



EXHIBIT RR 6

**CYRIL SIMPHIWE
MLOTSHWA**



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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IN THE COMMISSION OF ENQUIRY INTO STATE CAPTURE

HELD AT PARKTOWN, JOHANNESBURG

CONFIRMATORY AFFIDAVIT

I, the undersigned,

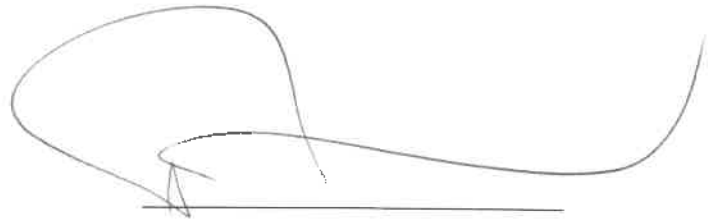
CYRIL SIMPHIWE MLOTSHWA

Hereby make oath and say:

1. I am an adult male Advocate of the High Court of South Africa, practising as such and keeping Chambers at 161 Pietermaritz Street, Pietermaritzburg.
2. The facts contained herein are within my own personal knowledge unless the context indicates otherwise.
3. I confirm that:
 - 3.1. The affidavit dated 12 May 2015 deposed to at Pietermaritzburg, which I annex hereto marked "A1" to "A9", together with annexures; was deposed to by me, and is a true copy of the original; and

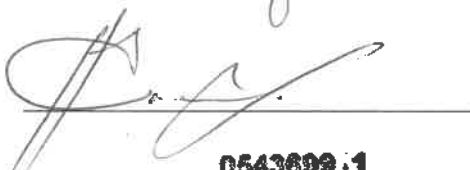
C.S.M. 

3.2. On or about 1 February 2019, I testified under oath before the Justice Mokgoro Enquiry; accordingly, the transcript annexed hereto marked "B1" to "B93" is a true reflection of my testimony.



DEPONENT

The terms of Regulation R1258 published in Government Gazette No. 3619 of the 21st July, 1972 having been complied with, I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at PIETERMARITZBURG on the day of 9th December 2019.



0543699 :1
Sgt H.Eraman

COMMISSIONER OF OATHS

SOUTH AFRICAN POLICE
COMMUNITY SERVICE CENTRE
2019 -12- 09
PIETERMARITZBURG
KWAZULU-NATAL

A1

SILVERTON. CAS 522/10/2014

A13

490

I CYRIL SIMPHIWE MLOTSHWA with I.D. no. 720902 5560 08 7 hereby state in English that I am currently employed by National Prosecuting Authority as a Deputy Director of Public Prosecutions and I am stationed at the office of the Director of Public Prosecutions, Pietermaritzburg, KwaZulu-Natal.

On 17 May 2010 until 9 July 2012, I was acting as the Director of Public Prosecutions, KwaZulu-Natal. Between January 2012 and March 2012, while driving to Port Shepstone, I received a call from Adv Nomngcobo Jiba who was acting as the National Director of Public Prosecutions at the time. She informed me that there was a matter where because of pressure, we had to enrol as matter of urgency. I informed her that I would first read the docket(s) and make a decision accordingly. She stated that the matter was urgent. I responded that I did not have prosecutors to urgently look at the dockets. She informed me that because she was at the OR Tambo Airport, she was going to call me later.

She did not call me later. Few days later, I received a call from Adv Chauke informing me that he had been instructed by Adv Jiba to send a team of prosecutors to prosecute the accused in the Cato Manor case. He told me that there were very sensitive security issues surrounding the matter. I told him that I was going to attend the DPPs meeting at VGM on 29 May 2012. So we were going to discuss the matter further.

On 29 May 2012 I attended the DPPs meeting at VGM. While the meeting was in progress, Adv Chauke told me that Adv Jiba wanted to see us urgently in her office. I went with Adv Chauke to Adv Jiba's office. In Adv Jiba's office, Adv Chauke told Adv Jiba that he can't discuss everything relating to the matter as he had serious security concerns and there was a possibility of investigation necessitating arrest even of advocates in the office of the DPP, KZN.

Adv Jiba told the two of us that she had procured a legal opinion from Adv Gerhard Nel in the Legal Affairs Section stating that I can sign the delegation for the prosecutors who will be prosecuting in the matter. She further told us that the indictment would, in terms of this legal opinion, be signed by me. I told Adv Jiba and Adv Chauke that I was going to sign the indictment only if it was accompanied by the prosecutor's memo or report detailing evidence implicating each accused as individuals and the evidence implicating all the accused as a collective. This meeting ended.

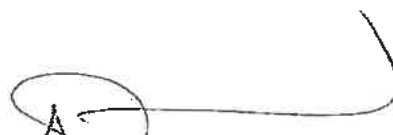
C S M



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On 12 June 2012, Adv Chauke's personal assistant Miss Mamikie Suping emailed me only the indictment without the prosecutor's memo or report. I thereafter exchanged a number of e-mails with Adv Chauke coping in Adv Jiba, her personal assistant and Adv Thoko Majokweni requesting Adv Chauke to give me prosecutor's memo or report as per initial agreement. My acting appointment came to an end on 9 July 2012. I never had anything to do with the matter after the 9th of July 2012.

I know and understand the contents of this statement. I have no objection in taking the prescribed oath. I consider the prescribed oath to be binding on my conscience.



C.S. Mlotshwa

I certify that the above statement was obtained by me and that the deponent has acknowledge and understands the contents of the statement. The statement was sworn to before me and the deponent's signature was placed thereon in my presence at PIETERMARITZBURG on 12 MAY 2015.



Commissioner of oaths
N.O. Taioe


NONE ETHANIEL TAIOE.

231 Francis Baard Street
Pretoria
Major General
SAPS

A13.
Hd2

I CYRIL SIMPHIWE MLOTSHWA hereby state in English that on 23 July 2015, the investigating officer Major General Taioe requested me to hand over the email's referred to in my statement dated 12 May 2015. E mail's herewith.

I know and understand the contents of this statement. I have no objection in taking the prescribed oath. I consider the prescribed oath to be binding on my conscience.



C.S. Mlotshwa

I certify that the above statement was obtained by me and that the deponent has acknowledged and understands the contents of the statement. The statement was sworn to before me and the deponent's signature was placed thereon in my presence at PIETERMARITZBURG on 23 July 2015.



Commissioner of oaths
N.O. Taioe

231 Francis Baard Street
Pretoria
Major General
SAPS

A4

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Cyril S. Mlotshwa

From: Andrew KMA. Chauke
Sent: 12 June 2012 05:14 PM
To: Cyril S. Mlotshwa
Cc: Thoko J Majokweni; Palesa NP. Matsi; Sello MAEMA (GS); Raymond R. Mathenjwa
Subject: RE: INDICTMENT - CATO MANOR

Dear adv Mlotshwa,

Who is the prosecutor that you are referring to? I have forwarded to you the indictment which has all the detailed summary, by which you ought to be in a position to open your office file. I also forwarded to you details of the inquests with police cas numbers etc to which you referred to adv Thoko Majokweni for reasons that I do not follow and understand. The indictment with respect gives you the whole view of the matter.

You are kindly and fervently requested to please discuss any issues if any with me. I really do not see any need for me to give you any report other than what I have forwarded to you already. Please if I misunderstand you, make me understand. I do not want to play you or undermine your jurisdictional authority in any way whatsoever. There are serious issues of security in this matter, which if necessary you will be briefed about which are not relevant to you and I cannot expose such to you at this stage.

I have also learnt with utter dismay that you have now issued an instruction to the senior prosecutors that all dockets that are with us must be brought to you. What is not happening here my brother? Please if you have any issue again talk to me or arrange that we see the ANDPP urgently.

Another issue of concern to me is the delay in you issuing the instruction of the reopening of the inquests in view of the fact that you have been requested to sign the indictment which must be preceded by your decision to reopen the inquests. If this makes you uncomfortable please indicate so that I may urgently take the matter up with the Acting NDPP as well as the minister.

I do not want to step on your toes, I was informed that you agreed and arranged with the ANDPP for somebody from outside to do the prosecution of this matters. If you have now a change of heart please indicate so that we may resolve it as soon as possible

Yards

Andrew Chauke
 Director of Public Prosecutions
 South Gauteng High Court
 Johannesburg
 Tel: (011) 220-4122
 Fax: (011) 220-4232

From: Cyril S. Mlotshwa
Sent: 12 June 2012 03:21 PM
To: Andrew KMA. Chauke
Subject: FW: INDICTMENT - CATO MANOR

1

Dear Adv Chauke

1. Our telephonic conversation today refers.
2. Kindly furnish me with the prosecutor's memo or report so that I can have a wrap around view of the matter. The report must also have the police station(s) and cas numbers so that we can open up the DPP's file.

Thanking you in advance.

Cyril S. Mlotshwa

From: Andrew KMA. Chauke
Sent: 13 June 2012 10:32 AM
To: Cyril S. Mlotshwa
Cc: Nomgcobo Jiba; Thoko J Majokweni
Subject: RE: INDICTMENT - CATO MANOR

Dear Adv Mlotshwa,

I have noted your concerns below. I apologize to you to the extent that you feel I am not respecting you and my communication to you was not what you expected.

I also apologize for not having told you that I could not travel to KZN due to unforeseen circumstances. I hope this meets with your approval. I have learnt my lesson in this regard.

Thank you for your assistance so far.

Regards,

Andrew Chauke
 Director of Public Prosecutions
 South Gauteng High Court
 Johannesburg
 Tel: (011) 220-4122
 Fax: (011) 220-4232

From: Cyril S. Mlotshwa
Sent: 13 June 2012 09:12 AM
To: Andrew KMA. Chauke
Cc: Nomgcobo Jiba; Thoko J Majokweni
Subject: RE: INDICTMENT - CATO MANOR

Dear Adv Chauke

1. I operate from the premise that the mission of the NPA enjoins us to be guided by the Constitution. The last time I cast a glance at the Constitution, I gleaned that its preamble encapsulates that all the rights enshrined in the Constitution have to be respected, protected and promoted. This includes the right to human dignity which is affirmed by section 10 of the same Constitution.
2. I think it is significant that I alert you or I bring it to your consciousness that as a South African citizen that this Constitution also renders me a cast iron guarantee to this right. I am acutely aware that as we live in a fast-paced, over-stimulated and I want-it-quick society, there is always a temptation to arrive at a decision that is based on preconceived ideas. Argumentum ad hominem principle is a well established principle of law. The caveat is that we should guard against emotions when we engage or interact with each other. If your memory serves you well, you would recall how you threw tantrums at me when you contacted me one morning last month. You levelled serious allegations against me. You did not repeat the same allegations when we met the ANDPP in her office. I maintained my cool through and through. The impression I derived from your behaviour is that you nourish a slavish mentality that you are the only one so fortunate to have at least one eye in the land of the blinds.
3. Anais Ninn postulates that we do not see things as they are but we see things as we are. Hence it is imperative that we make conclusions that are based on facts, factors and circumstances. You are posing a question to me: Do I have issues that we must discuss?. Supremely significant is the fact that Butler holds the view that words are nothing but just the clothes that thoughts wear. In 1974, L E Hefner postulated that a skilful reader reads the lines, reads between the lines and reads beyond the lines. Watermeyer JA stated in R v De Blom 1989 AD 188 @ 189 that when we draw inference, the inference we seek to draw must be

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Director of Public Prosecutions
 South Gauteng High Court
 Johannesburg
 Tel: (011) 220-4122
 Fax: (011) 220-4232

From: Andrew KMA. Chauke
Sent: 12 June 2012 05:14 PM
To: Cyril S. Mlotshwa
Cc: Thoko J Majokweni; Palesa NP, Matsi; Sello MAEMA (GS); Raymond R. Mathenjwa
Subject: RE: INDICTMENT - CATO MANOR

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You are kindly and fervently requested to please discuss any issues if any with me. I really do not see any need for me to give you any report other than what I have forwarded to you already. Please if I misunderstand you, make me understand. I do not want to play you or undermine your jurisdictional authority in any way whatsoever. There are serious issues of security in this matter, which if necessary you will be briefed about which are not relevant to you and I cannot expose such to you at this stage.

I have also learnt with utter dismay that you have now issued an instruction to the senior prosecutors that all dockets that are with us must be brought to you. What is not happening here my brother? Please if you have any issue again talk to me or arrange that we see the ANDPP urgently.

Another issue of concern to me is the delay in you issuing the instruction of the reopening of the inquests in view of the fact that you have been requested to sign the indictment which must be preceded by your decision to reopen the inquests. If this makes you uncomfortable please indicate so that I may urgently take the matter up with the Acting NDPP as well as the minister.

I do not want to step on your toes, I was informed that you agreed and arranged with the ANDPP for somebody from outside to do the prosecution of this matters. If you have now a change of heart please indicate so that we may resolve it as soon as possible

Regards

Andrew Chauke
 Director of Public Prosecutions
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Dear Adv Chauke

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2. Kindly furnish me with the prosecutor's memo or report so that I can have a wrap around view of the matter. The report must also have the police station(s) and cas numbers so that we can open up the DPP's file.

Thanking you in advance.

Best Regards

Simphiwe

From: Mamikie Suping (MM)
Sent: 12 June 2012 01:29 PM
To: Cyril S. Mlotshwa
Subject: INDICTMENT - CATO MANOR

*Executive Assistant to the Director of Public Prosecutions
South Gauteng High Court
Dyer Court Building
100 Von Brandts & Kerk Streets
1st Floor, Office 618
Tel: 011 220 4122
Fax: 011 220 4232
Rightfax: 012 843 2655
Cell: 084 261 8448*

"The truth does not change according to our ability to stomach it"



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Best Regards

Simphiwe

From: Mamikle Suping (MM)
Sent: 12 June 2012 01:29 PM
To: Cyril S. Mlotshwa
Subject: INDICTMENT - CATO MANOR

*Executive Assistant to the Director of Public Prosecutions
South Gauteng High Court
Inner Court Building
Cnr Von Brandis & Kerk Streets
6th Floor, Office 618
Tel: 011 220 4122
Fax: 011 220 4232
Tollfree: 012 843 2655
T: 084 261 8448*

"Truth does not change according to our ability to stomach it"



A9

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Cyril S. Mlotshwa

From: Andrew KMA. Chauke
Sent: 13 June 2012 11:20 AM
To: Cyril S. Mlotshwa
Cc: Nomgcobo Jiba; Thoko J Majokweni; Raymond R. Mathenjwa; Sello MAEMA (GS); Pumeza Fulshane; Mahlubi NTLAKAZA (MT); Patience PM. Moleko; Jabulani J. Mlotshwa
Subject: RE: RE-OPENING OF INQUESTS - CATO MANOR DOCKETS

Dear Adv Mlotshwa,

My memo ref 4/3/5/3/2 dated 18 May 2012 refers.

Kindly take note that I hereby withdraw the request for you to consider re-opening of the Inquests which have been listed on the memo.

There will be no necessity for them to be re-opened at this stage. I would however request copies thereof to be made and the current investigating team will approach your office or the offices of the magistrates for such assistance. I will let you know if we are unable to get assistance in this regard.

Regards,

Andrew Chauke
Director of Public Prosecutions
South Gauteng High Court
Johannesburg
Tel: (011) 220-4122
Fax: (011) 220-4232



ENQUIRY IN TERMS OF SECTION 12(6) OF
THE NATIONAL PROSECUTING AUTHORITY
ACT 32 OF 1998
GG NO 42029 OF 9 NOVEMBER 2018



REPUBLIC OF SOUTH AFRICA

JUSTICE MOKGORO ENQUIRY

SA LAW REFORM COMMISSION
1ST FLOOR SPOORAL PARK BUILDING
2007 LENCHEN AVENUE SOUTH
CENTURION
EMAIL: MOKGOROENQUIRY@JUSTICE.GOV.ZA
CELL: 082 808 3682

DATE: 01-02-2019

DAY 9

PANELLISTS

- | | |
|----------------------------|-------------|
| 1. JUSTICE YVONNE MOKGORO | Chairperson |
| 2. ADV. KGOMOTSO MOROKA SC | Panellist |
| 3. MS. THENJIWE VILAKAZI | Panellist |

EVIDENCE LEADING TEAM

- | | |
|--------------------------------|---------------------------|
| 1. ADV NAZREEN BAWA SC | Evidence Leader |
| 2. ADV NDLOVUKAZI SIKHAKHANE | Assistant Evidence Leader |
| 3. ADV NASREEN RAJAB-BUDLENDER | Assistant Evidence Leader |
| 4. ADV. ZODWA GUMEDE | Assistant Evidence Leader |

ADVOCATE MRWEBI TEAM

1. ADV MERVYN RIP (SC)
2. ADV R RAMAWELE (SC)

ADVOCATE JIBA TEAM

1. ADV. THABANI MASUKU (SC)
2. ADV. NORMAN ARENDSE (SC)
3. ADV. SHAUN FEGURS

WITNESSES

Adv. Simphiwe Mlotsha

Cnl. Kobus Roelofse

DAY 9 – 1 FEBRUARY 2019

DS500040

JUSTICE MOKGORO: Miss Bawa it is over to you.

ADV. BAWA: Good morning Madam Chair we are calling Advocate Cyril Simphiwe Mlotsha this morning.

JUSTICE MOKGORO: Before we start could I kindly ask everybody to
5 try as hard as they can to speak up, speak up number one, two speak
into the mic because it seems the recorders have a problem with people
speaking too softly and that includes me, they told me that I am the
biggest culprit so I think my colleague here has done a good job
throughout playing you know the choir master role, she will probably
10 continue to remind us to speak up but kindly when you take the stand or
when you speak try to speak up and think about the recording, thank
you.

MS MAANDA: Please state your full names for the purpose of the
record?

15 ADV. MLOTSHA: Cyril Simphiwe Mlotsha.

MS MAANDA: Will you take an oath or affirmation?

ADV. MLOTSHA: Yes I will take an oath.

MS MAANDA: Do you swear that the evidence that you shall give shall
be the truth the whole truth and nothing but the truth if so raise your right
20 hand and say so help me God.

ADV. MLOTSHA: I swear that the evidence that I shall give in this

Mokgoro Enquiry
2019-02-01

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Adv. C.S. Mlotsha

proceedings shall be the truth nothing but the truth so help me God.

CYRIL SIMPHIWE MLOTSHA (d.s.s.) (through secretary)

ADV. MOROKA: Again before we start let us find a comfortable position for you for the mic so whether it is, so that you do not have to go up and down.

ADV. MLOTSHA: Thank you so much Advocate Moroka.

ADV. BAWA: Good morning Advocate Mlotsha.

ADV. MLOTSHA: Greetings evidence leader.

ADV. BAWA: You will as a matter of housekeeping let me deal with that, you have an affidavit which you had deposed to dated 23 July 2015 before you correct?

ADV. MLOTSHA: Absolutely.

ADV. BAWA: At the time when you deposed to that affidavit you were employed as a Deputy Director of Public Prosecutions in the Pietermaritzburg KwaZulu Natal area.

ADV. MLOTSHA: Undoubtedly.

ADV. BAWA: Right now you have a B-Uris degree obtained in 1995 at the University of Zululand completed at the end of 1997 correct.

ADV. MLOTSHA: Correct.

ADV. BAWA: You then worked as a court interpreter at the Magistrates Court and you studied part time for your LLB which you completed in 1999.

ADV. MLOTSHA: That is correct.

ADV. BAWA: You became a District Court prosecutor at the Verulam

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2019-02-01

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Adv. C.S. Mlotsha

Magistrates Court in 1998.

ADV. MLOTSHA: That is the position.

ADV. BAWA: Right you then went to a prosecutor's course and you became a regional prosecutor in 2000/2001 at Stanger Magistrates Court.

ADV. MLOTSHA: That is the position.

ADV. BAWA: Okay and you were appointed as a state advocate in July 2001 at the DPP's office in Pietermaritzburg.

ADV. MLOTSHA: Absolutely.

ADV. BAWA: You became a senior state advocate in 2003.

ADV. MLOTSHA: Yes.

ADV. BAWA: And you then enrolled for your masters correct?

ADV. MLOTSHA: That is correct.

ADV. BAWA: Which you completed in 2004.

ADV. MLOTSHA: Yes.

ADV. BAWA: You also got a human resources management program course which you completed in 2005.

ADV. MLOTSHA: Absolutely.

ADV. BAWA: And you were appointed as a Deputy Director of Public Prosecutions in 2008.

ADV. MLOTSHA: Indeed correct.

ADV. BAWA: Right you were then recommended by the Minister of Justice to be the acting Director of Public Prosecutions, remind me when was that, from the period 17 May 2010 until 9 July 2012.

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ADV. MLOTSHA: That is correct.

ADV. BAWA: Okay you have got a BA Honours in philosophy which you got in 2015 and you graduated in 2016.

ADV. MLOTSHA: That is correct.

ADV. BAWA: Alright you commenced pupillage at the Pietermaritzburg Bar, you went through that with flying colours and you currently work as an advocate as a member of the Pietermaritzburg constituent bar correct.

ADV. MLOTSHA: That is indeed correct.

ADV. BAWA: Alright and I suppose most impressive on your curriculum vitae is that you are completed 9 Comrades marathons and busy training for the 10th.

ADV. MLOTSHA: That is correct evidence leader.

ADV. BAWA: Please do not have on your running shoes running away from me today.

ADV. MLOTSHA: I will try not to outrun everybody in these proceedings.

ADV. BAWA: Right now having briefly gone through that can you tell us what the circumstances and the arrangements were when you were appointed as the acting Director of Public Prosecutions in 2010, as I understand it, it followed on Advocate Batohi being deployed to the Hague correct.

ADV. MLOTSHA: That is correct ...(indistinct) will reveal that in the year, I think that will be towards the end of the year 2009 if not at the end of 2009 when the colleague Advocate Shamila Batohi left the division so as

to join the ICC at the Hague. At the time of her departure she had left behind a recommendation in terms of which in the light of the fact that she was going to be away at ICC at the Hague for 12 months that in terms of that recommendation that 12 months would be compartmentalised into two, six months being allocated to another colleague Advocate Cherisa Ramothar the senior deputy in Durban office and then in terms of that recommendation the other six months was going to be for the other senior deputy who is now late, senior counsel Advocate Gert Engelbrecht.

So in view of the fact that my former colleague, may his soul rest in peace, Advocate Gert Engelbrecht at the time when he was supposed to be taking over it then transpired that he was quite a ...(indistinct) he was a bit sickly and then he made a recommendation to the then National Director of Public Prosecutions Advocate Menzi Simelane that his view at the time was that it will be more fair and reasonable if among the other deputies that were in the division in KwaZulu Natal that the then National Director Advocate Simelane makes a recommendation to the then Minister of Justice Mr Jeff Radebe that I be the one who takes over from Cherisa Ramothar.

It I briefly against that background that I moved into the seat. Well after the acting period of six months there was objective evidence that I had excelled or there was objective evidence that the performance of the Province got enhanced, it improved on the basis of which another recommendation was made because after my six months of acting there was also a notion that indicated that possibility of Advocate Shamila

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2019-02-01

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Adv. C.S. Mlotsha

Batohi staying with the Hague was going to be lengthened so another recommendation was made that I act for another 12 months which is, for another six months so when I finished acting after six months Advocate Shamila Batohi was not back and at that time I was given to understand that South Africa as a republic was trying to have some certain issues sorted out with the Hague for the permanent absorption of Advocate Shamila Batohi

On that basis I was appointed to act until that issue of Advocate Shamila Batohi was resolved. If I am not mistaken an email from the office of the then CEO Advocate Karin van Rensburg was circulated through South Africa informing NPA officials that I was going to hold ...(indistinct) until further notice so that will be in 2012 I think on 9 July 2012 I was then called the headquarters, NPA headquarters VGM by the then acting National Director of Public Prosecutions my colleague Advocate Jiba. Upon arrival at the Head Office I indeed found her there with another colleague of mine, they are still a colleague, once a prosecutor always a prosecutor, Sis Togo Majakwene, Advocate Togo Majakwene and then indeed the lady who was going to take over from me was also present and then it was a mini meeting, very short meeting.

At that meeting my former colleague Advocate Jiba indicated that a decision had been taken that I step down and hand over to the lady who is currently, the colleague who is currently the Director of Public Prosecutions KwaZulu Natal then she thanked me for the excellent job that I had done in the NPA, I also thanked the colleague for the opportunity I had been given to test my ideas in the NPA and I also

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2019-02-01

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Adv. C.S. Mlotsha

undertook to prepare a handover report to my successor which I think I did within 24 hours then I stepped down as the acting Director of Public Prosecutions going back to my original position of that of a deputy and then I was in the office and then end of 2015 I caved in, I resigned then I joined the Pietermaritzburg Bar for pupillage as you have already stated in your introductory remarks. I think that is it, apologies for not being short to answer you.

ADV. BAWA: Ja we are going to make an effort to do that. Did you have any sign that this was coming?

ADV. MLOTSHA: I will say and answer the resounding yes because it was public knowledge, public knowledge in the sense that I used to receive smses, I used to receive emails, I have some of them here, some people giving me support in the sense that running through like a golden thread in all those messages and emails were saying be strong we can see what is happening to you, stick to the principle.

ADV. BAWA: Maybe, I think you misunderstand my question, prior to 9 July did you have any reason to query whether you were going to be removed from the position or not?

ADV. MLOTSHA: Not at all, not at all, not at all in the sense that some people in the legal fraternity were of the view that I had a very good case of a legitimate expectation in the sense that the expectation of being appointed permanently as the DPP was not self induced but was induced by both the institution as well as the ministry's office that I was serving at the time.

ADV. BAWA: Was there any indication in any form that Advocate Noko

was going to be appointed as the acting DPP?

ADV. MLOTSHA: Who Advocate?

ADV. BAWA: Noko, the person who replaced you as the acting Director of Public Prosecutions is that correct?

ADV. MLOTSHA: Yes, though these things happened six years ago but upon activation of my brain scanner from my longer term memory I can remember that flying fast and thick in the corridors there was a suggestion that my days were numbered and she as going to take over. On the basis and strength of those rumours I decided to transmit an email to the then acting CEO Karin van Rensburg, I am an open book I do not hide things, I put it to her in the email look flying fast and thick is this rumour I thought at some point the rumour will if ever sent that it would appear that the rumour is getting stronger and stronger as the time goes on.

Karin van Rensburg responded I think in a line or two saying no official position has been taken in this regard, consider yourself as the DPP KZN. Well I accepted her word in that regard, I think in a week or two then the decision was made that I step down, a decision that I indeed accepted and then I moved on with my life.

ADV. BAWA: Now if I go back to your affidavit ...

JUSTICE MOKGORO: What is going on. Please can you kindly try to correct that because it is not only is it disturbing to the proceedings it also distorts the recording, where are the technicians, kindly assist us. Please indicated if we could proceed. Okay thank you. You may proceed Mr Mlotsha.

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ADV. MLOTSHA: Thank you so much Chairperson.

ADV. BAWA: Right you then allude in the second paragraph of your affidavit, Mr Mlotsha before we go there maybe you should tell the enquiry what are those little black books you have got there.

ADV. MLOTSHA: So which means from the day of my appointment as the acting DPP, I bought myself these black books from day 1 until the last day of my acting in the position whatever that was happening, whatever meeting, whoever coming to my office, docket no docket I will record in these three black books. To cut a long story short the main objective to bring them here is that I had to refresh my memory, I am quite a busy Advocate at the Pietermaritzburg Bar and some of the things would have happened some years ago and I am no longer in the system NPA.

ADV. BAWA: Now if we go to the next part of your affidavit you say that ... (intervenes)

JUSTICE MOKGORO: Before we do that you say you brought those books here to refresh your memory but why did you find it necessary to make those recordings in those books then, was it also a memory thing?

ADV. MLOTSHA: Chairperson I am a fervent believer that spoken words are parasitic on written words with the view that written words are permanent you cannot scratch them away so I knew that at some point if I had a certain responsibility when called upon to account obviously with my busy schedule, for instance in KZN I think my span of control was plus or minus 726 prosecutors so and then again I think at the time I was relatively, I think I was 36 or 38 so I would make sure that I keep the

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records of everything.

ADV. BAWA: I am going to come back to the issue of your span of control, I want to take you to your second part of your affidavit, your second paragraph in the second sentence where you say between January 2012 and March 2012 while driving to Port Shepstone you received a call from Advocate Jiba who was acting as the NDPP at the time, can you elaborate on that.

ADV. MLOTSHA: Possibly before I elaborate on that I will have to give you this to avoid de-contextualising the contents of this affidavit. Firstly I was approached by the guy who commissioned the affidavit that will be General, I have been trying to get help to be able to pronounce his ...

ADV. BAWA: It is Tau.

ADV. MLOTSHA: Tau yes. When he first approached me he said look I am from the Hawks I am the general I want a statement from you, that was in 2015. When he said that to me I indicated to him that I was not prepared to cooperate, he wanted to know why, I said to him it was already in the media the number of the withdrawals that were taking place and some of the people were already making it a joke that the acronym NPA, National Prosecuting Authority, is now no longer National Prosecuting Authority but Non Prosecuting Authority so I was not prepared to file an affidavit for something that is not going to even see the light of the day.

Thereafter I think a few weeks or months he came back with Advocate Ferreira with a similar request then they wanted to know for me from them what is it that they wanted, I gave them a similar

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explanation that look there is now this perception of Non Prosecuting Authority, are you going to prosecute if you want statement from me then they assured me that everything was above board so at that time I did not have anything to rely on so I just dictated to my secretary from my recollection that it would have been between January and March of 2012 when I received a call on the way to Port Shepstone but after making this affidavit I had to gravitate to these black books with a view to establish the actual date.

When I went through these black books I was able to establish that the trips I made to Port Shepstone are two, one on 9 January 2012 to meet the prosecutors at Port Shepstone as well as the police, the detectives at market and the second trip was on 1 March 2012 so to cut the long story short it is my firm view that the day of the receipt of that call from my colleague would either be on 9 January or on 1 March 2010 but what I can stick my neck out for, for it to be chopped out for which I am sure of it was a trip to Port Shepstone when the call was received.

ADV. BAWA: Right and can you, you were driving at the time you received the call?

ADV. MLOTSHA: I was driving.

ADV. BAWA: And can you recall what the conversation was?

ADV. MLOTSHA: So as I was driving shortly after Marion Hill Toll Plaza I took a turnoff in the vicinity of the area called Queensborough, I think it was between 7 and 8 o'clock my phone rang, as it rang my colleague on the other side greeted me, that is Advocate Jiba, I also greeted her back. After the exchange of greetings she said to me where are you, I said

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look I am on the way to Port Shepstone, she aid pull over there is a matter I want to discuss with you, I said okay no that is fine. After that pulling over she said to me ai Simphiwe look there is a matter here that we need to enrol as we have got pressure. My immediate response to her was look I will have to first read the record, satisfy myself first, if there is evidence that warrants the enrolment of the matter in court and then she replied insisting that look with this one it is different in the sense that we have got pressure.

To which suggestion I responded that look if that is the position I do not think that I have got prosecutors who can do that matter or enrol that matter on urgency basis and then her response again was look I am checking in I am at the airport let me call you later and then I did not receive a call afterward about that matter.

ADV. BAWA: Was the nature of the pressure identified to you at the time?

ADV. MLOTSHA: No, no, no.

ADV. BAWA: Was the matter identified to you at the time?

ADV. MLOTSHA: No.

ADV. BAWA: Was any dockets identified to you at the time?

ADV. MLOTSHA: No I did not know the dockets.

ADV. BAWA: So you did not know whether it was a docket in your office or a docket that was not in your office.

ADV. MLOTSHA: Not at all.

ADV. BAWA: Was any other specifics discussed with you at the time?

ADV. MLOTSHA: No, no.

ADV. BAWA: Can you then tell me what transpired after that if we go to your next paragraph you detail you received a call from Advocate Chauke, sorry one more question, this conversation with Advocate Jiba did you record it in your black books?

ADV. MLOTSHA: Unfortunately that one I was driving I did not record it, I did not record it and unfortunately the phone on which I received that one because I had to keep it at home it got lost a few years ago, my beautiful red Nokia cellphone. I think I say there she did not call me later, a few days later I received a call, I think as I say I dictated the affidavit to the PA days ought to read months because reason why I am saying that is because if I go through these black books there are several meetings I attended at Head Office and the issue of this case again was never raised by my colleague. I think after that that will be 24, 25 January I was a VGM 19 and then 16 January, 1 April, 19, 23, 28, 29 and 30.

ADV. MOROKA: Are you saying at paragraph 3 it ought to read a few months later not a few days.

ADV. MLOTSHA: Ought to read a few months later. The basis upon which I am saying that is because if I look at, if I go through these black books I am able to discover that on the 24th and the 25th January 2012 I attended a meeting at VGM that was chaired by my colleague Advocate Jiba 19 January 2012 I attended I think it is a hate crime workshop for deputies that was addressed by one Professor from Unisa and then on 16 February of the same year I attended the DPP's media training, 1

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April I attended, I am not sure that I should call it a workshop but it was addressed by the current chief justice Mogoeng Mogoeng and then 19 April I attended a performance assessment meeting and then 23 May I attended the Amigo's case meeting with my team from KwaZulu Natal and then on 28 May it was an Eskom meeting that was chaired by my colleague Advocate Jiba the following day 29 May it was the DVB's meeting discussing the moderation of the performance assessment and then 3 May the presentation of the stats by another former colleague official Maralise from Head Office.

ADV. BAWA: And essentially those are the dates which your records show you were at the NPA Head Office which is known as the VGM building.

ADV. MLOTSHA: That is the position.

ADV. BAWA: Right now you then indicated you corrected it and you said a few months later you received a call from Advocate Chauke, can you recall more or less when you received that call?

ADV. MLOTSHA: Again in respect of the call in the same paragraph and the subsequent paragraph the date of the call I received from Chauke is not reflected here but the date will be in May a few days before that few days before 29 May 2012, how I know the date is because I was chairing a meeting of the deputies and the chief prosecutors in KwaZulu Natal when I received a call I had to leave the meeting and attend to it.

ADV. BAWA: Okay and can you recall what was the substance of the call?

ADV. MLOTSHA: When my colleague Advocate Chauke called me he

greeted me, I greeted him chief how are you and then he responded and then he told me that he had been instructed by my colleague Advocate Jiba to send a team of prosecutors to prosecute the accused in the Cato Manor so that is the first time I am beginning to get just a faint idea what the case is possibly about and then he further stated that there were sensitive security issues that were surrounding the matter and then as he stated that I responded to him that in recognition of the fact that at any rate I was going to attend a meeting at VGM let us discuss the matter further when the two of us attend that meeting. Then the call was terminated and then I returned to the meeting then the meeting proceeded with the prosecutors and the deputy's in KZN.

ADV. BAWA: So you then come to the meeting at the VGM on 29 May and as you indicated to us you were actually at the VGM building for a few days.

ADV. MLOTSHA: Let me put it this way, I was at VGM on 28, 29 and 30 May 2012 however on the, what distinguishes the 28th from the other days is the fact that the meeting of the 28th was branded as the Eskom meeting which was being chaired by my colleague Advocate Jiba but the meeting of the following day the 29th it was a moderating committee meeting constituted by the DPP's from different jurisdiction in the country to the exclusion of my colleague Advocate Jiba and I see the meeting of the 30th was a meeting of the presentation of the stats by Maralise in terms of which as DPP's we had to make a call in terms of making an assessment whether we are still on the right track in terms of the NPA measurable objectives conviction rate, withdrawal rate and so on and so

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forth.

ADV. BAWA: Okay so what transpires you and Advocate Chauke agreed you would discuss this matter at your meeting at the VGM building and what then occurs between you and Advocate Chauke there, take us through that.

ADV. MLOTSHA: So indeed on 29 May 2012 while the meeting was in progress the DPP's meeting my colleague Advocate Chauke stepped out for a few minutes, he returned to rejoin the meeting and then touched me on my shoulder and then he said acting NDPP want to see us in her office. As a very docile official in the organisation then I followed him, we went to my colleague's office we found my colleague in her office sitting at her desk. She greeted the two of us, we greeted her back and then Advocate Chauke indicated again that look I am not at liberty to discuss everything surrounding the case in the light of the fact that one there are security issues surrounding the Cato Manor case and then two at the moment I have got a very strong sense that my investigation with my team of prosecutors will lead to the arrest even of the Advocates in the office of Mr Mlotsha and then the response from my colleague Advocate Jiba did not say anything to that statement and then Advocate Jiba stated that look Simphiwe I have got an opinion from Gerhard Nel to the effect that in the light of the fact that you are the DPP KZN and prosecutors from outside will be prosecuting in your division in terms of Gerhard Nel's legal opinion you will have to sign the delegation for those prosecutors and then to sign the indictment that will be arraigning the Cato Manor accused in your division.

Then I agreed, I think when I was agreeing I responded by stating that look with the issue of the delegation I will at some point satisfy myself if constitutionally and legally it is legit to sign the delegation, I will sign the provisional delegation, unfortunately I could not contact those prosecutors that I gave the delegations to refresh my memory in terms of the date but as far as I remember those delegations were endorsed provisionally because of that.

And then with regard to the indictment I indicated that I do not have a problem at all in signing the indictment provided it met one requirement. Requirement I stated in no uncertain terms was the requirement that the indictment must be accompanied by the memo and the, or the report that will be detailing the evidence that implicates each accused in the case and then implicate the accused as a collective so that with certitude I can be able to sign the indictment so that ended our discussion. I left the office I rejoined the DPP's moderating committee meeting. If I am not mistaken Advocate Chauke was a few minutes behind me, later on he also rejoined the DPP meeting.

ADV. BAWA: Can I stop you there, how much contact up to that point have you had with Advocate Jiba?

ADV. MLOTSHA: In relation to?

ADV. BAWA: To generally, you are the DPP she is the NDPP, what is the nature of the relationship like, was there any bad vibes, was there any, I do not want to lead you I am just trying to find out what was the nature of your relationship?

ADV. MLOTSHA: Our relationship has always been as smooth as silk, I

take her as my big sister, I joke with her, I make her laugh, we will talk about my running she will tell me about the running of her husband as well, our relationship has always been above board we have never encountered a problem even at the time when she instructed me to hand over to the lady I never held any grudge against her, I never had any axe to grind with her even today I am fine with her, life moves on.

ADV. BAWA: And your life has moved on.

ADV. MLOTSHA: Indeed yes.

ADV. BAWA: Now did you ever see this opinion that was represented to you as having been provided by Gerhard Nel?

ADV. MLOTSHA: As I indicated a meeting was, a mini meeting, a short meeting ...

ADV. BAWA: How long was it?

ADV. MLOTSHA: Eish maybe a few minutes because it was the greeting and then my colleague Advocate Chauke explaining his embedded concern about me being present when the entire nitty gritty bolts and nuts of the case are discussed because of him having to gravitate even to make arrest in my office and then my colleague saying opinion you signed this so I would say maybe five to 10 minutes.

ADV. BAWA: What then, the meeting ended you went back you eventually returned to Pietermaritzburg and then I want to take you to a series of emails which is attached to your affidavit and I am going to hand up one, the emails because of the way it was printed are not always in sequence and I am going to let Advocate Mlotsha take us through it in the sequence and there is one which appears not to have

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been provided in the sequence which we ascertained this morning which I am going to hand up and I think Advocate Mlotsha has the one at 18:38 on 12 June to do that but if I look at the, with some sort of chronology you say in your affidavit that on 12 June Advocate Chauke's personal assistant Mme Shuping emailed you the indictment without the prosecutors memo and report, do you have your emails there Advocate Mlotsha.

ADV. MLOTSHA: If you may bear with me I am also trying to orientate myself with the file. Yes I have found the email and I think, I will have to confirm with you if you are making reference to email appearing on page 408 of the bundle?

ADV. BAWA: So the first email is the one sent at 12 June 2012 at 13:29 coming from the person whom we identified as the executive assistant of the DPP South Gauteng correct?

ADV. MLOTSHA: That is the position.

ADV. BAWA: Right and she emailed you the indictment without the prosecutor's memo report.

ADV. MLOTSHA: That is the position.

ADV. BAWA: Right and pursuant to that if we go to page 405 in the list ... (intervenes)

ADV. MLOTSHA: Before we move on as you can see on page 408 the lady is Mamiki Shuping sending that email 12 June to Cyril Mlotsha it is endorsed indictment Cato Manor. Unfortunately I could not print out the indictment that was attached to that email however if you look at another email on the same day, if you may bear with me.

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ADV. BAWA: You will see that at 405 at the bottom.

ADV. MLOTSHA: 405 at the bottom. Oh thank you so much Chairperson. So as soon as I received that indictment you can see no explanation nothing just the indictment no report, no memo as per the last agreement at the meeting of 29 May 2012 then I picked up the phone to call my colleague Advocate Chauke, I greeted him chief did you see your PA has sent me an indictment without the memo or the report as per our agreement and VGM it is then that I started having problem over the phone, him interrogating, probing me now what report are you talking about, what memo are you talking about I do not understand you then I dropped the phone, I was calling from the landline.

After dropping the phone, as I say I am a man of record, I decided to commit him in writing. I transmitted that email dated 12 June 2012 appearing on 405 you can see I received his at 13:29 PM.

ADV. BAWA: It is the one at the bottom.

ADV. MLOTSHA: And then on 405 I respond, I transmitted an email to him at 15:21 same day, in that email I am consistent I say to him, dear Advocate Chauke, our telephonic conversation today refers, kindly furnish me with the prosecutors memo or report so that I can have a wrap around view of the matter. The report must also have the Police Stations and the case numbers so that we can open up the DPP's file then I thanked him in advance. So that is the difficulty I found myself languishing in, in the sense that I was still at sea in terms of having the information about the case, no case number, no Police Station, even ja so that is what I transmitted to him.

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Then you can see that the same indictment that did not have a report and the memo on the evening of the same day he transmitted it to my colleague Advocate Jiba.

ADV. BAWA: That is the one that it just handed up.

JUSTICE MOKGORO: Sorry before you go there we are trying to sort out our own papers, Miss Bawa I have here page 407 which really is a repeat of what you have just given us. And then I have at the bottom of 407 is the same letter that appears at 405.

ADV. BAWA: So for purposes of this you are going to have some duplicates because it is emails that come from different source.

JUSTICE MOKGORO: But are they different?

ADV. BAWA: No, no they may be, there are duplicates in this because it is, you know what happens it is a continuum and then it is there and we did not want to disturb it so what I am trying to do in leading Advocate Mlotsha is taking you through a time chronology of a day so be directed to the emails he is taking you to and accept that there are duplicates in the chain.

JUSTICE MOKGORO: It is a trail of emails.

ADV. BAWA: It is a trail of emails.

JUSTICE MOKGORO: We must be careful they are not, it is because I just happened to be at 407 I should have gone to 405.

ADV. BAWA: No, no so listen to where we are trying to direct you, accept there are duplicates because every time an email of a particular day got printed the previous ones came with it and so I am trying to see

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if I can keep some order in it without actually trying to destruct it and scratch through things. So if you go back to 405 for the page that I handed up which I think maybe for record purposes let us mark it 405A right, you will see that your evidence was that at 18:38 PM on the 12th Advocate Chauke transfers the indictment to both you and Advocate Jiba.

ADV. MLOTSHA: That is the position. And then you will notice that as that email was sent to me and my colleague Jiba after 18:00 on the same day at 17:14 in the afternoon that will be the email appearing on 405 an email that was sent to me copied in, in the email is my colleague Advocate Sis Toko Majakwene then the lady there Palesa MP Matse was the PA to my colleague Advocate Jiba and then copied in as well is Advocate Sello Maema, I assume he is in the North West division as well as Advocate Raymond Matenjwa.

ADV. BAWA: When you get this email do you know why Advocate Maema and Matenjwa is included in the email trail?

ADV. MLOTSHA: No explanation in the email itself as to why there was necessity to copy them in as well so you can see that the introductory remark of the email is the same question I am saying I was asked over the phone, the question that galvanised me to terminate the call and resort to writing. My colleague Advocate Chauke is asking me who is the prosecutor that you are referring to, I have forwarded to you the indictment which has all the detailed summary by which you ought to be in a position to open your office file there you can see we are consensus *ad idem* with him in terms of the non existence of the file relating to this

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matter.

I also forwarded to you details of the inquest of police case numbers etcetera to which you referred to Advocate Toko Majakwene for reasons that I do not know and understand, if I pause there as you procedurally if I may take you two or three steps back a docket will be forwarded to the office of the DPP for decision, murder, robbery, rape, whatsoever. In an instance where it involves a murder and then a decision declining to prosecute procedurally invariably the office of the DPP will have to send the affidavit, statements and documents relating to murder to the Magistrate office with the instruction to the prosecutor to send the same to hold inquest.

So if I am receiving this email from my colleague Advocate Chauke saying he wanted to reopen the inquest at the time I quickly laid a finger on the Inquest Act and as I browsed through the Inquest Act I realised that no man it seems only the Judge can reopen the inquest so it was against that background that I decided to respond copying in Advocate Toko Majakwene because Advocate Toko Majakwene at that time was the acting National Prosecution Services head because I also wanted to take her on board so my colleague Chauke continues the indictment with respect, gives you the whole view of the matter which I did not agree, you are kindly and favourably requested to please discuss any issues if any with me.

If really, I really do not see any need for me to give you any report other than what I have forwarded to you already, please if I understand, make me understand, I do not want to play you or undermine your

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jurisdictional authority in any way whatsoever. There are serious issues of security in this matter which if necessary you will be briefed about which are not relevant to you and I cannot expose such to you at this stage. There you can see the attempt to exclude me from the matter same reason being given security issues. I have also learnt with utter dismay that you have now issued an instruction to the senior prosecutors that all dockets that are with us must be brought to you. What is not happened here my brother please if you have any issue again talk to me or arrange that we see the acting NDPP urgently, that is my colleague Advocate Jiba.

Another issue of concern to me is the delay in you issuing the instruction of the reopening of the inquest in view of the fact that you have been requested to sign the indictment which must be preceded by your decision to reopen the inquest.

ADV. BAWA: What in your view did you require for purposes of reopening an inquest?

ADV. MLOTSHA: That is why I had to transmit an email to copy in Advocate Toko Majakwene because as far as I saw at that time that did not fall within our Province as a prosecutor but you will see the emails later on. If this makes you uncomfortable indicate so that I may urgently take the matter up with the acting NDPP as well as the Minister.

ADV. BAWA: Which Minister did you think he was referring to at the time?

ADV. MLOTSHA: At the time I never had any idea which Minister reference was being made to, to date I do not know whether it was the

Minister of Justice or whoever. I do not want to step onto your toes, I was informed that you agreed and arranged with the acting NDPP for somebody from outside to do the prosecution of this matter. If you have now a change of heart please indicate so that we may resolve it as soon as possible. You can see now that the atmosphere is thickening between the NP officials. Then I respond on page, the following day I did not receive that email on the, I did not read it on the same day, I came back in the office the following day and then the following day after reading his email I thought that it was appropriate for me to respond.

ADV. BAWA: And that response is at page 406 it is the email sent on 13 June 2012 at 09:12 and you send it to Advocate Chauke, Jiba and Majakwene correct.

ADV. MLOTSHA: That is the position. So as I was responding here I thought there was quite a number of principles that I had to enunciate with colleagues so I indicated to him, dear Advocate Chauke I operate from the premise that the mission of the NPA enjoins us to be guided by the constitution. The last time I cast a glance at the constitution I gleaned that its preamble encapsulates that all the rights enshrined in the constitution have to be respected, protected and promoted. This includes the right to human dignity which is affirmed by section 10 of the same constitution.

Paragraph 2, I think it is significant that I alert you or I bring it to your consciousness that as a South African citizen that this constitution also renders me a cast iron guarantee to this right. I am acutely aware that as we live in a fast paced over- stimulated and I want it quick society

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there is always a temptation to arrive at a decision that is based on pre-conceived ideas. *Argumentum ad hominem* principle is a well established principle in our law ...(intervenes)

JUSTICE MOKGORO: Can I stop you there and ask Miss Bawa to direct you to parts of the response that she wants you to talk about because we already have it you do not need to read through it.

ADV. MLOTSHA: Thank you so much.

ADV. BAWA: I want you to elaborate on why you felt it was necessary especially in paragraphs 1 and 2 and you come to the next part you have levelled serious allegations against me and take us through as to what you meant by those allegations?

ADV. MLOTSHA: So that was the allegation that advocates in my office were going to be charged, I viewed that very seriously, if one does not have evidence and I doubt if anybody has ever been charged and I think again here it indicated that he got a sense that there was bias in terms of protecting the accused in the matter, I think those are the allegations he made even though I did not put them down here.

ADV. BAWA: Okay you then give him some words of wisdom in paragraph 3 and we will skip those and you then deal with the practice in the NDPP's office for the signing of a section 2 certificate, what did you mean by that in paragraph 4 which is the next page of your letter and I think for record purposes we should probably mark that page 406A it had been or should have been inserted into your bundle.

ADV. MLOTSHA: So in paragraph 4 that was an eloquent and conscious effort I was trying to make to get a report from him because I was finding

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myself in a difficult situation to sign the indictment with no report that was explaining what was happening in the matter but if I may hasten to add that the quality of the indictment that was given to me linguistic skill utilised in the indictment to articulate the charges it left much to be desired which gave me a very deep sense, a very deep sinking feeling to just sign having not seen the report at least that motivates for the charging of the accused.

ADV. BAWA: You in paragraph 4 that in order to enrol the matter in the High Court we need two things, DPP's file and a Judges file and in order to open up the DPP's file we need the name of the Police Station, the cas numbers and the names of the accused. Only the signed original indictment is required for the office of the registrar to open up the charge file and so the implication being you were not provided with those details, the name of the Police Station, the cas number.

ADV. MLOTSHA: That exhibits that I was still in the dark in terms of ...(Indistinct) and the detail, I did not have all those details as to be able to open up the file.

ADV. BAWA: So you then regarded this as you called it forensic ambush and then you go on in your paragraph 5 and you deal with the instruction that you issued to senior prosecutors in that regard right.

ADV. MLOTSHA: Yes.

ADV. BAWA: And you suggest that, it was his suggestion that the inquest must be reopened correct?

ADV. MLOTSHA: If you look at his initial email ja that is the position.

ADV. BAWA: So it was pursuant to that that you pointed out to him that

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the inquest records in the DPP office was, that the inquest records was not kept at the DPP office but at the criminal courts and hence you were calling for them, is that correct, that is what you sought to convey.

ADV. MLOTSHA: Yes, yes.

ADV. BAWA: Right you then referred to an embarrassment that you had at the soca indaba the previous week, can you elaborate on that, you attended a soca indaba where did it take place, tell us what is a soca indaba?

ADV. MLOTSHA: Soca was one of the acronyms that were used in the NPA, I think it was a Sexual Offences and Child Abuse Unit previously headed by Advocate Toko Majakwene later on at the time of my departure, if my memory serves me well headed by Advocate Pierre Smith so there had been a workshop at OR Tambo I think at Southern Sun Hotel, if my memory serves me well, to discuss the issue of sexual offences, I think it was going to be a two day or three day workshop and I think the second day of the workshop I stumbled upon another colleague Advocate Dawood, when I stumbled upon him he said ...(intervenes)

ADV. BAWA: When you say Advocate Dawood are you referring to Advocate Dawood Adam?

ADV. MLOTSHA: That is the position. So when I stumbled upon him he said I take it Simphiwe you are joining us in a meeting that is intended to discuss the security issue regarding the matter in your division, then I asked him which matter, he said the Cato Manor matter then I just laughed it off and then I left him. As I came out of the bathroom I stumbled upon another colleague from security and risk, I understand he

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is no longer in the NPA now, Mr Cammy, I could not recall his surname at the time of writing the email, he was from PE if I am not mistaken. When I stumbled upon him he asked me the similar question, no, no, no he did not ask a question instead he remarked Simphiwe please wait for me because we are all going to the same meeting, then I asked him which meeting are you talking about, he made reference to the same meeting that Dawood had made reference to so I took that as an embarrassment that all these discussions were taking place involving the division that I was heading at that time but I was being excluded so that is what I mean if I say to him I felt so embarrassed.

ADV. BAWA: And you had on the previous day met with Advocate Chauke.

ADV. MLOTSHA: We were all attending the same workshop at OR Tambo the soccer workshop.

ADV. BAWA: Was Advocate Jiba in attendance as well?

ADV. MLOTSHA: No I do not remember seeing her at that meeting, I do not remember, I think she was not present at that meeting.

ADV. BAWA: You then make reference to a meeting that was supposed to have happened with the AGP yesterday, and remember this email is now being sent on 13 June, what were you referring to?

ADV. MLOTSHA: What had happened is when I told him that, after signing the indictment after the opening of the file I told him that it will be more apacit if I take him to the acting Judge President who is now the Judge President that is Judge Japie, to introduce to him in the light of the fact that he was coming from another division and then to which

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suggestion he agreed. And then I contacted the Judges registrar to pencil an appointment for us and then my colleague never rocked up, he never gave me any excuse why that did not happen. I was also again expressing to him that ai brother this I felt also so embarrassed about the incident.

ADV. BAWA: Right the response that you got to this email is on page 406.

ADV. MLOTSHA: But one thing you need to note in that last sentence of paragraph 6 that indicated to him that I saw the AGP alone even though I know that you will cast aspersions upon it, I also put that to him.

ADV. BAWA: And why would you do that?

ADV. MLOTSHA: Seeing these exclusions from the discussion of the matter that is in my division I felt that maybe I was also the prime suspect that is why I had to explain to him the reason why I went alone without him present because the registrar had already confirmed with me that the acting Judge President was waiting to see us so I had to explain it to him that I went alone on that basis that the appointment had already been made.

ADV. BAWA: But you did not seriously thing that because they would hardly be asking the prime suspect to sign the indictments.

ADV. MLOTSHA: Come again?

ADV. BAWA: They were asking you to sign an indictment.

ADV. MLOTSHA: That is the position.

ADV. BAWA: And if you were the prime suspect they would not seriously

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be asking you to sign an indictment.

ADV. MLOTSHA: I agree with you, in hindsight we all become wiser.

ADV. BAWA: If we go to page 406 you get Advocate Chauke's response which he sends to you at 10:32 and he includes Advocate Jiba and Majakwene in this email chain.

ADV. MLOTSHA: Page.

ADV. BAWA: 406.

ADV. MLOTSHA: Oh yes, yes, yes.

ADV. BAWA: And there is very little detail in that email other than that he notes your concern, tenders an apology, does not offer you any dockets, case numbers, accused etcetera is that correct?

ADV. MLOTSHA: That is correct.

ADV. BAWA: Alright the following email which you then get is on page 410 is that correct at 11:20.

ADV. MLOTSHA: That is correct.

ADV. BAWA: Right that is just less than an hour later.

ADV. MLOTSHA: Yes, yes that is the position on the 13th.

ADV. BAWA: And in that email we have Advocate Jiba, Majakwene, Matenjwa, Maema, Fuchana and other people included in that email correct?

ADV. MLOTSHA: That is correct.

ADV. BAWA: Right and he then makes reference to a memo dated 18 May 2012 refers, do you know to what he is referring?

ADV. MLOTSHA: I think that will be the email I was unable to retrieve,

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the email wherein he was telling me to reopen the, so joh if need to be brutally honest with you I do not recall this memo. At the time when I received the email I did not pay much attention the moment I realised that he was apologising I was quick to accept his apology so that we could move on and work as colleagues and brothers.

ADV. BAWA: But look at the next paragraph, kindly take note that I hereby withdraw the request for you to consider reopening the inquest which is listed on the memo.

ADV. MLOTSHA: Yes.

ADV. BAWA: So on the basis of that it related to the list of files that he had asked you to reopen the inquest file.

ADV. MLOTSHA: Yes, yes I agree, I agree.

ADV. BAWA: And he then says to you there will be no necessity for them to be reopened at this stage, I would however request copies thereof to be, I think the word is there under current investigation team will approach the office or the offices of the Magistrate for such assistance and I will let you know if we are unable to get any assistance.

ADV. MLOTSHA: Yes.

ADV. BAWA: And that was the end of it.

ADV. MLOTSHA: That was the end of it, I think there is also another email where I was giving him an assurance that whenever he need help I will always be there.

ADV. BAWA: Right and at that juncture when you received that email were you appraised of the fact that certain advocates had been

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appointed to prosecute the Cato Manor prosecution in your division, Advocate Maema and Matenjwa in particular, I am now talking about June 2012.

ADV. MLOTSHA: The problem is I could not retrieve the provisional delegation that I had signed but I remember that I had already signed the provisional delegation for them but I cannot remember the date.

ADV. BAWA: Alright and for the record we have not been able to find that provisional delegation in any document that has been provided to us.

ADV. MLOTSHA: I was a bit hesitant to conduct my colleagues to give me those provisional delegations that I signed.

ADV. BAWA: Right what do you next hear about the Cato Manor prosecutions, this is 12 June 2012 you leave office on 9 July between 12 June and 9 July are you approached about the Cato Manor prosecutions at all?

ADV. MLOTSHA: Yes as you can see thee emails were exchanged some time mid June and then I stepped down on 9 July 2012 and then after stepping down I was just following the case in the newspapers as well as the, because I had already developed keen interest. I also looked at the judgment that was delivered by the Judge in the division in the review matter Booyesen vs the Acting National Director of Public Prosecutions, I think it is Judge Gorvin who handed down the judgment then that was it.

ADV. BAWA: You alluded earlier on to your span of control and the inference that sought to be drawn that there were advocates in your

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office that were implicated as a consequence of which others had to be brought in.

ADV. MLOTSHA: Yes.

ADV. BAWA: What is your comment on that?

ADV. MLOTSHA: If one were to make that suggestion I would not agree with it on the basis of the fact that it will be exhibiting lack of understanding on how NPA office is structured in KZN. Shortly, the DPP has got two offices one in Pietermaritzburg, one in Durban, the main being in Pietermaritzburg. Traditionally in the olden days they used to be the most senior deputy heading the DPP office in Durban currently I understand it is Advocate Cherisa Ramothar. In the office of the DPP Pietermaritzburg I think there is plus or minus 30 to 50 deputies including deputies, senior advocates, advocates and officials the same way the office in Durban. Further than that you will have Organised Crime headed by a senior deputy Advocate Vanie Govender at the moment and then you will have a specialised commercial crime component.

During my time I think it was headed by the gentleman who took an early retirement Advocate Willie Miller so if one were to say there are advocates implicated I would not accept it if it is presented as a generic sweeping statement, one will have to be specific in terms of these components that I am presenting here which one will be in close proximity with the accused to give a better understanding, for one to have a better understanding.

ADV. BAWA: I want to read a statement to you and then I want your comment on it.

The public outcry called for the reaction of the then police Minister honourable Nathi Mthethwa, acting Lieutenant General Mnkonzazi to establish an investigation task team to investigate the public outcry which was as a result of the killings which were caused by the members of the Cato Manor Police Station, so gruesome were the acts of the members of this unit resulted in the police unit being called the death squad or a hit squad. Pursuant to a meeting with the members of police who were appointed to investigate these crimes as an acting National Director of Public Prosecutions at the time I set up a national prosecuting team to work with the police. The reason why a national prosecuting team was establish is because the then KZN acting DPP pleaded that the suspects were known and have worked closely with members of the sub unit and some of the cases have fallen through the cracks of the provincial prosecutors.

Can I have your comment on that?

ADV. MLOTSHA: It is just that I am trying to understand whether I should give a short answer or a long answer, I do not agree with that statement.

ADV. BAWA: I think you must give a bit of a longer answer advocate, at my one peril I am suggesting that.

JUSTICE MOKGORO: I think we would also appreciate that.

ADV. MLOTSHA: Okay first and foremost whatever case that I would have dealt with in the Province KZN will feature in one of these black books, I never had any information about the case and then (2) if a prosecutor from another division is sent to another division the division to

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which that prosecutor is sent is responsible for they call it, they use the acronym SNT, subsistence and travelling, accommodation and so on and so forth. At no point did I ever sign those documents and then (3) in KwaZulu Natal I handled very massive projects at the time, there had been instances where prosecutors were prosecuted by colleagues in my Province, there were instances where my colleagues were prosecuting original Magistrate in the province, there were instances where politicians were prosecuted by advocates in my office so I really do not understand.

So to cut a long story short and what renders that suggestion anaemic is the fact that there is no date on which I made that plea there is no place that is given at which I would have made that plea it is just a generic plea that is purported to have been made by me it would have assisted me if there is also some indication as they say devil is in the detail, in what form was that plea received I never made any plea. As you can see these emails at all material relevant times I was at a loss in terms of het bolts and nuts, the mechanics of the case that was at hand until I stepped down as the DPP acting.

ADV. BAWA: So a short summing up of your evidence is, with reference to that statement you never made such a plea to the acting National Director of Public Prosecutions.

ADV. MLOTSHA: I never made a plea and again we will have to go to the email that Advocate Chauke sent to me. In that email there is no suggestion of plea having been made by me to acting NDPP in that email he states in no uncertain terms that the information he was given

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at the time was that I had agreed in the sending of the prosecutors from outside to the Province KZN. In that email the issue of a plea by Advocate C.S. Mlotsha the acting DPP is never featuring, I am hearing that for the first time I must be honest with you that I made a plea.

ADV. BAWA: Right I want to, you have been given two affidavits and I want to take you to each of those affidavits, the first affidavit which we will pull up onto the screen is to be found in folder J and it is number 88 which is the affidavit of Gladstone Sello Maema which we know is one of the, which you would now know is one of the prosecutors, Deputy Directors of Public Prosecutions from the North West Province that was deployed to deal with the Cato Manor prosecution in KZN, in fact he was the lead prosecutor correct?

ADV. MLOTSHA: Correct he is also my comrade in the sense that he is also a comrade runner.

ADV. BAWA: Yes we always deal with these things in running terms do we not Advocate Mlotsha. I want to take you to paragraph 3 of that affidavit and for the record this affidavit was deposed to on 16 January 2015 and I obtained this from the docket which Advocate Ferreira had prepared in relation to the perjury charges which were then on the go and paragraph 3 reads, in March 2012 which is some three months before the exchange you have with Advocate Chauke correct?

ADV. MLOTSHA: That is the position.

ADV. BAWA: He says, I was informed by my DPP Advocate Johan Smith SC about the request by the then acting DPP Advocate Jiba to form part of a team that would peruse a number of dockets which were originating

from the KZN division which later became known as the Cato Manor prosecution. The reason that was given at the time by the ANDPP was then that the acting Director of Public Prosecutions KwaZulu Natal Advocate Simphiwe Mlotsha had approached her with a request to appoint a prosecutors from other divisions to look into the matter as prosecutors in his division had worked over a number of years closely with the members of the Cato Manor section of the Durban Organised Crime Unit.

The request was that the team of prosecutors who were unknown to the suspects and who were unfamiliar with the fact of the matter be appointed to decide the dockets. I was asked to be the lead prosecutor assisted by DPP Advocate Raymond Matenjwa and four others who were identified were all based at the DPP office South Gauteng division under the leadership of Advocate Andrew Chauke. There was a meeting then held on 9 March with the team members Advocate Chauke and Advocate Mossing and a communicae was then sent to Advocate Smith via one Jackie Lapinka who I understand to be in the office of the acting DPP and I want you to comment on the allegation that is made in the, that this was being done pursuant to an approach from you for a request.

ADV. MLOTSHA: Before I respond it would appear that there is an attachment marked as M1 that I think it will be appropriate to also look at it.

ADV. BAWA: It is, I have it let me just think for a minute, give me a second. Advocate Mlotsha ...(intervenes)

ADV. MLOTSHA: In the interest of time.

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ADV. BAWA: In the interest of time let me say that that was a communication which was from advocate, from Miss Lapinka to the DPP of the North West reflecting the need for Advocate Maema to be deployed, he did not include you in it but for record purposes I will find it I just cannot lay my hands on it right now.

ADV. MLOTSHA: Thank you so much. My initial answer stays ...

JUSTICE MOKGORO: ...(microphone not on)

ADV. BAWA: We do have it, it is under what we call Maema docs which my junior will tell me it is at G, folder G, wait it is J156 and they will put it on the screen and it is a document to Advocate Smith from Miss Jackie Lapinka the manager executive support of the NDPP dated 19 March 2012 and I am going to ask somebody to just bring you a computer closer so you could read it, Sanan could you just, my junior on my left will take it. Right and it basically advise that the acting NDPP has noted the contents of the said communicae, the said communicae is a communication enquiring about Advocate Maema's need to be part of this. Advocate Maema's role will be determined by events as the matter progresses, please note that the matter is a national project and therefore cooperation from all relevant and identified officials is important and should not be hampered. Travel and accommodation will be borne by your office and this clarifies your concern.

What do you know about the national project?

ADV. MLOTSHA: I never knew it to be constituting a national project however that communication from, to Advocate Smith North West DPP from Jackie Lapinka never makes reference to me having with cap in

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hand the way I understand it now, pleaded to have the assistance, no mention of me in this communication.

ADV. BAWA: No.

ADV. MLOTSHA: None.

ADV. BAWA: No.

ADV. MLOTSHA: The same way the issue of budget I was not aware.

ADV. BAWA: Right so if I sum up you did not agree with what is contained in Advocate Maema's affidavit.

ADV. MLOTSHA: I do not agree.

ADV. BAWA: In so far as it relates to you.

ADV. MLOTSHA: That is the position.

ADV. BAWA: Right now I want to take you to another affidavit that has been provided to you which is an affidavit deposed to by Advocate Mossing and that affidavit was deposed to by Advocate Mossing also in, I think it is a little bit later, 5 May 2015, do you have it in front of you Advocate Mlotsha, I think it is just after that flag, I think there is a white flag and a red flag, it folder J92 on the screen.

ADV. MLOTSHA: Yes I found the document we seem to be on the same page.

ADV. BAWA: Right and Advocate Mossing in this affidavit says, he explains his involvement how it came about, how he comes to make this affidavit and then in paragraph 7 is where I want to take you to in this affidavit in which he says, in the course of the execution of my duties I attended a meeting on or about 8 March 2012 at our offices with three

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members of the IPID (?) who I gather from the NPA concerning an investigation that they were conducting into the crimes alleged to be committed by the SAPS members from Cato Manor and he then annexes and I am going to take you to this handwritten notes in a moment, annexes handwritten notes of the meeting.

And then he says, the reference to a meeting with the Minister of police and the acting National Commissioner of police Vilakazi is that I was informed by the said members that they being IPID and the Hawks had a joint meeting with the Minister a week ago whereby the Minister expressed his dissatisfaction with the slow progress made by the two investigating units, something that had been pending since December 2011. Were you invited to these meetings Advocate?

ADV. MLOTSHA: No.

ADV. BAWA: Were you aware that these meetings were happening?

ADV. MLOTSHA: No.

ADV. BAWA: It was apparently decided during that meeting that the two units should conduct the matter jointly and that they had been working throughout the previous weekend. The reason they came to see the acting NDPP was that they needed to rope in prosecutors to handle the matter urgently and that the prosecutor seemingly promised by the acting DPP of KZN Advocate Mlotsha was not materialising. I want to stop there for a moment, did you have any contact with IPID, anybody from the Hawks at which you were asked to produce prosecutors prior to 9 March 2012?

ADV. MLOTSHA: Not at all you can see my lower jaw is dropping I am

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surprised even the promise is given in the indictment I gave to the police and never, and I never kept the promise, I never did that and the mention of those police does not appear in this affidavit, as to who are those police or police officials who say I made a promise to them and I was not keeping my word.

ADV. BAWA: So you do not know where that information comes from?

ADV. MLOTSHA: I do not know where the information came from, I never attended the meeting, I was not aware of any meeting having taken place about the matter.

ADV. BAWA: They then mention that seized was 51 cases and then they go on and they deal with that and I just want to take you down to the handwritten notes to which he refers to in this meeting which you will see is annexure B to the affidavit and for clarity sake I am going to hand out so that we do not waste time, a typed version of these handwritten notes which you see has annexure B to this affidavit and it is a shorthand note which he says he kept and he saw to describe it in his affidavit but I want to take you to one aspect of this. In the first line he talks about a meeting for the Minister of police SAPS and the acting National Commissioner Vilakazi correct.

ADV. MLOTSHA: I see that in his affidavit.

ADV. BAWA: And I want to confirm that you had no knowledge of this?

ADV. MLOTSHA: No.

ADV. BAWA: Were you party to any such meeting?

ADV. MLOTSHA: No.

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ADV. BAWA: You will recall that in the email that you received from Advocate Chauke he also made mention of reporting to a Minister and you in fact indicated to us, you did not know who he was talking about.

ADV. MLOTSHA: That is my evidence.

ADV. BAWA: There is a line that is underlined which says challenged to rope in NPA pros, not submit to KZN DPP but to NDPP. Do you see that that is the bold and underlined.

ADV. MLOTSHA: What page is it?

ADV. BAWA: No I am talking about the type, the typed minute, you have been given a copy of the typed minute. Are you at any point during this process prior to your, sorry I was taking you to the first line in the email after the names and the fourth line.

ADV. MLOTSHA: Yes I see merge two teams mandate, matter pending since December 2012, 2011 my apologies.

ADV. BAWA: Wants arrest by this week, worked throughout weekend, do you see that?

ADV. MLOTSHA: I see that.

ADV. BAWA: What do you conclude by this Advocate Mlotsha?

ADV. MLOTSHA: It gives an impression of a pressure of some sort on the prosecution to execute the arrest.

ADV. BAWA: Advocate Mlotsha I want to take you off this issue onto something else. You indicated to us earlier on in your evidence ... (intervenes)

ADV. MOROKA: Before we go there can I just understand a few things,

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matter pending since 2011, do you know which matter reference is being made to?

ADV. MLOTSHA: I am in the dark I do not know.

ADV. MOROKA: Do you know anything about warrants of arrest, who would sign the warrants, who would initiate them.

ADV. MLOTSHA: No idea.

ADV. MOROKA: No, no, no who would, do you know in any given situation would it depend on whether it is in a Magistrates Court or in the High Court?

ADV. MLOTSHA: Under normal circumstances there will be an affidavit by the Investigating Officer and the prosecutor take that to the Magistrate for him to authorise the warrant of arrest but in this scenario I was not aware of the warrants of arrest.

ADV. MOROKA: You know nothing about it.

ADV. MLOTSHA: Yes.

ADV. MOROKA: Thank you.

JUSTICE MOKGORO: Who are the people whose names are mentioned at the top right hand, left hand corner, with those cellphone numbers?

ADV. MLOTSHA: They are all strangers to me I am seeing them for the first time I have never met them, I do not know them.

ADV. MOROKA: Thank you.

ADV. MLOTSHA: But I do not know General Mabula met with Mlotsha promised that to Advocate join only next week 51 cases, it seems in this matter we have got a duplication of Mlotsha's, one of the member of the

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prosecuting team is Jan Mlotsha whereas myself as the acting DPP then Cyril Simphiwe Mlotsha so possibly reference was being made to the other Jan or myself I do not know but there is Mlotsha who features in these minutes.

ADV. BAWA: Sorry I should have raised that, did you have a meeting with General Mabula?

ADV. MLOTSHA: With General Mabula on that one I would not know, I am a part time law tutor at Unisa but here in my black book I recorded that on a Saturday when attending a tutors workshop at Unisa he called me, unfortunately it seems I was at a meeting I just recorded his cellphone number with an undertaking to make a call after the tutors workshop. After that there is no recording of what transpired so I assume that maybe I forgot to call the gentleman.

ADV. BAWA: You had earlier testified to us when you had been to the VGM building and one of the dates you had provided was 24, 25 January.

ADV. MLOTSHA: That is the position.

ADV. BAWA: Can you recall maybe with reference to your black book what were you doing there on 24, 25 January 2012.

ADV. MLOTSHA: Oh my apologies, before I give you an answer to that it was on a Saturday 21 January 2012 when attending a workshop at Pietermaritzburg Unisa when General Mabula called me on the number 0828561403 so that is what I was trying to explain that I never reverted back to him. But back to the question that you posed in relation to 24 January 2012 it was an Eskom meeting ...(intervenes)

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ADV. BAWA: No, no it is 24 and 25 January 2012.

ADV. MLOTSHA: That is what I am talking about.

ADV. BAWA: Sorry Exco meeting I misunderstood you.

ADV. MLOTSHA: Yes it was an Exco meeting chaired by my colleague Sis Nomxolo.

ADV. BAWA: Right now looking at your black book to refresh your memory, did you have cause to raise any issue with anybody prior or at that meeting?

ADV. MLOTSHA: What had happened is, during the month of January the gentleman by the name of Pande had made representations directly to the office of my other colleague Boet Lawrence Mogwebe, after those representations were lodged with his office he sent an email to Willie Miller who was the special commercial crime unit head in KZN, I am not sure if we all have a copy of that, it is titled internal memorandum to Advocate Miller.

ADV. BAWA: I am told Madam Chair that it is at the back of your files and copies have been given to the other parties, it was provided to us this morning by Advocate Mlotsha.

ADV. MLOTSHA: So you can see that email to Advocate Miller, my apologies Miller was the acting regional head not the permanent regional head.

ADV. BAWA: Advocate Mlotsha can I take you a step back, there is one document which is headed Ravinda Maniklal Company correct.

ADV. MLOTSHA: I see the document.

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ADV. BAWA: It is dated 29 December 2011.

ADV. MLOTSHA: Yes.

ADV. BAWA: It is directed to the national head special Director of Public Prosecutions specialised commercial crime unit Advocate Mogwebe.

ADV. MLOTSHA: That is the position.

ADV. BAWA: Right and it relates to representations for Colonel Madu.

ADV. MLOTSHA: That is the position.

ADV. BAWA: Right can you just before we go onto the response can you just briefly tell us what it was about, the Madu matter. You were at that stage still the acting DPP correct?

ADV. MLOTSHA: Yes that is the position, if my memory serves me well this is the matter wherein there was an allegation of 1.3 million, 1.5 million rand bribe having been paid to General Booysen at the time as a consequence of which an arrest was executed upon this gentleman Colonel Navin Naidoo who was the supply chain manager at that time as well as Mr Pande.

ADV. BAWA: Right and that followed on section General Booysen having obtained a section 253 (A) authorisation after he had been approached to take a bribe and Advocate, General Booysen is coming to testify on Monday so I do not need you to go into the specifics but I just want to put it into context for the presiding officers.

ADV. MLOTSHA: If my memory disappoint me you will forgive me, as far as I remember though faintly, there had been an authorisation in terms of section 252 (A) given to General Booysen to be in this matter.

ADV. BAWA: Now these representations are made to the head of the specialised crime unit and he then does an internal memorandum which is the next document which is sent to the acting regional head SCCU and you cc'd in as the acting Director of Public Prosecutions and it is dated 9 January 2012.

ADV. MLOTSHA: That is the position.

ADV. BAWA: Right and tell us then what ensues after that?

ADV. MLOTSHA: As soon as I received this internal memo to which these representations were attached I got a very deep sinking feeling that something was not okay here, constitutionally and legally, I sent an email to my colleague, that is Advocate Mrwebi saying it seems here there is a problem in the sense that in terms of the constitution 179 and 22 of the NPA Act representations, I am the one who appointed a prosecutor, I think it was Advocate Manyate in the matter, I do not know anything what is happening, all of a sudden representations are being helicoptered into your office at headquarters, there was no response to that email but after that Advocate was handling the matter, if my memory serves me well, Advocate Manyate had sent his answers to those representations Advocate Lawrence Mrwebi emailed me again saying he holds the view that the matter must proceed.

But after that I thought that maybe I need to, I attended a meeting on 24 January 2012, before the meeting I think there was tea, there were some fruits there to replenish before the commencement of the meeting then I bounced into Willie Hofmeyer then I called him aside I said hey look I am a bit ambivalent here, in the event I am wrong I need to go to

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Lawrence and apologise to him, constitutionally and legally can it happen that the representations Chairperson get helicoptered boom over the head of the DPP of the division right into the office of the special director commercial crime, he said you are right, constitutionally you are the DPP.

As a result of that he said look probably this issue will affect other DPP's, I will put it on the agenda for the meeting, that is the meeting of 24 January. On 24 January a number of things were discussed because that meeting was chaired by my colleague Sis Nomxolo the issue of performance that was on a decline, the issue of CC, concerns on performance and then the observation by Karin van Rensburg, people who were NPA employees paid 60 percent less but most importantly to cut a long story short in this regard Willie Hofmeyer stated that constitutionally and legally in terms of NPA Act the power to prosecute rests with the DPP in the division.

He proceeded, the act says that the veto powers are with the DPP's, I quoted him *ipsissima verba* during that time therefore he continued, Advocate Mrwebi's interpretation of the Act both the constitution and the Act is wrong, in other words a case cannot be withdrawn if the DPP has not agreed. The constitution and the NPA insists that the decision taken must be taken in consultation with the DPP's and then other issues were discussed, the issue relating to the reporting lines SCCU and then the regional heads in the Province who are going to sign performance contracts with Advocate Lawrence as from 1 April 2012 so that would have wrapped up the meeting of the 24th

because on the 25th other issues were discussed including among others labour experts having been consulted, an indication that there was nothing wrong if the organisation is restructuring.

The debate whether NPA can be an independent entity constitutionally and legally if that was possible so I think that was the debate on the 25th.

ADV. BAWA: Now whilst you were acting DPP there is a case commonly referred to as the Amigo's case, the first accused is somebody called Gavin Savoy, correct?

ADV. MLOTSHA: Yes that is correct.

ADV. BAWA: And you took a decision to prefer charges in that matter.

ADV. MLOTSHA: That is correct.

ADV. BAWA: I am not sure if you have it in front of you, a memorandum and it is a memorandum dated 14 July 2014, did we give you a copy?

ADV. MLOTSHA: If I may.

ADV. BAWA: We will find that at, it is item number 2.2.11. Let me just get the bundle for you quickly. It is a report prepared by your successor Advocate Ngoko to Mr Nxosana, do you see that?

ADV. MLOTSHA: Yes I see a three page memorandum.

ADV. BAWA: Yes it is a three page memorandum, there is an affidavit attached which I am not giving you. Let me just find this on the Dropbox for everybody else in a second. It is 2.2.11. And it is to be found in folder F subfolder 2.2. And at 2.2.11. Right you will see from the contents of this memorandum that Advocate Ngoko had taken a decision to withdraw

those charges.

ADV. MLOTSHA: Yes I see in the memorandum.

ADV. BAWA: What was your view at the time when you, let me rephrase that, were you, was your opinion ever sought by Advocate Ngoko in respect of the charges brought in the Amigo's matter?

ADV. MLOTSHA: There was no opinion sought except that there was an email she dropped me saying she had received representations what was my take at the time, I think I responded in two or three lines it is just that I did not bring the email here with me, indicating to her that at the time when I stepped down I was of the opinion that there was evidence however I do not know what would have happened after my stepping down because things happen, witnesses die, documents get lost so I do not know what would have happened so thereafter I did not have anything to do with the matter.

ADV. BAWA: And was any ...

JUSTICE MOKGORO: Wrap up on that question because the recorders need 10 minute break.

ADV. BAWA: Other than that exchange by email has your opinion ever been sought in respect of the Amigo's matter.

ADV. MLOTSHA: In respect of the Amigo's case the last time I attended the meeting about it I think it was on 23 May 2012.

ADV. BAWA: What does your black book say about that on 23 May 2012?

ADV. MLOTSHA: On the 23rd I think that is the meeting that would have

been chaired also by my colleague Advocate Jiba, if you can bear with me. So the meeting was in the NPS boardroom on 23 May 2012 acting NDPP chairing the meeting. Present Willie, Dr Ramaite, the Northern Cape DPP that will be Sis Ivy, Advocate Ivy Tsenga. The KZN team, prosecution team that would Advocate Dunywa I think Advocate Vimbane and then the third one is now a member of the judiciary in KZN that will Mr Nkanyana. I recorded here Northern Cape team but I do not, I did not record the ...(intervenes)

ADV. BAWA: But maybe just get to the gist of ...

ADV. MLOTSHA: To cut a long story short we agreed that the matter will proceed.

ADV. BAWA: Okay we are just going to take a short adjournment.

JUSTICE MOKGORO: We will adjourn for 10 minutes.

HEARING ADJOURNS

HEARING RESUMES

DAY – 1 FEBRUARY 2019

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JUSTICE MOKGORO: Your call, Ms Bawa?

ADV. BAWA: Advocate Mlotsha, this overstepping of the jurisdiction of a DPP, are you aware of it ever happening in any other instance? Where DPP's come into your jurisdiction and another DPP, where Deputy come
5 into your jurisdiction and another DPP oversees it?

ADV. MLOTSHA: For – I have never encountered it personally during my tenor as the acting DPP from 2010 May to 2012 July. But there were those ramblings in the corridors within the NPA that it was leaving that

unsavoury taste in the mouth that the DPP from another division can do it.

ADV. BAWA: Do you have any reason to believe you were deliberately excluded?

- 5 ADV. MLOTSHA: To date I have never been informed why I was excluded from the case, as the logic would dictate, as the matter fell within my jurisdiction one would have expect me to have been taken through all the stages or phases of the case.

- ADV. BAWA: And why do you think you were removed as the Acting
10 DPP?

ADV. MLOTSHA: So many theories out there, so many theories.

ADV. BAWA: What are your theories?

- ADV. MLOTSHA: You know when you are emotionally involved you, you theorise in a particular way. Initially I felt a bit bad that, considering that I
15 did well, I was suitably qualified for the job, all of a sudden, boom. But looking at the pressure that I was languishing in I thought that I owed my colleague, Jiba, a great deal of gratitude, to thank him for relieving me from the job.

- ADV. BAWA: Just one last question. There was a performance
20 assessment done. In fact you alluded to it, that was why you were at the VGM buildings. During the course of that performance assessment you mentioned that you were there for a performance assessment on 17 April and then moderation on the 29th. In passing I just realised, you gave us a list of dates that you were at the VGM building. And then you meant ...

- 25 [intervenes]

ADV. MLOTSHA: Yes, that is correct.

ADV. BAWA: Were there any issues raised with you in relation to the performance assessment which preceded your removal, indicating to you any problems that would have resulted in your position, in your removal?

- 5 ADV. MLOTSHA: No, at no point, at no point. It is just that, if you look at the history of the NPA, particularly I think the minutes of the 24th, as my colleague, Advocate Jiba, stated that, I think it was a Q3 report that during that time it used to be normal that the performance would bottom down. So I think that used to be the problems across the spectrum,
- 10 because of Christmas, the holidays between December and January, as a consequence of which that will have a bearing, of course that is negative, on the ultimate percentage of the performance.

ADV. BAWA: Thank you Advocate Mlotsha, I have got no further questions.

- 15 ADV. MLOTSHA: Thank you.

ADV. BAWA: Just hold on. Thank you Advocate Mlotsha.

ADV. MLOTSHA: Thank you so much.

- ADV. MOROKA: Can I just ask one question of clarification, and it really relates to the set of last questions that you were asked. At the beginning
- 20 of your testimony you mentioned that, and you make reference to the meeting of 9 July 2012, and then you say at a point you were asked to step down, and then in 2015 I caved in. What do you mean by that?

ADV. MLOTSHA: So look, looking at the pressure that I was finding myself in, it always perambulated in my mind to just resign and join the

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bar, but there was a view that I thought at the time made sense, that if I resigned immediately after stepping down as the acting DPP some people would have construed and transcribed that move as if I was running away. I messed up then I am running away. Hence I had to
5 stay. So in 2015 it is the year that I realised that anything and everything relating to the former acting NDPP Mlotsha had acualated (?). Then I joined the pupillage the next year, the following year, 2016.

ADV. MOROKA: So it is not in a sense caved into pressure or rumblings. It was just your decision that I, it is time for me to leave?

10 ADV. MLOTSHA: I must say, my relationship with my successor, it was, I would not describe it as an icy one, but the treatment I was receiving it was quite bad. For instance, if I go to court I will be asked to provide report, I used to get good conviction rates in court and then there will be remarks that possibly I am choosy with the cases, I am taking cases with
15 no evidence. The remarks that took a steam out of me, and with discussions with the family, the family and relatives and some friends ended up saying look, this is too much, you run out of sympathisers. If you stay in an institution that is so toxic to you, rather throw in a towel. Hence my statement that it is the end of 2015 when I made a decisive
20 move to cave in.

ADV. MOROKA: And that decision was partly motivated by the pressures that you were experiencing in the institution?

ADV. MLOTSHA: That was the position, that was the position.

ADV. MOROKA: One more question from me. You indicated that you
25 felt the need to move away from the scene, okay, from the institution and

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you say you somehow felt when the Booysen matter was taken away from you, you felt that it may just as well be you were relieved of the matter. But in fact what actually happened in fact? Did you feel that, did you have a feeling that the matter was taken away from you, or did you
5 feel relieved that you no longer have to deal with the matter?

ADV. MLOTSHA: Chairperson, probably I would not have come across clearly on that point. In relation to relief I was saying when my colleague removed me from the position, that will be in 2012, the 9th. The position of acting as the DPP I could not hold any grudge because the popular
10 view was to the effect that you must thank instead of holding anything negative towards you have been removed because of the pressure that was prevailing at that time.

ADV. MOROKA: Oh that was, you said that about being removed from your position?

15 ADV. MLOTSHA: As the acting DPP.

ADV. MOROKA: Yes, ja. But when the Booysen matter was given to another official to handle over your head, did you feel that the matter was taken away from you?

ADV. MLOTSHA: Chairperson, in respect of the Booysen matter, as the
20 email has been presented in these proceedings you will realise that, and as I also explained the procedure in the office of the DPP, at no point did I physically deal with the matter, no advocates in my office deal in the matter, but one thing I realised though is that, when they started talking about the Cato Manor case and after [inaudible] looking at the indictment
25 I could pick it up that some of those cases had been sent to the DPP's

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office KwaZulu Natal for decision with consultation between the investigating officer in the matter and the advocates who would have been handling the docket in my office agreed that prospects of success were non-existent with the ultimate decision that those files are taken
5 back to the lower court for prosecutors to do the necessary in terms of submitting the statements, affidavits and documents for the courts to hold inquest, and it never ended there. Inquests were heard and then findings were made by a magistrate of nobody to be held responsible. It is one of the reasons that galvanised me to be very loath to append my
10 signature on the indictment to ask for the report before I did do anything, a report which I ended up not receiving until my stepping down from the position.

ADV. MOROKA: But did you ever felt that your authority was being undermined?

15 ADV. MLOTSHA: Chairperson, I think you will see, you will see that coming out clearly in the email that I wrote to him, with the concluding remark that if I can be treated with dignity this principle pupil interaction that I felt at the time, I think that will be my concluding remark in the email of the, that I sent after 09:00 on the 13th, where, with Kevin, and I
20 was egging to be treated with dignity. The introduction refers to dignity, the last paragraph refers to dignity. That is the extent to which I felt violated. It was as if I was a terrorist. That is how I felt.

ADV. MOROKA: Thank you.

ADV. MLOTSHA: Thank you so much.

25 JUSTICE MOKGORO: Ms Bawa, you seem to want to communicate?

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ADV. BAWA: You were interview for the job of the National Director of Public Prosecutions, not too long ago?

ADV. MLOTSHA: Yes, that is the position.

ADV. BAWA: And you were asked a number of questions?

5 ADV. MLOTSHA: That is the position.

ADV. BAWA: Would you confirm that what you had reported at that interview was true and correct?

ADV. MLOTSHA: Was?

ADV. BAWA: You had – that was not an interview that you had done
10 under oath, correct?

ADV. MLOTSHA: That is the position.

ADV. BAWA: But sitting here would you confirm to this enquiry that what you had indicated in that interview to the best ability was true and correct?

15 ADV. MLOTSHA: That is the undertaking personally I took to give the best as I could.

ADV. BAWA: Okay thank you I have got no questions.

ADV. MLOTSHA: Thank you so much.

JUSTICE MOKGORO: Thank you Ms Bawa. I think we are ready for
20 cross-examination. Who is going to start.

ADV. MASUKU: I will, Madam Chair.

JUSTICE MOKGORO: Okay. Mr Masuku.

ADV. MASUKU: Thank you. Good morning Advocate Mlotsha.

ADV. MLOTSHA: Greetings Sir, how are you?

ADV. MASUKU: Very well, Sir.

ADV. MLOTSHA: Ja.

ADV. MASUKU: Can I just, I will have a few questions for you relating to the evidence you have given on the signing of the provisional delegation.

- 5 You had a meeting which, before you signed that provisional delegation you were, you had been in a meeting where you were appraised of the reasons why your signature was necessary in that provisional delegation, is that correct?

ADV. MLOTSHA: I assume you are referring to the 29 May meeting?

- 10 ADV. MASUKU: Yes, yes, that is correct.

ADV. MLOTSHA: Between the three of us?

ADV. MASUKU: Yes.

ADV. MLOTSHA: Yes, yes, I agree with you Sir.

- ADV. MASUKU: Yes, so they at that time, even though you had
15 reservations about the constitutionality of that, of the delegation, you accepted that there may well be a reasonable basis on which prosecutors from outside could be brought in, into your province, right.

ADV. MLOTSHA: Come again?

- ADV. MASUKU: Perhaps because you have not heard the question
20 properly, let me just reformulate it. Can you describe to us what you understand by provisional delegation? What was it intended to do?

ADV. MLOTSHA: My understanding at the time was that the delegation will be provisional, pending the confirmation if that could be fine, and then it could be made permanent, because I was of the view that it was

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going to be a big project if it was going to be taken to court, maybe it was going to take a long period of time.

ADV. MASUKU: Yes. But it related to you essentially provisionally delegating your authority to prosecute, to prosecutors outside your
5 province, right?

ADV. MLOTSHA: Yes, yes, Sir.

ADV. MASUKU: So in that meeting did you feel that you have been pressured into signing that provisional delegation? Did you sense that, you know, you had to do it otherwise the sky would fall.

10 ADV. MLOTSHA: Look, to tell you the meeting was short, as I indicated, it took five to ten minutes. And then too, I comprehended at the time that the matter was in my division. So when Advocate Jiba suggested to me that look the opinion seems to suggest that both the delegation as well as the indictment, I did not put up any resistance to that suggestion.

15 ADV. MASUKU: Yes, no, I mean, you did not put up that resistance because you did not regard this as undue pressure. You are not the kind of person who would circum to undue pressure, are you?

ADV. MLOTSHA: You mean to be forced to sign the dele ... [intervenes]

ADV. MASUKU: Yes.

20 ADV. MLOTSHA: No, it was a discussion.

ADV. MASUKU: Yes.

ADV. MLOTSHA: Yes.

ADV. MASUKU: So what I am saying to you, I am not trying to catch you or anything, I mean, I think it is something that you testified to.

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ADV. MLOTSHA: Yes, yes.

ADV. MASUKU: What I am saying, I am here, I am a friendly force if you, if you want to know. All I am saying is that in that meeting you would say that it was a meeting conducted in a professional manner with
5 due regard to the principles that underpin the workings of the NPA?

ADV. MLOTSHA: I will take it - I would not take it professional, because as far as I understand, a professional meeting there will be an indication timeously, there will be a meeting, there will be items for the agenda, there will be an attendance register indicating who attended the meeting
10 and the item that would have been entertained at that meeting if there are any resolutions, and the resolutions as well. So I will have a concern if you use the word "professional meeting". But I would say when I left that meeting, I left that meeting knowing one she is my supervisor I have to sign this thing. If she is right she is right I need to do it. If the law
15 says I am wrong I was going to revert to her and say the law says I am wrong. And then two, the indictment, I will sign it provided there is a memo or a report, an aspect that was not an issue when we left. We departed along those lines that I was going to sign this to.

ADV. MASUKU: I mean you have a problem with my use of the word
20 "professional". Perhaps let me put it this way. In that meeting, was a meeting of professionals, three professionals engaged in a professional, on professional issues.

ADV. MLOTSHA: For the record, yes, you are right.

ADV. MASUKU: Yes. You did not have only one meeting with Advocate
25 Jiba?

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ADV. MLOTSHA: As I indicated ... [intervenes]

ADV. MASUKU: You indicated a number of meetings, ja.

ADV. MLOTSHA: As I indicated, firstly she was appointed as a Deputy NDPP. If I am not mistaken that would have been, I am not sure whether
5 after August 2011. So we used to spend quite a number of meeting together and possibly even after meetings we will intermingle together as colleagues. However, if my memory serves me well her elevation into the acting NDPP's position would have been very late in the year 2011. But the first official meeting where I attended with her, chairing, that will
10 be the meeting of 24 January 2012.

ADV. MASUKU: Yes, but the question I am really asking is that, whatever position she held you had never, you had a number of meetings that included [inaudible] ... [intervenes]

ADV. MLOTSHA: You are correct, yes.

15 ADV. MASUKU: In those meetings would you say that Advocate Jiba placed any, conducted herself in any way other than a professional manner that, and engaged in trying to resolve pertinent issues relating to the functioning of the NDPP, NPA and the issues?

ADV. MLOTSHA: I am not sure if I understand the question correctly.

20 ADV. MASUKU: You appear to understand it, because from your response I think you do. But in case you don't I will clarify.

ADV. MLOTSHA: Please clarify for me.

ADV. MASUKU: So what I am saying, what I am asking you is, in the meetings, all of them, the meetings that you can recall, some of them

that you recorded in your black book.

ADV. MLOTSHA: Mm.

ADV. MASUKU: Is there, would you say that, would you disagree with the statement that these meetings were conducted in a professional
5 manner, and Advocate Jiba conducted herself in a manner that is consistent with how a person in her position should?

ADV. MLOTSHA: Let me give you an example. You will know that there is a presumption of multiplicity of perspectives. We all have our own perspectives.

10 ADV. MASUKU: I am asking for yours.

ADV. MLOTSHA: At a personal level she was good to me, she was fine. But professionally I also have my own reservations. I will indicate to you why. For instance, if you look at the Amigo's case. With the Amigo's case, I just received a call from the PA, I think Palesa, saying, please
15 come to VGM. To me that was not fine, because that was a major project. Everything has to be professionalised. In advance you need to know when is the meeting, what we are going to talk about. To date I have never seen the attendance register of that meeting, I have never seen the issues that we discussed at that meeting. The only thing I have
20 are my notes, which may be correct, which may be right, but in the absence of a professionalised documentation of the meeting, you know, so those are the governance issues as a person, that I would have those reservations that maybe we can do better.

ADV. MASUKU: Okay. But so, of all the examples that you could come
25 up with that would raise concerns about Advocate Jiba's professional or

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governance, sensitivity to governance issues, it is this one that you raise, the Amigo's case, right?

ADV. MLOTSHA: Yes.

ADV. MASUKU: And your problem there is that you needed, you know,
5 you would have liked to be informed in advance?

ADV. MLOTSHA: Okay, I will give you another example. I have got quite a number of them. I was trying to give you a helicopter view. If you are prepared for me to give the numbers that would have generated and aroused a concern at a personal level I would give you those.

10 ADV. MASUKU: No. I am – okay, it is fine you can give me those later on. But I am asking you about the one that you isolated from a number of them. I understood that you are not saying this is the only one, but you, your immediate response would have been to pick up a very glaring example of what you would have considered to be a black mark in your
15 understanding of governance. It is that she, she asked a PA to call you to a meeting, and that meeting was not minuted, and that there was no advanced notice of that meeting and you had a problem with that?

ADV. MLOTSHA: Mm.

ADV. MASUKU: Okay. I mean, I am happy for you to call others ...
20 [intervenes]

JUSTICE MOKGORO: Sorry, say "yes".

ADV. MLOTSHA: My profuse apology. Yes, Sir.

ADV. MASUKU: Yes, so I would, I would want you to mention others, but I am really not interested in the others. The one that I am interested is

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the one that you picked up from, from the others.

ADV. MLOTSHA: I understand, Sir.

ADV. MASUKU: They may ask you others, if they wish to, but I am not going to ask you. The questions that we were asked by the panel
5 relating to overstepping the jurisdiction, so the two questions, one was overstepping jurisdiction, the other one was whether you had any reason to believe that you were being deliberately excluded from the cases and your answer was that up to today you do not know why, why you were, you were never given any reasons. Now on the first one relating to
10 overstepping the jurisdiction, you accept that when you signed the delegation, although you believed it was a provisional delegation you were essentially inviting people, prosecutors from outside the province to come in. It is normal, it is not an unusual thing?

ADV. MLOTSHA: Alright on the day preceding the 29th I was aware that
15 my colleague, Advocate Chauke, had called, given me a call saying, look, I have got these instructions from the NDPP to dispatch a team of prosecutors. So I was aware, yes.

ADV. MASUKU: Alright. So I am saying you are not suggesting that there is no practice within the NPA of prosecutors from another province
20 being invited to come and do matters in another province?

ADV. MLOTSHA: That is not my answer. All I am saying is that, if it were to happen there are values that are there in the NPA. Among others, the issue of professionalism, the issue of transparency, the issue of communication. If one looks meticulously at the emails that we were
25 exchanging you will see that there was no professionalism there. I would

not have asked not to be treated like a pupil, being treated like a principal, by the DPP of another division and frustratingly there are other senior officials in the NPA who are copied in, in the email. Did you see there is no responses from one. I was a lone ranger, swimming against
5 the sea.

ADV. MASUKU: Yes. So but the question I am asking you is the question of principle. You cannot say here and tell the panel that it is a practice, the practice of one prosecutor from one province, performing prosecutorial functions and the other, is an unusual practice within the
10 NPA?

ADV. MLOTSHA: I think I have answered in the sense that I say there are processes and procedures in place to be followed.

ADV. MASUKU: Yes. So as a principle it is there.

ADV. MLOTSHA: Yes, yes.

15 ADV. MASUKU: So, if those processes are followed there would be no problem with it.

ADV. MLOTSHA: Absolutely.

ADV. MASUKU: You just resented in this particular case, you believe that they were not followed, right?

20 ADV. MLOTSHA: I do not believe I was, they were not followed. It is these chain of events that happened, putting me in a position where I have got no other conclusion to draw, except the adverse one.

ADV. MASUKU: Which is one?

ADV. MLOTSHA: That I was being proceeded in the process.

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ADV. MASUKU: Sorry, what is it exactly that you say you are being frustrated about?

ADV. MLOTSHA: Sir, firstly I say we agree, all three of us, consensus [inaudible] *ad idem* indictment with the memo and then there is an
5 opinion from the, from Gerhard Nel from Legal Affairs division or section. I knew that a guy like that existed. I trusted Advocate Jiba when she said that I cannot even bother her to say favour me with the report. I accepted that. All of a sudden – that is why, when you read my email, I say to my colleague, my eye popped out, my lower jaw dropped,
10 shocked to the marrow of my bone, because for the very first time you are asking me about the report. I had raised the issue of report during the discussion in the office, I had raised the issue of, I think I indicated there. So that was, that was what was frustrating me.

ADV. MASUKU: Ja. Now I understand in the big organisation like the
15 NPA there will be those kind of moments when you feel that your colleagues are undermining you and you have got to stand up and, as you did in this email ... [intervenes]

ADV. MLOTSHA: You are hundred percent right, Sir ... [intervenes]

ADV. MASUKU: You put them into their place.

20 ADV. MLOTSHA: You are hundred right, Sir.

ADV. MASUKU: Ja. But what – as you know, I mean this enquiry really is about the fitness of Advocate Jiba. My interest that I want to draw from you has something to do with that. And that is why I am asking you, when you talk about pressure you have to bear in mind that what I am
25 seeking from you, is for you to tell me what it is that you believe was the

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pressure that was put on you by Advocate Jiba, and describe what the nature of that pressure was, so that I understand what it is that we should draw from your evidence of pressure.

ADV. MLOTSHA: Look, if you go back to my evidence, I enunciated in
5 my evidence that the word of pressure only cropped up during the discussion of a telephone conversation I had on my way to Port Shepstone. After that she never used any word of pressure in my interaction with her.

ADV. MASUKU: Okay, yes.

10 ADV. MLOTSHA: And by the way, that would mean the two of us, that is me and [inaudible] we would have spoken about this case only on two occasions, during that telephone conversations and in her office on 29 May 2012. That was the end of it. After that we never discussed that.

ADV. MASUKU: And you would say there was no pressure at all brought
15 to bear by her, at any other than the mentioning of that on the phone call?

ADV. MLOTSHA: I would not say – you see the email by Advocate Chauke to me.

ADV. MASUKU: Chauke, yes.

20 ADV. MLOTSHA: He says hey look, do not delay, I have to go back and report to Jiba, I have to go back and report to Minister. The Minister he does not described. There are minutes that have now been presented here, minutes from purported to have been, because having verified that purported to have been authored by Mossing, in which minutes he says
25 Minister seems to be losing patience in the slowness with which the

arrest is not taking place in the matter. So it is accumulative effect of those events that may put one in a corner where one does not have any other conclusion to reach, except the inescapable one that there was pressure.

- 5 ADV. MASUKU: Okay. Now of course my colleague Advocate Bawa, did ask you about the pressure and you did not say exactly, you did not say that there was political pressure. Am I putting that in your mouth? You have not mentioned the word Political pressure at all?

ADV. MLOTSHA: Politics, no-no-no, I have never mentioned it.

- 10 ADV. MASUKU: And from your response I assume that I should not even ask you about politics.

ADV. MLOTSHA: No, we have to be apolitical naturally, but we are human beings, we can talk about politics.

- ADV. MASUKU: No-no, in the context of this I will rather refrain from
15 asking you about politics. But the, really the final question, or rather it is a comment, you referred to Mossing's affidavit and the paragraph 7 was read to you, and this is the paragraph which deals with the fact that an IPID investigation had been triggered, which relates to the conduct of the police in the Cato Manner events. You are aware of that?

- 20 ADV. MLOTSHA: Yes, yes, I saw it in the affidavit.

- ADV. MASUKU: Yes. So when an Acting National Director of Public Prosecution is approached by the IPID and they say look, this is what we are investigating in your area, that could be some form of – that could trigger an immediate interest by the NDPP, or the acting NDPP to
25 understand what is going on in that area, right?

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ADV. MLOTSHA: Mm. Yes, yes, Sir.

ADV. MASUKU: You would expect that?

ADV. MLOTSHA: I would expect that. But my expectation would have to be within the legislative framework.

5 ADV. MASUKU: Absolutely.

ADV. MLOTSHA: Legislative framework in the sense that in terms of the Constitution 179, as well as the NPA Act it stipulates, it enunciates the powers, duties and rights of each person appointed within the entity. Among those things the NDPP would not have been bestowed upon
10 those powers to institute the prosecution as those powers reside with the prosecutor in the lower court, with the deputy DPP and the DPP.

ADV. MASUKU: Okay, and of course, I mean, you know ... [intervenes]

ADV. MLOTSHA: And before you, if I may finish. And if you look at my personality, you look at the performance, you look at the projects that I
15 was handling in KZN. I was not against the prosecution of anybody in the decision. Everybody knew that if there is evidence, if the prosecutor came to me saying there is evidence, I will say to the prosecutor, as soon as you have ascertained yourself with evidence it is your call, whether you throw a book or the entire library at the accused person, I
20 will be happy with that. So I would not have ...

ADV. MASUKU: Sorry, can I just take an ...

ADV. MLOTSHA: Not a problem.

ADV. MASUKU: Okay, I mean you appreciate that Advocate Jiba appointed a prosecution team? She was not doing the prosecution

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herself?

ADV. MLOTSHA: Yes, Sir.

ADV. MASUKU: Okay. I mean the last question arises from your very pleasant comments ... [intervenes]

- 5 JUSTICE MOKGORO: Can I understand that question? Advocate Jiba appointed a prosecution team? Are you being specific to what is under discussion?

ADV. MASUKU: Yes.

JUSTICE MOKGORO: Not generally?

- 10 ADV. MASUKU: No, it is specific to his jurisdiction. It is the comments, the pleasant comments you made about Advocate Jiba, that you had generally a good relationship with her?

ADV. MLOTSHA: At a personal level I still take her as a good sister of mine.

- 15 ADV. MASUKU: Yes. Maybe I should not ask you this question, because I risk you giving me an answer I do not like. So I will rather rest, rather than ask you that question. But if anybody would say to you that there was a manipulation of prosecution services to advance political interests, would you associate that with anything that you know
20 of, of Advocate Jiba?

ADV. MLOTSHA: Firstly, my response would be the devil is in the detail, give me the specifics. I cannot just be generic.

ADV. MASUKU: Yes. That is the question I would ask myself ... [intervenes]

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ADV. MLOTSHA: [Inaudible] that will help me ... [intervenes]

ADV. MASUKU: No, no, I was ... [intervenes]

ADV. MLOTSHA: If there is one case where I am confined and limited to, to give a comment and would have reason during my tenor as the
5 official in the NPA I will definitely give a fair comment on that.

ADV. MASUKU: No, I am happy with that. I also, I am looking for detail around that, around that allegation in relation to Jiba. So I, so both you and I are in the dark about the detail. Ja, those were the – our cross-examination. Thank you very much Mr Mlotsha.

10 ADV. MLOTSHA: Thank you so much.

JUSTICE MOKGORO: Mr Rip, your turn. Thank you Mr Masuku.

ADV. RIP: Thank you. Afternoon, Sir.

ADV. MLOTSHA: Good afternoon, Sir.

ADV. RIP: You arrived with two documents here today in respect of
15 Advocate Mrwebi. The document there, internal memorandum of two, of 9 January 2012 and the letter of Ravinda Maniklal and Company?

ADV. MLOTSHA: That is correct, Sir.

ADV. RIP: Why did you bring these documents here today?

ADV. MLOTSHA: Look, those are not the only documents I brought in
20 today, you can see I brought a batch of document in the event I am being questioned. It is quite a number of emails that I exchanged while I was still in the NPA.

ADV. RIP: With various people?

ADV. MLOTSHA: With various people and as I was going through my

book I realised that I, at some point I had a problem with Boet Laurence(?) regarding the representation going directly to his office. We exchanged email, after which I was left with that ambivalence which galvanised me to approach Willie and say Willie, please help me out
5 here. This is my interpretation, this is Laurence's interpretation which also culminated in him, Willie, raising it at the DPP. Other than that there is no explanation.

ADV. RIP: Yes, you do not know why that letter was written directly to Advocate Mrwebi from the attorneys?

10 ADV. MLOTSHA: To date no explanation has been given to me why it happened.

ADV. RIP: You do know that Advocate Mrwebi was appointed as the head of the SCCU, with effect from November 2011?

ADV. MLOTSHA: I know that very well, because in this book,
15 immediately after his appointment he gave me a call, he said, Mhlengaza, I am coming to your division. We had a meeting with him, I think mid-December 20, I think 2011, if I am not mistaken, where we had a discussion with him, his experiences in the NPA, and so on and so forth. Yes, I was quite aware of that.

20 ADV. RIP: So I mean, even from that answer it is clear that Advocate Mrwebi never tried to exclude you from anything. He was in fact communicating with you?

ADV. MLOTSHA: Look the feeling of exclusion would have struck me at the time when I saw him, not directing the email even to me as the head
25 of the division. Instead, directing the email or the internal memo to my

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subordinates, the head of the, of the SCCU. So I felt like if you read a law report and there are footnotes, all of a sudden I am head of the division but I am appearing there in the footnotes now. It is against that background that I transmitted an email to him saying, look Mhlengaza, 5 179 Constitution 22 seems to be giving more powers than you in terms of this, because we did not agree I had to get a second opinion and say Willie, help me out here, and then Willie said you seem to be on the right track, but let us share it at the meeting so that we can get the view of the other DPP. That is the long answer to your short question.

10 ADV. RIP: Yes. Could we have shorter answers possibly? You were copied in on the email, you were not excluded. He did not try and do something behind your back?

ADV. MLOTSHA: Yes.

ADV. RIP: The, and what Advocate Mrwebi will say, if required, on this 15 aspect is that he believed that as, in terms of the proclamation he had the power to deal with serious commercial crimes and that the representation had been made directly to him and in that capacity he was dealing with it, he did not exclude you at all from anything.

ADV. MLOTSHA: I am not sure if I am clear enough. The special 20 director, Commercial crime, Boet Laurence, yes, in terms of the proclamations he was bestowed upon, or he is bestowed upon those powers and the DPP in terms of the NPA Act are bestowed upon those powers, among other things, to initiate the prosecution and issues incidental thereto. When does the problem arise? The problem arise in 25 an instance where there is contradiction, where is disagreement between

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the special director and the director, with the question perambulating in that direction as to which view must prevail, should that situation arise. That is where we are, that is what was discussed at the meeting.

ADV. RIP: But there was no, I am talking about you, I am not worried
5 about the general. In this – what happened here, can I just put it to you simple and straight forward. Advocate Mrwebi received a representation relating to a matter which he believed fell within the jurisdiction of the SCCU which he was the head of?

ADV. MLOTSHA: Yes.

10 ADV. RIP: He then took it up with the head of the SCCU in the jurisdiction dealing with that matter, and he informed you that he was asking questions about it, and we have seen the memo where the questions are asked, you agree with that?

ADV. MLOTSHA: Yes.

15 ADV. RIP: He then, after having received the answers and looked at it decided he was going to do nothing further. I think you intimated in your evidence you heard later that he decided he would not respond with the, he would not agree with the representations?

ADV. MLOTSHA: Okay, at the time I was a prosecutor, as I was going
20 through his memo, wherein I was copied.

ADV. RIP: Yes.

ADV. MLOTSHA: When meticulously going through the memo I got a sense that the way it was interrogating that it was more in favour of the defence than the prosecution. So it started giving me some discomfort.

Then I realised at that point that *ex facie* it would appear that even decision wise whether this representation should succeed, possibility looms large that we will disagree with my colleague.

ADV. RIP: But this, you still have not answered the question, that you
5 knew that he had taken a decision not to intervene filing upon the representation.

ADV. MLOTSHA: Yes.

ADV. RIP: When you found out, you gave evidence that you found out, I do not know exactly when, but you ... [intervenes]

10 ADV. MLOTSHA: The prosecutor in the matter had motivated why those was representations could not stand, on the basis and strand of which we agreed.

ADV. RIP: And you accepted.

ADV. MLOTSHA: Yes, yes, I agreed.

15 ADV. RIP: Now let us get to where I am trying to go. Only if Advocate Mrwebi had wanted to uphold the representations and try and stop the prosecution would the situation have arisen that you speak about, then he would have had to consult you and you would have had to reach agreement as to whether or not the prosecution goes ahead. But we
20 never got to that position. That situation never arose. So I do not know what the difficulty is in him just getting information.

ADV. MLOTSHA: You know, as I read what Willie said at the meeting, quoting from the NPA Act the appropriate section, the section does not ... [intervenes]

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ADV. RIP: Section 24(3).

ADV. MLOTSHA: The section does not provide, does not give a condition that should the special director uphold then must consult. The section, if one follows its literal grammatical meaning seems to suggest
5 that the special director and in concurrent with, in consultation, I think the word uses in consultation with ... [intervenes]

ADV. RIP: Yes, it is in consultation. Yes, so he must, if he was going to recommend that there should be a stopping of this prosecution such decision to stop the prosecution would have had to be taken in
10 consultation with you. But I agree with you. Do you agree with that statement?

ADV. MLOTSHA: The way I interpret it at the time, I transcribed it as meaning, as soon as he gets the representation the tone of the letter will be to the effect that look Mhlengaza, I have received these
15 representations as the act stipulates that whatever I do, I must do it in consultation with you. ... [intervenes]

ADV. RIP: So even if he is then – sorry.

ADV. MLOTSHA: This is the process to set in motion that consultation. Instead, if you cast a glance at the internal memo, it is copied mainly to
20 the acting regional head, my subordinate and then I am copied in.

ADV. RIP: I would consider that in consultation any case. But that is not the issue. Is your case that even when he is thinking about whether or not there should be any prosecution he must do that thinking with you, otherwise it is not in consultation? Is that what you are trying to say to
25 me?

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ADV. MLOTSHA: It is not what I am trying to say, it is what I interpreted the law to be saying. That it must be in consultation. It is not Mlotsha's theory in that regard ... [intervenes]

ADV. RIP: Okay. At this stage we ... [intervenes]

5 ADV. MLOTSHA: That was my understand.

ADV. RIP: Okay. At this stage we will agree to disagree and I will argue that further. We have no further questions to this witness thank you Madam.

JUSTICE MOKGORO: Thank you very much, Mr Rip. Ms Bawa?

10 ADV. BAWA: I know it is on lunch time, but I am going to be very quick and then the witness could be excused. Would that be okay for us to continue?

ADV. MLOTSHA: It would help us all, thank you.

ADV. BAWA: Ja. Advocate Mlotsha, the proposition was put to you that
15 it was not unusual for one prosecutor in one jurisdiction to perform functions in another jurisdiction. In your experience how common was it for a DPP of one jurisdiction to exercise powers in the jurisdiction of another DPP.

ADV. MLOTSHA: That is what I said in my evidence that it, there were
20 rumblings in the NPA that it was not palatable at all.

ADV. BAWA: Let me be very clear. Are you aware of that happening in any other instance?

ADV. MLOTSHA: It was happening for the first time that if there is a prosecutor from another division then the head of another division will be

appointed to heard the project in another division of another – as you can see the conflict that was arising there, if you look at the emails.

ADV. BAWA: The other question, so the other question, so to answer my question, it was unusual?

5 ADV. MLOTSHA: I considered it unprecedented.

ADV. BAWA: Alright. It was put to you that, and I presume this is Advocate's Jiba's view that it was put to you that if the investigators from IPID approached the NDPP of concerns of an investigation then the NDPP would do something about it. I understood that was the
10 proposition that was put to you. Was there any enquiry made to you as the head of the DPP about it? Here you come, the watchdog of the police comes to the boss of the NPA and says your DPP promised us prosecutors and he did not give it to us?

ADV. MLOTSHA: In fact, as I indicated in my evidence, those are the
15 things I heard in these proceedings first time today, that there were meetings with the minister, that there were meetings with the IPID. At no point were those activities ever brought to my attention at the time.

ADV. BAWA: Now you were taken to the point of being asked about Advocate Jiba's professional conduct and then you were stopped short
20 at one example, and you then tendered that you had other examples, and I am going to invite you to provide those other examples to which was alluded to in your cross-examination.

ADV. MLOTSHA: No, as I indicated in my evidence is that it is like in a family, you will always have different views. But I stated my, my
25 embedded concern that I would house regarding the issue relating to

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governance. Can I not proceed any further.

ADV. BAWA: Should I understand that you are not inclined to want to share any further examples with the enquiry?

ADV. MLOTSHA: Can I be given leave to do so, not to?

- 5 ADV. BAWA: There is no misunderstanding that when you get summoned to the office of the NDPP you get summonsed to the office of the boss, would that be correct?

ADV. MLOTSHA: Yes.

ADV. BAWA: Thank you. I have got no further questions.

- 10 MS. VILAKAZI: Are you – Mr Mlotsha, I have a question for you relating to the indictment and prosecutorial independence. Has it ever happened that one would get an indictment to just simply sign, and if not what is the expectation of, what is expected of a prosecutor before they sign an indictment?

- 15 ADV. MLOTSHA: You know, as a prosecutor at the time when you receive the, when you receive the docket, as you go through the docket some call it fact analyses, you go through the facts, you identify the type of evidence that you have, you identify the perpetrators, you have the evidence you have, your decision, how many you are prosecuting and
20 then some, we are different, some are traditional, some are modern, they are against these new modern offences. They will now go with the traditional ones and then the second step will be that of, of drafting either the indictment or the charge sheet. In the KwaZulu Natal DPP's position the practice that I found there was that the file that get retained in the
25 office of the DPP will have, if you close the file like this, if you open it like

this it will have 1, 2 and 3 sections. The copies of the docket, if the decision is to prosecute in the Regional Court, the original will go there. Whatever correspondence the prosecutors and the, will stay in the making and then the last part will be the part, one will call maybe a
5 memo or a report explaining why is that the position, that was the position, the way I understood it then, in the event that prosecutor decides to leave this world, if he dies, if another prosecutor steps in it is easy, because that prosecutor will just go to the last part of the file, look at the memo, oh three accused here involved, direct evidence,
10 fingerprints and so on and so forth, hence the charges, murder, robbery and so forth and so on. You will notice in my email, I think the same email dated 13 June 2012, the last line wherein I state that I still need to know what I am signing on, favour me with the report/memo. It is something, legally speaking even a law student I think will know that,
15 that you do not sign something that you do not have peculiar knowledge of.

MS. VILAKAZI: Just one follow-up question. You were in charge of the KZN office, this is more of your personal manner of how you would deal with things. In circumstances which you find yourself, with Advocate
20 Chauke, in those circumstances if something of a similar nature happened with your subordinates within your office, where one was seeking the other, say prosecutor to sign an indictment without the accompanying memo or sufficient information, what steps would you have taken if you had been copied in that kind of email?

25 ADV. MLOTSHA: Without a memo?

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MS. VILAKAZI: Yes.

ADV. MLOTSHA: Look, the issue of disagreement, legally speaking, is something not unheard of. Because as [inaudible] as we are all sitting here, we would all have our own personal views. The practice of
5 compiling a memo, or a report, in the event with your supervisor, assuming in the KZN DPP office the senior advocate or the advocate is making a decision, that decision will have to be checked by a deputy or a DPP. In the event there is disagreement between that subordinate making a decision with the supervisor to authenticate, to sign the
10 indictment, that must also reflect in the office note. So that whoever takes the file to court, in the event it is not the two who would have been involved in the handling of the matter, has got a helicopter view that look, from the word go there is disagreement here between the person who signed the indictment as well as the – because in the analyses of the
15 facts the application of the law to the facts, some may have a variety of conclusion which should be necessary to be captured in the report.

MS. VILAKAZI: To be more specific, how did you feel about circumstances where Ms Jiba was copied in the email, with the exchanges between you and Chauke, and as far as him expecting you to
20 sign an indictment when you have requested further information to enable you to satisfy yourself before signing that indictment? How did you feel about a manager, who is copied, not actually intervening. You had alluded to the fact that you felt like you were swimming against the sea at a certain point.

25 ADV. MLOTSHA: At that point, I must be honest, I felt depressed. Felt

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depressed because firstly all three of us were consensus, *ad idem* that these two will be inextricably linked, the indictment as well as the report. Now I am getting the indictment without a report. She is favoured in the report. There is no response. Chauke start, Advocate Chauke start
5 probing me those questions you see about the report, what report, there is no response. Me responding in that email, you can see there, I was taking you head-on, no response. Copying in not only her, other senior officials in the NPA. Nobody picks up a phone and say: Guys, what the heck is going on, can we sit across the table? Let's find things out. That
10 never happened. On that score I felt disappointed a bit. That is why I felt like somebody was being let down by the system.

JUSTICE MOKGORO: And with regard to the delegations, did you by yourself require prosecutors from outside of your jurisdiction to come in and deal with the particular prosecution, or were you asked to sign the
15 delegations.

ADV. MLOTSHA: I was asked to sign the delegation, stemming from the telephonic conversation which I have had, that there is a matter that has to be enrolled, with the email from Chauke saying, I am told you agreed that prosecutors would be sent to your division.

20 JUSTICE MOKGORO: So for all intends and purposes, in fact actually the delegations were not initiated by you?

ADV. MLOTSHA: No, they were not.

JUSTICE MOKGORO: With regards to the examples, other examples with regards to questions of governance, as they relate to Ms Jiba, you
25 do not want to take the enquiry into your confidence and give us

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examples? Or if you insist on not giving examples do you have, what is your specific reason for not wanting to give examples? Other examples?

ADV. MLOTSHA: No, as I indicated, I have never had a problem with her, she is a big sister. I have my strong views, something that we will
5 also have in the, will happen in the family where a brother and a sister will also have views against and for each other. So ... [intervenes]

JUSTICE MOKGORO: Ja, so it is normal to differ. Nothing unusual.

ADV. MLOTSHA: So I was not comfortable ... [intervenes]

JUSTICE MOKGORO: But if you're not comfortable.

10 ADV. MLOTSHA: I was not comfortable. For instance with the handling of this matter, you can see, to me these are pure governance issues. There are meetings that are being held, I do not know anything about. I am in charge of the division. At no point one is taking me into confidence and say look this is what is happening. A colleague of mine
15 is making serious allegations against me in my office. If one looks, no action is taken, you can see the colleague is at liberty to say whatever he want to say to me. Nobody comes to my rescue. It is against that background that I thought – and again, there are things that are being suggested here, I pleaded for help, he who alleges must prove, no
20 minutes of that, there is no indication, in what form was it? Was it written, was it typed, was it verbal, that approach. Those are the things that approach. Those are the things that gave me a sense of discomfort, culminating me to, I mean, galvanising me to reach a conclusion that those activities do not sit handsomely and comfortably on the pillars of
25 governance in an entity of the NPA's nature.

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JUSTICE MOKGORO: Thank you.

ADV. MLOTSHA: Thank you so much.

ADV. BAWA: May I please have a follow-up question?

JUSTICE MOKGORO: One follow-up question.

5 MS. VILAKAZI: Just one question, it is a general one?

ADV. MLOTSHA: Yes.

MS. VILAKAZI: Have you ever receive any correspondence directly from
Ms Jiba? Whether it is an instruction or, just, do you actually remember
a point at which you would receive any correspondence, just directly
10 from her?

ADV. MLOTSHA: In recognition of the fact that she was my supervisor I
used to receive quite a lot. For instance there was an instance where
my colleague, Boet Laurence went with Mossing, went to KZN regarding
the Amigos case. They met, I think there was a guy, Inspector Du Plooy,
15 who was the IO in the Amigos case, as well as the auditors represented
by Trevor White, if I am not mistaken. I was not at that meeting, but it
seems there was an exchange of words, that is what I heard, between
my colleague Mrwebi, with Du Plooy, when Du Plooy, Mrwebi was asking
questions about the case, got a sense that Mrwebi wanted to withdraw
20 the case, where he confronted him saying, why do you not talk straight
and tell us that you are here to withdraw the case. So in that instance
the following day, I think I was on my way to Harrismith, which was
making headlines in the Mercury that there was interference by the
special director from the head office. I think I received a call from her
25 late in the afternoon saying Hey Simphiwe, did you see this article,

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please immediately consult or contact Mthunzi Maaka at the time because there are questions from the media. So I used to receive quite a number, even the smses sometimes we will exchange smses. As I say, our relationship was not a sour relationship. Just that when it comes to professionalisation of the relationship there will be those things that will give me at a personal level. I do not know what other people were feeling.

MS. VILAKAZI: Thank you Mr Mlotsha.

ADV. MLOTSHA: Thank you so much.

10 ADV. MASUKU: Sorry Chair, can there be follow-up questions arising from what you have just asked?

JUSTICE MOKGORO: Follow up cross-examination? Okay, you may do so.

ADV. MASUKU: Yes, thank you. The questions you were asked by Ms Vilakazi, relating to the fact that you felt like you are swimming against the tide relates to the fact that you feel that Advocate Jiba could have intervened in your communication with Chauke, because she was copied onto the letters, am I correct?

ADV. MLOTSHA: As I indicated, I have got quite a number of examples that I can make, including the emails.

ADV. MASUKU: No I just picked – I just picked up that one.

ADV. MLOTSHA: To substantiate that one. If you are interested I will do so.

ADV. MASUKU: No, I picked up that one, because that is the one you

testified on.

ADV. MLOTSHA: Come again, what is the question?

ADV. MASUKU: Okay, that helps. So you were asked by Ms Vilakazi about your feeling relating to the fact that Advocate Jiba was copied on
5 your communication with Advocate Chauke, and you said you felt like you were swimming against the tide.

ADV. MLOTSHA: Yes.

ADV. MASUKU: Alright, can I ask you this, when Advocate Chauke responded to your email and apologised you said in your testimony that
10 you felt that because he had apologised that was okay?

ADV. MLOTSHA: Yes.

ADV. MASUKU: Why would Advocate Jiba get involved? Why do you think Advocate Jiba should have been involved, after you had received a response to your email from Advocate Chauke, apologising on calling
15 you brother?

ADV. MLOTSHA: Yes. I will go back to my explanation. KZN is the province, at that time I think with the population between R11 million and R12 million. I had quite a number of cases I was dealing with in the province. But because today I was confined to a single case, there were
20 other cases as my line manager I would have dealt with, with her.

ADV. MASUKU: Okay, so is there a process in the NPA of raising a complaint against a colleague, a formal complaint against a colleague for the specific attention of your manager, so that your manager intervenes. Is there a process that must be followed to deal with those kind of

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problems, where there is a breach, a break in relationship between you and your other colleagues?

ADV. MLOTSHA: If you may bear with me. If I say I was swimming against the tide, there was a time ... [intervenes]

- 5 ADV. MASUKU: Sorry, you have to respond to the question that I asked. You are now talking about swimming against the tide. I asked you if there is a policy within the NPA that governs how you register grievances against persons that you have grievances against.

ADV. MLOTSHA: Yes

- 10 ADV. MASUKU: Now I am not, I did not ask you about swimming against the tide.

- ADV. MLOTSHA: Yes, yes, but it will go back to swimming against the tide, my answer. The process is, when I was about to step down in the Mail and Guardian, there was a guy called Nick Doze, I am not sure if I
- 15 am correctly pronouncing his surname, from the Mail and Guardian. Somebody told him that my days in the KZN were numbered as the DPP, and then Nick Doze was, sent the questions to my colleague, Advocate Mrwebi. In that email in the Mail and Guardian, you can get the, I think it will be the Mail and Guardian between 2 July and 9 July, Advocate
- 20 Mrwebi said, why do you approach me for answers, because your source is Advocate Mlotsha, I felt gravely aggrieved by that statement. I lodged a grievance with the NPA, nothing turned on it. That is the procedure I was trying to follow, and then with that, at some point there was an allegation I was overpaid with the salary that was investigated.
- 25 Eventually it was discovered that I was never overpaid. There were

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other incidents that were happening, other than what I am talking about here. Hence I said to you, if you want me to continue with the examples, I will be giving you the examples relating to the procedure.

ADV. MASUKU: No Mr Mlotsha, it is not the question that I asked. The
5 question I asked is really about the existence of a policy, of a grievance policy that one could follow. I mean, the answer could be yes there is in fact a grievance policy that is followed. If I needed to know whether you had utilised that grievance policy in relation to the issues that you testified on I would ask you that question. That is really what I wanted to
10 ask. I mean, this was arising from what the, Ms Vilakazi had asked you. So I was not inviting you to give me examples. I was only asking you to give me knowledge of whether or not there is a process that is followed.

ADV. MLOTSHA: Apologies, I [inaudible] the question is an open question not a closed question.

15 ADV. MASUKU: No, it was a closed question.

ADV. MLOTSHA: Thank you so much. Ja.

ADV. MASUKU: The final question really is this one, you say that a colleague of yours was making very serious allegations against you and you felt nothing was being done. It really relates to whether or not you
20 activated your grievance procedure in accordance with the policy of the, of the NPA. Did you do that?

ADV. MLOTSHA: No.

ADV. MASUKU: Okay. Now I want to put it to you this way. Part of what Ms Vilakazi asked you was about prosecutorial independence. It is not
25 desirable, and I put it as a proposition, you can differ with me or not. It is

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not desirable that every squabble between prosecutors the NDPP is copied on them and that she should intervene? It is not desirable because you are expected to stand your ground, which is what you did here against Advocate Chauke, and you stabilise your professional
5 relationship with him, without the intervention of anybody else?

ADV. MLOTSHA: Not only him, with all the officials.

ADV. MASUKU: Yes, that is what I am ... [intervenes]

ADV. MLOTSHA: yes.

ADV. MASUKU: I am trying to put it broader than that. But so you are
10 expected to stand your ground and if there is a collapse of a process by a violation of the NPA process you are expected to report that through the normal process of reporting, right?

ADV. MLOTSHA: I would not agree with you on that one.

ADV. MASUKU: Okay?

15 ADV. MLOTSHA: As I said to you, NPA has got values, amongst other things the issue of transparency. And if you adopt, if you look at it transparency in its primordial form it will suggest that sunshine is the greatest disinfectant, in the sense that when I had problems with Advocate Chauke it was all in the open, copying in the senior officials. It
20 was all out there. As far as I am concerned that was in full compliance with one of the values of transparency that are in the NPA.

ADV. MASUKU: I understand. I think you make sense with that. I mean I know that that is how you see it. But one way of ensuring that your professional lines remain firmed up is being able to, when you see a

colleague going outside an NPA process to go to that colleague and say no-no-no, this is not how we do things here, this is how we should operate around this? Am I correct? That is just one way of doing it?

ADV. MLOTSHA: I [inaudible] ... [intervenes]

5 ADV. MASUKU: You do not always have to lodge a grievance?

ADV. MLOTSHA: You agree with me, the same I did in the email when I was telling Chauke, do you know the process, do you know this, do you know that? Going forward let us respect each other, no principal people relationship. As long as I get the report as we agreed I am prepared to
10 work with you as a brother and a colleague.

ADV. MASUKU: Yes, and then of course that resulted in you and him, as they put it, kissing up and making up. Not literally but – okay.

ADV. MLOTSHA: You know, I am a firm believer you know, you have to listen ... [intervenes]

15 ADV. MASUKU: In forgiveness, yes.

ADV. MLOTSHA: ... to [inaudible] man, man of the past leaving the presence marching into the future.

ADV. MASUKU: Ja Man, Ja Man. Okay finally ... [intervenes]

JUSTICE MOKGORO: I was going to say ja man. Thank you so much.

20 ADV. MASUKU: I just ... [intervenes]

JUSTICE MOKGORO: Oh, you are not [inaudible].

ADV. MASUKU: No, I mean, it is really maybe just a closing remark. Of course you did philosophy, so most of what, your approach to things do come across like you, we are going to read some books from you and we

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look forward to that.

ADV. MLOTSHA: Thank you so much my brother. Hope to [inaudible] the case. Though when you said you put it to me I had a [inaudible] in court one day when the lawyer said, I put it to you, and the witness said,
5 put it wherever you want, I am telling you this is the truth.

JUSTICE MOKGORO: Okay, thank you Mr Mlotsha.

ADV. MLOTSHA: Thank you so much, Chairperson.

JUSTICE MOKGORO: Thanks for your willingness to assist. And for taking the time, we appreciate it. You may stand down. Can we, we are
10 passed our bedtime now, but can we stand down until, adjourn rather until – we can still make it 14:00.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

DS500043

JUSTICE MOKGORO: Thank you. Ms Bawa?

15 ADV. BAWA: Good afternoon, we are calling our next witness, is Colonel Kobus Roelofse.

MS. MAANDA: Please state your full names for the purposes of the record?

CNL. ROELOFSE: Kobus de Meyer Roelofse.

20 MS MAANDA: Will you take an oath or affirmation?

CNL. ROELOFSE: Oath.

MS. MAANDA: Do you swear that the evidence that you shall give shall be the truth, the whole truth and nothing but the truth? If so raise your right hand and say, so help me God.



BLACK LAWYERS ASSOCIATION PIETERMARITZBURG BRANCH

2017: BRANCH EXECUTIVE COMMITTEE
CHAIRPERSON Mr Nzimande; DEPUTY CHAIRPERSON: Mr S Ngwenya
SECRETARY: Mr M Mbokazi; DEPUTY SECRETARY: Ms T Ngcobo
TREASURER: R Stuurman; HEAD OF POLICY AND LEGISLATION: Adv Simphiwe Mlotshwa
HEAD OF LEGAL EDUCATION AND RESEARCH: Ms Nozipho Myende
HEAD OF EVENTS AND CAMPAIGNS Adv Siphon Ngcobo

Established in 1977

TO: THE HONOURABLE PRESIDENT
OF THE REPUBLIC OF SOUTH AFRICA
MR C M RAMAPHOSA

AND TO: THE HONOURABLE MINISTER AND THE CHAIRPERSON
OF THE ADVISORY PANEL FOR APPOINTMENT OF
NATIONAL DIRECTOR OF PUBLIC PROSECUTION
MR J T RADEBE

RE: NOMINATION FOR NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS BY
BLACK LAWYERS ASSOCIATION ("BLA") PIETERMARITZBURG BRANCH

NOMINEE: ADVOCATE CYRIL SIMPHIWE MLOTSHWA

Please be advised that the BLA on behalf of the Pietermaritzburg and Northern Kwa
Natal branch hereby nominates **ADVOCATE CYRIL SIMPHIWE MLOTSHWA** for
consideration and appointment to the position of **NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS** of the Republic of South Africa.



PIETERMARITZBURG BRANCH: Po Box 101092 Scottsville
Branch chairperson cell: 082 6666 108
Branch secretary cell: 0714340267

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Please be further informed that in support of the nomination, we specifically refer to Advocate Mlotshwa's curriculum vitae and certificates which are attached hereto.

His qualifications and achievements in his legal career of many years as Court Interpreter, Prosecutor, State Advocate, Senior State Advocate, Deputy Director of Public Prosecutions and Acting Director of Public Prosecutions demonstrate that he is suitable for the position of NDPP as aforesaid.

During his acting period as a KwaZulu-Natal Provincial Director of Public Prosecution, he presented himself as a proven and tested leader, at all relevant times when engaging with all stake holders necessary for the functioning of administration of justice. He has participated and contributed to the development of our jurisprudence through his involvement in different structures.

During his tenure as a leader of Prosecutors in the Province of KwaZulu-Natal, he developed a good professional rapport with Advocates, Prosecutors, Attorneys and Judges. He contributed and ensured that there was smooth running of Courts and has contributed to the administration of justice. He has keen intellect and astuteness, with his uncompromising professionalism and maturity, which allow him to be held in high esteem amongst his colleagues.

Members of the BLA have personally worked with him and have observed the impeccable manner in which he handles the issues, displaying vast experience as a practitioner and notably decisive and to the point.

In support of this nomination, we specifically refer to Advocate Mlotshwa's curriculum vitae. It would be seen that he comes from very humble beginnings, having been born and raised in the deep rural area of Maphumulo in KwaDukuza, KwaZulu-Natal. Our assertion is further supported on the following grounds:



1. Advocate Cyril Simphiwe Mlotshwa has NPA institutional memory with 18 years in the NPA and 21 years of legal experience in that:
 - 1.1 He completed Matric at Groutville High School in 1992;
 - 1.2 He worked as a Cleaner at Coastal Panel Beaters, Stanger, KwaDukuza, in 1993;
 - 1.3 He enrolled for Baccalaureus Iuris (B Iuris) degree in 1995 at the University of Zululand and he completed it in record time in 1997;
 - 1.4 He worked as a Court Interpreter at the Durban Magistrates' Court while studying part-time for LLB at the University of Zululand as LLB degree was a postgraduate degree at the time, he completed it in 1999;
 - 1.5 He was appointed as a District Court Prosecutor at Verulam Magistrates' Court in June 1998;
 - 1.6 He attended a Prosecutors' Course at Justice College in Pretoria in August 1999;
 - 1.7 He was the Regional Prosecutor in 2000 and 2001 at Stanger Magistrates' Court;
 - 1.8 He was appointed as State Advocate in June 2001 at the Director of Public Prosecutions Office, Pietermaritzburg;
 - 1.9 He was elevated into Senior State Advocate's position in 2003;

- 1.10 In the same year of his elevation into Senior State Advocate, he enrolled for Magister Legum / Master of Laws degree part-time at Unisa which he completed in 2004;
- 1.11. In the year 2005, he enrolled for Human Resources Management Programme at Unisa which he completed within a year;
- 1.12. He was appointed as a Deputy Director of Public Prosecutions-KwaZulu-Natal in 2008;
- 1.13. Two years later, with strong recommendation of the Minister of Justice, Mr J T Radebe, he was appointed as the Acting Director of Public Prosecutions-KwaZulu-Natal and he did exceedingly well in a two year period for which he was appointed to act;
- 1.14. He completed his BA Honours in Philosophy degree in 2015 but graduated in 2016;
- 1.15. He resigned in the NPA in 2015 with a view to do pupillage in 2016;
- 1.16. He was doing pupillage at the Pietermaritzburg Advocates' Bar in 2016;
- 1.17. He got an outright pass after the General Bar Council's Examination and started practicing as an advocate at the Constituent Bar immediately thereafter,
- 1.18. He is currently at the Pietermaritzburg Advocates' Bar and doing final year of his second Masters in Philosophy specializing in Legal Philosophy at the University of KwaZulu-Natal;

- 1.19. He has been a part-time law tutor at Unisa since 2009 and his modules as a tutor are Introduction to Law, Skills Course for Law Students and Historical Foundations of Law.
2. He is a conscientious, hardworking and very determined person.
3. His legal acumen, his unwaveringly unswerving commitment to rule of law, his credentials and experience in law exhibit that he is suitably qualified for the position of the National Director of Public Prosecutions.
4. As a member of the Pietermaritzburg Constituent Advocates' Bar, his legal work includes criminal work, labour law work and civil practice.
5. Health wise, he has run and completed 9 Comrades Marathons and is currently preparing for his 10th Comrades Marathon next year in 2019.

The BLA have no hesitation in stating that Advocate Cyril Simphiwe Mlotshwa is a person of absolute integrity and sound moral principles. Therefore we are of the view that he is a fit and proper person to be considered for appointment as a NDPP.

Yours faithfully,

SIBANI NZIMANDE
BRANCH CHAIRPERSON (PMB)



PIETERMARITZBURG BRANCH: Po Box 101092 Scottsville
Branch chairperson cell: 082 6666 108
Branch secretary cell: 0714340267

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ARTICLE 1 - SOURCE:

<https://www.news24.com/SouthAfrica/News/Intaka-corruption-charges-may-be-dropped-20120419>

Intaka corruption charges may be dropped

2012-04-19 12:39

Durban - Charges of corruption against high profile KwaZulu-Natal ANC politicians implicated in the awarding of multi-million rand tenders to Intaka may be dropped, the **Mercury** reported on Thursday.

Independent sources told the paper the head of National Prosecuting Authority's commercial crime unit Richard Mrwebi was reviewing the decision to prosecute KwaZulu-Natal legislature speaker Peggy Nkonyeni and economic development MEC Mike Mabuyakhulu.

Nkonyeni, Mabuyakhulu, former Ithala development finance corporation CEO Sipho Shabalala, and Uruguayan businessman Gaston Savoi have been charged with racketeering and corruption.

The charges against them relate to the awarding of multi-million rand tenders to Savoi's company, Intaka, to supply water purification plants and oxygen generating units to provincial hospitals.

The Mercury reported that Mrwebi recently called in a meeting to discuss the trial and was expected to make a decision on prosecuting Mabuyakhulu and Nkonyeni.

"Advocate Mrwebi has not made any decision about this matter because it falls under the director of public prosecutions in KwaZulu-Natal. We are not at liberty to discuss matters pending before court as the matter has been set down for trial," NPA spokesperson Mthunzi Mhaga was quoted as saying by the newspaper.

Mrwebi was recently appointed by President Jacob Zuma.

In January Judge Ron McLaren set the trial date for October 1 to December 14.

ARTICLE 2 - SOURCE:

<https://www.timeslive.co.za/politics/2012-04-19-grossly-inappropriate-to-drop-corruption-charges-da/>

Times LIVE

NEWS POLITICS SPORT TSHISALIVE LIFESTYLE BUSINESS MOTORING MULTIMEDIA TIMES SELECT

POLITICS

'Grossly inappropriate' to drop corruption charges: DA

19 April 2012 - 14:17BY SAPA



Peggy Nkonyeni, speaker of the KwaZulu-Natal legislature, economic development MEC Mike Mabuyakhulu and former head of the province's health department, Ronald Green-Thompson, in the Pietermaritzburg Magistrate's Court. File photo.

Image: SHAN PILLAY/SAPA

An attempt to have charges of corruption against high profile KwaZulu-Natal ANC politicians dropped would be grossly inappropriate, the DA said on Thursday.

"Just like anyone else accused of a crime, they must have their day in court," Democratic Alliance leader in KwaZulu-Natal Sizwe Mchunu said in a statement.

"It is inconceivable that these two individuals remain in high office, particularly when all of the other accused have either retired, resigned or been dismissed."

ARTICLE 2 - SOURCE:

<https://www.timeslive.co.za/politics/2012-04-19-grossly-inappropriate-to-drop-corruption-charges-da/>

According to reports on Thursday corruption charges against KwaZulu-Natal legislature speaker Peggy Nkonyeni and economic development MEC Mike Mabuyakhulu, who were implicated in the awarding of multi-million rand tenders to Intaka, may be dropped.

Independent sources told the Mercury newspaper that the head of National Prosecuting Authority's commercial crime unit Richard Mrwebi was reviewing the decision to prosecute.

Nkonyeni, Mabuyakhulu, former Ithala development finance corporation CEO Sipho Shabalala, and Uruguayan businessman Gaston Savoi have been charged with racketeering and corruption.

The charges against them relate to the awarding of multi-million rand tenders to Savoi's company, Intaka, to supply water purification plants and oxygen generating units to provincial hospitals.

Mchunu said KwaZulu-Natal premier Zweli Mkhize had to dispel concerns that the two officials may not face trial. If the charges were dropped it would be a clear case of justice being practised selectively.

According to reports Mrwebi recently called a meeting to discuss the trial and was expected to make a decision on prosecuting Mabuyakhulu and Nkonyeni.

Mrwebi was recently appointed by President Jacob Zuma.

In January Judge Ron McLaren set the trial date for October 1 to December 14.

Mchunu said the DA expected Mkhize to clarify whether talks had taken place.

ARTICLE 3 - SOURCE:

<https://mg.co.za/article/2012-07-06-crime-unit-head-accused-of-meddling/>



NEWS OPINION ARTS & CULTURE BUSINESS EDUCATION HEALTH MOTORING PARTNER FEATURES EVENTS

LOGIN SUBSCRIBE

NATIONAL

Crime unit head accused of meddling

Kwanele Sosibo Sam Sole 6 Jul 2012

The National Prosecuting Authority has been racked by fresh controversy over claims of interference by advocate Lawrence Mrwebi, the head of the specialised commercial crimes unit, in politically sensitive cases. Mrwebi is the NPA official who ordered the withdrawal of fraud charges against former crime intelligence boss Richard Mdluli. Now internal memos seen by the *Mail & Guardian* show that Mrwebi has also intervened in two politically charged cases in KwaZulu-Natal. Mrwebi's intervention revolved around the "Amigos case" — involving Uruguayan businessman Gaston Savoi and senior KwaZulu-Natal politicians — and the "Madhoe case", which touches on the investigation of politically connected businessperson Thoshan Panday and draws in provincial Hawks commander General Johan Booysen and the Cato Manor "hit squad" allegations. In both instances there are claims that two senior prosecutors who have rejected Mrwebi's views — the acting provincial director of public prosecutions, Simphiwe Mlotshwa, and advocate Bheki Manyathi — have experienced attempts to sideline them. One prosecutor, who declined to be named, said: "I am risking my career, but someone has to speak out about what Mrwebi is doing." **Talk to Mlotshwa** Following a list of questions sent to the NPA, a caller from the authority who sounded like Mrwebi telephoned and suggested that this reporter talk to Mlotshwa "as he will confirm all your allegations". When it was suggested speaking to Mlotshwa might get the KwaZulu-Natal advocate into trouble, the caller said: "We know he is your source. He is in trouble already, bye bye." When the *M&G* called Mrwebi on his cellphone, he refused to confirm or deny that he was the caller and hung up. In the official response to the questions, NPA spokesperson Mthunzi Mhaga said: "Advocate Mrwebi has not 'interfered' in the Mdluli matter, but exercised his powers as head of the specialised commercial crimes unit in accordance with the NPA Act. In fact, he has not interfered in any matter as all decisions in the NPA are taken by officials empowered by both the NPA and the Constitution to do so." **Amigos** In the Amigos case, Mrwebi has held a series of meetings with prosecutors and investigators in the corruption case involving Gaston Savoi. The investigation has been dubbed the "Amigos case" because of the chummy way in which Savoi and politicians addressed each other in email correspondence. Savoi, through his company Intaka, is alleged to have paid sweeteners to smooth the sale of water purifiers and oxygen generators at hugely inflated prices. He is due to go on trial in October with a number of high-profile ANC figures, including economic development MEC Mike Mabuyakhulu, former health MEC Peggy Nkonyeni and former provincial treasury boss Siphoshe Shabalala. Documents seen by the *M&G* show there has been a serious push by the NPA's head office, spearheaded by Mrwebi, to have charges withdrawn against Mabuyakhulu and Nkonyeni. The investigation has been dogged by allegations of political partiality as it cuts through provincial factions around Premier Zweli Mkhize and his perceived rivals, Mabuyakhulu and Nkonyeni. Mkhize was also involved in the procurement but was not charged. Mabuyakhulu and Nkonyeni are both regarded as closer to President Jacob Zuma than Mkhize. **Staving off interference** In July last year, in what was

ARTICLE 3 - SOURCE:

<https://mg.co.za/article/2012-07-06-crime-unit-head-accused-of-meddling/>

perceived as a bid to stave off interference, the acting provincial director of public prosecutions, Mlotshwa, went so far as to confirm in the media that he had signed arrest warrants for Mabuyakhulu and Nkonyeni. The NPA was forced to admit that the national director — Menzi Simelane at the time — had intervened to ask police to delay the execution of the warrants. Since Simelane stepped aside in December last year, efforts to review the decision to prosecute Mabuyakhulu and Nkonyeni have ratcheted up. The documents seen by the *M&G* show that on March 8 this year a meeting was held at the NPA's head office in Pretoria where "issues were raised", including "why the premier was not similarly being charged if the MECs were charged". That meeting prompted two visits to KwaZulu-Natal by Mrwebi and advocate Anthony Mosing in March 2012 to discuss the case with local prosecutors and investigators. A memo dated April 25, drafted by Mosing "with the concurrence of Mrwebi", sets out their findings. It records how the Intaka purchase was pushed by Shabalala, who allegedly later received a R1 053 000 payment from Savoi. On the advice of Shabalala, Mkhize established an interdepartmental committee to consider the Intaka purchase. **R1-million donation for ANC** Mabuyakhulu later admitted receiving R1-million from Shabalala as a donation to the ANC, although there was no paper trail to support the claim. The Mosing memo confirms charges against Shabalala, but says of Mabuyakhulu: "Withdraw charges ... He acted on the proposal that came from Shabalala and Dr Mkhize. If the latter is not being charged, how can he be charged? He received no benefit that is directly related to Intaka." On Nkonyeni, the memo states: "The crux of the case against the MEC, Peggy Nkonyeni, appears to be based on the relationship she had with one Mkhwanazi ... It was alleged that she received R20 000 from Mkhwanazi as a bribe ... It was considered by the team that this amount was negligible and could easily be explained by Peggy..." Lindelihle Mkhwanazi, who was also charged, was said to be Nkonyeni's lover and owned a company that had received significant "commission" payments from Intaka. Mosing notes that the evidence against Nkonyeni was "based on various emails between her and Savoi", but there was "no proof" of any gratification payments. Mosing claims there was consensus that the charges against Nkonyeni and Mabuyakhulu had to be withdrawn. That does not seem to have been the understanding of the KwaZulu-Natal office and it appears the April 25 memo was drawn up for another head office meeting attended by Mlotshwa and senior NPA managers, including acting national director of public prosecutions Nomgcobo Jiba and Mrwebi. **Mlotshwa** Although the *M&G* has not spoken to any of those present at the meeting, it is understood that Mlotshwa indicated that he still believed there was sufficient evidence to charge Nkonyeni and Mabuyakhulu and that Jiba should formally overrule him in terms of the NPA Act if she held a different view. A provincial NPA source, who declined to be named, told the *M&G* that on Monday this week a senior KwaZulu-Natal prosecutor, whose name is known to the *M&G*, told her staff that she would be taking over from Mlotshwa. In response to questions, Mhaga said: "With regard to the Intaka case, we challenge you to provide proof that advocate Mrwebi has attempted to withdraw the case. We are not aware of such attempts as that matter falls within the jurisdiction of the director of public prosecutions [in KwaZulu-Natal]. "The allegations of 'brow-beating and bullying' are dismissed with the contempt they deserve. As far as we are concerned, advocate Mlotshwa is still the acting director of public prosecutions for the KwaZulu-Natal office." **Madhoe** Colonel Navin Madhoe is the KwaZulu-Natal procurement officer charged with R60-million in fraudulent police contracts with co-accused Panday, the Durban businessman who is linked both to President Jacob Zuma's son Edward and the president's friend, Deebo Mzobe. While on bail, Madhoe is alleged to have tried to bribe provincial Hawks commander Booysen to backdate a key investigation report to suggest that evidence against him and Panday had been illegally obtained prior to the issuing of warrants. Booysen set up a sting and Madhoe was arrested shortly after handing over R1.362-million to Booysen. Booysen worked closely with

ARTICLE 3 - SOURCE:

<https://mg.co.za/article/2012-07-06-crime-unit-head-accused-of-meddling/>

the Cato Manor organised crime squad whose members were recently arrested on allegations of carrying out extrajudicial killings. Several members of the squad were used in the investigation of Madhoe and Panday. On January 9, following representations by Madhoe's lawyers on December 6, Mrwebi wrote to the provincial serious commercial crime unit to query the basis of the bribe charges against Madhoe. Advocate Manyathi wrote back defending his case in detail. The essence of Madhoe's main defence, he explained, was that he had approached Booysen and told him of damning evidence that implicated Booysen and the Cato Manor unit. Booysen then asked him to get the evidence so he could destroy it. Madhoe's contacts wanted R2-million, but Booysen had handed him R1.362-million with a promise to pay the balance. This was unacceptable to his "contacts" and he was in the process of returning the money to Booysen when he was arrested. **'Absurd averment'** Manyathi commented: "I must say that this is the most absurd averment I have ever come across." He pointed out that the "evidence" — crime scene photos similar to those that precipitated the Cato Manor investigation after they were published in the *Sunday Times* on December 11 — had been booked into the exhibit register by Booysen. Manyathi wrote: "If Booysen was so determined to destroy the damning evidence, it defies logic why he allowed it to be handed into the exhibit register." According to an NPA source, it was after this interaction that a problem emerged with the selection process to fill the position of head of the provincial specialised commercial crimes unit head, for which Manyathi had been recommended. Mhaga responded: "Advocate Mrwebi received representations from [Madhoe's] attorneys ... Upon receipt of these representations, he requested that the prosecutors furnish him with the relevant case docket and clarify certain issues relating to the case. "This is standard procedure followed by any official who has to consider representations so that he makes an informed decision. After studying the evidential material ... advocate Mrwebi reaffirmed the initial decision taken by prosecutors to proceed with the prosecution "With regard to your allegations of 'victimisation' of advocate Manyathi, advocate Mrwebi denies this as he was not involved in the recruitment process leading up to his recommendation and subsequent halting of the process. * *Got a tip-off for us about this story? Email amabhungane@mg.co.za*

ARTICLE 4 - SOURCE:

<https://mg.co.za/article/2012-07-19-staff-smell-a-rat-over-national-prosecuting-authority-rotation/>


NATIONAL

Staff smell a rat in NPA rotation

Staff Reporter 19 Jul 2012



Attempts to withdraw fraud charges against KwaZulu-Natal speaker Peggy Nkonyeni in the 'Amigos' case are motivated by her support for President Jacob Zuma

Concerned National Prosecuting Authority (NPA) legal staff believe the unexpected removal of advocate Simphiwe Mlotshwa as KwaZulu-Natal acting prosecutions head could pave the way for "political interference" in the high-profile fraud and corruption case involving several elected ANC officials and Uruguayan businessperson Gaston Savoi.

By removing Mlotshwa from the position, they fear it is only a matter of time before criminal charges against ANC KwaZulu-Natal political figures Mike Mabuyakhulu, the province's economic development MEC, and KwaZulu-Natal legislature speaker Peggy Nkonyeni are withdrawn. Mlotshwa has been replaced by advocate Moipone Noko-Mashilo, who some senior NPA officials claim is too junior for the job.

The Mail & Guardian was reliably informed by a number of sources that Mlotshwa had not bowed to pressure to withdraw charges against Mabuyakhulu and Nkonyeni. The sources

ARTICLE 4 - SOURCE:

<https://mg.co.za/article/2012-07-19-staff-smell-a-rat-over-national-prosecuting-authority-rotation/>

cannot be named for fear of getting fired, but they told the M&G they could not stand by and watch the case being sabotaged.

"We respect Mlotshwa absolutely," said a KwaZulu-Natal advocate who requested anonymity. "The only reason they went out to get somebody else was because he would not withdraw the charges against Mabuyakhulu and Nkonyeni. We want to know what agreements Noko-Mashilo has reached on the case."

Noko-Mashilo declined to comment and would not say whether she was considering withdrawing the charges against Mabuyakhulu and Nkonyeni.

Exceptionally well

An internal NPA memo sent out this week said Mlotshwa had executed his mandate "exceptionally well, hence his concomitant appointment to a higher position within the same director of public prosecutions office", indicating that he had been "promoted" 10 days prior to his removal.

NPA sources said Mlotshwa's promotion was to the rank of senior, instead of junior, deputy director of public prosecutions. He had applied for the post last year, they said, but insisted he was unaware that he was being removed from his acting post until the last minute. They alleged that Mlotshwa had been preparing to do Noko-Mashilo's performance assessment in her tax office when he learned about her promotion.

Earlier this month the M&G revealed allegations of interference by advocate Lawrence Mrwebi, the head of the specialised commercial crimes unit, in the case involving Savoi. Documents seen by the M&G showed there was a serious effort by the NPA, spearheaded by Mrwebi, to have the charges withdrawn against Mabuyakhulu and Nkonyeni.

The case throws into the spotlight the critical issue of sources of funding for political parties, which are still not publicly declared in South Africa. At its core is the issue of whether Savoi paid "bribes" to politicians and government officials to secure contracts, or whether he was asked to make "donations" to the ANC, as his legal team asserts.

The state claims that Savoi, through his company Intaka Holdings, allegedly paid sweeteners to secure contracts to provide water-purification systems and oxygen machines to the health and local government departments at hugely inflated prices.

Matters came to a head when Mlotshwa was removed on the day a pretrial session was held behind closed doors in the Pietermaritzburg High Court. Some see the move as part of a concerted drive to have the charges against Mabuyakhulu and Nkonyeni withdrawn amid opposing claims of a political conspiracy against them as the ANC leadership battle heats up. Upset NPA staff assume Mabuyakhulu and Nkonyeni are receiving political support because they are believed to be backing President Jacob Zuma for a second term in office.

ARTICLE 4 - SOURCE:

<https://mg.co.za/article/2012-07-19-staff-smell-a-rat-over-national-prosecuting-authority-rotation/>

Unconstitutional

Zuma's favourite lawyer in his long-running legal battles, Kemp J Kemp, is part of the defence team representing Savoi. The M&G was informed that, based on Kemp's and other legal opinion, Savoi's legal team will request at the next pretrial meeting in October that the racketeering charges against him be declared "unconstitutional".

Savoi's attorney, George van Niekerk, said the constitutionality challenge to the racketeering charges in the indictment would be based on an offence created in section 2 (1) of the Prevention of Organised Crime Act 121 of 1998.

"Our concern is that the section is void for vagueness," said Van Niekerk. "We say it is not possible for an accused to ascertain from the wide wording of the Act exactly what the offence is for which the accused is charged. Hence it is unconstitutional."

If trial judge Ron McLaren decides to allow it and grants an order, some legal figures believe it could assist the state in withdrawing the charges against Mabuyakhulu and Nkonyeni, who are also accused of racketeering.

Dumisani Xaba, the Pieter-maritzburg attorney representing Mabuyakhulu, confirmed he had received no indication from the state that the charges against his client would be withdrawn.

Flimsy

Nkonyeni was until recently represented by Durban attorney Mvuseeni Ngubane, who allegedly committed suicide in May. Nkonyeni could not be reached for comment.

Although NPA staff say the case against Mabuyakhulu and Nkonyeni is solid, lawyers representing some of the accused allege the charges are "flimsy". The events in question took place while KwaZulu-Natal Premier Zweli Mkhize was MEC for economic development. Although state officials involved in the case say they believe Mkhize might have a case to answer, he has vigorously denied being implicated and has not been charged.

The NPA's claim that Mlotshwa's removal complied with public service policy not to keep acting appointees in their post for longer than a year was laughed off by those close to him. They said he had already been acting in the post for two years. Mlotshwa declined to comment.

Mabuyakhulu and Nkonyeni were arrested in August last year, almost a year after most of the other 21 accused were arrested. Some close to the case say this was because of political interference, but others believe the state did not have enough evidence against them.
– *Additional reporting by Sam Sole*

Mlotshwa 'promoted', not axed

The trial dubbed the "Amigos" case, because of the friendly correspondence between

ARTICLE 4 - SOURCE:

<https://mg.co.za/article/2012-07-19-staff-smell-a-rat-over-national-prosecuting-authority-rotation/>

Uruguyan businessperson Gaston Savoi and South African government officials, has been beset by accusations of meddling.

But the spokesperson for the National Prosecuting Authority, Mthunzi Mhaga, said there was nothing untoward about the sudden removal of the acting director of public prosecutions in KwaZulu-Natal, Simphiwe Mlotshwa.

"No charges have been withdrawn against any of the accused in the Intaka case, including the Northern Cape leg of the case," he said. "Advocate Mlotshwa was not 'axed' – his acting appointment was never permanent.

"It has been common practice in the past to rotate the director of public prosecutions acting - appointees.

"Insinuation that the new acting appointment is linked to the Intaka case is nonsensical because he is still part of the prosecution team in the Intaka case and remains a senior member of staff in that office." – Glynnis Underhill