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POLITICAL INTERFERENCE AND CORRUPTION IN THE
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HELD AT

BRIGITTE MABANDLA JUSTICE COLLEGE

15 MAY 2026

DAY 109



PROCEEDINGS HELD ON 15 MAY 2026

CHAIRPERSON: Yes, good morning, Ms Hassim.

ADV HASSIM SC: Good morning, Chair. Morning, Commissioners. We are meant to be dealing on the application of Mr Mogotsi for the recusal of an Evidence Leader, and I will be making submissions in opposition. But I do not see his legal representatives, although I believe they are present, and I am advised that Mr Mogotsi is running late, and I think we need to hear from his legal
10 representatives how late.

CHAIRPERSON: But at this stage, I do not think we need him right away. He will only be needed, depending on what our decision is, right at the end.

ADV HASSIM SC: That is correct, Chair. We could proceed without him.

CHAIRPERSON: So what we want is his representation, his legal representation at this stage.

ADV HASSIM SC: Thank you.

CHAIRPERSON: Ja, and I see Mr Sekgatja and Counsel,
20 ja. Good morning, Mr Segatcha. Who is leading today? I greeted you because you were leading last time.

MR SEKGATJA: Good morning, Chair.

CHAIRPERSON: Yes.

MR SEKGATJA: Thank you. I was leading last time.

CHAIRPERSON: Yes.

MR SEKGATJA: But for today's purposes, Counsel, Advocate Mohomane, she is the one who is going to be leading.

CHAIRPERSON: Thank you.

ADV MOHOMANE: Morning, morning, Chair. Morning, Commissioners.

CHAIRPERSON: Good morning.

ADV KHUMALO SC: It is Mohomane?

ADV MOHOMANE: Yes, yes, Commissioner, it is
10 Mohomane.

CHAIRPERSON: Please spell it for me. I just want to...

ADV MOHOMANE: Surname, Chair, it is M-o-h-o-m-a-n-e,
Chair.

CHAIRPERSON: Mohomane.

ADV MOHOMANE: Yes, Chair.

CHAIRPERSON: Thank you.

ADV MOHOMANE: Thank you, Chair.

CHAIRPERSON: Thank you. Are you ready, Ms
Mohomane?

20 **ADV MOHOMANE**: Yes, Chair, only, we are ready to
proceed.

CHAIRPERSON: Yes?

ADV MOHOMANE: Chair, prior to starting, I thought it
would be prudent to inform the Commission. We spoke to
Mr Mogotsi. He said that he is delayed in traffic, but his

GPS shows him that he will be here in the next 15 or 18 minutes. I am uncertain how the Commissioners would like us to deal with the matter. Do we proceed in *absentia* or do we wait for him to arrive? I will seek the Chairperson's guidance.

CHAIRPERSON: To my mind, this is very much akin to a motion matter in court. You do not need the litigant in such a matter. So, let us start.

ADV MOHOMANE: Thank you, Chair. Chair and Co-
10 Commissioners, this is an application that is being brought by Mr Oupa Brown Mogotsi for the recusal of Matthew Chaskalson SC, who is the Chief Evidence Leader in the proceedings where Mr Mogotsi is witness.

Now, Chair, what the relief that the applicant seeks is that Advocate Chaskalson be recused from the matter and an alternative Evidence Leader be appointed to cross-examine Mr Mogotsi. The basis of the application rests on the possibility of biasness or impartiality. And this, Chair, stems from ...[intervenes].

20 **CHAIRPERSON**: Actual bias or alternatively perceived?

ADV MOHOMANE: Perceived bias, Chair.

CHAIRPERSON: Not actual, but perceived.

ADV MOHOMANE: Perceived bias.

CHAIRPERSON: Thank you.

ADV MOHOMANE: And the reason for this perceived bias

is as a result of events that took place before the Commission on the 9th of March and the 10th of March. Mr Carrim Suleiman came in to bear testimony before the Commission.

Now, during the days when Mr Suleiman was giving testimony, there was communication between the Evidence Leader and Mr Mogotsi, who is the applicant for the recusal. That communication comes in the form of WhatsApps ...[intervenes].

10 **CHAIRPERSON:** I think there is an antecedent question, a legal question, because how we grapple with the events that you refer to depends on what the law is. Because you must first know what the law is and then you apply the law to what you refer to as events, which effectively are facts or factual issues.

In your application, you rely on *SARFU* other cases. Those cases relate to situations that involve decision-makers in whatever form those may manifest. The respondents have taken the point that those cases are
20 irrelevant to a situation like the present, where a decision-maker is not involved.

And the point made is that the Chief Evidence Leader is not a decision-maker. So what law are you relying on? Because the point is correct that the cases that you refer to in your application relate to decision-makers.

So are you continuing to rely on those cases? If so, on what basis would they be applicable here?

ADV MOHOMANE: Chair, I would be inclined to concede that the cases or the case law that was used by the applicant is that of the decision-makers and not the parties who partake in the proceedings. But then from that, Chair, I will also submit to the Commission that case law has been brought to the attention of the Commission in the form of an answering affidavit by the respondent. And the cases that
10 are therein mentioned do make provisions for instances where Prosecutors and, with this case, an Evidence Leader may be recused from certain proceedings.

CHAIRPERSON: Can you state the principles insofar as you see them for us to have an idea of the case you want to make out?

ADV MOHOMANE: Chair, there is the matter of the *DPP of the Western Cape v Killian*. It is a 2007 decision in the Supreme Court of Appeal. The full citation is at 169 (RSA). It is *DPP, Western Cape v Killian* (2007) SCA 169.

20 **ADV KHUMALO SC**: Is it the same case cited in footnote 16 of the answering affidavit?

ADV MOHOMANE: Yes, yes, yes, Commissioner.

ADV KHUMALO SC: It is footnote 16 of the answering affidavit on page 70. That is where the citation is. It is footnote 16 on page 70 of the record. And the test there is

substantive unfairness.

ADV MOHOMANE: It is substantive fairness, yes, Commissioner.

ADV KHUMALO SC: Unfairness.

ADV MOHOMANE: Unfairness, yes.

CHAIRPERSON: So that is basically what you will be relying on. There is also a reliance on *Porritt v NDPP* by the respondent.

ADV MOHOMANE: Yes, Chair.

10 **CHAIRPERSON**: By the respondent. I would assume that the test is the same.

ADV MOHOMANE: Yes, Chair.

CHAIRPERSON: In *Porritt* as well. All right, please continue then. You were dealing with the events.

ADV BALOYI SC: Maybe just to correct the citation. As we have it here, it is 2008(1) SACR 247 (SCA). Is that the one you are referring to? Because you have given us a different citation.

20 **ADV MOHOMANE**: Commissioner, according to the papers, it reads as 2007 (SCA) 169.

ADV BALOYI SC: I do not know.

CHAIRPERSON: If it is a ZASCA citation, it would still be wrong because you must have a ZASCA number.

ADV MOHOMANE: Yes.

CHAIRPERSON: Because I assume that the 169 is the

page. So there must be two numbers, the ZASCA number and then there should also be the page number. So, the citation is still wrong. But anyway, let us continue.

ADV MOHOMANE: Chair, as I was previously submitting

CHAIRPERSON: Yes, yes.

ADV MOHOMANE: As I was previously submitting, Chair, previously Mr Mogotsi was before the Commission with a different legal team. Subsequent thereto, in January of 2026, the legal team withdrew from the record. Now, Mr
10 Carrim came on to give testimony before the Commission and this occurred on the 9th and the 10th of March, respectively. And it is at this time when there was communication between the Evidence Leader and Mr Mogotsi.

Now, this communication comes in the form of telephone calls and WhatsApp messages. Now, the content of the WhatsApp messages which are contained in the papers is that there was communication of some sort. Now, the dispute is factual in the sense that the applicant gives a
20 different version of what was discussed specifically with the telephone calls and it differs significantly from what the respondent replies.

The applicant in his papers say that the Evidence Leader had suggested that he can be able to assist him, he can be able to protect him in the event that he gives

evidence that is adverse against Mr Carrim Suleiman. That is the case in a nutshell. Now, a meeting was to take place on the 10th of March where discussions would go forward regarding the type of evidence ...[intervenes].

CHAIRPERSON: Is it not correct, though, that we would only have a full picture of what actually transpired between Mr Mogotsi and the Chief Evidence Leader if we are given the full picture of the exchanges between Mr Mogotsi and the Chief Evidence Leader? Is that not correct? I do not
10 think that is something you can find in the papers. It is a question that you should be able to answer off the top of your head.

ADV MOHOMANE: Chair, the intention with the perusal was to take the Commission to the attachment of the WhatsApp messages which would have the dates and the times when the communication started between both parties.

CHAIRPERSON: I do not think that is what I am asking. What I am asking is do you agree or do you not that for us
20 to get a full picture of what actually transpired between Mr Mogotsi and the Chief Evidence Leader is if we have a full picture of the exchanges themselves. Is that so or not?

ADV MOHOMANE: That is so, Chair.

CHAIRPERSON: Has Mr Mogotsi given us that full picture?

ADV MOHOMANE: Mr Mogotsi has given us what he has in

his possession in the form of WhatsApp messages. Further thereto, with regards to the telephone calls, he has given disclosure of what was discussed in those telephone calls that took place. I am uncertain whether there is anything that he has omitted to give to the Commission.

CHAIRPERSON: I will not get into much detail. I will just mention one, and you will correct me if I am wrong. There is the one during Mr Carrim's testimony where Mr Mogotsi sent to the Chief Evidence Leader what was normally used
10 as laughing emojis, but with tears coming down the person's face. I think you know what I am referring to.

ADV MOHOMANE: Yes.

CHAIRPERSON: That is an example of something that was excluded. From what you said, I understand you to be suggesting that all that Mr Mogotsi has excluded are just phone calls. But what I have just referred to, I think that too was excluded. That is just one example. Or am I wrong?

ADV MOHOMANE: There is an explanation that is
20 contained in the reply affidavit about ...[intervenes].

CHAIRPERSON: Am I wrong?

ADV MOHOMANE: No, Chair, you are not wrong.

CHAIRPERSON: Yes, yes.

ADV MOHOMANE: However, Chair, when that issue was raised, Mr Mogotsi then goes and he addresses the issue

and he gives an explanation as to why that was omitted in the images of the WhatsApp chats that were handed in as annexures.

CHAIRPERSON: And what is that explanation?

ADV MOHOMANE: Chair, the explanation is that he took what he thought was necessary in order to make a case. And this, Chair, can find at paragraph 43 of the replying affidavit.

CHAIRPERSON: Page?

10 **ADV MOHOMANE**: 43, Chair.

CHAIRPERSON: Page in terms of the entire pagination, not the page of his affidavit.

ADV KHUMALO SC: 267.

CHAIRPERSON: Do you want to take us through what you have just referred to, please? That explanation.

ADV MOHOMANE: Chair will find at 267 of the bundle.

CHAIRPERSON: You said paragraph?

ADV MOHOMANE: Paragraph 43, Chair.

CHAIRPERSON: 43?

20 **ADV MOHOMANE**: Yes, Chair.

CHAIRPERSON: Thank you. This is not addressing the issue I am raising with you. There he says that he deleted calls. I just referred you to something that is not a call, and that is what I was engaging you on now. That is something that is not a call. Go to page 97, paginated 97 of the

papers. That is what I am referring you to. You see those three emojis there? Someone laughing, they have tears in their faces.

ADV MOHOMANE: I see them.

CHAIRPERSON: Tilted.

ADV MOHOMANE: Yes, Chair, I see them.

CHAIRPERSON: So that is not a call. So 43 does not answer that. Paragraph 43 at 267 does not answer that. And I said I am referring to this just as one example.

10 Maybe my colleagues, Ms Hassim, I do not know, perhaps they may refer to something else. But I just raised this one example to say to you it is not correct that all that he took out were calls only.

ADV MOHOMANE: No, Chair, in response to that, if the Commissioners look at paragraph 42 of the same affidavit that I referred the Chairperson to, it reads that:

“The sole intention behind the deletion was to protect my conversations with the third respondent from third persons.”

20 **CHAIRPERSON**: That does not make sense to me. What does that mean? If he is saying, here are our conversations, however they may manifest, and these communications show that the Chief Evidence Leader is perceived to be biased, that is the language we use in the application, how do you then go ahead and protect him?

You should actually be seeking to embarrass him and show what a bad person he is by showing what he has communicated or by showing what you have communicated if, in your view, it shows the perception of bias or it demonstrates the perception of bias. So, I just do not know. What do you mean by this? What does Mr Mogotsi mean by what he says in paragraph 42?

ADV MOHOMANE: Chair, in response, I will submit that, save for paragraph 42 and 43, there is nothing further that
10 deals with these deleted telephone calls and the emojis, and there is no provision in the affidavit nor the reply that gives a basis for the deletion of the same.

CHAIRPERSON: Are the deletions not actually calculated to avoid the possibility of interpreting these chats in a manner that disproves what Mr Mogotsi is saying? Is that not a possibility? That is, they are calculated for that purpose?

ADV MOHOMANE: Chair, in response, I will submit that the interactions and the events that took place, the end
20 result was the belief that if Mr Mogotsi does not provide information or useful information or helpful information, the condition that he will be protected ...[intervenes].

CHAIRPERSON: I am not sure that answers the question I have put to you. My question is about, is there not a possibility that the deletions are calculated to create the

impression that Mr Mogotsi is pushing for? So he deletes whatever may be at variance with or at odds with what the Chief Evidence Leader is saying. Is that not a possibility?

ADV MOHOMANE: Chair, it is a possibility, and it is also a possibility that none of us know the content of these deleted telephone calls.

CHAIRPERSON: We know the Chief Evidence Leader has put up everything, so we know, we do know.

ADV MOHOMANE: But, Chair, it is the same information
10 ...[intervenes].

CHAIRPERSON: Except, of course, for calls. We are not in a position to know the content of the calls themselves, but as for texts, the Chief Evidence Leader has put up everything. So in that regard, we do know.

ADV MOHOMANE: Hence, Chair, when I responded, I spoke about the calls specifically.

CHAIRPERSON: Yes.

ADV MOHOMANE: I said where we are seated and where the Commissioners are seated, none of us know the content
20 of these deleted phone calls that took place between the two parties. Now, having said that, I would not be in a position to submit whether the deletions were to push a certain agenda or to conceal a certain intention because I was not privy to the calls and neither was the Commission.

It is two individuals where one says, I deleted for

this specific reason and this was requested of me or it was asked of me. And there is an individual who then says, I did not ask this, I asked that. So the dispute now tends to be a factual dispute about what was contained in the phone calls. I cannot make any submissions on that.

CHAIRPERSON: Here is what I understand the respondent's case to be. Most of the calls, the bulk of the calls, were by Mr Mogotsi and not the other way around. Do you agree with that?

10 **ADV MOHOMANE**: Chair, I will agree with you. And in my opinion ...[intervenes].

CHAIRPERSON: Let me continue with the point. I just wanted to see if you agree or not. So you say you agree. Now, if I understand the respondent's case correctly, it is that Mr Mogotsi was persistently knocking at the door of the Chief Evidence Leader and he was the one through, amongst others, calls, the many calls which you accept largely came from him, Mr Mogotsi.

20 So he was knocking at the door of the Chief Evidence Leader, seeking to be assisted. So he is the one that was seeking to be assisted. And if I understand the case, that is amongst others shown by the fact that he made several calls. He is the one that largely made calls to the Chief Evidence Leader and not the other way around. That is how I understand the case.

So we may not know the content of the calls, but the point appears to be that from the fact that he is the one that made most of the calls, that appears to be an indication that he is the one that was, if I am to speak loosely, was seeking the Chief Evidence Leader out. Do you get my point?

Go, for example, to page 95. 96 as well. And there you will see missed voice call, missed voice call, missed voice call, missed voice call. And all of those, and next
10 page 96, missed voice call, missed voice call. There is another one, missed voice call. And all the way down, I am sure you could go on and on. 97 as well, same thing. All of those are missed voice calls coming from Mr Mogotsi.

So it is Mr Mogotsi who is seeking out the Chief Evidence Leader. It is not the Chief Evidence Leader who is trying to get, desperately trying to get hold of Mr Mogotsi. It is Mr Mogotsi who appears to be desperately wanting to get hold of the Chief Evidence Leader.

So I am saying, yes, we do not know the content of
20 the conversations, or rather, what conversations actually took place where there were calls that were taken between them. But from the fact that Mr Mogotsi appears to have been the one seeking out the Chief Evidence Leader, that may well be, that may well be, I am not deciding that point. I am engaging you on it. That may well be an indication

that it is Mr Mogotsi who wanted assistance from the Chief Evidence Leader, and not the other way around, as Mr Mogotsi is suggesting in his application. What is your comment? And comment specifically on the several calls that Mr Mogotsi is making here.

ADV MOHOMANE: Chair, on page 95, I concede that ...[intervenes].

CHAIRPERSON: It is not only 95, it is 95, I took you to 95, 96, 97, and I am sure ...[intervenes].

10 **ADV MOHOMANE**: Yes, Chair, I am moving through the pages.

CHAIRPERSON: Yes.

ADV MOHOMANE: Now, if I may be allowed to start with the first page, which would be 95. Chair, I concede that there is a missed call that came from Mr Mogotsi. Now, there is a call that goes back to Mr Mogotsi with a duration of three minutes that comes from the Evidence Leader.

20 Subsequent to whatever that was discussed in that call, there is a question that comes from Mr Mogotsi that says, how do you protect me? The next question says, this guy, I believe that that Sana maybe wants to take me down. It is open to ...[intervenes].

CHAIRPERSON: Ja, how the respondents have read that, they quote this as is, and then in practice they say, this guy want to take me down, something like that.

ADV MOHOMANE: That is how I understand it.

CHAIRPERSON: This guy wants to take me down, yes.

ADV MOHOMANE: Now, Chair, the calls move further towards the night, and well, I suspect that the both of them at some point went to bed. Now, on the 10th of March, there is a missed call in the morning. If Chair moves to page 96, there is subsequent missed calls, and then there is a text that comes in which says that:

10 “Are you proceeding with him or are you
 going to need info prior?”

Again, Chair, what info does the Evidence Leader require prior to questioning Mr Suleiman?

CHAIRPERSON: The Evidence Leader, the Chief Evidence Leader says that Mr Mogotsi made the offer that he had information, new information to give to the Chief Evidence Leader.

ADV MOHOMANE: Now, Chair, with regards to that, Mr Mogotsi further says that during this phone call, there was a discussion about additional information that the Evidence
20 Leader sought, which was in the form of proof of payment and bank statements. And then he then says in his affidavit that he became aware on that 10th of March that the Evidence Leader has gotten hold of these proof of payments and the bank statements. Now, he further asks:

 “Thought you may need something.”

Now, Chair, my submission is that the Commission may look at it to say that Mr Mogotsi is the one who reached out. And according to these records, indeed that is the case. Now, when Mr Mogotsi reaches out, the Evidence Leader also entertains him. And he could have been told of, he could have been ...[intervenes].

CHAIRPERSON: Why should that be the case? Why should he tell him of? If he says I have information, it is information that is relevant to what the Commission is
10 about, I want to give you that information. Why should the Evidence Leader not be interested in that? And we know, for example, that the Chief Evidence Leader was not cagey or secretive, confidential about any of this. Remember, even there are texts written to two other people within the Commission. I think it is two ...[intervenes].

ADV MOHOMANE: [Indistinct] ...[intervenes].

CHAIRPERSON: One is definitely an investigator. And there is another second one. I do not know whether ...[intervenes].

20 **ADV MOHOMANE**: Yes, there is a Mr Dlamini ...[intervenes].

CHAIRPERSON: That is also an investigator.

ADV MOHOMANE: And somebody else.

CHAIRPERSON: Yes, two investigators.

ADV MOHOMANE: Yes.

CHAIRPERSON: So he said, I have an appointment with Mr Mogotsi to consult with him. And that is basically all the new information that Mr Mogotsi says he has. Can you please join me? If the Chief Evidence Leader wanted to act improperly, do you think he would have invited other people to come listen to him, going to say to Mr Mogotsi, I want you to give any dirt you can give me on Mr Carrim. I am going to get him and I will protect you. Would he have acted in that manner?

10 **ADV MOHOMANE**: Chair, I ...[intervenes].

CHAIRPERSON: Or perhaps let me go back to my initial question, which is, to use your language, why should he have told him off? If he said, I have information, why should he not listen to what that information is? That is the first point. And then the second point is, if there was anything the matter with regard to his conduct, that is the Chief Evidence Leader, would he have invited other people to come witness what he wanted to do? And please answer both questions.

20 **ADV MOHOMANE**: On the first question, Chair, there is nothing underhanded with the behaviour of the Evidence Leader when he called two other parties or members, if I may so put it without labels, who form part of the team for the Commission to come with him when he goes to meet with Mr Mogotsi.

Now, then the question turns on, would he have done that if he knew that he was going to do something underhanded with Mr Mogotsi? Chair, the allegation here is not anything underhanded. It has got nothing to do with underhandedness. It is the phobia that ...[intervenes].

CHAIRPERSON: I understood it to be Mr Mogotsi's case that everything about what the Chief Evidence Leader did was underhanded. So what you are saying now seems to cut across that case.

10 **ADV MOHOMANE**: No, Chair, what he says is he wanted valuable information. He wanted me to throw Carrim Suleiman under the bus. He wanted to give him something that would embarrass Suleiman. Now, in the event that I cannot do that ...[intervenes].

CHAIRPERSON: So are you now saying that there was basically nothing wrong that the Chief Evidence Leader did? Which you cannot say if your case is that the Chief Evidence Leader must be taken out of this case. You cannot possibly say there is nothing wrong he did.

20 **ADV MOHOMANE**: Chair, there has been interactions. I want to select a word wisely. There has been interactions between the evidence, Chair, and Mr Mogotsi, which have strained whatever relation that they might have had. And to demonstrate that even prior to the recusal application ...[intervenes].

CHAIRPERSON: I am going to get lost. I am very, very sorry. My most sincere apologies, but I am going to get lost. My first question to you was, why do you say that the Chief Evidence Leader ought to have told Mr Mogotsi off – again, I am using your language – when Mr Mogotsi was saying, I have information for you, information that is relevant to the Commission? Why should the Chief Evidence Leader not listen to Mr Mogotsi to hear what the information is? Maybe instead of what I did earlier, which
10 was to ask two questions, let me ask that one question and get your response on it.

ADV MOHOMANE: Chair, in response, I will submit that when Mr Mogotsi was giving testimony, the Evidence Leader labelled him a liar. Now, you have this person who is a liar, and he comes to you and he says he has information, and you take the word of a liar and you entertain him and you run with that information.

CHAIRPERSON: But have you seen what the Chief Evidence Leader's treatment of what you have just said is in
20 his affidavit? Have you seen that?

ADV MOHOMANE: Yes, Chair, I have seen it.

CHAIRPERSON: What does he say? Let me tell you to save time. The Chief Evidence Leader says that I would still listen or consider what Mr Mogotsi says, but from where I am sitting, because Mr Mogotsi has been shown to be a

liar, I would want to have corroboration of whatever it is that he were to tell me. That is his response. I think that answers the hypothetical question you are raising.

ADV MOHOMANE: Chair, I will respond by saying that the corroboration comes after they have engaged each other for two days. It comes late on the 10th of March. They make an appointment to meet at 13 minutes past four ...[intervenes].

CHAIRPERSON: I am not sure I get what you mean by
10 referring to corroboration coming to the fore because corroboration would only be after the Chief Evidence Leader had received the information. Then as to what he would do with regard to how that gets corroborated is something that would arise after receipt of the information. So, I do not ...[intervenes].

ADV MOHOMANE: I am in agreement with the Chair.

CHAIRPERSON: Yes, yes, yes.

ADV MOHOMANE: Why I am raising this issue, Chair, there is numerous phone calls, there is messages, there is
20 missed calls, there is emojis that come for a period of two days. And the appointment is finally confirmed on the second day at 16:13. And they have been engaging each other for two days with telephone calls that, as I had previously submitted, I know nothing about, and the Commission does not know the contents thereof.

CHAIRPERSON: But I think we all agree, though, that whatever was said in those phone calls was not about the actual content of what Mr Mogotsi could or would have said because that is exactly what the consultation was to be about. So no question of any corroboration at that stage. I will stop there and say subject to whatever issues my Co-Commissioners may want to raise, you may continue with your argument, and I will try not to disturb you any further.

ADV BALOYI SC: Maybe before you continue, if you look
10 at page 76, paragraph 8.2, that is the evidence, Mr Chaskalson's affidavit. And in there, that is the answering affidavit.

ADV MOHOMANE: Yes, yes, Commissioner.

ADV BALOYI SC: 8.2. He says:

“The suggestion that Mr Mogotsi could provide evidence against Mr Carrim first came from Mr Mogotsi himself, unsolicited by me.”

That is what Mr Chaskalson says. Then you look at how Mr
20 Mogotsi deals with that in his replying affidavit. You will find it at page 264. It is quite a lengthy response. It goes from paragraph 22 up to 29. But in all of that, he does not deny that he is the one that approached Mr Chaskalson with an offer to provide information about Mr Carrim. And in your exchange with the Chairperson, I understand you in

your own way to not be disputing.

That is how this started. Now, if that is the case, and we have to accept that is the case because in the replying affidavit it is not denied, so Mr Chaskalson's word on it would be the last word on it. Now, if that is what happened, how is it a problem or even a ground for a complaint that finds a recusal application that they then continue conversations about Mr Carrim? How can it be?

ADV MOHOMANE: Can the Commissioner repeat the
10 question for me?

ADV BALOYI SC: If the admitted case or the undisputed case, let me make it the undisputed because Mr Mogotsi does not dispute it. If the undisputed case is that Mr Mogotsi is the one that approached Mr Chaskalson with an offer to give him information about Mr Carrim, that is the case, right?

And I am saying that is not disputed. Your client had the opportunity to dispute and say exactly what happened in those conversations, but he does not dispute
20 it. So we must accept that the position, the true position, is that Mr Mogotsi unsolicited offered to Mr Chaskalson that I will give you information about Chaskalson. About Carrim, about Mr Carrim.

With that, knowing that, how can it be then a legitimate ground of complaint that Mr Chaskalson was

having discussions with me to give him information about Mr Carrim? How can it be? Just logically, if nothing else, just logically, how can it be a legitimate ground for complaint and therefore for recusal?

ADV MOHOMANE: Commissioner, the issue relating to a belief of unfairness or biasness is subjective. And it is not disputed that Mr Mogotsi reached out to Mr Chaskalson. Now, what then transpired from there on could have or did create the impression that moving on, there will be a
10 biasness of some sort, or he will not be treated fairly. And this is what prompted the application. And prior to the application being brought, there was a letter that was addressed to the Commission ...[intervenes].

ADV BALOYI SC: No, no, do not go to the letter. You are not answering my question. I am going to repeat it. But before I do that, let me correct you. You are incorrect. It is an incorrect standard to say the issue of biasness is subjective. It is an objective test. I expect you know that. So the test is objective.

20 That is one correction. Two, my question to you, do not go to letters that were written to the Commission. My question to you is simply this. Mr Mogotsi approached Mr Chaskalson with an offer to give him information about Mr Carrim. That is what happened according to Mr Chaskalson's affidavit, and Mr Mogotsi does not deny it in

the replying affidavit.

And in your engagement with the Chairperson, I said to you that as I was listening to you, you seem in your own way to accept that is what happened here. So having established that you and I agree that Mr Mogotsi is the one that made the approach and offered to provide information about Mr Carrim, how can then it be a legitimate complaint that Mr Chaskalson was talking to me about Mr Carrim to get information about Mr Carrim? How can it be?

10 In fact, it can never be a basis to claim bias until you address my question about how can this be a legitimate complaint? You offered, you offered, I will give you information about Carrim that relates to your terms of reference. I have stuff on Carrim. Then Mr Chaskalson says, okay, give me that information.

If the engagement is about information relating to Mr Carrim, which is originally offered by Mr Mogotsi, how can that be now a legitimate complaint that, oh, Mr Chaskalson wants to talk to me or was talking to me about
20 Mr Mogotsi?

Firstly, how can that be a legitimate complaint? And I want to suggest to you it is not legitimate. It can never be a legitimate complaint, the fact itself that he is talking to me about Carrim because you offered, unless you want to tell us that Mr Mogotsi was setting Mr Chaskalson

up when he offered him that I will give you information about Mogotsi. Perhaps he was setting him up so that he can do this complaint, but we have to accept he was in good faith when he made the offer. So I am not casting aspersions on him at this stage. I accept he was in good faith when he said I have information that is relevant to you about Mr Carrim that I am going to share with you.

Having accepted that, I am suggesting to you, in fact, I am putting to you that it can never be a legitimate
10 complaint that he was talking to me about Carrim, therefore, firstly, he was talking to me about Carrim can never be a basis for a proper or legitimate complaint. Two, it could not, under any circumstance, be a basis for claims of bias or fear of bias. It cannot be. So, I would like you to say why am I wrong in what I am saying to you, in what I am suggesting to you.

ADV MOHOMANE: Commissioner, if it is looked at in isolation that Mr Mogotsi approached the Evidence Leader, then that cannot be a ground for this application. If the
20 mere approach on its own is what the recusal is about, I will have to concede, in isolation, it is not a ground to bring a recusal application, neither is it a ground to anticipate any form of biasness from the Evidence Leader.

ADV BALOYI SC: All right, that is fine. So, what else do you say we should look at? So, we have settled that the

approach and the conversation that follows as a result of that approach in itself is not a ground for complaint, for legitimate complaint, but for recusal. But then you say do not look at it on its own, in isolation. What else are you saying we should look at that then supports the complaint and the ground for recusal?

ADV MOHOMANE: Commissioner, if I may refer you to page 38 of the bundle? It is back to the telephone calls and the WhatsApp messages.

10 **ADV BALOYI SC**: Yes.

ADV MOHOMANE: Now, this is a continuation from the dates that we spoke about prior, but there is a message here and it reads, from Mr Mogotsi, I believe you can help me. Now, there is a response after that which says:

“I think so too, but you cannot mess me around.”

Now ...[intervenes].

ADV BALOYI SC: What about that? What are you saying about this exchange?

20 **ADV MOHOMANE**: Chair, my submission is we concede that from the onset Mr Mogotsi approached the Evidence Chair and they engaged in whatever form of communication that they engaged in and as the Commissioner had said, the purpose of the exercise was *bona fide* to say I have information, I can help you.

Now, as the events transpired, the impression that was formed according to Mr Mogotsi's case is that if I do not bring anything valuable, if I do not bring anything useful, then I cannot be indemnified or I cannot be saved. If Chair looks at page 16 of the founding affidavit ...[intervenes].

ADV BALOYI SC: No, before you go to page 16, I think let us first settle what page 38 is about, the reference to page 38. The text reads:

10 “I believe you can help me.”

And we know from the papers and you have just said that is Mr Mogotsi saying to Mr Chaskalson and Mr Chaskalson responds:

 “I think so too, but you cannot mess me around.”

What are you saying about this?

ADV MOHOMANE: Chair, Commissioner, I apologise. What I am saying about the messing around, it forms an impression that give me the information, do not play with
20 me.

ADV BALOYI SC: Where does it form that impression that the text does not say ...[intervenes].

ADV MOHOMANE: Chair, if you read ...[intervenes].

ADV BALOYI SC: Sorry, let me finish.

ADV MOHOMANE: I apologise, I apologise, Commissioner.

ADV BALOYI SC: It is okay, you do not have to apologise, it is okay. The text says, but you cannot mess me around. I think so too, but you cannot mess me around. Where do you see what impression it forms and what it is speaking to? Where do you see that?

ADV MOHOMANE: Chair ...[intervenes].

ADV BALOYI SC: Because I think, keep in mind, also I want to suggest that you also do not read that. A proper way of reading any document is to read it in context, you
10 know that, right? So look at the context of the communication from the beginning to the very last one and the one that precedes, I believe you can help me, it is preceded by:

“When am I going to be heard? When are you bringing the subpoena? Which date do you have in mind? When I know we can fit you in.”

That is Mr Chaskalson. Yes.

ADV MOHOMANE: Commissioner ...[intervenes].

20 **ADV BALOYI SC:** Sorry, let me finish. I just want for us to be in agreement about the context in which this text appears.

ADV MOHOMANE: Yes, Commissioner.

ADV BALOYI SC: That whole page, it starts with:

“What happened to you?”

That is Mr Chaskalson. And in his affidavit, he does say that they had been waiting for Mr Mogotsi to come here for an appointment, Mr Chaskalson and the two investigators. Mr Chaskalson says in his affidavit we waited for two hours. He complains, he says we actually wasted a good two hours waiting for Mr Mogotsi, and he did not arrive, and that explains, according to Mr Chaskalson.

So, what Mr Chaskalson says in the affidavit, you would have seen, he says we had an appointment with Mr
10 Mogotsi for the morning. He did not arrive in the morning. We rescheduled for 2 o'clock. He did not arrive at 2 o'clock, and Mr Chaskalson complains in his affidavit that he wasted our time. We waited for a good two hours for him to arrive, the three of us, two investigators and Mr Chaskalson.

And he explains that message. He says that message of what happened to you is because Mr Mogotsi had not arrived here at the college, not a secret meeting. Here, at this venue for a consultation. And then Mr
20 Chaskalson says, and I read this only to say to you, context is important. We should not read selectively WhatsApp messages. After Mr Chaskalson says, what happened to you, he then again says:

“I cannot hear your evidence tomorrow.”

Note the date of the text is the 12th of March. Mr

Chaskalson says:

“I cannot hear your evidence tomorrow anymore because we have not met on the new info yet. I will see what else works on the calendar and get back to you.”

And then Mr Mogotsi asks at 11:31:

“When are you bringing the subpoenas?”

That is Mr Mogotsi, indicating a willingness to come and testify. Mr Mogotsi again asks:

10 “Which date do you have in mind?”

Mr Chaskalson answers him:

“When I know when we can fit you in, I will tell you.”

That is Mr Chaskalson. Then Mr Mogotsi says:

“I believe you can help me.”

That is his response to:

“When I know when we can fit you in, I will tell you.”

He says:

20 “I believe you can help me.”

That is Mr Mogotsi. Mr Chaskalson says:

“I think so too, but you cannot mess me around.”

Now remember the context I said to you, he has missed appointments, but you cannot mess me around. Then Mr

Chaskalson finally, in that stream of communication, says:

“I will try to work out when we can fit you into the calendar. It will have to be next month. I will get back to you next week with possible dates.”

Now, nothing in this sequence of communication gives you, or Mr Mogotsi, any basis to say that which you have selectively read, Ms Mohomane, I think so too, but you cannot mess me around, means give me something and
10 then I will protect you. There is absolutely no basis to present that part of the text in that way when you look at the context.

ADV MOHOMANE: Commissioner, I am inclined to agree with you thus far. Now, further to the response that you cannot mess me around and I will try to work out when we can fit you into the calendar, there is a response from Mr Mogotsi which says that:

“How do I get involved and finish, which I knew what to do exactly.”

20 **ADV BALOYI SC**: What about it?

ADV MOHOMANE: We are underneath, fit you into the calendar. It will have to be next month message.

ADV BALOYI SC: Yes, I can see that. That is on page 39. So it is a continuation of what I had read at page 38, right?

ADV MOHOMANE: Yes. There is a message that comes in

at 12:43.

ADV BALOYI SC: Yes:

“How do I get involved and finish? Wish I
knew what to do exactly.”

Yes. What about it? That is Mr Mogotsi saying to Mr Chaskalson, right? And in the way that he is presented, or it is presented on this page, it is a response to Mr Chaskalson saying:

10 “I think so too, but you cannot mess me
around.”

And we have discussed that in context, it must have meant this. And then Mr Mogotsi says:

“How do I get involved and finish? Wish I
knew what to do exactly.”

That is Mr Mogotsi. It is not Mr Chaskalson. What are you saying about it?

ADV MOHOMANE: I agree.

20 **ADV BALOYI SC:** And I ask the question, keep in mind my conversation with you is about what do you say Mr Chaskalson did wrong in this communication that is initiated by Mr Mogotsi to give information about Mr Carrim to Mr Chaskalson? Here he offers, he again continues Mr Mogotsi to offer:

“How do I get involved and finish? Wish I
knew what to do exactly.”

What do you say Mr Chaskalson did wrong when you read this text that creates a basis for the complaint and for fear of bias on his part?

ADV MOHOMANE: Commissioner, with the last response in the WhatsApp message, my submission would be the navigation of whatever it is that Mr Chaskalson and Mr Mogotsi were doing was being steered by the direction of the Evidence Leader, if I may so put it.

ADV BALOYI SC: Where do we see that?

10 **ADV MOHOMANE**: He asks, Mr Mogotsi asks, he says that:

“How do I get involved and finish? I wish I knew exactly what to do.”

ADV BALOYI SC: Why do you say this text was steered by, and you have to give us facts, remember? You do not get to say whatever we want. You are making allegations of fact. So when you say this text:

“How do I get involved and finish? Wish I knew what to do exactly.”

20 When you say this was steered, to use your language, by Mr Chaskalson, you have to refer us to the source of that steering.

ADV MOHOMANE: Commissioner, paragraph 6.3 of the founding papers, page 12.

ADV BALOYI SC: It is 6.3?

ADV MOHOMANE: It is 6.3, Commissioner, it is page 12 of the bundle.

ADV BALOYI SC: Yes.

ADV MOHOMANE: Commissioner, Mr Mogotsi – may I just read this paragraph:

10 “On the 9th of March 2026 at 20:56, I attempted to call Advocate Chaskalson SC, who returned my call. The call lasted approximately three minutes. During the call, he told me, get me anything against Suleiman and I will help you. He further stated that Suleiman had implicated me and that I should find a way to defend myself. He expressed his belief that Suleiman was lying, that Suleiman had thrown me under the bus, and that he wanted me to do the same to Suleiman.”

20 **ADV BALOYI SC:** And Mr Chaskalson says what about it in his answering affidavit?

ADV MOHOMANE: He denies, he denies the contents of this paragraph.

ADV BALOYI SC: Yes.

ADV BALOYI SC: Ja.

ADV MOHOMANE: Now, Commissioner ...[intervenes].

ADV BALOYI SC: So there is a denial. Perhaps then that is when you get to address what do we do with that.

ADV MOHOMANE: Hence, Commissioner, in response to that, I had said to the Commission that there is a factual dispute here wherein one party says I did, and the other says I did not. And then the other one says you did this, and the other one denies. And the difficulty with that, as I had answered the Chairperson, is nobody knows the contents of the phone calls and what was discussed
10 between the Evidence Leader and Mr Mogotsi.

ADV BALOYI SC: Thank you, Ms Mohomane.

ADV MOHOMANE: He says, Commissioner, the Evidence Leader says that he has got no detailed recollection of what was discussed in the call on the 9th of March, as opposed to the call of 08:03 in the morning of the 10th of March. It is not a denial per se. He says that he has no recollection. So he is not disputing that.

ADV BALOYI SC: I have heard you.

ADV KHUMALO SC: Ms Mohomane, only two issues from
20 me. Good morning.

ADV MOHOMANE: Good morning, Commissioner.

ADV KHUMALO SC: The transcript of 10 March 2026, when Mr Carrim was here giving evidence on page 159 and 160.

ADV MOHOMANE: On which page, Commissioner?

ADV KHUMALO SC: 159 and 160. You will see on page 159, line 22. Because, if you recall, Mr Carrim's evidence was public. He was sitting here with us. Mr Chaskalson says:

“Now, did Brown ever meet with you and Mr Maumela?”

Mr Carrim says:

“No.”

Mr Chaskalson continues:

10 “You say no. Because after your evidence yesterday, Mr Mogotsi called us up and said he had in fact met with you and Mr Maumela shortly after this tender. You have no recollection of that?”

And it continues. The point I am making here is, it was not hidden that Mr Mogotsi had approached the Evidence Leaders and had given them evidence relating to his interactions with Mr Carrim, which is what that was all about.

20 So, if that is what has happened, if that is what happened, how does that create a perception of substantive unfairness that should result in the Evidence Leader being disqualified from leading further evidence? Because there is no suggestion anywhere that what the Evidence Leader sought was false information from Mr Mogotsi.

If Mr Mogotsi has information which is the truth and can be verified and corroborated through other means, what is wrong with Evidence Leaders asking Mr Mogotsi to provide that information so that it can be put to Mr Carrim? I would understand if you were saying in your application that Evidence Leaders asked Mr Mogotsi to provide false information, and I emphasise false information because that would be problematic to me.

10 But if in their engagements they said, give me what you have on the issues we are dealing with so that I can put that to Mr Carrim and he will have the opportunity in a public hearing to respond to that, what is wrong with that? And how does all of that rise to the level of substantive unfairness that should result in an Evidence Leader being disqualified?

ADV MOHOMANE: Commissioner, as I had previously responded, if that aspect is taken in isolation and the only issue is that Mr Mogotsi approached the Evidence Leader, then it is the correct position there is no basis to have the
20 Evidence Leader recused specifically with regards to Mr Mogotsi.

Now, if as the events unfold and the conversations and the interactions, Mr Mogotsi starts feeling that in the absence of the failure to provide or to throw Carrim Suleiman under the bus does not work out, then he has got

a problem moving forward. And that is where the inclination of biasness comes in. When he approached the Evidence Leader, it was done *bona fide* in the hope that he has information that can assist the Evidence Leader.

ADV KHUMALO SC: And if that information has the effect of throwing Mr Carrim under the bus, if that information is true, what is wrong with that?

ADV MOHOMANE: Commissioner, there is nothing wrong with that, hence the establishment of the Commission.

10 **ADV KHUMALO SC:** Because it is Mr Mogotsi who says, the very first text he says, this guy is trying to take me down, on page 35. It is Mogotsi who is saying that. So if he has information, that has the same effect towards Mr Carrim, but that information is true or can be corroborated in other means and he is not being asked to lie to the Commission or give false information, what is wrong with that?

Because I can tell you in this Commission, almost every witness who comes here implicates other people. So
20 if Mr Mogotsi has information that implicates Mr Carrim, and that has the effect of throwing Mr Carrim under the bus, what is wrong with that? Because that is what witnesses do in this Commission. They give information, and if it is helpful to the Commission, it must be put to Mr Carrim so that he is given the opportunity to dispute it. So, I do not

understand how that can result in substantive unfairness, which should disqualify an Evidence Leader. And if you respond to that, that is all I had to raise with you.

ADV MOHOMANE: There is nothing, Commissioner, untoward about soliciting information that can assist the Commission, and so to put it, even go as far as throwing Mr Carrim under the bus. The core or the challenge here is Mr Mogotsi alleges that he was promised. He says, I am promised protection, I am promised indemnity, and if I do it,
10 I might just get out of this unscathed. There is a promise.

ADV KHUMALO SC: It is Commissioners who decide what happens to Mr Mogotsi and other people who are implicated. It is not the people who lead evidence. Their job is to present the evidence to the Commissioners, and the Commissioners decide what happens to all the people who are implicated. It is not the other way around. Thank you.

ADV MOHOMANE: I will agree with you, Commissioner. That is indeed the hierarchy of powers and decision-making.
20 But there is an influence of some sort. It is undue influence to say, help me, then I can do this for you.

ADV KHUMALO SC: Thank you.

ADV MOHOMANE: Thank you, Commissioner.

ADV BALOYI SC: Can we just be clear? This is very important, and I must insist that you refer us to the record.

When I say the record, I mean the papers. In your exchange with Commissioner Khumalo, you say Mr Mogotsi says:

“If I do this, I may come out of the Commission unscathed. That is a promise.”

Can you point us in the papers where Mr Chaskalson says that? Because that is quite a serious allegation that is being made. And if it is not in the papers that you have put
10 before us in your application, I am going to ask that you withdraw that allegation because it is quite a damaging allegation.

Where do we find in the exchanges between them where Mr Chaskalson says to Mr Mogotsi, if you give me information about Mr Carrim, I will make sure, I promise you that I will help you to come out of the Commission unscathed. Where do we find that?

ADV KHUMALO SC: I think the best you can do is 6.5 on page 13. Also 6.16 on page 16, but it says the same thing
20 as 6.5.

ADV MOHOMANE: I was looking at 6.19.

ADV KHUMALO SC: Yes.

ADV MOHOMANE: I see the 6.5 that Commissioner is referring to.

ADV KHUMALO SC: So, it is 6.5 where he says:

“I was left with a distinct impression that my protection from adverse findings by the Commission was being made conditional upon my willingness to provide information and documentation.”

ADV BALOYI SC: My question is, point us to the exchanges between Mr Chaskalson and Mr Mogotsi where that promise is recorded. I do not want to be referred to Mr Mogotsi's impressions, and I want you to say if it is not in
10 the exchanges, if it is not recorded in the exchanges, I would like you to at least admit that for the record, that nothing in the exchanges between them that are placed before us by Mr Mogotsi records that.

ADV MOHOMANE: Commissioner, I will respond by saying that with the WhatsApp messages and the phone calls that have been put as annexures, there is nothing in that communication that brings that sort of message across. Now, it is information that comes from Mr Mogotsi, and it is then where he says in the affidavit that I can get out of the
20 Commission, I can be protected, and in a nutshell, I will submit that it is some form of immunity. That is how he understands it. But further thereto, there is nothing in the communication that has been put forth that depicts that.

ADV BALOYI SC: So, just to be clear, you accept that there is no evidence before us, and Mr Mogotsi does not

say that Mr Chaskalson promised me that if I give him information on Mr Carrim, he will ensure that I come out of the Commission unscathed. Nowhere in the WhatsApp messages. Mr Mogotsi does not say in any of our calls that was said, and he does not allege that in the affidavit. He simply says, I got the impression.

ADV BALOYI SC: Very so, Commissioner ...[intervenes].

ADV BALOYI SC: That is what you are saying.

ADV MOHOMANE: Yes.

10 **ADV BALOYI SC:** So, where you earlier said a promise was made to him, that is not, there was not correct to say.

ADV MOHOMANE: That is not, I will retract that, and I will say an impression. According to the affidavit of Mr Mogotsi, an impression was created.

ADV BALOYI SC: My difficulty with you when I started engaging, why I engaged you in this, you said a promise was made to him.

ADV MOHOMANE: I will retract the use of the word promise, Commissioner.

20 **ADV BALOYI SC:** No, you are not retracting the use of the word promise. You are retracting a statement that says Mr Chaskalson made a promise to Mr Mogotsi because we do not have evidence of that promise. That is what I am saying should be retracted.

You can still say Mr Mogotsi gained the impression

from their communication that that is what was being offered to him. I do not quarrel with it being an impression that he formed. The question is whether that was a reasonable impression based on the facts that are before us. The one that I needed clarity on is where you make the positive statement that he was made a promise, that he would be protected from adverse findings if he gives debt or incriminating evidence on Mr Carrim. That is all I wanted you to ...[intervenes].

10 **ADV MOHOMANE**: Commissioner, I will retract the statement that I made earlier on.

ADV BALOYI SC: Thank you. I think that is a fair resolution to my concern.

CHAIRPERSON: Just one very brief matter. There appears to be a suggestion of something negative about the statement relating to throwing under the bus. Did I understand that correctly? If I did, can you again just articulate that?

20 **ADV MOHOMANE**: Is the Chair asking my personal understanding of throw under the bus?

CHAIRPERSON: No, no. What exactly are the allegations and what is the point being made in that regard?

ADV MOHOMANE: Chair ...[intervenes].

CHAIRPERSON: My sense, but my sense may have been wrong, my sense was that there is a suggestion that there is

something negative or sinister around that issue, the issue of throwing under the bus.

ADV MOHOMANE: Chair, it would be defend yourself at whatever cost, if I may put it in a nutshell. Chair, it says, paragraph 6.3 says that – it will be on page 12 of the bundle, Chair.

CHAIRPERSON: Yes.

ADV MOHOMANE: And I will leave the first three lines because I believe that we had gone to this paragraph on
10 numerous occasions and I will go straight to the point. Mr Mogotsi says that:

“The Evidence Leader says that get me anything against Suleiman and I will help you. He further stated that Suleiman had implicated me and that I should find a way to defend myself. He expressed his belief that Suleiman was lying, that Suleiman had thrown me under the bus and that he wanted me to do the same to
20 Suleiman.”

CHAIRPERSON: I want to – I will not engage you on get me anything against Suleiman and I will help you because my colleague Commissioner Baloyi has already engaged you on that. I just want to take you to page 253 of the record. That comes after the affidavit of Mr or Ms, of

Tshepo Modimogale. Page 253.

ADV MOHOMANE: I have arrived there, Chair.

CHAIRPERSON: Yes. Now this is a, you will see the text by the Chief Evidence Leader. It is written to the two investigators that I referred to earlier.

ADV MOHOMANE: Yes, Chair.

CHAIRPERSON: And the Chief Investigator greets them and then says:

“Mogotsi has been calling me nonstop.”

10 That again emphasises the point I made with you that the person who was really seeking out the other was Mr Mogotsi and not the other way around:

“Mogotsi has been calling me nonstop since Carrim started giving evidence and threw him under the bus.”

So, the Chief Evidence Leader has no qualms about saying that. That is his assessment of the evidence. What we will make of it is something else, of course, but that is his assessment of the evidence, and no qualms at all about

20 saying this:

“He wants to give us dirt on Carrim and ostensibly wants to tell us what he knows about Matlala's contract. I have arranged to see him tomorrow at 10:00. If you are available, please join me.”

All innocent so far as I read this. And, of course, the 10 o'clock meeting is a meeting that did not materialise. Mr Mogotsi did not show up. And after contact was revived, an arrangement was again made, as Commissioner Baloyi said, for a meeting at 14:00 of the same day. That too did not materialise. Nothing negative at all in any of this. You may comment if you want to.

ADV MOHOMANE: Chair, my comment will be, I concede with what the Chairman says. If this text is read in isolation, then, Chair, there is nothing untoward.

CHAIRPERSON: I will not go back there because, again, Commissioner Baloyi engaged you on what more do you want us to look at. And I am not sure that I heard what you were saying in response to that question by Commissioner Baloyi. So the same applies here as well. Your point about in isolation, but what is the additional material that you have in mind?

I am not asking for a response. The question, as I said, was responded to. I will leave it at that. And as I said, I had personally reached a point after engaging you for a longish time to hear you out, that is to give you an opportunity to argue your case. Of course, it does not mean that we will not ask you questions here and there, but we want to let you feel free to argue your case. I see that the time is 10:56. Let us continue until 11 o'clock.

ADV MOHOMANE: Chair, I do not have a response. I am uncertain if ...[intervenes].

CHAIRPERSON: No, no, no, I am not asking for a response to any question now. I want you to argue your case. We engaged you right from the start and did not really give you an opportunity to freely argue your case. I am now giving you an opportunity to freely argue your case. Am I making sense?

ADV MOHOMANE: You are. You are making sense, Chair.

10 **CHAIRPERSON**: Unless you are saying through our engagement you have dealt with all the points that you wanted to deal with and that you have no further submissions to make. I am not steering you in that direction, no.

ADV MOHOMANE: Chair, I am going to request that we take an adjournment. I am informed that a client is here so that we can obtain further instructions with what has transpired. I am uncertain how much time the Commissioners would like to give us.

20 **CHAIRPERSON**: All right. Of course, in an application brought on affidavit, I am not sure what a litigant may tell you as to what happened or did not happen because we go by what is contained in the affidavit. But we will adjourn and you can take whatever instructions you want to. Let us adjourn and return at 11:25.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Ms Mohomane.

ADDRESS BY ADV MOHOMANE (CONTINUES): Thank you. I have a couple of submissions to make. If I am allowed, may I direct the Commission to page 12, paragraph 6.1 of the founding affidavit of Mr Mogotsi. Chair, paragraph 6.1 gives a picture of what happened when Mr Mogotsi reached out to the evidence leader. And he says
10 that it was around that time he did not have any attorneys, which coincided with the time that Mr Suleiman was giving testimony in the Commission.

Now, he also, further in the next paragraph, says that there was an exchange of WhatsApp's and telephone calls. And the content of the conversations caused him grave concern regarding the evidence leader's impartiality. Now, it goes on and he explains what then transpired. What is important, Chair, is that with regards to the call that took place on the 9th of March, the response from the evidence
20 leader is that he does not have any recollection of what the content of the conversation was about.

And therefore, it cannot be that what he says is most probably true as opposed to what Mr Mogotsi is saying. Mr Mogotsi gives a thorough explanation as to what was discussed when the call took place. And that is the

evidence that we have before the Commission. And it is not disputed. Now, Chair, I also submit that it is important that we visit the purpose or the rule of one being an evidence leader when it comes to commissions.

The evidence leader's role is crucial in its nature in that it will decide how the evidence is tested and it will shape the lines of questioning. And it ought to be done in a way that can assist the Commission, and it also impacts on the fairness of the procedure. The evidence leader can
10 influence the narrative of the evidence, and he is the one who engages with the witnesses in order to solicit evidence from them. Now, Chair, the test for what constitutes apprehended bias is whether a reasonable, objective and informed person would reasonably think that the decision maker or relevant actor ...[intervenes]

CHAIRPERSON: Are you going back to that test now? Because I thought right at the beginning you and I reached a stage where we agreed that that is not the correct test and that that test applies to decision makers and that an
20 evidence leader is not a decision maker.

ADV MOHOMANE: I will retract that statement, Chair.

CHAIRPERSON: Yes, yes.

ADV KHUMALO SC: Without interrupting you, because you are dealing with an important point, the evidence leader does not say he does not recall that phone call of 20:56 on

the 9th of March 2026. On page 82, at paragraph 17, this is what he says:

“I have no detailed recollection of what was discussed.”

And then he continues, but in paragraph 19, on page 83, he then sets out what was discussed. And you will find that on paragraph 19, he says:

“In our call at 20:56 on 9 March 2026, this is what happened.”

10 And goes into detail about that. And then on 84, paragraph 23, he says:

“I would never have encouraged Mr Mogotsi to give false evidence against Mr Carrim. I categorically deny.”

Then he sets out the denials. And then he says the impression Mr Mogotsi is trying to create, where reference is made to help, deals with that in paragraph 24. So, he does not say he has no recollection of the phone call. So that is the full answer to that. So maybe you can then
20 continue with your submissions. I just wanted to draw your attention to what the affidavit actually says.

ADV MOHOMANE: Commissioner, the evidence leader says in paragraph 17 that he does not have a detailed recollection. Meaning that he cannot recall specifics regarding the contents of what was discussed on that day.

And Mr Mogotsi then says, I called the evidence leader and the evidence leader suggested that based on the evidence that Mr Suleiman gave, he threw me under the bus, and I need to defend myself. That in itself is a dispute of fact. He says in paragraph 6.3 that:

10 “The evidence leader asked him to get anything against Suleiman and he will help. And that Mr Suleiman had implicated him and that he should find a way to defend himself. And further that Mr Suleiman was lying.”

Now these are two conflicting versions of what the contents of the telephone call are that took place on that day. And my submission would be in light of the absence of a detailed recollection then what would be of sense is that Mr Mogotsi's version as to what was said on that day should be the one that stands.

ADV KHUMALO SC: There is a specific denial in 23.2:

20 “I deny that I suggested that if he could find evidence to implicate Mr Carrim, I would protect him from adverse findings from the Commission.”

So that is a specific denial, and it goes to the very issue you are raising.

ADV MOHOMANE: You in one breath Commissioner say

that you do not have a detailed recollection and in the same papers you say that you deny. How do you deny something that you cannot recollect in detail?

CHAIRPERSON: That is a simplistic approach. Let us take the example of a person and their child. And the child says that on the 26th of April 2021, I had a discussion with my father about issue X. The father says, because of the time that has since elapsed, I do not remember that conversation. But there is no way with the parenting skills
10 that I have and the values that I cherish that I could ever have said something like this to my child.

I would never ever. The parent knows what the values they cherish are. The parent knows what they could never ever say to their child on the basis that it would be at odds with their values. So, the parent, even if they do not recall the conversation referred to by the child, is in a position to say I could never ever have said anything like that to my child. I see nothing wrong with that at all.

And that is basically what, in substance, of course.
20 That is what Commissioner Khumalo is drawing to your attention. So, the chief evidence leader is saying, whatever the detail of the conversation might have been, there is no way that I could ever have said to Mr Mogotsi, do the improper. I see nothing wrong with that. He may not remember the detail of the conversation but suggesting to

Mr Mogotsi that he should do something improper, he says, that I could never ever do. So, I see nothing wrong with that. Your point about him in one breath saying this and, in another breath, saying that does not necessarily apply or necessarily make sense. Do you follow my point?

ADV MOHOMANE: I hear you, Chair.

CHAIRPERSON: Yes, yes. I had said we would try to, or rather not to, interrupt as much as possible, but sometimes we cannot resist it because of the submissions being made.

10 Because we want to give you an opportunity to argue your case as freely as possible. Please continue.

ADV MOHOMANE: Thank you, Chair.

CHAIRPERSON: I am no longer inviting you to respond to what I said. I just want you to continue with your submission.

ADV MOHOMANE: I will do so, Chair.

CHAIRPERSON: Yes, I think before Commissioner Khumalo put a question to you, you were at a point where you wanted to deal with the role of an evidence leader in
20 instances like these. I thought that is where you were. And I sort of assumed that perhaps you were going to take us to what Justice Nugent said in the SARS Commission or something like that. Maybe that is not what you had in mind, but once you started saying something about that role, I thought of what Justice Nugent said in the SARS

Commission, in his judgment in the SARS Commission.

ADV MOHOMANE: I will revisit that, Chair. I deviated from my chain of thought. I am just recollecting. If I may be so permitted, Chair, may I take the Commissioners to page 21 of the bundle? It is still the founding affidavit of Mr Mogotsi. And these Commissioners will be in reply to the selective evidence that the evidence leader deals with. And this is the basis for the fear of where the bias might emanate from.

10 If the Commissioners look at paragraph 10, the applicant makes a reference to credible information that he had made available to the evidence leader and the leads thereto. And his take is that these issues, which he sees as important issues, have not been given sufficient investigative attention. And what is happening is that the interest has been directed towards specific individuals [Suleiman].

 And further, thereto there is also evidence that came to the Commission regarding the purchase of certain
20 properties in the name of private individuals, and that has also been overlooked. And he further requested that these leads that he gave be given sufficient attention. And his take is that the individuals are not as significant or as important as this evidence that he has brought forth. Further Commissioners, there is a *point in limine* that was

raised, and this the Commissioners will find at page 260 of the bundle.

CHAIRPERSON: 260.

ADV MOHOMANE: 260, Chair.

ADV BALOYI SC: Maybe before we start on 260, just to make sure that I understand what is the submission of the argument about paragraph 10. Are you saying, is Mr Mogotsi, rather, saying that the failure, there is a failure, firstly, one, there is a failure by, is it the evidence leader?

10 Because this is an application to recuse Mr Chaskalson by the evidence leader to pursue his allegations that crime intelligence has bought properties, crime intelligence transactions.

His evidence about the Section 252(A) operations, informant-related issues, and procurement irregularities is the case being made that Mr Chaskalson has failed to investigate those, and that failure has created an apprehension that he is biased against Mr Mogotsi. Is that the ...[intervenes]

20 **ADV MOHOMANE**: That is the position.

ADV BALOYI SC: Okay, all right, thank you.

CHAIRPERSON: Please continue.

ADV MOHOMANE: I apologise. I was directing the Commissioners to page 260 of the bundle, and these deals with a *point in limine* that were raised by the applicant in

the application for recusal. Specifically, it deals with the answering affidavit that was deposed to by the attorney, purporting to be acting on behalf of the second respondent. There is no dispute that the attorney may be authorised to act on behalf of the Commission.

The dispute here is that the attorney goes beyond the scope of the institutionalised institutional representation and purports to make factual averments on behalf of the first respondent, defend the personal conduct, intentions, and state of mind of the first respondent, who is the evidence leader, and they respond to allegations concerning private communications between Mr Mogotsi and the evidence leader.

This attorney does not allege nor annex any proof that he or she has been authorised by the first respondent to depose to the factual matters on his behalf. The allegations that are raised against the first respondent relate to private WhatsApp communication, telephone conversations, alleged discussions, and alleged assurances of help or protection.

The first respondent's subjective intentions and conduct, those are matters that are peculiarly within the personal knowledge of the first respondent, and that the deponent who is the attorney will not be privy or cannot comment on these issues. Now, the affidavit of the first

respondent has also been presented as an annexure, and there is certain value between an affidavit and an annexure.

An annexure is merely a supporting document, and the first - the attorney cannot make a case for the evidence leader and have the evidence leader's affidavit come in as an annexure, which seems to be confirming submissions by the attorney for the Commission. I am inviting the Commission to find that when it comes to the affidavit that was deposed to by the attorney for the Commission, that the
10 Commission finds that that affidavit does not enjoy *locus standi*.

The issues that are contained in that affidavit and the comments cannot be of any value or any benefit because it is comments that they know nothing about. It is personal communication between Mr Mogotsi and the evidence leader, and it is issues that the evidence leader should be answering and not the attorney. Commissioners, there has been an explanation that was proffered in the replying affidavit regarding these deleted telephone calls or
20 emojis. Now ...[intervenes]

CHAIRPERSON: Just, I am sorry, please do not forget the point you were about to make.

ADV MOHOMANE: Yes, Commissioner.

CHAIRPERSON: In the context of hearing the testimony of a witness, and in fact even beyond that, the applicable

prescripts say that the rules of evidence that apply, for example, in courts of law, do not apply to Commissions of enquiry. Commissions of enquiry may receive evidence of a variety of forms which would ordinarily not be admissible in courts of law.

But, as I say, that is provided for in the context of the Commission receiving evidence towards the investigation that it was set up for. That is the context. Would you say that those rules with regard to the
10 admissibility acceptance of evidence would not apply to an interlocutory process like the one we have before us now?

You would have that permissive manner of receiving evidence in the context of receiving evidence towards the investigation. But we have a very restrictive process when it comes to interlocutory matters that relate to the Commission's investigative process. I am asking that in the context of the *point in limine* that you are raising. Would there not be an anomaly if that were to be the case?

ADV MOHOMANE: Chair, in the normal route, that would
20 be an issue to raise. However, in light of what you are saying to me or what you are putting to me, I will submit that in a quasi-judicial tribunal of this nature, then I cannot take that *point in limine* any further. If that is, then the status quo. I will have to leave that *point in limine* and not argue it any further.

CHAIRPERSON: Thank you. I did not want us to reach a situation where, for example, we decide your *point in limine* along the lines of what I have raised with you, without offering you an opportunity to respond. Well, I have offered you that opportunity and you have responded. I may go back to the point I asked you not to forget.

ADV MOHOMANE: Oh yes, Chair. Thank you. Chair, I was making a submission with regards to the deletion or the alleged fraudulent deletion of conversations in the
10 WhatsApp records. And I was further saying that Mr Mogotsi did respond to those allegations that were put forth by the evidence leader. And at paragraph 41, which will be at page 267 of the replying affidavit.

CHAIRPERSON: Yes.

ADV MOHOMANE: Mr Mogotsi says that he admits that he deleted the message dated the 11th of March that was sent at 11:29 a.m. And the intention was not to mislead the Commission, as at the time he had not even contemplated bringing the application herein. He further says in the next
20 paragraph:

“The sole intention behind the deletion was to protect my conversation with the first respondent from third persons.”

The next paragraph he says that:

“He admits that he deleted the calls on

the basis that at the time of taking the screenshots for purposes of this application, he did not find them relevant. And furthermore, he is further to allow me to take screenshots of the relevant facts. I therefore deleted them.”

I understand this, Chair, and I am subject to correction to say that to allow me to take screenshots of the relevant facts, his handset does not allow him to take screenshots. I
10 am uncertain how to read this, and I seek the guidance of the Commission.

CHAIRPERSON: No, no, just make your submissions.

ADV MOHOMANE: I submit that ...[intervenes]

CHAIRPERSON: There is no need for guidance from us on this.

ADV MOHOMANE: I submit that, and subject to correction, that his handset did not allow him to take screenshots of the relevant facts. He therefore deleted them. The calls that have been deleted were unanswered and therefore hold
20 no significance to the application. What is ...[intervenes]

CHAIRPERSON: Except of course that they may assist in the context of what I engaged you on right at the beginning. I will not repeat that. Please continue.

ADV MOHOMANE: Chair, what is ...[intervenes]

CHAIRPERSON: The point I made about based on the

number of calls, who appears to have sought out whom in that context? Please continue.

ADV MOHOMANE: Chair, what is common cause is that, yes, there was communication between Mr Mogotsi and the evidence leader. And during those conversations, a discussion came in regarding Mr Carrim. It is also common cause that during the conversation, there was an agreement or a request to bring certain evidence to rebut what was put on record regarding Mr Mogotsi to defend himself and, if the
10 need arises, to throw Mr Carrim under the bus.

Now, Mr Mogotsi's evidence is that the communication between himself and Mr Carrim formed an impression that his cooperation in providing information against another witness was linked to his treatment in the proceedings. And this, Chair, will find in paragraph 7 of the replying affidavit. And he further says that:

“Whether intended or not, such perception undermines the appearance of impartiality.”

20 Now, it goes back, Chair, to whether or not a reasonable, objective and informed person would apprehend bias. Now, with what had transpired and with Mr Mogotsi due to come back to the Commission and testify and him not being able to have provided any information that was helpful because the meetings never happened, he became fearful of

appearances of impartiality and that he would, upon his appearance, be treated unfairly.

ADV BALOYI SC: Is it not opportunistic to offer Mr Chaskalson information on Mr Carrim and then fail to deliver because Mr Mogotsi turns out he does not have that kind of information and then say I fear that Mr Chaskalson will be biased against me because I did not give him that which I promised. Is there not some opportunism there? You offer and then you fail to deliver and then, without
10 more, you say he is going to be biased against me.

I mean, he has not referred us to anything in the chats which shows Mr Chaskalson being upset with him or saying to him, you know, I am going to get you for failing to deliver. There is none of that, other than that text which we have read in context that it actually does not quite convey what you were saying where it says do not mess with me, do not mess me around or something like that. I do not understand how that an offer made which could not be fulfilled without more creates a reasonable, remember the
20 test is, reasonable apprehension of bias. How that would create a reasonable apprehension of bias that after this he is not going to treat me fairly.

ADV MOHOMANE: In response, Commissioner, what we had considered is that Mr Mogotsi is the one who called the evidence leader. That is not in dispute. However, what

was contained in the phone calls, and I had said previously, I do not know and neither does anybody know what was discussed in these telephone calls.

ADV BALOYI SC: Then in that case, how can the Commission say the apprehension is reasonable if we do not know what was discussed in those calls? You are saying that we do not know, therefore we do not have the content of those telephone calls according to you, so we lack the necessary facts on the basis of which the
10 Commission can make the determination that the apprehension is reasonable because eventually that is what we must find. We must find that the apprehension is reasonable.

ADV MOHOMANE: Commissioner, firstly, that can - I will invite the Commission to make a finding through what is contained in the papers. Now what seems to be a challenge is that with regards to the telephone calls, there is a dispute of fact. One says I said, the other says I said. But hence, I keep on repeating that I do not know what was
20 contained in the telephone conversation and Commissioner, you would also not be in a position to know what was discussed in those telephone conversations.

And unfortunately for me, there is no recorded conversation of what would have happened. I will rely on the submissions that my client makes before the

Commission. Now, I had said previously that he is labelled as a liar. He was labelled as a liar. Now if he approaches you, this liar, and he says I have got information, why would you be interested in information? He might be lying to you.

ADV BALOYI SC: I was not taking you back to that conversation. I was really addressing your submission where you say we do not know what was discussed. You do not know, the Commissioners do not know what was discussed in those telephone calls. That comes from you, it
10 is your submission. So I was asking the simple question that if we do not have the facts about those calls, what was discussed, are we in a position, at least as it relates to those calls, is the Commission in a position to make a determination that whatever was discussed in the calls creates a reasonable apprehension of bias?

That is all I was putting to you. And maybe to reframe it, maybe can I ask you this, do you accept that for a determination that the feared bias is reasonable, for that determination there has to be facts on which that
20 determination is based? Facts must be put to the panel, and then the panel will say yes, on these facts we are satisfied, or we are not satisfied that the apprehension of bias is reasonable. Do you accept that as a proposition?

ADV MOHOMANE: I will accept it, Commissioner.

ADV BALOYI SC: You accept that, right.

ADV MOHOMANE: Yes.

ADV BALOYI SC: So on the back of that, I then ask the question, if we do not know what was discussed in the calls, insofar as it relates to the calls, limited to the calls for now, if we do not know what was discussed in those calls, as you say, can you accept, should you not accept that the Commission is not - the panel is not in a position to say those telephone calls do create a reasonable apprehension of bias, because we do not know what was discussed according to you. Do you accept that we cannot make that determination?

ADV MOHOMANE: If the Commissioner allows me to reply to that in two parts.

ADV BALOYI SC: Yes.

ADV MOHOMANE: On the first aspect, Commissioner, you are correct. In the absence of us knowing, or the Commission knowing, what was contained in those telephone calls, the Commission cannot rule on the apprehension of harm ...[intervenes]

20 **ADV BALOYI SC:** Bias.

ADV MOHOMANE: Or of bias.

ADV BALOYI SC: On the calls.

ADV MOHOMANE: Or of bias, yes, I apologise. But then there are two sides, and two versions, if I may so put it, of what was contained or what was discussed. And based on

those and based on how the applicant perceives in his mind what the contents of these discussions are, then the Commission can be in a position to make a ruling as to whether or not there is an apprehension of bias.

Now, Commissioner, I submit further that the issue here is not that Mr Brown does not come back and give testimony in the Commission. The issue here is somebody else in the Commission may be elected if there is an election procedure or appointed if there is an appointment
10 procedure to come on board and move with the cross-examination.

CHAIRPERSON: How much more time do you require, Ms Mohomane?

ADV MOHOMANE: On the submissions?

CHAIRPERSON: Yes, yes, yes. Your entire submissions. We started at 09:30. Now it is 6 minutes after 12 midday. If I was sitting in the court where I used to sit, we would have given you 30 minutes only. I am listening? That does not mean I will accept the time that you ...[incomplete].

20 **ADV MOHOMANE**: Chair, I will not be longer than 5 minutes.

CHAIRPERSON: Thank you very much. Thank you.

ADV MOHOMANE: Chair, lastly, I request to invite the Commission to the role of the evidence leaders. I believe I left it hanging, and I had said to the Commission that I will

come back to it in due course. Now, to supplement what I had said previously, in a nutshell, evidence leaders are required to assist and facilitate the work of the Commission. And in doing so, they must investigate and marshal the presentation of evidence to the Commission. They bear the overall responsibility of leading evidence before the Commission, although it is subject to the direction of the Chairperson. If I am so permitted, may I direct the court to the matter or the ruling by Judge Nugent in the Commission
10 of Enquiry into tax administration and governance by the South African ...[intervenes]

CHAIRPERSON: Yes, you do not need to read that. We have had sight of it. We have read it. Yes, please continue. But, of course, you may make whatever point you want to make about it.

ADV MOHOMANE: Chair, we do not have any further submissions to make unless the Commission would like me to address it on other aspects.

CHAIRPERSON: No, thank you very much, Ms Mohomane.

20 **ADV MOHOMANE**: Thank you.

CHAIRPERSON: Yes, Ms Hassim.

ADDRESS BY ADV HASSIM SC: Thank you, Chair. Chair, I have listened closely to the exchanges between the Commissioners and my learned friend, Ms Mohomane. And to some extent, it covers ground that we had included in the

answering affidavit submitted to the Commission, including some of the legal submissions we made there. So, I beg the Chair's indulgence if I come back and touch on the same issues that arose in the exchange, but I hope to give it a proper perspective.

In my address to you. And to begin with, Chair, let me just say that the evidence leaders oppose this application in the strongest terms. And obviously, we submit that the application should be dismissed. And we do
10 so on the basis that it is legally misconceived. And I have heard the shift in approach by my learned friend and the reference to Killian earlier.

But I will submit in due course that there was not actually any shift in an argument and the legal basis, the wrong legal basis that was advanced. So, it is legally misconceived. On the facts, it is not just unsustainable. It is a deliberate misrepresentation of the facts. And I propose to return to the facts in order to explain this. And it is an abuse of the Commission's process.

20 Chair, I will address four issues. The first, the conceptual flaw. The second is the factual basis of the application. And I would like to have a particular focus on the altered WhatsApp record that was put forward by Mr Mogotsi as a key part of the basis, the factual basis for his application. Third, the allegation of unfair questioning by

Mr Chaskalson.

And finally, what we respectfully submit should be the appropriate ruling in the circumstances, including referrals for investigation for possible perjury forgery, and contraventions of the Commission's Act and the regulations of this Commission. So, the first difficulty, as I have said, is conceptual. Mr Mogotsi invokes the law of judicial recusal.

He relies on SARFU, on De Lacy, on Basson, on
10 Bennett, and on Mulaudzi. All of those cases concern judicial officers or decision makers. None of them concern a Commission of Enquiry or even something akin to a Commission of Enquiry. And while my learned friend indicated reliance on Killian at the start of her submissions to the Commission, she continued to make submissions on the basis of a reasonable apprehension of bias.

The test for judicial recusal. And that is not the test that applies. Because Mr Chaskalson is not a decision maker. He does not decide credibility. He does not decide
20 admissibility. He does not make any decisions about whether adverse findings should be made, when and how. Those powers belong to the Commission. What an evidence leader does, as correctly asserted by my learned friend, is an evidence leader assists the Commission.

He leads, organises, and tests evidence. That

function must be performed fairly, but it is not adjudicative. It is an investigative function. To assist the Commission, we provided the authorities that we think are more suited to an application of this sort. Where an applicant is seeking to remove an evidence leader.

And in this regard, Chair, we refer to the recent ruling of Justice Khampepe in the *TRC Commission*. And it was specifically an application that was made thereto for the recusal of an evidence leader. And what she said is
10 important. The Chairperson rejected the proposition that the SARFU recusal test applies directly to evidence leaders. Her ruling held that:

“Evidence leaders are not decision makers. They function subject, always subject, to the direction of the Commission. The appropriate enquiry, therefore, by analogy perhaps with that of prosecutors, is whether the evidence leader's continued role would cause
20 substantive unfairness in the work of the Commission.”

And this approach is consistent with the decisions in the two cases that we have referred to in the answering submissions. *Porritt v NDPP* and *DPP Weston Cape v Killian*. In *Porritt*, the Supreme Court of Appeal rejected an

attempt to equate prosecutors with judicial officers for the purposes of recusal. And in Killian, the same reasoning was applied.

And in Killian the issue there was whether the prosecutor should be removed because the prosecutor was the same person that had interrogated the applicant for recusal, had interrogated that person in an earlier statutory enquiry. And so there were serious concerns about whether there would be fairness on behalf of the prosecutor in that
10 case.

And the Supreme Court of Appeal rejected that argument. So, the question is not whether the SARFU recusal test is satisfied, it is whether the continued involvement of the evidence leader would cause substantive and fairness in the Commission's work. Mr Mogotsi has not shown that. Incidentally ...[intervenes]

CHAIRPERSON: If the allegations made were true, would the test not be met? I am not asking whether we should hold that they are. That is the debate that we are ageing
20 in, and that is a finding we will make in the end. But if they were true, would they not meet the test?

ADV HASSIM SC: Chair, the allegations are so serious. They are - they go to the heart of ethics, professional ethics, and the integrity of the evidence leader. Those kinds of allegations, if proven to be correct, would warrant a

conclusion that there is unfairness. They are very, very serious allegations, and we take it very seriously. But of course, I am about to ...[intervenes]

CHAIRPERSON: It is something else, whether they are in fact true, and that is what you are going to deal with, and that is what we engage Ms Mohomane on.

ADV HASSIM SC: Indeed so, Chair. And that rests on the facts that support this application.

CHAIRPERSON: Yes.

10 **ADV HASSIM SC**: Chair, I actually wanted to say on the law, incidentally, in paragraph 40 of the submissions of the attorney for the Commission, Mr Mogashoa, paragraph 40, it is pointed out that it is not just that the cases do not apply here, because the test does not apply. There are quotations that are attributed to those cases which are not found in those cases.

I just make it as an aside. For a moment I thought whether I should even say anything about it and then I rethought and actually it is important, because it is a
20 responsibility of counsel who appear before any tribunal to ensure that the correct law is put to a decision maker. And whether or not the papers were settled by the legal representatives, the legal representatives were very aware after reading our answering affidavit that that was a concern, but it is just not addressed at all.

And I just wanted to make it point because one needs to be able to rely on quotations as genuinely existing in the cases that are cited. I leave it at that. I do not want to take it any further. So, much for the law and the cases and legal basis for Mr Mogotsi's application. Let us turn to the facts. There are two main factual propositions ...[intervenes]

ADV BALOYI SC: Maybe before you do that. The other point that has been taken and you did not list it in the topics
10 that you are going to be addressing, is the standing of the affidavit of the attorneys for the Commission and its consequence for Mr Chaskalson's affidavit.

ADV HASSIM SC: Yes, thank you, Commissioner. I think that the point is more about form than of substance. Mr Chaskalson has submitted a full, detailed, comprehensive answering affidavit on oath. It is true that it is annexed to Mr Mogashoa's affidavit. But it is just a question of form. Because Mr Mogashoa sets out submissions, as you will recall, at the end of the last appearance of Mr Mogotsi, the
20 request was for submissions to be made by the applicant, and then for submissions to be made including legal submissions on behalf of the respondent.

And it seemed to us, in the unusual circumstances of a Commission enquiry, that this would be the appropriate form to submit it in. It is just a question of form. There is

nothing that - I think it is an entirely unreasonable allegation to make that there is no weight to be given to Mr Chaskalson's affidavit because it looks like an annexure and it is not a self-standing affidavit. His position is made very clear. He sets out the facts in his affidavit.

ADV KHUMALO SC: It says in the railway tracks, answering affidavit.

ADV HASSIM SC: And it does, yes.

ADV KHUMALO SC: And it says in paragraph 5, I am
10 deposing to an affidavit. So, it is an affidavit.

ADV HASSIM SC: It is absolutely an affidavit. And moreover, he responds in that affidavit paragraph by paragraph to the founding affidavit of Mr Mogotsi.

ADV BALOYI SC: Sorry, I think what I understood to be the issue that is raised about it, is Mr Mogashoa lacks *locus standi* to depose to an affidavit. That is the one part of it. And then the second is his affidavit, well, it is actually three points as I think I understood them. It is the *locus standi* issue, and then two, the affidavit contains hearsay, and
20 then the annexure issue that Mr Chaskalson effectively has not answered the allegations because his affidavit is attached as an annexure. So, your exchange now with Commissioner Khumalo deals with the third part, which is, well, there is an affidavit that is before us. But the antecedent questions are *locus standi*, and the second I

said it was ...[intervenes]

ADV HASSIM SC: Hearsay.

ADV BALOYI SC: Hearsay. Thank you.

ADV HASSIM SC: Well, if one reads the affidavit closely, there is not hearsay. What one will find in the affidavit is reliance on Mr Chaskalson's own affidavit for any factual proposition that relates to the communications between Mr Chaskalson and Mr Mogotsi. It is repeated referral to Mr Chaskalson's affidavit. And where it goes beyond Mr
10 Chaskalson's affidavit, it does so with reference to the record transcripts of this Commission's hearing.

ADV BALOYI SC: If we accept it that parts of that affidavit, Mr Mogashoa's affidavit, contains hearsay, can we disregard that hearsay part of evidence and still – and yet still end up with an affidavit that deals with other issues that are not an answer to the facts of the exchanges between the two?

ADV HASSIM SC: Commissioner Baloyi, I have two responses to that. The first is these are different
20 proceedings to a court of law. How you assess the probity of that evidence is up to the Commissioners. But hearsay evidence, as we know, is admissible in a Commission of Enquiry. That is the first thing I will say. But let me say this too ...[intervenes]

ADV BALOYI SC: Does that not apply to the evidence of

witnesses to the Commission? There is a lower standard of how you treat evidence.

ADV HASSIM SC: To the extent that Mr Mogashoa is a witness here in providing this affidavit and then the same would apply. But even if you were to disregard what you may consider to be hearsay, and I will say it again I will repeat again to the Commissioners, there is very little hearsay, if any, in that affidavit, but even if there were and you were to disregard it, the strength of this opposition
10 does not rely on Mr Mogashoa's affidavit. The strength of the opposition relies on Mr Chaskalson's affidavit.

ADV BALOYI SC: Is it open to ask to the Commission to say – can we do this? It is a question. We say these paragraphs contain hearsay evidence, which is what is contained in Mr Chaskalson's testimony anyway, as you say, affidavit. So, we disregard Mogashoa to the extent that those parts, because to say it contains hearsay evidence, as I understand the position to be, does not mean we necessarily reject the whole affidavit, right?

20 You look at what in fact in the affidavit is hearsay, and then you decide how to treat it. Could we retain Mr Mogashoa's affidavit on the basis that it places Mr Chaskalson's evidence before us? I do not know if you understand what I am saying. His affidavit before us, even if we disregarded the parts that we have ultimately say this

is hearsay evidence. I do not know if I am articulating that.

ADV HASSIM SC: I think I understand what you are saying, Commissioner Baloyi. I see no reason why you cannot do that, even if you were to disregard large parts. Remember that that affidavit does not just deal with the facts, it also is here to make submissions. And to make submissions for the purposes of assisting the Commission, which is why we put to the Commission case law that is intended to set the correct legal framework for this.

10 The approach is not to say, well, the applicants did not make out a case, there is no legal foundation, full stop, which is what one would do in a normal case. You may not necessarily go down a long road, you will say there is just no case that is been met here. We are in a different position. We are here to assist the Commission and to put all evidence and all law that may assist the Commissioners in making this decision, and that is the value of that affidavit of Mr Mogashoa.

ADV BALOYI SC: And the complaint or assertion that he
20 lacks *locus standi*, it is accepted that he acts by the applicant, that he acts for the institution, and so I understand the applicant to accept that he has standing to speak on behalf of the Commission, and yet there is a submission that he lacks *locus standi*. I am not sure I understand how there is an acceptance, and yet that kind of

complaint. Do you want to say anything about it?

ADV HASSIM SC: Commissioner Baloyi, I have to confess I do not understand the submission. It is very difficult for me to respond to it beyond what I have already said.

ADV BALOYI SC: Okay, but you assert that Mr Mogashoa does have *locus standi* to depose on behalf of the Commission.

ADV HASSIM SC: Indeed, and to oppose the application ...[intervenes]

10 **ADV BALOYI SC:** And to oppose, yes.

ADV HASSIM SC: Yes.

ADV BALOYI SC: Thank you.

ADV HASSIM SC: So, ...[intervenes]

ADV KHUMALO SC: May I will ask a follow-up question. It may or may not matter in the end. My understanding of hearsay is that it is evidence the probative value of which depends on something which somebody else knows, but that person is not giving evidence. Now, you have a situation here where Mr Chaskalson deposes to an affidavit which is
20 longer than Mr Mogashoa's affidavit by some 5 or 6 pages.

It is 21, Mogashoa's is 17. And Mogashoa says, I have read Chaskalson's affidavit, so where I deal with the allegations against Chaskalson, I rely on the affidavit by Chaskalson, which means there is an affidavit by Chaskalson. So, it is not hearsay because that evidence is

here and he simply repeats then what Chaskalson says.

ADV HASSIM SC: Quite right, Commissioner Khumalo. It really is, as I said, a repeated referral to what is said in Mr Chaskalson's affidavit.

ADV KHUMALO SC: So, if there was no affidavit by Chaskalson, then what Mogashoa says would be hearsay?

ADV HASSIM SC: Absolutely. Absolutely. It is entirely based on Mr Chaskalson's. And in fact, he says so. Mr Mogashoa says so that this affidavit is based on the facts,
10 the correct facts as stated in Mr Chaskalson's affidavit. And so the idea that and I have heard my learned friend say ...[intervenes]

ADV KHUMALO SC: I do not want to - I just wanted that short response.

ADV HASSIM SC: Sure.

ADV KHUMALO SC: I know we could argue and debate.

ADV HASSIM SC: We could go on, but I will turn to the facts then, if I may. So, the factual foundation seems to be twofold. First, Mr Mogotsi says that Mr Chaskalson treated
20 him unfairly when he previously testified before this Commission in the manner in which Mr Chaskalson questioned him. Second, he makes what we say is a very, very grave allegation that Mr Chaskalson induced him to give evidence and to give false evidence against another witness before this Commission.

And if one has regard to Mr Chaskalson's affidavit, it is abundantly clear from the affidavit and the annexures that these propositions are simply untenable. The answering affidavit is more than a denial, and I will call it an answering affidavit, Mr Chaskalson's affidavit. That is what I, when I refer to the answering affidavit, I am always referring to Mr Chaskalson's affidavit.

That affidavit is more than a denial. It is a detailed factual account supported by the true WhatsApp record
10 annexed as MC1 and a marked-up comparison annexed as MC2, which identifies the communications which Mr Mogotsi removed from his annexure, and his annexure is marked OBM2. I think that there was a point at which when I say that it is more than a denial, there was an argument by my learned friend that Mr Chaskalson did not dispute paragraph 6.3 of the founding affidavit.

And it goes to - there was an exchange between Commissioner Khumalo and my learned friend. It goes to, in fact, if we could just go to Mr Chaskalson's affidavit at
20 paragraph 17, and that is at page 82 of the record, because this is the one instance where the submissions for the applicant say that there is no denial by Mr Chaskalson. And if you look at paragraph 17, so the point that is made is, well, how can Mr Chaskalson deny that he solicited evidence from Mr Mogotsi if he does not recall the

conversation? But look closely at what Mr Chaskalson says at paragraph 17. He says the following:

10 “I have no detailed recollection of what was discussed in the call at 20H56 on 9 March 2026 as opposed to the call at 08:03 on the morning of 10 March 2026. So, what is set out below is reconstructed from my overall memory of the two calls as informed by the WhatsApp record.”

What Mr Chaskalson is saying is, I cannot say whether I said something in the first call or the second call, but together, these are the facts that I can set out of the conversations that took place on those two calls. He sets it then in detail from paragraph 18 and onwards, and he concludes at paragraph 23 with his categorical denials that he invited Mr Mogotsi to give false evidence against Mr Carrim, or that he suggested that if Mr Mogotsi could find evidence to implicate Mr Carrim, that he would then protect
20 him from adverse findings.

So, there is simply no basis to say that there is no denial. And again, I submit that it is more than just a denial because what Mr Chaskalson does is set out the facts with reference to the WhatsApp record. So, calls must be seen in the context of the WhatsApp record. But Mr Mogotsi's

difficulty goes further because his own replying affidavit destroys his allegation that Advocate Chaskalson exerted improper pressure on him.

He admits to manipulating the WhatsApp exchanges between himself and Mr Chaskalson before placing the record before the Commission. He does not use the word manipulating. He tries to explain it in several ways, but he admits to making several deletions. And one deletion he does not even answer to at all, and that is the emojis, which
10 I will come to in a moment. Chair, if I may ask that we look at OBM2, the annexure that is put up by Mr Mogotsi, the WhatsApp record that he puts up. OBM2 is what page?

ADV KHUMALO SC: 35.

ADV HASSIM SC: Thank you. I do not know about - I am not using the bundles because the printed version is not that good for me, for the submissions I am going to make. I would ask the Commissioners, if you have the electronic version, to look at that version, alternatively to look at what is being flighted in front of you, because it is a better
20 version.

And it is important that you see this for the following reason. The problem with this annexure is not just about its content and the misrepresentation in the content. It is also about its appearance. It is presented - it is not presented as a transcript of WhatsApp exchanges

that took place between the two individuals with ellipses or anything like that.

It is not even presented as screenshots showing deleted messages, as one would ordinarily see in a WhatsApp conversation where messages have been removed. Ordinarily, one sees deleted message, you deleted this message, or this message was deleted. That is not how it appears. It is made to appear as a genuine and complete set of screenshots with the default WhatsApp
10 speech bubble colours and with the default WhatsApp wallpaper.

It, in other words, conceals that material texts and calls have been deleted. It is not - if Mr Mogotsi had put up a transcript and that indicated there were deletions, that would be one thing. So, the first submission I am making to the Commissioners is, before we even get to the content of the deletions, it is the appearance that is created in this constructed set of chats that makes it look like there was nothing in between, and that is significant.

20 The deletions themselves, too, are significant because they are material in what they show and what they do not show. They are material because they point away from the narrative that Mr Mogotsi seeks to create before this Commission. What he says, of course, to try to explain this is that he admits - first he denies tampering with the

WhatsApp messages in paragraph 38, but then he admits to deleting the message. He admits to deleting the message of 12 March at 11:29, and that is the text that says - in fact, if I may ask that MC2 is now displayed because this shows easily where the deletions are made. So, the text said:

“Worried about coming there, also mentioning that I called you at night, thought would be strategic also.”

He says that:

10 “This deletion was made to protect the conversation from unnamed third persons.”

I am not sure what it is we are supposed to make of that. He says nothing more about these third persons and why there would be a risk. Then he is silent on the text that he deleted with the three crying with a laughter emojis. He does not explain at all why he deleted those emojis sent on 10 March at 01:18 in the afternoon, and that was during the evidence of Mr Carrim.

20 And what he was indicating was that he was, you know, sort of revelling in the discomfort that Mr Carrim was facing in the witness box. That he deletes, but he does not explain why he deleted it. He admits that he deleted the calls, and he says that he did not regard them as relevant. So, he deleted that from the screenshots, and he wished to

capture what he considered to be the relevant facts.

But to be clear, what he deleted were 6 calls to Mr Chaskalson, which Mr Chaskalson declined to answer. Three calls on the 9th of March, the day on which Mr Carrim first began his evidence, and 3 further calls during the lunch adjournment of Mr Carrim's testimony. He therefore does not merely admit to deleting. He admits to curating the WhatsApp account, the WhatsApp record rather, selecting what he considered to be relevant, and presenting
10 only part of the picture to the Commission, and making it appear authentic.

This is deliberately deceptive. This was misleading to the Commission. And Commissioner's Annexure MC2 sets very neatly the actual true content, because what it does is take OBM2, and then it inserts where the missing texts ought to be. And what it also shows is that if this was an authentic record, you would have seen those deletions. You would have seen that it says deleted, and it does not say so.

20 So those calls, those 6 calls on 9 and 10 March, must be understood in the context of the backdrop of Mr Carrim's oral evidence. Because what it shows is, first of all, on 9 March, Mr Carrim gave evidence, right, about his conversations, WhatsApp conversations that were put in the record between him and Mr Matlala. As Mr Chaskalson

says in his affidavit, and it is at paragraph 18.2 for the record, that:

“In response to many of the questions that were being put to Mr Carrim regarding the WhatsApp communications between him and Mr Matlala, Mr Carrim sought to blame Mr Mogotsi for what he was conveying to Mr Matlala.”

So that was what was happening on the 9th of March. That evening, Mr Mogotsi initiated a call to Mr Chaskalson. Mr Chaskalson says, and that is at paragraph 19 of his affidavit for the record, that in his call, which lasted all of 3 minutes, in this call:

“Mr Mogotsi conveyed his concern that Mr Carrim had been blaming him for everything.”

Mr Chaskalson accepts that he agreed with this assessment. That too was his assessment of Mr Carrim's evidence. And he also accepts that he may well have used the phrase throwing him under the bus. And he refers to - he puts up the contemporaneous text to two investigators of the Commission where he used that phrase. And speaking colloquially, he used the phrase throwing him under the bus.

But it is Mr Mogotsi who asks, how will you protect

me? Mr Chaskalson explains this at paragraph 24 of his affidavit for the record. That he understood Mr Mogotsi to be asking for protection from being falsely blamed. So, protection from being thrown under the bus. That is the protection that he understood Mr Mogotsi to be seeking. That is his explanation of it.

Mr Mogotsi then called three more times that night. Mr Chaskalson did not answer. So, it is Mr Mogotsi that is driving this. The pursuit is being made by Mr Mogotsi, not
10 by Mr Chaskalson. What Mr Chaskalson says is that Mr Mogotsi offered evidence against Mr Carrim, as well as further evidence.

So, it was not just evidence regarding Mr Carrim's testimony, but it was also evidence relating to the Medicare 24 contract that was also a subject of debate with Mr Carrim. The contract that Mr Matlala concluded with the SAPS. And again, that explanation is corroborated by the two contemporaneous messages to the two investigators. Because when you have a look at that, those are Annexures
20 MC4 and MC5 to Mr Chaskalson's answering affidavit. What he says in those texts to the investigators in part is:

“Mogotsi has been calling me non-stop.

He wants to give us dirt on Carrim and ostensibly wants to tell us what he knows about Matlala's contract. And then he

asks the investigators to join him in a meeting with Mr Mogotsi that he was trying to set up the next day at 10 o'clock. They both agreed to go through to the meeting.”

And the plan was to go through to hear what Mr Mogotsi had to say, obviously, but to go through his evidence. Because again, Commissioners, you may recall that Mr Mogotsi was due to appear before the Commission on the 13th of March.
10 He was no longer represented. Therefore, Mr Chaskalson needed to meet with him in order to make sure that there was preparation for that evidence on the 13th of March.

It is entirely appropriate that Mr Chaskalson did so. So, the continued allegations that, well, he was trying to meet me, really is neither here nor there. There is simply nothing wrong with Mr Chaskalson making those efforts. But Mr Mogotsi does not show up to the meeting at 10 o'clock and he does not give any indication that he is not going to show up.

20 So then when Mr Chaskalson calls him, the call is again very short if one has a look at the record and it is to enquire about his whereabouts. They then agreed that they will meet at 2 o'clock. And they set an appointment for 2 o'clock and again, Mr Mogotsi does not show up. And again, Mr Mogotsi does not answer his phone, and he does

not explain why he did not show up.

He does not give an indication. In the meantime, we have had Mr Chaskalson and the investigators waiting around for this appointment. And that is what Mr Chaskalson explains when he says what he meant by you cannot mess me around. That is what he says, is you cannot mess me around. And he explains that what he is referring to is that Mr Mogotsi's missing appointments was continually missing these appointments and disrupting the
10 schedules of the evidence leader and the investigators.

So that is his explanation. Do not mess me around. It makes sense when you have regard to the full context of the WhatsApp records. If you were truly, and I think it was, I cannot remember which of the Commissioners put this to my learned friend, but the point is important because if you were truly attempting to use false information against Mr Mogotsi, why would he invite the investigators to accompany him?

And second important relevance of the
20 investigators being there is so that they can follow up on any information that does emerge from Mr Mogotsi to test its credibility and to see whether it can be independently corroborated. Again, entirely consistent with the version that Mr Chaskalson explains in his answering affidavit. So, the true picture is this.

Mr Mogotsi pursued Mr Chaskalson. He initiated the conversations. He says he was concerned that Mr Carrim was throwing him under the bus. He sought assistance to avoid being used as a scapegoat, as Mr Chaskalson explains it. That was his understanding, that that is the assistance, the help he wanted was not to be used as a scapegoat.

And then he offered to provide evidence against Mr Carrim and the Medicare 24 contract. But what is more, as
10 we now know, he was also peddling falsehoods to Mr Chaskalson. And he says so. In order to precipitate a postponement of Mr Carrim's evidence. And we also see now, contrary to everything that he was saying about Mr Carrim to Mr Chaskalson around the 9th and 10th of March, when those efforts proved unsuccessful to provide evidence to secure a postponement.

He then provides an affidavit which is attached to his founding affidavit, in which he lists all the parts of testimony that, of Mr Carrim, that he now corroborates. And
20 I will come back to the false information, Chair. Let me deal with the next aspect before I come to that. The next aspect is this question of, well, you see Mr Chaskalson was playing this false game, because on the 10th of March, when he was questioning Mr Carrim, he said to Mr Carrim that yesterday Mr Mogotsi told me this about a meeting that took

place in the North West.

And I really am not going to spend much time on this. It is very clear when you look at the record that what Mr Chaskalson was saying was, he said the following, because after your evidence yesterday, Mr Mogotsi called us out. So, he was referring to evidence that had been given the day before. Not that Mr Mogotsi had called him the day before.

So, the timing of the call from Mr Mogotsi is
10 actually not relevant. The material point is this. It is that Mr Mogotsi admits that he told Mr Chaskalson that this meeting took place, this meeting in the North West. He admits that. And then he adds this following startling addition to his affidavit. At paragraph 6.10 of his founding affidavit, he says the following. He says:

20 “I began by suggesting he ask about the meeting between myself, Morgan Maumela, and Suleiman, a meeting which never took place. I did this deliberately to encourage him to postpone Suleiman's testimony, as I was already concerned about the Commission's treatment of me and its focus on issues outside its mandate.”

So, this is the point I was making earlier. He admits that

what he told Mr Chaskalson was false in that paragraph. And that he advanced that falsehood to secure postponement of Mr Carrim's testimony. That admission is serious because it does not only suggest dishonesty, but it is a deliberate attempt to manipulate the evidence leader and this Commission's process. Mr Mogotsi's conduct, and it is for that reason, Chair, that we say that Mr Mogotsi's conduct, in addition to the forged WhatsApp record, his conduct should be investigated as a possible offence under
10 the Section 5 of the Commission's Act and Regulation.

ADV KHUMALO SC: 6.20 says:

“I deliberately mentioned it to prompt a postponement of Suleiman's testimony.”

So, it was deliberate.

ADV HASSIM SC: Absolutely. He deliberately gave false evidence to secure the postponement of Mr Carrim's evidence. Those are the words that he says unmistakably in his affidavit. That brings me to the complaint about the questioning. Mr Mogotsi complains that Mr Chaskalson
20 questioned him very vigorously and put it to him that he was dishonest. That is true.

That did take place. Mr Chaskalson did question him vigorously and did say to him that he was being dishonest. But that is not unfair because a Commission is inquisitorial. It is the duty of an evidence leader to test

evidence, to confront witnesses with inconsistencies and to put adverse propositions to them so that they may answer. Robust questioning is not unfairness.

In our affidavit, in our submissions, we pointed to the extract from Justice Nugent's ruling in the SARS Commission where he speaks about the role of evidence leaders. Chair, I do think that this paragraph is important. May I read it out? I think it is important that everybody understands the role of evidence leaders. And I will read it
10 very fast. What Justice Nugent said in the *SARS Commission* is the following:

“What is called for from counsel for a Commission and from the Commission itself is an open but enquiring 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 Enquiry.”

20 And then he quotes from the SCA judgment as follows:

“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 a conviction that there is deceit. How it progresses will vary 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. It is in that state of mind that counsel go about their work.”

10

So that the SCA, just to for completeness, the SCA judgment that Justice Nugent was referring to, was a passage from *The Public Protector v Mail and Guardian*.
20 And the reference, if I may provide it, is 2011(4), *South African Law Reports*, at page 420, decision of the SCA, and the passage is in paragraph 22 of the judgment.

CHAIRPERSON: Is the citation not given in the affidavit?

It is.

ADV HASSIM SC: It is not.

CHAIRPERSON: It is not.

ADV HASSIM SC: No, it is not, Chair. That is why I am giving it to you now. We omitted to explain that that is where the passage comes from. The Constitutional Court cited the same principle with approval. The same paragraph 22 was cited by the Con Court with approval in Public Protector v the President of the Republic of South Africa.

And again, for completeness, let me provide that
10 citation. It is 2021(6), South African Law Reports, page 37, decision of the Con Court, and it is at paragraph 139 specifically. That is the proper approach to questioning by an evidence leader. It does not require impartiality. It requires an open, enquiring, probing mind. There is also an important practical fact to make about the questioning, Chair, that took place, and this was in November 2025.

When Mr Mogotsi testified then, he was legally represented. His legal representatives did not object to the questions that are now being complained of the questioning.
20 The complaint is only raised later when the witness is due to return to the witness box, and I would submit that that timing is telling.

CHAIRPERSON: But of course, the lack of objection is not in and of itself determinative.

ADV HASSIM SC: That is correct. That is correct, Chair.

But one would think that if the degree to which Mr Mogotsi is complaining now about it, that if it was that serious at the time, that there would have been a complaint at the time. There was not. But we have addressed the complaint nevertheless because one ought to still address the substance of the complaint. Correct, Chair.

There is one additional point which I did not indicate in my opening, but it is about, and it came up again in the questions, it is about ignoring leads that are relevant, information that is provided, information that is ignored. And what Mr Mogotsi says is that he provided certain leads and they were not pursued. First of all, that is not a recusal point.

The Commission is assisted by evidence leaders and investigators. The evidence leaders and investigators decide what to investigate, when to investigate it, through which witnesses, and whether something warrants investigation. A witness who provides information does not acquire a right to dictate the Commission's investigative priorities. So, failure to pursue a witness's preferred leads immediately does not establish bias. There may be many reasons. But, Chair, in Mr Mogashoa's affidavit, he does deal with this complaint. And ...[intervenes]

CHAIRPERSON: I noticed that you two fall into the trap of bias instead of substantive unfairness.

ADV HASSIM SC: Absolutely. Well, it does not even establish bias, let alone substantive unfairness. So, on their test, it does not even meet the grade. There was the Section 252 information, there was the crime intelligence procurement information, and so on, and that is addressed fully in the affidavit. In fact, the Section 252 investigation was thoroughly questioned and probed during Mr Mogotsi's evidence, and we have attached the transcript, which is why this is bulkier than it should be, because we have attached
10 the transcript to show in the many different places in which that lead was tested and questioned. We are not at liberty, nor are we required to say how else we are pursuing these leads and these investigations and the other witnesses who have come to testify here, including those who may have come *in camera*, and that is where I am going to leave it. It is just not a witness's ...[intervenes]

CHAIRPERSON: Is this the test with regard to those leads would have to be how, if at all, does the fact that they have not been dealt with, how does that impact on the retention
20 of the evidence leader with the result that there would be substantive unfairness. That is what Mr Mogotsi would have to show, and I am not aware that there has been any attempt to show that at all with regard to those leads.

ADV HASSIM SC: Chair, there is nothing in the affidavit that suggests that it therefore is going to mean that Mr

Mogotsi has been treated unfairly. Maybe it will be to the detriment of the Commission, it will not have a full picture, if those leads are not pursued or something, at best, and again, there are many reasons for when and how evidence is placed before the Commission. Some leads require further corroboration, further witnesses, *et cetera*. All of that is entirely separate to the questioning of Mr Mogotsi and whether Mr Chaskalson can continue to question him and whether there would be any unfairness in that.

10 **CHAIRPERSON**: Yes, please continue.

ADV HASSIM SC: The final point before I conclude, Commissioners, is that the timing of the application does matter because the questions that are complained of go back to 2025 and then the WhatsApp complaint starts in 9 and 10 March, but the application is only brought when Mr Mogotsi is due to return to give evidence, and the reason I am raising this again, this issue of the delays, for two reasons.

20 The first is a practical one about protecting the Commission's proceedings, and in fact, in *Bennett*, the case that is put up by the applicant, the only aspect of this case that is of any assistant relevance to this application, in fact, when it does not help the applicants, is at paragraph 71, where the Court says the following about when complaints of reasonable apprehension of bias should be made, and

the Court says this, the Constitutional Court:

“It is highly desirable if extra costs, delay, and inconveniences are to be avoided, that complaints of this nature be raised at the earliest possible stage.”

So, I raise it for that point, it is a practical point, and it is about protecting the Commission's resources, time, and its proceedings. The second is, what I submit with respect, is that properly understood, what it shows is that this
10 application is just another stratagem to manufacture further objections, to secure further postponements, and to ultimately avoid testifying before the Commission.

So, for those two submissions, I say that the delay is relevant. So in conclusion, Chair, let me finally submit that the application should be dismissed, and we submit, again with respect, that the Commission should find that there is no legal basis that is set for a recusal of an evidence leader, as if he were a judge or a decision maker, that the applicable enquiry is where the continued
20 involvement would cause substantive unfairness, that Mr Mogotsi has not established any such unfairness, that the allegation that Mr Chaskalson has induced false evidence is unsupported, and is contradicted by Mr Mogotsi's own submissions, and in my own personal opinion, is a reckless and slanderous allegation, but that is my own personal

opinion.

Mr Mogotsi placed before the Commission a materially incomplete WhatsApp record and admitted to deleting material from it. He should, therefore, be referred to investigation, for investigation, for possible perjury, forgery, and contraventions of Section 5 of the Commission's Act, and Regulation 12(1) of this Commission's Regulations.

And thus, in short, Chair, if the Commission were to
10 rule that this application falls to be dismissed, we would finally say that then what must appropriately follow is that the Commission directs that Mr Mogotsi's evidence proceeds without further delay, and of course, the appropriate evidence leader would be Mr Chaskalson. Thank you, Chair.

CHAIRPERSON: Thank you, Ms Hassim. Yes, Ms Mohomane.

ADV MOHOMANE: Chair, I see that ...[intervenes]

CHAIRPERSON: Oh, your mic, your mic, please.

20 **ADV MOHOMANE**: I apologise, Chair. Thank you. I see that it is lunchtime. I am uncertain if ...[intervenes]

CHAIRPERSON: Our preference is for you to reply, but not more than 10 minutes.

ADV MOHOMANE: I will confine myself to the 10 minutes, Chair. Thank you.

CHAIRPERSON: Yes.

ADDRESS BY ADV MOHOMANE IN REPLY: Thank you, Chair. In reply, I will start firstly by talking about the deleted calls. What is shown in the MC2, which is the WhatsApp chat of Mr Chaskalson, it is that these are missed calls. And Mr Mogotsi further says that he deleted them in his WhatsApp because they were missed calls and he saw no significance in having them.

Now, Chair, further, Annexure MC2, which will be
10 Mr Chaskalson's WhatsApp, which is the WhatsApp that comes without any calls or emojis being deleted, the first page which depicts the 9th of March 2026, it will be page 35. Chair, what I want to submit is that if the Commission looks right on top of the chat, there is a word there that says no.

And there is a time that says 08:56 a.m. Now, Chair, with that, my submission is that even Mr Chaskalson has not brought the entire conversation between himself and Mr Mogotsi. With that little that appears, it is evident
20 that there has been some discussions prior to the one of the 9th. Now, Chair, my submission with regards to that is it prompts that messages that come prior to that which are conversations between Mr Mogotsi and Mr Chaskalson also be looked at. Because there is nowhere in the affidavits both of the applicant and that of the first respondent that

makes reference or gives the Commission an explanation as to what was discussed prior to the state of the 9th.

CHAIRPERSON: But Mr Mogotsi is the applicant and is the one who is suggesting impropriety. If by the lack of texts or the fullness of texts in this regard, you want to make some point with regard to impropriety, is it not so that as the applicant, Mr Mogotsi should have told us what is happening there?

ADV MOHOMANE: It is true, Chair, but then it takes away
10 this impression that has been created that Mr Mogotsi is the one who reached out to the evidence leader. And this happened on the 9th.

CHAIRPERSON: But do the calls that I referred you to earlier not show that it is he who appears to have reached out? And in addition to that, I think Commissioner Baloyi took you to the detail of what actually happened and also lack of denials by Mr Mogotsi in his replying affidavit with regard to who actually initiated all of this. So, your point cannot stand. Do you remember that engagement by
20 Commissioner Baloyi?

ADV MOHOMANE: Yes, I do.

CHAIRPERSON: And when Commissioner Baloyi made specific reference to what is lacking in the replying affidavit with regard to allegations made by the chief evidence leader. So, I do not see how you can make the point you

are now attempting to make.

ADV MOHOMANE: Yes, Chair, my instructions
...[intervenes]

ADV BALOYI SC: Can I just add to that before you answer based on your instructions? In the founding affidavit, the whole of paragraph 6, it sets out the heading is detailed factual basis for application. And Mr Mogotsi speaks only to the 9th and 10th. So those are the relevant that what he says are the relevant facts for purposes of this application.

10 And if you look at that WhatsApp message that you are relying too on MC2, the first call is on the 9th of March is at 08:56 p.m. Can you see that?

Because this thing has got dates on it when communication started. So, you have got two things. On Mr Mogotsi's facts that he relies on for this application he selected the 9th and 10th to speak to. And then the WhatsApp that you referred to, in fact, records what happens between them from the 9th. So, what happened on the 8th, Mr Mogotsi did not consider it to be relevant. He

20 has not placed it before us.

CHAIRPERSON: In addition, look at 6.3. There is specific reference to 08:56. And indeed, you do see the three-minute call at 08:56. So Mr Chaskalson's focus is there or relates to that timeline. So that is why his focus and additions of what are missing from Mr Mogotsi's chats focus

on that timeline. So, you cannot fault Mr Chaskalson by not saying anything about the nose appearing at the top. That would be very unfair. His attention has been drawn to 08:56, and then he focusses on that timeline. Do you follow what I am saying?

ADV MOHOMANE: I do follow, Chair.

CHAIRPERSON: Yes, yes. Can you continue with your submissions, then?

ADV MOHOMANE: Chair, further, there was an issue that
10 was raised by the second respondent regarding the contents of Mr Mogotsi's affidavit with a further postponement when Mr Carrim was giving testimony.

ADV KHUMALO SC: 06.10 on page 14 and 6.20 on page
17. Because I had a question there also. What should we make of that if Mr Mogotsi himself says, I gave Mr Chaskalson this information in order to engineer a postponement of Mr Carrim's evidence? Because that is serious interference with the work of the Commission if you are giving evidence leaders misleading information, and
20 your intention is to engineer a postponement of a witness who is in the witness box and giving evidence. So, as you deal with that point, can you please address that?

ADV MOHOMANE: I will do so, Commissioner. In reply to 6.10, read together with 6.11, these are events that transpire whilst Mr Mogotsi is trying to get information or

whatever evidence that the evidence leader can use. Now, my submission on that is that he mentioned the Health Department tender which is contained in paragraph 6.11, and he also mentioned Mr Maumela and Suleiman in paragraph 10, hoping that in light of this information, he might go and get an opportunity to get more information that was required from him, from the evidence leader. That is how I understand this.

ADV BALOYI SC: He does not say that. He says:

10 “I did this deliberately to encourage him to postpone Suleiman's testimony as I was already concerned about the Commission's treatment of me and its focus on issues outside its mandate.”

He does give a reason why he was trying to engineer a postponement in favour of Mr Carrim.

ADV KHUMALO SC: Ms Mohomane, look at 6.10. He says:

20 “He began by suggesting that Mr Chaskalson should ask Mr Carrim about a meeting that took place between himself, Maumela and Suleiman.”

And then he says:

“That meeting never took place.”

So, he lied when he said there was such a meeting. And

then he says:

“I did this deliberately to encourage him to postpone Suleiman's testimony.”

ADV MOHOMANE: And he further, Commissioner, says:

“As I was already concerned about the Commission's treatment of me and its focus on issues outside its mandate.”

ADV KHUMALO SC: Yes, so, my issue is, why would he mislead the evidence leader about a meeting that never
10 took place? And him saying under oath that he did so in order to engineer the postponement of Mr Carrim's testimony.

ADV MOHOMANE: The answer to that question, Commissioner, is on the last two lines of that paragraph. He says:

“He was concerned about the Commission's treatment and the focus on issues outside its mandate.”

ADV KHUMALO SC: So, I am going to leave it at you
20 believe that him misleading evidence leaders to engineer a postponement of another witness is justifiable if he is concerned about his own treatment.

ADV MOHOMANE: That is not my comment, Chair. And that is not my belief. I am merely directing the Commissioner to say that in that same paragraph, he gives

an explanation to say that he was concerned about the Commission's treatment and its focus. I am mindful not to be found to say that his concern was correct about making mention of a meeting. I am just merely emphasising that he states that this is the reason he did it. It is not my opinion as to whether it is right or not.

ADV KHUMALO SC: I appreciate it, thank you.

CHAIRPERSON: So, we are dealing with a witness who will say or do anything based on what he wants. It does not
10 matter if that may be untrue. Effectively, that is what is happening here or not. Yes, do you agree with me? I think you must.

ADV MOHOMANE: Chair, in response to the question, firstly, I will respond by saying it is improper.

CHAIRPERSON: Do you agree with the proposition I have put to you? That is not the question. The question is not where I am. The impropriety if I am correct is obvious so that is not where I am. Do you agree with the proposition I put to you?

20 **ADV MOHOMANE:** Can Chair repeat the proposition again?

CHAIRPERSON: I say, based on what the witness is saying here, we are dealing with a witness who will say or do anything regardless of its truthfulness or lack of it, depending on what he wants under the circumstances. That

is the sort of witness we are dealing with based on what we read here. Do you agree? You must.

ADV MOHOMANE: Chair, may I answer it in twofold, Chair? Yes, I agree.

CHAIRPERSON: Thank you.

ADV MOHOMANE: And if Chair permits me ...[intervenes]

CHAIRPERSON: Can I ask my next question before you go there? You may go afterwards.

ADV MOHOMANE: Yes, Chair.

10 **CHAIRPERSON:** So, if that is the sort of witness we are dealing with here, what must we make of that in the broader scheme of things? And by that, I mean with regard to this application. I am not talking about Mr Mogotsi's testimony with regard to the investigative process. What must we do with that or what must we make of that in the context of this application?

ADV MOHOMANE: Earlier during the proceedings, Chair made an example about a father and a child. And Chair said that a man of value, a staunch father, would know what
20 he had uttered and why he did not utter. And Chair will understand where I am going with that example.

CHAIRPERSON: I do not ...[intervenes]

ADV MOHOMANE: I will explain it so that Chair understands.

CHAIRPERSON: Okay.

ADV MOHOMANE: Chair, a child in a house who lives with very strict parents, and he gets a good beating when he does something, even if he had not done it, to avoid getting a good beating, he would simply say, yes, dad I did it. Now, why that example, Chair? We have Mr Mogotsi who, according to his papers, believed that if he does not deliver, as per the agreement, consequences are going to befall him. Now, if consequences befall him, there will be adverse consequences.

10 **CHAIRPERSON:** I am not sure I follow that in the context of Mr Mogotsi saying I did this deliberately to encourage him to postpone Suleiman's testimony.

ADV MOHOMANE: It is to run away, Chair, from the consequences. The consequences ...[intervenes]

CHAIRPERSON: So, basically, you are explaining why he lied. Is that what you are saying?

ADV MOHOMANE: Chair, in light of what is contained in the papers ...[intervenes]

CHAIRPERSON: Are you explaining why he lied?

20 **ADV MOHOMANE:** From what is in the papers, yes, Chair.

CHAIRPERSON: Yes, now that takes me back to my question, which is, if we have a witness like that, what must we make of such a witness in the context of this application, this interlocutory application? That is my question.

ADV MOHOMANE: Chair, that leaves the Commission with

nothing other than to find on the credibility of the applicant.

CHAIRPERSON: Please, I think the 10 minutes is ...[intervenes]

ADV MOHOMANE: It has elapsed, Chair. Can I just see for a second, Chair, if there is anything else I wanted to address?

CHAIRPERSON: All right, all right.

ADV MOHOMANE: Just one aspect. Oh, sorry, Chair, I apologise. I apologise, Chair.

10 **CHAIRPERSON**: Please continue, Ms Mohomane.

ADV MOHOMANE: Thank you, Chair. On just one aspect, the timing of the filing of the application. Chair, it is common cause that Mr Mogotsi did not have attorneys from, I think, January of 2026. And according to the letters that were filed in the Commission, my attorney only came on record, I believe it was during the Easter holidays. I do not recall the exact date. Now, from the time he came in to consulting and raising these issues, it still falls within a reasonable time. And ...[intervenes]

20 **CHAIRPERSON**: On my reading, I do not remember reading that explanation in the affidavit. Is it there in the reply?

ADV MOHOMANE: No, it is not in the replying affidavit. It is merely ...[intervenes]

CHAIRPERSON: Should it not have been there? You know

what judges will usually throw at counsel, which is, counsel is now testifying from the bar.

ADV MOHOMANE: I will retract that submission. I have nothing further to say, Chair.

CHAIRPERSON: Thank you very much Ms Mohomane. Let us adjourn and resume at half past 2.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good afternoon, Ms Hassim. Good
10 afternoon, Ms Mohomane.

ADV MOHOMANE: Good afternoon.

RULING

CHAIRPERSON: The application is dismissed. Reasons will be given during the course of next week, if not, the week after. The effect of the dismissal of the application is that Mr Mogotsi's evidence will be heard today. But we will have to take an adjournment. I will not indicate after how long we will come back, but we will come back, not long from now, for the hearing of the evidence and Mr Mogotsi
20 will be led by the Chief Evidence Leader, Mr Chaskalson. That is the effect of the dismissal of the application. Let us adjourn.

Oh, sorry, sorry. Yes, yes.

ADV MOHOMANE: Thank you, thank you, Chair. Chair, I have been instructed to place on record that in light of the

outcome of the recusal application, Mr Mogotsi wishes to bring a review application. We thought it prudent to bring it to the attention of the Commission.

CHAIRPERSON: But because there is no interdict at this stage, we will be continuing with the hearing of the evidence. Let us adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good afternoon, Mr Mogotsi.

10 **MR MOGOTSI**: Good afternoon, Chair.

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

MR MOGOTSI: So help me God.

BROWN MOGOTSI (duly sworn states)

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: Thanks, Chair. Good afternoon, Mr Mogotsi. Good to see you again.

20 **MR MOGOTSI**: I do not, Chair, may I say something, please?

CHAIRPERSON: Yes.

MR MOGOTSI: Thank you very much, Chair.

CHAIRPERSON: Yes.

MR MOGOTSI: I think it is very much important that I put

this into record regarding the whole process as how it unfolded. It should be recorded again, Chair. I have noticed the proceedings, including when my Counsel speaks, she got interrupted more than ten times. The Counsel here was allowed to speak. When my Counsel tried to read one case law into record, it was that no, we know it. The other Counsel had an opportunity to speak uninterrupted for so long.

Secondly, Chair, when I came here before, I came
10 voluntarily, and as it was also put in my affidavit, the information that I said will need to be corroborated and be converted into evidence that is required or needed, Chair. I have given that all. I was declared a liar. I kept on saying I had to do the affidavit so that we could process this 252A. I was declared a liar again.

And now today, again, I have made an application for the recusal of the Chief Evidence Leader, which it was fair, it was done properly. It is within the discretion of the Commission to make, to arrive at a certain conclusion. By
20 so saying, Chair, I want to say I am very much unhappy with the proceedings. Thank you.

CHAIRPERSON: Thank you, Mr Mogotsi. I have heard you. We will continue with the hearing of your testimony.
Thank you.

ADV CHASKALSON SC: Mr Mogotsi, since you last

testified, both General Sibiya and the person you say was your co-handler have testified, and I just want to clarify certain discrepancies between what you told us and what they told us. General Sibiya said two things that are at odds with your evidence. The first was that he said that he had not met you before the January 8th event in Cape Town, that that was the first time he met you. And the second is that at no stage when he met you did he ever discuss any official policing business or operational investigative or intelligence matters. So I just want your response to each of those.

MR MOGOTSI: Ja, to ...[intervenes].

ADV CHASKALSON SC: Was General Sibiya correct to say that the first time he met you was at the 8th January event?

MR MOGOTSI: Ja, to all the answers, I am not going to incriminate myself and forward, Chair.

ADV CHASKALSON SC: But I do not understand how you can incriminate yourself in relation to whether you met General Sibiya before January the 8th or only on January the 8th.

MR MOGOTSI: As I said, I am not going to incriminate myself.

CHAIRPERSON: Please explain how that incriminates you.

MR MOGOTSI: By answering that question, Chair, I will be

incriminating myself again.

CHAIRPERSON: How ...[intervenes].

MR MOGOTSI: I therefore request, I request to ...[intervenes].

CHAIRPERSON: Sorry, sorry ...[intervenes].

MR MOGOTSI: To rather invoke my right to remain silent.

CHAIRPERSON: How does this incriminate you, Mr Mogotsi?

MR MOGOTSI: That is the answer, I do not want to
10 incriminate myself any further. That is the answer, Chair.

CHAIRPERSON: It does not answer my question. I hear you when you say you do not want to incriminate yourself. What I want to understand is how this incriminates you.

MR MOGOTSI: I do not want to incriminate myself, Chair.

CHAIRPERSON: It is open to a witness to adopt that stance, but it does not mean that that necessarily makes sense in all instances. I should just draw it to your attention that the section, I think it is Section 6 of the Commission's Act and there is also, is it Regulation 8(1), if
20 I am not mistaken, but there is also provision in the regulations. Both create an offence if a witness that has been sworn in fails to answer fully and satisfactorily any question lawfully put to them.

So for you to simply say this incriminates you, you do not explain how, you do not explain what the crime is,

we are completely in the dark. It may well be that we may have to consider this. I am not saying that you are not entitled to raise what you are raising. It may well be that there is a basis for substantiating it and for exculpating yourself from the possible applicability of Section 6 and the relevant regulation, but I think it only fair that I should draw your attention to the provisions of these statutory prescripts. So are you still insisting that that is the attitude you have?

10 **MR MOGOTSI**: That is my posture, Chair. That is my posture. I have gone through those rules and as a layman, I may not have full comprehension as to how they work. Perhaps my legal team will talk to that, but I am not going to incriminate myself.

CHAIRPERSON: Ms, yes, yes, Mr Chaskalson.

ADV CHASKALSON SC: Chair, I think it is possibly appropriate for Mr Mogotsi to take some legal advice on this, because certainly the attitude of the Evidence Leaders is that subject to any plausible reason for a fear of self-
20 incrimination, the Evidence Leaders would want a refusal to answer questions to be followed by a referral for prosecution under the relevant provisions of the Act.

And while I can understand that there are certain questions that I want to ask today that might legitimately elicit an assertion of privilege against self-incrimination, I

certainly had not imagined that this one would. And there are going to be a lot of questions that are going to give rise to this issue. So I think Mr Mogotsi needs to understand what his legal position is and I do not want him to be put into a position where he ends up being prosecuted for refusing to answer questions believing that he has a right to do so when he does not.

MR MOGOTSI: No, Chair, I am not refusing to answer questions.

10 **CHAIRPERSON:** Mr Mogotsi, I will invite you when I want to hear you.

MR MOGOTSI: All right.

CHAIRPERSON: Ms Mohomane.

ADV MOHOMANE: Chair.

CHAIRPERSON: Do you want to take the opportunity to talk to your client? Perhaps let us just adjourn. Let us adjourn. We will come back when it is indicated to us when to come back.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: Yes, Ms Mohomane. Thank you, thank you, Chair. Chair, I have obtained further instructions together with my attorney from client regarding the situation. Chair, my instructions are that prior to the instructions, we have also looked at the provisions of

Regulation 8 and Regulation 12 of the rules of the Commission, and we have extensively advised client on same and the repercussions that fall, fall with.

Chair, my instructions are that Mr Mogotsi has voluntarily made himself available to the Commission, and he gave evidence without being summoned to come. It is not a refusal to answer questions specifically with regards to General Sibiya. His response thereto is that he will not incriminate himself any further, thus will not answer the
10 question. If the Commission so requires, it may also ensure or rather just double-check with Mr Mogotsi if whether those are the correct instructions.

CHAIRPERSON: I am not sure whether I follow. Is the stance that Mr Mogotsi this afternoon will not be answering any questions, and that his stance with regard to all questions put to him is that he will not answer and that he will claim his privilege against self-incrimination in response to all questions?

ADV MOHOMANE: Chair, thus far my instructions fall on
20 the evidence of General Sibiya. I am uncertain ...[intervenes].

CHAIRPERSON: That is what confuses me. I am not sure I follow that.

ADV MOHOMANE: Chair, if I may, I see a nod from Mr Mogotsi when Chair asks that would it be with all the other

witnesses, and I see a nod from Mr Mogotsi's side. May Chair confirm for me?

CHAIRPERSON: Yes. Or perhaps let me ask you directly, Mr Mogotsi. I am not sure that I follow your Counsel. I want to establish from you whether your stance is that you will claim privilege against self-incrimination in response to all questions, whatever their nature.

MR MOGOTSI: Chair, I will sit here and wait for all the questions. I will respond to each and every question, as I
10 said. If a question is posed, I am not refusing. If I say I do not want to incriminate myself, I am answering. I am aware of the repercussions as I will be in contempt with the Commission. I am saying a self-incriminatory kind of environment, I believe I should be given an opportunity to do that. I will wait for every question. I will respond. I will not say I put a blanket on all the questions. As they come, I will respond.

CHAIRPERSON: Mr Chaskalson, I guess the best way to deal with it is for you to put all your questions to Mr
20 Mogotsi.

ADV CHASKALSON SC: Let us proceed then, Chair.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: So my first question was, is General Sibiba correct to say that the first time that he met you was in Cape Town around the January the 8th event?

MR MOGOTSI: I am not going to incriminate myself, Chair.

ADV CHASKALSON SC: And my second question is, is General Sibiya correct when he told us that he never discussed any official policing business or operational investigative or intelligence matters with you at any time?

MR MOGOTSI: Still, I am not going to incriminate myself, Chair.

ADV CHASKALSON SC: Then let me proceed to another question. The man who you have described as your co-
10 handler said that he met with you and General Sibiya in Bryanston prior, well before January the 8th, 2025. Is that correct?

MR MOGOTSI: I am not going to incriminate myself, Chair.

ADV CHASKALSON SC: Let us proceed. When you were at Parliament, you withdrew your allegations against General Mkhwanazi and King Misuzulu and you apologised for casting aspersions on them. Can we then accept that, from your perspective, the Commission does not have to pursue those allegations further?

20 **MR MOGOTSI:** Like I said, every question I will respond, Chair. Indeed, in Parliament I said so, but I do not want to incriminate myself, Chair.

ADV CHASKALSON SC: Let us move on to your status as an agent or an informant. Can I ask you to go to page 8 of the exhibit bundle?

ADV KHUMALO SC: Mr Chaskalson, Chair made a ruling the other day that we should refer to CJC numbers for the transcription. CJC40.

ADV CHASKALSON SC: CJC40. I may, I can see myself running into difficulties.

ADV BALOYI SC: Mr Chaskalson, we will assist you because we have the physical file. So that is the page number.

ADV CHASKALSON SC: Thank you. So on page 8 there
10 is an affidavit from a Colonel in the Division of Crime Intelligence, who is the Section Head of Undercover Operations and Agent Program and you will see in paragraph 1, that Colonel states:

“This section is responsible for registration of all undercover operations and deployment of undercover agents, either discharged or non-discharged agents, for head office in nine provinces.”

20 Then he says:

“Mr Brown Mogotsi, with identity number ...”

And he gives you identity number.

“... has never been in our program as an undercover agent and there are no

records that indicate that Mr Mogotsi was ever an agent. In our manual database and a computer system, his name does not appear as a person that was ever an undercover agent. As the Undercover Operations and Agent Support Section, we provide operational support functions and administer all agent files for members of the South African Police Service. The management and administration of all undercover agents, regardless of the division, component or province where a person is placed, is the responsibility of this office. Undercover agents are members of the South African Police Service. Mr Brown Mogotsi was never employed or enlisted in the South African Police Service. His name does not reflect on the record systems of the South African Police Service. I therefore deny that Mr Brown Mogotsi was ever an undercover agent of the South African Police Service.”

So, the person charged with maintaining all of the records of undercover agents in the South African Police Service Criminal Intelligence Division denies that you were ever an undercover agent. Do you have a response to that?

MR MOGOTSI: I responded in Parliament. This person only got appointed in 2024. I know how he got appointed. I know where he used to work. He can never know me, therefore, I will not want to implicate myself.

ADV CHASKALSON SC: Are you, sorry, are you asserting
10 a privilege against self-incrimination not to answer that question?

MR MOGOTSI: Yes, that is correct. That is the answer I am going to give to all the questions, by the way.

ADV CHASKALSON SC: Well, we will still go through the questions one by one.

MR MOGOTSI: Yes.

ADV CHASKALSON SC: Who informed you that you were acting as an agent?

MR MOGOTSI: I am not incriminating myself, Chair.

20 **ADV CHASKALSON SC:** Did anybody inform you that you were acting as an agent?

MR MOGOTSI: I would not want to incriminate myself, Chair.

ADV CHASKALSON SC: Let us go down to the next annexure. I think it would be CJC41. It is at page 10 and

there, you will see this is an affidavit with a Colonel stationed at the Secret Services account in the Division of Crime Intelligence and the Colonel says:

10 “I am the Acting Section Head of Finance responsible overall management of the financial administration of the Secret Services account. Part of my duties include administrative management of informer database nationally. The SSA central informant index falls under the control of the Divisional Commissioner, Crime Intelligence or his/her delegate appointed for this purpose and serves as the notal point for the registration and handling of record checks relating to informants. All active and inactive informants are placed on the register, as it is important to know if a person is
20 or has been an informant previously.”

Paragraph 4:

“A record of all known information ...[indistinct] is kept on a separate database to ensure that such person’s particulars are supplied for record

purposes. The *bona fides* of such persons must be placed under suspicion as they are normally not trustworthy and attempt to provide information to the highest bidder, irrespective of the consequences.”

And then if you go down to paragraph 5 on page 11:

10 “The division of Crime Intelligence is responsible for registering and managing informants. All registered informants are subject to verification every six months. During this process, handlers and their immediate commanders are required to physically verify the source and submit a certificate to this office for capturing. The ID number ...”

And your number is given.

20 “... belonging to Mr Brown Mogotsi, was tested against the Crime Intelligence database. This ID number is registered in the captain system with ...”

And it has been redacted.

“The source was handled by ...”

And it is redacted.

“And co-handled by ...”

And it is also redacted.

10 “The source was registered on 9
January 2001 at Soweto cluster and the
same source was deregistered on 20
August 2001. The handlers requested
an amount of R1,200.00 for recruitment
fee to motivate the contact. According
to our report, there are no other
financial transactions relating to the
source for the period he was active in
our system.”

So the Colonel responsible for administering Crime Intelligence records of all informants says you were an informant for a brief period in 2001, but there is no record of you being an informant ever after. Do you have a comment on that?

MR MOGOTSI: No incriminating, sir.

20 **ADV CHASKALSON SC**: Sorry?

MR MOGOTSI: I do not want to incriminate myself.

ADV CHASKALSON SC: Now in fairness to you, I should place on record that the person who you describe as your co-handler says that he was aware that you were being run as an informant. He does confirm that you were being run

as an informant. He, however, was emphatic that you were never an agent, only an informant. Do you want to comment on that?

MR MOGOTSI: I do not want to incriminate myself.

ADV CHASKALSON SC: In your affidavit you described yourself as a contact agent. The person who you referred to as your co-handler says there is no such thing as a contact agent. Do you want to comment on that?

MR MOGOTSI: I am not going to incriminate myself.

10 **ADV CHASKALSON SC**: And that person also testified that you and he were homeboys from Soweto and knew each other outside SAPS work. What is your response to that?

MR MOGOTSI: I do not incriminate myself, Chair.

ADV CHASKALSON SC: Now, in your statement you say that your handler was Warrant Officer Mabizela. Do you stand by that statement? There are six different references in your statement to Warrant Officer Mabizela as your handler.

20 **MR MOGOTSI**: Yes, Mabizela Mabuza, I understand that. I do not want to incriminate myself.

ADV CHASKALSON SC: Sorry, you said Mabizela Mabuza.

MR MOGOTSI: I do not want to incriminate myself.

ADV CHASKALSON SC: You do not want to incriminate yourself. Well, the man who you describe as your co-

handler was adamant that you were never handled by Warrant Officer Mabizela, only by Warrant Officer Mabuza. What is your response to that?

MR MOGOTSI: I do not incriminate myself, Chair.

ADV CHASKALSON SC: And the man who you describe as your co-handler was also adamant that he was not your co-handler. He said he just played a supervisory role in relation to Warrant Officer, a minor supervisory role in relation to Warrant Officer Mabuza. Do you want to respond
10 to that?

MR MOGOTSI: I do not want to incriminate myself.

ADV CHASKALSON SC: He said the primary supervisory role in relation to Warrant Officer Mabuza was played by a Colonel Duma who was later promoted to Brigadier Duma. Do you want to respond to that?

MR MOGOTSI: I do not want to incriminate myself.

ADV CHASKALSON SC: And he also said that Colonel Duma was involved as the supervisor of your handler, Warrant Officer Mabuza, right from your first alleged
20 meeting with the man you describe as your co-handler. Do you have a response to that?

MR MOGOTSI: I am not going to incriminate myself.

ADV CHASKALSON SC: Can you explain why there is no mention of Colonel Duma in your statement?

MR MOGOTSI: I am not going to implicate myself. He was

Brigadier Duma actually. I am not going to incriminate myself.

ADV CHASKALSON SC: Ja, well, he was later promoted to Brigadier Duma, but at the beginning we are told he was Colonel Duma. Can you say why there is no mention of him in your statement?

MR MOGOTSI: Let me not incriminate myself.

ADV CHASKALSON SC: Can you say why there is no mention of Warrant Officer Mabuza in your statement?

10 **MR MOGOTSI:** Mabuza and Mabuzela is almost the same name. It is, they refer to one person, but let me not implicate myself.

ADV CHASKALSON SC: I understand you to say that Mabuza and Mabuzela are the same person.

MR MOGOTSI: Let me not incriminate myself, Chair.

ADV CHASKALSON SC: The person who was your co-handler said he introduced you with Colonel Duma, Warrant Officer, and Warrant Officer Mabuza to General Sibiya. Do you have a comment on that?

20 **MR MOGOTSI:** I am not going to incriminate myself.

ADV CHASKALSON SC: Now, Warrant Officer Mabuza is dead. Are you aware, or do you want to, can you confirm that?

MR MOGOTSI: It is true. May his soul rest in peace.

ADV CHASKALSON SC: Brigadier Duma, who used to be

Colonel Duma, is also dead. Can you confirm that?

MR MOGOTSI: May his soul rest in peace. No, it is true, he has passed on.

ADV CHASKALSON SC: General Mfazi, who you say in your statement is the first person to whom your handlers reported, has also passed away.

MR MOGOTSI: All of them, but let me not incriminate myself, Chair.

ADV BALOYI SC: Mr Mogotsi, just so that I understand
10 your answer, when you say all of them, I do not want to incriminate myself, are you saying all of them have passed on or ...[intervenes].

MR MOGOTSI: That is correct.

ADV BALOYI SC: Is that what you are saying. All right, thank you.

MR MOGOTSI: Chair, you know when I was here, I told the Commission how a man was killed. The Evidence Leader does not want to ask me things that I presented. How a man bought a property for 100 million, put it in his
20 daughter's name, those questions are not asked. Thank you, Chair.

CHAIRPERSON: Yes, Mr Chaskalson.

ADV CHASKALSON SC: You see, Mr Mogotsi, there are only two people who may have had anything to do with your operations in Crime Intelligence and who are still alive.

The one is the person you describe as your co-handler, and the other is General Sibiya. Is there anybody else in Crime Intelligence who may have had something to do with your operations who is still alive?

MR MOGOTSI: I am not going to incriminate myself, Chair.

ADV CHASKALSON SC: Well, the two people who you have identified as being involved in your alleged role as a Crime Intelligence operative are first General Sibiya, and he denies ever discussing any police matters with you. Can
10 you comment on that?

MR MOGOTSI: I do not comment, I do not want to implicate myself.

ADV CHASKALSON SC: And then your co-handler testified to us that he had very little to do with your operational activities. That was all handled by Warrant Officer Mabuza and Brigadier Duma and he cannot account for any, he has no knowledge of any reports that you gave to Warrant Officer Mabuza or Brigadier Duma. That was his evidence. Do you want to comment on that?

20 **MR MOGOTSI**: No comment.

ADV CHASKALSON SC: You see, Mr Mogotsi, I am genuinely wanting to point something out here which may be to your assistance. It is not just Mr Carrim who is throwing you under the bus. It is everyone in SAPS who has ever dealt with you who is also throwing you under the bus and

you need to think about that in relation to your answers.

MR MOGOTSI: But I never fell under the bus.

ADV CHASKALSON SC: Sorry?

MR MOGOTSI: I never ...[intervenes].

ADV CHASKALSON SC: You never, yes.

MR MOGOTSI: Let me not incriminate myself, Chair.

ADV CHASKALSON SC: Let us look at your alleged Crime Intelligence investigation. What were you told to investigate in relation to Crime Intelligence?

10 **MR MOGOTSI**: I am not going to implicate myself, Chair.

ADV CHASKALSON SC: Sorry, you are not going to?

MR MOGOTSI: Incriminate myself.

ADV CHASKALSON SC: I see. Who was the target of your investigation into Crime Intelligence?

MR MOGOTSI: I am not going to incriminate myself, Chair.

ADV CHASKALSON SC: Mr Mogotsi, you have criticised me for not following up your alleged leads in relation to Crime Intelligence properties. Who tasked you to follow those leads?

20 **MR MOGOTSI**: Let me not incriminate myself. You know, Chair, the gentleman who is seated here, he came to the lawyers with a document saying, Mr Chaskalson say you must check this to be presented here, before you made a ruling. Senior Chaskalson knew he was going to come and ask me questions, because he sent this gentleman to come

and see my lawyers and say, he say you must prepare yourself. Let me not incriminate myself, Chair.

ADV CHASKALSON SC: Yes. Mr Mogotsi, to set the record straight, between Advocate Hassim and ourselves, we agreed that we would both prepare to ask questions to you and that I would take responsibility for preparing if there were any additional documents that had to be put before you. That is the context in which that document was presented to your lawyers. If the recusal application had
10 gone your way, Advocate Hassim would be here asking the same questions as I am asking.

MR MOGOTSI: Thank you, Chair.

CHAIRPERSON: Do you understand the point?

MR MOGOTSI: Yes, very well. Thank you, Chair.

CHAIRPERSON: So your testimony would have been heard regardless of the outcome. If the application had been granted, Ms Hassim would have been the one questioning you now, so those documents would have been relevant ...[intervenes].

20 **MR MOGOTSI:** Either way.

CHAIRPERSON: Either way, yes.

MR MOGOTSI: Thank you, Chair.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: Mr Mogotsi, what did you discover in your investigations into Crime Intelligence?

MR MOGOTSI: I am not going to incriminate myself, Chair.

ADV CHASKALSON SC: Why did you criticize me for not pursuing leads that you allegedly offered me in relation to Crime Intelligence properties if you were not prepared to testify to that for fear of self-incrimination?

MR MOGOTSI: Chair, when I came here with evidence, in everything I said, this is two questions you asked me, my ID number and the matter in the North West Health Department. Very relevant. The narrative was to prove that
10 I am a liar. Everyone, they know I am a liar. None of the things that I submitted or anything that I wanted to have been corroborated were never entertained till today. Let me not incriminate myself, Chair.

ADV CHASKALSON SC: Did you report your discoveries to General Sibiya?

MR MOGOTSI: I am not going to incriminate myself or General Sibiya.

ADV CHASKALSON SC: Did you report your discoveries to General Khan?

20 **MR MOGOTSI:** I do not know General Khan. I never worked with General Khan and I am not going to incriminate myself.

ADV CHASKALSON SC: The man you describe as your co-handler says that he works with General Khan and regards General Khan as his close friend. Are you aware of

that?

MR MOGOTSI: That is something that I should not incriminate myself with, Chair.

ADV CHASKALSON SC: Let us look at the documents that you wanted me to investigate. Can I ask you to go to page 64 of the evidence bundle, sorry, of the exhibit, of the annexure bundle. It is annexure BM7.23.

ADV KHUMALO SC: 64?

ADV CHASKALSON SC: 64, BM7.23. Do you have the
10 document?

MR MOGOTSI: I do, thank you.

ADV CHASKALSON SC: And if I understand it correctly, it is an image of a route from one property which I understand you to say is a property that was irregularly purchased by Crime Intelligence to a new property where the business on the old property now operates. Is that correct?

MR MOGOTSI: I am not going to incriminate myself, Chair.

ADV CHASKALSON SC: I see. Where did you get this
20 image that you sent to Mr Matlala on the 2nd of January at 11:57 in the morning?

MR MOGOTSI: I am not going to incriminate myself, Chair.

ADV BALOYI SC: Let me ask a follow-up question. Why did you send this to Mr Matlala?

MR MOGOTSI: I am not going to incriminate myself.

ADV BALOYI SC: Thank you.

ADV CHASKALSON SC: Let us go to page 65, the next page. I am just going to go page by page here. And you see there at 11:57:04 there is a photograph of a brick wall and a house behind it that you also sent to Mr Matlala. Is this a picture of the property that we previously described, discussed?

MR MOGOTSI: I am not going to incriminate myself.

ADV CHASKALSON SC: Why did you send this picture to Mr Matlala?

10 **MR MOGOTSI:** I am not going to incriminate myself, Chair.

ADV CHASKALSON SC: And from whom did you acquire this picture?

MR MOGOTSI: I was going to say a source, but because I do not want to incriminate myself, Chair.

ADV CHASKALSON SC: Well, you say you were going to say a source. Can you give us details of the source? I do not want you to say out loud because I do not want to expose the identity of the source, but I would like to get the name of the source so that we can follow it further.

20 **MR MOGOTSI:** Even if I was prepared to incriminate myself, all the names I have given you, even one man is in hospital, has been departmentally charged. Every person I mentioned here, in camera between me and you, they have been caught. But the informant, I know, I still repeat, the investigating officer of the informant, the co-handler and the

handler of the informant, he was killed. I know them. Chair, Evidence Leader does not want those names of the people who are still in SAPS who can corroborate. Let me not incriminate myself, Chair.

ADV CHASKALSON SC: Sorry, the investigating officer of the informant, you have never given us that information.

MR MOGOTSI: You never asked for that.

ADV CHASKALSON SC: No, no, I understood your first answer to be every name that you have given to us has left
10 somebody dead. So you will admit that you have never given us the name of the investigating officer of the informant.

MR MOGOTSI: It is what I am saying, Chair, that there was no interest from the side of the evidence to say but you say this man was killed like this. Who is the co-handler, who was the handler, because they are also, they are from this Brigadier, the Colonel, and the IO. I know them. You never asked them.

ADV CHASKALSON SC: Mr Mogotsi, your version in
20 relation to the man who was killed, who you described as Warrant Officer Mabizela and who we did investigate, Warrant Officer Mabizela was not killed. Warrant Officer Mabizela was imprisoned.

MR MOGOTSI: Mabuza.

ADV CHASKALSON SC: Well, you did not call him

Mabuza, you called him Mabizela. Warrant Officer Mabizela is alive and well and in prison, the only Warrant Officer Mabizela in Crime Intelligence, who has been in Crime Intelligence over this period. You did not give us the name of Warrant Officer Mabuza so we could not investigate Warrant Officer Mabuza. You told us of your co-handler and you gave us his name. We have spoken to your co-handler. Your co-handler has testified in camera here. You have given us no other names.

10 **MR MOGOTSI**: Chair, I gave you another name. I gave you Major General Lushaba. I said he took a woman to the house, a case was opened, he got arrested for that matter. He was never called here. He is the CFO of the Crime Intelligence. He was never called here.

ADV CHASKALSON SC: You are giving, well, let me correct myself. You have given us the name of Major General Lushaba as a target, not as someone to go to investigate, to support your allegations.

MR MOGOTSI: Okay, let me not incriminate myself.

20 **ADV CHASKALSON SC**: Let us go to page 65. At the bottom of the page, and going over to page 66, there is a salary record of, or part of a SAPS salary record. Where did you get this screen with a salary enquiry on it?

MR MOGOTSI: I remember very well. Let me not incriminate myself.

ADV CHASKALSON SC: Why did you send it to Mr Matlala?

MR MOGOTSI: I am not going to incriminate myself, Chair.

ADV CHASKALSON SC: Let us go to the next page, page 66. There at 11:57:05, you sent to Mr Matlala company details of what you allege to be the company in which the Crime Intelligence property is housed. How did you acquire these details?

MR MOGOTSI: I will just request the addresses of this
10 property not to be displayed.

ADV CHASKALSON SC: Sorry, the addresses of this property?

MR MOGOTSI: I was just saying I hope they are not there. But let me not incriminate myself on this. And the name, and the name of the person who the property was transferred to is also here.

ADV CHASKALSON SC: Yes, you have an unredacted bundle so you know what we are talking about. The public and the screen behind you only has redacted ...[intervenes].

20 **MR MOGOTSI:** All right.

ADV CHASKALSON SC: If you were worried about disclosing this information, why did you send it to Mr Matlala?

MR MOGOTSI: I am not going to incriminate myself.

ADV CHASKALSON SC: Let us go to the foot of the page.

There at the 17:57:05 WhatsApp, you send what looks like a screenshot of a business saying where they have moved to.

MR MOGOTSI: That is correct.

ADV CHASKALSON SC: That was the business that used to reside at the property that you say was purchased by Crime Intelligence, is that not right?

MR MOGOTSI: I am not going to incriminate myself, Chair.

ADV CHASKALSON SC: Where did you get that screenshot?

10 **MR MOGOTSI**: You know, Chair, I so wish during that adjournment SC could have asked that question. I can give you the name of the person to come here who got the receipts, proof of payments of all these illegal purchases. I have.

ADV CHASKALSON SC: Why do not you write it down on a piece of paper and ...[intervenes].

MR MOGOTSI: Exactly. Remember I wrote the name here. Even the Chair had to give an order because it went out. But it should be done differently if ever I am prepared to
20 incriminate myself next time.

ADV CHASKALSON SC: Well, I am inviting you to write down the name of the source of each one of these documents that you WhatsApp'd to Mr Matlala.

MR MOGOTSI: No, Chair, I am ...[intervenes].

CHAIRPERSON: If the insinuation is that something given

privately to us was leaked by us, there is no truth to that at all. We keep the documents to ourselves and for the record, we have never leaked a single one of those documents.

MR MOGOTSI: Okay, sir.

ADV CHASKALSON SC: The only name that I understand you to have given to us in confidence was the name of your alleged co-handler and that name ...[intervenes].

MR MOGOTSI: But it was not shown by the Commission.
10 It just leaked to the media here. The Chair also gave an order that it should not be published. I appreciate that. But I am saying to the lawyer, I can give you the name of the person who has receipts, proof of payments, who, like your government procurement, who authorized, who signed, who approved. He has those things, but maybe that is what should be asked so that we can give to you. All these ones it is just to incriminate myself.

ADV HASSIM SC: You see, Mr Mogotsi, I would urge you to give us this information, because what we are dealing
20 with is something very, very important and central to this entire Commission. All of these documents that we are talking about now, are documents relating to the two criminal cases against General Khumalo and his co-accused. You are aware of that?

MR MOGOTSI: Not yet charged for that. It is only charged

for appointment of a BMW man. It is not charged for that.

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

MR MOGOTSI: And even when General Khumalo or Masemola were here, they would never be subjected to this harsh questioning like you do on General Sibiyi on others.

ADV CHASKALSON SC: Well, let me continue. It was the arrest of General Khumalo in relation to these charges that really triggered General Mkhwanazi's press conference in July last year and General Mkhwanazi clearly regarded
10 those arrests as evidence of organized crime, or states that he regards those arrests as evidence of organized crimes hold over the criminal justice system. So one of two things is going on. Either there is a genuine investigation into the illegal use of Crime Intelligence funds in relation to these properties and the illegal appointment of a Crime Intelligence Brigadier, in which case we need as much information as possible to show that when General Mkhwanazi characterized those acts as a conspiracy involving organized crime, he was wrong. That is the one
20 option.

MR MOGOTSI: Chair.

ADV CHASKALSON SC: The other option is that General Mkhwanazi was right and this was an attempt by Organized Crime to essentially frame General Khumalo in relation to false offenses.

MR MOGOTSI: Chair.

ADV CHASKALSON SC: If that is the scenario, then we also need to investigate it. Either way, we need to investigate it, so I would urge you to give us this information.

MR MOGOTSI: That is the first thing, Chair. When I met you for the first time, I told you already. The arrest of General Khumalo and the other Generals it has nothing to do with the property. They were arrested for the
10 appointment of a Brigadier. For General Mkhwanazi as you say it triggered and so forth, it is what I told you. It is what I had in mind. It is what I even said he came to the police college here to write the statement, the July 6th, how it was staged. I presented that to you. So let me not incriminate myself further, Chair.

ADV CHASKALSON SC: So you are declining to give us the information that we say is at the centre of the inquiry of this Commission?

MR MOGOTSI: I am not, Chair, I am not declining. I am
20 saying it for now, to come here in public and mention those things does not help. I could rather give that to the lawyers and the person who have the papers, payment, proof of payments, who can prove. He wants to come here. He is not getting an opportunity. I can get that for you. But General Khumalo was not arrested for these properties.

The same thing we saw about General Mkhwanazi and the Big Five, in the first place, how did South African Police Service appoint a Big Five Matlala? How did they screen him? And now he is a Big Five. Let me not incriminate myself, Chair.

ADV CHASKALSON SC: Can I ask you to look at the foot of page 65.

MR MOGOTSI: Yes.

ADV CHASKALSON SC: Is that salary record not directly
10 relevant to the arrest of General Khumalo?

MR MOGOTSI: Let me not incriminate myself.

ADV CHASKALSON SC: I see. What about page 73, another salary record, next to 11:57:10, that, the second screenshot on the page. Is that relevant to the arrest of General Khumalo?

MR MOGOTSI: Let me not incriminate myself, Chair.

ADV CHASKALSON SC: Let us go down to page 75 and the screenshot from somebody whose name appears on a WhatsApp to you, dealing with the appointment of someone
20 as a Brigadier, is that relevant to the arrest of General Khumalo?

MR MOGOTSI: That is relevant.

ADV CHASKALSON SC: Sorry?

MR MOGOTSI: It is relevant.

ADV CHASKALSON SC: It is relevant?

MR MOGOTSI: Ja.

ADV CHASKALSON SC: And are you willing to give us the details of the person whose name is there?

MR MOGOTSI: I mean, the matter is *sub judicare* now. It is before the court. They even went to court today for the same matter. Perhaps it is one of the things which should be handled there.

ADV CHASKALSON SC: I am asking for the details of the name, the details, the full name and phone number of the
10 person whose name we see on that message that you sent to Mr Matlala on the 2nd of January.

MR MOGOTSI: Let me not incriminate myself, Chair.

ADV CHASKALSON SC: Are you saying it would incriminate you to provide that, those details?

MR MOGOTSI: I may be incriminated. He may be called here. He can apply for my cross-examination and I will be incriminated, definitely ...[indistinct].

ADV CHASKALSON SC: Sorry, being cross-examined is not the same as being incriminated, Mr Mogotsi.

20 **MR MOGOTSI:** Ja, that is a layman thinking. I do not want to be incriminated if possible, Chair.

ADV CHASKALSON SC: So are you suggesting that if we speak to that person whose name we see on top of that screenshot, he may tell you, he may tell us information that will lead to you being criminally convicted?

MR MOGOTSI: I am not sure. Let me not incriminate myself, Chair.

ADV CHASKALSON SC: What about the ...[intervenes].

ADV BALOYI SC: Sorry, Mr Chaskalson, can I just understand. Mr Mogotsi, you do understand, and is that your intention, that when you speak about self-incrimination, you are speaking about self-incrimination against prosecution, criminal prosecution. Is that how you are using this?

10 **MR MOGOTSI:** I am not conversant with those processes. I just learned, and being advised by lawyers, that I should not incriminate myself.

ADV BALOYI SC: The reason I am asking is because, just one answer back, you said you do not want to say something, and this person comes here and cross-examines you. So that is why I am asking that when you speak about self-incrimination, are you using it, or do you understand what it is that you are saying? Are you saying, I do not want to answer because I do not want to be prosecuted, or
20 are you saying I do not want to answer because I do not want to be cross-examined? I just want to understand.

MR MOGOTSI: No, thank you. Thank you. I understand now.

ADV BALOYI SC: Which one is it of the two?

MR MOGOTSI: I do not want to be prosecuted, but this

one I do not know. I know nothing and I do not ...[intervenes].

ADV BALOYI SC: Okay, so you do not want to be prosecuted when you say self-incriminate.

MR MOGOTSI: Ja.

ADV BALOYI SC: Okay.

ADV CHASKALSON SC: Sorry, which one did you say you know nothing about?

MR MOGOTSI: Like the name that he said, there are so
10 many names like this, I do not know, and I will end up
incriminating myself with this.

ADV CHASKALSON SC: Mr Mogotsi ...[intervenes].

MR MOGOTSI: Unless you refer ...[intervenes].

ADV CHASKALSON SC: You are edging towards perjury
here ...[intervenes].

MR MOGOTSI: Unless you are referring to ...[intervenes].

ADV CHASKALSON SC: I find it impossible to believe that
you are unable to identify the name of someone in your
phone book who has a name on a WhatsApp that is sent,
20 addressed to you.

MR MOGOTSI: Ja, to avoid perjury, let me not incriminate
myself.

ADV CHASKALSON SC: No, you cannot plead a privilege
against self-incrimination because you might perjure
yourself if you give a false answer. The privilege against

self-incrimination applies only to true answers.

MR MOGOTSI: That is correct, but remember I said, Chair, why am I not given the opportunity if any of these things would have to be given to you, should come through the lawyers, that I do not come back here and incriminate myself and myself and myself.

CHAIRPERSON: I do not follow what you say about something coming from your lawyers. What exactly are you saying?

10 **MR MOGOTSI**: Chair, I am saying if there is anything which probably the Evidence Leader may want, because as he lead evidence, remember he is asking me about things that, the information from my phone, that is it not, can it not be useful that I perhaps give through the lawyers whatever he wants, if I have, because others, you may find, I am not clued up with it.

CHAIRPERSON: Yes, Mr Chaskalson.

ADV CHASKALSON SC: No, I am going to repeat my question. Can you give us the name and contact details,
20 the full name and contact details of the person whose name appears at the top of that WhatsApp, whose first name appears?

MR MOGOTSI: Ja, I only knew this person as this is written, and remember my phones were taken by the police, so I am not having those old numbers anymore. But I only

knew him like this, so that is the answer.

ADV CHASKALSON SC: So you are telling us you just do not know the answer to that. You are unable to give us the answer.

MR MOGOTSI: It is not that I am unable.

ADV CHASKALSON SC: Ja, is that what you are saying?

MR MOGOTSI: No, Chair. This name I know it, so you want the name and the surname, which I do not have the surname, you want the contact numbers of this person, they
10 are gone with the cellphone.

ADV CHASKALSON SC: So you do not know how to get hold of this person?

MR MOGOTSI: I am not sure, I cannot. And now no one trusts me, remember I am a liar now.

ADV CHASKALSON SC: Where does this person work?

MR MOGOTSI: Let me not incriminate myself, Chair.

ADV BALOYI SC: Mr Mogotsi, maybe just also to make the observation that there is a difference between refusing to answer a question and, because you do not want to answer
20 the question, and the one, there is also the I will not answer the question because I will incriminate myself if I give you the answer. So when you are asked a question about where is this person employed and your answer, and you do not want to give that answer, it is not self-incrimination, it is you are refusing to answer the question.

MR MOGOTSI: Yes, I do understand.

ADV BALOYI SC: Is that, you understand the difference?

MR MOGOTSI: Yes, I get your point.

ADV BALOYI SC: Okay, thank you.

ADV CHASKALSON SC: Well, let me try again. Let us call this person John.

MR MOGOTSI: John.

ADV CHASKALSON SC: Okay, John. We will just call him John. His name is not John. We know what his name is.

10 The screenshot reflects that at 11:27 you asked John, and then somebody's name is included there, "by julle aangestel as 'n Brigadier". So you asked whether that person who we know was appointed as a Brigadier at Crime Intelligence "is by julle aangestel as 'n Brigadier". So can we infer from that that John works in Crime Intelligence?

MR MOGOTSI: Ja, you see, this message I think was forwarded to me because the language written here, there is no way he and me can speak in this language. So this John, I do not know, I cannot find, I only knew he is John. I
20 cannot find this John.

ADV CHASKALSON SC: Now, a short while ago you were saying to me that you could not identify John because John may have been on your phone but your phone has disappeared, so ...[intervenies].

MR MOGOTSI: No, they took it ...[indistinct].

ADV HASSIM SC: Sorry?

MR MOGOTSI: It was taken by the police.

ADV CHASKALSON SC: Yes, taken by the police. So you do not have your phone anymore so you cannot tell me who John is.

MR MOGOTSI: No.

ADV CHASKALSON SC: Now you are saying something completely different. Now you are saying, no, no, John did not send a WhatsApp to me, John sends a WhatsApp to
10 somebody else who forwarded it to me.

MR MOGOTSI: No, Chair, I am saying the language that is written here, you may find it was forwarded, this portion. And now this John, I only knew this John on my phone like this. I do not have his surname and I do not know if his numbers.

ADV CHASKALSON SC: You have never had his number?

MR MOGOTSI: Of John?

ADV CHASKALSON SC: Of John, yes.

MR MOGOTSI: No, John was in my phone. I do not know
20 his surname. So if you say I should go and look for him, I cannot find him.

ADV CHASKALSON SC: Yes, because you do not have your phone anymore.

MR MOGOTSI: Ja.

ADV HASSIM SC: But what you asked John ...[intervenes].

MR MOGOTSI: But, Chair, if I can be, you know, what I have just requested, in assisting this process, if there is anything which perhaps Senior Counsel may want to be, if it can be done with my lawyers, all the names, whatever that you need, like things that I said, I did talk about the names, I am ready, I can get the lawyers to even, that they can submit them to Senior Counsel. Not only John, anything that is here, perhaps, the names and the surname, like you say, you want to go and do some investigations, it can help,

10 Chair.

CHAIRPERSON: Mr Chaskalson.

ADV CHASKALSON SC: Well, I would like to know John's name and number.

ADV MOHOMANE: Chair, I am going to object. I am going to object, Chair.

CHAIRPERSON: Just before that. Yes, Ms Mohomane.

ADV MOHOMANE: Thank you, Chair. The question that the Evidence Leader is putting to Mr Mogotsi, I believe, has been asked on numerous occasions, and his response
20 thereto is that the phone is not available, it was taken by the police. He does not know how to get a hold of this, John. Now, asking him on numerous occasions, he is already given the answer. That is the basis of my objection, Chair.

CHAIRPERSON: Thank you, Ms Mohomane. Yes

...[intervenes].

ADV CHASKALSON SC: I may have misunderstood Mr Mogotsi, but I thought he was inviting me to ask, through his attorneys, for names and numbers, and the one name and number that I want to get hold of is John's name and number. If Mr Mogotsi was not inviting that, then I will withdraw the request to the attorneys, but I understood him to be inviting me to ask that.

ADV MOHOMANE: And, Chair, I would understand that to
10 be in due course, upon that information, whatever information, that he may have or the names, that same will be made by the legal team for the Evidence Leader to have. At this juncture, he does not know who John is. He does not have his phone. It does not take the issue of John any further.

ADV CHASKALSON SC: I was not asking for the answer now. I was asking for it in due course, in response to that invitation.

CHAIRPERSON: What is your attitude to the invitation by
20 Mr Mogotsi, Ms Mohomane?

ADV MOHOMANE: Chair, if those are the instructions, I am certain that same can be arranged. We have had even prior to the proceedings where we have had meetings with the investigators together with the Evidence Leader. I do not see why we cannot do that when we are done here for

the day. I do not have any objection thereto.

CHAIRPERSON: Thank you. Thank you. Mr Chaskalson?

ADV CHASKALSON SC: Thank you, Chair. Chair, can I just clarify that you were the one who wrote, or are you the one who asked the question, “is”, and then the name is there, “by julle aangestel as ‘n Brigadier”? Did, is that a text that you sent?

MR MOGOTSI: I cannot remember, Chair.

ADV CHASKALSON SC: Well, let us go later down. If we
10 go over the page, we see how the conversation proceeded.
It said:

“Nou hoe het sy nog steeds nie ‘n
PERSAL number nie? Enige idee of sy
familie is?”

Did you write those?

MR MOGOTSI: Since this long, it is not me.

ADV CHASKALSON SC: Sorry?

MR MOGOTSI: It cannot be me. I cannot write this
language.

20 **ADV CHASKALSON SC:** You do not write in Afrikaans?

MR MOGOTSI: I cannot, ja, I cannot. I do not text in
Afrikaans. I do not. I am not good in Afrikaans.

ADV CHASKALSON SC: And why would you send that to
Mr Matlala on the 2nd of January?

MR MOGOTSI: Let me not incriminate myself, Chair.

ADV CHASKALSON SC: Then, the next screenshot is, again, the PERSAL number, well, the salary screen without a PERSAL number. No records for combination. Does that relate to the prosecution of General Khumalo?

MR MOGOTSI: Let me not incriminate myself, Chair.

ADV CHASKALSON SC: Now, let us get to what happened after you sent all of these screenshots to Mr Matlala. He writes back on page 77:

10 “What is this things you just sent to
me, brother? I see it shows several
registration numbers of cars and
residential addresses, and you say and
they used state money to buy those
properties.”

So why were you sharing this information with Mr Matlala?

MR MOGOTSI: I am not going to incriminate myself, Chair.

20 **ADV CHASKALSON SC:** Well, let me ask another
question. Did either your handler or your co-handler know
that you were sharing this information with Mr Matlala?

MR MOGOTSI: It will depend, but let me not incriminate myself, Chair.

ADV CHASKALSON SC: Well, what would it depend on?

MR MOGOTSI: You see, when you work with a handler, there is a time where you submit, like, your report. In your

report, you will outline, this is what is happening, this is where we are, every step. So possibility is, it is just that you cannot show him all these messages, if there are hundred. You can say, I am talking to Matlala, we are working on this and this. Full stop.

ADV CHASKALSON SC: Ja, but would you provide a brief description of, I have shared with him a whole range of properties illegally bought by Crime Intelligence and details of someone illegally appointed by Crime Intelligence.

10 Would you ...[intervenes].

MR MOGOTSI: Ja, no, let me not incriminate myself.

CHAIRPERSON: Mr Chaskalson, is there a way of short-circuiting this?

ADV CHASKALSON SC: Chair, I do think it is important that we go through it, if only to show that we are, I mean, even if we are not getting much out of the witness, I think we do need to try.

CHAIRPERSON: All right, all right. How much longer do you think? Your microphone?

20 **ADV CHASKALSON SC:** No, no, I know, I switched the microphone because I was looking to see how much longer.

CHAIRPERSON: Sorry, sorry. Okay.

ADV CHASKALSON SC: It, I think at least an hour, unfortunately.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Let me put to you what your alleged co-handler said to us. He said that he was not aware that you were investigating Mr Matlala. Do you have a response to that?

MR MOGOTSI: As you said, Brigadier Duma, who was senior to this co-handler, is the one who knew what I was doing. Even the notice for investigation went to Duma.

ADV CHASKALSON SC: I see. Why did not you mention Duma at all in your statement?

10 **MR MOGOTSI:** Let me not incriminate myself, Chair.

ADV CHASKALSON SC: You see, your alleged co-handler did not just say he was unaware that you were investigating Mr Matlala. What he said is that if you were investigating Mr Matlala, sharing documents relating to your investigation of Crime Intelligence with Mr Matlala, who was a completely different target, would be bad intelligence practice. What is your response to that?

MR MOGOTSI: That is his thinking and there is nothing I can do about that.

20 **ADV CHASKALSON SC:** But your handler, are you saying that your handler was aware of this and was quite happy with you sharing these documents with Mr Matlala?

MR MOGOTSI: Let me not incriminate myself, Chair.

ADV CHASKALSON SC: You see, this is not the only example of bad intelligence practice, if your version is to be

believed. You say in your statement that your first meeting with Mr Matlala was on 7 December 2024. That is at page 9 of your statement, at paragraph 32.

MR MOGOTSI: Yes, Chair.

ADV CHASKALSON SC: And you stand by that?

MR MOGOTSI: No, I am not going to incriminate myself.

ADV HASSIM SC: Well, Mr Mogotsi, it is a bit too late for that because you stated that under oath in paragraph 32 of your paragraph.

10 **MR MOGOTSI**: No, it means all the evidence that I have given will stand, I will not retract or change. From now, let me not incriminate myself.

ADV CHASKALSON SC: I see. Well, you then say, and 7 December was the day after the raid on Mr Matlala's house. You are aware of that? The raid was on the 6th of December.

MR MOGOTSI: Let me not incriminate myself.

ADV BALOYI SC: Mr Mogotsi, you are refusing to answer the question. It is not an incriminating issue. You simply
20 refuse to confirm that the 7th of December was the date after the raid on Mr Matlala. And that is it, you are refusing to answer the question.

MR MOGOTSI: Commissioner, I am going to give the answer, Commissioner. You see how I incriminate myself. I met Cat on the 7th of December. I may not remember if it

was a day after he was raided.

ADV CHASKALSON SC: I do not see anything incriminatory in that answer.

MR MOGOTSI: Let us take the next question.

ADV CHASKALSON SC: The next question is, you met him on the 7th and on the same day, we see in paragraph 33, that you activated your handler, who you say is Mabizela, but now you say is Mabuza, to arrange for Matlala to open a criminal case at SAPS in Soweto. Mabizela, you said, but
10 you now say Mabuza, then spoke to my co-handler, who then facilitated the opening of the docket. Do you stand by that as well?

MR MOGOTSI: It is in the statement.

ADV CHASKALSON SC: Yes, but I am asking, do you stand by it?

MR MOGOTSI: I stand by that.

ADV CHASKALSON SC: You see, your co-handler said that the request came straight from you, not from Mabizela or Mabuza, the request to open a docket for this person.

20 **MR MOGOTSI:** Yes, I may have called him also, because I talked to them both.

ADV CHASKALSON SC: Okay. Your co-handler also said that at that stage he was unaware that you were investigating Mr Matlala. What is ...[intervenes].

MR MOGOTSI: It is possible. If I request ...[intervenes].

ADV CHASKALSON SC: It is possible.

MR MOGOTSI: Yes, any high-ranking officer, you ask him, may you assist someone to open a case, he will not, no, he will not ask you if you investigate why you open a case. He will just help the person.

ADV CHASKALSON SC: Yes, and he said he did not even know that it was Mr Matlala you were asking to open a case for. It was just some person.

MR MOGOTSI: Ja, it is possible he did not know.

10 **ADV CHASKALSON SC:** Yes. He was very clear that it was not good intelligence practice to put a target in contact with a member of Crime Intelligence who was playing a supervisory role in relation to the investigation of the target. So he was clear on that. So the tenor of his evidence was that if he knew you were investigating Mr Matlala and he knew that you were asking him to open a case for Mr Matlala, he would not have put himself in a position where Mr Matlala saw him and knew that you were dealing with him. What is your response to that?

20 **MR MOGOTSI:** You see, one of the reasons Mr Matlala had to open, he is staying in Pretoria. One of the reasons he had to open a case, I did say that previously, the same to the arrest of General Khumalo. The case was opened in Cape Town by a member of Parliament. It could not be investigated. The same person came to Soweto

...[indistinct] to open a case because there was this thing of Station Commissioners communicating or being instructed by the Provincial Commissioners that this case, this one, do not open. So for me to say, help someone to open a case, it is not about intelligence practice or not, it is to ensure that a person is able to open a case.

ADV CHASKALSON SC: Yes, but you can get a case opened without exposing your supervising handler, or co-handler as you say, to be known by someone who is a
10 target of an investigation that he is supervising.

MR MOGOTSI: Chair, the man could not open a case in Brooklyn, even ...[indistinct] township in Pretoria. Once you are a target, you cannot open a case.

ADV CHASKALSON SC: Why was it so important to get this case open?

MR MOGOTSI: He wanted to open a case. If a criminal charge is to be laid, it does not come with importance or non-importance.

ADV CHASKALSON SC: And so you were prepared to
20 expose your co-handler's identity to this man by, because you thought it was important for the case to be opened.

MR MOGOTSI: No, Chair. You call, please assist this person to open a case. You do not say, my brother, I now expose you, going to open a case. This man is from Crime Intelligence, let me show you. No. Even himself, he did not

open a case for him. He spoke to someone, please assist this man, and he left, according to him.

ADV CHASKALSON SC: Yes, but he, according to him, he met Mr Matlala outside the police station.

MR MOGOTSI: That is correct.

ADV CHASKALSON SC: He did not know it was Mr Matlala, he says, but ...[intervenes].

MR MOGOTSI: Ja, it means he did not know him.

ADV CHASKALSON SC: Yes.

10 **MR MOGOTSI:** And he did not know him.

ADV CHASKALSON SC: Yes. But he was very clear that it is very poor intelligence practice to put Mr Matlala, who was a target, in contact with the supervisor of the investigation into Mr Matlala.

MR MOGOTSI: Ja, no, I have no comment. That is what he is clear about.

ADV CHASKALSON SC: Yes. And it goes further because a few weeks later, you not only gave Mr Matlala the name of your co-handler, but you also gave him his ID number.
20 Take a look at page 84. And you remember when you did this, when you wanted Mr Matlala to pay for your co-handler's ticket?

MR MOGOTSI: Ja, and I believe it is in the statement where I explained why I needed to go with a co-handler in Cape Town.

ADV CHASKALSON SC: Yes, but why was it necessary to give Mr Matlala his name and ID number?

MR MOGOTSI: You see, when you purchase a plane ticket, there is nothing else you can use except an identity document. And Mr Matlala could not prophesy that this man is who ...[indistinct]. He did not know him. He could never know. It happens every time, even here, when some, an operation is done, you do not tell people, this is this man.

ADV CHASKALSON SC: Mr Mogotsi, your co-handler's
10 name is all over the press as a senior Crime Intelligence official. Anyone who showed any interest in these people would have been able to identify the fact that one of the people who you had asked Mr Matlala to buy tickets for was a Crime Intelligence official.

MR MOGOTSI: I know how that leaked.

ADV CHASKALSON SC: No, long before this Commission got set up ...[intervenens].

MR MOGOTSI: Yes.

ADV CHASKALSON SC: Do a Google search. You will
20 find lots and lots of references to your co-handler and his role in Crime Intelligence.

MR MOGOTSI: Okay, that is true.

ADV CHASKALSON SC: You see, what I want to put to you is that none of these dealings, in terms of which you exposed your co-handler to Mr Matlala, make any sense if

Mr Matlala was an actual target of your investigation. And what I want to put to you is he was not a target of your investigation at all. In fact, he was someone who you hoped to work with against the real target, who was General Khumalo. What is your response to that?

MR MOGOTSI: No, no comment. I am not going to implicate myself.

ADV CHASKALSON SC: You are not going to incriminate yourself?

10 **MR MOGOTSI:** Yes, that is correct.

ADV CHASKALSON SC: Let us look at your interest in General Khumalo. Let us start with your approach, out of the blue, to General Mkhwanazi. Remember in September, out of nowhere, you sent him WhatsApp's. Can you go to page 290 of the exhibits file.

MR MOGOTSI: One nine?

ADV CHASKALSON SC: 290. Do you have it?

MR MOGOTSI: That is correct.

20 **ADV CHASKALSON SC:** Now, these are the WhatsApp's that you describe as having been sent to General Mkhwanazi in your statement as a way of making contact with him and you are opening gambit on the 30th of September you say:

“My General, Brown Mogotsi from the North West. An internal attempt to

discredit you through a defeating the ends case.”

That is the 30th of September. General responds to you the next day and says:

“Morning, sir, what you are talking about? What defeating case are you referring to and who is behind it?”

And just remember, he is asking who is behind it. You immediately forward him the Empangeni occurrence
10 book. And then if we go down all the way to page 292, you answer his question, who is behind it when at 9:19, you say:

“General Khumalo, DivCom, just check your standing with him. Yesterday, he pushed a negative narrative about you on the CIT’s in KZN. The same complainant spoke with him.”

And that is a reference to the complainant in the Empangeni case who you have referred to at 7:51 when you say:

20 “I am meeting with a complainant, we will revert.”

Are you with me so far?

MR MOGOTSI: That is correct.

ADV CHASKALSON SC: Go over the page 293. That text we have just seen is at the start. And in fact, it comes above a Crime Intelligence presentation. So when you say,

General Khumalo DivCom is behind this attempt to discredit General Khumalo, yesterday, he pushed a negative narrative about you on CIT's and KZN, you actually attach ...[intervenes].

ADV KHUMALO SC: To discredit General Mkhwanazi.

ADV CHASKALSON SC: General Mkhwanazi. You attach a screenshot which shows a Crime Intelligence presentation. And then General Mkhwanazi responds to your Empangeni materials. He says:

10 “I know that matter very well. When the illegal operation was conducted, the premise of the high-ranking DCS official ...”

We go down through 294, he gives his whole version on the illegal search at the prison offices. But he responds to your suggestion that General Khumalo is behind this attempt to frame him with a defeating the ends case, which we see at the top of page 295. He said:

 “What did he say about me?”

20 In response to your General DivCom, General Khumalo, DivCom, just check your standing with him, was your message. He says:

 “What did he say about me?”

You respond at 937. And you say, in response to what General Khumalo allegedly said about General

Mkhwanazi, you say that:

“He said you ...”

In other words General Mkhwanazi.

“... are having your interest and that maybe you are having your own cartel.

You do not listen to Crime Intelligence.”

So you are telling General Mkhwanazi that General Khumalo at a Crime Intelligence briefing said maybe
10 General Mkhwanazi has his own cartel.

ADV KHUMALO SC: Is it not preceded by keep it a secret, as in Gen, this must be in your chest, then that chat that you just mentioned.

ADV CHASKALSON SC: Ja, indeed, Commissioner. So if we go a step back. You respond to General Mkhwanazi when he says:

“What did he say about me?”

“Gen, this must be in your chest.”

He responds:

20 “Trust me on this one.”

And then you give the answer.

“You are having your interest and that maybe you are having your own cartel.

You do not listen to Crime Intelligence.

Then Masemola intercepted him. Also

spoke about your provincial Crime Intelligence. Remember he is retiring next month.”

And General Mkhwanazi is clearly concerned. He says:

“Please get me that presentation if there is one to confirm or otherwise if there is any recordings.”

And you respond to that:

10 “Nothing.”

In other words, there are no recordings.

“General Khan will brief you next week.”

So that is what the exchange was. And what I want to put to you is that the overall picture is that you are making very serious allegations against General Khumalo to General Mkhwanazi. You are suggesting that General Khumalo is trying to frame General Mkhwanazi. He is trying to link him to cartels and that General Khan will be able to
20 tell General Mkhwanazi more about the treachery of General Khumalo. What is your response to that?

MR MOGOTSI: Thank you, Chair. You know, this I am going to respond because it is in my statement. Like I say, what I said in my statement still stands. Logically, anyone here, if you can pick up a phone and send a message to

General Mkhwanazi or any General in the province, he will not respond. The time I told you about legend building, that is legend building at its best. And men who does not know you get to talk to you. When I brought the application here for your recusal, I led you. Or I did not lead you. It is because you called me. You were talking. But I heard that you wanted to do something. That is what an agent does. Immediately when it is an opportunity of information, you utilize it. Like the word Khan, General Khan, is known in
10 the Crime Intelligence. It is not my friend. In my previous statement, I said I met him once, greeted him from the car. But I knew when I used this name, look how General Mkhwanazi responded. In full, he explained to me what happened. He will not, General ...[indistinct] will not respond to those things if you do not tell him what he wants to hear.

ADV CHASKALSON SC: You see, why General Mkhwanazi would be interested in responding to you, I want to suggest, is not because of any dramatic legend building that you did
20 in this exchange, but because you clearly had access to a Crime Intelligence briefing and you gave him a screenshot. Where did you get that screenshot?

MR MOGOTSI: Let me not incriminate myself, Chair.

ADV CHASKALSON SC: Are we no longer answering questions now?

MR MOGOTSI: No, because I am going to say a source. You are going to ask me what is the source.

ADV CHASKALSON SC: No, no, saying a source is not necessarily incriminating yourself unless your conduct in relation to that source was illegal.

MR MOGOTSI: I will say it is a source.

ADV CHASKALSON SC: Well, I want to know the name of the source and how I can contact that source. And now you are saying ...[intervenes].

10 **MR MOGOTSI:** Chair.

ADV CHASKALSON SC: That if you were to give that information away, you would disclose that you have committed an offence by getting this Crime Intelligence briefing cover page. Is that what you are saying?

MR MOGOTSI: I do not understand the question, Chair.

ADV CHASKALSON SC: Answering that question cannot incriminate yourself.

MR MOGOTSI: Okay, but I do not want to incriminate myself.

20 **ADV CHASKALSON SC:** I know you do not want to incriminate yourself, but I am asking you, if you were to give me with the mere fact of the name of the person who, name and details of the person who gave you that cover page, expose you to criminal prosecution. Because if not, you are obliged to furnish it.

MR MOGOTSI: If I do not give the name?

ADV CHASKALSON SC: No, no, if by giving the name, you have exposed yourself, you have disclosed that you have committed an offence, then you do not have to. If by giving the name, you are not disclosing that you have committed an offence, then you are obliged to.

MR MOGOTSI: Then I do not want to incriminate myself.

ADV CHASKALSON SC: So you are saying that if you were to give me that name, it would be evidence that you
10 have committed an offence?

MR MOGOTSI: Answering these questions leads me to incriminate myself.

ADV CHASKALSON SC: No, no, answer the specific question that I just asked you. If you were to give me the name of the person who gave you that division of Crime Intelligence slide, would that disclose that you have committed an offence, the identity of that person would be sufficient to show that you have committed an offence?

MR MOGOTSI: I do not, I do not. But if I say it is a
20 source, it means a source is a source.

ADV CHASKALSON SC: No, I am not interested in sources. I want people I can speak to.

MR MOGOTSI: No, Chair, there is no way you can get a source name. A source, never.

CHAIRPERSON: Chair, I must ask you to instruct the

witness to answer this question. It seems that he does not, he wants to protect his source, which is different from asserting a privilege against self-incrimination. He can disclose the matter, does not need to give the name publicly. He can write it on a piece of paper like he did last time and we will keep it confidential.

MR MOGOTSI: A chain of information, information of this nature, it will come from this person, goes to my handler, comes to me, if I give it to somebody, and if my handler is
10 the one who got it, may his soul rest in peace.

ADV CHASKALSON SC: Well, you know ...[intervenes].

CHAIRPERSON: Mr Mogotsi, this is not about self-incrimination.

MR MOGOTSI: Yes.

CHAIRPERSON: It is simply not. So it is just a question of either giving the information or plainly refusing to give it. It has nothing to do with self-incrimination.

MR MOGOTSI: Chair, is a witness compelled to give a name of a source in the Commission?

20 **CHAIRPERSON**: The witness is compelled to give evidence, and this relates to exactly that. This is about evidence. And if the issue is not divulging it openly, you can give us the name. You can write it down and give it to us. It has nothing to do with self-incrimination.

MR MOGOTSI: All right, I will write it down. I will talk to

my lawyer to give it to you.

ADV BALOYI SC: You are on the witness box now. You have to answer. The question is asked now. You have to answer it now. And you have been given the option to write it on a piece of paper and give it to us.

MR MOGOTSI: Yes.

ADV BALOYI SC: Your legal representatives are not testifying, Mr Mogotsi.

MR MOGOTSI: Oh, no, I can write it down. I can write it
10 down.

ADV BALOYI SC: Yes. Give him the piece of paper.

MR MOGOTSI: No, they are borrowing me now.

ADV CHASKALSON SC: I could have predicted it would be a dead person.

MR MOGOTSI: But, Chair, you heard this, the person I was working with is the only one who had access to that. Now how ...[intervenes].

ADV CHASKALSON SC: Sorry?

MR MOGOTSI: You even told me that my co-handler did
20 tell you who I was working with, who had direct communication with the Crime Intelligence. He is the only one who could give me that. Now, if questions are posed when there are predictions, Chair, please protect me.

CHAIRPERSON: Yes, Mr Chaskalson.

ADV CHASKALSON SC: Sir, the source was not, in fact, a

source at all, was he?

MR MOGOTSI: Chair?

ADV CHASKALSON SC: The source was not a source at all, the person who gave that cover page to you. You said it came from a source. You did not want to disclose a source. That was false, was it not?

MR MOGOTSI: It is not false. You see, there is life and there are families who are still alive. In this environment, giving out people's names, whether alive or not, you put,
10 you really put their families in danger.

ADV CHASKALSON SC: But the fact remains, you did not get that information from a source at all. You did not receive it from a source.

MR MOGOTSI: No, he was my source.

ADV CHASKALSON SC: Well, the Commissioner and I know who he was, and I put it to you that he was not a source at all.

MR MOGOTSI: And Chair, is it not worrying that the person you are referring to, two days before he had to come
20 here, something horrible happened to him and he passed on? When his body went, when the family went to collect his body, the same police officer was shot at, same number of bullets like me. None of the bullets touched him. At least they never said he shot his own car and shot himself. He was also, he was almost killed, that Captain who went to

fetch the body of the same person.

ADV BALOYI SC: Are you saying that had anything to do with him giving you this screenshot?

MR MOGOTSI: No.

ADV BALOYI SC: You are describing.

MR MOGOTSI: No, I am saying there is a lot that is happening, Commissioner.

ADV BALOYI SC: Okay.

MR MOGOTSI: Yes.

10 **ADV BALOYI SC:** No, I just wanted to be clear that you are connecting it to this screenshot.

ADV CHASKALSON SC: You see, Mr Mogotsi, there is another way of looking at all of this. The person who passed away three days before your alleged co-handler was going to meet us was someone whose existence we knew nothing about. Warrant Officer Mabuza was someone whose existence we knew nothing about. We learned about these people for the first time they get mentioned, a long time after they have passed away, when of course they are
20 no longer around to be able to contradict the things that are said about them.

And it is very disconcerting to me that you are able to mention Warrant Officer Mabizela who, you know, was arrested several years ago, and never played any role at all in your handling in your witness statement. You do not

mention Warrant Officer Mabuza. You mention your co-handler and you give us his name. We go to speak to your co-handler, he says nothing about Brigadier Duma.

And then after Brigadier Duma dies, he suddenly becomes the key to this entire operation. It does seem to me that you are pinning on a dead man responsibility for what looks very much like a renegade Crime Intelligence operation, and it is very convenient to have a dead man to pin it on to. What is your response to that?

10 **MR MOGOTSI**: No comment, Chair.

ADV CHASKALSON SC: Do you have any evidence of having met Brigadier Duma at any time, any extrinsic evidence that will satisfy us that you met Brigadier Duma before he passed away?

MR MOGOTSI: I do not know what kind of evidence you want.

CHAIRPERSON: Sorry, I could not hear you?

MR MOGOTSI: I do not understand the kind of evidence he refers to. You, for example, you just spoke about
20 Lieutenant General Sibiya. I cannot give you any evidence that I met him. If people met and this thing operates differently, you do not take pictures. You do not, you cannot say, hey, I was with this man, then you take pictures.

ADV CHASKALSON SC: If we look at your cellphones, will

we find the geolocation showing that you were ever in the same place together?

MR MOGOTSI: Ja, ja, that if it is utilized, yes, definitely, more than once. More than once.

ADV CHASKALSON SC: And maybe you could give us some dates to look at.

MR MOGOTSI: No, I cannot remember the date.

ADV CHASKALSON SC: Not even, I mean, Brigadier Duma passed away three months ago.

10 **MR MOGOTSI:** But it cannot be dates. If you do it, your section 205, I can tell you locate me with the same person.

ADV CHASKALSON SC: You give us some approximate times when you say you met with Brigadier Duma and where, and we will do that exercise.

MR MOGOTSI: Ja, I will try and check when was that, the last time, or you want them now here?

ADV CHASKALSON SC: Ja, ja, no, I would like to have them here.

20 **MR MOGOTSI:** Even this year in, was it now December, December.

ADV CHASKALSON SC: And where would you meet Brigadier Duma?

MR MOGOTSI: Well, even at the office, at his office.

ADV CHASKALSON SC: At his office?

MR MOGOTSI: Ja.

ADV CHASKALSON SC: Now, his office is in the same building as your co-handler.

MR MOGOTSI: No, no, yes, he also have an office.

ADV CHASKALSON SC: Yes, yes.

MR MOGOTSI: He also have an office.

ADV CHASKALSON SC: So it is not going to help us to look for meetings at his office, because if you go to meet your co-handler who admits to meeting you, you will be seen in the same position. I want a location outside the
10 office.

MR MOGOTSI: No, that is the only help, that is the only place we will meet. That is where ...[intervenes].

ADV CHASKALSON SC: You have only ever met Brigadier Duma at his office?

MR MOGOTSI: I met him at his office.

ADV CHASKALSON SC: Yes, how many times did you meet at his office? If we go and look at access records at that office building, will we find you coming in and out to see Brigadier Duma?

20 **MR MOGOTSI:** Ja, but we can go and check. You will never find, even when I went to see my co-handler, I do not sign. You will never find my signatures or name there. And you will see most of the time where people meet when you get there, there is a way of meeting.

ADV CHASKALSON SC: You see, the version that your

co-handler put was that he frequently met with you at his place in Bryanston. Is that true?

MR MOGOTSI: No, I cannot answer that question.

ADV CHASKALSON SC: Well, you can answer it. It is either true or false.

MR MOGOTSI: That I met with Duma in Bryanston?

ADV CHASKALSON SC: Yes, he said he is got a place in Bryanston and that is where you would meet, small place, small ...[intervenes].

10 **CHAIRPERSON:** You said co-handler, now you are saying ...[intervenes].

ADV CHASKALSON SC: No, I am saying co-handler.

CHAIRPERSON: Co-handler.

ADV CHASKALSON SC: Yes, I am saying co-handler.

MR MOGOTSI: And I met with Brigadier Duma and co-handler?

ADV CHASKALSON SC: No, no, no, I am saying the version of your co-handler is that he would meet you frequently at his place in Bryanston. He said it is a small
20 nyana place.

MR MOGOTSI: Ja, but let me not answer this question ...[indistinct] incriminating myself. You know, after he said that, the police now during the raid, you know, they went to Bryanston last week. So let me not incriminate myself further.

ADV CHASKALSON SC: This is not an issue of incrimination.

MR MOGOTSI: No, it is to put myself, I mean, they went after he spoke to you, after he spoke to the Commission about Bryanston, the police went on Sunday, this Sunday.

ADV BALOYI SC: Mr Mogotsi, you have admitted that you have met him.

MR MOGOTSI: Yes.

ADV BALOYI SC: How does the location, you are giving
10 an address. You say we met in his office.

MR MOGOTSI: Yes.

ADV BALOYI SC: How does it become self-incrimination to confirm a different address, because you have already admitted ...[intervenes].

MR MOGOTSI: Yes, but I am saying ...[intervenes].

ADV BALOYI SC: Let me finish now. Let me finish, please.

MR MOGOTSI: Okay, Chair.

ADV BALOYI SC: You have admitted meeting him and you
20 have put up a version of where you met him. What is being put to you is his version of, and only the location where you met in Bryanston. How can that be a question of self-incrimination?

MR MOGOTSI: Okay. Ja, okay, I understand what you are saying because I admitted to have met him. Yes, no, we

met in Bryanston. I was just telling, putting it on record that after my co-handler spoke about Bryanston, the police went to raid Bryanston on Sunday. Yes, we met in Bryanston.

ADV CHASKALSON SC: So you would meet your co-handler in Bryanston?

MR MOGOTSI: I also met him there.

ADV CHASKALSON SC: You also met Brigadier Duma there?

MR MOGOTSI: But that was not recent. It was a long
10 time.

ADV CHASKALSON SC: Long time ago?

MR MOGOTSI: Yes.

ADV CHASKALSON SC: But if we, how long ago? Are we talking 2024, 2023?

MR MOGOTSI: No, 2020, even after, I think around, even 2025, I think it happened.

ADV CHASKALSON SC: It was in 2025?

MR MOGOTSI: I think so, in Bryanston. I am not sure.

ADV CHASKALSON SC: So we will find you and Brigadier
20 Duma in the same place in Bryanston at some stage in 2024, 2025.

MR MOGOTSI: Ja. And then, Chair, Chair, something just that you have a clue. You see, the co-handler told you that he is very close to this General, who is it, General Khan. Locate them, if you ever find them together. Or if you

locate me with my handler, with our phones, no one, the first rule, do not bring your phone. But go and try. That is the first rule. Thank you, Chair.

ADV CHASKALSON SC: So you are now telling me that I should not look at geolocation because you always switch off your phones?

MR MOGOTSI: No, no, I say you can go and check. But at the office, probably you will get, even in Bryanston, you check. But to rely on cellphones in these things is not as
10 easy as you think.

ADV CHASKALSON SC: Well, we know that you did meet your co-handler in Bryanston quite frequently, so we will first check to see if we can find you and your co-handler's cellphones together in Bryanston. And if we do, then we will go and look and see if we can find you and Brigadier Duma in Bryanston also.

MR MOGOTSI: Okay, thanks, Chair.

ADV CHASKALSON SC: Can I just quickly clarify, everything that you told General Mkhwanazi in your
20 WhatsApp's was false, was it not? Literally every single statement that you made to General Mkhwanazi in those WhatsApp's in September, October last year was false.

MR MOGOTSI: It was not false. It was not false. There was an OB entry. There was a correctional officer who was arrested with drugs. That thing was registered as an OB.

ADV CHASKALSON SC: Well, let us take them one by one then. Did you meet the complainant in the Empangeni prison case?

MR MOGOTSI: No.

ADV CHASKALSON SC: No. So that was a lie?

MR MOGOTSI: Ja, that is true ...[indistinct].

ADV CHASKALSON SC: Sorry?

MR MOGOTSI: Ja, it is true.

ADV CHASKALSON SC: It was a lie?

10 **MR MOGOTSI:** It never happened, yes.

ADV CHASKALSON SC: Yes. Did General Khumalo speak with the complainant?

MR MOGOTSI: No, I do not know. It was ...[intervenes].

ADV CHASKALSON SC: That was another lie?

MR MOGOTSI: That is a false lie. That is something that I made. They never spoke. General Khumalo never spoke about him in the meeting. I was not there at all. I ...[intervenes].

20 **ADV CHASKALSON SC:** We are going to take them one by one.

MR MOGOTSI: Okay.

ADV CHASKALSON SC: So you have told two lies there. You have said you met with a complainant in the Empangeni case and that General Khumalo was also speaking to the same complainant. Did you clear with your handler and co-

handler that you were going to tell these lies to General Mkhwanazi?

MR MOGOTSI: My handler, ja. My handler knew when I started talking to General Mkhwanazi. My handler knew.

ADV CHASKALSON SC: And he knew you were talking to General Mkhwanazi. Did he know that you were going to lie to him and say General Khumalo is meeting with the complainant who is setting up this defeating the ends case against you?

10 **MR MOGOTSI**: No, obviously, where the information of this nature comes, wherever, from the name where I showed you ...[indistinct] Mabiza will always be involved.

ADV CHASKALSON SC: So Mabizela/Mabuza knew that you were going to say that you were meeting with a complainant and that General Khumalo was also meeting with a complainant and that General Khumalo was trying to set up General Mkhwanazi, trying to frame General Mkhwanazi on a defeating the ends case.

20 **MR MOGOTSI**: No, no, Chair. And maybe I should give it another example. If one is a prosecutor and instructions say the state opposes bail, you do not tell him go there, stand up and say, you just tell him go and oppose. When you get there, you oppose the bail. It does not necessarily mean you give him statement by statement, this is what you are going to say, this is what you are going to say.

ADV CHASKALSON SC: I see. So I now understand that you have got a broad brief from your handlers, go and engage General Mkhwanazi. Is that what you are saying?

MR MOGOTSI: I am not going to incriminate myself on that one.

ADV CHASKALSON SC: Did your handlers know that you were going to say that General Khumalo had pushed a negative narrative about cash in transits in KZN and had suggested that General Mkhwanazi had his own cartel?

10 **MR MOGOTSI:** No, I am not going to incriminate myself.

ADV CHASKALSON SC: You see, did your handlers know that you were going to say that General Khan would brief General Mkhwanazi next week?

MR MOGOTSI: Ja, I am not going to incriminate myself and my handler.

ADV CHASKALSON SC: Did you clear with your handlers whether you could drop the name of General Khan?

MR MOGOTSI: You do not need to clear. When you work on such things, you do what you have to do and report. But
20 perhaps I should not incriminate myself, yes.

ADV CHASKALSON SC: You see, in your statement you say this was all about an attempt to gain General Mkhwanazi's confidence and trust in order to execute my mandate in terms of the task order of your handler. What was that mandate?

MR MOGOTSI: Ja, no, as it is written on the statement, that is how it stands going forward. Let me not incriminate myself.

ADV CHASKALSON SC: So am I to understand then that this was your fishing expedition to establish whether General Mkhwanazi was working for the CIA?

MR MOGOTSI: Let me not incriminate myself further, please.

ADV CHASKALSON SC: I do not understand why that
10 would incriminate yourself. You have said the only mandate that you mention in your statement is the allegation that General Mkhwanazi may be working for the CIA.

MR MOGOTSI: Ja, but now, as I said, remember I fully confirmed that the content of my statement as is, shall not change. But going forward, let me not incriminate myself.

ADV CHASKALSON SC: So there was no other mandate that you had in relation to General Mkhwanazi beyond the mandate in your statement?

MR MOGOTSI: Ja, that is why I am saying I do not want to
20 incriminate myself.

ADV CHASKALSON SC: So you are now saying there may be another mandate beyond the one in your statement?

MR MOGOTSI: Ja, of incriminating myself, ja, it is coming. I do not want to incriminate myself.

ADV CHASKALSON SC: You have now publicly apologised

to General Mkhwanazi for suggesting that he may have been linked to the CIA.

MR MOGOTSI: I did apologise. I can apologise again.

ADV CHASKALSON SC: Yes.

MR MOGOTSI: And retracted that since I do not have tangible evidence, I should retract it, and that is what I have done.

ADV CHASKALSON SC: But in pursuit of that link, you were happy to tell a series of lies that were calculated to
10 interfere with the relationship between General Mkhwanazi and General Khumalo, were you not?

MR MOGOTSI: No. No, let me not incriminate myself.

ADV CHASKALSON SC: Well, the whole purpose of your, or the whole tenor of your WhatsApp's was to make General Mkhwanazi suspicious of General Khumalo.

MR MOGOTSI: Ja, as long as I do not incriminate myself.

ADV CHASKALSON SC: I see. And you were going to sow suspicion between General Mkhwanazi and General Khumalo, who was the Head of the PKTT in KZN and the
20 Divisional Commission of Crime Intelligence nationally.

MR MOGOTSI: Repeat the question, Chair?

ADV CHASKALSON SC: You were sowing suspicion between the Provincial Commissioner of KZN and General Khumalo, who was the Head of the PKTT in KZN, and also the Head of Crime Intelligence nationally.

MR MOGOTSI: Ja, no, I am not going to incriminate myself.

ADV CHASKALSON SC: I see. Did your handlers approve of this, sowing suspicion between General Khumalo and General Mkhwanazi?

MR MOGOTSI: Ja, maybe. Please, let me not incriminate myself.

ADV CHASKALSON SC: Did you receive specific approval from any handler, co-handler, or Brigadier Duma to do this?

10 **MR MOGOTSI:** Well, like I said, if it comes from him, he knew. So, somehow, he knew what was going on.

ADV CHASKALSON SC: Who knew?

MR MOGOTSI: The same person I wrote on the book.

ADV CHASKALSON SC: Oh, I see. A dead person.

MR MOGOTSI: Let me, I have agreed, I have accepted that they have passed on.

ADV CHASKALSON SC: And so he knew that you were going to tell lies about General Khumalo to General Mkhwanazi, and make General Mkhwanazi believe that
20 General Khumalo was trying to frame him.

MR MOGOTSI: No, I am not, may I not incriminate myself, please.

ADV CHASKALSON SC: Did General Sibiya know?

MR MOGOTSI: I am not going to incriminate myself.

ADV CHASKALSON SC: General Khan?

MR MOGOTSI: I am not going to incriminate myself.

ADV CHASKALSON SC: You see, if we go through everything that we know that you actually did in relation to your so-called investigation, what we see is time and again you are trying to set up General Khumalo. Do you remember the episode when you wrote to the Minister about the breakthrough and whether the arrest was affected and you immediately, well not immediately, you then WhatsApp'd your screenshot to Mr Matlala and asked him
10 about IPID?

MR MOGOTSI: Ja, those that are in the statement, it still stand.

ADV CHASKALSON SC: Yes, well, so I am going to list a series of episodes. The first is your attempts to get members of the PKTT, or who you thought were members of the PKTT, arrested for the raid at Mr Matlala.

MR MOGOTSI: I thought so. I cannot hear the question.

ADV CHASKALSON SC: The first, the first, I am listing a series of operations that you performed that seemed to be
20 targeted at General Khumalo. The first is trying to get members of the PKTT, or who you thought were members of the PKTT, arrested for the raid at Mr Matlala's house.

MR MOGOTSI: I did not open the case for them. I did not do it.

ADV CHASKALSON SC: No, no, you referred it

immediately to your co-handler, your alleged co-handler who tried to open a case for them in Soweto. That is one.

MR MOGOTSI: Ja, but unless you say the PKTT or whoever can go to anyone's house and remember, he even said they assaulted his wife. To help someone open a case is not to target any person. He became the target.

ADV CHASKALSON SC: Who else have you opened a case for while working in Crime Intelligence?

MR MOGOTSI: Ja, let me not incriminate myself.

10 **ADV CHASKALSON SC:** Oh, I see. Can you give me one example of another case that you have tried to open while working in Crime Intelligence for an alleged target?

MR MOGOTSI: I cannot remember.

ADV CHASKALSON SC: Well, try and remember. Is there one? Is there any target in your lengthy experience in Crime Intelligence who you have helped to open a case other than Mr Matlala?

MR MOGOTSI: No, they did not want to open cases. They were not attacked. Operations were not about opening
20 cases. It was just a coincidence that the person's wife was assaulted and you know someone who can help you and that is it.

ADV CHASKALSON SC: Yes, but it was not a coincidence. Your first meeting with the man was the day after he was raided.

MR MOGOTSI: It is a coincidence in the nature that his wife and himself were assaulted. I did not say for those that assaulted come to me and I refer you to open cases. Then that time a person could not open a case. If like this member of Parliament when he came to Soweto, I was not part of that. I did not know how that happened. But if I also referred him to someone would that means my job is to help people open cases. People ...[intervenes].

ADV CHASKALSON SC: We do know what happened with
10 that member of Parliament. He also went to your co-
handler. Your co-handler managed to get a case open for
him.

MR MOGOTSI: Ja, and no one is concerned that why these
people are traveling for this so long distances to open
cases, because where they come from, cases cannot be
opened. When you gave an example earlier, Chair, about
the arrest of those Generals, on the 6th of July when
General Mkhwanazi spoke, if you could remember how he
attacked the presiding officer who imposed those bail
20 conditions. That magistrate also even recused himself from
that case. It is because they were not worried as to how
did this man, why did he have to travel all the way to open a
case.

ADV CHASKALSON SC: Mr Mogotsi, we will ask questions
of General Mkhwanazi when he comes back, but at the

moment I am asking questions of you.

MR MOGOTSI: All right.

ADV CHASKALSON SC: My question was, have you ever opened a case ...[intervenes].

MR MOGOTSI: No.

ADV CHASKALSON SC: And the answer was no.

MR MOGOTSI: No.

ADV CHASKALSON SC: So you did that, you assisted the opening of the case on the 7th of December, the day after
10 the raid. You then started communicating with the Minister about getting an IPID arrest. Do you recall that?

MR MOGOTSI: If it is in the statement, it is done like that.

ADV CHASKALSON SC: Well, we traversed it last time. I am not going to do it again. That was the second occasion.

CHAIRPERSON: At this point, let us adjourn for 10 minutes. Let us come back at 10 past 5.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Mr Chaskalson.

20 **ADV CHASKALSON SC:** Thank you, Chair. So, we have talked about your attempt to sow division between General Khumalo and General Mkhwanazi, your attempt to have members of the PKTT arrested for the raid on Mr Matlala, your attempt to get IPID involved in an arrest arising out of the raid on Mr Matlala's house.

That is three instances where we actually see you in action operationally. Your fourth, the fourth instance is your attempt to persuade the Minister that he or General Sibiya can discipline General Khumalo arising out of the Constitutional Court judgment in the Makala case. Do you recall that?

MR MOGOTSI: That is correct.

ADV CHASKALSON SC: That was a case that had absolutely nothing whatsoever to do with General Khumalo.

10 You accept that now?

MR MOGOTSI: It was spoken here and I accept at the time.

ADV CHASKALSON SC: Yes, but at the time you were urging the Minister to charge General Khumalo. That is the fourth case. The fifth case is your attempted trap involving the Colonel who was going to give evidence in relation to the disciplinary of General Khan that would result in General Khumalo being prosecuted for defeating the ends of justice. You remember that, your section 252?

20 **MR MOGOTSI**: I remember that he only had to prove that there was a plot to have General Khan dismissed, not the part that General Khumalo should be charged with defeating.

ADV CHASKALSON SC: Sorry, General, so you are now disavowing that you wanted General Khumalo charged with

defeating the ends?

MR MOGOTSI: Going with, as a result of the operationalization of the 252A?

ADV CHASKALSON SC: Yes, was that not the purpose of the 252A?

MR MOGOTSI: No, the purpose was to get information on what that man was saying about the hearing.

ADV CHASKALSON SC: No, that was not the purpose of the 252A. 252A you were trying to bribe the Colonel with
10 promises of promotion and possible payments of bags of money to say that General Khumalo had put him up to changing his version to implicate General Khan. We went through this all last time, I do not want to rehearse it again. Do you remember that?

MR MOGOTSI: But the word that I wanted to bribe him is not true. I never bribed him. He, the transcripts are here, there is no way I bribed him. He spoke about how he was approached and what to say during the hearing. And to my surprise here, having his statement, what he said from the
20 transcripts, the Evidence Leader decided to defend that man.

It is not me who was speaking. I was part of the recording of the trap to have the man recorded. He said himself that I was approached, I was in Durban to speak a lie about this General, but the concentration is not on that

man, what he was saying. It is me, I wanted to bribe him.

ADV CHASKALSON SC: Yes, but you did not bother investigating what he had said under oath the day after the events at Aeroton, which were what General Khan was going to be charged with, did you?

MR MOGOTSI: No, it was said. You led that evidence here, you showed me the statement that is ...[intervenens].

ADV CHASKALSON SC: Yes.

MR MOGOTSI: During the arrest, ja.

10 **ADV CHASKALSON SC:** And so what he said the day after the event was exactly the same as what he had been, as what he was intending to say in front of the disciplinary committee.

MR MOGOTSI: I do not know, I recorded the man, that is all I can tell.

ADV CHASKALSON SC: Yes, but you got involved and tried to persuade him to say that General Khumalo was telling him to change his story.

20 **MR MOGOTSI:** No, I did not persuade. I did not even know that he was going to do that thing. He came and said all those things himself. There is no way where I persuaded him. It is him.

ADV CHASKALSON SC: Well, we dealt with it last time, I am not going to deal with it further, but that is then the fifth instance where you seem to be targeting General Khumalo

in your operational activities. There is a sixth instance. The sixth instance relates to your WhatsApp, your Signal exchange with the Minister at page 110 of the exhibit bundle, BM7, of the annexure bundle, BM7.69.

CHAIRPERSON: Sorry, the page again?

ADV CHASKALSON SC: 110. It runs over 110 and 111. Do you remember this Signal screenshot that you sent to ...[intervenes].

MR MOGOTSI: Ja.

10 **ADV CHASKALSON SC:** To Mr Matlala on the 30th of January?

MR MOGOTSI: Ja, this is what was also dealt with previously.

ADV CHASKALSON SC: Yes, it was, but I am just pointing out that the sixth instance of you apparently targeting General Khumalo is the piece under 2 at the bottom of page 110 where you are saying, also meeting with the DNC and COS today, in other words, with Deputy National Commissioner Sibiya and Chief of Staff Nkabinde today in
20 Durban for finalization of Khumalo and General Mkhwanazi's matters. And then DNC is waiting for the COS here, this is very significant. That looks like a sixth instance of your targeting General Khumalo. As against that, sorry, do you have any comment there?

MR MOGOTSI: No comment.

ADV CHASKALSON SC: No comment. As against that, there is no evidence at all in relation to an investigation of Mr Matlala, none whatsoever that you have given us.

MR MOGOTSI: No, I am not going to incriminate myself.

CHAIRPERSON: I did not hear you?

MR MOGOTSI: I am not going to incriminate myself.

ADV CHASKALSON SC: You have known Mr Matlala since at least the North West tender case that your foundation brought with the funding of Mr Carrim to stop a tender that
10 had been awarded to someone other than Mr Mamela. You recall that case?

MR MOGOTSI: Ja, we also dealt about it last time.

ADV CHASKALSON SC: Sorry, we did deal with it.

MR MOGOTSI: Yes.

ADV CHASKALSON SC: Yes, that was September 2023, August, September 2023.

MR MOGOTSI: That is correct.

ADV CHASKALSON SC: And your version was that Mr Matlala had assisted you in relation to that interdict
20 application.

MR MOGOTSI: What I said on TV, that is correct.

ADV CHASKALSON SC: Yes, and you then confirmed it here.

MR MOGOTSI: Yes.

ADV CHASKALSON SC: So you have known Mr Matlala

since at least August, September 2023.

MR MOGOTSI: That is correct.

ADV CHASKALSON SC: Yes. You found out about the possible need to investigate his tender with SAPS according to your statement in March, April 2024.

MR MOGOTSI: That is the statement.

ADV CHASKALSON SC: That is what the statement says.

MR MOGOTSI: Ja.

ADV CHASKALSON SC: Page 8, paragraph 26.

10 **MR MOGOTSI**: Ja.

ADV CHASKALSON SC: So you knew about the need to investigate in March, April 2024.

ADV KHUMALO SC: Is that, sorry, which tender is that? I thought the tender was ...[intervenes].

ADV CHASKALSON SC: The SAPS tender.

ADV KHUMALO SC: Was it not issued in June of that year?

ADV CHASKALSON SC: No, no, it, the award came earlier. Was it 2024?

20 **MR MOGOTSI**: 2025.

ADV CHASKALSON SC: 2025. 2025. I am sorry, 2025. So you found out about the need to investigate the tender in March, April 2025.

MR MOGOTSI: That is correct.

ADV CHASKALSON SC: That was more than 18 months

after you first had contact with Mr Matlala.

MR MOGOTSI: Yes, more than that. Remember during testimony, when I was trying to show you that, when I was showing the Commission that even former Minister Bheki Cele knew Cat Matlala, I made reference to that thing of Boko Haram. And on that time, I also said I had his numbers, if you remember very well.

ADV CHASKALSON SC: Yes, but you knew about Cat Matlala and his Boko Haram activities, or alleged Boko
10 Haram activities earlier, but you had had contact with him for the first time, as I understood it, in August, September 2023.

MR MOGOTSI: Ja, I think that is what we dealt with.

ADV CHASKALSON SC: Yes. So you were told about your source, you say, at paragraph 26, told you to investigate this tender in March, April 2020, you say it was 2024.

ADV KHUMALO SC: I see where you got confused, Mr Chaskalson.

20 **ADV CHASKALSON SC:** No, no, it was 2024. It was 2024, because the contract was cancelled early 2025. So it was 2024. So you say your source informed you about the tender that was awarded to Mr Matlala through a company, Medicare 24, which also had links to the former Minister, Minister Cele.

MR MOGOTSI: Ja, my answer is I am not going to incriminate myself.

ADV CHASKALSON SC: No, no, but ...[intervenes].

MR MOGOTSI: It is in the statement.

ADV CHASKALSON SC: You said it, March, April ...[intervenes].

MR MOGOTSI: Yes, that is why I say everything in the statement I agree it should stand.

ADV CHASKALSON SC: I see.

10 **MR MOGOTSI:** Yes.

ADV CHASKALSON SC: Well, in your supplementary statement, you mentioned that you were contacted by Mr Carrim prior to his investing money in Medicare 24, and he wanted you to verify if the tender was indeed valid.

MR MOGOTSI: It is in the statement. That one stays ...[intervenes].

ADV CHASKALSON SC: No, no, I am asking you questions.

20 **MR MOGOTSI:** No, going forward, let me not incriminate myself.

ADV CHASKALSON SC: No, this is not about incrimination. Mr Carrim approached you before he invested in the contract. His version is his first payment of R5 million was on the 26th of June 2024. So this would have been before 26 June 2024 that he approached you and

asked you to establish whether the contract was valid. Do you accept it was before the 26th of June?

MR MOGOTSI: Yes, that is on the statement. Yes, that is correct.

ADV CHASKALSON SC: Yes. Now, Mr Carrim is your friend, is he not?

MR MOGOTSI: That is correct.

ADV CHASKALSON SC: Yes.

MR MOGOTSI: We were friends.

10 **ADV CHASKALSON SC**: You were friends?

MR MOGOTSI: Ja.

ADV CHASKALSON SC: Are you no longer friends?

MR MOGOTSI: No, not ...[intervenes].

ADV CHASKALSON SC: I always understood the recusal application as an attempt to start being friends again.

MR MOGOTSI: No.

ADV CHASKALSON SC: You approached Mr Carrim prior to June 2024, prior to 26 June 2024.

20 **MR MOGOTSI**: Ja, you see, those dates I cannot remember now.

ADV CHASKALSON SC: Yes, well, you can take it from me that Mr Carrim says his first payment of 5 million was on the 26th of June.

MR MOGOTSI: That is Mr Carrim.

ADV CHASKALSON SC: Yes. But you say he contacted

you prior to his investing monies in Medicare 24.

MR MOGOTSI: Ja, what he may have told you and what he has told me, I cannot speak on his behalf. I can only tell you when he spoke to me that he wanted to invest, that was the time. As to whether he has paid the money before or after, I do not know, but he asked me.

ADV CHASKALSON SC: I see. So when you say in 32.1, I was contacted by Suleiman prior to him investing his monies in Medicare 24 to verify the tender awarded to
10 Medicare 24 was indeed valid, that is not what you meant to say. What you meant to say was I was contacted by Suleiman prior to him telling me that he had not yet invested money in Medicare 24 to verify. He may have invested already, he may have invested later. Is that what you are now saying?

MR MOGOTSI: Let me not implicate ...[intervenes].

ADV CHASKALSON SC: Sorry, let you not?

MR MOGOTSI: Okay, let me not incriminate myself.

ADV CHASKALSON SC: I do not see what is incriminating.

20 **MR MOGOTSI:** No, you want me to change what I have said. You say what I meant to say is something else.

ADV CHASKALSON SC: Well, I point you to what you say and you then say well it was not before, I cannot say it was before he invested money.

MR MOGOTSI: Ja, I cannot ...[intervenes].

ADV CHASKALSON SC: Well, it is not a big issue.

MR MOGOTSI: Yes.

ADV CHASKALSON SC: But he started investing in June and July and we have seen the bank records, unless there are other payments he made that he has not told us about, none of them were made prior to 26 June. So you would have been in touch with him in relation to this contract around June, July 2024.

MR MOGOTSI: I cannot remember ...[indistinct].

10 **ADV CHASKALSON SC:** Okay, well.

MR MOGOTSI: Chairperson, SC, you are having the statements where he has paid. So now that I do not see the statement where he has paid, I can, either I must take your word as you say ...[intervenues].

ADV CHASKALSON SC: On this one you can take my word.

MR MOGOTSI: Yes, I take your word.

ADV CHASKALSON SC: Okay, 26 June was the first 5 million payment.

20 **MR MOGOTSI:** All right.

ADV CHASKALSON SC: And Mr Carrim's evidence was that you kept in touch with him or he kept in touch with you right through 2024 when he was concerned about finding out when payments were going to be made and what payments were going to be made. Is that correct? Did he,

after the first approach did he continue to keep in touch with you about this contract through 2024?

MR MOGOTSI: SC, like I said, I speak, the statement that I have, if what you are asking is in my statement, yes. If it is about Carrim, I cannot answer for him.

ADV CHASKALSON SC: I see.

MR MOGOTSI: Ja.

ADV CHASKALSON SC: If you wanted, I want to put to you that if you wanted to make contact with Mr Matlala to
10 investigate the contract you could always do so through Mr Carrim. You could always have arranged an introduction to Mr Matlala in relation to the contract through Mr Carrim and you could have done that at any stage after June 2024.

MR MOGOTSI: As you are putting it to me, I do not know, Chair, and I am not going to incriminate myself.

ADV CHASKALSON SC: Well, why would it not have been possible to get access to Mr Matlala through Mr Carrim?

MR MOGOTSI: The same way, I do not know, let me not incriminate myself.

20 **ADV CHASKALSON SC**: It is not an issue of incrimination, it is an issue of either you could, either you think there would have been a problem approaching Mr Matlala through Mr Carrim, or you do not.

MR MOGOTSI: The question why, why did I not?

ADV CHASKALSON SC: No, the question is, could you

have approached him through Mr Carrim, if you wanted to investigate his contract, if you wanted contact with him to investigate his contract?

MR MOGOTSI: That is why I am saying let me not incriminate myself. By saying yes, I could have approached him directly or I could have called him, is to incriminate myself, Chair.

ADV KHUMALO SC: How does that expose you to criminal prosecution, whether or not you could have found out about
10 the contract from Mr Carrim? Either you could or you could not. How does answering that question expose you to criminal prosecution?

MR MOGOTSI: The next question will be, the question here is ...[intervenes].

ADV KHUMALO SC: It is not the next question.

MR MOGOTSI: Yes.

ADV KHUMALO SC: That question.

MR MOGOTSI: Is ...[intervenes].

ADV KHUMALO SC: You cannot say I am anticipating that
20 10 questions from now ...[intervenes].

MR MOGOTSI: No, Chair.

ADV KHUMALO SC: You would be asked a question that might ...[indistinct] [microphone off].

MR MOGOTSI: Ja, Chair ...[intervenes].

ADV KHUMALO SC: A specific question.

MR MOGOTSI: Ja, but the answer is simple, I do not know. He say should, he is asking me two years back if I wanted. I did not want. He is asking me if I wanted, Chair, I could have made them meet and so and so. So, I did not want. I had no intention. It was not in my mind at that time. So it is difficult to say now, yes, I could have made them meet.

ADV KHUMALO SC: So that is the answer you should give, but do not say you do not want to incriminate yourself, because that has nothing to do with whether or not you will
10 expose yourself to criminal prosecution.

MR MOGOTSI: All right, all right.

ADV KHUMALO SC: There may very well be questions that concern you for that very reason, and there you can say, I do not have to.

MR MOGOTSI: All right, thank you, Chair.

ADV KHUMALO SC: But where you are asked, could you have contacted this person or that person, there is no reason why you cannot answer that question.

MR MOGOTSI: All right, Chair.

20 **ADV CHASKALSON SC:** You see, what I find strange is that if you were genuinely investigating Mr Matlala's contract from March, April 2024, I cannot find any rational explanation for why you wait until 7 December 2024, the day after he is been raided by the PKTT, as you think, before you reach out to him. Can you give me any

explanation why you wait from March, April through to 7 December before you reach out to Mr Matlala?

MR MOGOTSI: If you can look at my statement where I spoke about having to wait for the new administration and so forth, where I said, because he was, where is my statement? Ja, and that should not be misconcepted that we waited until December. It is not the case. But he reached out to me that time and on my statement, I cannot find my statement.

10 On the statement, that is where I said, because he was close to the former Minister and the National Commissioner who appointed him, we thought we should wait for the new dispensation. And indeed, when the ANC list, parliamentary list came out, we were able to see that the former Minister Bheki Cele did not make it into the list. That is when we realized that there is going to be a new Minister, of course and we waited. It is somewhere in my statement.

ADV KHUMALO SC: In paragraph 27.

20 **MR MOGOTSI**: I need the total.

ADV CHASKALSON SC: When were the elections in 2024? Or let me help you on that one. They were on the 29th of May.

MR MOGOTSI: All right.

ADV CHASKALSON SC: Okay. The new cabinet would

have been announced in June.

MR MOGOTSI: All right.

ADV CHASKALSON SC: Roundabout's the time that you were approached, probably before you were approached, by Mr Carrim, to check out this contract.

MR MOGOTSI: I do not follow, Chair.

ADV CHASKALSON SC: Sorry?

MR MOGOTSI: Okay, I do not follow.

ADV CHASKALSON SC: Well, Mr Carrim approached you
10 before he invested in the contract, and he invested in the contract for the first time on the 26th of June.

MR MOGOTSI: That is correct.

ADV CHASKALSON SC: Yes. So by the time Mr Carrim approached you, there probably already was a new cabinet. You would certainly have known that General Cele was not going to be Minister of Police, because he was not on the list.

MR MOGOTSI: That is correct.

ADV CHASKALSON SC: So my question remains, why did
20 you wait until the 7th of December before you reached out to Mr Matlala?

MR MOGOTSI: Chair, because I am starting to get the statement here. If you remember what I said, I did mention that we had to wait and I also mentioned in my statement here, it is on paragraph, is it, Commissioner said 27.

ADV KHUMALO SC: 27, Mr Mogotsi.

MR MOGOTSI: Thank you, Chair.

ADV KHUMALO SC: On page 8.

MR MOGOTSI: Yes, it was after the ...[indistinct] that may, now, remember we also had to wait to meet with General Sibiyi at the time and all those processes, we could not jump and look for Mr Matlala. In my statement it is written here on page 8, how the whole thing unfolded until we were able to get another DNC and go to Matlala.

10 But the point I am trying to make is, people do realize when you are looking for something, you cannot go to him and say, I am here, I am looking for you. There is a process, that is how you must talk to a person, take time. But it is not, it was not the target that we were supposed to meet in September. It is a known fact that after he was not able to open the case, that is when he reached out to me, that is when he wanted to open the case.

ADV CHASKALSON SC: So your version now is that Mr Matlala reached out to you?

20 **MR MOGOTSI:** No, no, I am saying that is when we met. Let me put it that way, that is when we met. And that is, remember, SC, as I said, these things are here in the statement and whatever that I have said in the statement, I am not changing it. I will request that the statement should stand.

ADV CHASKALSON SC: You see, Mr Mogotsi, you were quite happy to spread some very damaging lies about General Khumalo to General Mkhwanazi on the 30th of September and the 1st of October. Why did that not have to wait for things to go very slowly?

MR MOGOTSI: Why? What was supposed to wait?

ADV CHASKALSON SC: Why were you able to sort of send your texts to General Mkhwanazi saying lies about General Khumalo and sowing suspicion between the two of
10 them on the 30th of September? Why did not you have to speak to General Sibiya ...[intervenes].

MR MOGOTSI: No, that is how ...[intervenes].

ADV CHASKALSON SC: And get your authority to do that first?

MR MOGOTSI: That is how I am going to incriminate myself now.

ADV CHASKALSON SC: Ja, but I think this may be the first time that you have actually asserted privilege in an appropriate context. You see, what I want to put to you,
20 and it has been a long day so I think we might want to end quite soon now, what I want to put to you is there was never any investigation on your part into Mr Matlala, none whatsoever.

You were targeting General Khumalo and you only became interested in Mr Matlala when he was raided by

SAPS members who you thought were the PKTT and you thought arising out of that raid you could get criminal charges brought against PKTT members and use that against General Khumalo. What is your answer to that?

MR MOGOTSI: No, that is not the case.

ADV CHASKALSON SC: I see. My last set of questions is I want to know, I want your understanding of who is at the head of your operations, which I see as targeted against General Khumalo or rather than Mr Matlala. It seems to me
10 that there are three possible candidates. The first is General Sibiya, who you say was at the head of all of your operations. What is your response to that?

MR MOGOTSI: I should not incriminate myself.

ADV CHASKALSON SC: You have said already that he was in overall charge of your operations. Do you recall? He replaced, when General Mfazi passed away, General Sibiya was, took over.

MR MOGOTSI: Ja, not my operations, he took over the space of General Mfazi.

20 **ADV CHASKALSON SC:** Yes, but did you not understand your handler and co-handler ultimately to be reporting to General Sibiya?

MR MOGOTSI: I do not understand the question. Did I understand that they were reporting to General Sibiya?

ADV CHASKALSON SC: Yes.

MR MOGOTSI: Ja, reporting or not reporting is not my operation. It is not that now he is heading the operation.

ADV CHASKALSON SC: Sorry, did you understand, well let us take it a step at a time. Did you understand that they were reporting to General Sibiya?

MR MOGOTSI: No, I know they were working together. As to how they are reporting, I cannot tell. I do not know how they report.

ADV CHASKALSON SC: So did you expect that General
10 Sibiya would be kept, filled in on what was coming out of your operation?

MR MOGOTSI: Ja, I am not going to, ja, let me rather not incriminate myself.

ADV KHUMALO SC: That is not what you say in paragraph 28, unless I am reading it incorrectly ...[indistinct] [microphone off] statement. It is the black file, Mr Mogotsi.

MR MOGOTSI: Ja, it is paragraph 28.

ADV KHUMALO SC: Do you want the question to be repeated?

20 **MR MOGOTSI:** Yes, you can repeat the question.

ADV CHASKALSON SC: And did you understand that your handler and co-handler would be reporting the outcome of your operations to General Sibiya?

MR MOGOTSI: I believe the statement as is, that is my statement.

ADV CHASKALSON SC: My question is slightly different. Did you understand that General Sibiya would be briefed on the outcome of your operations?

MR MOGOTSI: I did not know that.

ADV CHASKALSON SC: You did not know that?

MR MOGOTSI: No.

ADV CHASKALSON SC: Why then did you need General Sibiya's permission before you could get going with your operations again?

10 **MR MOGOTSI:** That is incriminating myself, Chair.

ADV CHASKALSON SC: Is that going to incriminate yourself?

MR MOGOTSI: I do not wish to incriminate – the question is, why do I want to ...[intervenes].

ADV CHASKALSON SC: Why did it, why was it necessary to have a meeting with General Sibiya before you took matters forward in September?

MR MOGOTSI: Ja, but it is in the statement that General Sibiya was appointed in ...[indistinct]. It is written there.

20 **ADV CHASKALSON SC:** Yes.

MR MOGOTSI: And another statement, one of the sentences where we say we have, there was a feeling from the handlers that he was not involved in the Medicare 24 tender, somehow he was not implicated in that.

ADV CHASKALSON SC: Yes.

MR MOGOTSI: [Indistinct]...

ADV CHASKALSON SC: Let us just stop there. We have seen substantial evidence of the relationship between General Sibiya and Mr Matlala in this Commission and in particular, we have seen evidence that Mr Matlala arranged through Sergeant Nkosi for impalas to be delivered to the home of General Sibiya. Now, if you go to page 86 of the annexure bundle, BM7.45, this is when you are in Cape Town for January the 8th.

10 **MR MOGOTSI:** Ja, that is correct.

ADV CHASKALSON SC: And you WhatsApp Mr Matlala on the 8th of January at 20:57 saying:

“Please assist with something for the guests.”

MR MOGOTSI: That is correct.

ADV CHASKALSON SC: And he does not get back to you, and two hours later you say:

“Impala?”

MR MOGOTSI: Yes, yes.

20 **ADV CHASKALSON SC:** And then there are some laughing emojis straight after that on the next page.

MR MOGOTSI: Yes.

ADV CHASKALSON SC: Are you still seriously suggesting that you were not aware that Mr Matlala had delivered impalas to General Sibiya?

MR MOGOTSI: Ja, this I hear for the first time. As you say, people came here and gave evidence before the Commission, Chairperson, ever since I left the Commission last time, I do not watch the Commission. I, it is, ja, I do not watch the Commission at all. But the impala, this one, it was the meat, impala meat, which I thought we will have.

ADV CHASKALSON SC: But did you know of a place in Cape Town where you could get impala meat?

MR MOGOTSI: No, but I thought he had in the fridge. It
10 was ready. Not the animal. The animal is now spoken by SC and Nkosi, and that I was not part of. And you can see I was laughing. It is the meat that we thought we were going to eat there.

ADV CHASKALSON SC: So were you then staying in Mr Matlala's house in Cape Town?

MR MOGOTSI: No.

ADV CHASKALSON SC: So how was Mr Matlala going to get hold of impala meat for you in Cape Town?

MR MOGOTSI: I also heard Mr Matlala may be coming
20 here. He will be able to, he said he have some meat.

ADV CHASKALSON SC: I see. But Mr Matlala was not in Cape Town. He was staying in Johannesburg.

MR MOGOTSI: That is correct.

ADV CHASKALSON SC: So from Johannesburg he was going to orchestrate impala meat for your dinner that night?

MR MOGOTSI: No, no, no, not, I do not get when you say he was going to orchestrate. What I know is we needed something for the guests, which he was going to do from Johannesburg and then the impala, the meat, the impala meat.

ADV CHASKALSON SC: And where would this impala meat come from?

MR MOGOTSI: Like myself now at home, I have kudu and this small thing. Anyone can, you can have any meat that
10 you want.

ADV CHASKALSON SC: No, you can, but I mean, are you able to find a place in Cape Town at 10:52 at night that can arrange for a delivery of some impala steaks?

MR MOGOTSI: No, it is to check if we will have it tomorrow to eat. And it is now practical. There is no way you can deliver impala at 10:52.

ADV BALOYI SC: What were you asking, that ...[intervenes].

MR MOGOTSI: The meat.

20 **ADV BALOYI SC:** Ja, you thought what? That he will cause it to be delivered to you in Cape Town?

MR MOGOTSI: No, we thought during braai he will arrange someone to give us some meat. He got wild meat. It is not only impala. That time he was referring to wild meat.

ADV BALOYI SC: So he would arrange someone where, in

Cape Town?

MR MOGOTSI: I do not know, he did not tell us, because ...[intervenes].

ADV BALOYI SC: No, you thought, you thought.

MR MOGOTSI: Yes, yes.

ADV BALOYI SC: I am not asking about him, but you, your thinking. You thought the meat will come from Mr Matlala to you, how?

MR MOGOTSI: Oh, no, no. Remember, if he has the meat,
10 either in the fridge or elsewhere, he could speak to one of his workers to say, take 5kg, drop for these people where they were.

ADV BALOYI SC: That is why Mr Chaskalson is asking you, were you staying in Mr Matala's house and you said no.

MR MOGOTSI: No.

ADV BALOYI SC: And then he says, so you thought he would orchestrate that you get the impala meat from Johannesburg to Cape Town?

20 **MR MOGOTSI**: No. He had, agree he has a holiday house there. We did not, it is just that we did not go there.

ADV BALOYI SC: Okay.

MR MOGOTSI: He had, according to him, that meat in his house.

ADV BALOYI SC: I see, in Cape Town?

MR MOGOTSI: In Cape Town.

ADV BALOYI SC: In Cape Town house. I see.

MR MOGOTSI: Yes.

ADV BALOYI SC: Okay, understood.

ADV CHASKALSON SC: And what about these two cry with laughter emojis, one less than the three that you sent me, what do they mean? Why would you be crying with laughter after suggesting that he should send you impala?

MR MOGOTSI: Was I crying?

10 **ADV CHASKALSON SC:** No, the emoji is a cry with laughter emoji, at the top of page 87.

MR MOGOTSI: Oh, you see, he was not responding and I said next time, then I just sent him to show that I can see he was not willing to respond. And I check, which with all fairness, the SC still, you know, he make reference to an application which was dismissed, the content. He keep on saying I also send him an emoji like I sent to him and what, so it prompt me to now, because I was five minutes late when I was outside and still if he was present, I could not
20 have said exactly what happened.

Now he keeps on touching it so that it comes as if I must also say, it is you who called me, it is you who said, Mafana, can you get me this, this on Suleiman, it is him. Now for us not to talk about it, I am requesting that these examples relating to that thing, because the matter has

been dismissed.

ADV CHASKALSON SC: The matter has been dismissed, but I want to know what was so funny about the suggestion that Mr Matlala would give you impala, that you sent him two emojis which are the cry with laughter emojis.

MR MOGOTSI: Ja, he was not responding, but like you said, I also send you, it means I love sending this stuff, Chair.

ADV CHASKALSON SC: Ja, we have had an interesting
10 time in this Commission learning about the different meaning of new emojis. So that is General Sibiyi. The other possibility, and they are not exclusive, is possibly the Minister, Minister Mchunu, because all of your communications, which we have seen, related to General Khumalo. Are you in possession of any other communications with the Minister that you can show us that do not relate to General Khumalo?

MR MOGOTSI: Ja, but remember the phone is now gone. We would perhaps get something when you talk about the
20 ANC, the ANC, too much. Ja, but now there is nothing to show you now since the phones are ...[incomplete].

ADV CHASKALSON SC: And you spoke to the Minister about Mr Matlala as someone who was going to fund him. You remember that at page 110, foot of 110.

“The guy of the funding (20) is also in

Johannesburg from Tuesday. He is the one I said has a 3 billion contract with SAPS.”

MR MOGOTSI: Yes, I remember this, but we also dealt with this.

ADV CHASKALSON SC: Yes.

MR MOGOTSI: Ja.

ADV CHASKALSON SC: And you told Mr Matlala that you wanted him to fund the Minister. You remember that?

10 **MR MOGOTSI:** I want him to fund the Minister?

ADV CHASKALSON SC: Yes.

MR MOGOTSI: I cannot remember that.

ADV CHASKALSON SC: Well, let me give you an example. Go to page 59. You see foot of page 59, Mr Matlala tells you, when you tell him to stand back for his safety in business, he says:

20 “This will not change my contribution towards the Minister though. I made a conscious decision and I am not backing down. Whatever help the Minister needs from my side, I will be happy to assist.”

MR MOGOTSI: Ja, but the question was, did I ask him to fund this and ...[intervenes].

ADV CHASKALSON SC: No, no.

MR MOGOTSI: I did not ask him.

ADV CHASKALSON SC: You did not ask, so he volunteered to fund the Minister.

MR MOGOTSI: Ja, you see, this is what he said. You can say I volunteered, but I did not ask him. You can never ask funding or anything in the name of another person.

ADV CHASKALSON SC: He thought that he was funding the Minister, or not?

MR MOGOTSI: Come again?

10 **ADV CHASKALSON SC:** Mr Matlala thought he was funding the Minister.

MR MOGOTSI: Thought he was funding the Minister? He thought he was funding the Minister?

ADV CHASKALSON SC: Yes.

MR MOGOTSI: No. In all our communication, there is no part where I say the Minister wants, no. No one ever funded Minister Senzo, that I know, nobody. The guy that want, which I thought would fund the thing, I forgot his name, he also had a small contract in SAPS, but the
20 meeting never materialized.

ADV CHASKALSON SC: I see. So it was somebody else who was funding the Minister.

MR MOGOTSI: Never funded.

ADV CHASKALSON SC: Right.

MR MOGOTSI: I was trying to arrange the meeting, it

never took place, for that thing in KZN.

ADV CHASKALSON SC: Let us look at the last possible candidate, General Khan.

MR MOGOTSI: General Khan?

ADV CHASKALSON SC: Yes.

MR MOGOTSI: All right.

ADV CHASKALSON SC: He was being prosecuted at the time in a process which had been initiated by General Khumalo. Do you remember that?

10 **MR MOGOTSI:** It is correct.

ADV CHASKALSON SC: The only person in Crime Intelligence who actually admits to any knowledge of your operation is someone who works with General Khan and says he is a very good friend. That is your co-handler.

MR MOGOTSI: Oh, he said that to you? No, I do not know that.

ADV CHASKALSON SC: Yes, well, you can take it from us that that is what his testimony was.

MR MOGOTSI: Thank you, Chair.

20 **ADV CHASKALSON SC:** There is no sign of you on the books of Crime Intelligence, we have seen that. You are not registered as an agent, you are not registered as an informant.

MR MOGOTSI: Ja, but I cannot comment on that.

ADV CHASKALSON SC: Yes, but if your co-handler was

going to be running you off the books of Crime Intelligence, you would expect that he would need someone senior to support him doing that.

MR MOGOTSI: You see, when we went to the hospital with you, you remember we went to the hospital?

ADV CHASKALSON SC: Yes, you did not come, but your attorneys did.

MR MOGOTSI: Thank you, Chair.

ADV CHASKALSON SC: Your attorney and Counsel did.

10 **MR MOGOTSI**: He wrote something very short, and he said, when I was registered for this particular, because the matter was sensitive, we could not be registered, re-registered again. So it was then done manually. I do not know how they do it.

ADV CHASKALSON SC: Yes, we have been trying to find that out too, but the one thing that is clear to me is that is not someone at the level of a rank of Colonel will do without cover higher up. Do you accept that? And if you are going to run someone off the books, you will want a senior officer
20 backing you.

MR MOGOTSI: Ja, but that is why he was called by General Mfazi in the first place.

ADV CHASKALSON SC: Yes, but General Mfazi was long dead by this stage. Are you now saying it was General Sibiya who was the one who was protecting the operation?

MR MOGOTSI: No, no, no. The introduction of the co-handler and General Mfazi happens on the same day simultaneously. It was the same period. General Sibiya came in after the elections. Now, recently, when we needed another DNC, it is the co-handler who went to talk to him, who arranged all those things, it is not me.

You see, the situation is so, I do not know how to put it, Chair, a logic person will think, will ask himself, but this Brown Mogotsi, like you say, this is not, this does not
10 exist, where does this things come from? Why will this man be involved in these things to the hilt. It is just that when we are here, we are not being questioned, the evidence or the information that we brought, what I have been doing. I am getting to be asked about this, like impala, my ID number, the matter in the North West. We do not deal with the nitty gritty of why do we have this Commission, and that is why I was so willing to come here and say this is what happened.

Now, I have also said, it is just that now
20 Commissioners say I am sitting here under oath, and the lawyers are not talking under, they have not taken an oath. I was saying there is someone who can help this Commission in two days. He bring the file, he bring everything that has been purchased illegally. I wish you accept that.

ADV CHASKALSON SC: We have asked you for the name of this person and contact details, and you will not give them ...[intervenes].

MR MOGOTSI: [Indistinct]... [cross-talking] we will do it. Even my co-handler did tell you. He asked you, let this man come here.

MR MOGOTSI: No, your co-handler asked us about something completely different, which we are following up.

MR MOGOTSI: All right. No, thanks.

10 **ADV BALOYI SC:** But, Mr Mogotsi, you were asked right at the beginning of your evidence to provide names of people that the investigators can speak to about the leads that you say should have been followed, and specifically the Crime Intelligence complaints that you have about property. You were asked, and you said, I do not want to incriminate myself.

MR MOGOTSI: You mean today?

ADV BALOYI SC: Yes.

MR MOGOTSI: Ja, no. No, it is fine.

20 **ADV BALOYI SC:** No, no, no, you were asked, and you cannot three hours later say, well, I have that information, I can give you that person.

MR MOGOTSI: No.

ADV BALOYI SC: Now is the opportunity for you to give the Commission the name of the person that you say the

Commission should speak to, who you say can come, he will come here or can come here with files, not through your attorneys. They are not testifying. You are the witness that is making the allegation, remember.

You are the one in the witness box that has made the allegation the last time you appeared and today that there are these properties, Crime Intelligence, investigate them. The simple question you were asked is, okay, give us a name so that we know who to talk to. You said, I do not
10 want to incriminate myself.

MR MOGOTSI: Okay, no, I remember. Let me not incriminate myself, Chair. But what I did say is still here. The title deed, the amount of the property, the person whom the property is registered on. It is here, it is with the Commission. At least if you could start there.

ADV BALOYI SC: Can I understand this. You are refusing to give a name of the person that will assist the Commission to find out more about these properties that you say Crime Intelligence bought, used money, bought and registered in
20 the name of somebody's daughter.

You want us to investigate that, but you are refusing to give the name of the person who you say can come here, has got files and documents, because that is what you said. You said there is someone who is got files and documents and they can come here. And I am now

asking you the simple question, you are refusing to give the name of that person.

MR MOGOTSI: But, Chair, I think what the Commission, this I have said before. If General Khumalo is the Head of Crime Intelligence, it means he is also signed. I said Lushaba, the Major General, is the CFO of the Crime Intelligence, it means he is also signed. Now, if we are able to go to so many bank statements, so many people, including myself, all of us, can we not get the statement of
10 the Crime Intelligence, here is the property name, there is the date of transfer and the amount of money that has been paid. Can this not be pursued, because I am saying this ...[intervenes].

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

MR MOGOTSI: I am saying this, Commissioner, because I spoke of an informant who was in the operation and pretended to have passed on and money was claimed, he was given 50,000. I gave the name of the police who wanted to accompany the handler to meet the informant.
20 After meeting, three days later, the informant was killed.

ADV BALOYI SC: Yes, Mr Mogotsi, let me stop you. You have said, as you are sitting there ...[intervenes].

MR MOGOTSI: Yes.

ADV BALOYI SC: There is someone who has files and documents, and you keep repeating it, that is why I am

talking to you about it, otherwise we would all have gone home by now. You keep repeating it.

MR MOGOTSI: Okay, I will give, I will ...[intervenes].

ADV BALOYI SC: You keep repeating it. You say investigate that. There is nothing wrong with you saying that, saying investigate it. You get asked, no, in fact, before you get asked, you say there is a person who, if you talk to them, they will come here with files and documents. You said that.

10 **MR MOGOTSI**: Yes.

ADV BALOYI SC: And Mr Chaskalson and now me have said, give us the name. You say, speak to my attorney. So you do have a name, right? When you say, speak to my attorneys, and I say, we cannot speak to your attorneys because they are not testifying, they are not the ones that make the allegation. You make the allegation in the witness box, give us the name. You can say, I refuse to give you the name, because I understand you to be refusing to give the name, and I would like it to come from your mouth that
20 you refuse to give us the name. Then we leave this topic.

MR MOGOTSI: No, we cannot leave the topic, Commissioner. It is, the rules have been read. Once you have taken an oath, you cannot refuse.

ADV BALOYI SC: So give us the name, Mr Mogotsi.

MR MOGOTSI: It is the same as, I will give the name, and

I wish ...[intervenes].

ADV BALOYI SC: Please do.

MR MOGOTSI: Ja, I will write it down also.

ADV BALOYI SC: Please do. Ja, maybe let us cut through this.

MR MOGOTSI: All right.

ADV BALOYI SC: You can write the name down, give it to Mr Chaskalson. You have given him something to start with, to start to investigate, someone to talk to.

10 **MR MOGOTSI:** Yes, I will do that. No, thank you. Thank you. At least, thank you so much, Chair. This one is alive.

ADV CHASKALSON SC: It is always a help when you have to ask them questions. It is a name I know. I am happy. If you want to destroy that so that it goes no further, I will remember that name. I know that name.

MR MOGOTSI: Oh, thank you, Chair.

ADV BALOYI SC: Thank you, Mr Mogotsi.

ADV CHASKALSON SC: Chair, it is 6 o'clock on a Friday. I do not have any further questions.

20 **CHAIRPERSON:** Thank you, Mr Chaskalson.

ADV KHUMALO SC: Just to place it on record, we gave it back to you. Do not say it was leaked by the Commission.

CHAIRPERSON: Any re-examination, Ms Mohomane?

ADV MOHOMANE: None, Chair. Thank you.

CHAIRPERSON: Thank you very much. And have we

reached a stage where Mr Mogotsi must be excused or is being excused?

ADV CHASKALSON SC: If Mr Mogotsi and I do not see each other ever again I suspect we will both be very pleased, Chair.

CHAIRPERSON: Thank you.

MR MOGOTSI: But I like how he is smiling face.

CHAIRPERSON: Mr Mogotsi, thank you very, very much. You are excused.

10 **MR MOGOTSI:** Thank you, Chair.

CHAIRPERSON: The Commission will not be sitting until, what will be the date?

ADV CHASKALSON SC: 1 June.

CHAIRPERSON: 1 June, until 1 June. We are going to be preparing the second interim report. Let us adjourn and resume at 9:30 on 1 June 2026.

INQUIRY POSTPONED TO 1 JUNE 2026

INQUIRY ADJOURNS
