

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

27 FEBRUARY 2020

DAY 220

FINAL

20

PROCEEDINGS RESUME ON 27 FEBRUARY 2020

CHAIRPERSON: Good morning Mr Nicholson, good morning everybody.

ADV WILLIAM NICHOLSON: Good morning DCJ.

CHAIRPERSON: Are you ready?

ADV WILLIAM NICHOLSON: I am ready Chair.

CHAIRPERSON: Yes okay let us start.

ADV WILLIAM NICHOLSON: Chair the witness that will be testifying today is Advocate Cyril Simphiwe Mlotshwa. He is the former acting DPP of the Province of KwaZulu-Natal. He is now a Member of the
10 Pietermaritzburg bar. Advocate Mlotshwa will deal with a – with his involvement in the Cato Manor prosecution and primarily and other related issues of the NPA. With the leave's Chair may the witness be sworn in?

CHAIRPERSON: H'mm. Thank you please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record?

ADV MLOTSHWA: Cyril Simphiwe Mlotshwa.

REGISTRAR: Do you have any objection to taking the prescribed oath?

ADV MLOTSHWA: None.

20 **CHAIRPERSON:** Do you consider the oath to be binding on your conscience?

ADV MLOTSHWA: Yes.

REGISTRAR: Do you swear that the evidence you will give will be the truth; the whole truth and nothing else but the truth if so please raise your right hand and say, so help me God.

ADV MLOTSHWA: So help me God.

ADV WILLIAM NICHOLSON: Chair there is a bundle prepared for the Chair. The bundle has been marked Exhibit RR6. With the Chair's leave may the bundle be handed in?

CHAIRPERSON: The affidavit of Mr Cyril Simphiwe Mlotshwa deposed to on the 9th of December 2019 together with its annexures is admitted and will be marked as Exhibit RR6.

ADV WILLIAM NICHOLSON: I am indebted Chair. Mr Mlotshwa can you have a look at the bundle before you at pages 1 and 2?

10 **ADV MLOTSHWA:** Yes.

ADV WILLIAM NICHOLSON: Can you – are you able to identify that document?

ADV MLOTSHWA: Yes it is a confirmatory affidavit that I deposed to in December 2019.

ADV WILLIAM NICHOLSON: Okay. The signature on the second page is that yours

ADV MLOTSHWA: Absolutely.

ADV WILLIAM NICHOLSON: And the signature and the initials ...(intervenes).

20 **CHAIRPERSON:** That is ...(intervenes).

ADV MLOTSHWA: That is correct.

ADV WILLIAM NICHOLSON: Under deponent.

CHAIRPERSON: There are two signatures on page 2 so the one under – above deponent is yours?

ADV MLOTSHWA: That is correct Chairperson.

CHAIRPERSON: *Ja.*

ADV WILLIAM NICHOLSON: And the second signature is that the signature of the Commissioner of Oaths?

ADV MLOTSHWA: That is the position.

ADV WILLIAM NICHOLSON: On page 1 there are two sets of initials whose initials are those?

ADV MLOTSHWA: The first one will be mine on your left.

ADV WILLIAM NICHOLSON: And the second one?

ADV MLOTSHWA: The second one will be that of a Commissioner of
10 Oaths who administered the oath to me.

ADV WILLIAM NICHOLSON: Okay. Now this affidavit at pages 1 and 2 confirms an affidavit which is at pages 4 and 5, is that correct?

ADV MLOTSHWA: That is correct sir.

ADV WILLIAM NICHOLSON: Are you the deponent of that affidavit at pages 4 and 5?

ADV MLOTSHWA: Absolutely.

ADV WILLIAM NICHOLSON: And the initials at the bottom right hand are those your initials?

ADV MLOTSHWA: Yes initials yes mine.

20 **ADV WILLIAM NICHOLSON:** And on the left hand side are those the Commissioner of Oath's?

ADV MLOTSHWA: That is the position.

ADV WILLIAM NICHOLSON: And then on the – at page 5 we have a full signature above what is typed out C S Mlotshwa, is that your signature?

ADV MLOTSHWA: That is correct Sir.

ADV WILLIAM NICHOLSON: And the signature below that is that of the Commissioner of Oaths?

ADV MLOTSHWA: That is the position.

ADV WILLIAM NICHOLSON: Okay. At page 6 we have another affidavit. Can you confirm – do you identify these documents? Let me put it that way?

ADV MLOTSHWA: Sir the position is if one meticulously looks at the affidavit that you have referred to on page 4 and 5 it makes reference
10 to e-mails that were exchanged. So as I deposed to that affidavit on 12 May 2015 I was a few months in July approached by the same Commissioner of Oaths requesting me to hand to him the e-mails that I had give – I had referred to in the initial e-mail. So it is just an affidavit that was confirming the handing over of those e-mails to the investigating officer at the time. I think he was Colonel Dawe.

ADV WILLIAM NICHOLSON: And at pages 7 to 12 are those the e-mails you referring to ...(intervenes).

ADV MLOTSHWA: That is the position sir.

ADV WILLIAM NICHOLSON: Okay now at pages 40 to 67 of the bundle
20 can you identify that document?

ADV MLOTSHWA: Yes I think this will relate to the evidence that I tendered before the Mokgoro Commission of Inquiry in respect of two NPA senior officials.

ADV WILLIAM NICHOLSON: Is the correct name Justice Mokgoro Inquiry?

ADV MLOTSHWA: I confirm that Sir.

ADV WILLIAM NICHOLSON: And did you testify on the 1st of February 2019?

ADV MLOTSHWA: That is correct.

ADV WILLIAM NICHOLSON: Does your testimony go from page 14 to page 67 of the bundle?

CHAIRPERSON: Well ...(intervenes).

ADV MLOTSHWA: That is also true sir.

10 **CHAIRPERSON:** Starts from 15 is it not? Page 14 is just the covering page.

ADV WILLIAM NICHOLSON: That is correct. Does your testimony go from page 15 to page 67 of the bundle?

ADV MLOTSHWA: Your Worship it – my apologies. Chairperson it seems it goes further than that because there will be cross-examination from I think page 68.

CHAIRPERSON: To 106?

ADV MLOTSHWA: To ...(intervenes).

CHAIRPERSON: Maybe re-examination as well? I think what we need is have you recently had a look at this document.

20 **ADV MLOTSHWA:** Indeed Chairperson I was accorded an opportunity to do so.

CHAIRPERSON: Does it correctly reflect the evidence that you gave at the Inquiry chaired by Justice Mokgoro last year that is 2019?

ADV MLOTSHWA: I confirm Chair.

CHAIRPERSON: You confirm?

ADV MLOTSHWA: Yes.

CHAIRPERSON: Okay. Thank you.

ADV WILLIAM NICHOLSON: I am indebted Chair. Now Mr Mlotshwa if we can just start – where are you currently employed?

ADV MLOTSHWA: So currently I am at the Pietermaritzburg Advocates Bar.

ADV WILLIAM NICHOLSON: And how long have you been there?

ADV MLOTSHWA: I resigned in the NPA end of the year 2015 and at the commencement of the year 2016 I was attached to the Pupillage
10 Program which I completed end of 2016. So with effect from 2017 I am practicing as an advocate at the Pietermaritzburg Constituent Bar.

ADV WILLIAM NICHOLSON: Before joining the bar where were you employed?

ADV MLOTSHWA: I will say I have been in the justice system – I was in the justice system for almost 16 years having started as a court interpreter in Durban. Appointed as a court – a District Court Prosecutor in Verulam 1998/99 I was transferred to Stanger Magistrate Court 2000/2001 I was in the Regional Court Stanger in the middle of 2001 I was appointed as a State Advocate stationed at the
20 Pietermaritzburg Advocates Bar. After three years of which will be 2003 I was elevated into the position of a senior State Advocate and then in the year 2008 I was appointed as a Deputy Director of Prosecutions KwaZulu-Natal and then in the year 2010 until 2012 I was appointed as the acting Director of Public Prosecutions for the Province KwaZulu-Natal.

ADV WILLIAM NICHOLSON: Can you just tell us for which period were the acting Director of Public Prosecutions for the Province KwaZulu-Natal?

ADV MLOTSHWA: It is effective from the 17th of May 2010 and I think I was recalled or I stepped down. If I am not mistaken on a Friday the 9th of July 2010 effectively two years.

ADV WILLIAM NICHOLSON: Okay. And who replaced you?

ADV MLOTSHWA: My successor was Advocate Moipone Noko.

ADV WILLIAM NICHOLSON: Did she replace you in an acting
10 capacity?

ADV MLOTSHWA: I think so. When I was recalled she was also appointed to act. And acting position that was confirmed permanently if I am not mistaken 2013/2014.

ADV WILLIAM NICHOLSON: Okay. Now if we can just before we move onto your affidavits very briefly what is a Director of Public Prosecutions?

ADV MLOTSHWA: If one looks at the constitution firstly Section 179 it speaks of ...(intervenes).

CHAIRPERSON: Sorry – I am sorry what was that question?

ADV WILLIAM NICHOLSON: What is a Director of Public
20 Prosecutions?

CHAIRPERSON: No we know what a Director of Public Prosecutions is.

ADV WILLIAM NICHOLSON: Thank you.

CHAIRPERSON: Let us go to matters that are really important for the witness.

ADV WILLIAM NICHOLSON: Okay.

CHAIRPERSON: Mr Mlotshwa you gave evidence already in the Inquiry that was chaired by Justice Mokgoro it would appear that here you would be needing to traverse the same issues. Since we already have a transcript of your evidence in that inquiry and you have confirmed that this transcript correctly reflects your evidence the Evidence Leader will focus on what may be important where it is necessary to get clarification or for you to cover just certain things because otherwise your evidence was under oath, you were cross-
10 examined, you have signed an affidavit that says, this transcript correctly reflects your evidence.

ADV MLOTSHWA: As the Chairperson pleases.

CHAIRPERSON: Okay. *Ja.*

ADV WILLIAM NICHOLSON: So Mr Mlotshwa if we can just briefly deal with the – what has been termed the Cato Manor it has been dubbed “The Hit – Cato Manor Hit Squad Prosecution”. If we can just deal with that. What was your involvement in that matter?

ADV MLOTSHWA: I became involved when I first received a call from my Line Manager at the time Advocate Jiba informing me that there was
20 a matter that required my consideration. My second involvement was when myself and another fellow colleague the Head of the Division Gauteng South with the Line Manager Advocate Jiba at the time met in her office and then a suggestion was made that in the light of the fact that I was the Head of the Province KZN and the case was emanating from KwaZulu-Natal I will have to sign an indictment to array the

accused in the matter in the High Court in KZN.

ADV WILLIAM NICHOLSON: Was a prosecution conducted by prosecutors from your office?

ADV MLOTSHWA: No it was conducted by prosecutors from other jurisdictions North West as well as Gauteng South. If I am not mistaken the Lead Prosecutor was from North West Advocate Maema and then the other Members of the Team were from Gauteng South.

CHAIRPERSON: Well ...(intervenes).

ADV MLOTSHWA: DPP office.

10 **ADV WILLIAM NICHOLSON:** Do you know why they were not prosecuted by prosecutors from your office?

ADV MLOTSHWA: At that time I was never given the reason except that from the discussion that we would have had in the office of my Line Manager I could gather that the view was not to involve prosecutors from KZN as the possibility existed that the investigation may lead to a possible charge of some of the advocates or prosecutors in my decision. That is what I could glean from the discussion that we had in her chambers.

20 **ADV WILLIAM NICHOLSON:** Were prosecutors from the KZN Province ever prosecuted in this matter?

ADV MLOTSHWA: To date no.

ADV WILLIAM NICHOLSON: Okay. There was also ...(intervenes).

CHAIRPERSON: Were there any allegations that were ever brought to their attention or your attention relating to anybody in your office that related to the Cato Manor?

ADV MLOTSHWA: I am not sure if I understand the question
Chairperson.

CHAIRPERSON: Were you ever made aware or were any prosecutors
in KZN ever made aware of any allegations against them relating to the
Cato Manor matter?

ADV MLOTSHWA: Not at all Chairperson it was just ...(intervenes).

CHAIRPERSON: So it is not just that they were not prosecuted but
nobody even ever came to them and said, you are implicated in this
way and that way in the Cato Manor matter?

10 **ADV MLOTSHWA:** To date as far as I know.

CHAIRPERSON: Yes.

ADV MLOTSHWA: That has never happened.

CHAIRPERSON: Yes. Okay.

ADV WILLIAM NICHOLSON: Now if we could just briefly deal with that.
If in the Province of KwaZulu-Natal if there is a prosecution that is
going to be connected against another prosecution how would that be
dealt with?

ADV MLOTSHWA: Under normal circumstances if the matter is arising
out of a specific division prosecutors from that division are the ones
20 who are supposed to be handling the prosecution in the matter. But
there will be instances where there will be ground breaking exceptional
circumstances that warrant that a prosecutor from another division be
brought in to conduct a prosecution. A variety of reasons may exist for
that.

ADV WILLIAM NICHOLSON: The question that I am trying to get at did

the Province of KwaZulu-Natal at the – at that stage the DPP’s office had the capacity to prosecute within its – from prosecutors within the province to prosecute another prosecutor.

ADV MLOTSHWA: In KZN particularly during my reign the province KwaZulu-Natal was handling very huge prosecution projects some of which you have already made reference to in your bite sized introductory remarks.

ADV WILLIAM NICHOLSON: Okay. Let me ask the question this way. Was there any reason that you were informed of that would warrant the
10 prosecutors from a different division prosecuting the Cato Manor matter?

ADV MLOTSHWA: Chair no except that if one looks at the e-mails that we made reference earlier on.

CHAIRPERSON: You can refer to the e-mails to refresh your memory.

ADV MLOTSHWA: The Chairperson with ...(intervenes).

ADV WILLIAM NICHOLSON: The e-mails starts at page 7.

ADV MLOTSHWA: Chair the e-mail that I focussing on will be an e-mail that appears on page 9 of Exhibit RR6.

CHAIRPERSON: Yes.

20 **ADV MLOTSHWA:** If you look – if you cast a glance at that e-mail towards the bottom of that e-mail there are – the last paragraph reads:

“I do not want to step on your toes. I was informed that you agreed and arranged with the acting National Director of Public Prosecutions 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.”

That was the first time this was brought to my attention that somewhere somehow there was an allegation that I had made an arrangement for somebody to be brought from outside.

ADV WILLIAM NICHOLSON: Did you in fact make this arrangements?

ADV MLOTSHWA: Not at all.

CHAIRPERSON: Were you ever asked by Ms Jiba or anybody to agree
10 that the Cato Manor matter be prosecuted by prosecutors from outside
KZN?

ADV MLOTSHWA: No.

CHAIRPERSON: You were asked for – to agree to that?

ADV MLOTSHWA: Never.

CHAIRPERSON: So to the extent that the writer of that e-mail says that this is what he was told namely that you had agreed that prosecutors from outside KZN be the ones who would prosecute the Cato Manor you are saying that is not true?

ADV MLOTSHWA: I saw it first time.

20 **CHAIRPERSON:** Yes.

ADV MLOTSHWA: And it is a bit generic in the sense that it never particularises the date, the place where this arrangement would probably have been – it is just generic there was an arrangement.

CHAIRPERSON: Yes. But of course there might be no need to give those particulars until they – the writer knows whether you are

disputing that you agreed. So if he was told that you had agreed and have no reason to think that is not true he would not give those particulars. But if you said, no I do not know what you are talking about I have never agreed to this you may say give me more information and then maybe he would give you information or maybe he would say, actually the person who can give information is so and so who is the one that told me. You understand that?

ADV MLOTSHWA: I do Chair.

CHAIRPERSON: *Ja.* But you are saying you never agreed to – you
10 never agreed that the prosecutors for the Cato Manor matter be from
outside KZN.

ADV MLOTSHWA: No.

CHAIRPERSON: And you were never requested to agree?

ADV MLOTSHWA: No.

CHAIRPERSON: Yes. Okay.

ADV WILLIAM NICHOLSON: Did you in fact – if we just deal with this
– with that e-mail. You said an e-mail you were dealing with is at page
9? Who was the e-mail from?

ADV MLOTSHWA: The author will be the person appearing at the
20 bottom the Head of the Division Gauteng South fellow colleague
Advocate Andrew Chauke.

ADV WILLIAM NICHOLSON: And on what date was it sent?

ADV MLOTSHWA: It is dated 12 June 2012 in the afternoon 17:14.

ADV WILLIAM NICHOLSON: Did you in fact – did you reply to this e-
mail or in writing or telephonically?

ADV MLOTSHWA: Probably with the leave of the Chair to avoid decontextualizing the e-mails.

CHAIRPERSON: Yes.

ADV MLOTSHWA: If one looks at page 11 of Exhibit RR6.

CHAIRPERSON: Yes.

ADV MLOTSHWA: As you lay an eye on that e-mail you can see from Mamiki Suping so at the time that was a lady who was a personal assistant to the Head of the Prosecution Gauteng. So that e-mail was following hotly and hardly on the heels of the meeting I had with
10 Chauke and Advocate Jiba. A meeting where she had indicated to me that I will have to sign an indictment as well as the provisional delegation in the light of the fact that the prosecutors who were going to handle prosecution were not from KZN. So at that meeting my response had been I never had a problem of signing an indictment provided the indictment was going to be accompanied by a memorandum or a report. A report that would be detailing evidence – that would be detailing evidence how it links each accused individually and the accused as a collective. So as you can see there it was just an indictment without a memorandum with – so as I received that e-mail it
20 was on the 12th of June 2012 at 13:29. As soon as I received it I made a call to my colleague to say, there seems to be a deviation from the agreement in terms of which when we left at our meeting we were all consensus *ad idem* that I was going to receive both the indictment and the memorandum. But it seems now I am not sure if it is the PA who would have committed an error here by sending the indictment without

the memorandum. It is then that I started picking up during our telephonic conversation that was not going to happen. Then I decided to terminate the call and transmit another e-mail so that I could have a record of what was happening. It is then that you will be able to see the e-mail that appears on page 9 of Exhibit RR6 at the bottom there you can see he sent that e-mail – the first e-mail is at 13:29 on 12 June 2012. Then the e-mail that I am sending to him at the bottom of page 9 from Cyril S Mlotshwa it bears the same subject.

CHAIRPERSON: Yes.

10 **ADV MLOTSHWA:** The

“Dear Advocate Chauke our telephonic conversation today the 1st kindly furnish me with the prosecutor’s memorandum or report so that I can have a wraparound view of the matter. The report must also have the police station and case numbers so that we can be able to open up the DPP’s file.”

In the normal scheme of things if the docket is forwarded to the office of the Director of Public Prosecutions there ought to be a file opened there. And then that file will contain the docket and everything
20 that relates to that matter. So you can see when you look at this e-mail closely that the office of the Director of Public Prosecutions KwaZulu-Natal did not have anything in relation to this matter. It was my eloquent and conscious effort to get some information so that we could also open up the file at our office. So it is then that you can see the debate getting heated. A reply to my e-mail at 13:21 on the same page,

on page 9.

CHAIRPERSON: Yes.

ADV MLOTSHWA: At 17:14 from my colleague.

CHAIRPERSON: Yes I think you can read that e-mail.

ADV MLOTSHWA: Yes. The e-mail reads:

10 “Dear Advocate 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 up your
 file – your office file. I also forwarded to you details
 of the inquest with police case numbers etcetera to
 which you referred to Advocate Thoke Mjokweni.”

 For the record Thoke Mjokweni at the time was the acting
Prosecution Services Director at National office.

20 “For reasons that I do not follow and I 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 happening here my brother? Please if you have any issue again talk to me or arrange that we see the acting National Director of Public Prosecutions urgently.”

CHAIRPERSON: And I think it says what is not happening here my
10 brother.

ADV MLOTSHWA: Yes.

CHAIRPERSON: I do not know whether he meant what is happening here my brother but what is written is what is not happening here my brother. I am mentioning that because I think you read what is happening here my brother whereas it is written what is not happening here my brother. That is the only reason why I am mentioning it.

ADV MLOTSHWA: As the Chairperson pleases.

CHAIRPERSON: Yes.

ADV MLOTSHWA: “Another issue of concern to me is the
20 delay in your 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. If this makes you uncomfortable please indicate so that I may urgently take the matter up with the acting and

DPP as well as the Minister.”

That was a bit confusing because if one looks at the lines of reporting within the National Prosecuting Authority I am not sure because I am not ...(indistinct) in the system the DPP reports to the acting and DPP and its – the NDPP in terms of the legislation who should report to the Minister. So here seems to be suggestive that he has to report to both.

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

Chairperson it is something that I brought to the attention ...(intervenes).

CHAIRPERSON: And it is from Mr Andrew Chauke Director of Public Prosecutions South Gauteng High Court?

ADV MLOTSHWA: That is the position.

CHAIRPERSON: Yes.

20 **ADV MLOTSHWA:** Again if you go back on page 8 that is my response to his e-mail. So which means in the afternoon after sending an e-mail to him I left the office late. Upon opening up my e-mails on the following day 13 June 2012 at 09:12. That is the e-mail I decide – it is then that read that e-mail and I decided to respond.

CHAIRPERSON: Yes.

ADV MLOTSHWA: Regrettably Chair that e-mail is incomplete in my response to him. As you can see I am saying to him:

10 “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 it is its preamble encapsulate 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. 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 services you well you will 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

20

the same allegations when we met the NDPP in their office. I maintained my cool through and through. The impression I derived from your behaviour is that you nourish a lavish mentality that you are the only one so fortunate ...”

My apologies. It seems there I was also emotional in that response and then paragraph 3:

10 “(Indistinct) that we do not see things as they are, but we see things as we are. Hence it is imperative that we make a conclusion that is based on facts, factors and circumstances. You are posing a question to me. Do I have issues that we must discuss? So premier significant is the fact that Butler holds the view that words are nothing, but just the clothes that the thoughts were. In 1974 L E Hefner (?) postulated that a skilful reader reads between the lines and reads beyond the lines. Watermeyer, J H stated in R vs Blom 1989 AD that: when we draw inference the inference that we seek
20 to draw must be from the facts.”

So two pages are missing to that e-mail.

CHAIRPERSON: Oh.

ADV MLOTSHWA: So ...(intervenes).

CHAIRPERSON: That is quite a lot. Why are those two pages not there?

ADV WILLIAM NICHOLSON: Chair, we – these e-mails come from the information that was provided to us on a hard drive by the Mokgoro Inquiry. Only until consulting with Advocate Mlotshwa did we realise that these two pages are missing. We are going to endeavour to ...(intervenes).

CHAIRPERSON: Why was that not seen much earlier? His affidavit was deposed to in December.

ADV WILLIAM NICHOLSON: Chair, it just was not brought to our attention that there was anything missing, because ...(intervenes).

10 **CHAIRPERSON:** Who was going to bring it to your attention, because he was going to give evidence in December is it not or was it November?

ADV WILLIAM NICHOLSON: In January.

CHAIRPERSON: Well we had the other session when was it when Mr Ngidi – is it Ngidi or Manyathi testified? When was that?

ADV WILLIAM NICHOLSON: It was in January Chair.

CHAIRPERSON: Was it in January?

ADV WILLIAM NICHOLSON: That is correct.

20 **CHAIRPERSON:** Oh. Okay, but by then there would – what Mr Mlotshwa was going to give evidence should have been perused and to see if everything was fine. I cannot see why that was not picked up much earlier.

ADV WILLIAM NICHOLSON: Chair ...(intervenes).

CHAIRPERSON: Both by the investigators, but more importantly by the Legal Team.

ADV WILLIAM NICHOLSON: Indeed Chair. Chair, it ought to have been picked up much earlier. The only reason I can think of is that Mr Mlotshwa was removed in January and therefore the file was not perused for the January hearing.

CHAIRPERSON: Yes, but who are responsible to make sure everything is ready? It is the Legal Team, because they are the ones who must lead evidence. If there is anything that is not ready. They are the ones who must be able to pick it up if the investigators have not picked it up before it comes here.

10 **ADV WILLIAM NICHOLSON:** Indeed Chair.

CHAIRPERSON: Because how much value can I put on an incomplete e-mail ...(intervenes).

ADV WILLIAM NICHOLSON: Chair ...(intervenes).

CHAIRPERSON: Because I do not know what was said in the second page. I do not what was said in the second page. I do not know what was in the third page. I do not know if it negates everything that was said in the first page.

ADV WILLIAM NICHOLSON: Indeed Chair. Chair, what I will endeavour to do is to ensure that those e-mails are obtained and
20 perhaps a supplementary affidavit is obtained for the purposes of the Chair, but perhaps this witness could testify if he has memory of what was in the e-mail.

CHAIRPERSON: It is unsatisfactory. The Legal Team should long have picked up if there were – there was an e-mail that was not complete. That should have attended to. To obtain whatever pages were missing

and if the position was that those missing pages could not be found. The Legal Team should have taken a decision whether there was any value in presenting an incomplete e-mail.

I do not know whether it would be fair to the witness to ask him to try and remember what the two pages that he wrote in 2012 said. If – unless he has got the complete e-mail and he has had a look at it recently. Mr Mlotshwa, do you have a complete e-mail?

ADV MLOTSHWA: Chair, as the incident happened in 2012. I handed these e-mails to the investigation Team in 2015 and I left the system.

10 **CHAIRPERSON:** That is the Investigation Team of the Cato Manor matter?

ADV MLOTSHWA: Both Teams. The SAPS, the Commissioner of Oath. I think it is Lieutenant Howa who appears there at the bottom of the e-mail that I deposed to. I gave him those e-mails. I also gave those e-mails to the Evidence Leaders in the Mokgoro Commission of Inquiry.

CHAIRPERSON: So as of last year when you testified at the Mokgoro Inquiry ...(intervenes).

ADV MLOTSHWA: They were complete.

CHAIRPERSON: This e-mail was complete?

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

CHAIRPERSON: Yes.

ADV MLOTSHWA: That is why when reading the e-mails realising that they were incomplete. The impression I got was that probably when making the copies someone might have erred and not printed out the – so that is the impression I immediately got when ...(intervenes).

CHAIRPERSON: Yes, but the Legal Team should have picked that a long time ago. That is my concern that the witness is giving evidence and the – he is referred to an e-mail that is incomplete. I have not been told in advance that there is an incomplete e-mail here.

ADV WILLIAM NICHOLSON: Indeed Chair.

CHAIRPERSON: I do not understand why the Legal Team should not have picked that up much earlier and made sure that it was sorted out.

ADV WILLIAM NICHOLSON: Chair, the only explanation I can give is that as I have said perhaps we can endeavour to find it and do a
10 supplementary affidavit.

CHAIRPERSON: Yes. Of course you are appreciated that is not an explanation. That is what you will do to try and control damage, but I really do not understand why. Let us continue with the witness and try and let him cover the important things and then you can do what needs to be done to rectify this.

ADV WILLIAM NICHOLSON: I am indebted Chair. Are you able to say what the rest of the e-mail contained?

ADV MLOTSHWA: The significant part in the outstanding pages is that I had agreed with the colleague to go and see the Acting Judge
20 President in the division. He is currently the Judge President Judge Chabi, because in – if prosecutors from outside were coming to the division. It was more appropriate for me to introduce him to the Judge. He did not do that.

So I had raised that in the outstanding pages that that was also my embedded concern. That look that was not honoured. So the

response will be the e-mail 30 June 2012 on page 8 I think he authored that e-mail at 10:32 copying in Jiba as well as Advocate Sithole Majokweni. In that e-mail he said:

10 “Dear Advocate Mlotshwa I have noted your concerns below. I apologise to the extent that you feel I am not respecting you and my communication to you was not what you expected. I also apologise for having not told you that I could not travel to KZN due to unforeseen circumstances. I hope this meets your approval and I have learnt my lesson in this regard.”

I accepted his apology and then he also gave me another e-mail on page 12, because he had also indicted that the inquest must be reopened. So him saying that that e-mail is also withdrawn according to the e-mail on page 12.

CHAIRPERSON: Let us go back to the practice or system used before a prosecutor from another province can be brought in to prosecute in a matter that is in another province. Is there a policy on this? Is there - are there prescripts that you are aware of that need to be followed?
20 Was there a practice as to how – when that happens and how it is done?

ADV MLOTSHWA: Chair that is why it was a problem when we met in the office of the then Acting Director of Public Prosecutions, because what she said to me were two things during that very brief meeting. That one, you will have to sign the ...(indistinct) and then two, you will

have to sign the provisional delegations for those prosecutors and then at that point she indicated to me it is a legal opinion she had procured from legal services.

She particularised the person from whom she got a legal opinion. Advocate Gerhard Nel. I understand he also testified in the Mokgoro Commission whether or not he ever administered that opinion. That being a legal conundrum in the sense that if a Deputy Director is appointed by the Minister is appointed for a specific division and if one looks meticulously at the members of the Team that were forming part
10 of this Team that was sent to KZN.

The Lead Prosecutor was Advocate Maema from North West DPP Office. He was a Deputy DPP and still is a Deputy DPP in North West and appointment specifying as such. So if he goes to lead prosecution in KZN it was going to create a problem. I think another advocate – Advocate Mathenjwa – Ray Mathenjwa – he was also a Deputy DPP in the office of the DPP Gauteng South. Appointed specifically for Gauteng South.

For him to go and prosecute in KZN that was going to be an issue and then with the other members. Advocate Yanni Mlotshwa.
20 Mlotshwa is a Senior Advocate. Though not appointed by the Minister for – specifically for Gauteng South, but his delegation to execute prosecutorial decisions. That delegation would have been assigned – would have been signed by the Head of the Division my colleague, Advocate Chauke.

So it is against that background that my Line Manager at the

time of Jiba indicated that in terms of the legal opinion that she had procured. I could sign the indictment. I could sign the provisional delegation pending the research and investigation whether or not they can be assigned permanently in that project. So unfortunately I was recalled in 2012. I am not sure, because they are still involved – if the case is still in court as to what is the status of their delegation in the matter.

CHAIRPERSON: But that is what happened in the specific case.

ADV MLOTSHWA: Yes.

- 10 **CHAIRPERSON:** I am asking about the general practice or a policy whether when you were Acting DPP in KZN you were aware of what policies exist within the NPA or what prescripts – legal prescripts existed that dealt with or governed the situation where a prosecutor will be taken from one province to go and prosecute in another province.

ADV MLOTSHWA: None that I know of.

CHAIRPERSON: Yes.

ADV MLOTSHWA: Yes.

CHAIRPERSON: Do you have any recollection whether the National Prosecuting Authority Act says anything about such things?

- 20 **ADV MLOTSHWA:** As far as I remember there was nothing in the Act. Except that because of the nature of budget if a prosecutor from – if the DPP requests assistance. We request assistance from the NDPP and then the NDPP will get assistance from a specific DPP who has to dispatch the prosecutor to go and assist. It is then that the issue of budget will be discussed.

Travelling arrangements and so on and so forth as to which office will have to pick up the tab – to pay the bill. So in this one I was not involved even with the arrangements, accommodation, travelling. I do not know what was – what happened.

CHAIRPERSON: But is your answer that as far as you know or rather that you are not aware of any provision in the National Prosecuting Authority Act that specifically deals with getting a prosecutor from one province to go and prosecute in another province?

ADV MLOTSHWA: That is affirmative Chair.

10 **CHAIRPERSON:** And you are not aware that there were any written policies on this?

ADV MLOTSHWA: None that I recall.

CHAIRPERSON: Are you aware of – were you aware of any practice that may have been followed over the years?

ADV MLOTSHWA: As I have indicated Chair ...(intervenes).

CHAIRPERSON: H'mm.

ADV MLOTSHWA: That it will be the DPP because of some certain considerations feeling that look another division must send a prosecutor, but that require – request will have to go via – the NDPP
20 will make a determination from which division a request can be made to get a prosecutor to go and prosecute in that division.

CHAIRPERSON: So your understanding is that indeed there was a practice?

ADV MLOTSHWA: Yes. Yes.

CHAIRPERSON: And are you saying the practice was that the request

had to come from the DPP of the province concerned where the prosecution was to take place?

ADV MLOTSHWA: That is the position.

CHAIRPERSON: And that request would be directed to the NDPP?

ADV MLOTSHWA: Who will make a determination among the other divisions that are there ...(intervenes).

CHAIRPERSON: Yes. Yes.

ADV MLOTSHWA: Where he or she approaches ...(intervenes).

CHAIRPERSON: Yes.

10 **ADV MLOTSHWA:** To get assistance.

CHAIRPERSON: Well it ought to be possible to have a situation where a prosecutor comes from another province, because there could be a situation where a sitting DPP has to be prosecuted and maybe it might be awkward to have one of his or her subordinates prosecuting him. So it ought to be possible to bring in somebody from another province, but you say the only practice you knew is that the DPP would have to make the request to the NDPP.

ADV MLOTSHWA: I concur Chair.

CHAIRPERSON: Yes.

20 **ADV MLOTSHWA:** That that was always possible during my time ...(intervenes).

CHAIRPERSON: Yes.

ADV MLOTSHWA: To have somebody from another division to prosecute in another ...(intervenes).

CHAIRPERSON: Yes, but in regard to this particular matter of Cato

Manor how did it come about that a matter that related to KZN where you were Acting DPP suddenly got attended to in Gauteng without your knowledge, because that is what I understand, but you can tell me if I misunderstand something.

I get the impression that when you were approached by the Acting NDPP and told about the Cato Manor matter. Your office as acting DPP in KZN had not been involved in any – in that matter at all at that stage or do I misunderstand something?

ADV MLOTSHWA: Chair, I think that is the aspect that I also found a
10 bit odd, because in respect of the e-mails that I made reference to. I indicated that we did not have even the case numbers, the police stations from which those cases would be coming from. Except just the indictment. So as we all know that the parties will be.

No matter can be enrolled in the High Court – a criminal matter in the High Court without the DPP file existing and it is on that basis that once the DPP file has been captured/obtained then there will be another file in the Registrar's Office on their part which will eventually become the Judge's file. So with this one I did not have anything from the day I first became aware of the matter until I was
20 recalled.

CHAIRPERSON: So as I understand your evidence before the inquiry chaired by Justice Mokgoro. You got a call from Advocate Jiba when you were on a trip to Port Shepstone and that is when you heard for the first time that there was prosecution that was being contemplated relating to the Cato Manor matter.

ADV MLOTSHWA: That is ...(intervenes).

CHAIRPERSON: That is correct?

ADV MLOTSHWA: That is correct Chair.

CHAIRPERSON: Yes.

ADV MLOTSHWA: Chair.

CHAIRPERSON: As at that time you did not – your office was not involved in – as far as you know no prosecutor was involved in any ...(intervenes).

ADV MLOTSHWA: During ...(intervenes).

10 **CHAIRPERSON**: Such matter?

ADV MLOTSHWA: During that telephonic conversation no indication was made as to who were the accused. As to where in KwaZulu-Natal was the matter emanating from. Even the date of possible commission of the offences. I was not given the information. As far as I remember her call had to be terminated, because she indicated that she was at the airport at the time and was going to call me later.

20 Then I did not receive a call from her. Up until one of the days when I was the Chair of the meeting of the Managers in KZN. The Chief Prosecutors and the Deputy Directors of Public Prosecutions. Me having forgotten to switch off my phone. It rang. As I excused myself from chairing the meeting seeing who the caller was. It is then that my colleague indicated that he had been instructed to dispatch a team, that is Advocate Chauke, to dispatch a Team of prosecutors to KZN, because I had to go back to the meeting.

My reply to him was we were going to discuss the matter

further and thoroughly when we meet again at the DPP's meeting and indeed there were – there was a meeting at National Office which took three days. First day it was chaired by Advocate Jiba if I am not mistaken and then the second day it was discussing the performance assessment of the prosecutors in the country.

I think at that meeting it was a meeting of the DPP's only and Advocate Jiba was in her chambers. So while that meeting was in progress it is then that my colleague, Advocate Chauke, stood up, touched me on my shoulder and said let us go and meet Advocate Jiba
10 in her chambers.

I left the DPP's meeting following him into Advocate Jiba's office and indeed upon entering her office we exchanged greetings and then Chauke indicating that look we cannot discuss much about this case, because there are serious security concerns and the possibility that other prosecutors or advocates in KZN may also be possibly linked and then the Line Manager Advocate Jiba responded that Simphiwe by the way I have got a legal opinion in terms of which you will have to sign the indictment as the Head of the Province KwaZulu-Natal and then also sign the provisional delegation for them – the team to have a
20 delegation to hand the prosecution in the province and reply to that was very short in that.

I will do that provided in respect of the indictment it will be accompanied by the report and the memo that will help me to have a helicopter view of what is happening in the matter. As I do not have any information at that stage.

CHAIRPERSON: Just as maybe an aside. Actually in order to be comfortable in signing an indictment would the position not be that not only would you need a prosecutor's memo I think as the correspondence seems to refer to it, but you – would you not also need to see the statements of witnesses and so on or would you be able to sign an indictment without seeing the statements of witnesses?

ADV MLOTSHWA: Chair, as you saw in the e-mails that I made reference to that we did not have any file in existence. At that time I was so desperate to get something so that I could be able to issue an
10 instruction in my office that an – a docket – a file for this matter be opened. It was against that background that at least if I got an indictment as well as the memo or the memorandum.

With those two documents we will be able to open up the file in the DPP's Office, because obviously the memo or the report will indicate the police station where the matter or the matters were coming from, case numbers, the investigating officers and then detail what evidence each witness is saying and the form of evidence contained in the docket whether it is documental, eyewitnesses and so on and so forth and for me as well, because if – as the Head of the Division
20 though I cannot tamper with the decision to prosecute, but I had also to be satisfied that evidence existed to justify the enrolment in the matter.

CHAIRPERSON: Yes, but am I right in thinking that you would not be comfortable or any DPP should not be comfortable signing the indictment without having seen the actual evidence or statements? Am I correct in that or is the position that provided you have – you are

satisfied on the basis of a memo from another prosecutor who has looked at the evidence and in his or her memo he or she details what the evidence is.

You may be justified in signing the indictment even if you yourself have not actually seen the statements or the evidence.

ADV MLOTSHWA: Chair, unfortunately the outstanding pages of the e-mail will also explain that ...(intervenes).

CHAIRPERSON: Yes.

ADV MLOTSHWA: Because if you see the e-mail to me asking me who
10 are you talking about? What report are you talking about? It is then that I try to give an account to him in respect of the report or the memo saying; it is the practice in the NPP – it was the practice then. I do not know currently. For instance if the National Director of Public Prosecutions had to issue a certificate for people to be charged with racketeering with this new – racketeering/money laundering.

I will make an example. With the projects that I had the Amigos case and other projects were there would be racketeering charges. More often than not a practice will be a memo will be submitted without the copies of dockets themselves. So the memo will
20 be so detailed to such an extent that they put one in a tense and uncomfortable space to make a determination as to what is it that is happening in the matter.

For the NDPP to have confidence to append a signature on the certificate. That is how I appeared to be understanding ...(intervenes).

CHAIRPERSON: Yes.

ADV MLOTSHWA: The situation at the time. That with those two documents the indictment accompanied by the memo with that information I could be in a position to sign the indictment with ease.

CHAIRPERSON: So if the prosecutor's memo is sufficient detailed that could lead you to being comfortable to sign the indictment even though you have not seen the witness statements as such, but if it is not sufficiently detailed you might then wish to see more – to see the witness statements?

10 **ADV MLOTSHWA:** Under normal circumstances Chair, it is sufficient, because as lawyers will know. In the memo you will see what facts will they – will be alleged. What facts will be proved? What facts will be disputed? The anticipation of the defence by the accused.

CHAIRPERSON: Yes.

ADV MLOTSHWA: What facts will possibly be agreed on when the matter goes ...(intervenes).

CHAIRPERSON: Yes.

ADV MLOTSHWA: To court ...(intervenes).

CHAIRPERSON: Yes.

20 **ADV MLOTSHWA:** And then we will further indicate the oral evidence ...(intervenes).

CHAIRPERSON: Yes.

ADV MLOTSHWA: Documentary evidence and the shortcomings ...(intervenes).

CHAIRPERSON: *Ja.*

ADV MLOTSHWA: If any.

CHAIRPERSON: *Ja*.

ADV MLOTSHWA: For instance the witness. It was at night
...(intervenes).

CHAIRPERSON: Yes. *Ja*.

ADV MLOTSHWA: And so on and so forth.

CHAIRPERSON: *Ja*.

ADV MLOTSHWA: It is so detailed.

CHAIRPERSON: So usually it is sufficiently detailed?

10 **ADV MLOTSHWA**: That is the position.

CHAIRPERSON: Yes. Okay ...(intervenes).

ADV MLOTSHWA: Chair.

CHAIRPERSON: But here you were being asked to sign an indictment
and there was no such prosecutor's memo?

ADV MLOTSHWA: That was the position.

CHAIRPERSON: And you had difficulty with that?

ADV MLOTSHWA: I had difficulty with that to such an extent that the
way I was viewing the difficulty I refused to sign the indictment until I
was recalled.

20 **CHAIRPERSON**: Yes. So by the time you were recalled or asked to
step down as Acting DPP. That issue had not been resolved. Namely
whether the signing of the indictment, because you were saying I need
the prosecutor's memo and Mr Chauke and whoever else were not
providing that memo and Mr Chauke was saying that having the
indictment before you is sufficient. Is that correct?

ADV MLOTSHWA: That is correct.

CHAIRPERSON: Yes. What do you make of Mr Chauke's stance?

ADV MLOTSHWA: H'mm.

CHAIRPERSON: He was the DPP for South Gauteng himself. So he was in – except that he was not acting and you were acting, but you were on the same level. You were Acting DPP for KZN. He was for DPP for South Gauteng. What did you make of his stance that there is no reason for you to want a prosecutor's memo?

ADV MLOTSHWA: Chair that is the reason I draw your attention to the
10 last sentence above paragraph 3 of my e-mail.

CHAIRPERSON: Yes.

ADV MLOTSHWA: On page 8.

CHAIRPERSON: Yes.

ADV MLOTSHWA: You can see the tone there when I was responding.

“The impression I derived from your behaviour is that you nourish this lavish mentality that you are the only one so fortunate to be able to see.”

CHAIRPERSON: So was this something that was shocking to you that he expected you to sign an indictment without a prosecutor's memo in a
20 matter in which you had not previously being involved?

ADV MLOTSHWA: In fact Chairperson before I even request – made a decision to request a memo. I first went through the indictment myself. As I was going through the indictment I had that very nagging feeling that the quality of the indictment was not above reproach. So that was the first thing that gave me that sense of discomfort ...(intervenes).

CHAIRPERSON: Yes. Yes.

ADV MLOTSHWA: And then what aggravated that. The nonexistence of the memo to explain ...(intervenes).

CHAIRPERSON: H'mm.

ADV MLOTSHWA: The indictment ...(intervenes).

CHAIRPERSON: Yes. Yes.

ADV MLOTSHWA: And then in the telephonic conversation when I request the memo or the report. Now I am being probed or asked what is it that I am talking about. As if there is resistance to give me the
10 memo and then fourthly, any prosecutorial decision whether you call it office notes or memo will stay in the file explaining when was that docket received.

What evidence was there? What decision was there? In an instance where there is disagreement between the prosecutors, because the way I understood it then. I do not know now. For my 15 years working in the Office of the DPP you find that if the State Advocate is making a decision.

That decision had to be endorsed by the Deputy Director of Public Prosecutions as somebody more senior in the entity. I thought
20 that that used to serve as a ...(indistinct) in an instance where wrong people are prosecuted or people who are supposed to be prosecuted are not prosecuted.

So one would always presume that when that indictment was drafted it should have been on the basis and strength of something that was – so which would have made it easier for my colleague to say here

– is this what you want. So that also gave me sleepless nights. That if it exists why am I not ...(intervenes).

CHAIRPERSON: So you had a suspicion that it did not exist?

ADV MLOTSHWA: I was not comfortable at all.

CHAIRPERSON: *Ja. Ja.*

ADV MLOTSHWA: That nagging feeling ...(intervenes).

CHAIRPERSON: Yes.

ADV MLOTSHWA: Did not want to divorce me.

CHAIRPERSON: Are you able to say for every matter in which you ever
10 signed an indictment while you were Acting DPP. There would have
been or there was a prosecutor's note ...(intervenes).

ADV MLOTSHWA: H'mm.

CHAIRPERSON: Or would you say ...(intervenes).

ADV MLOTSHWA: Who.

CHAIRPERSON: There were some where there might not be a
prosecutor's memo?

ADV MLOTSHWA: Who – as I indicated with 15 years of my experience
in the DPP Office KZN. All cases where the indictment is signed.
There will be an office note in the file, but at the time when I assumed
20 a position as the Acting Director of Public Prosecutions KwaZulu-Natal I
decided to have my own personal parallel process. A parallel process
in terms of which I bought myself black books.

CHAIRPERSON: Yes.

ADV MLOTSHWA: From day one of my acting until I was recalled.

CHAIRPERSON: Yes.

ADV MLOTSHWA: Where I would record ...(intervenes).

CHAIRPERSON: Yes.

ADV MLOTSHWA: All my engagements, my interactions ...(intervenes).

CHAIRPERSON: Decisions.

ADV MLOTSHWA: And including my decisions including the dockets where – cases where the police would approach me, because I was accessible at the time to discuss the docket maybe with an inquiry file without the docket and where I would have given them an advice and the return date upon which we can meet again to discuss the case
10 further.

So I also used to record that in the event I am not in the office and then they call. Maybe I am attending a meeting. I am able to refresh my memory. So ...(intervenes).

CHAIRPERSON: So this idea that you should sign an indictment in a matter without a prosecutor's memo or note was something unheard of as far as you are concerned?

ADV MLOTSHWA: In my experience as a prosecutor it was something unheard of.

CHAIRPERSON: Yes.

20 **ADV MLOTSHWA:** Unprecedentedly.

CHAIRPERSON: Unprecedented?

ADV MLOTSHWA: Yes.

CHAIRPERSON: Yes. Okay. Mr Nicholson I see we are a few minutes past quarter past. I think I must take the tea break and then when we resume you can then take it from there.

ADV WILLIAM NICHOLSON: Chair that is fine Chair. I do not have many ...(intervenes).

CHAIRPERSON: Oh.

ADV WILLIAM NICHOLSON: Very many questions.

CHAIRPERSON: Oh. Have I taken – have I asked most of the questions you wanted to ask?

ADV MLOTSHWA: You have done so Chair.

CHAIRPERSON: Okay, but during the tea break you could reflect and see whether there are other matters that have not been covered that
10 should be covered.

ADV WILLIAM NICHOLSON: Indeed Chair.

CHAIRPERSON: Okay. We take the tea adjournment. It is nearly 20 past. We will resume at 11:35. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Mr Nicholson?

ADV WILLIAM NICHOLSON: Mr Mlotshwa we have dealt with the issue, you said that there was no request from your side to have the –
20 have prosecutors from outside the province prosecute the Cato Manor case.

ADV MLOTSHWA: That is correct.

ADV WILLIAM NICHOLSON: You've also dealt with the issue that no prosecutor has been charged as one of the reasons put forward for having prosecutors from outside of the Province.

ADV MLOTSHWA: That is correct.

ADV WILLIAM NICHOLSON: Now just one other issue, at the meeting of the 29th of May 2012 you just made reference to it now, you indicated that one of the other issues that was put forward for having outside prosecutors was that there was some security issues that needed to be taken into account.

ADV MLOTSHWA: Yes.

ADV WILLIAM NICHOLSON: Were those security issues ever fleshed out?

10 **ADV MLOTSHWA:** Unfortunately I will have to go back to the outstanding pages of my e-mails, that is where I raise all those concerns that even the issue of security as the Head of the Division I ought to have been taken on board. In the outstanding pages of the e-mail I make reference to a workshop, SOCA Workshop, S-O-C-A, Sexual Offences and Child something, something Workshop.

CHAIRPERSON: Child Abuse.

ADV MLOTSHWA: Child Abuse yes, that workshop was held at OR so when I attended ...(intervenes).

CHAIRPERSON: OR Tambo Airport?

20 **ADV MLOTSHWA:** OR Tambo Airport. So as we were attending that workshop I stumbled upon a gentleman who was in the security and risk section in the NPA, I think his name was Kenny from the Eastern Cape, so as somebody who was in the Risk and Security Section of the NPA we exchanged greetings and then he asked if I would be leaving that workshop into one of the bedrooms, of the boardrooms at OR to discuss

the issues of security surrounding the Cato Manor matter. It is then that I became aware for the very first time that while we are attending a SOCA workshop there will also be a separate meeting to discuss security issues and concerns about KZN.

So in the outstanding pages of the e-mail I also raised that aspect, that look I felt a bit humiliated as the Head of the Division that even the issue of security could be discussed without me being involved and Kenny was not the only one. There was also another Advocate, Advocate Dawood at National Office, he – as I was going into
10 the bathroom him exiting he also remarked similarly that I hope you are joining us soon in the meeting to discuss the issue of security about the Cato Manor. Then I just flashed a smile and then left, I did not attend that meeting.

CHAIRPERSON: You had not been invited to the meeting?

ADV MLOTSHWA: I had not been informed about the meeting nor had I been invited to the meeting

CHAIRPERSON: Yes.

ADV WILLIAM NICHOLSON: And he also dealt with the issue of the Prosecutor's memo, that you have not received the Prosecutor's memo
20 but simply an indictment.

CHAIRPERSON: Maybe before that did you get to know who had convened that meeting that from – to which you were not invited?

ADV MLOTSHWA: Other than this gentleman Kenny as well as Advocate Dawood to date I do not know who were the attendees in that meeting, I was never favoured with the agenda of the meeting, nor the

minutes of that meeting. I am not sure if NPA will be able to help the Commission with that.

CHAIRPERSON: H'mm, h'mm, but you never got more information than what these two colleagues of your said?

ADV MLOTSHWA: Not at all.

CHAIRPERSON: Yes, okay.

ADV WILLIAM NICHOLSON: Outside of this meeting were you ever briefed about what security issues should be taken into account?

ADV MLOTSHWA: Chair the e-mail that I referred to on page 9 that is
10 the e-mail from my fellow colleague, Advocate Chauke, particularly paragraph number 2, the last sentence, you can see that he is also pending the issue of security. He says:

“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.”

CHAIRPERSON: Yes. So that's what you knew about allegations of security issues in relation to the Cato Manor matter?

ADV MLOTSHWA: That is the position Chair.

20 **CHAIRPERSON:** Yes.

ADV WILLIAM NICHOLSON: And as I have said we have dealt with the issue that you were expected to sign an indictment, although you have not seen neither the docket nor a prosecutor's memo.

ADV MLOTSHWA: That is the position.

ADV WILLIAM NICHOLSON: Did you in fact sign that indictment?

ADV MLOTSHWA: Up until I was recalled on the 9th day of December 2012 I had not put my signature on the indictment.

ADV WILLIAM NICHOLSON: Now that ties up that part of the evidence, if I can just briefly deal with the racketeering matter in the Amigos case. Were you involved in drafting of the charge sheets or the indictment for racketeering?

ADV MLOTSHWA: With the Amigos case maybe to give the context, as I indicated I was appointed on 17 May, I became aware of it end of May and as soon after that date I requested a meeting with the prosecutor
10 at the time. So at that time no one had been apprehended in the matter, so the prosecutor will be the gentleman who is now with the ICC, Advocate Anton Steinberg.

So when I looked at my notes last night the first meeting I had with him about the matter was on the 9th of June 2012, him to come sit down with me in the office and tell me what is it that he is having in that matter.

After that I requested another meeting with Asset Forfeiture Unit with the SAPS particularly the Investigation Team being led by the gentleman, I think Lt Col du Plooy, as well as the Forensic Auditing
20 Team led by Trevor White.

Thereafter we had a battery of meeting to discuss the matter because I had to assemble a team that was going to substitute Anton Steinberg as Anton Steinberg was about to leave the country for a position at the ICC and indeed I ended up assembling the team led by Advocate Dunywa, who was and still is a senior State Advocate in the

Office of the DPP KZN, I think the other one was Advocate Nomfundo Sipunzi, she is now Regional Court Magistrate in Empangeni, and another one is a Magistrate in Pietermaritzburg, Mr Vincent Ntanjana and one senior advocate but junior advocate then, Advocate Mthembu.

ADV WILLIAM NICHOLSON: Okay, now evidence has been led, that is indeed there was a racketeering certificate signed by the then National – the then NDPP, the one before Jiba, were you involved in having that racketeering certificate signed?

ADV MLOTSHWA: In fact in light of the fact that that matter had
10 reams and reams of documents plus minus 220 000 if my memory serves me well, not only were the consultations and meetings continuous between myself and the Prosecution Team, there were also meetings and consultations held with the then NDPP Advocate Menzi Simelane, who would time and again have one of his deputies, Advocate Silas Ramaite, Willie Hofmeyer, because of this aspect of asset forfeiture.

Then eventually after I had satisfied myself that we could enrol the matter in court with the charge of racketeering it is then that I took my team with the memo to Head Office to do a presentation before
20 Advocate Memzi Simelane, as well as his deputies and Willie Hofmeyer and then at that meeting there was a great deal of unanimity that my Team and myself could safely enrol the matter in court.

So which means the National Director, Menzi, signed the racketeering certificate and then as the head of the Division, KZN, I signed the indictment which includes among other things a charge of

racketeering and money laundering.

ADV WILLIAM NICHOLSON: Can you recall who was at the meeting when you briefed Advocate Memzi Simelane about the possible racketeering charge?

ADV MLOTSHWA: Obviously it will be myself as the Head of the Division and then the Prosecuting Team, the members that I have aforementioned and then from the head office it used to be the National Director of Public Prosecutions at the time, Advocate Memzi Simelane as well as his deputy, Advocate Silas Ramaite and Advocate Dawood.

10 Because of the fact that the Amigos case in KZN was umbilically connected with another Amigos case in the Northern Cape a decision was taken that each time we meet at National Office to discuss the matter that the head of that division in Northern Cape, that would Advocate ...(indistinct) be also present with the Team that was prosecuting the Amigos case that side. I am not sure if it was also called the Amigos case but as far as I remember it involved one gentleman by the name of John Blogg and I think the matter was finalised a year or two ago, as well as the Investigating Team led by Lt Col du Plooy, and I think the forensic auditor Trevor White would also
20 be present.

ADV WILLIAM NICHOLSON: Okay, now evidence has been led before the Commission by two witnesses, that is Mr Trevor White and Colonel du Plooy, that a meeting was arranged for the 23rd of March 2012 in Durban where Advocate Mrwebi stated at the meeting I have decided to withdraw charges against Mr Mike Mabuyakhulu and I want to know

what evidence you have against Ms Nkonyene. Were you consulted about that?

ADV MLOTSHWA: In relation to that meeting first and foremost I did not attend it, I think I had a meeting with the prosecutors in Ladysmith if not Newcastle. However at the time when the meeting was held I do not know how it escaped me, I had not seen that indeed Advocate Mrwebi had transmitted an e-mail suggesting that the meeting be held, an e-mail wherein I was also copied, so I became aware of the meeting because I received, I think it was an SMS from my Line Manager at the
10 time saying look there's a problem it seems our learned colleagues in the media are chasing us, they want to know what happened at that meeting, the journalists have information that Du Plooy, as the investigation officer, had confronted Mrwebi asking him if he was there to instruct ...(indistinct) to withdraw, so to cut a long story short I was not present at that meeting.

At a later stage when going through the e-mails it is then that I realised that when Advocate Mrwebi sent an e-mail that he was coming down to KZN to meet the Prosecuting Team he had indeed copied me in, in respect of that e-mail.

20 **ADV WILLIAM NICHOLSON:** Were you consulted about the withdrawing of those charges?

ADV MLOTSHWA: I think after that ...(intervenes).

ADV WILLIAM NICHOLSON: I am talking about before the meeting.

ADV MLOTSHWA: It is a bit confusing, I would say after that meeting there was also another meeting that was held in May 2012, that would

be the last meeting me present to discuss the Amigos case, then June/July then I was recalled, I do not know what happened thereafter.

CHAIRPERSON: Is the position that you can't remember whether anybody spoke to you prior to that meeting and said we are going to withdraw charges against particular accused persons in this matter or we are contemplating withdrawing charges and would like to have your input. Is the position that you can't remember whether anybody spoke to you about that?

ADV MLOTSHWA: Chair that did not happen until the last meeting, I
10 am speaking about, that we had to discuss the Amigos case, that would have been on the 23rd or 29th of May.

CHAIRPERSON: I think there is reference to 29th of May in your ... (intervenes).

ADV MLOTSHWA: Yes, that would be the meeting where the chairperson of the meeting, my Line Manager Advocate Jiba, would have said guys let us sit down and talk. I think her view was there was a great number of accused is there no way that we can cut down, and then at that meeting I think Advocate Silas Ramaite came up with the suggestion that if that were to happen it is not an easy process, we
20 must first discuss what meeting, what evidence was there when the initial decision was made to enrol the matter in court, to charge people, so as to be able to make a determination if at this stage something ground breaking exceptional would have happened to justify us interfering with the original decision to charge, and then after that discussion a decision was reached that there appears to be no reason

to tamper with the original decision to charge, then I left that meeting with the Prosecuting Team on that note, and as far as I remember the DPP Northern Cape Advocate ...(indistinct) was also present but her Team from Northern Cape wasn't, but the detectives, Lt Col du Plooy and the forensic auditor as well were not present.

CHAIRPERSON: Was the meeting of the 29th of May that you're talking about before the meeting that you missed in KZN attended by Advocate Mrwebi and Advocate Mosing and Col du Plooy and I think Mr White when you had gone to have a meeting with prosecutors in New
10 Castle, did it come before or after that meeting?

ADV MLOTSHWA: I will say the meeting that we had in May was precipitated by the March meeting that I did not attend.

CHAIRPERSON: Oh, okay, okay.

ADV MLOTSHWA: Yes.

CHAIRPERSON: So at the meeting that you attended in May was Advocate Mrwebi there?

ADV MLOTSHWA: When the meeting started the Chairperson had indicated that on that morning he had reported to be unwell so she indicated that she wasn't sure whether or not Mr Mrwebi was going to
20 join us at a later stage.

CHAIRPERSON: What about Mr Mosing, was he present at that meeting?

ADV MLOTSHWA: No Mr Mosing was not present but at the initial stages of the meeting Mrwebi came in and joined the meeting as well.

CHAIRPERSON: You mean towards the end of the meeting?

ADV MLOTSHWA: At the initial stages of the meeting.

CHAIRPERSON: Oh he came after the meeting had started?

ADV MLOTSHWA: Yes, after the meeting had ...(intervenes).

CHAIRPERSON: But soon after it had started.

ADV MLOTSHWA: Soon after it had started, at the time when the Chairperson was – because when attending that meeting we had not been favoured with the agenda of the meeting and so on and so forth, so the Chairperson was still outlining the purpose of the meeting and as to how the meeting was going to progress, so before she could finish
10 off in respect of the introductory remarks fellow colleague Mrwebi stepped in.

CHAIRPERSON: Did the Lead Prosecutor in that matter was it Mr Dunywa in KZN

ADV MLOTSHWA: It was Advocate Dunywa.

CHAIRPERSON: Did he attend that meeting?

ADV MLOTSHWA: He was a leader of the Prosecuting Team so I came with all members.

CHAIRPERSON: So he was – he attended that meeting.

ADV MLOTSHWA: He was present because at the time when we were
20 discussing at the meeting there was a firm view that a person who does the presentation for all in terms of identifying that was there in the original decision as well as the evidence that was existing at the time of reconsidering, if I may call it that way for lack of better words, so it would be more appropriate if that is being done by Advocate Dunywa so he was also present but my team has changed if I am not mistaken

because of promotions and so on and so forth, if I am not mistaken Advocate Nomfundo Sipunzi had been appointed to act as Regional Court Magistrate in Western Cape so I drew up the new members but the lead prosecutor was still there Mr Dunywa ...(indistinct) Mthembu and the head of the SACU KZN, Advocate Vimbani, Bulelwa Vimbani, so they were also present as members of the Amigos Prosecuting Team.

CHAIRPERSON: Now after the meeting that you missed, which was attended by Advocate Mrwebi, Advocate Mosing in KZN did you get a briefing as to what transpired in that meeting?

10 **ADV MLOTSHWA:** Obviously after I had received an SMS from my Line Manager saying please liaise with this spokesperson, the spokesperson at the time was Advocate Mthunzi Maka and see how you deal with these questions that are coming through.

CHAIRPERSON: The media queries.

ADV MLOTSHWA: The media queries, I requested to meet the Prosecuting Team. It was during that meeting where I was informed that it would appear that the meeting with Mosing and Mrwebi did not end on the right note, there were heated exchanges, the investigating officer confronting Mrwebi about – because it was already in the media,
20 the newspaper had already started writing articles that I was refusing, there was a perception that I was refusing to withdraw and then I was going to be forced to withdrawn certain counts and so on and so forth, so at that meeting it would appear that Lt Col du Plooy confronted Mrwebi exactly with that allegation, is it true that this is what you intend doing so that's the report I got.

CHAIRPERSON: But were you also told that Mr Mrwebi had said they intended withdrawing the charges against I think Mr Mabuyakhulu I think.

ADV MLOTSHWA: Yes Mabuyakhulu.

CHAIRPERSON: With regard to either Mr Mabuyakhulu or Ms Peggy Nkonyene, as I understand the evidence of Mr White and Colonel du Plooy in regard to one of them Mr Mrwebi had said a decision has been taken to withdraw charges against this one. Tell me what evidence there is against this other one, I just can't remember whether it's
10 ...(intervenes).

ADV WILLIAM NICHOLSON: Chair if I can assist here it was Mr Mike Mabuyakhulu that Advocate Mrwebi indicated he is withdrawing charges against.

CHAIRPERSON: Were you told that that is what had happened at that time?

ADV MLOTSHWA: Chairperson I might have misunderstood, the way I understood it was that during that meeting it was a confrontation between the investigating officer, Lt Colonel du Plooy confronting Mrwebi with the allegation that the sole purpose why Mrwebi had
20 requested the meeting is because he wanted to achieve this objective of withdrawing charges against certain accused.

CHAIRPERSON: So what you were told was more general about specific two individuals?

ADV MLOTSHWA: It was more general.

CHAIRPERSON: *Ja*, who did you get your report from?

ADV MLOTSHWA: I think I met the Prosecuting Team.

CHAIRPERSON: The whole Team?

ADV MLOTSHWA: The whole – with the ...(intervenes).

CHAIRPERSON: Or some of them?

ADV MLOTSHWA: We normally met every Friday.

CHAIRPERSON: Yes?

ADV MLOTSHWA: In respect of that project.

CHAIRPERSON: Yes, okay.

ADV MLOTSHWA: So I think it was one of those normal Friday
10 meetings with the team just to get the heads up.

CHAIRPERSON: Yes. Now you said that at the meeting of the 29th of
May, which Mr Mrwebi attended, you said that the conclusion was that
no charges were to be withdrawn, did I understand you correctly?

ADV MLOTSHWA: That was the unanimous decision.

CHAIRPERSON: Which means even Mr Mrwebi went along with that
decision?

ADV MLOTSHWA: Including Willie Hofmeyer, Silas Ramaite,
...(Indistinct), as well as my team.

CHAIRPERSON: Yes, okay, thank you.

20 **ADV WILLIAM NICHOLSON:** Now just to be clear the evidence of
Colonel du Plooy and Trevor White is that at the commencement of the
meeting of the 23rd of March 2012 Advocate Mrwebi almost in his
introductory remarks he said:

“I intend withdrawing charges against Mr Mike
Mabuyakhulu and what evidence do you have about

Ms Nkonyene.

Were you consulted about the withdrawal of the charges against Mr Mike Mabuyakhulu?

ADV MLOTSHWA: No.

ADV WILLIAM NICHOLSON: Does Advocate Mrwebi have the authority to withdraw charges – to withdraw those charges?

ADV MLOTSHWA: My understanding of the situation was that Advocate Mrwebi was a Special Director, Specialised Commercial Crime Unit at the National Office. So a decision to prosecute had been taken
10 by myself as the Head of the Division obviously in conjunction with the Prosecution Team in the matter. So when it comes to a direct answer whether or not he could withdraw I think if one looks at the nature of the law that could happen in conjunction with or in consultation with the DPP, but in the light of the fact that the certificate had been signed by the National Director of Public Prosecutions I think that would have necessitated a thorough comprehensive presentation to the National
Director of Prosecutions in terms of demonstrating what is that would have changed to warrant the interference with the original decision and make the decision that has been made.

20 **ADV WILLIAM NICHOLSON:** Okay, so you have already testified that subsequent to the March 2012 meeting – a meeting on the 29th of May 2012 this issue was rehashed and it was agreed that charges will not be dropped.

ADV MLOTSHWA: That was the unanimous decision.

ADV WILLIAM NICHOLSON: In August of 2012 charges were

withdrawn against Mr Mike Mabuyakhulu and Ms Nkonyene, were you consulted on the decisions to withdraw those charges as well as four other people?

ADV MLOTSHWA: When the decision to withdraw charges was made I had already gone back to my position as a Deputy Director Public Prosecutions so I was no longer the Head of the Division so – but to answer you directly I was not consulted regarding the withdrawal of the charges.

CHAIRPERSON: But the point you make is that there was no need for anybody to consult you at that time because you were no longer acting DPP?

ADV MLOTSHWA: I think so Chair.

CHAIRPERSON: *Ja*, you would need to be consulted if you were still acting as the head, isn't it? Or did you remain part of the Prosecution Team in the case in which case maybe then you may have needed to be consulted in that capacity, not in the capacity of Acting DPP?

ADV MLOTSHWA: The day I stepped down, on the 9th, you will see as I testified Chair in the Mokgoro Commission of Inquiry I had made an undertaking to prepare a handover report for my successor. The following Monday would have been the 12th of July 2012, so during that weekend I put together the handing over report including the sensitive files that I had in my custody, the huge projects that I was handling in the matter including the certificates that I had that my successor had to be aware of. So, the following Monday the twelfth I gave the successor the handover report with all the files that I was handling. That was the

last time I knew what was happening in the matters.

CHAIRPERSON: Yes, but the question was if you were no longer acting DPP would there have been any basis upon which it can be said you should have been consulted after you had stepped down.

MR MLOTSHWA: In the world of idealism, Chair, ideally as a person who had been handling the project since 9 June 2010, it is now July 2012. Two years later. Ordinarily, it will not have been unreasonable for one to expect a person to say Mlotshwa you seems to be *au fait* with the ins and outs of the project merely to reduce certain things to dimension how does

10 X Y happen? So, I was completely out of the picture.

CHAIRPERSON: Yes, yes.

MR MLOTSHWA: That is the world of realism.

CHAIRPERSON: Yes, yes, okay.

ADV WILLIAM NICHOLSON: Now, in August 2012, when the charges were withdrawn, the evidence was led that you were no longer, that was the, the decision was taken by Advocate Noko. Is that correct?

CHAIRPERSON: Well he was no longer there.

MR MLOTSHWA: I was no longer acting, I was also reading it in the newspapers I think that will be those articles, that you – that are
20 attached to these bundles. I was also following the matter in the newspapers ...(intervenes).

CHAIRPERSON: No, I think it is enough that you were no longer there.

MR MLOTSHWA: Okay.

ADV WILLIAM NICHOLSON: Now, how were you – when did you formally become aware that you will be removed from your role as Acting DPP?

MR MLOTSHWA: That I was going to be removed, I think from February 2012 until July time and again in the newspapers that would crop up that I was bucking under pressure. There was a firm view that a need is there for me to be removed and even when I was attending the funerals during the weekends, some people will approach me and give their sympathies to me, that they sympathize with me, this was an axe was about to fall on my head.

ADV WILLIAM NICHOLSON: Besides the media reports and the informal conversations that you had, when were you formally advised that your
10 time for DPP is now up – acting DPP is now up?

MR MLOTSHWA: If I am not mistaken there was a point where my successor, because she was the Head of the Tax Unit had a meeting with her Unit in Durban, somebody at that meeting, one of her subordinates did call me to say:

“Haibo here the Supervisor is saying, she will be taking over from you as the DPP.”

On the basis and strength of that call, I wanted to know with certainty to whether or not that was the position. I decided to transmit an e-mail to the then Acting CEO in the Chairperson, Advocate Karin Van
20 Rensburg. In the e-mail, I was particular. Rumour is flying fast and thick that my days are numbered, I will be removed as the Head of the Province. Tag take me into your full confidence, is this rumour true? She responded in a Veritas e-mail, one or two lines, saying:

“No formal position has been taken in that regard.

Consider yourself as being the Head of the

Province.”

That is why my lower jaw dropped a day or two when I received a call from Advocate Jiba saying, can you please come to Head Office on a Friday, that was the 9th. So, I could then relate what I had had with the invitation for the meeting at National Office. So psychologically I was prepared, so indeed when I went to the Headquarters NPA, upon entry in her chambers she was with Advocate Thoko Majokweni, the Acting Head, Prosecution Services at the time, and my successor was also there. Other than short exchange of greetings, my Line Manager Jiba told me
 10 that Simphiwe you have to hand over to your successor, a decision had been made that she takes over. She thanked me for the excellent job that I had done in the Province. I also on my own accord took her into my full confidence in terms of assuring them that I was prepared, willing and ready to put together the handover report, so that my successor could have a soft landing on the acting job the following week. Hence I had to give her the handover report on a Monday, on 12 July 2012.

ADV WILLIAM NICHOLSON: So, your evidence is, you were formally informed on the 9th of July 2012 and you did the handing over report on the 12th of July 2012.

20 **MR MLOTSHWA:** Yes. And this happens in the full context of the fact that initially I was appointed for six months. After six months there was a view that I had done well in the Province. That six months had to be extended by another six months. During that time they were trying to clear up that position of the DPP at the time. Advocate Shamila Batohi with the ICC, so after 12 months of my acting a memo was circulated

throughout the country to all the prosecutors saying up until the situation of Shamila was, Advocate Shamila Batohi was cleared up, I would remain the Acting Head of Prosecutions in KZN. Which was contradicted by a record, because if that circular was saying up until the situation of Shamila is cleared, and then now I am recalled before that situation was cleared. Hence I indicated that there were some colleagues in private practice were prepared to represent me *pro amico* in terms of taking both the Minister and the President to court in relation to a legitimate expectation because in these circumstances, the expectation for my permanent appointed was not self-induce but was induced by my communication with the entity.

CHAIRPERSON: Where is that circular? It is not here because I did not see it here. You are not aware that it is here?

ADV WILLIAM NICHOLSON: It is not here.

CHAIRPERSON: Looking at Mr Nicholson, he does not think it is here. Would you be able to find it?

MR MLOTSHWA: I will be sending the first appointment of six months, the extension of six months, the e-mail saying up until the position of the permanent DPP was cleared up, I will remain acting.

20 **CHAIRPERSON:** Yes, now you said that on the 9th of July 2012, when you met with Miss Jiba and Miss Noko and Advocate Majokweni I think and Miss Jiba said you hand to hand over to Miss Noko. Did you say that she thanked you for an excellent job done?

MR MLOTSHWA: Yes, yes. She told me I had executed – I had acquitted myself well as the Acting DPP KZN.

CHAIRPERSON: Are you sure that that is what she said?

MR MLOTSHWA: Yes, I can ...(intervenes).

CHAIRPERSON: You are sure about that?

MR MLOTSHWA: Yes, I am.

CHAIRPERSON: Yes, now, you had been acting in this position for about what?

MR MLOTSHWA: Two years.

CHAIRPERSON: Two years. During that time would there have been performance appraisals about how you were performing as Acting DPP?

10 **MR MLOTSHWA:** I think yes, I had succeeded in getting a cash performance bonus.

CHAIRPERSON: Yes.

MR MLOTSHWA: And then most importantly my qualifications are Chair, I had a Baccalaureus LL.B Masters Human Resource I think I was busy with my BA Honours in Philosophy ...(intervenes).

CHAIRPERSON: Yes.

MR MLOTSHWA: So, everybody in the division including the judicial both in the Low Court and High Court will say the same whenever I stumble upon them that we are looking forward to your permanent appointment.

20 **CHAIRPERSON:** Yes. But now I am looking at whether there were any performance assessments or appraisals done within the NPA by your superiors which reflect what they thought about your performance for that time ...(intervenes).

MR MLOTSHWA: *Ja*, in terms of ...(intervenes).

CHAIRPERSON: Is there something in writing?

MR MLOTSHWA: I think if one goes through the archives in NPA in terms of rankings when I was appointed I think the division was number 8 subject to corrections of course. But in the following year 2011 March or April I think we were number 2 and then I got a cash performance bonus ...(intervenes).

CHAIRPERSON: Yes.

MR MLOTSHWA: Monetary reward.

CHAIRPERSON: For good performance.

MR MLOTSHWA: For good performance. Yes, and most importantly if
10 you look at the Public Service Act it stipulates, I have not checked now I checked then, it stipulates that if you act in the Public Service you cannot be remunerated for a period exceeding 12 years. Meaning, the last time I received a salary for being the Acting Head of the Prosecution was 2011 in May. When I was having all these problems you were seeing in the media I was not even getting paid for it, I was getting paid for the Deputy Director Public Prosecutions position. Of course, with that indication that itinerant it would appear that you will have been appointed permanently so I don't worry.

CHAIRPERSON: So, but – I am asking whether somewhere there you
20 should be document or documents that record how your performance was viewed by your superiors during the time you were Acting DPP.

MR MLOTSHWA: My understanding is that the Acting – the CEO at the time was Advocate Karen van Rensburg I think that would be the person at the time best place to have the documentation I think she ...(intervenes).

CHAIRPERSON: Are you saying there should be documentation?

MR MLOTSHWA: There should be documentation.

CHAIRPERSON: Were there performance assessments there were conducted on your performance? Or on the performance of your office Acting DPP.

MR MLOTSHWA: The NPA generally after three months there will be those performance assessment with the difference being that some are formal some are informal.

CHAIRPERSON: Yes.

10 **MR MLOTSHWA**: But, with the last annual performance assessment it will definitely be formal and it is on the basis and strength of it that a determination is made whether you deserve a monetary reward for excellent job or not.

CHAIRPERSON: So, the one in respect of which you were given a cash bonus or payment for good performance, when did that happen? Just before you stepped down or much earlier?

MR MLOTSHWA: I think that would have happened in 2011.

CHAIRPERSON: 2011?

MR MLOTSHWA: Yes, 2011.

20 **CHAIRPERSON**: Would you remember whether it might have been towards the end of 2011.

MR MLOTSHWA: My understanding then I do not know now.

CHAIRPERSON: *Ja*.

MR MLOTSHWA: The Government financial year commences on I think 1st of April to end of March the following year. Yes. So, the one that I am

making reference to will be the one that would have wrapped up I think 2011, March.

CHAIRPERSON: March, okay.

MR MLOTSHWA: But more often than not you will find that even though the year ends in March but the processing of the assessments ...(intervenes).

CHAIRPERSON: *Ja*, continue.

MR MLOTSHWA: Will be a bit delayed and then you find that the payments in relation to that cash performance bonuses maybe are paid in
10 May, June or July.

CHAIRPERSON: Yes, but did you say that when you started as Acting DPP in terms of performance the KZN DPP's office was ranked number eight out of nine provinces, is that what you said.

MR MLOTSHWA: As far as my memory serves me well that was the position.

CHAIRPERSON: Yes. And when you stepped down do you know where it was ranked.

MR MLOTSHWA: When I stepped down I think it had it was I think it was – I would have go back to the document.

20 **CHAIRPERSON**: Well you can if you remember for sure you can tell us if you are not sure you can say you think it was ranked whatever ...(intervenes).

MR MLOTSHWA: I cannot remember the position, but it was no longer ...(intervenes).

CHAIRPERSON: Leave room for ...(intervenes).

MR MLOTSHWA: It was still performing well but no longer number two it is just that I do not have the specifics when I stepped down.

CHAIRPERSON: Would it have been around three or four?

MR MLOTSHWA: I cannot put my ...(intervenes).

CHAIRPERSON: You cannot remember? But had there been a huge improvement in the performance of that office since you took over, can one say that?

MR MLOTSHWA: I can safely say that.

CHAIRPERSON: Yes, okay. Is there something you can find later on
10 and send to the Legal Team that might reflect what the position was or is that something that would be difficult to find after so many years?

MR MLOTSHWA: As I have indicated that I am no longer in the NPA the only documentation that I will be able to present here at the Commission will be the document explaining my appointment for first six months, the extension of six months, and the circular saying up until the position of the permanent DPP's clarified I would remain the Acting Head.

CHAIRPERSON: Okay and you say that at the time you were asked to step down the position relating to Advocate Batochi had not been finalized as far as you recall?

20 **MR MLOTSHWA**: As far as I recall she was still with the ICC at the Head.

CHAIRPERSON: Yes, yes. Okay, alright.

MR MLOTSHWA: But I think, at that time there was a suggestion that she had taken I am not sure whether a contract of five years or seven years.

CHAIRPERSON: Yes. Okay.

MR MLOTSHWA: So, in other words it had been clarified.

CHAIRPERSON: Yes.

MR MLOTSHWA: Warranting or justifying the permanent appointment.

CHAIRPERSON: Okay, no that is fine. And Miss Noko, what position did she hold at the time she – you stepped down when before she became Acting DPP?

MR MLOTSHWA: She was one of the Deputy Directors of Public Prosecutions Head in the Tax Unit in Durban.

10 **CHAIRPERSON:** Yes, okay. Okay, no that is fine.

MR MLOTSHWA: In fact, she was my subordinate reporting to me.

CHAIRPERSON: She was your subordinate. Okay. Mr Nicholson.

ADV WILLIAM NICHOLSON: Okay, now just to wrap up on this point the issue of Miss Noko – Advocate Noko being appointed, in which office did she work? You say she was your subordinate in which office did she work?

MR MLOTSHWA: She was in the Tax Unit, Durban.

ADV WILLIAM NICHOLSON: What does the Tax Unit do?

20 **MR MLOTSHWA:** That will be the Unit assigned with the duty and responsibility to prosecute the Tax VAT transgressions.

ADV WILLIAM NICHOLSON: Okay.

MR MLOTSHWA: Offences.

ADV WILLIAM NICHOLSON: Do you know how long she was in the NPA.

MR MLOTSHWA: No, no.

ADV WILLIAM NICHOLSON: Are you able to comment on her court

experience?

MR MLOTSHWA: You mean in terms of me seeing her to go to court during the time when she was my subordinate?

ADV WILLIAM NICHOLSON: Well, can you say anything about her court experience?

MR MLOTSHWA: Ay, I do not remember.

CHAIRPERSON: Okay. Did Miss Jiba tell you – give you any particular reason why you were being asked to step down at the time that she asked you to step down, particularly in the light of the circular that you talked
10 about?

MR MLOTSHWA: Chair, at the time when she indicated that I had to do had to handover and at that time I was personally I wasn't okay because of stress as you could see in the newspapers that they were reporting that I was bucking under pressure. That was indeed the position to such an extent that in June 2012 I was supposed to be running my third or fourth Comrade Marathon my – the family doctor had made a recommendation that I should not run because of my state of – emotional state. So, to me it came as a great relief. The only thing I could do to her was to thank her on behalf of the NPA for having accorded me an
20 opportunity to get an experience and explore whatever ideas I had that I could convert into deliverables within the entity.

CHAIRPERSON: It sounds like you wanted to get out of the position, is that true or not really?

MR MLOTSHWA: No, no.

CHAIRPERSON: You did not want to get out of the position?

MR MLOTSHWA: All I am trying to say is that the circumstances were so unbearable.

CHAIRPERSON: Yes, yes.

MR MLOTSHWA: To such an extent that I was expecting anything not that I wanted to ...(intervenes).

CHAIRPERSON: Get out of the position?

MR MLOTSHWA: To get out of the position.

CHAIRPERSON: What was bringing about this – what was causing this stress that you are talking about in, because I assume it was work related
10 obviously, I am not interested in personal matters.

MR MLOTSHWA: It was quite a number of professional reasons. Among others, when I took over as the Head of the Division. Risk and Securities Services conducted an investigation, and when the investigation was conducted it was then that the investigation was able to unearth that my life and that of my family was not safe.

CHAIRPERSON: Were you in danger?

MR MLOTSHWA: So, we were in danger. On the basis and strength of that I was afforded, and I was given security bodyguards and security at my house. So, as people were talking about all these things me being
20 under pressure. On the side, I was also having a problem – an allegation that in the first place I never deserved security and then there were certain allegations people saying I am abusing security.

Myself and my kids, and my family we are inseparable, people starting to question how come when they go to school I am there with security and so on and so forth. So, and then when I stepped down when

I left the office I used to arrive early in the morning and leave late, seven o'clock, six o'clock. As we were leaving with the bodyguards received a call prior to my calling, they received a call I think few meters out of my office saying I must be dumped on the road. So, because I had worked with them for a number of months after receiving that call they told me that:

“Ay look the call that we are receiving is that we need to dump you here on the road.”

CHAIRPERSON: This is now on the ...(intervenes).

10 **MR MLOTSHWA**: That is 2012.

CHAIRPERSON: Day after ...(intervenes).

MR MLOTSHWA: No, around March.

CHAIRPERSON: Oh, long before you stepped down.

MR MLOTSHWA: Long before, a month or two before I stepped down, I had been – the security had been removed from me. So as – they received that call in the car they told me that they were receiving an instruction to dump you here on the road, what do you say?

Then I told them that:

20 “Guys I do not give a damn even if I lose a job with you, I feel sorry for you guys. Make a decision if you will not be fired by proceeding to take me home because we are now seven kilometres away from my house, if your job is safe we can proceed and you can drop me off at home, or if you drop me here I can call the wife at home to come and pick me up. I will tell her where I am and then they said it was

very, the situation was very sour in the car, they said no we will rather drop you off at home, we will see what they do at work.”

So, few minutes later they also received a call. Bodyguards from the security guards at home because they were stable guards who were guarding my house. So those security guards were calling the bodyguards asking if they received any call because they had also received a call saying they must leave my house. So, it was a cocktail ...(intervenes).

10 **CHAIRPERSON**: It was a number of factors.

MR MLOTSHWA: Accumulating effect of which, so I had to be hospitalized for bloods and so on and so forth. And the doctors were saying they could attribute it to nothing else but a stressful ...(intervenes).

CHAIRPERSON: Stress.

MR MLOTSHWA: Environment I was finding myself in. So, when I received that call to go there ...(intervenes).

CHAIRPERSON: So, that was the context why you had to leave.

MR MLOTSHWA: So, in a way what they were saying accept whatever.

20 Yes, yes.

CHAIRPERSON: Okay, alright.

ADV WILLIAM NICHOLSON: Do I understand that very abruptly the guards were removed from you?

MR MLOTSHWA: That was the position.

ADV WILLIAM NICHOLSON: And who provided these protectors and

security guards at your home?

MR MLOTSHWA: As I indicated there were threats at my house, there were threats in the office, people calling not telling, not indicating who they were, buzzing at the gate at home and so on and so forth, reported to Crime Intelligence. Crime Intelligence conducted their own investigation, I think I also have those reports. They conducted their own investigation after the investigation they came back saying the situation warrants that I be assigned with security. So, on the basis and strengths of that I had to be given security. I mean the bodyguards and then at
10 home the security guards. I would say it was the Department of Justice in conjunction with NPA.

ADV WILLIAM NICHOLSON: Okay. And who gave the instruction to very abruptly remove those security measures?

MR MLOTSHWA: Ay the way I was – the condition I was in mentally and emotional at the time including my family I did not even bother to ask because I could feel that at the time I was swimming against the tidal wave.

ADV WILLIAM NICHOLSON: Ja. But it may have been somebody from either the NPA or the Department of Justice?

20 **MR MLOTSHWA**: To date I never ...(intervenes).

CHAIRPERSON: But he does not know.

MR MLOTSHWA: Even ask the bodyguards nor the security guards.

ADV WILLIAM NICHOLSON: Okay. You also mention, you referred to the media reports that said that you were buckling under pressure, the pressure you were buckling under, has it related to the normal work that

you were doing in the DPP's office?

CHAIRPERSON: Well, first ask whether he was buckling under pressure in the first place?

ADV WILLIAM NICHOLSON: Are those reports correct?

MR MLOTSHWA: You know with media sometimes; it is difficult if they have not given you the foundation upon which they are making the allegation. But to cut a long story short the prosecutorial job is, it comes with a lot of pressure as well. The Head of the Prosecution is worse.

CHAIRPERSON: There certainly was pressure. Is that correct?

10 **MR MLOTSHWA**: If you look at the projects that were in the delivery, yes.

CHAIRPERSON: Yes, there was pressure. But, are you able to say you were able to handle the pressure or are you saying that you were not able to handle the pressure?

MR MLOTSHWA: I will say I was able to handle the pressure.

CHAIRPERSON: Yes. Okay.

MR MLOTSHWA: If I was not I would have voluntarily ...(intervenes).

CHAIRPERSON: Resigned

MR MLOTSHWA: Came in and resigned.

20 **ADV WILLIAM NICHOLSON**: So, the issues that lead you to be hospitalized, the issues that lead you to miss the Comrades Marathon, was that normal work pressure?

MR MLOTSHWA: Not that I missed the Comrades. I said I ran against the – my medical practitioners' advice. Their view was I shouldn't but I did. So, I think it was work related.

ADV WILLIAM NICHOLSON: Was it normal work pressure? That is the question I want to get to.

MR MLOTSHWA: I would say it was an abnormal pressure.

ADV WILLIAM NICHOLSON: Did you say abnormal pressure?

MR MLOTSHWA: I would say it was abnormal if it culminates in one being seen by the doctor.

ADV WILLIAM NICHOLSON: Okay. Now, just to wrap up your evidence, after spending nearly all your adult life as a career prosecutor and rising to the ranks of Senior Deputy DPP and in fact Acting DPP, why did you
10 join the Bar?

MR MLOTSHWA: In fact, when I picked up all these problems in 2012.

CHAIRPERSON: Well, I guess the more appropriate question is, why did you leave the NPA?

ADV WILLIAM NICHOLSON: Why did you leave the NPA and ... (intervenes).

CHAIRPERSON: Where you went is might be neither here nor there. But why did you leave the NPA after so many years?

MR MLOTSHWA: I thought I had done everything in the NPA.

CHAIRPERSON: Yes. Okay.

20 **MR MLOTSHWA:** From the ... (indistinct).

CHAIRPERSON: It was for career reasons. It was for career purposes.

MR MLOTSHWA: That is the position.

CHAIRPERSON: *Ja*, okay.

ADV WILLIAM NICHOLSON: Okay, and are you able to given the fact the issues that we dealt with in the Cato Manor prosecution the way

prosecutors were being imposed into this province – into your province, given the way charges were withdrawn after you had left can we draw any conclusions from your no longer acting as a DPP? Can we draw any conclusions from that?

CHAIRPERSON: Maybe don't put it like that. Are you able to tell us why you were asked to step down?

MR MLOTSHWA: Chair, I would think that falls particularly within the personal knowledge of the people who recalled me.

CHAIRPERSON: You, yourself are not able to say why you were not told
10 and you have not analysed what happened and come to any conclusion as to why you were asked to step down?

MR MLOTSHWA: After I had stepped down I was also looking at the speculations including the timing of the withdrawals and so on and so forth, that possibly my recalling could be attributed to that.

CHAIRPERSON: Could be attributed to?

MR MLOTSHWA: That the main reason why I was recalled was to make certain decisions.

CHAIRPERSON: Yes. Okay, alright. Thank you.

ADV WILLIAM NICHOLSON: Chair, those were my questions for this
20 witness.

CHAIRPERSON: Thank you, Mr Mlotshwa for coming to give evidence. We appreciate it. But for now, you are excused. If there is a need for us to call you back, we call you back. But thank you very much, you are excused.

MR MLOTSHWA: Thank you Chair.

CHAIRPERSON: We are going to adjourn for the day. There would be no hearing tomorrow. There would be no hearing next week as well. But as things stand it is intended that the hearings should resume on Wednesday the week after next week.

The venue for the hearing will no longer be this venue beyond the end of February. The plans are that the hearings will be held in the old Chamber of the Johannesburg Municipality. Arrangements are being finalised but as I understand it, it is just the formalities.

In substance an agreement has been reached and the
10 Commission for the rest of the year, its seating's will be in the old Chamber at the Johannesburg Municipality. So, but in due course there will be a media statement once all the formalities has been finalised. We adjourn.

INQUIRY ADJOURNS TO 11 MARCH 2020

**TRANSCRIBER'S CERTIFICATE FOR COMMISSION OF INQUIRY INTO STATE
CAPTURE
HELD AT
PARKTOWN, JOHANNESBURG**

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DAY: : 220

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