COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Local Division, Johannesburg

CASE NO: **2026-026936**

In the matter between:

JACOB GEDLEYIHLEKISA ZUMA Plaintiff / Applicant / Appellant

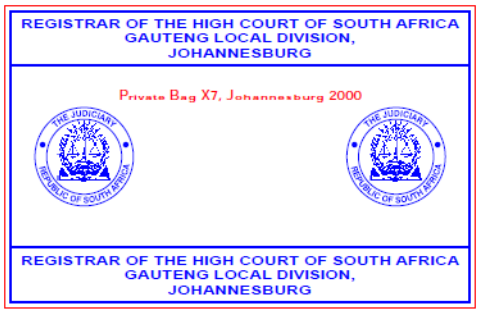
and

THE CHAIRPERSON OF THE COMMISSION KHAMPEPE OTHERS Defendant / Respondent

---

Notice of Motion (Long Form)

NOTE: **This document was filed electronically by the Registrar on 6/2/2026 at 2:35:24 PM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.**



ELECTRONICALLY SIGNED BY:

Registrar of High Court , Gauteng Local Division,Johannesburg

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, JOHANNESBURG)

CASE NO: 2026-026936

In the matter between:

JACOB GEDLEYIHLEKISA ZUMA	Applicant

and

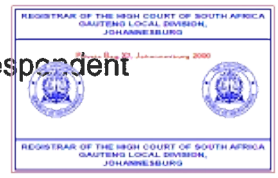
THE CHAIRPERSON OF THE COMMISSION:	
COMMISSIONER SISI KHAMPEPE	First Respondent
SECRETARY OF THE COMMISSION	Second Respondent
ADVOCATE ISHMAEL SEMENYA SC	Third Respondent
COMMISSIONER FRANS KGOMO	Fourth Respondent
ADVOCATE ANDREA GABRIEL SC	Fifth Respondent

CALATA GROUP Sixth Respondent

THABO MVUYELWA MBEKI Seventh Respondent

NATIONAL PROSECUTING AUTHORITY Eighth Respondent

MINISTER OF JUSTICE AND CONSTITUTIONAL AFFAIRS Ninth Respondent



PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA Tenth Respondent

NOTICE OF MOTION

TAKE NOTICE THAT the applicant intends to apply to this Honourable Court at 10h00 on 17 March 2026 or so soon thereafter as the matter may be heard as directed by the Honourable Deputy Judge President, for an order in the following terms:-

1. That the application be heard on the basis of urgency in terms of Rule 6(12) of the Rules of Court;

2. Declaring the conduct of the first respondent in dismissing the application for her recusal to be unconstitutional and invalid in terms of sections 172(1)(a) and 38 of the Constitution;

3. Reviewing and setting aside the decision of the first respondent delivered on 30 January 2026 on the grounds of PAJA;

4. Alternatively to prayer 3 above, reviewing and setting aside the decision of the first respondent on the basis of the principle of legality;

5. Directing that the first respondent be removed from being a member and/or Chairperson of the Commission;

6. Granting further alternative just, equitable and/or appropriate relief in terms of section 172(1)(b) of the Constitution and/or section 8 of PAJA; and/or

7. Punitive costs in the case of opposition, including personal costs against the first respondent.

TAKE NOTICE FURTHER THAT the founding affidavit, together with annexures, of **JACOB GEDLEYIHLEKISA ZUMA**, in support of this application is annexed to this notice.

TAKE NOTICE FURTHER THAT:-

(a) the first to third respondents are called upon to show cause why the abovementioned decision(s) should not be reviewed and set aside;

(b) in terms of Rule 53(1)(b) (alternatively section 173 of the Constitution), the first and/or second respondents (and/or any other respondents who played any role in the impugned decision) are called upon to dispatch within 5 days after receipt of this Notice of Motion, to the Registrar:-

(i) the record of all documents and electronic records that relate to the decisions referred to in prayer 3 of this notice; and

(ii) any outstanding or additional reasons for the same impugned decision, where applicable, are required in terms of section 5 of the

Promotion of Administrative Justice Act 3 of 2000 ("PAJA") and/or the common law.

TAKE NOTICE FURTHER THAT the applicant may, within 5 days of receipt of the record from the Registrar, by delivery of notice and accompanying affidavit amend, add to or vary the terms of this application and supplement her founding affidavit, in terms of Rule 53(4) of the Rules of this Court (alternatively section 173 of the Constitution).

TAKE NOTICE FURTHER THAT if you intend to oppose this application, you are required:-

(a) to notify the applicant's attorneys in writing by filing a notice of intention to oppose on or before 10h00 on 13 February 2026, and to appoint in such notification an address at which notice and service of all documents in these proceedings shall be accepted;

(b) on or before 10h00 on 20 February 2026, to file their answering affidavit(s), if any;

(c) to note that the applicant will file her replying affidavit on or before 17h00 on 27 February 2026.

If no such notice is given, application will be made on 17 March 2026 at 10h00 or so soon thereafter as Counsel may be heard.

KINDLY SET THE MATTER DOWN ACCORDINGLY.

SIGNED AND DATED AT SANDTON ON THIS 06TH DAY OF FEBRUARY 2026.

KMNS INC.
Attorneys for the Applicant
43 Wierda Road West

Wierda Valley
SANDTON, 2196
Tel: 011 462 5589
Emails: thabo@kmnsinc.co.za /
busisiwe@kmnsinc.co.za /
zukiswa@kmnsinc.co.za
Ref: Mr. Kwinana/Ms. Sibiya/Ms. Mbana

TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**
JOHANNESBURG

AND TO: **THE CHAIRPERSON OF THE COMMISSION**
First Respondent
Sci-bono Discovery Centre
Corner Miriam Makeba and Helen Joseph Streets
Newtown
JOHANNESBURG
Email: secretary@trc-inquiry.org.za

AND TO: **SECRETARY OF THE COMMISSION**
Second Respondent
Sci-bono Discovery Centre
Corner Miriam Makeba and Helen Joseph Streets
Newtown
JOHANNESBURG
Email: secretary@trc-inquiry.org.za

AND TO: **ADVOCATE ISHMAEL SEMENYA SC**
Third Respondent
care of the Secretary of the Commission,
Sci-bono Discovery Centre
Corner Miriam Makeba and Helen Joseph Streets
Newtown

JOHANNESBURG

Email: secretary@trc-inquiry.org.za

AND TO: **COMMISSIONER FRANS KGOMO**

Fourth Respondent

care of the Secretary of the Commission,

Sci-bono Discovery Centre

Corner Miriam Makeba and Helen Joseph Streets

Newtown

JOHANNESBURG

Email: secretary@trc-inquiry.org.za

AND TO: **ADVOCATE ANDREA GABRIEL SC**

Fifth Respondent

care of the Secretary of the Commission,

Sci-bono Discovery Centre

Corner Miriam Makeba and Helen Joseph Streets

Newtown

JOHANNESBURG

Email: secretary@trc-inquiry.org.za

AND TO: **WEBBER WENTZEL**

Sixth Respondent's Attorneys

90 Rivonia Road

SANDTON

Email: lize-mari.doubell@webberwentzel.com

AND TO: **BOQWANA BURNS ATTORNEYS**

Seventh Respondent's Attorneys

1st floor, 357 Rivonia Boulevard

RIVONIA

Emails: irvine@boqwanaburns.com / aneesa@boqwanaburns.com.

Ref: **Mr. I Armoed/Aneesa**

AND TO: **NATIONAL PROSECUTING AUTHORITY**
Eighth Respondent
VGM Building
123 Westlake Avenue
Weavind Park
Silverton
PRETORIA
c/o THE STATE ATTORNEY, PRETORIA
Per: Mr. Ronald Baloyi
Email: RonBaloyi@justice.gov.za

AND TO: **THE STATE ATTORNEY, PRETORIA**
Ninth Respondent's Attorneys
SALU Building
316 Thabo Sehume Street
PRETORIA
Per: Mr. Ronald Baloyi
Email: RonBaloyi@justice.gov.za

AND TO: **THE STATE ATTORNEY, PRETORIA**
Tenth Respondent's Attorneys
SALU Building
316 Thabo Sehume Street
PRETORIA
Per: Mr. Joseph Sebelemetsa
Email: RSebelemetsa@justice.gov.za

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, JOHANNESBURG)

CASE NO: 2026-026936

In the matter between:

JACOB GEDLEYIHLEKISA ZUMA	Applicant
and	
THE CHAIRPERSON OF THE COMMISSION:	
COMMISSIONER SISI KHAMPEPE	First Respondent
SECRETARY OF THE COMMISSION	Second Respondent
ADVOCATE ISHMAEL SEMENYA SC	Third Respondent
COMMISSIONER FRANS KGOMO	Fourth Respondent
ADVOCATE ANDREA GABRIEL SC	Fifth Respondent

NPO

CALATA GROUP	Sixth Respondent
THABO MVUYELWA MBEKI	Seventh Respondent
NATIONAL PROSECUTING AUTHORITY	Eighth Respondent
MINISTER OF JUSTICE AND CONSTITUTIONAL AFFAIRS	Ninth Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Tenth Respondent

APPLICANT'S FOUNDING AFFIDAVIT

I, the undersigned,

JACOB GEDLEYIHLEKISA ZUMA

do hereby make oath and say that:-

1. I am an adult male citizen and former President of South Africa residing in KwaDakwadunuse, Nkandla.

2. The facts stated herein, unless the context indicates otherwise, are within my own personal knowledge and are to the best of my belief both true and correct.

A: THE PARTIES

3. I am the applicant in this application. I bring the application in my personal capacity. I also do so in my official capacity as a former President of the Republic of South Africa, having served in that capacity from May 2009 till January 2018.

4. The first respondent is Commissioner Sisi Khampepe who is a retired Judge and former Constitutional Court Justice Sisi Khampepe. At some of the relevant times she held the high office and position of Acting Deputy Chief Justice of South Africa. She was subsequently appointed as a Judge in several courts. She is cited here in her non-judicial capacity as the Chairperson of a Commission of Inquiry appointed by the President in terms of section 84(2)(f) of the Constitution, read with section 1 of the Commissions Act 8 of 1947.

5. The second respondent is the Secretary of the Commission of Inquiry into Allegations regarding efforts or attempts having been made to stop the investigation or prosecution of Truth and Reconciliation cases who holds office at the headquarters of the Commission situated at Sci-bono Discovery Centre, Corner Miriam Makeba and Helen Joseph Streets, Newtown Johannesburg with the email address of secretary@trc-inquiry.org.za (hereinafter referred to as the Secretary of the Commission.

6. The third respondent Advocate Ishmael Semenya SC who is the Chief Evidence Leader of the Commission, care of the Secretary of the Commission.

7. The fourth respondent is Commissioner Frans Kgomo who is cited herein in his official capacity as a Commissioner appointed as such by the second respondent. He is also a retired Judge having previously held the high office or position of Judge President of the Northern Cape from November 2001 until September 2017, care of the Secretary of the Commission.

8. The fifth respondent is Advocate Andrea Gabriel SC who is cited in her official capacity as a Commissioner appointed as such by the second respondent. She is also a duly admitted advocate of the High Court of South Africa practising as such as a member of the Johannesburg Society of Advocates and duly registered with the Legal Practice Council (LPC), care of the Secretary of the Commission.

9. Service upon the second to fifth respondents will be effected care of the Secretary of the Commission on the email secretary@trc-inquiry.org.za.

10. The sixth respondent is the so-called Calata Group which is a collective term employed for convenience to refer to the parties constituting families and/or relatives of the direct victims of apartheid atrocities, care of Webber Wentzel, 90 Rivonia Road, Sandton, email lize-mari.doubell@webberwentzel.com. The sixth respondent were joined in the impugned recusal proceedings as an opposing party or co-respondent.

11. The seventh respondent is Thabo Mvuyelwa Mbeki who is a former President of the Republic of South Africa care of Boqwana Burns Attorneys, 1st floor, 357 Rivonia Boulevard, Rivonia, Johannesburg, email irvine@boqwanaburns.com / aneesa@boqwanaburns.com. The seventh respondent was joined in the impugned recusal proceedings as a supporting party or co-applicant.

12. The eighth respondent is the National Prosecuting Authority of South Africa ("**the NPA**"), a constitutional institution established in terms of section 179 of the Constitution of the Republic of South Africa, 1996, with its principal place of business at VGM Building, 123 Westlake Avenue, Weavind Park, Silverton, Pretoria, 0184.

13. The ninth respondent is the Minister of Justice and Constitutional Affairs care of the State Attorney, SALU Building, 316 Thabo Sehume Street, Pretoria.

NPS

14. This application will be served on the eighth and ninth respondents care of the State Attorney, Pretoria, in accordance with Uniform Rule of Court 4(9). The application will be served on them via email to the State Attorney Mr Ronald Baloyi at RonBaloyi@justice.gov.za.

15. The tenth respondent is the President of the Republic of South Africa, His Excellency Honourable Cyril Matamela Ramaphosa elected as such in terms of section 42(3) of the Constitution care of The State Attorney, SALU Building, 316 Thabo Sehume Street, Pretoria. He is the head of the national executive and the Head of State. The application will be served via email to the State Attorney Mr. Joseph Sebelemetsa at RSebelemetsa@justice.gov.za.

16. No relief is sought against the third to tenth respondents who are each cited herein due to having a sufficient, direct and/or indirect interest in the outcome of this application. As such no costs order will be sought against them unless they enter a notice to oppose the application.

B: NATURE OF THE APPLICATION

17. As can be gleaned from the Notice of Motion to which this affidavit is attached this is an application to review and set aside the decision/ruling of the Chairperson of the Commission and/or the Commission itself, brought in the form of an urgent review application in terms of the Promotion of Administrative Justice Act ("**PAJA**") where applicable and/or the principle of legality under the auspices of Rule 53 of the Uniform Rules of this Honourable Court, read with Rule 6(12)(a) thereof and on truncated timelines due to the indisputable urgency of the matter.

18. As against the first and/or second respondents the main relief sought is to review and set aside the decision of the Chairperson of the Commission to dismiss the application for her recusal from her current position as a member and/or chairperson of the Commission, which decision was made on 30

NPS

January 2026. A copy of the said decision or ruling together with the reasons therefor, is annexed hereto as "**JZR1**".

19. The urgent review application is coupled with stand-alone declaratory relief based on alleged breaches of fundamental rights and other constitutional provisions, in terms of section 172 and/or section 38 of the Constitution together with a prayer for just and equitable remedies. This relief is independent and separate from the cause of action based on judicial review. I am advised that this distinction will be more fully explained during legal argument.

20. Due to factors including the urgency, constitutional and public importance of the issues raised, the potential number of participating parties and the duration of the Commission I have given instructions to my legal representatives to approach the legal representatives of any participating, supporting and/or opposing parties with the view to jointly addressing a letter to the Honourable Acting Judge President of this Honourable Court to allocate this matter for a special hearing before the Full Court, failing such agreement the matter will be set down in the ordinary urgent court for hearing on the date designated in the Notice of Motion, namely 17 March 2026.

21. The court had the requisite jurisdiction to hear the matter in relation to the constitutional issues raised, the geographical location of the respondents and/or the cause of action having arisen within its area of jurisdiction.

22. In terms of Rule 53(4) the applicant reserves the right to amend the Notice of Motion and to file his supplementary founding affidavit upon the service of the record and/or reasons for the impugned decision/s.

J.Z.

C: FACTUAL BACKGROUND

23. The factual matrix in this matter is largely common or undisputed cause as between the parties. It is anticipated that the main dispute will be on the legal conclusions which arise from the admitted facts.

24. It is reasonably anticipated that the Rule 53 record to be filed by the participating respondent/s will include the complete set of pleadings and submissions of the parties in the impugned recusal application. The relevant and undisputed facts are also repeatedly set out in those documents which will serve before this Honourable Court. To avoid unnecessary prolixity I do not attach all those bulky documents at this stage save for the specific documents referred to below. I reserve my right to do so in the supplementary founding affidavit. I therefore set out only the high level facts below.

25. It is generally known and the court will be requested to take judicial notice of the fact that between 1995 and 2003 an entity known as the Truth and Reconciliation Commission ("**the TRC**") was established and Chaired by the late Archbishop Emeritus Desmond Mpilo Tutu.

26. In a nutshell the main purposes of the TRC were to give a voice to the victims of heinous atrocities committed against the victims of apartheid, to offer a platform for the perpetrators to come clean by telling the truth and in return to grant amnesty to such perpetrators from otherwise well-deserved criminal prosecutions.

27. In the two decades or so following the final report of the TRC a major controversy has been raging about the failure of the National Prosecuting Authority under the leadership of all previous National Directors of Private Prosecutions (NDPPs) to prosecute certain alleged perpetrators who were denied amnesty by the TRC's Amnesty Committee.

28. This debate culminated in certain relevant litigation which in turn led to the appointment in May 2025 of the present Commission by the President. The terms of reference of the Commission is annexed hereto and marked "**JZR2**".

29. Sometime in early October it came to my attention that the second respondent had served a Notice in terms of Regulation 3.3 addressed to me, effectively notifying me of the Commission and its mandate and also inviting me to participate in the investigation.

30. As I was travelling overseas at the time, I instructed my attorneys to indicate that I would only be able to engage with the matter at a later stage beyond the stipulated deadline. The indulgence of an extension was duly granted.

31. Before I could complete my consultations, this process was interrupted by the lodgement of an earlier application for the recusal of Adv Semenya SC who is the Chief Evidence Leader from participating in certain aspects of the investigation. That recusal application, in which I elected not to participate for personal reasons, had been instituted by the National Prosecuting Authority and the Minister of Justice. The application was dismissed by means of a ruling dated 4 December 2025.

32. Sometime in November 2025 it was reported to me by a whistleblower that Chairperson had committed actions which amount to bias, gross misconduct and/or corruption in that she had, *inter alia*, coached and/or colluded with one of the parties in the Semenya SC recusal application, namely Semenya SC himself in that she advised him of weaknesses in his case and even went as far as sharing research in her possession regarding to the dispute and telling him to convey certain tips to Adv Vas Soni SC who was representing Adv Semenya SC.

33. Around the same time I became aware that the Chairperson was possibly conflicted in that she had vocational history which included membership of the Amnesty Committee of the TRC between 1996 and 1998, followed by a period

NPS

in which she served as the Deputy National Director of Public Prosecutions during times relevant to the subject matter of the Commission's mandate.

34. During her tenure in the National Prosecuting Authority she was notably deputising one of the main participants and possible witnesses in the current Commission, Mr Bulelani Ngcuka.

35. It has since emerged from the papers that the Chairperson played prominent rules in various structures of the TRC and the NPA which were directly and/or indirectly concerned with the very issues under investigation. Further details may well emerge from the Rule 53 record.

36. All of the above naturally added fuel to my own personal reluctance predilection and/or strong discomfort at the prospect of expecting fairness from the Chairperson given her leading role in writing and handing down the two judgments which led to my unfair, improper and irregular detention without trial in July 2021.

37. As set out more elaborately in the relevant pleadings these three factors, both individually and cumulatively, led to my decision to apply for the recusal of the Chairperson from any participation in the Commission based on considerations of actual bias and/or a reasonable apprehension of bias. The relevant application was launched on 15 December 2025.

38. However it must be stated upfront that the allegations of actual bias, possible judicial misconduct and/or criminal corruption represented the proverbial last straw and were pivotal in my decision to apply to the Commission for the recusal of the Chairperson.

39. The actual bias charge relates to the gross misconduct which is manifest and clear in any administrative decision-maker in the position of Commissioner Khampepe, deliberately and intentionally giving advice to one party in adversarial proceedings which were yet to be argued before a panel presided

over by her. If true, it is difficult to imagine a more egregious form of actual bias by any supposedly independent and impartial decision-maker.

40. For obvious reasons, mainly to do with the general need to protect whistleblowers who expose such corrupt activities from victimisation and other retaliatory recriminations I was reluctant to present the corroborating evidence in any manner which could be detrimental to any person or persons.

41. On the assumption that this Honourable Court will agree to proposed protective measures and protocols to protect my sources I will disclose or provide the gist of the contents of the said email and WhatsApp exchanges which are referred to in my pleadings in the recusal application.

42. The clear intent was to clandestinely assist Adv Semenya SC and his legal representative to the prejudice of the opposing parties, all interested parties and the public at large.

43. I hasten to assure the court that I certainly did not obtain the information by any unlawful means. The attempts to criminalise the exposure of corruption must be strenuously resisted. Any reluctance to share it in the public domain is to protect human rights and legitimate interests. I am advised that, if necessary, further legal argument will be advanced at the hearing in this regard.

44. As expected on or about 21 December 2025 an answering affidavit was delivered to my legal representatives. What came as a shock was that the affidavit was deposed to by Adv Semenya SC purportedly on behalf of "*the Commission*" and also in his official capacity as the legal advisor and/or Chief Evidence Leader. No affidavit or statement was submitted on behalf of the Chairperson. No confirmatory affidavit was included.

45. It is reasonably anticipated that these documents will be disclosed as part of the Rule 53 record. In that case physical copies of the abovementioned communications will be duly attached to the supplementary founding affidavit.

46. To avoid unnecessary prolixity at this stage, I do not attach the pleadings in the recusal application. It is however my intention to refer to the contents thereof together with the Rule 53 record at the appropriate stage.

47. The most remarkable feature of the abovementioned pleadings is that there was no valid or competent denial of the gravamen of the alleged conduct on the part of the Chairperson, neither by her nor by Adv Semenya SC. We are left with sweeping generalities which are vague and embarrassing in spite of the seriousness of the allegations. An inference of admission is therefore warranted in our law. I am advised that further legal argument will be advanced in due course in this regard.

48. A second feature is that the preliminary point regarding the status of the answering affidavit was left effectively unaddressed or dealt with very superficially, thereby failing in taking into account a very relevant consideration, which is in itself a ground of review.

49. It must be mentioned in passing that:-

    49.1. former President Thabo Mbeki who had received a Rule 3.3 Notice similar to mine, elected to institute a separate application in support of my recusal application, albeit on limited and slightly different grounds; and

    49.2. the Calata Group, which is a collective reference to the victims, elected and supported the respondent in opposing the recusal application.

50. After the exchange of heads of argument the application was heard in a public hearing on 16 January 2026. The ruling was reserved *sine die*.

51. On Friday 30 January 2026 the (now impugned) decision of the Chairperson, which has been earlier annexed as JZR1, was handed down. It is the subject matter of the present application.

52. Notably the decision was clearly taken by the Chairperson alone and not by the Commission as duly constituted. I deal with this issue later below.

53. On the same day the second respondent issued an invitation to all interested parties to attend a "*prehearing meeting*" scheduled for the next Wednesday 4 February 2026 at 10h00.

54. The two working days between the ruling and the proposed meeting was clearly insufficient for he and/or all the parties adequately to study the ruling and consult on the way forward. This ought reasonably to have been clear to the Commission.

55. Be that as it may I instructed my legal representatives to attend the meeting and place my concerns on the record, including the fact that the meeting was premature in view of the possible review application(s) against the ruling by me and/or other aggrieved parties. These concerns fell on deaf ears as expected. The minutes or transcript of the proceedings of the said meeting will likely form part of the record.

56. On 4 February 2026 my attorneys received a circular issued by the Secretary of the Commission announcing that the hearing of the Commission will commence on 11 February 2026. A copy of the circular is annexed hereto and marked "**JZR3**".

57. At that point and after I had received a report from the meeting, I promptly gave the final instructions for the institution of this application. The papers

were drafted and settled in the next two to three days including the weekend. The application was intended to be delivered at the earliest available opportunity and by no later than 9 February 2026.

D: URGENCY

58. It is not reasonably anticipated that any party who is familiar with this matter and the factual background will dispute the self-evident and extreme urgency of this application and the need for an expedited resolution of the issues arising as a precursor to the lawful execution of the mandate of the Commission. However and in the unlikely event of such opposition to urgency being unreasonably asserted, I now deal with the grounds of urgency.

59. The application obviously cannot conceivably be properly dealt with in due course, which may take anything from 6 months to a year (or even more) to materialise. By then the Commission would have long completed its task, all things being equal. Currently the end date for the Commission is in May 2026, approximately two months from the date of set down.

60. It is common cause that the recusal application was launched on 15 December 2025, heard on 16 January 2026 and the ruling delivered on 30 January 2026. The ensuing pre-hearing conference was hastily convened on 4 February 2026 and the commencement of the hearings was scheduled for 11 February 2026. This is an indication that all concerned were acutely aware of the urgency.

61. Following the delivery of the impugned decision or ruling on 30 January 2026 I immediately took the necessary steps over the weekend to study the ruling and reasons given, to consult with my legal representatives and to give instructions for the drafting, settling and institution of this application.

62. I was advised that the advice I sought regarding my options would be ready within approximately two days but no later than Tuesday 3 February 2025. I

undertook to give my comments thereon by no later than the following day whereafter the application would be ready for service within the time strictly necessary to complete the papers with reasonably truncated timelines for the procedures envisaged in Rule 53.

63. Accordingly the urgency is not self-created by any stretch of the imagination. I have dealt with the matter in line with the requisite urgency.

64. I am advised that in assessing urgency, it is trite that this Honourable Court must assume the truthfulness of the allegations made on the merits.

65. The utmost care has been taken to strike a balance between the need for an urgent hearing and affording the respondents reasonable time to comply with their procedural obligations.

66. Although this has not yet materialised all indications point to the intention of the Commission to use its powers to issue subpoenas to compel me and others to appear before it. It would be oppressive to do so in the prevailing circumstances. Based on recent history and precedent, this possibility alone poses personal risks which add to the urgency of the present application and the need to circumvent a further proliferation of costly litigation as happened in the past.

67. In view of the aforegoing and the totality of the circumstances, it is in the interests of justice that the matter be heard on the basis of urgency in terms of Rule 6(12)(a).

E: LEGAL FRAMEWORK

68. In this section I set out the various legal instruments which I am advised will be mainly invoked or relied on in support of the present application.

69. The constitutional provisions at play include:-

69.1. Section 1 of the Constitution which refers to the relevant constitutional values including the rule of law, supremacy of the Constitution, openness and accountability;

69.2. Section 9 thereof which provides for equality before the law;

69.3. Section 33 of the Constitution (read with PAJA) which refers to the right to administrative justice;

69.4. Section 34 thereof which deals with the right to a fair public hearing before a tribunal such as the Commission;

69.5. Section 165(4) of the Constitution which refers to judicial independence; and

69.6. Section 195 of the Constitution which refers to the duty of organs of state to act ethically and without bias.

70. Relevant statutory provisions as set out in PAJA, more particularly:-

70.1. Section 5 thereof which deals with the duty of administrative bodies to furnish adequate reasons in writing for administrative action which adversely affects any person;

70.2. Section 6(2)(a)(iii) which prohibits administrative action which is (actually) biased or reasonably suspected of bias;

70.3. Section 6(2)(e)(ii) which prohibits administrative action which is taken for an ulterior purpose or motive;

70.4. Section 6(2)(e)(iii) which prohibits administrative action taken because irrelevant considerations were taken into account or relevant considerations were not considered;

70.5. Section 6(2)(f) which prohibits irrational administrative action;

70.6. Section 6(2)(h) which prohibits administrative decisions which are unreasonable; and

70.7. Section 6(2)(i) which prohibits administrative action which is otherwise unconstitutional or unlawful.

71. Further relevant statutory provisions as set out in section 8 of the Prevention and Combatting of Corrupt Activities Act 12 of 2004 ("**PRECCA**"), which provides that:-

"***Any judicial officer who directly or indirectly ... accepts any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person in order to act personally or by influencing another person so to act in a manner that amounts to the illegal, dishonest, unauthorised, incomplete or biased exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation... that amounts to the abuse of a position of authority or ... the violation of a legal duty or a set of rules is or designed to achieve an unjustified result ... guilty of the offence of corrupt activities relating to judicial officers.***"

72. The common law principle of legality which prohibits a decision or conduct which is irrational.

73. Various regulatory provisions, including:-

73.1. the terms of reference and/or regulations of the Commission;

73.2. Rule 11 of the applicable Judicial Code which provides that a judge must:-

"***Save in the discharge of judicial office, not comment publicly on the merits of any case pending before or determined by that judge or any other court.***"

73.3. Rule 13 of the Judicial Code which provides further that a judge must:-

"***Not enter into a public debate about a case irrespective of criticism, levelled against the judge, the judgment or any other aspect of the case.***"

74. These and other relevant legal instruments will be invoked together with the relevant and applicable case law authorities.

75. I now turn to the main discussions pertaining to the application of the law to the pleaded facts. What follows must be evaluated against the reality that such pleaded facts are largely undisputed or in any event indisputable.

F: LEGAL ANALYSIS: APPLYING THE LAW TO THE FACTS

76. The main thrust of the present application is that the impugned non-recusal decision, which is captured in annexure "JZR1" ought properly to be declared unconstitutional and/or to be reviewed and set aside for the reasons set out below.

77. I now proceed to synthesise all of the above sections by applying the relevant law to the facts set out above and/or in the relevant pleadings. In so doing a distinction must be drawn between the present application and any other proceedings which will be referred to other bodies such as the Judicial Service Commission and/or the police. Those matters are referred to only in so far as they are indirectly relevant to the present application.

78. The defects identified below must be assessed in conjunction with the contents of the impugned ruling. The ruling, viewed as a whole, is superficial, deficient and woefully inadequate in view of the disputed issues.

79. In order to limit the issues and due to the urgency of the application, I will no longer pursue the third ground based on the role of the Chairperson in my detention without trial. This is in line with my intention to remove the lame distraction and unnecessary red herring about alleged intemperate language so that the court may focus on the real issue of bias. What I propose to still pursue is the unanswered issue of media interviews which were unlawfully conducted by the Chairperson as evidence of the inherent taintedness of the Chairperson's role in the Commission which ought rationally and cumulatively to have led to the recusal application being granted on each of the remaining two broad grounds of:-

79.1. vocational history; and

79.2. the undisclosed collusion and coaching of the Evidence Leader(s).

80. The grounds set out below will be amplified and/or supplemented after the due consideration of the record.

F1: **<u>Breaches of fundamental rights and other constitutional provisions (the declaratory relief in Prayer 2)</u>**

81. The impugned conduct of the Chairperson and/or her decision was in direct violation of the Bill of Rights, more particularly:-

81.1. Section 9 of the Constitution, in that, she irrationally differentiate between the parties appearing before her by assisting only one of them and/or treating him favourably at the expense of the opposing parties.

81.2. Section 33 in that she breached the acceptable standards for just administration action, as more fully elaborated upon below in the section dealing with PAJA.

81.3. Section 34 of the Constitution, in that, the alleged conduct itself as well as the failure to give adequate reasons justifying such conduct was in direct violation of the right to access fairness and justice before the Commission. The right to openness and a public hearing were equally violated. To the extent that the ruling fails to give adequate consideration to a number of submissions made in respect of the disputed issues, section 34 was also violated.

82. To the extent that her membership of the judiciary may be relevant to the exercise of her duties as a Chairperson of an administrative tribunal, her alleged conduct was in violation of the duty of independence set out in section 165(4) in that she did not discharge her duties without favour and prejudice when she clearly and clandestinely favoured Adv Semenya SC with tips, advices and warnings about possible pitfalls in his case, which conduct has not been denied and must be taken as effectively admitted. Further details are set out in the pleadings in the recusal application.

83. The alleged conduct was clearly in breach of the duties set out in section 195 of the Constitution in that such conduct amounted to actual bias or reasonably apprehended bias. The conduct was also unethical, amounting to judicial misconduct. The latter aspect will be referred to the Judicial Service Conduct shortly. What further steps will have been taken in this regard will be revealed in the supplementary founding affidavit in which the relevance of such steps in the present application, if any, will be canvassed.

84. The said conduct also amounts to the *prima facie* violation of the provisions of section 8 of PRECCA, which is a criminal offence.

NPS

85. Even if the higher threshold based on the judicial standard were to be applied, the Chairperson would still have exceedingly failed it.

86. I intend to report and/or refer these matters to the Judicial Service Commission and/or the police, as the case may be, in the near future I only refer to them here to illustrate how poisoned the atmosphere is as a result of the biased conduct of the Chairperson.

87. Having discussed the declaratory relief, I now turn to the review relief.

F2: <u>Breaches of PAJA (Prayer 3)</u>

88. It is trite that PAJA applies in respect of this relief exactly because the impugned non-recusal decision was taken by the first respondent in her official capacity as the administrative Chairperson presiding over an entity appointed by the executive, to wit the President as the Head of State and/or Head of the Executive.

89. The impugned decision was in breach of the legal standards set out in PAJA, more particularly:-

89.1. Section 5 of PAJA in so far as the Chairperson in her ruling and elsewhere, has failed to provide adequate reasons to me as the aggrieved party. The reasons given in the impugned ruling are severely deficient and/or inadequate.

89.2. Section 6(2)(a)(iii), in that upon the admitted facts the relevant decision was tainted by actual bias with reference to the giving of advice to Advocate Semenya SC and/or reasonably apprehended bias, with reference to the institutional and/or subject matter bias arising from the previous vocational involvement with the very issues under investigation, as more elaborately put in the pleadings in both the Zuma and Mbeki recusal applications.

NPS

J.G.Z.

89.3. Section 6(2)(e)(ii) in that the impugned conduct was clearly rooted in bad faith as well as the improper and/or ulterior motive of assisting Advocate Semenya SC to emerge victorious from the application for his recusal and to eliminate the prospects of success on the part of the opposing parties.

89.4. Section 6(2)(e)(iii) in that upon a reading of the ruling it is clear that, firstly, the Chairperson took into account the irrelevant considerations, including:-

89.4.1. the alleged intemperate language which unfairly sought to regulate my true feelings regarding what I considered to be cruel and degrading punishment;

89.4.2. the separate and severable opposition mounted by the Calata group;

89.4.3. the double reasonableness test and/or presumption of impartiality;

89.4.4. the cut off date of 2003;

89.4.5. the inapplicable remarks made in the ***Irvin and Johnson*** and/or the ***Masuku*** cases;

89.4.6. the inquisitorial nature of the ordinary proceedings of the Commission;

89.4.7. the alleged 8-month delay which relates to a period where I was not even aware of the existence of the Commission.

89.5. Section 6(2)(e)(iii) in that, secondly, the Chairperson, in the same breath, failed to take into account the relevant considerations, including:-

89.5.1. the failure of the respondents to deny the allegations of misconduct;

89.5.2. the failure by the Chairperson to submit any statement, in contrast to the position in the ***SARFU*** case;

89.5.3. the distinction between administrative and judicial roles;

89.5.4. the binding and total prohibition on undisclosed communications with only one party in a dispute;

89.5.5. the prohibitions contained in Rules 11 and 13 of the Judicial Code of Conduct;

89.5.6. the ***Gijima*** principle according to which undue delay cannot trump objective illegality and/or unconstitutionality.

89.6. Section 6(2)(f) in that in taking the decision the Chairperson breached several constitutional provisions and exceeded her powers.

89.7. Section 6(2)(h) in that, the non-recusal decision was so unreasonable that no reasonable decision maker could have made it, in all the prevailing circumstances.

89.8. In addition the Chairperson was, in these particular circumstances, not authorised, qualified or competent to sit in the hearing of an

application dealing with alleged gross misconduct and/or criminal conduct on her own part. This is a violation of the rule against bias.

89.9. In the event that she was entitled to sit, which is disputed, then she was certainly not authorised or rationally permitted to decide the recusal application on her own accord in a situation such as the present where the application was made to the Commission and the other Commissioners actively participated in the hearing. In such circumstances a decision of the panel or its majority was rationally warranted.

90. With specific reference to the question of actual bias the following is settled law, per Howie JA in ***S v Roberts 1999 (4) SA 915 (SCA)***, at paragraph 23:-

"***That justice publicly be seen to be done necessitates, as an elementary requirement to avoid the appearance that justice is being administered in secret, that the presiding judicial officer should have no communication whatever with either party except in the presence of the other***." (my emphasis)

91. Even a single violation of PAJA is sufficient to attract the judicial review of the impugned decision.

F3 Breaches of the principle of legality (Prayer 4)

92. The impugned decision amounts to administrative action in terms of section 1 of PAJA and it is not hit by the exclusions listed in that section.

93. However and in the unlikely event that it is found that PAJA does not apply, which is denied, reliance will be alternatively placed on the principle of legality. It is trite that the grounds listed in PAJA are in the main, statutory codifications of the common law grounds of review.

94. Regarding the principle of illegality the impugned conduct was illegal and/or irrational more particularly in that:-

94.1. all the grounds pleaded above in respect of PAJA apply in equal force in respect of the alternative ground of legality; and

94.2. viewed as a whole, the means employed by the Chairperson in making the impugned decision are not rationally linked to the relevant powers and objectives.

G: <u>CONCLUSION AND COSTS (Prayers 5, 6 and 7)</u>

95. The declaratory relief is based on the listed violations of the Constitution coupled with just and equitable remedies in terms of section 172 of the Constitution.

96. The review relief is based on PAJA alternatively irrationality, including the remedies outlined in section 8 of PAJA.

97. In totality and where applicable, sufficient grounds exist for substitutionary remedies, in line with binding case law authorities.

98. Finally and regarding the question of costs, I am advised that it will be argued that the overall conduct of the Chairperson, as more fully set out above and in the papers as a whole, is of sufficient gravity to attract not only a punitive order of costs but also to warrant the payment of personal costs by the Chairperson. Support for this contention will be based, *inter alia*, on the leading case of ***Public Protector v South African Reserve Bank 2019 (6) SA 253 (CC)*** and other binding authorities.

WHEREFORE, I pray for the order set out in the Notice of Application to which the affidavit is annexed.

DEPONENT

NPS

Sworn to and signed before me in DURBAN. on this the 06th day of **FEBRUARY 2026,** the deponent having acknowledged in my presence that he knows and understands the contents of this affidavit, which he regards as binding on his conscience and has no objection to taking the prescribed oath, the Regulations contained in the Government Notice No. R1258 of 21 July 1972, as amended, and the Government Notice No. R1648 of 19 August 1977, R1428 of 11 July 1980 and R774 of 23 April 1992 having been duly complied with.

COMMISSIONER OF OATHS

SOUTH AFRICAN POLICE SERVICE
PRESIDENTIAL PROTECTION SERVICE
2026 -02- 06
KWAZULU - NATAL
SOUTH AFRICAN POLICE SERVICE

"JRZ1"

Outlook

RULING - RECUSAL APPLICATIONS OF THE CHAIRPERSON

From Secretary <secretary@trc-inquiry.org.za>

Date Fri 1/30/2026 7:05 AM

To Lutho Dzedze <lutho@boqwanaburns.com>; Lavelesani Ncube <lavelesani@kmnsinc.co.za>; Lize-Mari Doubell <lize-mari.doubell@webberwentzel.com>

Cc alan131elsdon <alan131elsdon@gmail.com>; amailola <amailola@fhr.org.za>; amailola <amailola@fhr.org.za>; aminafrense1 <aminafrense1@gmail.com>; aneesa <aneesa@boqwanaburns.com>; ascher <ascher@opensecrets.org.za>; Asmita Thakor <asmita.thakor@webberwentzel.com>; attorney <attorney@ntanga.co.za>; bongani.masinga <bongani.masinga@za.ey.com>; bongekilemadlems <bongekilemadlems@gmail.com>; bruinders <bruinders@group621.co.za>; Busisiwe Sibiya <busisiwe@kmnsinc.co.za>; Busisiwe Sibiya <busisiwe@kmnsinc.co.za>; bviljoen <bviljoen@parliament.gov.za>; Caroline Cotton <caroline.cotton@nortonrosefulbright.com>; celenanasie <celenanasie@gmail.com>; Chanel van der Linde <chanel@hsf.org.za>; christianvelapi.67 <christianvelapi.67@gmail.com>; christopher.gevers <christopher.gevers@wits.ac.za>; Chuma Bubu <Chuma.Bubu@nortonrosefulbright.com>

1 attachment (353 KB)

RULING - RECUSAL OF THE CHAIRPERSON - 30.01.2026 - SIGNED.pdf;

Dear Sir/Madam,

Please find herewith, the ruling in the recusal applications of the Chairperson, for your attention.

Kind Regards,

Adv Mphothu Thokoa
Secretary
TRC CASES INQUIRY
+27 69 008 8888
TRC.secretary@trc-inquiry.org.za
www.trc-inquiry.org.za

TRC_Inquiry TRC_Inquiry TRC_Inquiry

J.G.Z.

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

In the matters between:

JACOB GEDLEYIHLEKISA ZUMA Applicant

and

JUSTICE SISI KHAMPEPE, THE CHAIRPERSON OF THE COMMISSION Respondent

and

THABO MVUYELWA MBEKI AND OTHERS Applicant

and

JUSTICE SISI KHAMPEPE, THE CHAIRPERSON OF THE COMMISSION Respondent

---

RULING ON THE APPLICATIONS FOR THE RECUSAL OF THE CHAIRPERSON

NPS

TABLE OF CONTENTS

NKS

A. INTRODUCTION

1. Two applications serve before the Commission, for my recusal. The first was brought on 15 December 2025 by Jacob Gedleyihlekisa Zuma ("former President Zuma"). The second was brought on 19 December 2025 by Thabo Mvuyelwa Mbeki ("former President Mbeki") and four other former members of the Cabinet.[1] Argument on these applications was heard by the Commission on 16 January 2026.

2. The applications are opposed by the Calata group of families, who represent 25 survivors and families of victims who were forcibly disappeared or murdered during South Africa's struggle against apartheid ("Calata Group"). They are represented by the Foundation for Human Rights.

3. These applications are also opposed by the evidence leaders appointed by me to the Commission. They filed an affidavit by Ishmael Semenya SC in his capacity as Chief Evidence Leader ("Semenya SC").

B. BACKGROUND TO THE COMMISSION

4. This Commission was established by the President by Proclamation in the Government Gazette on 29 May 2025.[2] It is a Commission established in

---

1 These are: Ms Brigitte Sylvia Mabandla, former Minister of Justice and Constitutional Development; Mr Ronnie Kasrils, former Minister of Intelligence Services; Ms Thoko Didiza, former Acting Minister of Justice and Constitutional Development; and Mr Charles Nqakula, former Minister of Safety and Security.

2 Proclamation Notice 264 of 2025.

terms of section 84(2)(f) of the Constitution, to enquire into whether efforts or attempts were made to stop the investigation or prosecution of Truth and Reconciliation Commission cases ("TRC cases").

5. The Commission's original mandate was to complete its work within six months and submit its report two months thereafter. Despite substantial preparatory work and owing to various challenges and delays, the Commission was not able to complete its work during the stipulated period. On 28 November 2025 the President extended the term of this Commission to 29 July 2026.[3] Time is therefore of the essence for the Commission to fulfil its mandate.

6. The present recusal applications were not brought during the first 8-month period of the life of the Commission but during the second, extended period granted to the Commission to complete its work.

7. The effect of the recusal applications, if they are successful, will be to bring the work of the Commission to a halt, until a new Chairperson is appointed, which would mean that the Commission would still not be able to complete its work, during an extended period.

C. THE APPLICATIONS FOR RECUSAL

8. Former President Zuma delivered his recusal application first. It must be recorded that the application is riddled with intemperate, rude and disparaging

---

3 Proclamation Notice 302 of 2025.

accusations and thinly disguised threats. Needless to say, such vexatious material does not constitute evidence, much less evidence of objective facts.

9. Former President Zuma relies on both a reasonable apprehension of bias and actual bias as the basis upon which my recusal is sought.

10. The former President Mbeki's application is more restrained in its language and it is alleged that he has a reasonable apprehension of bias over my continued role as Chairperson of the Commission.

11. Both former Presidents Zuma and Mbeki raise certain common grounds for seeking my recusal. These relate to my prior roles as a member of the Amnesty Committee of the TRC during the period 1996 to 2001 and as a Deputy National Director of Public Prosecutions (DNDPP) during the period September 1998 to December 1999. The averments and contentions made in both applications overlap substantially. It is consequently convenient that they be heard together, and a composite ruling issued.

12. It is now necessary to deal with the contentions advanced at the outset by both former Presidents Zuma and Mbeki as preliminary issues disguised as points *in limine*.

D. WHETHER THE APPLICATIONS ARE UNOPPOSED

13. Former Presidents Zuma and Mbeki argue that my failure to deliver an answering affidavit in these applications has the effect of their applications

being unopposed. Former President Zuma contests the authority of Semenya SC to deliver an answering affidavit on behalf of the Commission. I disagree with these arguments.

14. As the decided cases on recusal demonstrate, judges do not deliver answering affidavits in applications seeking their recusal. It would indeed be surprising for a judge confronted with a recusal application to deliver an affidavit and then sit in judgment of that very evidence.

15. Rather, the appropriate and routine way for judges to deal with recusal applications is through their reasoned judgments. I propose to do the same. The *SARFU* Constitutional Court Case is precedent setting.

16. In addition, it can hardly be contended that these recusal applications are unopposed because the Calata Group, which the founding Proclamation of this Commission recognises as an 'interested party' in this Commission, is resisting the recusal attempt. [4]

17. That then brings me to the affidavit of Semenya SC. Former President Zuma contends that Semenya SC has not been authorised by the Commission to deliver an answering affidavit. He argues that this affidavit is therefore unauthorised and must be disregarded for the purposes of his recusal application. Former President Mbeki's application is to similar effect.

---

4 Paragraph 2 and specifically 2.1 of the Proclamation of 29 May 2025 makes this clear.

NPS

18. I disagree. As pointed out by Semenya SC and the evidence leaders, Semenya SC is alleged to have been the direct recipient of 'secret communication' that I sent to him either on email or on the cellular WhatsApp platform. He is therefore eminently entitled to respond to such matters, given that he is directly implicated in those allegations.

19. Semenya SC notes also, under oath, that he delivers the answering affidavit on behalf of the Commission. Although this is contested in reply, the grounds for such contestation do not withstand scrutiny. Semenya SC has been appointed by me as the Chief Evidence Leader. As I have already noted in the Commission's prior ruling on 4 December 2025, evidence leaders work "subject to the control and direction of the Chairperson of the Commission."[5]

20. Further, the evidence leaders have been appointed by me, as part of this Commission and I deem it necessary to take their contentions into account. It is to be noted that in the overlapping grounds in the recusal applications, the historical facts of my prior institutional roles are largely common cause and the resolution of these matters turns primarily on legal argument, rather than on contested evidence.

21. In any event, the grounds of opposition advanced by Semenya SC and the evidence leaders are substantially similar to the grounds of opposition advanced by the Calata Group and there is no suggestion that their affidavits

---

5 Ruling on the Recusal Application for Semenya SC dated 4 December 2025, at paragraph 13.

NPS

are not properly before this Commission.

22. I accordingly make the signification that these recusal applications are opposed.

23. I propose to deal first with the legal principles established for recusal. These are well established principles in our law.

E. THE LEGAL PRINCIPLE APPLICABLE TO RECUSAL FOR BIAS

24. In recusal applications, two types of bias find application. First is actual bias. The second is a reasonable apprehension of bias.

25. Former President Zuma implicates both types of bias while former President Mbeki only claims a reasonable apprehension of bias.

26. "Bias" '*... is to denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office or those who are commonly regarded as holding a quasi-judicial office ...*'".[6]

27. Allegations of bias "*must be substantiated by a proper factual basis, must not be based on mere speculation and conjecture, and must be proved by the party alleging bias.*"[7] Claims of actual bias require evidence of a "*mind which*

---

6 *BTR Industries SA (Pty) Ltd v Metal and Allied Workers' Union* 1992 (3) SA 673 (A), at 690C ("*BTR Industries*").

7 *South African Commercial Catering and Allied Workers Union and Others v Irvin & Johnson Ltd (Seafoods Division Fish Processing)* (2000) 21 ILJ 1583 (CC) ("*Irvin and Johnson*") at para 12; *S v Basson* 2007 (3) SA 582 (CC) at para 30.

was in fact prejudiced and not open to conviction."[8]

28. The test for a reasonable apprehension of bias set out in the seminal *SARFU* judgment has been the lodestar to follow, enunciated in these terms:

> *"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 predisposition. 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 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."*[9]

29. This test has been referred to as the "*double requirement of reasonableness*" test: "*both the person who apprehends bias and the apprehension itself must be reasonable.*"[10]

---

8 *BTR Industries*, at 690 B-C.

9 *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 1999 (4) SA 147 (CC) ("*SARFU*"), at paragraph 48.

10 *Bernert v Absa Bank Ltd* 2011 (3) SA 92 (CC) ("*Bernert*"), at paras 34 and 35.

NRS

30. In *Masuku*, these principles were expressed in this manner:

> *"[64] The test for recusal is objective and constitutes an assessment of whether a reasonable litigant in possession of all the relevant facts would have a reasonable apprehension that the judge is biased and unable to bring an impartial mind to bear on the issues in dispute. The application of the test requires both that the apprehension of bias be that of a reasonable person in the position of the litigant and that it be based on reasonable grounds. This test must, thus, be applied to the true facts on which the recusal is based."*

31. In this regard, subjective perceptions are not enough because the test is objective:

> *"The test for recusal is objective and constitutes an assessment of whether a reasonable litigant in possession of all the relevant facts would have a reasonable apprehension that the judge is biased and unable to bring an impartial mind to bear on the issues in dispute. The application of the test requires both that the apprehension of bias be that of a reasonable person in the position of the litigant and that it be based on reasonable grounds. This test must, thus, be applied to the true facts on which the recusal application is based."*[11]

32. Even "strongly and honestly felt anxiety" is not enough.[12] This means that an applicant who brings a recusal application faces a "formidable ... burden".[13] Objective evidence in the form of "*an articulation of a logical connection*

---

11 *South African Human Rights Commission On Behalf Of South African Jewish Board of Deputies v Masuku and Another* 2022 (4) SA 1 (CC) ("*Masuku*"), at para 64.

12 *Bernert*, at para 34.

13 *Bernert,* at para 35.

NPS

between the matter and the feared deviation from the course of deciding the case on its merits" must be presented.[14]

33. There are additional important principles that must be considered in applications for recusal. These form the legal backdrop to any application for recusal of a judicial officer.

34. First, there is a strong presumption of judicial impartiality which is not easily dislodged. This arises from the oath of office taken by judicial officers which presumes that judges are capable of administering justice without fear, favour or prejudice, based on their training and experience.[15]

35. Second, there is a duty on judicial officers to continue to sit in any matter in which they are not obliged to recuse themselves.[16]

36. Third, judges are presumed, by virtue of their training and experience, to innately carry the ability to *"disabuse their minds of any irrelevant personal beliefs or predispositions*".[17]

37. This means that a litigant or an applicant for recusal must present "cogent or

---

14 *Ex Parte Goosen* 2020 (1) SA 569 (GJ) ("*Goosen*") at para 29, endorsed in *Masuku*, at paragraph 69.

15 *SARFU*, at para 48. This presumption was emphasised in *Irvine and Johnson Ltd*, at para 12. *See also*, *Bernert* at paras 31-34 and *Masuku*, at paras 59-62.

16 *SARFU*, at para 46. *Electoral Commission v Umkhonto Wesizwe Party and Others* 2025 (5) SA 1 (CC) ("*Electoral Commission")*, at para 24. *Bernert,* at para 35.

17 *Masuku, supra,* at para 61, citing SARFU.

NRS

convincing evidence" to dislodge the presumption of judicial impartiality.[18]

38. Mpofu SC, who appeared for former President Zuma, sought to downplay the judicial presumption of impartiality by arguing that I am simply the Chairperson of a tribunal and not sitting as a Judge. I disagree. I have been appointed by the President, through his section 84(2)(f) presidential powers, to chair a Judicial Commission of Inquiry. I have been appointed precisely because of my oath of office and because I am a Judge, albeit presently retired. It is my considered view that Mpofu SC's contention is devoid of substance. The presumption of judicial impartiality remains in my present role as Chairperson of this Commission and, as I have said, it is one that is not easy to dislodge.

39. This is not to say that I fulfil judicial functions in my present position. Commissions of Inquiry are not courts of law. This Commission is an investigatory body tasked with investigating the matters set out in its Terms of Reference. The Commission will ultimately report to the President on the outcome of those investigations. The Commission may make recommendations to the President, but it will be up to the President on whether to implement such recommendations.

40. This Commission does not function as an adversarial body and the proceedings before it must not to be confused with litigious, court based proceedings, with winners and losers.

---

18 *Irvine and Johnson Ltd* at para 12.

NPS.

41. I am, by virtue of the Regulations[19] issued pursuant to the appointment of the Commission, responsible for the processes and conduct of this Commission. I have published Rules[20] that govern its work.

F. PRIOR INSTITUTIONAL ROLES

42. It is common cause that I sat as a member of the Amnesty Committee of the TRC over the period 1996 to 2001. It is also common cause that I was appointed as a Deputy National Director of Public Prosecutions (DNDPP) over the period September 1998 to December 1999. I held these positions over 28 years ago, counting from 1998.

Former President Zuma's Contentions

43. Former President Zuma contends that these positions make me:

> *"(a) distinctively unsuitable and/or automatically disqualified" for my present position;*
>
> *(b) unsuitable because witnesses before this Commission may include my former colleagues and superiors;*
>
> *(c) a potential witness in this Commission; and*
>
> *(d) that the issue of prosecution is directly related to the granting or refusal of amnesty."*

---

19 Published on 19 August 2025, in Proclamation Notice R. 278 of 2025.

20 Published on 29 August 2025, in Proclamation Notice 285 of 2025.

44. In effect former President Zuma argues that my prior roles have the concomitance that I have subject-matter bias or disqualifying bias. He referred us to the *Pinochet* case in the United Kingdom. In that matter a member of a panel was found to have disqualifying bias because of his directorship of a company controlled by one of the litigants to the proceedings.[21] That was the basis for the disqualifying bias by association in that case. That case has little relevance to the present facts.

45. Former President Zuma ignores the fact that the issue of efforts or attempts having been made to stop the investigation or prosecution of TRC cases, were not matters that were pertinent before the TRC's Amnesty Committee or indeed at the National Prosecuting Authority (NPA) during my tenure there. Nor has he pointed to any direct aspect of my work there that can be said to constitute an "articulation of a logical connection"[22] between my work in those roles and the present investigations before this Commission.

Former President Mbeki's Contentions

46. Former President Mbeki states that my prior institutional role at the Amnesty Committee meant that I was *"directly involved in making the TRC findings and recommendations (regarding prosecutions of those who were declined amnesty)"* and argues that this yields a reasonable apprehension of bias. The

---

21 *Pinochet, In Re* (1999) UKHL 1. In that matter the House of Lords held that a member of the panel, who was a Director in a company controlled by one of the parties, was disqualified because of that association and ought not to have sat in the decision of the first instance.

22 *Goosen* at para 29; *Masuku* at para 69.

NPS

far-fetched inference that is sought to be drawn is that I might therefore have a predisposition in favour of justifying or defending conclusions reached during those times.

47. Former President Mbeki argues that I presided over or participated in the amnesty proceedings in the Cradock Four matter, involving "Mr Calata's father." This is not borne out by the facts, as also correctly pointed out by the Calata Group.

48. In addition, former President Mbeki argues that I was party to the conclusions reached by the TRC in its report, which made findings that the African National Congress ("ANC") had committed gross human rights violations. Once again, as correctly pointed out by the Calata group, this is a one-sided assessment of the report of the TRC. That report made key findings that the primary perpetrators of violence and murder during the years of apartheid was the apartheid regime itself. In addition the TRC report also found that several other groups were responsible for committing gross human rights violations.

49. Former President Mbeki also argues that my prior role at the NPA means that I may have an "institutional interest" in defending or validating my decisions made during that time.

50. Former President Mbeki alleges that during my time at the NPA I had *"institutional responsibility for shaping NPA policy on the TRC cases"*. I am not aware of any specific policy on TRC cases that I was involved in emerging from the human rights investigation unit during 1998 or 1999. As the Calata

NPS.

Group further points out, this is mere speculation. This averment is not supported by a factual basis. It therefore veered into the realm of conjecture.

51. Further, former President Mbeki alleges that my prior role in the TRC creates an apprehension of bias because of "the unavoidable overlap" between my "past adjudicative role and her present fact-finding responsibilities." What this alleged overlap is, is not spelt out and I cannot divine what this might be.

Analysis: The facts

52. The claims, by both former Presidents Zuma and Mbeki, are based simply on generalised suspicions and claims, with no attempt to state what I did or when during those times, that is relevant to the work of this Commission.

53. The question of whether apartheid era crimes should be prosecuted is not before this Commission, and therefore the recommendation of the TRC that offenders who were not given amnesty must be prosecuted, does not have to be defended or justified. Nor should such questions feature at all in the work of this Commission.

54. Furthermore, there is no evidence at all to suggest that my work at the NPA during 1998-1999 is somehow of direct relevance to the present work of this Commission. Again, they allege but fail to produce the proof.

55. As with former President Zuma, former President Mbeki fails to demonstrate any "logical connection" between my prior institutional roles and the work of

this Commission. Without this basic information it requires a leap of logic, to conclude that there might be an apprehension of bias on my part as I continue to probe what this Commission is mandated to determine.

56. But there is a more fundamental problem with the apprehension of bias argument based on my prior institutional roles. It is this. The Terms of Reference of this Commission require that it must investigate whether attempts or efforts were made to stop the investigation or prosecution of TRC cases from 2003. That was well after my prior roles at the Amnesty Committee which ended in 2001 and at the NPA which ended in December 1999.

57. There is thus a 2003 temporal boundary over the work of this Commission which means that what I did in my prior institutional roles will not be the subject of the work of this Commission. Nor have former Presidents Zuma and Mbeki offered any elucidation of what these related matters might be.

58. Consequently, I find that the apprehension of bias based on my prior institutional roles is not reasonable based on the lack of facts established by the applicants in their founding affidavits.

Analysis: The Law

59. It is established law that prior institutional positions will not, without more, be indicative of bias, let alone a reasonable apprehension of bias. Our courts have recognised that judges are the product of their life experiences. They are not expected to "occupy a place of utter isolation from an issue or from

even a party for that matter."[23]

60. In addition, the Constitutional Court has held:

> *"... '[A]bsolute neutrality' is something of a chimera in the judicial context. This is because Judges are human. They are unavoidably the product of their own life experiences and the perspective thus derived inevitably and distinctively informs each Judge's performance of his or her judicial duties...".*[24]

61. In *Masuku*,[25] it was recognised that judicial personal and professional experience play a role in the adjudicative function and "what is more, 'it is appropriate for judges to bring their own life experience to the adjudication process."

Conclusion

62. On this ground therefore, I find that the applicants, have not established any reasonable apprehension of bias, either on the facts or on the law. They fall remarkably short of displacing the presumption of judicial impartiality.

G. MY ROLE IN PRIOR JUDGMENTS

63. Former President Zuma complains that I was the author of judgments against him in the past. His primary concern on this aspect is the judgment of the

---

23 *Ex Parte Goosen*, at para 25 (citing *Ebner v Official Trustee* (2001) 205 CLR 337 (HCA)).

24 *Irvin and Johnson*, at para 13.

25 At paragraph 67.

NRS

Constitutional Court which resulted in his imprisonment.[26] I wrote the judgment on behalf of the majority of Judges of the Constitutional Court. Even the two minority Judges were of the view that former President Zuma's refusal to appear at the State Capture Commission deserved a sanction of imprisonment. They merely differed in respect of whether the motion procedure followed in convicting and sentencing him to imprisonment was consistent with the Constitution.

64. It is in this area of his application that the language in the founding affidavit is particularly disrespectful, egregious and ad hominem. I choose these adjectives advisedly and buttressed with the following extracts from the founding affidavit:

> *"28. Judged from both the tone of these last two judgments and her general demeanour it was self-evident that Justice Khampepe was motivated by deep-seated personal hatred, animosity and/or anger specifically directed towards me."*
>
> *31. Millions of people in South Africa continue genuinely to believe that the judgment was driven by undue vengeance, bitterness and highly personalised animosity. The decision reportedly sparked unprecedented levels of public rejection and unrest which regrettably resulted in the death of 350 South Africans and untold economic damage. But for the judgment all those would still be alive today."*

---

26 *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).

NPS

32. *Further confirmation of my reasonable suspicions about the malice behind the judgment came in the form of various public media interviews conducted by Justice Khampepe after retirement."*

33. *I strongly believe that the tone and tenor of the interview confirms that my imprisonment was aimed at 'teaching me a lesson' rather than a detached application of law."*

65. These are, however, the subjective perceptions of former President Zuma. The test for bias is an objective one based on objective facts. It would stretch credulity to believe that these expressed perceptions are bona fide. Former President Zuma has presented no part of the judgment which is said to demonstrate bias, or a reasonable apprehension of bias, on my part. Again, I am left to guess as to what these facts might be. The mention of "millions of people" is a thumb-suck, not even based on a gallup-poll. Further, no reference is made to the Report of the Expert Panel into the July 2021 Civil Unrest or the South African Human Rights Commission (SAHRC) Report on what the source of the insurrection of July 2021 was. Be that as it may, to blame me and the Constitutional Court for what happened is to stoop low. The aim is plainly to denigrate me and delegitimize the Apex Court.

66. Former President Zuma also relies on interviews I gave after my retirement which are reported in Newzroom Afrika and News 24. Yet, he does not provide any substantive part of those interviews, apart from a headline in a News24 article, which reads: "*We could not pander to Mr Zuma*." This is said to be demonstrative of bias on my part, or at least capable of instilling a reasonable

NPS

apprehension of bias on his part. This is throwing mud against the wall with the hope that some of it might stick.

67. On the law, our courts have definitively established that *"Judges often hear different matters relating to the same applicant without that providing a justifiable basis for recusal."*[27]

68. Consequently, I find that this ground falls woefully short of establishing an objectively established reasonable apprehension of bias.

H. SECRET COMMUNICATIONS

69. Former President Zuma alleges that I have sent secret communication to Semenya SC and that I did so during the application for the recusal of Semenya SC. Former President Zuma did not participate in that application for recusal. That application was dismissed in my ruling dated 4 December 2025.

70. Although former President Zuma claims that I gave "private and secret advice" to Semenya SC, he provides no evidence whatsoever of these communications. In fact, in his founding affidavit, he states that he will produce this evidence if the allegations are denied but will do so before another forum. How one is meant to disprove a negative, or disprove the absence of evidence, is beyond comprehension.

---

27 *Electoral Commission*, at para 26.

NM

71. During oral argument Mpofu SC persisted in former President Zuma's averment that I gave private advice to Semenya SC, Chief Evidence Leader, on how to counter certain allegations by the applicants for his recusal. According to Counsel, "*the recusal application is clearly adversarial. So, the fact that the Commission itself might be inquisitorial is neither here nor there. And to the extent that it is adversarial it is improper conduct for the chairperson to give to one of the adversaries.*" For this contention he invokes *S v Roberts 1999(4) SA 915 (SCA) at para 23.* As already pronounced at paragraph 40 (above) of this Ruling, Mpofu SC has misconceived the true nature of a Commission of Enquiry. The Roberts case is not on point.

72. The aforesaid approach elicited the following engagement with the Commission:

> *"But you did not bring out the content of the advice. It is just advice in vacuo, the expression 'advice'; the content of the advice, the text of the advice",* is lacking.

73. Mpofu SC then averted to paragraphs 38, 39 and 40 of former President Zuma's statement as an answer to the enquiry. It is apposite therefore to quote verbatim the contents of these paragraphs for objective examination:

> *"38 In the build up to the hearing of the Semenya recusal application Justice Khampepe as a member of the judiciary and as the decision maker who would ultimately make the final ruling, conducted herself improperly and exhibited actual bias in favour of the non-recusal of Adv Semenya SC.*

NIS.

39 *A good example of this is that Justice Khampepe, without the knowledge of the applicants, privately and secretly gave advice to Semenya SC on certain key weaknesses in his case and even advised him on what to look out for and what to convey to his legal representative Adv Vas Soni in order to succeed in the recusal application. This is a case of plain and gross misconduct irrespective of the merit or demerit of the Semenya recusal application.*

40 *Purely in order not to jeopardise ongoing investigations into this serious conduct which poses a threat to our democracy, I deliberately and consciously refrain at this [stage], from revealing the complete evidence available to me. If the accusation is denied, then I will be left with no option but to resort to alternative procedural mechanisms in order to secure and/or provide the evidence. I trust that this will not be necessary."*

74. This is not the only threat by former President Zuma. It is neither even veiled nor subtle. Mpofu SC was asked to speak to para 52 of former President Zuma's statement because the "*understanding seems to be that if Justice Khampepe does not recuse herself or perhaps if the finding is that she does not recuse herself, then Mr Zuma is out of here? He is not participating.*"

75. Para 52 reads:

"52 *Last but not least, the previous conduct by the Chairperson in relation to my controversial detention without trial and her subsequent negative public commentary, make it untenable for me to comply with the request to participate in the present Commission as set out in the Rule 3.3 Notice sent to me by*

NPS

the Commission and in any process which is tainted by her demonstratable and/or reasonably perceived bias."

76. After a preamble Mpofu SC contends at pp 112-113 (of the transcribed argument):

"Now of course that does not suggest anything about out of here. All it suggests – in fact, let me put it plainly; is that should this commission find that this ground, serious as it is, is not sufficient and the chairperson should nevertheless continue, having given advice to my learned friend, Adv Semenya SC; then former President Zuma will exercise his options which are provided in the Constitution.

One of them he has already mentioned that he is going to approach the Judicial Service Commission. The other one, which is obvious, is that he could approach the courts. So, that is what that paragraph is meant to convey; nothing more, nothing less. And as I say, anyone of us, any human being would find it untenable to appear under such circumstances."

No amount of embellishment by Counsel would alter the plain unequivocal meaning in the said para 52. It is an ultimatum.

77. As in the poem *"The Rubaiyat of Omar Khayyam (1859) Stanza 27*:

"Myself when young did eagerly frequent

Doctor and Saint, ***heard great Argument***

About it and about: but evermore

NPS

Came out by the same Door as in I Went."

(own emphasis)

In short, we are none the wiser.

78. Even in his replying affidavit, former President Zuma did not produce a smidgen of evidence with regard to the secret communications. In his replying affidavit, former President Zuma accepts that he has not provided any evidence of these communications and states that the decision to withhold these communications is to protect *"ongoing sensitive investigations"* and that at some future time that will be *"made available to the Judicial Services Commission or even this Commission once specific safeguards have been negotiated."*

79. In his replying affidavit, it is also claimed that I sent an email to Semenya SC on or about 5 November 2025 dealing with advice about the recusal application, but, as the evidence leaders correctly point out, the recusal application was only brought on 12 November 2025, some time later.

80. Further, as the evidence leaders pointed out there is nothing untoward about me communicating with the Chief Evidence Leader and the evidence leaders' team because this is how this Commission is supposed to work and others in reputable jurisdictions operate. Frequent communication between us is therefore to be expected.

81. What is most sinister about these allegations is that former President Zuma

NPS

does not explain the lawful bases upon which he has acquired such communications, on the assumption that these exist and are in his possession. It is an offence in terms of the Cybercrimes Act 19 of 2020 to gain access to another person's computer system or data storage without permission. I have given no such permission to former President Zuma, or to anyone else for that matter, relating to the work of this Commission.

82. What is more, former President Zuma contends that I emailed Semenya SC from my private email address rather than my official email address. The system that obtains is that all Commissioners use their private email addresses and have not been allocated official email addresses.

83. In so far as the work of the Commission is concerned, matters of direct relevance to the public are posted, in real time, onto the Commission's website and the public has ready access thereto. This includes all correspondence and communication with the parties involved in this Commission and matters about which the public must be kept informed. It is a historical record of the work of the Commission.

84. It follows therefore, that if former President Zuma has access to my communication with Semenya SC, that can only be through unlawful surveillance. This is a serious matter which warrants thorough investigation.

85. For present purposes, however, it is perspicuous that the lack of cogent evidence by former President Zuma as to the alleged secret communications, falls flat. There is no factual basis upon which an objective conclusion could

NPS.

be drawn about bias, let alone an objectively justifiable, reasonable apprehension of bias.

86. I consequently find that there is no substance in this allegation.

I. PRIOR PROCEDURAL DIRECTIONS

87. Former President Mbeki complains about my handling of objections pertaining to Semenya SC. The complaints are two-fold.

88. First, that I endorsed an irregular arrangement between Semenya SC and Advocate Varney in regard to the leading of witnesses in a ruling dated 2 December 2025. It is argued further that I failed to give reasons for this decision.

89. Second, it is alleged that I endorsed a breach by Semenya SC of my prior directive to him not to participate in any questioning of NPA officials about the prosecution policy at a stage when Semenya SC's prior advisory role to the NPA was at issue.

90. In so far as the first ground is concerned, it is significant that former President Mbeki's legal team delivered heads of argument pertaining to the objection to Advocate Varney leading the witnesses of the Calata Group. In those heads of argument, former President Mbeki's legal team analysed the provisions of Rule 3.1 of this Commission and argued that this decision was one that I could make. Those procedural objections were initially set down to be argued on

NPS

28 November 2025.

91. On the scheduled date, the parties, including former President Mbeki's legal team, approached the Commissioners in chambers, with an agreed process for the resolution of the objection over the arrangement for Advocate Varney to lead the witnesses of the Calata Group. That agreed process is contained in my Ruling on that day, which is published on the website of the Commission.

92. Pursuant thereto, I made a decision, in accordance with the process agreed by the parties, considered the objections and the arguments against those objections, and exercised my discretion to permit Advocate Varney to lead the witnesses of the Calata Group.

93. In light of paragraphs 5 and 6 of the Draft Ruling submitted by the legal representatives of all parties present, it is evident that Advocate Varney and the Calata Group have not been accorded any preferential treatment. These paragraphs provide as follows:

> *"5. In respect of future requests by the parties to lead witnesses, such requests will be made by way of letter addressed to the Chairperson, copied to all parties, identifying the witnesses in question and providing the reasons why the parties wish to lead those witnesses.*
>
> *6. Any party wishing to object to another party leading their witnesses, may do so by way of letter addressed to the Chairperson, copied to all parties"*

UPS

94. These paragraphs and the Ruling I made on 2 December 2025, therefore, eliminated the dispute or *lis* on this aspect. It would accordingly have been a futile exercise and superfluous to furnish reasons in these circumstances.

95. In addition, that was a procedural direction and my decision is not uncommon. Several other Commissions in this country have permitted parties to be led by their legal representatives, for example at the Marikana Commission of Inquiry.

96. Given that this was a procedural direction, I exercised my discretion not to write a reasoned ruling. It is seldom in our Courts that procedural directions are accompanied by written judgments, or followed by reasons for that direction. Indeed, these are matters that are not regarded as final or appealable because they are simply procedural directions and may be subject to variation.

97. If former President Mbeki was dissatisfied with the outcome of my discretion and my eventual ruling on this issue, then the appropriate course would have been to approach the Commission to vary the ruling, or to take the matter on judicial review to the High Court. Former President Mbeki has not done so.

98. Notably, nothing in the Rules require me to give reasons in respect of the Directive I issued in terms of Rule.3.1.1.

99. The point I make is this. Dissatisfaction with my procedural ruling is not objective evidence in support of a reasonable apprehension of bias.

100. In *Martiz v The State*[28] the Court had to deal with a failure of a Judge to recuse herself prior to sentencing. It was claimed that the Judge had revoked a person's bail which had then been restored by a higher court. This was one of the grounds asserted as a basis for a claim of reasonable apprehension of bias. The SCA noted that a mistake in the application of the law or the facts does not in itself mean that the Judge was biased:

> *"If a litigant is for some sound reason, not satisfied with a judicial officer's judgment or decision, the aggrieved litigant has a right to approach a higher court for the appeal or review of the judgment (as the case may be) to adjudicate on its correctness. The reason why we have the appeal court system is inter alia, a recognition of the fact that judges may sometimes err in the exercise of their discretion or misapply the law in the process of adjudicating. Naidoo J may have wrongly revoked the appellant's bail. Her mistake in the application of the law, or on the facts did not by itself mean she was biased. The relevant connection must call into question her ability to apply her mind in an impartial manner to the case before her."*

101. Even a mistake on the facts is not sufficient, on its own, to establish a reasonable apprehension of bias:

> *"[102] As we held in Basson II, 'a mistake on the facts, even if correct, is not ordinarily sufficient on its own to give rise to a reasonable apprehension of bias'. Judicial officers are not superhuman beings who do not make mistakes. That is why there is an appellate process to correct mistaken findings on law or facts. A mistake on the facts will only give rise to a*

---

28 [2024] SASCA 72 (8 May 2024)

MPS

> *reasonable apprehension of bias if it is so unreasonable on the record that it is inexplicable except on the basis of bias. A litigant who relies on bias based on incorrect factual findings bears the onus of establishing this fact. This is a formidable onus to discharge."*[29]

102. From these cases, it is apparent that dissatisfaction with the outcome of a judgment or decision is therefore something ordinarily to be taken up on appeal or review, as the case may be. But such dissatisfaction does not, without more, suffice to establish a reasonable apprehension of bias.

103. In so far as former President Mbeki's second complaint is concerned, namely, that I endorsed a breach by Semenya SC of my prior directive to him not to participate in any questioning of NPA officials, I should point out that this was dealt with in my Ruling on the Semenya SC recusal application. This Ruling was delivered on 4 December 2025. That ruling deals with the fact that the very basis for that earlier preliminary ruling was to be regarded as *pro non scripto*.[30]

104. It is significant that former President Mbeki did not play any part in the recusal applications for Semenya SC, despite him having had every opportunity to do so.

---

29 *Bernert*, at paragraph 102.

30 Ruling on Semenya SC's recusal application, which deals with this issue at paras 53-58 and which finds at para 58 as follows:

> "Given that I conclude that there is no basis upon which Semenya SC's role in *Nkadimeng* serves to disqualify him as chief evidence leader, the logical basis for that preliminary direction falls away and must be read *pro non scripto*."

NPS

105. Again, if former President Mbeki had any concerns with my ruling on this issue, then the appropriate course for him was to have taken the matter on review before the High Court. But dissatisfaction with that Ruling, does not by itself equate to a reasonable apprehension of bias.

106. In my view, former President Mbeki has failed to establish any "relevant connection" between these complaints and my ability to apply my mind impartially to the work of this Commission. Nor is it suggested that my ruling was so unreasonable that it can only be explained upon the basis that I am biased.

107. I consequently find that former President Mbeki has not established any reasonable apprehension of bias on this set of complaints.

J. CONCLUSION ON THE GROUNDS ADVANCED

108. As is evident from the foregoing, none of the grounds advanced by former President Zuma for actual or a reasonable apprehension of bias can be said to be sufficient to meet the required legal tests. I therefore find that former President Zuma has made out no case of actual bias on my part, or indeed that he holds a reasonable apprehension of bias on my part as I perform my duties to chair the Commission.

109. The same is true of the argument advanced by former President Mbeki. None of the grounds advanced by him equate to objective evidence of a reasonably held apprehension of bias.

110. Both applications for my recusal must therefore fail.

111. But that is not the end of the matter. Even if I am wrong in these conclusions, there is the pressing issue of delay. In my view, and apart from the grounds advanced by the applicants, both applicants delayed unreasonably in bringing these recusal applications. The applications for my recusal must be dismissed on this basis alone. I deal with this next.

K. DELAY

112. As noted at the outset, both applications were launched in the extended second term of this Commission. Yet, the common cause facts of my prior institutional involvement have been publicly known for decades.

113. At the very least both former Presidents Zuma and Mbeki would have, or ought to have had such publicly available knowledge on 29 May 2025, which is when the Proclamation establishing this Commission was gazetted.

114. At that time, both applicants as former Presidents of this country, would have or ought to have been aware that the Terms of Reference of this Commission overlapped with their terms as Presidents of this country.

115. Further, former President Mbeki would have known of these matters because he had earlier applied to intervene in the pending Calata application before the High Court.

116. There can therefore be no suggestion that these applicants were unaware of

my position in this Commission and of the Terms of Reference of this Commission. Yet both applicants failed to act.

The legal principles applicable to delay in recusal applications

117. It is established law that recusal applications go to the heart of the administration of justice. This means that they must be brought with expedition because such applications have the possibility of disturbing the proper administration of justice.

118. In *Bernert*, the Constitutional Court held:

> *"It is highly desirable, if extra costs, delay and convenience are to be avoided, that complaints of this nature be raised at the earliest possible stage."*[31]

119. There must be an explanation for any delay in instituting recusal applications. The Constitutional Court in *De Lacy and Another v South African Post Office*[32] held the following:

> *"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."*

---

31 At para 71.

32 2011 (9) BCLR 905 (CC)

NPS

120. In *Bernert* that Court held:

> *"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. 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."*[33]

121. What is clear from these extracts is that in assessing delay, not only is the administration of justice and its disruption to be considered, but it is also the interest of other parties, such as the Calata Group, who were responsible for the establishment of this Commission by consent with the President. They are waiting for their matters to be heard and investigated and they have been waiting for a long time.

Former President Zuma's Delay

122. Former President Zuma received his Rule 3.3 notice on 19 September 2025. This notice advised him of allegations made by the Calata Group, which implicated him and called upon him to furnish the Commission with his response. In response, former President Zuma's lawyers sought further time in which to respond. An extension of time was given to former President Zuma to file his response by 17 November 2025.

---

33 At para 72.

MRS

123. Yet on 14 November 2025, former President Zuma's lawyers sought a further extension of time so that he could cooperate with the Commission:

> *"In the circumstances, we beg the indulgence of the Commission to grant our client a further extension so as to allow him to make a meaningful contribution to its work."*

124. There was no suggestion then by former President Zuma or his lawyers that they took umbrage to my chairing of this Commission.

125. It is only in his replying affidavit that former President Zuma attempts to explain his delay. The allegation is that *"the most recent improper conduct in respect of the Semenya recusal application constituted the last straw and trigger for the recusal application."* Former President Zuma did not participate in that application for the recusal of Semenya SC. Yet it is asserted that my ruling on the Semenya SC recusal application was the "trigger" which prompted him to bring this application.

126. This means that former President Zuma's arguments about the adverse judgments and my previous roles in the TRC and the NPA were not deemed sufficiently serious to him so as to "trigger" the recusal application. In fact, former President Zuma was well aware that the Commission was set to hear the first set of witnesses beginning on 10 November 2025, yet he did not act then. What is odd is that former President Zuma did not participate at all in the application for Semenya's recusal. It is only after my ruling that he formed the view that this was a "trigger" for my recusal.

NPS.

127. In my view this constitutes an unexplained and unreasonable delay.

Former President Mbeki's delay

128. Former President Mbeki too delayed unreasonably, for which there is no adequate explanation in the founding affidavit. The one ground advanced is that he had to wait for his lawyers to consider former President Zuma's recusal application, before he could act.

129. It would therefore seem that but for the former President Zuma's application, former President Mbeki would not have sought my recusal. The trigger for former President Mbeki was the former President Zuma's application. Yet, former President Mbeki could have acted much earlier on his grounds relating to my prior institutional involvement and my ruling on the leading of witnesses. Former President Mbeki and his lawyers failed to do so.

130. But former President Mbeki also argues that the handling of the two complaints against Semenya SC was more recent and crystalized the need to bring the recusal application. Given what I have already found in respect of these complaints, elsewhere in this ruling, and in particular in paragraphs 87 to 98; 103 to 106, I am of the view that these complaints were a feeble attempt made with hindsight on his part to justify why the recusal application was not filed timeously.

131. Significantly, former President Mbeki too had prior to his recusal application, willingly co-operated with the work of the Commission. His lawyers committed

to assisting the Commission at various stages prior to the recusal application being brought, as is detailed in the answering affidavit of Semenya SC. And, all of this was reiterated shortly before the sudden arrival of his recusal application.

Applying the Legal Principles on Delay

132. As I recorded at the outset to this Ruling, this Commission is currently in its second term, and these recusal applications have already had the effect of delaying justice and closure to the complainants with the result that this Commission will in all likelihood not complete its work in the remaining limited time.

133. As it is, this recusal application and the preparation of this Ruling has meant that the Commission has had to adjourn its first sitting of 2026, which was scheduled for 27 January 2026. These are factors that I must consider in assessing the reasonableness of the delay in the institution of these recusal applications, including the astronomical costs implications.

134. Therefore, on the facts, I find that both applicants have delayed, without proper explanation, unreasonably so, in bringing these recusal applications. They ought to be non-suited on this ground alone.

135. Further, the time bound nature of the work of this Commission and the various interests involved, dictate that the work of this Commission must continue in an uninterrupted fashion.

136. In my view, this outcome is the only outcome that gives effect to the proper administration of justice in the work of the Commission and redounds to the benefit of the aggrieved parties and to the public interest.

137. I have a duty, as Chair of this Commission, to ensure that the work of this Commission is completed as expeditiously as the exigency permits and in accordance the Commission's mandate.

138. I therefore rule that both applicants:

(a) delayed unreasonably;

(b) failed to provide proper explanations for their delays; and

(c) that such delays demonstrate that their apprehension of bias is not reasonable.

139. The applications for my recusal must therefore be dismissed on this basis alone.

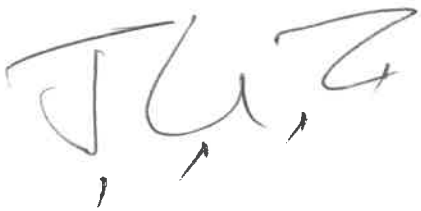
L. CONCLUSION

140. The work of this Commission has been beset by undue delays. The Rule of Law, the principle of legality and the proper administration of Justice dictate that I must ensure that this Commission continues and complete its mandate. The public is entitled to and deserves no less.

NPS.

141. I therefore rule that both applications for my recusal, brought by former Presidents Zuma and Mbeki, must be and are hereby dismissed.

Justice Sisi Khampepe
Chairperson of the Commission
30 January 2026



"JRZ2"

PROCLAMATION NOTICE R. 278 OF 2025

by the

PRESIDENT of the REPUBLIC of SOUTH AFRICA

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: REGULATIONS

Under the powers vested in me by section 1 of the Commissions Act, 1947 (Act No. 8 of 1947), I hereby—

(a) declare that the provisions of the said Act shall be applicable to 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 established in terms of Proclamation No. 264 of 2025 published in *Gazette* No. 52749 dated 29 May 2025; and

(b) make the regulations in the Schedule with reference to the said Commission.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria on this 18th day of August Two Thousand and Twenty-five.

M C RAMAPHOSA
President

By order of the President-in-Cabinet:

M T KUBAYI
Minister of the Cabinet

NPS.

SCHEDULE

ARRANGEMENT OF REGULATIONS

Definitions

1. In these Regulations, unless the context otherwise indicates—

'Chairperson' means the Honourable Madam Justice S Khampepe appointed by the President;

'Commission' means 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 established in terms of Proclamation No. 264 of 2025 published in *Gazette* No. 52749 dated 29 May 2025;

'document' includes, whether in electronic form or otherwise, any book, pamphlet, record, list, circular, plan, poster, publication, drawing, photograph, picture, data, disc, hard drive or recording;

'Inquiry' means the inquiry conducted by the Commission;

'Minister' means the Minister of Justice and Constitutional Development;

'Officer' means any person appointed by the Chairperson and any other person in the service of the State who has been duly seconded to the Commission to provide

NPS.

administrative support to the Commission; and

'Secretary' means a person appointed by the Chairperson who, under the direction of the Chairperson, assists the Commission in the performance of its functions.

Proceedings of Commission

2. (1) The proceedings of the Commission shall be recorded in the manner determined by the Chairperson.

(2) Any person appointed or designated to record proceedings of the Commission by mechanical or electronic means, or to transcribe such proceedings which have been so recorded, must, at the outset, take an oath or make an affirmation in the following form:

"I, A.B., declare under oath / affirm and declare that—

(a) I shall faithfully and to the best of my ability record the proceedings of the Commission of Inquiry to investigate allegations of whether efforts or attempts were made to stop the investigation or prosecution of the Truth and Reconciliation Commission cases by mechanical or electronic means as ordered by the Chairperson of the Commission; and

(b) I shall transcribe fully and to the best of my ability any mechanical record of the proceedings of the said Commission made by me or any other person.".

(3) No mechanical or electronic record of the proceedings of the Commission, that have been recorded by the person referred to in subregulation (2), may be transcribed except by order of the Chairperson and such transcription will be the only official record of the proceedings of the Commission after the Chairperson has approved such transcription.

Persons to assist Commission

3. The Chairperson may designate one or more knowledgeable or experienced persons to assist the Commission in the performance of its functions, in a capacity other than that of a member.

Personnel of Commission

4. (1) The Chairperson shall, in accordance with applicable legislation, appoint the Secretary of the Commission and such other persons and officers as may

be required to assist the Commission in carrying out its functions.

(2) The Chairperson may in writing, delegate to the Secretary, the authority to appoint certain categories of staff of the Commission.

(3) A person or an officer appointed by the Chairperson or the Secretary shall be appointed additional to the establishment of the Department of Justice and Constitutional Development for the period of such appointment or the duration of the Commission, as the case may be.

(4) The Minister must, at the request of, and on such conditions as may be determined by the Chairperson, second such officers from the public service as may be required to assist the Commission in the execution of its mandate: Provided that to the extent that an official identified for secondment to the Commission is in the employ of a department or State entity under another Minister, the Minister shall consult with the Minister concerned to facilitate such secondment.

Funds of Commission

5. The National Treasury will, in consultation with the Minister, ensure that adequate funds are made available to the Commission to realise its mandate.

Representation

6. Any person appearing before the Commission may be assisted by an advocate or an attorney.

Taking of oath or affirmation

7. The Chairperson or an officer generally or specifically authorised thereto by the Chairperson may, where necessary, administer an oath to or accept an affirmation from any person appearing before the Commission.

Persons appearing before Commission

8. (1) No person appearing before the Commission may refuse to answer any question on any grounds other than those contemplated in section 3(4) of the Commissions Act, 1947 (Act No. 8 of 1947).

(2) A self-incriminating answer or a statement given by a witness

before the Commission shall not be admissible as evidence against that person in any criminal proceedings brought against that person instituted in any court except in criminal proceedings where the person concerned is charged with an offence in terms of section 6 of the Commissions Act, 1947.

(3) Any witness appearing before the Commission may be cross-examined by a person only if the Chairperson permits such cross-examination should he or she deem it necessary and in the best interest of the functions of the Commission.

(4) *(a)* A witness may, after examination by an evidence leader of the Commission, be re-examined by his or her legal representative strictly for the purpose of explaining the evidence given by the witness during his or her examination, and only after an application to re-examine has been granted by the Chairperson.

(b) An evidence leader may, after the re-examination of a witness referred to in paragraph *(a)*, conduct a further examination of the witness concerned.

Disclosure of information

9. Where, at the time of any person appearing during or at any aspect or stage of the inquiry, or presenting information to or giving evidence to or before the Commission, members of the general public are or have been excluded from attendance at any stage or aspect of the inquiry, or at the proceedings of the Commission, the Chairperson may, on the request of such a person, direct that no person shall disclose in any manner whatsoever, the name or address of such person or any information likely to reveal his or her identity.

Search and seizure

10. (1) The Chairperson or any officer may, with a warrant, for the purposes of the inquiry, at all reasonable times and without prior notice or with such notice as he or she may deem appropriate, enter and inspect any premises and demand and seize any document or article which is on such premises.

(2) Any entry upon or search of any premises or person thereon in terms of this regulation, shall be conducted with strict regard to decency and order including the right of a person to—

(a) respect for and the protection of his or her dignity;

(b) freedom and security; and

(c) his or her personal privacy.

(3) Subject to subregulation (4), the premises referred to in subregulation (1) may be entered only by virtue of a warrant issued in chambers by a judge of the area of jurisdiction within which the premises are situated.

(4) A warrant referred to in subregulation (1) may be issued by a judge in respect of premises situated in another area of jurisdiction, if he or she deems it justified.

(5) A warrant referred to in subregulation (1) may be issued only if it appears to the judge from information revealed under oath or affirmation, stating the need, in regard to the inquiry, for a search and seizure in terms of this regulation that there are reasonable grounds to believe that any document or article referred to in subregulation (1) is on or at such premises or suspected to be on or at such premises.

(6) For the purposes of conducting an investigation, the Chairperson may direct any person to submit an affidavit or affirmed declaration or to appear before the Commission to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated, and may examine such person.

Oath of fidelity or secrecy

11. (1) Every person employed in the execution of the functions of the Commission shall assist to preserve secrecy with regard to any matter or information that may come to his or her knowledge in the performance of his or her duties in connection with the said functions, except in so far as the publication of such matter or information is necessary for the purposes of the report of the Commission, and every such person, except the Chairperson, or any officer, or any person assisting the Commission in any other capacity shall, before performing any duty in connection with the Commission, take and subscribe before the Chairperson an oath of fidelity or secrecy in the following form:

"I, A.B., declare under oath / affirm and declare that, except in so far as it is necessary in the performance of my duties in connection with the functions of the Commission or by order of a competent court, I shall not communicate to any person any matter or information which comes to my knowledge in connection with the inquiry, or allow or permit any person to have access to any records of the Commission, including any notes, record or transcription of the

proceedings of the said Commission in my possession or custody of the said Commission or any officer.".

(2) No person shall communicate to any other person any matter or information which may have come to his or her knowledge in connection with the inquiry, or allow or permit any other person to have access to any records of the Commission, except in so far as it is necessary in the performance of his or her duties in connection with the functions of the Commission or by order of a competent court.

(3) No person may without the written permission of the Chairperson—

(a) disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document; or

(b) peruse any document, including any statement, which is destined to be submitted to the Chairperson or intercept such document while it is being taken or forwarded to the Chairperson.

(4) No person shall, except in so far as shall be necessary in the execution of the terms of reference of the Commission, publish or furnish any other person with the report or any interim report of the Commission or a copy or a part thereof or information regarding the consideration of evidence by the Commission.

Offences and penalties

12. (1) Any person who insults, disparages or belittles the Chairperson or any member of the Commission or prejudices the inquiry or proceedings or findings of the Commission, is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding six months.

(2) Any person who—

(a) contravenes regulation 9;

(b) wilfully hinders, resists or obstructs the Chairperson or any officer in the exercise of any power contemplated in regulation 10; or

(c) contravenes a provision of regulation 11,

is guilty of an offence and liable on conviction—

(i) in the case of an offence referred to in paragraph *(a)* to a fine, or to imprisonment for a period not exceeding six months; and

(ii) in the case of an offence referred to in paragraph *(b)* or *(c)*, to a fine, or to imprisonment for a period not exceeding 12 months.

NPS.

Seat of Commission

13. (1) The Chairperson shall determine the seat of the Commission by Notice in the *Gazette*.

(2) The Commission may, for purposes of facilitating access to the Commission, conduct hearings at any other place as may be determined by the Chairperson where he or she considers it appropriate to do so.

Procedures of Commission

14. The Commission may determine its own procedures.

Amendment of regulations

15. These regulations may be added to, varied or amended from time to time.

Short title and commencement

16. These regulations shall be called the Regulations of 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 and shall come into effect on publication in the *Gazette*.

Outlook

"JZR3"

COMMENCEMENT OF THE COMMISSION'S HEARING

From Secretary <secretary@trc-inquiry.org.za>

Date Wed 2/4/2026 4:04 PM

To Executive Assistant <executive.assistant@trc-inquiry.org.za>; Admin Officer <admin.officer@trc-inquiry.org.za>; Document Manager <document.manager@trc-inquiry.org.za>; Investigations <investigations@trc-inquiry.org.za>; Evidence Leaders <evidence.leaders@trc-inquiry.org.za>

Cc alan131elsdon <alan131elsdon@gmail.com>; amailola <amailola@fhr.org.za>; amailola <amailola@fhr.org.za>; aminafrense1 <aminafrense1@gmail.com>; aneesa <aneesa@boqwanaburns.com>; ascher <ascher@opensecrets.org.za>; Asmita Thakor <asmita.thakor@webberwentzel.com>; attorney <attorney@ntanga.co.za>; bongani.masinga <bongani.masinga@za.ey.com>; bongekilemadlems <bongekilemadlems@gmail.com>; bruinders <bruinders@group621.co.za>; Busisiwe Sibiya <busisiwe@kmnsinc.co.za>; Busisiwe Sibiya <busisiwe@kmnsinc.co.za>; bviljoen <bviljoen@parliament.gov.za>; Caroline Cotton <caroline.cotton@nortonrosefulbright.com>; celenanasie <celenanasie@gmail.com>; Chanel van der Linde <chanel@hsf.org.za>; christianvelapi.67 <christianvelapi.67@gmail.com>; christopher.gevers <christopher.gevers@wits.ac.za>; Chuma Bubu <Chuma.Bubu@nortonrosefulbright.com>

1 attachment (292 KB)

LETTER TO INTERESTED PARTIES - COMMENCEMENT OF THE COMMISSION'S HEARINGS - 04.02.2026.pdf;

Dear Sir/Madam,

Please find herewith, the letter regarding the commencement of the Commission's hearings, for your attention.

Kind Regards,

Adv Mphothu Thokoa
Secretary
TRC CASES INQUIRY
+27 69 008 8888
secretay@trc-inquiry.org.za
www.trc-inquiry.org.za

TRC_Inquiry TRC_Inquiry TRC_Inquiry

NPS

04 February 2026

Dear Interested and Affected Party

RE: **THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS REGARDING EFFORTS OR ATTEMPTS TO STOP THE INVESTIGATION OR PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES (TRC CASES INQUIRY)**

COMMENCEMENT OF THE COMMISSION'S HEARINGS

1 I am instructed by the Chairperson to announce that the hearings of the Commission will commence on **Wednesday, 11 February 2026, from 09h00 to 18h00, at Sci-Bono Discovery Centre, Corner of Miriam Makeba and Helen Joseph Street (formerly Newtown), Johannesburg**.

2 The hearings will commence with the opening statements of those parties and entities who indicate their intention to present opening statements by no later than **Friday, 6 February 2026**.

Yours faithfully

Adv AM Thokoa
Secretary