

IN THE JUDICIAL COMMISSION OF INQUIRY TO INQUIRE INTO ALLEGATIONS  
REGARDING EFFORTS OR ATTEMPTS HAVING BEEN MADE TO STOP THE  
INVESTIGATION OR PROSECUTION OF TRUTH AND RECONCILIATION  
COMMISSION CASES

In the application of Jacob Gedleyihlekisa Zuma for the recusal of the  
Chairperson of the Commission

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ANSWERING AFFIDAVIT  
On behalf of the Calata Group

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I, the undersigned

**LUKHANYO BRUCE MATTHEWS CALATA**

Do hereby make oath and state as follows:

- 1 I am an adult male journalist, author and filmmaker. I am currently employed as the News Director at eNCA based in Johannesburg.
- 2 The facts deposed to in this affidavit are within my personal knowledge, unless otherwise stated or indicated by the context, and are true and correct to the best of my knowledge. Where I make legal submissions, I do so on the advice of my legal representatives, which advice I believe to be correct.
- 3 I have read the application by former president Jacob Gedleyihlekisa Zuma ("**the Applicant**" or "**Mr Zuma**") for the recusal of the Chairperson, Judge Sisi Khampepe.

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## BACKGROUND

- 4 On 20 January 2025, twenty-five survivors and families of victims ("**the Calata Group**") who were forcibly disappeared or murdered during South Africa's struggle for democracy, together with the Foundation for Human Rights, filed a court application against President Ramaphosa and the government (Case No. 2025-005245 before the Gauteng Division of the High Court, Pretoria). We alleged that political interference had suppressed the cases referred by the Truth and Reconciliation Commission ("**TRC**") to the National Prosecuting Authority ("**the TRC cases**"). I am one of the applicants. We sought an award of constitutional damages to vindicate our violated rights as well as an order compelling the President to establish a commission of inquiry.
- 5 A partial settlement was reached and on 29 May 2025, President Ramaphosa issued a Proclamation under Government Notice 264 of 2025 ("**the Proclamation**"), establishing the Judicial Commission of Inquiry to inquire into allegations regarding efforts or attempts having been made to stop the investigation or prosecution of Truth and Reconciliation Commission cases ("**the Commission**"). The claim for constitutional damages is still being litigated before the High Court.
- 6 On 19 September 2025 the Commission issued a notice to the Applicant in terms of Rule 3.3 of the Commission's Rules notifying him of the establishment of the Commission and its composition, which included the appointment of Justice Khampepe as the Chairperson. This notice is attached to Mr Zuma's affidavit as annex D ("**the Notice**").
- 7 The Notice advised Mr Zuma that he is potentially implicated in the subject matter of the Commission. The Notice brought to his attention that amongst other allegations, he and other senior members of the African National Congress and/or the then government, allegedly attended meetings with former apartheid-era generals in the late 1990s and early 2000s. The aim of the meetings was allegedly to consider ways of avoiding future prosecutions of apartheid-era crimes.

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- 8 On 3 December 2025 the Applicant's attorneys wrote to the Commission's secretary, Adv Thokoa demanding "*the immediate recusal of the Chairperson in respect of any process which involves the rights and interests of our client [the Applicant] alternatively from the Commission itself further alternatively to exempt our client [the Applicant] from any participation in the Commission as presently constituted.*" This letter is attached to Mr Zuma's affidavit as annex B.
- 9 On the same day, the Commission issued a directive requiring the filing of an application for recusal and directing filing dates. The Applicant did not comply with this directive resulting in the Commission directing new filing dates.
- 10 On 15 December 2025, the Applicant filed a notice of motion and founding affidavit seeking the recusal of the Chairperson. An answering affidavit was filed by Adv. Semanya SC, on behalf of the evidence leaders of the Commission on 19 December 2025.
- 11 The Calata Group has not been cited in these proceedings; however, we have a direct and substantial interest in the recusal application, which we oppose. We do so in terms of paragraph 3 of the Chairperson's letter dated 11 December 2025 to the Applicant's attorneys. In the remainder of this affidavit, I set out the following:
- 11.1 The undue delay in bringing the application for recusal;
- 11.2 The test for recusal;
- 11.3 The failure of the Applicant to provide evidence in support of the application;
- 11.4 Why the Applicant has failed to make out a case for the recusal of the Chairperson; and
- 11.5 Conclusion.

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## APPLICANT'S DELAY IN TAKING ACTION

- 12 The High Court application brought by the Calata Group on 17 January 2025 disclosed the alleged connection between the Applicant and the alleged political interference in the TRC cases. The launching of the application was reported widely in the media, and the court papers have been publicly available since that time.
- 13 The Proclamation dated 29 May 2025 establishing the Commission and appointing Justice Khampepe as its Chairperson, and Justice Kgomo and Adv Gabriel SC as members of the Commission, was also published widely in the media.
- 14 It is likely that the Applicant was aware of the aforesaid facts around the times they were reported in the media. To the extent that he claims he was unaware he was formerly issued with the Rule 3.3 Notice on or about 19 September 2025, informing him of the specific allegations against him and calling on him to submit a statement in response.
- 15 I am advised that it is settled law that applications for recusal must be made as soon as an applicant becomes aware of the circumstances that warrant such an application.
- 16 Notwithstanding this well known requirement, the Applicant waited 75 days before raising his objections against the Chairperson in his attorneys' letter dated 3 December 2025 ("**the letter**"). No attempt was made in that letter to explain why he waited nearly 11 weeks before communicating his concerns to the Commission.
- 17 Indeed, the letter discloses that Mr Zuma "*has been following*" the objections against the Chief Evidence Leader Adv I. Semanya SC "*with keen interest*." The letter indicates why he chose "*not to enter the fray*":

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*"Among the reasons why our client had chosen not to enter the fray was that he has objections of his own which are not specifically directed at Adv Semenya SC but at the Chairperson ..."*

- 18 The efforts to remove Semenya SC, which commenced in late October, and the outcome thereof, do not provide the slightest basis for not raising his own objections against the Chairperson. Indeed, the Applicant would also have been aware that the Commission's hearings were due to begin on 10 November 2025, yet he took no action to have the Chairperson recused prior to this date.
- 19 Mr Zuma's affidavit is entirely silent on why he waited until 3 December 2025 to raise his objections. No explanation whatsoever is proffered for the delay, let alone any special or exceptional circumstances. It appears that he is of the view that he does not have to explain why he waited 75 days from receipt of his Rule 3.3 notice to raise his objections.
- 20 The Applicant's dilatory conduct raises serious questions around the various claims he makes. His long delay in taking action suggests that his claims cannot be taken seriously.
- 21 Moreover, there was a duty on the Mr Zuma to speak up, arising out of his long held view over many years that the Chairperson was biased against him. He was not permitted to stand by and bide his time. There was a duty on him to bring his complaint to the attention of the Commission promptly and without delay.
- 22 To the extent that Mr Zuma claims that he had to wait for the outcome of the Semenya recusal before pursuing his complaint of bias, I am advised that it was not open to him to do so. The main facts giving rise to his complaint were known to him years before.
- 23 I am advised that pursuing a recusal at a later stage, despite a much earlier opportunity to do so, implicates the interests of justice. The applicant had knowledge of all the central facts upon which recusal is sought and yet waited some 11 weeks before acting.

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- 24 In addition, the interests of justice demand that the interests of other parties and the broader public be considered. In this regard, we note that recusal proceedings have the potential to derail or substantially delay the work of the Commission, which would be deeply prejudicial to the interests of the Calata Group, other victims in TRC cases and the public in general.
- 25 I am advised that it is not in the interests of justice to permit a complainant who has knowledge of all the essential facts upon which recusal is sought, to wait 75 days before acting. Such objections must be dealt with expeditiously and brought to finality as speedily as possible.
- 26 Mr Zuma did not suddenly discover the career history of the Chairperson and her earlier involvement in cases connected with him. He was not taken by surprise. He knew these facts all along. Yet he took no action, even after he was served with a Rule 3.3 notice. He cannot now be heard to complain that this same background gives rise to a real danger of bias.
- 27 In waiting until the end of the year to take action, Mr Zuma's application and any ensuing litigation has the potential to seriously disrupt the operations of this Commission. This was likely a calculated move aimed at undermining the effective running of the Commission. Accordingly, his application amounts to an abuse of the Commission process. I am advised that the Commission has a duty to the parties and the public to ensure that such abuse is prevented.
- 28 I am advised that granting such a belated application would be unfair to the other parties and it would undermine the fair administration of the Commission's mandate in the public interest. It would bring the administration of the Commission into disrepute.
- 29 In short, Mr Zuma's application for the recusal of the Chairperson was not made promptly or within a reasonable time. The delay was inordinate, inexcusable and unexplained. It should be dismissed on this ground alone.

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- 30 In any event, his conduct is manifestly inconsistent with a reasonable apprehension of bias, which will be dealt with below.

### **THE TEST FOR RECUSAL**

- 31 I am advised that the test for recusal on the basis of a reasonably held apprehension of bias, in the context of commissions of inquiry, is the following:

- 31.1 The approach must be objective.
- 31.2 The onus of establishing that the requirements for recusal have been met is on the applicant.
- 31.3 The facts relied upon must be correct.
- 31.4 The apprehension must be that of a reasonable, objective, and informed person.
- 31.5 The apprehension itself must be reasonable.
- 31.6 The apprehension must be that the decision maker has not or will not bring an impartial mind to bear upon the proceedings, that is a mind open to persuasion by the evidence and the submissions.

### **THE APPLICANT PLEADS CONCLUSIONS WITHOUT EVIDENCE**

- 32 I am advised that a legal application, let alone an application for recusal, cannot be granted on the basis of bare assertions. A complainant is required to put up the facts or evidence upon which he relies to claim bias on the part of the decision maker.

### **Media interviews**

- 33 In paragraphs 32 and 33 of his affidavit, the applicant refers to interviews Newzroom Afrika and News24 conducted with Justice Khampepe. The applicant

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alleges that the interviews constitute evidence of malice behind the Chairperson's earlier judgments involving him (referred to in paragraphs 23 and 26); and that they confirmed his view that his "*imprisonment was aimed at 'teaching [him] a lesson'*".

- 34 Yet neither interview has been put up in evidence. No article or transcript providing the interviews was annexed to Mr Zuma's affidavit. He simply refers to annex B, which is the letter of 3 December 2025 referred to above. That letter only annexed a photocopy of the cover page of a News24 article with a single headline and a photo of the Chairperson. The article itself was not included, and Mr Zuma saw fit not to quote from it. The alleged Newzroom Afrika interview appears nowhere in the annexes and no quotes from it appear in Mr Zuma's affidavit.
- 35 Accordingly, I am advised that no reliance may be placed on these alleged media interviews.

### **The Semenya recusal application**

- 36 The Applicant turns to the recusal application from paragraph 36 of his affidavit, an application which he "*elected not to join*". Notwithstanding his decision not to get involved, in paragraphs 39 and 40, he alleges that the Chairperson "*privately and secretly*" gave advice to Semenya SC on the question of his recusal and that this was an example of "*actual bias*" and "*gross misconduct*".
- 37 Despite this serious accusation, the Applicant chose not to disclose any evidence supporting his claim, claiming that only in the event of a denial will he "*resort to alternative procedural mechanisms to secure the evidence*". On the Applicant's own version, he is not in possession of the evidence but still saw fit to make the accusation.
- 38 I am advised that the Applicant's manner of proceeding is wholly impermissible and grossly unethical. Mr Zuma is required to set out a case before the parties

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are called upon to answer it. Instead, he makes a serious accusation against the Chairperson without putting up a shred of evidence to support the claim.

- 39 I am advised that no reliance may be placed on these vexatious claims, which fall to be struck from the record.
- 40 I am further advised that it is entirely impermissible to introduce new matters in reply simply because respondents have placed the applicants' version in dispute. Yet that is precisely the Applicant's stated intention.
- 41 In addition, I am advised that Mr Zuma's legal representatives may have acted inconsistently with section 9.7 of the Legal Practice Council's Code of Conduct (GN 168 of 29 March 2019) which proscribes the gratuitous disparaging of others and the intentional and/ or reckless making of unsubstantiated allegations in the composition of pleadings or affidavits.

#### **APPLICANT HAS FAILED TO MAKE OUT A CASE FOR THE RECUSAL**

- 42 The Applicant's grounds for the Chairperson recusal are essentially that she:
- 42.1 made adverse judgments against him;
  - 42.2 was previously a Commissioner of the TRC and a deputy National Director of National Prosecutions ("**deputy NDPP**"); and
  - 42.3 was biased in her handling of the application to recuse Semenya SC.
- 43 It is quite apparent that the Applicant's main grounds of complaint are the adverse judgments authored by the Chairperson, which resulted in his imprisonment. In my respectful view, the other matters raised are mere add-ons raised for purposes of atmosphere.

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### Chairperson's role in earlier judgments

- 44 The central ground raised by the Applicant is that from the tone of the judgments referred to in paragraphs 23 and 26 of his affidavit it was "*self-evident that Justice Khampepe was motivated by deep-seated personal hatred, animosity and/or anger specifically directed towards [him]*" (at para 28).
- 45 Nothing was quoted from those judgments to support this contention, but Mr Zuma, at paragraph 28, says he will provide detailed support during oral argument. I am advised that he was obliged to provide those quotes and conclusions in his founding affidavit so that the parties could have responded in their answering papers – rather than attempting trial by ambush during arguments.
- 46 While Mr Zuma has expressed disparaging views and remarks about the judgments, as matters stand, he has not pleaded any specific facts arising from those judgments to support his claim of actual bias or reasonable apprehension of bias on the part of the Chairperson.
- 47 The pleaded basis for this ground is that the Chairperson has penned adverse judgments against the Applicant in the past. I am advised that Judges often hear different matters relating to the same applicant without that providing a justifiable basis for recusal.
- 48 I am advised that the mere fact that a judge, earlier in the same case or in a previous case, commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more, found a sustainable objection.
- 49 I am advised that each application for recusal must be decided on its particular facts and circumstances. Since Mr Zuma has chosen not to put up specific examples or quotes from the two judgments, there are no facts to consider apart from the bare assertions claimed in his affidavit. This defect may not be remedied in reply.

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- 50 The claim that the Chairperson is consumed by a “*deep-seated personal hatred, animosity and/or anger*” against the Applicant has not been demonstrated. Indeed, the bare claims do not have a rational basis, let alone that constituting the apprehension of a reasonable, objective, and informed person.
- 51 I am advised that the assertions of Mr Zuma do not come close to rebutting the presumption that judicial officers are impartial in adjudicating disputes given their legal training, oath of office, intellectual discipline and experience. This presumption is not easily dislodged.

### **The Chairperson's former roles**

- 52 The Applicant points out that the Chairperson was a TRC Commissioner and a member of the Amnesty Committee and a Deputy NDPP, a post she held from September 1998 to December 1999.
- 53 According to Mr Zuma the mere holding of these positions made her “*distinctively unsuitable and/or automatically disqualified for her present position*” (at para 48).
- 54 I am advised that the mere holding of a position is not a ground of recusal. The mere association with a person or institution is also not a ground of recusal, nor is a general claim of “unsuitability”.
- 55 The only explanation offered by the Applicant is what he sets out at paragraph 49 of his affidavit.

*“To illustrate this particular ground I wish to point out that the witnesses in the Commission will likely include the Chairperson's former colleagues and/or superiors in the TRC and/or the NPA, as the case may be. Furthermore the issue of prosecution is directly linked to the granting or non-granting of amnesty. This is trite.”*

- 56 The question of political interference in the TRC cases did not arise at the TRC since the actual interference only commenced in the years following the winding up of the TRC, more particularly from 2003 onwards. There is also no allegation

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that political interference was imposed on the National Prosecuting Authority (“NPA”) during her tenure there between 1998 and 1999.

57 In this regard, I refer to the alleged period of active political interference, which is set out between pages 61 and 149 of my founding affidavit in High Court application, which is part of the Commission's record and is available on its website under Bundle 1 of the Calata Group submissions.

58 In the absence of a specific allegation of an inappropriate relationship or undue dependency with anyone in the TRC or NPA that directly implicates the Chairperson's current role in the Commission, this ground is devoid of merit.

### **The Semenya recusal matter**

59 The Applicant's complaint of bias rests entirely on his claim of “*private and secret advice*” allegedly provided by the Chairperson to Semenya SC (paragraphs 38 to 40 of his affidavit), of which there are no facts or evidence before this Commission.

60 As mentioned above, there is no basis to entertain vexatious and scandalous claims unsubstantiated by evidence or facts. Such an approach deeply offends the elementary and basic standards of the practice of law in South Africa.

61 Mr Zuma puts up no other grounds to impugn the Chairperson's conduct in those proceedings but claims at paragraph 51 of his affidavit that at some future point:

*“The Commission will be referred to relevant pleadings, transcript and/or outcome of the application which will vindicate the submission that the outcome was improperly pre-determined.”*

62 It appears that Mr Zuma and/ or his legal team are attempting to appropriate the right to determine when and how they will put up their case for recusal. I am advised that it is trite law that a case may only be made out in the founding papers and cannot be made out or embellished at a later stage.

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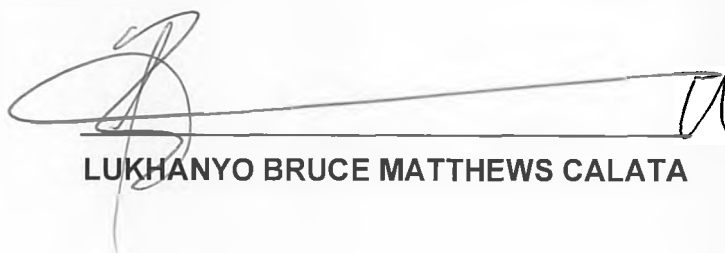
63 If there are relevant pleadings, transcripts or extracts that Mr Zuma wished to rely on to demonstrate his case for recusal, he was required to set them out in his founding papers. He has declined to do so and may not do so in reply or under the guise of argument.

## CONCLUSION

64 In the light of what I have set out above, I am advised that it is not necessary for me to respond *ad seriatim* to the Applicant's affidavit. I have disputed the essential claims made by Mr Zuma. He has not made out the slightest case for the recusal of the Chairperson. To the extent that any allegation advanced by him has not already been addressed, and which is not consistent with what I have set out above, it is denied.

65 In passing, I note that Mr Zuma states at paragraph 52 of this affidavit that it would be untenable for him to comply with the Rule 3.3 notice. I wish to point out that he is under a moral obligation to disclose what he knows about the subject matter of this inquiry. He owes it to the families of those who laid down their lives for a democratic South Africa to explain why they were denied justice, truth and closure.

66 Having regard to the above, I respectfully submit that the application for the Chairperson's recusal and the other relief sought must be dismissed.



LUKHANYO BRUCE MATTHEWS CALATA

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit as signed and sworn to me before at Roubaik SAPS on this the 22nd day of December 2025, and the Regulations contained in the Government Notice

R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having complied with.

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N. Mankhale, Cst

COMMISSIONER OF OATHS

Full names: Nkhankha Mankhale

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Capacity: Cst

