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 matter of the applications for the recusal of the Chairperson of the Commission.

WRITTEN SUBMISSIONS ON BEHALF OF THE CALATA GROUP

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INTRODUCTION

1 Former Presidents Jacob Gedleyihlekisa Zuma ("**Zuma**") and Thabo Mvuyelwa Mbeki ("**Mbeki**") ("**the applicants**") have applied for the recusal of Chairperson of the Commission, Judge Khampepe ("**the Chairperson**").[1]

2 The recusal applications are largely based on three grounds:

2.1 First, the Chairperson's former roles in Truth and Reconciliation Commission ("**TRC**") and the National Prosecuting Authority ("**NPA**") give rise to a reasonable apprehension of bias.

2.2 Second, the fact that Chairperson previously penned an adverse judgment against Zuma gives rise to a reasonable apprehension of bias.

2.3 Third, the Chairperson's handling of the application to recuse the chief evidence leader of the Commission, Adv Ishmael Semenya SC ("**Semenya**") gives rise to actual and/ or a reasonable apprehension of bias.

3 The Calata Group opposes the applications. We submit:

3.1 First, applications for recusal must be brought timeously. Both the Zuma and Mbeki applications were brought after an inordinate delay.

3.2 Second, the Chairperson's previous roles do not give rise to a reasonable apprehension of bias.

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[1] Mbeki deposed to the affidavit on his own behalf as well as other former members of the Executive, namely: Brigitte Mabandla, Charles Nqakula, Thoko Didiza and Ronnie Kasrils.

3.3 Third, the jurisprudence regarding recusal makes it clear that previous adverse findings do not give rise to a reasonable apprehension of bias.

3.4 Fourth, applications for recusal can only be assessed on the facts presented. The claim that the Chairperson acted improperly in her handling of the application for the recusal of Semenya was made without evidence.

BACKGROUND TO THE COMMISSION

4 This Commission was established to inquire into alleged efforts to stop the investigation and prosecution of the Truth and Reconciliation Commission cases ("**the Commission**").

5 The Commission was established following a court application launched on 20 January 2025, by 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. They alleged that political interference stopped the bulk of the cases referred by the TRC to the NPA ("**the TRC cases**") from being pursued. They sought an award of constitutional damages as well as an order compelling the President to establish a commission of inquiry.

6 President Ramaphosa agreed to set up a commission and on 29 May 2025 issued a Proclamation under Government Notice 264 of 2025 ("**the Proclamation**") establishing the Commission. Justice Khampepe was appointed as Chairperson and Justice Kgomo and Adv Gabriel SC as members of the Commission.

7 On 19 September 2025 the Commission issued notices to Zuma and Mbeki in terms of Rule 3.3 of the Commission's Rules notifying them of the establishment of the Commission and its composition. It also provided details of how they were potentially implicated in or connected to the subject matter of the Commission.

THE ZUMA APPLICATION

8 On 3 December 2025 Zuma'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.*"[2]

9 That same day, the Commission issued a directive requiring an application for recusal. The directive included filing dates that Zuma did not meet. On 11 December 2025 the Commission then set out new dates for the filing of papers.

10 Zuma filed a Notice of Motion and Founding Affidavit seeking the recusal of the Chairperson on 15 December 2025. Zuma raised the following grounds:

10.1 the Chairperson has made an adverse judgment against him, which resulted in his imprisonment;[3]

10.2 the Chairperson's previous roles as a Commissioner of the TRC and the Deputy National Director of Public Prosecutions ("**DNDPP**") made her

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[2] Bundle A, Annexure "B" to Founding Affidavit of JG Zuma – Letter from KNMS Inc to the Commission Re: Notice 3.3 Former President Mr. J.G. Zuma dated 3 December 2025, p 22-26.
[3] Bundle A, Founding Affidavit of JG Zuma, pp 8-9.

unsuited for her current role;[4] and

10.3 the Chairperson displayed bias in her handling of the application to recuse the chief evidence leader of the Commission, Semenya.[5]

THE MBEKI APPLICATION

11 On 19 December 2025 Mbeki filed an application for the recusal of the Chairperson of the Commission.[6] The application was presented as a response to the recusal application brought by Zuma, but it is in fact a standalone application.

12 Mbeki's grounds of recusal overlap in large part with those of Zuma.[7] Mbeki's grounds include:

12.1 the Chairperson's previous roles in the TRC and the NPA;

12.2 the Chairperson's handling of the application to recuse Semenya was improper, and

12.3 the Chairperson did not apply her mind to the objections to counsel for the Calata group leading certain witnesses.

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[4] Bundle A, Founding Affidavit of JG Zuma, pp 13-14 at paras 48-49.
[5] Bundle D, Founding Affidavit TM Mbeki, pp 4-5 at para 7.1.
[6] Circulated to the parties on the evening of Sunday, 21 December 2025.
[7] Bundle D, Founding Affidavit of TM Mbeki, p 5 at para 7.2.

THE LAW ON RECUSAL

The test for recusal

Actual bias

13 Actual bias occurs where the issues in question are approached "*with a mind which was in fact prejudiced and not open to conviction*".[8] The pre-judgment of issues by a tribunal or committee constitutes bias.[9]

14 Allegations of bias, especially on the part of a judge, must be substantiated by a proper factual basis and must be proved by the party alleging bias.[10]

Reasonable apprehension of bias

15 The test of reasonable apprehension of bias was authoritatively established by the Constitutional Court in *SARFU* as follows:

> "*The question is whether a reasonable, objective and informed person would, on the correct facts reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office taken by the judges to administer justice without fear or favour; and their ability to carry out that oath by reason of their training and experience." It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or predispositions. They must take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves. At the same time, it must never be forgotten that an impartial Judge is a fundamental prerequisite to a fair trial and a judicial officer should not hesitate to recuse herself or himself if there*

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[8] *BTR Industries SA* (*Pty*) *Ltd v Metal & Allied Workers*' *Union* 1992 4 All SA 701 (A); 1992 3 SA 673 (A) ("*BTR Industries*") 690A–B.
[9] *De Lille v Speaker of the National Assembly* 1998 3 All SA 287 (C); 1998 7 BCLR 916 (C)1998 7 BCLR 916 (C); 1998 3 SA 430 (C) at paras 17-18. Cf *Chairman*: *Board on Tariffs & Trade v Brenco Incorporated* 2001 JOL 8274 (A); 2001 4 SA 511 (SCA) at para 64.
[10] *Sepheka v Du Point Pioneer (Pty) Ltd* (J267/18) [2018] ZALCJHB 336; (2019) 40 ILJ 613 (LC) ("Sepheka") at para 16.

are reasonable grounds on the part of the litigant for apprehending that the judicial officer, for whatever reasons, was not or will not be impartial" [11]

16 The Court held that the test is objective. The onus of establishing an apprehension of bias rests on the party applying for recusal.[12]

Presumption of judicial impartiality

17 The Constitutional Court held, and has subsequently emphasised, that the apprehension of bias must be assessed in the light of the presumption of judicial impartiality.[13] In *SARFU* the Court explains that judges have taken an oath of office to administer justice without fear or favour and can ordinarily disabuse their minds of irrelevant personal beliefs or predispositions.

18 In *SACCAWU,* the Constitutional Court held that this principle entailed two consequences: that a person seeking recusal bears the onus of rebutting the presumption of judicial impartiality; and that the presumption is not easily dislodged but requires cogent or convincing evidence.[14]

Double reasonableness requirement

19 The burden that arises that from the "*presumption of impartiality and the double requirement of reasonableness*" is a "*formidable*" one.[15] A judge is presumed to be a person of conscience and intellectual discipline, capable of judging the

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[11] *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 1999 (4) SA 147 (CC) ("*SARFU*") at para 48.
[12] *SARFU* at para 45.
[13] *SARFU* at paras 40-41; Emphasised in *South African Commercial Catering and Allied Workers Union v Irvin & Johnson Ltd* 2000 (3) SA 705 (CC) ("*SACCAWU*") at para 12; *Bernert v ABSA Bank Ltd* 2011 (3) SA 92 (CC) ("*Bernert*") at paras 31-34 and *South African Human Rights Commission obo South African Jewish Board of Deputies v Masuku and another (South African Holocaust and Genocide Foundation and others as amici curiae)* 2022 (4) SA 1 (CC) ("*Masuku*") at paras 59-62.
[14] *SACCAWU* at para 13.
[15] *Bernert* at para 35.

particular controversy fairly on the basis of its own circumstances.[16]

20 An applicant seeking recusal of a judge, can overcome that presumption only if they meet the double requirement of reasonableness—the apprehension of bias must be that of a reasonable person in the position of the litigant, and it must be based on reasonable grounds.[17]

21 The double reasonableness requirement emerged from the Canadian case of *R v S (RD)*[18] which held that *"the person considering the alleged bias must be reasonable, and the apprehension of bias itself must also be reasonable in the circumstances of the case."*[19]

22 The double requirement not only ensures that the threshold for establishing apprehended bias is high, but also that '*mere apprehensiveness'* on the part of a litigant is not enough.[20]

23 A court must determine that objectively a reasonable litigant would entertain an apprehension that on the facts is reasonable. A subjective anxiety on the part of a litigant, even if genuine, will not suffice for recusal if it is not grounded on facts sufficient to give rise to a reasonable apprehension of bias in the mind of a reasonable litigant.[21]

Duty to hear a case

24 A judge has a duty to hear a case unless they are required to recuse themselves.

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[16] *SACCAWU* at para 12-13, *Bernert* at paras 31-34 and *Masuku* at para 59.
[17] *Masuku* at para 64.
[18] (1997) 118 CCC (3d) 353
[19] Quoted at para 45 of *SARFU*.
[20] *SACCAWU* at paras 16-17.
[21] *SACCAWU* at para 17.

In *SARFU*, the court cited the following comments from the High Court of Australia with approval:

> "*Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour.*"[22]

25 In the remainder of these submissions, we set out the reasons why the applications for the recusal of the Chairperson should fail.

UNREASONABLE DELAY

26 Both applications for the recusal of the Chairperson were not brought promptly or within a reasonable period. Zuma and Mbeki's individual conduct is addressed below.

Zuma's delay

27 Zuma's unreasonable delay in taking action is set out in detail in paragraphs 12 to 30 of Lukhanyo Calata's answering affidavit and will not be repeated here.[23]

28 Zuma's founding affidavit offered no explanation as to why he first only raised his concerns in his attorney's letter of 3 December 2025. This is notwithstanding the very public appointment of Judge Khampepe on 29 May 2025 and the receipt of his Rule 3.3 notice on 19 September 2025.

29 Zuma's replying affidavit offers some explanation. In particular he alleges that:

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[22] *SARFU* at para 46.
[23] Bundle C, Answering Affidavit of LBM Calata, pp 4-7at paras 12-30.

> "…*the fact that the most recent improper conduct in respect of the Semenya recusal application* ***constituted the last straw and trigger for the recusal application***."[24] (Bold added)

30 This explanation is most revealing. The alleged improper conduct of the Chairperson in the Semenya recusal was "*the last straw*" and "*the trigger*" for his application against her. Zuma is effectively saying that but for the claimed improper conduct in the Semenya recusal, he would not have brought the recusal application.

31 The grounds relating to the Chairperson's adverse judgments against Zuma and her previous roles in the TRC and NPA were insufficient to "*trigger*" a recusal application. Indeed Zuma, knowing that the original hearings were scheduled to start on 10 November 2025, was happy to proceed without seeking the Chairperson's recusal notwithstanding his knowledge of her involvement in the adverse judgments and the public positions she held previously.

Mbeki's delay

32 The delay by Mbeki in bringing his application was equally egregious, details of which are set out in the answering affidavit of Asmita Thakor at paragraphs 23 to 44.[25]

33 The only explanation offered by Mbeki was that he had to wait for his lawyers to consider Zuma's recusal application filed on 15 December 2025 before he could act.[26]

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[24] Bundle A, Replying Affidavit of JG Zuma, p 75 at para 16.
[25] Bundle F, Answering Affidavit A Thakor, pp 5-9 at paras 23-44.
[26] Bundle D, Founding Affidavit of TM Mbeki, p 22 at para 64.

34 It is clear then that but for the bringing of the Zuma recusal application, Mbeki would not have acted. An application brought in such circumstances cannot be taken seriously.

The law on recusal and delay

35 Legal applications must be brought as soon as an applicant becomes aware of the circumstances that warranted such an application.[27] This is particularly the case in respect of complaints of bias against judges.[28] Recusal applications should be made promptly and may be dismissed if there is inordinate and inexcusable delay in raising the point.[29] This is because such applications go to the heart of the administration of justice and must be raised as soon as reasonably practicable.[30]

36 The Constitutional Court held in *De Lacy* that:

> "*It must be added that a litigant who raises a complaint of bias or its apprehension must do so at the earliest possible opportunity, setting out the details of the time and circumstances under which the apprehension of bias would have arisen. These details would be singularly important in assessing whether the apprehension advanced is reasonable. Here the applicants have neither furnished an explanation for the delay nor any details of the circumstances under which their apprehension of bias has arisen*."[31]

37 There was a duty on both Zuma and Mbeki to bring their objections to the attention of the Commission promptly and without delay. They cannot now be

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[27] *Lion Match Company (Pty) Ltd v Commissioner, South African Revenue Service* [2025] ZASCA (Lion Match) at paras 21 – 25.
[28] *Bernert* at para 71.
[29] *BMF Assets No 1 Ltd v Sanne Group Plc*, 2022 WL 00228282 (2022) at p16.
[30] Id.
[31] *De Lacy and Another v South African Post Office* 2011 (9) BCLR 905 (CC) ("*De Lacy*") at para 61.

heard to complain of matters they were aware of months earlier.[32] In *Bernert* the Constitutional Court noted that:[33]

> "*In Locabail, the Court of Appeal held that if, after disclosure of interest in one of the parties to proceedings, a party does not raise any objection to the judge hearing the case or continuing to hear the case, that party cannot thereafter complain of the matter disclosed as giving rise to a real danger of bias.*[34] *To allow a party to complain of bias in these circumstances would be unjust to the other party and undermine both the reality and the appearance of justice*".[35]

38 There was a duty on Zuma to speak up, arising out of his long held view over many years that the Chairperson was biased against him.[36] He was not permitted to stand by and bide his time.[37]

39 Pursuing a recusal at a later stage, despite a much earlier opportunity to do so, implicates the interests of justice.[38] In addition, the interests of justice demand that the interests of other parties and the wider public be considered. [39]

40 There is a duty on courts and commissions to the public and the parties to ensure that abuses of their processes is curtailed.[40]

41 There was a duty on the applicants to bring their complaints to the attention of the Commission promptly and without delay. They failed to do so. The circumstances of the delays occasioned by them suggest that the apprehension

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[32] *Bernert* at para 72.
[33] Id.
[34] *Locabail* (*UK) Ltd v Bayfield Properties Ltd and another* [2000] 1 All ER 65 at para 21 at para 26.
[35] Id.
[36] *JSC BTA Bank v Ablyazov and others* (No 9) [2012] EWCACiv 1551.
[37] *Vakauta v Kelly* (1989) 167 CLR 568 at 572, para 5 and *Bennett and Another v the State: In re S v Porritt and Another* 2021 (1) SACR 195 (GJ) ("*Porritt"*) at para 63.
[38] *Bernert* at para 74 - 75.
[39] Id
[40] *Lion Match* at para 22.

of bias advanced by them is not reasonable. Indeed, their conduct is not consistent with a reasonable apprehension of bias.

THE CHAIRPERSON'S FORMER ROLES

42 Both Zuma and Mbeki complain that the Chairperson's former roles render her unsuitable for the position of Chairperson of the Commission.[41]

43 They point 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.

Zuma's assertions

44 According to Zuma:

44.1 the mere holding of these positions made her "*distinctively unsuitable and/ or automatically disqualified for her present position*"[42]

44.2 witnesses before the Commission could include her former colleagues and superiors,[43]

44.3 the issue of prosecution is directly linked to the granting or refusal of amnesty.[44]

45 Zuma overlooks the fact the political interference was not a subject matter before the TRC and NPA during the Chairperson's tenure there, since such steps were

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[41] Bundle A, Founding Affidavit of JG Zuma, pp 13-14 at para 48 and Bundle D, Founding Affidavit of TM Mbeki, p 7 at para 15.
[42] Bundle A, Founding Affidavit of JG Zuma, pp 13-14 at para 48.
[43] Bundle A, Founding Affidavit of JG Zuma, p 14 at para 49.
[44] *Id*.

only taken more than 3 years later.[45]

Mbeki's assertions

46 Mbeki asserts that Judge Khampepe presided over or participated in the amnesty proceedings in the Cradock Four matter "*involving Mr Calata's father*".[46] She did not.[47]

47 Mbeki notes that as a TRC Commissioner, Judge Khampepe, was party to a finding made in the TRC Report that the African National Congress ("**ANC**") had committed gross human rights violations.[48]

47.1 However, he did not refer to the TRC's primary finding (against the former apartheid regime) as well as other findings against other groups.[49]

47.2 He did so presumably to raise the insinuation that the Chairperson would be predisposed against the ANC.

48 Mbeki also explained that:

> "*Given Justice Khampepe was directly involved in making the TRC findings and recommendations (regarding prosecutions of those who were declined amnesty), the reasonable observer would apprehend that she may be predisposed in favour of justifying or defending prior institutional conclusions in which she played a key decision-making role.*"[50]

49 Mbeki made the same claim in respect of the Chairperson's short stint at the NPA, namely that she may have an "*institutional interest*" in validating her

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[45] Bundle C, Answering Affidavit of LBM Calata, pp 11-12 at paras 56 - 58.
[46] Bundle D, Founding Affidavit of TM Mbeki, p 7 at para 17 and p 8 at para 22.
[47] Bundle F, Answering Affidavit A Thakor, p 9 at para 46.
[48] Bundle D, Founding Affidavit of TM Mbeki, p 8 at para 18.
[49] Bundle F, Answering Affidavit A Thakor, pp 10-12 at paras 47–54.
[50] Bundle D, Founding Affidavit of TM Mbeki, p 8 at para 20.

decisions while at the prosecuting authority.[51]

50 However, the question of whether apartheid-era crimes should be prosecuted is not before this Commission, and accordingly the TRC recommendation that offenders who were not amnestied should be prosecuted does not have to be defended or justified.[52]

51 Mbeki claims that "*this Commission is mandated to investigate whether, during that very period*" (1995 – 2001) steps were taken to block TRC-related prosecutions.[53] Yet there is no allegation or evidence suggesting that such steps were taken before mid-2003.[54]

52 Mbeki alleges, without any evidence, that Judge Khampepe had the "*institutional responsibility for shaping NPA policy on the TRC cases*". This is speculation. We are not aware of any specific policy on the TRC cases emerging from the NPA or the Human Rights Investigation Unit ("**HRIU**") during 1998 or 1999. [55]

53 Finally, Mbeki makes the extraordinary claim that because of Judge Khampepe's prior role in the TRC an apprehension of bias arises from "*the unavoidable overlap*" between her "*past adjudicative role and her present fact-finding responsibilities*". It is settled law that mere overlap between cases or judgments is not a ground for recusal.[56]

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[51] Bundle D, Founding Affidavit of TM Mbeki, p 11 at para 31.
[52] Bundle F, Answering Affidavit A Thakor, pp 12-13 at paras 56 – 60 and pp 17-18 at paras 76–77.
[53] Bundle D, Founding Affidavit of TM Mbeki, p 10 at para 28
[54] Bundle F, Answering Affidavit A Thakor, pp 14-16 at paras 66 – 71.
[55] *Id.*
[56] *Electoral Commission of South Africa v Umkhonto Wesizwe Political Party and Others (CCT 97/24) [2024] ZACC 6; 2024 (7) BCLR 869 (CC); 2025 (5) SA 1 (CC) (20 May 2024)* ("*Electoral Commission*") at para 26.

The law on previous positions and recusal

54 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 In *SARFU*, the application for the recusal was based in part on the fact that four of the judges had been members of the ANC before appointment, although they had all resigned upon appointment.

55.1 It was argued that their prior political affiliation gave rise to a reasonable apprehension that they would be biased in favour of the President of the country, the president of the ANC, against whom the applicant was litigating.

55.2 This argument was rejected. The Constitutional Court reasoned that Judges are expected to put party political loyalties behind them upon appointment.

55.3 The Court concluded that prior political affiliation would not be a ground for recusal "*unless the subject matter of the litigation arises from such association or activities*".[57]

56 In addition, in *Goosen*, the full court in the Gauteng Local Division noted that "[*i]t is unnecessary for a Judge to occupy a place of utter isolation from an issue or from even a party for that matter.*[58] The full court, quoting the Australian case of

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[57] *SARFU* at para 76.
[58] *Ex parte Goosen* 2020 (1) SA 569 (GJ) ("*Goosen"*) at para 25.

Ebna,[59] emphasised that more is needed before the test for recusal will be satisfied:

> "*There must be an articulation of a logical connection between the matter and the feared deviation from the course of deciding the case on the merits. The bare assertion that a Judge has an 'interest' in litigation, or an* interest *in a party to it, will be of no assistance until the nature of the interest, and the asserted connection with the possibility of departure from impartial decision making is articulated.*" [60]

57 The applicants have failed to articulate a logical connection between the Chairperson's former positions in the TRC and NPA and the apprehension of bias. They have failed to explain why her former roles prevent her from adjudicating impartially on the question of political interference.

ZUMA'S REMAINING GROUNDS FOR RECUSAL

The chairperson's role in earlier judgments

58 Zuma contends that the Chairperson has penned judgments against him in the past. He complains particularly about the judgment of the Constitutional Court in the Zuma Contempt matter, which resulted in his imprisonment.[61]

59 Judges often hear different matters relating to the same applicant without that proving to be a justifiable basis for recusal. In *Electoral Commission of South Africa v uMkhonto weSizwe Political Party and Others,* Zuma and the MK Party sought the recusal of certain judges claiming they were tainted by bias since they

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[59] *Ebner v Official Trustee* (2001) 205 CLR 337 (HCA) ([2000] HCA 63; 176 ALR 644; 75 ALJR 277)
[60] *Goosen* at para 29 quoting *Ebner* at para 8. The position in Goosen was confirmed by the Constitutional Court in *Masuku* at para 69.
[61] *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* 2021 (5) SA 327 (CC).

were members of the bench in the Zuma contempt proceedings. [62]

60 The Constitutional Court made the following finding in this regard:

> "*The pleaded basis for recusal is that the judges "are bound to seek to interpret their own previous decision which now lies at the heart of the issues arising in this appeal in such a way as to automatically differ with the unanimous view of the Electoral Court". It is not uncommon for judges to interpret and apply their previous decisions. Judges do this all the time. Judges often hear different matters relating to the same applicant without that providing a justifiable basis for recusal. Leave to appeal and rescission applications are generally brought before the same judge. Further, in the main application, there is no debate that this Court convicted and sentenced Mr Zuma.*"[63] (Emphasis added)

61 Zuma does not explain what in the judgment gives rise to his reasonable apprehension of bias. Since Zuma chose 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.

62 Zuma also places reliance on interviews Newzroom Afrika and News24 conducted with Judge Khampepe, yet he does not provide any quotes, nor did he put up the interviews in evidence (apart from a headline from the News24 article).[64] Accordingly, no reliance may be placed on the interviews.

Alleged biased in favour of Semenya

63 Zuma complains that the Chairperson has displayed bias in favour of Semenya. The complaint rests entirely on his claim of "*private and secret advice*" allegedly

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[62] *Electoral Commission of South Africa v Umkhonto WeSizwe Political Party and Others (CCT 97/24) [2024] ZACC 6; 2024 (7) BCLR 869 (CC); 2025 (5) SA 1 (CC) (20 May 2024)* ("*Electoral Commission*").
[63] *Electoral Commission* at para 26.
[64] Bundle A, Founding Affidavit of JG Zuma, paras 32 – 33 and Bundle C, Answering Affidavit of LBM Calata, pp 7-8 at paras 33-34.

provided by the Chairperson to Semenya SC.[65]

64 Zuma provides no facts or evidence to that effect. He simply claimed that at some future point the Commission will be referred to the relevant evidence.[66] That evidence has still not been supplied.

65 In reply Zuma claimed that on 5 November 2025 the Chairperson provided written advice to Semenya in an email and on another occasion, she sent him a WhatsApp advising him to deal with a certain aspect.[67] The communications were not attached to his affidavit.

66 Zuma claims that the decision to withhold the evidence is to protect "*ongoing sensitive investigations*" and that at some undisclosed future time the evidence will "*be made available to the Judicial Services Commission or even this Commission once specific safeguards have been negotiated*." [68]

67 It is not explained how Zuma came into possession of these communications, and whether such means were legal or not.[69]

68 It is trite law that the test for recusal is objective and assumes that a reasonable litigant is in possession of all the relevant facts.

68.1 This test must, thus, be applied to the *true* facts on which the recusal

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[65] Bundle A, Founding Affidavit of JG Zuma, pp 11-12 at paras 38-40.
[66] Bundle A, Founding Affidavit of JG Zuma, p14 at para 51.
[67] Bundle A, Replying Affidavit of JG Zuma, p 78 at para 23.6.
[68] Bundle A, Replying Affidavit of JG Zuma, p 78 at para 23.5.
[69] In terms of s 2 of the *Cybercrimes Act 19 of 2020* it is unlawful to gain access to another person's phone, computer system or storage without permission. Even just opening files or copying information can amount to an offence. A contravention of section 2(1) or (2) can lead to a sentence of a fine or imprisonment not exceeding five years or to both a fine and imprisonment. Possession of unlawfully obtained data is a criminal offence in terms of s 3. Contraventions of section 3 can be punished by way a fine or imprisonment not exceeding 5 years (section 3(3)) and 10 years (section 3(1) and (2)) or to both a fine and imprisonment.

application is based.[70]

68.2 In all circumstances, the test emphasises reasonableness in light of the true facts, not the technical legal nuances of the particular case.[71]

68.3 In other words, if the factual foundation is wanting then *a fortiori* the apprehension is misplaced and that will end the enquiry.[72]

69 Any allegation of bias, especially on the part of a judge must be substantiated by a proper factual basis and must be proved by the party alleging bias.[73]

70 In addition, actual bias must be clearly pleaded and particularised. The burden of proof on actual bias has been described in an academic article "*as heavy as the burden of proof of fraud, bad faith or misfeasance in public office*", meaning that that the party alleging it must support it with cogent evidence, not mere assertion.[74]

71 Zuma has failed to put up true facts or cogent evidence. This is a theme of the case put up by Zuma. Not only did he fail to put up the aforesaid communications, but he also declined to refer to the relevant extracts from the judgments and media articles he relies on to claim actual or a reasonable apprehension of bias.

72 The making of assertions without putting up the underlying true facts does not come close to meeting the test for recusal.

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[70] *Masuku* at para 64.
[71] *SARFU* at para 45, *SACCAWU* at para 57.
[72] *Porritt* at para 26.
[73] *Sepheka* at paras 15–16.
[74] C Okpaluba and L Juma, *The Problems of Proving Actual or Apparent Bias: An Analysis of Contemporary Developments in South Africa* [2011] PER 38.

MBEKI'S REMAINING GROUNDS FOR RECUSAL

73 The balance of Mbeki's grounds dealing with his objection to the Chairperson's handling of request by the Calata Group to lead certain witnesses and the application to recuse Semenya have been adequately dealt with in the Calata Group's answering affidavit.[75] Reliance is placed on those paragraphs which will not be repeated in these submissions.

CONCLUSION

74 It is quite evident that but for the claimed improper conduct of the Chairperson in the Semenya recusal, Zuma's application for recusal would not have been brought. Yet he failed or declined to put up the facts or evidence to support his various claims.

75 It is also more than apparent that but for the bringing of the Zuma recusal application, Mbeki would not have brought his application to recuse the Chairperson. Such an opportunistic application cannot be taken seriously.

76 In this matter, the claims of Zuma and Mbeki fall hopelessly short of rebutting the presumption that judicial officers are impartial in adjudicating disputes given their legal training, oath of office, intellectual discipline and experience. The application for the Chairperson's recusal and other relief sought falls to be dismissed.

Howard Varney
Counsel for the Calata Group
14 January 2026

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[75] Bundle F, Answering Affidavit A Thakor, pp 18-23 at paras 79 – 97.

CALATA GROUP LIST OF AUTHORITIES

NO	DESCRIPTION
	Domestic case law
1.	*Bennet and Porrit v The State, SS 40/2006* (12 October 2020), Gauteng Local Division
2.	*Bennett and Another v the State: In re S v Porritt and Another* 2021 (1) SACR 195 (GJ)
3.	*Bernert v ABSA Bank Ltd,* 2011 (3) SA 92 (CC)
4.	*BTR Industries SA (Pty) Ltd v Metal & Allied Workers' Union,* 1992 4 All SA 701 (A); 1992 3 SA 673 (A)
5.	*Board on Tariffs & Trade v Brenco Incorporated*, 2001 JOL 8274 (A); 2001 4 SA 511 (SCA)
6.	*Chairman: Board on Tariffs & Trade v Brenco Incorporated* 2001 JOL 8274 (A); 2001 4 SA 511 (SCA)
7.	*De Lacy and Another v South African Post Office*, 2011 (9) BCLR 905 (CC)
8.	*De Lille v Speaker of the National Assembly*, 1998 3 All SA 287 (C); 1998 7 BCLR 916 (C); 1998 3 SA 430 (C)
9.	*Electoral Commission of South Africa v Umkhonto WeSizwe Political Party and Others* (CCT 97/24) [2024] ZACC 6; 2024 (7) BCLR 869 (CC); 2025 (5) SA 1 (CC)
10.	*Ex parte Goosen*, 2020 (1) SA 569 (GJ)
11.	*Lion Match Company (Pty) Ltd v Commissioner, South African Revenue Service,* [2025] ZASCA
12.	*President of the Republic of South Africa and Others v South African Rugby Football Union and Others*, 1999 (4) SA 147 (CC)
13.	*Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* 2021 (5) SA 327 (CC).

14.	*Sepheka v Du Point Pioneer (Pty) Ltd*, (J267/18) [2018] ZALCJHB 336; (2019) 40 ILJ 613 (LC)
15.	*South African Commercial Catering and Allied Workers Union v Irvin & Johnson Ltd*, 2000 (3) SA 705 (CC)
16.	*South African Human Rights Commission obo South African Jewish Board of Deputies v Masuku and Another*, 2022 (4) SA 1 (CC)
Foreign case law	
17.	*BMF Assets No 1 Ltd v Sanne Group Plc*, 2022 WL 00228282 (2022)
18.	*Ebner v Official Trustee*, (2001) 205 CLR 337 (HCA); [2000] HCA 63; 176 ALR 644; 75 ALJR 277
19.	*JSC BTA Bank v Ablyazov and Others* (No 9), [2012] EWCA Civ 1551
20.	*Locabail (UK) Ltd v Bayfield Properties Ltd and Another*, [2000] 1 All ER 65
21.	*Vakauta v Kelly,* (1989) 167 CLR 568