

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

**Case No.: 2026-026936**

In the matter between:

**JACOB GEDLEYIHLEKISA ZUMA**

First 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  
DEVELOPMENT**

Ninth Respondent

**PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

Tenth Respondent



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**FIRST TO FIFTH RESPONDENTS' ANSWERING AFFIDAVIT**

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I, the undersigned,

**ISHMAEL ANTHONY MMAKWENA SEMENYA**

declare and affirm as follows:

- 1 I am an adult male practising as an advocate and the third respondent in this application.
- 2 I depose to this affidavit in my capacity as the Chief Evidence Leader of 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 ("**the Commission**"), so appointed by the first respondent.
- 3 The averments made herein are true and correct and are, save where I say or contexts indicates otherwise, within my personal knowledge and belief.
- 4 I depose to this affidavit, on behalf of the first to fifth respondents, in answer to the application initially brought by the first applicant, former President Jacob Zuma.



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- 5 Insofar as the seventh respondent, former President Thabo Mbeki, has indicated in his own papers that he wishes to be joined to the application as a co-applicant, and has since delivered a notice of motion to such effect, this affidavit answers the respective affidavits of President Zuma and President Mbeki.
- 6 Accordingly, where necessary, I refer to President Zuma and President Mbeki collectively as the applicants.
- 7 The applicants seek, amongst others, an order—
- 7.1 declaring the conduct of the first respondent, Justice Sisi Khampepe, in dismissing the application for her recusal to be unconstitutional and invalid in terms of sections 172(1)(a) and 38 of the Constitution; and
- 7.2 reviewing and setting aside such decision, delivered on 30 January 2026, on the grounds of the Promotion Administrative Justice Act 3 of 2000 (“**PAJA**”) and alternatively the principle of legality.
- 8 Justice Khampepe is appointed by the President as Chairperson of the Commission and her confirmatory affidavit is delivered herewith.
- 9 In this affidavit, I deal with the applicants’ allegations thematically. Given the extreme time pressures imposed upon the Commission by the applicants, and the numerous other applications that have since been delivered by the applicants in the interim, it is impossible to respond *ad seriatim* to the

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**OVERVIEW**

- 10 Insofar as the applicable factual background is lengthy and is, in any event, extensively traversed in the record before the Honourable Court, I do not repeat it herein save to the extent necessary.
- 11 In what follows, I provide a brief overview relevant for the present proceedings.
- 12 President Zuma launched this application on 6 February 2026. On 13 February 2026, President Mbeki filed an "answering affidavit", to which he deposed on behalf of certain other former members of the Executive, requesting, amongst others, that he be joined as a co-applicant in the proceedings initiated by President Zuma. In his affidavit, President Mbeki further proposed additional grounds for the review and setting aside of Justice Khampepe's decision of 30 January 2026 to dismiss applications for her recusal.
- 13 President Mbeki indicates that he supports the relief claimed by President Zuma insofar as their respective grievances and grounds of review, in any event, overlap.
- 14 President Mbeki's notice of motion delivered on 19 February 2026 goes even further and proposes an order by the Honourable Court in the following terms:

"4 In the alternative to prayer 5 of former President Zuma's notice of motion, directing the tenth respondent, the President of the Republic of South Africa, to terminate the appointment of the second respondent, Commissioner Khampepe, first respondent in the main application, as Commissioner and Chairperson of the Commission with immediate effect;

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- 5 Declaring that all acts, decisions, directives, and proceedings undertaken by the Commission with the involvement of Commissioner Khampepe, whether directly or indirectly, are unlawful and of no force or effect, and accordingly constitute a nullity”.

- 15 In what follows, I address the applicants' respective allegations and set out the reasons for which it is clear no ground exists at all for the relief claimed.

**THE APPLICANTS HAVE NOT OBTAINED THE REQUISITE PERMISSION TO INSTITUTE THE PROCEEDINGS**

- 16 Section 47(1) of the Superior Courts Act 10 of 2013 provides that no civil proceedings may be instituted against any judge of a Superior Court, except with the consent of the head of that court.
- 17 The above principle applies to retired judges and encompasses precisely the proceedings of the present nature.
- 18 In the absence of the requisite permission having been obtained by the applicants and presented to the Honourable Court, this renders the applicants non-suited and this application stands to be dismissed on that basis alone.

**THE APPLICANTS' CONTEMPLATED PAJA RELIEF IS INCOMPETENT**

- 19 Insofar as the applicants allege that the relevant ruling or decision by Justice Khampepe constitutes administrative action and is reviewable under PAJA, it is settled law that the findings of a commission of inquiry such as this does not evince the characteristic of an administrative act as defined in PAJA.

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- 20 Indeed, the Chairperson's dismissal of the applications for her recusal cannot be said to have direct legal effect or constitute one of finality in the administration of rights.
- 21 In the result, the application of PAJA to the present proceedings is a non-starter and it follows therefrom that any reliance by the applicants on the provisions of PAJA is not only misguided but incapable of predicating the contemplated relief.

### **MIDSTREAM REVIEW**

- 22 It is common cause that the Commission of Inquiry has not finalised its inquiry. The current review application takes place in the middle of incomplete proceedings.
- 23 Case law suggests that proceedings of this nature should be entertained only in rare and exceptional circumstances and where the prejudice to the applicant is clear and irremediable. In this matter no exceptional circumstances are pleaded. Nor is there manifest prejudice to the applicants which cannot be remedied.
- 24 In the absence of pleading exceptional circumstances and showing clear prejudice, the application is stillborn. For this reason too, the application must be dismissed with costs.

  
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## SEPARATION OF POWERS

25 As outlined above, President Mbeki's own notice of motion contemplates that the Honourable Court must direct the President (tenth respondent) to terminate the appointment of Justice Khampepe as Commissioner and Chairperson of the Commission, with immediate effect.

26 Section 84 of the Constitution sets out the powers and functions of the President and states as follows in relevant part:

### **"84. Powers and functions of President**

1. The President has the powers entrusted by the Constitution and legislation, including those necessary to perform the functions of Head of State and head of the national executive.

2. The President is responsible for

...

f. appointing commissions of inquiry"

27 It is inconceivable that a person of President Mbeki's former office should contemplate that the Judiciary encroach upon those matters solely within the President's purview and expressly contemplated by the Constitution to be within the President's powers and functions,

- 28 President Mbeki's contemplated relief does not, in any event, follow from a finding that the Chairperson's ruling stands to be reviewed and set aside or is otherwise unlawful.
- 29 Quite simply, the contemplated relief constitutes unjustifiable overreach and is all the more unpermitted insofar as no case has been made at all for the proposition that the President unlawfully exercised the powers conferred upon him in terms of section 84(2)(f) of the Constitution or ought not to have appointed the Chairperson, in the first instance.
- 30 Accordingly, this relief may not be reasonably granted even if the Chairperson's ruling is reviewed and set aside or found to be otherwise unlawful.

#### **THE APPLICATION CONSTITUTES AN ABUSE OF THE COURT**

- 31 For the reasons expanded upon below, I submit that the applicants' respective allegations hold no merit, in any event, and their challenge of Justice Khampepe's ruling cannot be reasonably sustained.
- 32 But there is an even bigger concern. It is evident the applicants have simply elected to engage in a dilatory and meritless *stratagem* notwithstanding that they have each held the highest office in the Republic and must thus be uniquely aware that the demands of public accountability are especially exacting upon the Presidential Office, for all its power, and require that they submit themselves before the Commission.

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- 33 The public interest necessitates that President Zuma and President Mbeki take seriously (and be seen to take seriously) enquiries into alleged wrongdoing, particularly when the Executive itself is implicated and, as in this case, stands accused of having interfered with the very administration of justice.
- 34 Yet the applicants ignore their responsibility to the public and have, instead, chosen to undermine the work of the Commission by engaging in needless litigation aimed at hindering the efficient execution of its mandate.
- 35 I respectfully submit that this should not be allowed to prevail and further propose that an adverse costs order is necessitated insofar as this application constitutes an abuse of court process, with no real rights asserted by the applicants in the first instance.
- 36 This Court is urged to take into account the precise nature of the terms of reference of the Commission. These terms include the investigation into "whether, why, to what extent and by whom attempts were made to influence members of the South African Police Service or National Prosecuting Authority not to investigate or prosecute cases identified by the Truth and Reconciliation Commission."
- 37 The period covered by the Commission's terms of reference includes the terms of office of both applicants. In other words, the Commission's terms of reference seek to hold decision-makers, including President Mbeki and President Zuma accountable for any decisions they may have made or been part of when they held office. The Commission is thus a platform for holding

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holders of public power accountable. Accountability for decisions made by persons holding public power is a cornerstone of the Constitution.

- 38 Therefore, the effect of this application, since it has no merit at any rate, is that the applicants seek to evade accountability for their own role, if any, which may be impacted by the terms of reference. This Court should not tolerate the strategy of evading accountability. The processes of this Court should not be abused in this fashion.

**THE SIGNIFICANT DELAY IN BRINGING THE APPLICATIONS FOR THE CHAIRPERSON'S RECUSAL RENDERS THE APPLICANTS UNSUITED**

- 39 The Calata Group (sixth respondent) launched proceedings in January 2025, alleging interference with the investigation and prosecution of Truth and Reconciliation Commission ("TRC") cases by government officials.
- 40 It is relevant to these proceedings that President Mbeki and Ms Bridget Mabandla (on whose behalf President Mbeki has deposed to the relevant affidavits) unsuccessfully sought to be joined in the Calata Group's litigation, as early as 31 March 2025.
- 41 It is accordingly evident that President Mbeki has been aware of the subject matter that would ultimately inform the establishment of the Commission for at least some 12 months.
- 42 Indeed, as noted in the judgment dismissing his application for joinder, President Mbeki and Ms Mabandla were, at that point, aware of the

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establishment of the Commission and “[i]t was common cause between the parties in argument that both Mr. Mbeki and Ms. Mabandla are likely to make themselves available to testify before the commission.”

43 The basis, then, on which it should be accepted that President Mbeki first became aware of the Commission and/or the Chairperson’s role therein only upon receipt of his Rule 3.3 Notice is entirely unclear.

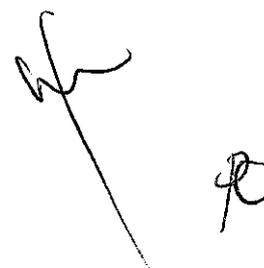
44 In his founding affidavit, President Zuma states as follows:

“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.”

45 It bears mention here that President Zuma was, in fact, issued with the relevant Rule 3.3 Notice on 19 September 2025.

46 Insofar as it is evident that President Zuma became aware of the Commission, and that he was to participate in its investigations, at least some six months ago, he confoundingly explains his delay in pursuing the recusal of the Chairperson with reference to the proceedings for my own recusal.

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47 President Zuma alleges that the process of completing his consultations with his attorneys was "interrupted" by the lodgement of the applications for my recusal. President Zuma makes this allegation notwithstanding that he was not a participant in the relevant proceedings for my recusal and indicates in his own papers that he elected not to participate in those proceedings "for personal reasons".

48 Even more worrisome, President Zuma alleges that, in November 2025, it was reported to him by a whistleblower that the Chairperson had committed actions that amount to bias, gross misconduct and/or corruption in that she had allegedly coached and colluded with me by advising me of weaknesses in my "case" for recusal and "even went as far as sharing research in her possession regarding to the dispute and telling [me] to convey certain tips" to counsel who was representing me.

49 Still, President Zuma elected not to bring any application for the recusal of the Chairperson at this point notwithstanding knowledge of what he alleges to be criminal conduct of the highest degree, given the Chairperson's office.

50 Rather, President Zuma alleges that it was around precisely this time that he also became aware of the Chairperson's history in the TRC and the National Prosecuting Authority ("**NPA**"), summarising his concerns as to the Chairperson's previous vocations in the following terms:

"35. It has since emerged from the papers that the Chairperson played prominent roles (sic) in various structures of the TRC and the NPA which were directly and/or indirectly concerned

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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."

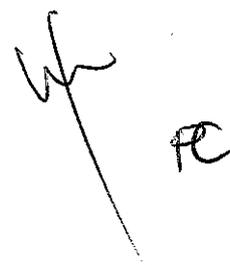
51 It beggars belief that a person of President Zuma's stature and former office would, until November 2025, be unaware of the publicly available institutional history of a figure such as the Chairperson.

52 I submit it cannot be reasonably accepted that the nature of the Chairperson's previous work was entirely unknown to President Zuma until some six months ago.

53 In any event, President Zuma's application for the recusal of the Chairperson was brought on 15 December 2025, at least some three months after he was aware on his own version that he was due to appear before the Commission.

54 As I have already outlined, the matter's long history evinces that President Mbeki was, at all times, aware of the relevant facts that would ultimately underpin his own belated application.

55 President Mbeki's application before the Commission, much like the present one before the Honourable Court, was inexplicably triggered only by President Zuma's own application and delivered on 19 December 2025. This is plainly

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unacceptable and the applicants' self-admittedly intentional delay cannot be allowed to derail the proceedings of the Commission.

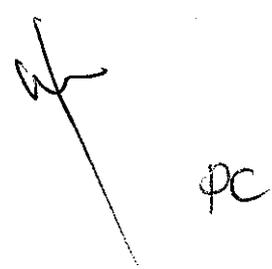
56 Notwithstanding the applicants' significant period of inaction before bringing their applications for the Chairperson's recusal, they now suggest that the work already done by the Commission is tainted.

57 Indeed, President Mbeki's notice of motion suggests that the existing work of the Commission is to be jettisoned in its entirety and suggests an order "declaring that all acts, decisions, directives, and proceedings undertaken by the Commission with the involvement of Commissioner Khampepe, whether directly or indirectly, are unlawful and of no force or effect, and accordingly constitute a nullity".

58 The interests of justice do not permit this.

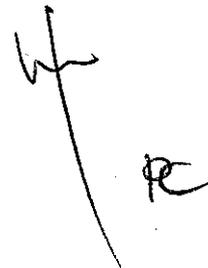
59 Insofar as the Chairperson correctly found in her ruling that the applicants' delay in seeking her recusal was so significant (and prejudicial) so as not to be overlooked, the applicants suggest that this was unlawful and renders the ruling susceptible to review.

60 President Zuma suggests that his significant delay in bringing an application for the Chairperson's recusal is to be overlooked in alleged adherence with "the *Gijima* principle according to which undue delay cannot trump objective illegality and/or unconstitutionality."

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- 61 President Zuma makes this confounding suggestion notwithstanding that he has not provided a morsel of evidence in support of his slanderous accusations of “objective illegality” and evades the obvious question as to how he would have lawfully come across the Chairperson’s communications by having reference to some anonymous “whistleblower”. This should not be sanctioned by the Honourable Court.
- 62 Indeed, even President Mbeki references the *Gijima* principle and (incorrectly) suggests that it necessitates that his own inexcusable delay be ignored even as his own papers also make clear that he ought to have been aware of the Commission by at least 29 May 2025, being the date of the Commission’s establishment by public Proclamation. This is all the more so, given President Mbeki’s self-admitted legal interest in the Commission’s subject matter.
- 63 The Commission is required to complete its work by 29 May 2026 and submit its report by 31 July 2026. Given the very limited time period within which the Commission is required to execute its mandate, it is inconceivable that either of the applicants should suggest that this be of no moment and their unexplained failure to act timeously allowed to further prejudice state funds and the survivors of apartheid-era victims.
- 64 In any event, insofar as the applicants rely on the *Gijima* principle, the circumstances that ultimately precipitated their applications for the Chairperson’s recusal certainly do not constitute clear and indisputable unlawfulness such that there may be any basis at all to overlook the applicants’ abject delay.

- 65 I emphasise here again that absolutely no weight is to be afforded to President Zuma's unsubstantiated accusations of criminal conduct by the Chairperson and his refusal to even indicate the source of his alleged "knowledge" is not to be taken seriously and cannot found the basis for his relief.
- 66 The Chairperson has correctly found that the applicants' applications for her recusal were so delayed as to necessitate that they be dismissed and it is not available to the applicants to shoehorn a further challenge now under the guise of review proceedings.
- 67 The delay in bringing the recusal application continues to apply to these review proceedings. That is because the delay was one of the grounds on which the recusal application was dismissed. To overturn that finding the applicants must show that in dismissing the application on the grounds of undue and unexplained delay the Chairperson committed a reviewable error. They cannot sidestep the requirement to explain their dilatoriness by bringing review proceedings. In this matter they have simply failed to explain their delay.
- 68 It follows that there can be no merit to the contention that the Chairperson erred in treating the applicants' considerable delay as an independent and decisive basis for dismissal, and that her decision is to be reviewed and set aside on such basis. It was perfectly acceptable for the Chairperson to regard the delay as a separate basis to dismiss the application. The Gijima decision does not say that delay is not a ground for dismissing an application.

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**THE CHAIRPERSON NEED NOT HAVE DEPOSED TO AN AFFIDAVIT IN THE COMMISSION'S PROCEEDINGS FOR HER RECUSAL**

69 Confoundingly, the applicants both take the point that the Chairperson ought to have deposed to an affidavit setting out her "defence" to their allegations for her recusal, and that this alleged failure by the Chairperson is a further irregularity that warrants the review and setting aside of her ruling.

70 Indeed, as noted in the ruling of 30 January 2026, the applicants went so far as to argue that the Chairperson's "failure" to deliver an answering affidavit in her recusal applications had the effect that such applications went unopposed.

71 With respect, this is nonsensical and defies logic. Presiding officers do not ordinarily depose to affidavits in matters on which they must adjudicate, including applications for their very recusal.

72 A presiding officer, called upon to decide the question of whether she must recuse herself from certain proceedings, cannot depose to the very affidavit on which she must later adjudicate in reaching her decision. A suggestion otherwise has no sound legal basis.

73 In response to this obvious reasoning, it is suggested by President Mbeki in his affidavit before the Honourable Court that the mere existence of the Chairperson's Co-Commissioners, and the fact that the recusal application was heard by a panel of all three Commissioners necessitates that the

  
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Chairperson's version of events have been available on affidavit for the benefit of such co-Commissioners.

74 President Mbeki states as follows in relevant part:

"It is not clear from the recusal ruling whether Commissioners Kgomo and Gabriel SC concurred in the ruling or that the ruling is a ruling of "the Commission" written for it by the Chairperson. In an application of this nature, where the Commission is constituted by three members and the allegation is directed at one of them, Justice Khampepe was required to consider her own position individually and then collectively together with the two Commissioners. The participation of the remaining Commissioners would require the Chairperson to place on record the facts as are known to her that are relevant to the grounds of recusal. Otherwise, the other Commissioners would not know what the Chairperson knew regarding her prior roles and the other factual allegations on why she ought to recuse herself. But the Chairperson placed no relevant facts known to her on record."

75 Contrary to what is stated by President Mbeki, not all decisions of a commission of inquiry are required to be made by the panel of Commissioners who participate in hearing the relevant application.

76 Recusal is a case in point and is, as a matter of law, the decision of the presiding officer sought to be recused.

77 It follows that the applicants' contentions hold no merit and cannot reasonably sustain a finding that the Chairperson did not oppose the application for her recusal or otherwise acted in an improper manner.

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**NO GROUNDS FOR RECUSAL***The Chairperson's Institutional Roles*

78 In both the applicants' papers, much is made of the proposition that institutional bias on the part of the Chairperson is to be apprehended because of the roles she previously occupied within the NPA and the TRC. Yet when the President issued the relevant proclamation which contained the name of the Chairperson, no issue was taken at all. I emphasise this because the roles of Justice Khampepe are common cause and have been the subject of public knowledge. If the applicants "reasonably apprehended" bias on her part, the correct avenue should have been to challenge the proclamation which appointed Justice Khampepe at the time it was issued. It is therefore apparent that the alleged reasonable apprehension of bias is a late blooming theory on the part of the applicants. It has no substance in any event.

79 President Mbeki states as follows in his further affidavit of 24 February 2026:

"We apprehend that her roles in these institutions would make it difficult to approach the issues in the Commission with an open mind open to persuasion."

80 For the reasons outlined above the suggestion of a reasonable apprehension should be rejected as a late comer into the evolving case of the applicants. The applicants have been aware of Justice Khampepe's various roles way before she was appointed by the President to Chair the Commission.

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- 81 On the merits, these allegations do not constitute grounds for recusal. It is common cause that the Chairperson sat as a member of the Amnesty Committee of the TRC over the period 1996 to 2001. It is also common cause that the Chairperson was appointed as Deputy National Director of Public Prosecutions from September 1998 to December 1999.
- 82 The applicants argue that the abovementioned roles held by the Chairperson some 30 years ago lend themselves to subject-matter bias and that she is to be disqualified from sitting as Chairperson of the Commission on this basis alone.
- 83 Insofar as it is alleged by President Mbeki that the Chairperson had "institutional responsibility for shaping NPA policy on the TRC cases" and that the Chairperson's prior role in the TRC necessarily creates an apprehension of bias because of "the unavoidable overlap" between her past adjudicative role and the fact-finding responsibilities of the Commission, these contentions simply have no factual basis. This is a baseless claim. The terms of reference of this Commission are narrow and factual. They require an investigation into whether, since 2003, any person is responsible for influencing the police and the prosecution not to investigate and prosecute TRC cases. They also require an inquiry into whether members of the law enforcement agencies aided and abetted the attempts to influence them not to prosecute or investigate cases. Finally the terms require the view of the Commission into the issue of compensation to affected individuals. The Chairperson has had no prior involvement into any of the issues that are to be investigated. She has no prior knowledge about any decision taken not to investigate or prosecute certain

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cases. Nor does she have any pre-existing knowledge of the decisions of the NPA and the SAPS regarding who must or must not be investigated or prosecuted. She will learn about these issues for the first time in these proceedings, if such evidence is adduced. It is too far fetched to speak of prosecution policy to link the Chairperson as the one who "shaped" it. Not only is the claim false as a matter of fact, it is also unrelated to the Commission's terms of reference.

- 84 As pointed out in the Chairperson's ruling of 30 January 2026, the claims by the applicants are based on generalised suspicions and claims, with no attempt to state what the Chairperson did previously that is now relevant to the work of the Commission. This is obviously necessary for the evaluation of the reasonableness of any apprehension of bias.
- 85 It does not suffice to suggest that there exists reasonable apprehension of bias simply by deign of the Chairperson's previous connection, howsoever incidental or tenuous, to some or other aspect of the TRC and/or the NPA. The fact of the matter is that the Chaiperson has had no knowledge or involvement in any of the matters which are to be investigated by the Commission. That is the acid test. And the application falls short in every respect when that test is applied.
- 86 It also follows that the applicants cannot merely allege, without establishing, that the Chairperson did, in fact, have "institutional responsibility" for shaping NPA policy on TRC cases. Indeed, the Chairperson's ruling states explicitly



that she is not aware of any specific policy on TRC cases that she was involved in during 1998 or 1999.

- 87 The Chairperson does not, as President Mbeki suggests, confuse the applicable test for bias as one that is subjective in its nature simply because she highlights the necessity of at least some logical connection between her current role as the Chairperson and her previous roles in the TRC and the NPA.
- 88 To be clear, the Chairperson has not misunderstood the applicable requirement to be that of establishing actual bias insofar as she emphasises the necessity of logical connection. She simply alleges that there is no factual foundation for the case. The fact that an applicant, alleges, without any facts, that he suspects something, cannot pass the requirement that any suspicion of bias must be reasonable. That means it must be founded on some evidentiary basis, not conjecture.
- 89 There is no escaping that the applicants must do more than merely allege the Chairperson's previous institutional roles. The applicants must establish that the nature of such previous roles vis-à-vis the Commission's current mandate lends itself to a reasonable apprehension of bias.
- 90 As the Chairperson has highlighted in her ruling, the question of whether apartheid era crimes should be prosecuted is not before the Commission. The enquiry as to possible interferences in governance and the administration of justice in TRC-related cases is decidedly distinct from the enquiry as to the



merits of individual cases and whether a party who was not granted amnesty must, in fact, face prosecution.

91 It also follows from this that it is entirely irrelevant that President Mbeki or any other individual was not granted amnesty by the TRC.

92 The merits of individual amnesty applications are of no significance to the enquiry now envisaged by the Commission's Terms of Reference and it is, in any event, simply not so that the Chairperson denied amnesty to President Mbeki.

93 I submit this deals with the matter definitively, then. Simply, there can be no reasonable apprehension of bias on the basis only of conjectural claims, where the applicants have clearly failed to adduce any relevant evidence reasonably pointing to such apprehension, in the first instance.

94 As also stated in the Chairperson's ruling, it is established law that prior institutional positions will not, without more, be indicative of bias. Adherence to this principle necessitates that the applicants have demonstrated a logical connection between the Chairperson's institutional roles and the work of the Commission that lends itself to the alleged apprehension.

95 Insofar as remains necessary to highlight, the Chairperson has also correctly emphasised that there is to be a presumption of her impartiality given the nature of her position and oath of office. The applicants have simply done nothing to rebut this presumption.

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*The Commission's temporal boundary*

- 96 As the Chairperson correctly states in her ruling, "there is a more fundamental problem with the apprehension of bias argument".
- 97 The Commission's Terms of Reference require that it investigate whether attempts were made to stop the investigation or prosecution of TRC cases from 2003, whereas the Chairperson's prior roles in the Amnesty Committee of the TRC and the NPA ended in 2001 and 1999 respectively.
- 98 Insofar as there clearly exists this boundary to the work of the Commission, which boundary further makes clear that the Chairperson's respective tenures should be of no moment, the applicants now pivot their attack to the very content of the Terms of Reference and suggest that it should be impossible for the Commission to do its work without having regard to events pre-dating 2003. But if the Commission makes findings about what transpired before 2003, it will be acting outside of the terms of reference. It has no intention of doing that.
- 99 It goes without saying that the applicants have brought no challenge to the Terms of Reference and/or the content thereof. The basis on which this line of argument is to be sustained, therefore, is entirely unclear.
- 100 Plainly, the suggestion by the applicants that the work of the Commission ought, in fact, to encompass even those efforts or attempts to suppress TRC

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investigations and prosecutions before 2003 is neither here nor there for purposes of the present application.

101 The applicants' subjective views as to the supposed misguidedness of the Terms of Reference are entirely irrelevant to the question at hand and certainly cannot serve to form the basis of the Chairperson's recusal.

102 To be clear, it is no answer at all that the applicants contend that the conduct sought to be investigated by the Commission predates 2003. The Terms of Reference contemplate that the Commission's mandate is limited in this regard.

103 The applicants have failed to make a proper case for their proposition that the very nature of the Chairperson's previous positions precludes her from acting in her current capacity.

104 For all the above reasons, the allegations cannot be sustained.

*Previous rulings of the Chairperson*

105 In support of the meritless proposition that the applicants now have a reasonable apprehension of bias by the Chairperson, the applicants point, amongst others, to the manner in which the Chairperson dealt with the matters culminating in calls for my own recusal.



106 In what follows, I set out the historical background that ultimately culminated in the applications for my recusal as Evidence Leader. I do this insofar as it is necessary to understand that the Chairperson's ultimate treatment of the concerns relating to any conduct on my part is neither indicative of her bias towards me nor otherwise irregular.

*A brief factual background*

107 On 11 August 2025, the attorneys of record for the Calata Group, Webber Wentzel, directed correspondence to the Chairperson requesting permission to lead certain witnesses and to cross-examine others, subject to the Commission's directions. A copy of this letter is attached marked "IS1".

108 Subsequently, on 18 September 2025, Webber Wentzel wrote a further letter stating as follows in relevant part:

- "2. It has come to our attention that the chief evidence leader, Ishmael Semanya SC ("**Mr Semanya**"), represented the National Director of Public Prosecutions ("**the NDPP**") and the Minister of Justice ("**the Minister**") in *Nkadimeng and Others v National Director of Public Prosecutions and Others* [2008] ZAGPHC 422.
3. In the foregoing matter, Thembi Nkadimeng (now Simelane) and the wives of the Cradock Four ("**the applicants**") challenged the amendments in Appendix A to the Prosecution Policy titled: "*PROSECUTING POLICY AND DIRECTIVES RELATING TO THE PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST AND WHICH WERE COMMITTED ON OR BEFORE 11 MAY 1994*" ("**the amendments**").
4. The applicants contended that the amendments amounted to "*a backdoor amnesty*" and an unlawful attempt to shield apartheid-era perpetrators from justice. Judge M F Legodi

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declared the amendments to be unconstitutional and set them aside.

5. Our clients (who include the Simelane and Cradock Four families) intend to put up the amendments to the Prosecution Policy as a key example of how the South African government sought to intervene and block the bulk of the TRC cases from proceeding.
6. In order to avoid any public perception of partiality or conflict we respectfully request that Mr Semanya not be involved in any of the deliberations or leading or cross examination of witnesses in relation to the amendments of the Prosecution Policy. As there is in any event likely to be a division of labour amongst the evidence leaders, we believe this to be a practical and sensible suggestion."

109 I attach a copy of Webber Wentzel's letter of 18 September 2025, marked "IS2".

110 On 19 September 2025, the Chairperson responded to Webber Wentzel indicating, amongst others, that she had sent their letter to me for my response.

111 In her letter, a copy of which is attached marked "IS3", the Chairperson also indicated that:

111.1 I had advised her that the court in *Nkadimeng* was not called upon to decide whether there was any interference with the investigation or prosecution of TRC cases, which is the mandate of the Commission; and

111.2 Having considered the concerns of the Calata Group and having heard my response thereto, but without making any decision on such

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concerns by the Calata Group, the Chairperson would have another member of the evidence leader team deal with the aspects relating to the amendments of the prosecution policy at issue.

112 On 25 September 2025, Webber Wentzel sent a letter to the Secretary of the Commission (second respondent) attaching a number of documents, including a document entitled "Availability of statements for November hearing".

113 In that attached document, Webber Wentzel indicated that, since the relevant witnesses listed therein were its clients or had given Webber Wentzel their affidavits in other related matters, they were happy to lead them, "*if the Commission so directs*".

114 A copy of this correspondence and relevant attachment is attached, marked "IS4".

115 I subsequently engaged in telephonic communication with counsel for the Calata Group, Mr Howard Varney, on 29 September 2025. We agreed, in light of the various correspondences as outlined above, that Mr Varney would be the one to lead the evidence of witnesses related to the Calata Group.

116 This arrangement is set out in a letter from Webber Wentzel confirming that Mr Varney would lead the evidence of the Calata Group's witnesses. A copy of the letter is attached as "IS5".

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- 117 In turn, the Secretary of the Commission, confirmed the arrangement in her letter to Webber Wentzel dated 2 October 2025. This communication and the confirmation by the Commission necessarily occurred in accordance with its Rules providing that the Chairperson may give directions in regard the leading of evidence by specific witnesses.
- 118 In submissions by the Evidence Leaders in response to the objections against witnesses being led by their own legal representatives, it has already been placed on record before the Commission that the Evidence Leaders had been under the (incorrect) impression that the abovementioned communications between Webber Wentzel and the Commission were accessible to all interested parties as they had been uploaded onto a shared platform
- 119 In a pre-hearing meeting of 27 October 2025 that was attended by all the parties, it became apparent that not everyone had access to the shared platform and the uploaded communications.
- 120 I point out here that it is readily apparent from these facts that the arrangement that Mr Varney would lead the Calata Group's witnesses could not have constituted "a secret agreement" made in the absence of parties who would otherwise have had an interest in those discussions.
- 121 Upon realisation, in the pre-hearing meeting of 27 October 2025, that other interested parties did not have access to the shared platform, and accordingly had not become aware of the correspondence with Webber Wentzel about the arrangement that Mr Varney would lead the Calata Group's witnesses, it was

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decided that all correspondences between interested parties and the Commission would be uploaded to the Commission's website where they would be readily available to everyone, including the public. This is now the practice.

122 In the pre-hearing meeting, various parties objected to the arrangement that Mr Varney would lead the Calata Group's witnesses and the Chairperson accordingly issued a directive that objecting parties file written objections and submissions regarding "the objection against the leading of witnesses by their legal representatives when so requested and the contention that all evidence before the Commission must be led exclusively by the Evidence Leaders".

123 I attach a copy of this directive of 27 October 2025, marked "IS6".

124 I also attach, marked "IS7", my correspondence of even date sent after the pre-hearing meeting in response to a request for information by the attorneys of record for President Mbeki, Boqwana Burns Incorporated.

125 In that correspondence, I indicated that Mr Varney and I had initially reached an oral agreement regarding the leading of the Calata Group's witnesses and that Mr Varney's request to lead those witnesses was "*considered and granted in line with Rule 3.1 of the Commission's Rules.*"

126 Insofar as it may be suggested that I made some irregular arrangement with Mr Varney in the absence of the other parties, this objection is unsustainable

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for the additional reason that it is an ill-considered importation of the principles ordinarily applicable to adversarial proceedings.

127 There is simply no prejudice to be guarded against in the Commission's own communications with a relevant party as to the ultimate identity of the person charged with the leading of their witnesses. This is so given the fundamentally inquisitorial nature of its proceedings.

128 In any event, on 10 November 2025, being the date of the hearing of the abovementioned objections and related submissions, the parties reached agreement on how similar matters would be handled in future. President Mbeki's attorneys were part of this agreement.

129 In the result, on 28 November 2025, the Commission handed down a ruling in, amongst others, the following terms:

"1 In respect of requests by parties to lead witnesses, the Chairperson of the Commission will make such decisions in terms of Rule 3.1 of the Commission's Rules.

...

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 a letter addressed to the Chairperson, copied to all parties."

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130 A copy of this ruling is attached, marked "IS8".

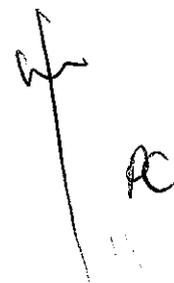
131 Insofar as the relevant issue between the parties related to grievances as to how the arrangement with Mr Varney had come about, and not the merits of Mr Varney's request per sé, the ruling of 28 November 2025 brought an end to the matter and settled the procedure to be adopted in future to avoid further conflicts or disagreements of a similar nature.

132 In accordance with the ruling, Mr Varney was permitted to proceed with the leading of the Calata Group's witnesses and it was not understood by the Commission that there remained any objection or opposition, in principle, to the permission granted to Mr Varney in this regard.

133 It appears this understanding was not shared by President Mbeki, whose attorneys of record responded to receipt of the ruling of 28 November 2025 by requesting that the Secretary of the Commission "[k]indly confirm for our records whether the Chairperson will provide reasons for her ruling." A copy of this email correspondence of 3 December 2025, is attached marked "IS9".

134 On 3 December 2025, the Secretary of the Commission responded to President Mbeki's attorneys stating as follows in relevant part:

- "2. Rule 3.1 gives the Chairperson the power to give directions for the presentation of witness's evidence and does not require reasons to be furnished for a direction made in terms of that rule.
3. No reasons will follow."

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135 A copy of this correspondence is attached marked "IS10".

136 It is apparent from the text of the ruling that the Chairperson applied her mind to the parties' submissions.

137 While the above-detailed objection process (relating to the permission granted to Mr Varney) was underway, the Minister of Justice and Constitutional Development (ninth respondent) informed the Chairperson that she was of the view that I should be relieved of my role as Evidence Leader because of my involvement in the *Nkadimeng* matter and my "conduct" in handling the request by Mr Varney to lead the Calata Group's witnesses.

138 In subsequent correspondence of 3 November 2025, the Minister requested that the Chairperson consider whether the decision to keep me as Evidence Leader "would be appropriate to preserve and maintain the integrity of the Commission".

139 I attach a copy of this letter, marked "IS11".

140 The Chairperson responded to the letter stating as follows in relevant part:

- "2. I deliberately decided not to address the possible conflict of interest in the work Adv Semanya SC would have done in the *Nkadimeng and Others v National Director of Public Prosecutions and Others (32709/07) (2008) ZAGPHC 433 (12 December 2008)* matter and the Terms of Reference of this Commission.
3. The request in your letter "that I consider whether the decision to keep Adv Semanya SC as evidence leader,

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would be appropriate to preserve and maintain the integrity of the Commission” is a matter that would require the decision by the Commission. To that end, a formal recusal application is required.”

141 A copy of the letter is attached as “**IS12**”.

142 In line with the above, and the indication by the Minister that she would make application for my recusal, the Chairperson issued a formal directive for the filing of papers in that regard. A copy of the directive is attached, marked “**IS13**”.

143 Two applications ultimately served before the Commission for my recusal. They were brought by the National Prosecution Authority (eighth respondent) and the Minister.

144 As stated in the Chairperson’s ruling of 4 December 2025, a copy of which is attached marked “**IS14**”, the Commission also considered the affidavit and submissions filed by Webber Wentzel on behalf of the Calata Group. The Calata Group affirmed confidence in my impartiality but ultimately suggested that I step down on grounds of efficiency and practicality.

145 The Chairperson summarised the grounds for recusal in the following terms:

“The grounds for the recusal revolved primarily around Semenya SC’s representation of both the DOJ and NPA in the matter of *Nkadimeng and Others v NDP and Others*, case number 32709/07, which culminated in a judgment by Legodi J on 12 December 2008. This prior representation and related conduct on the part of Semenya SC is said to create a conflict of interest and a reasonable apprehension of bias against the

DOJ and the NPA, by Semenya SC's continued participation in this Commission."

146 In ultimately dismissing the applications, the Chairperson made the following findings, which findings I submit cannot be faulted:

146.1 Evidence Leaders play a key role in assisting the Commission in executing its mandate and in seeking out and presenting evidence before the Commission. As such, Evidence Leaders are not to be elevated to decision makers, that being the exclusive domain of the Commission;

146.2 Insofar as the test set out in *President of the Republic of South Africa v South African Rugby Football Union* 1999 (4) SA 147 (CC) contemplates that recusal will be granted if it is established that a reasonable, objective and informed person would, on the correct facts, apprehend that the judge or decision maker will not bring an impartial mind to bear on the case at hand, that test is inapplicable to the Commission's Evidence Leaders who act merely as assistants to the Commission;

146.3 The recusal of evidence leaders may well require a test akin to that for the recusal of prosecutors, whose function is to place before a court credible evidence relevant to the alleged crime in question;

146.4 Given the inquisitorial nature of the Commission, "[t]heirs is not to attempt to secure a conviction or to represent one party in an adversarial dispute. What is required of evidence leaders is that they

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bring an open and enquiring mind to bear upon their tasks and to execute their duties subject to the directions of the Commission”;

146.5 The issue that falls for determination is whether my role in *Nkadimeng*, and other alleged conduct, will result in substantive unfairness in the ensuing work of the Commission;

146.6 In *Nkadimeng*, the Calata Group brought a narrowly tailored constitutional and administrative law challenge to the prosecution policy at issue. The amendments to the prosecution policy are simply one of the means through which the Calata Group claims that the prosecution of TRC cases was ultimately retarded;

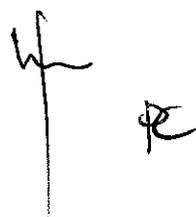
146.7 The *Nkadimeng* judgment is final and the issue of the constitutionality of the amendments to the prosecution policy is *res judicata*; and

146.8 There is, accordingly, no overlap between the subject matter in *Nkadimeng* and the terms of reference of the Commission.

147 Of particular significance is the Chairperson’s statement that:

“34. ...Although there may well be reference to the 2005 amendments to the prosecution policy, in the ensuing work of the Commission, this is a documented, historical fact about which there is unlikely to be any controversy.

35. The argument therefore that unfairness will flow from Semanya SC’s prior role in *Nkadimeng* is misplaced. It is as well to point out again that the role of evidence leaders, including the questioning of witnesses, is always subject to the direction of the Chairperson of the Commission, which is a key safeguard to ensure that the Commission’s proceedings are conducted in a fair manner.

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36. I can therefore not envisage that any substantive unfairness would emanate from Semanya SC's prior role in *Nkadimeng*."

*Grievances about my conduct and applications for my own recusal do not suggest that the Chairperson has acted irregularly*

148 It bears emphasis at the outset that the present proceedings are not a rehearing of the merits for my recusal.

149 Neither can they be allowed to constitute appeal proceedings in which the applicants' grievances with the Chairperson's ultimate finding on the merits is simply recast as the basis for an alleged apprehension of bias and, now, review proceedings, albeit contemplating her own recusal this time.

150 The Chairperson's ruling on my recusal is well-reasoned and betrays no suggestion that her treatment of me and/or the applications for my recusal are (or may reasonably be apprehended to be) informed by bias.

151 In the first instance, it will be abundantly clear that the Chairperson cannot be biased, or be apprehended of bias, towards an Evidence Leader tasked only with the presentation of evidence in inquisitorial proceedings.

152 The very nature of the relevant exercise by an Evidence Leader precludes that he can have any real interest with which the Chairperson is capable of aligning in her own functions.

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153 It is also noteworthy that President Zuma did not take part in the applications for my recusal but now seeks to cast doubt on even my own integrity in seeking the Chairperson's recusal for the reasons he alleges.

154 I submit that this *stratagem* should not be sanctioned by the Honourable Court.

155 Insofar as my previous involvement in *Nkadimeng* is no disqualifier for the reasons correctly relied upon by the Chairperson in her ruling of December 2025, the fact of any remaining unhappiness about the arrangement with Mr Varney, while regrettable, cannot reasonably be elevated to that which requires sanction or even her recusal.

156 Indeed, as I have stated above, the arrangement was made and finalised in line with the Commission's own Rules.

157 Rule 3 of the Commission is entitled "Witnesses presented by the Commission's Evidence Leader and implicated persons and their evidence" and provides as follows in relevant part:

"3.1 Subject to anything to the contrary contained in these Rules or to the Chairperson's directions in regard to any specific witness, the Commission's Evidence Leader bears the overall responsibility to present the evidence of witnesses to the Commission.

3.2 A member of the Commission's Evidence Leader may put questions to a witness whose evidence is presented to the Commission by the Commission's Evidence Leader including questions aimed at assisting the Commission in assessing the truthfulness of the evidence of a witness. Subject to the directions of the

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Chairperson, the Commission's Evidence Leader may ask leading questions.

3.3 If the Commission's Evidence Leader intends to present to the Commission a witness, whose evidence implicates or may implicate another person, it must, through the Secretary of the Commission, notify that person ("implicated person") in writing within a reasonable time before the witness gives evidence:

3.3.1 that he or she is, or may be, implicated by the witness' evidence;

3.3.2 in what way he or she is, or may be, implicated and furnish him or her with the witness' statement or relevant portions of the statement;

3.3.3 of the date when and the venue where the witness will give the evidence;

3.3.4 that he or she may attend the hearing at which the witness gives evidence;

3.3.5 that he or she may be assisted by a legal representative when the witness gives evidence;

3.3.6 that, if he or she wishes:

3.3.6.1 to give evidence himself or herself;

3.3.6.2 to call any witness to give evidence on his or her behalf; or

3.3.6.3 to cross-examine the witness;

he or she must, within two weeks from the date of notice, apply in writing to the Commission for leave to do so; and

3.3.7 that the Chairperson will decide the application."

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- 158 It is evident the Commission's Rules contemplate that the Evidence Leader bears the "overall" responsibility for the leading of witnesses and explicitly allow for the Chairperson's directions in regard to any specific witness.
- 159 As will be evident from the factual background summarised above, it has been articulated to the parties *ad nauseam* that Mr Varney was granted the requisite permission to lead the Calata Group's witnesses in accordance with Rule 3.1 of the Commission. I have already set out the chain of events as to how the Chairperson came to sanction Mr Varney's presentation of the relevant evidence in accordance with such Rule.
- 160 It is to be emphasised once more that nothing precluded the nature of my discussions with Mr Varney and there is no basis to allege any impropriety in relation thereto, either on my part or that of the Chairperson, subsequently.
- 161 Insofar as the Chairperson has correctly observed that the skirmish around the leading of the Calata Group's witnesses "is a discrete issue and was dealt with by the parties through an agreed formulation on 28 November 2025, which is reflected in Ruling 1 which I handed down on that date", it is difficult to see how there can be said to be any merit at all to the contention that the Chairperson's "mishandling" of the matter now requires her recusal.
- 162 This, then, ought to be the end of the matter and I submit there is nothing before the Honourable Court to suggest that the Chairperson's own conduct in regard the above matter is blameworthy or otherwise indicative of some bias she may have towards me or against the applicants.

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**THE CHAIRPERSON IS NOT A WITNESS BEFORE THE COMMISSION**

163 Both applicants contemplate a further ground of review on the premise that the inclusion of certain of the Chairperson's former colleagues as witnesses before the Commission means that the Chairperson, too, stands to be called as a witness before the Commission.

164 There are no facts on which this allegations is founded. Yet it is argued, on no more than surmise that the Chairperson is necessarily precluded from acting as such and cannot be permitted to act "as a judge in her own case".

165 In President Zuma's supplementary founding affidavit, he states as follows in support of the argument that the Chairperson is, in fact, a competent or potential witness before the Commission:

"34. From the above as well as the line-up of witnesses and additional information which has been recently sent out by the Commission, it ought to be clear that:-

34.1 fellow TRC Commissioners and relevant colleagues of the Chairperson will certainly testify in the Commission. In the case of Ms Sooka she has already commenced her testimony o 17 February 2026;

34.2 the Chairperson's former boss, Adv Ngcuka has been called upon to testify in the Commission as a material witness; and/or

34.3 the Chairperson is herself a competent or qualified to be a material witness in respect of the mandate of the Commission, which automatically disqualifies her from also sitting as a Commissioner because *nemo iudex in sua causa*

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(nobody should be a judge in his or her own case).

35. In light of the above new facts it would be untenable for the first respondent and/or the President to deny the inherent and multiple grounds for the requisite reasonable apprehension of bias and/or conflicts of interests on the part of the first respondent as a result of her relevant vocational history which has been invoked by the applicants."

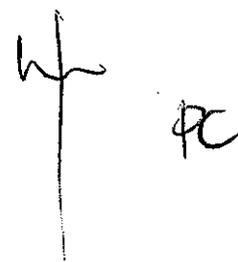
166 President Mbeki echoes this sentiment and goes on to state as follows in his own further affidavit:

"25 It is common cause that Justice Khampepe and Justice Saldanha were in the HRIU unit at the same time. Justice Khampepe's exact duties in this unit remain unexplained by her or the Commission. But they would clearly include what Justice Saldanha states in his witness statement.

26 What is clear, however, is that like Justice Saldanha, Justice Khampepe can be called to answer the question that the Commission posed to Justice Saldanha. In other words, because they were in the unit at the same time, they can both be asked whether they had access to information concerning decisions, discussions, or policies affecting the investigation and prosecution of TRC related cases. Justice Khampepe is in as good a position to answer this question as is Justice Saldanha. She is a competent and compellable witness before the Commission. She could be subpoenaed to furnish the same information, in response to the same question, that Justice Saldanha has been requested to furnish. Mr Zuma is entirely correct in his conclusion that Justice Khampepe is, essentially, a judge in her own case or is tasked to investigate matters in which she was directly involved as an important role player. The matters are clearly directly relevant to the terms of reference of the Commission; hence the Request for Assistance notice to Justice Saldanha, its content and the content of Justice Saldanha's witness statement."

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- 167 With respect, it is evident from the above that the applicants labour under great misapprehension as to the applicable legal position on the very matter they purport to bring to the Court's attention.
- 168 In the first instance, the principle of *nemo iudex in sua causa* (nobody should be a judge in his or her own case) can find no application in inquisitorial proceedings in which there is neither an adjudicating "judge" in the traditional sense nor is there any accused or litigating party upon whose case such judge must adjudicate.
- 169 In any event, even if the principle of *nemo iudex in sua causa* were to be imported into the present matter without more, and it be accepted that the Chairperson may well have stood to be called as a witness before the Commission, the fact of the matter is that she has not. Indeed, it is not contemplated at all that the Chairperson will or should be called as a witness in respect of the matters within the Commission's mandate.
- 170 If a judicial officer is a material witness (being a witness whose evidence is necessary in the relevant proceedings), she must recuse herself from presiding in the matter.
- 171 However, where there is already evidence from elsewhere as to the issue on which the judicial officer could have testified, the judicial officer in question may preside in the proceedings insofar as she need not be the one to give the relevant evidence.

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172 Thus, the fact that certain individuals who once worked with the Chairperson will be called to give evidence is not a basis for the disqualification of the Chairperson.

173 Indeed, the applicants inadvertently make the point on the Chairperson's behalf. The applicants rely on precisely the fact that other persons have already been called upon to testify on matters relevant to the terms of reference. The Chairperson is simply not implicated at all. There is no factual basis to say that the Chairperson is a likely witness in these proceedings. In fact the applicants do not point to any fact upon which requires the evidence of the Chairperson and is germane to the terms of reference.

174 The calling of the relevant witnesses makes clear that the Chairperson's own witness testimony is not relevant and that, at best for the applicants, there in any event exist other persons well-placed to speak to the issues they allege are within the Chairperson's own knowledge. The mere fact of the Chairperson's personal knowledge take the matter no further and she would, in any event, remain competent to adjudicate upon the relevant issues even if the Commission's proceedings were adversarial and demanded that she act in her judicial capacity. Judicial authority is clear on the point. Judges come to their role with previous backgrounds and histories. A judge's role once appointed is to pay no regard to their history and past associations. Any reasonable person knows that and cannot use that as a basis for application for recusal.

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- 175 It will be clear then that this particular argument by the applicants can stand to be dismissed.
- 176 To be clear, even if it is to be presumed in the applicants' favour that all relevant allegations as to the Chairperson's institutional knowledge are true and that she very well could have been called to give evidence, that evidence will be before the Commission *aliunde* in any event. On precisely such basis, the Chairperson's own testimony is of no necessity and there accordingly exist no legal precepts requiring her recusal.
- 177 Insofar as the applicants place reliance upon this ground for the Chairperson's recusal, it is misinformed and cannot reasonably sustain the relief sought.

#### **SERIATUM RESPONSES**

- 178 What follows is the seriatum responses to former Presidents Zuma and Mbeki's affidavits as well as the incumbent President Ramaphosa's Explanatory Affidavit. Any submissions of law or fact in the former President Zuma and Mbeki affidavit and that of President Ramaphosa's Explanatory Affidavit that are not addressed in the seriatum responses are denied by the Commission.

#### ***President Zuma's founding affidavit***

#### **Ad Paragraphs 1-2**

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179 Save to deny that the facts stated by President Zuma are true and correct, I admit these allegations.

**Ad Paragraphs 3-16**

180 Save to highlight that no permission has been granted to cite the Chairperson in these proceedings, I admit these allegations.

**Ad Paragraphs 17-22**

181 I admit these allegations.

**Ad Paragraphs 23-38**

182 I admit these allegations.

**Ad Paragraphs 29-31**

183 Save to admit the lodgement and dismissal of the applications for my recusal, I deny these allegations insofar as I have no personal knowledge thereof.

**Ad Paragraphs 32-33**

184 I deny these allegations.

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185 As outlined above, President Zuma impermissibly makes unfounded and slanderous accusations but fails to provide the requisite evidence. This can be no reasonable basis for the relief claimed.

186 I also state once more that the Chairperson's vocational history is a matter of public record and ought to have been known by someone of President Zuma's former office

**Ad Paragraphs 34-35**

187 I admit these allegations.

**Ad Paragraphs 36-43**

188 I deny these allegations.

189 In the first instance, I have no knowledge of that which ultimately informed President Zuma's decision to delay in seeking the Chairperson's recusal.

190 To the extent necessary, I also reiterate that President Zuma should not be permitted to rely on the existence of an anonymous whistleblower for his alleged possession of materials and communications that would, on his own version, have been illegally obtained and suggest criminality, if true (which is denied).

**Ad Paragraphs 44-46**

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191 I admit these allegations and have already dealt with the misguided allegations that the Chairperson was required to depose to any affidavit, in the first instance.

**Ad Paragraphs 47-48**

192 deny these allegations.

**Ad Paragraphs 49-56**

193 Save to deny that the period between the Chairperson's ruling and the proposed prehearing meeting was inadequate, I admit these allegations.

**Ad Paragraph 57**

194 I deny these allegations insofar as I have no personal knowledge of President Zuma's instructions to his legal team and the work accordingly undertaken by such team.

**Ad Paragraphs 58-67**

195 I deny that 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.

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196 I also highlight that the apparently urgent nature of this application was precipitated by President Zuma's own delay in bringing the underlying application before the Commission for the Chairperson's recusal, in the first instance.

197 Save as aforesaid, I admit the necessity for the expedited resolution of the issues brought by the applicants before the Honourable Court.

**Ad Paragraphs 68-75**

198 I admit these allegations only insofar as they are accurate representations of the relevant legal instruments.

**Ad Paragraphs 76-80**

199 I deny that the Chairperson's decision ought properly to be declared unconstitutional and/or reviewed and set aside.

**Ad Paragraphs 81-87**

200 I deny that the Chairperson's conduct is in violation of the Bill of Rights or any other provision of the Constitution. I also deny that the Chairperson in violation of section 8 of PRECCA and has, in so doing, committed a criminal offence.

**Ad Paragraphs 88-91**

  
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201 For the reasons already outlined above, I deny that PAJA is of application to the Chairperson's dismissal of President Zuma's application for her recusal.

202 To the extent necessary, and in the event that it is found PAJA is of application, I deny that the Chairperson's impugned decision is in breach of the legal standards therein contemplated.

**Ad Paragraphs 92-93**

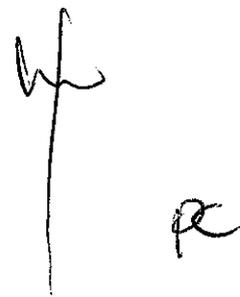
203 I deny that the Chairperson's ruling constitutes administrative action and that PAJA is of application to such ruling.

**Ad Paragraph 94**

204 For the reasons already set out, I deny that the Chairperson's ruling offends against the principle of legality and that the impugned conduct was irrational or otherwise unlawful.

**Ad Paragraphs 95-98**

205 I deny these allegations. The Chairperson's ruling is neither unlawful for any reason, nor is the overall conduct of the Chairperson "of sufficient gravity to attract not only a punitive order of costs but also to warrant the payment of personal costs by the Chairperson".

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***President Zuma's supplementary affidavit and founding affidavit in the application to compel in terms of rule 53(1)(b)***

**Ad paragraphs 1-9**

206 Save to deny that the facts stated by President Zuma are true and correct, I admit these allegations.

**Ad paragraphs 10-22**

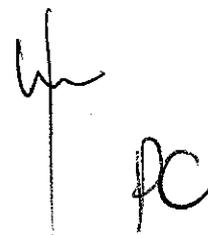
207 I deny these allegations.

208 There has, in the first instance, been no improper withholding of the record.

209 President Zuma is not at liberty simply to make unfounded allegations on the basis that a reverse onus will then be imposed upon the respondents to divulge private communications notwithstanding the absence of any truth or substance to the allegations.

**Ad paragraphs 23-30**

210 I have already set out the reasons for which the Honourable Court cannot grant the alternative relief contemplated by President Mbeki and deny that it is competent relief to be granted in default or otherwise.

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**Ad paragraphs 31-37**

211 For the reasons I have already expanded upon, I deny that the Chairperson stands to be recused on the basis that she is a competent witness before the Commission.

**Ad paragraphs 38-41**

212 I deny that the Chairperson has committed any error of law "that the terms of reference ought properly to be interpreted literally and/or restrictively" to exclude that which occurred in the period predating 2003.

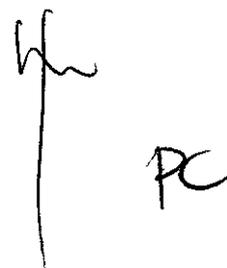
**Ad paragraphs 42-52**

213 For the reasons already outlined above, I deny that the decision to dismiss President Zuma's application on account of his significant delay was irrational or otherwise unlawful.

**Ad paragraphs 53-55**

214 I deny that the Chairperson laboured under any error of law in dismissing President Zuma's application, including in relation (but not limited) to:

215 The *SARFU* judgment and the necessity of the Chairperson's own affidavit in proceedings for her recusal;

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**Ad paragraphs 56-61**

216 I deny that there is any material before the Honourable Court that enhances any case for the Chairperson's actual and/or reasonably perceived bias.

**Ad paragraphs 62-64**

217 I admit these allegations.

***President Mbeki's answering affidavit and founding affidavit in application to be permitted to act and joined as a co-applicant***

**Ad Paragraphs 1-6**

218 Save to deny that the facts stated by President Mbeki are true and correct, I admit these allegations.

**Ad Paragraphs 7-12**

219 I admit these allegations.

**Ad Paragraphs 13-23**

220 For the reasons already extensively outlined, I deny these allegations.

**Ad Paragraphs 24-29**

hf  
pc

221 I admit these allegations.

**Ad Paragraphs 30-33**

222 I deny these allegations.

223 President Mbeki was not "denied" amnesty and merely had his application determined to be non-compliant with the requirements for amnesty, in the first instance.

**Ad Paragraphs 34-38**

224 I admit these allegations.

**Ad Paragraphs 39-50**

225 Save to deny that the Commission contemplates the investigation of even those events predating 2003 in direct contradiction of the express provisions of the Terms of Reference, I admit these allegations.

**Ad Paragraphs 51-56**

226 I admit these allegations.

**Ad Paragraphs 57-58**

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227 I deny these allegations insofar as they relate to President Mbeki and matter about which I have no personal knowledge.

**Ad Paragraphs 59-71**

228 Save to admit the chronology of events, including the formal objections culminating in applications for my recusal, I deny these allegations and have already set out the basis on which there cannot be said to have been any impropriety in relation to the permission granted to Mr Varney for the leading of the Calata Group's witnesses.

**Ad Paragraphs 72-75**

229 I admit these allegations.

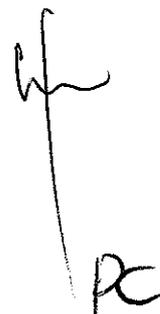
**Ad Paragraphs 76-79**

230 I deny that PAJA is of application and that the Chairperson's ruling is reviewable on the grounds set out.

**Ad Paragraphs 80-155**

231 I have extensively outlined the reasons for which President Mbeki's grounds of review cannot be reasonably sustained.

232 I reiterate that I deny these allegations.

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**Ad Paragraphs 156-160**

233 I deny these allegations.

235 It is simply not the case that the Chairperson had inappropriate regard for the disruption that would be occasioned to the Commission as the result of the applications for her recusal.

236 I further deny that the Chairperson misunderstood the recusal test and sought to intrude into the applicable recusal enquiry.

**Ad Paragraphs 161-165**

237 I deny these allegations and have already set out the reasons for which it was appropriate and correct that the Chairperson's co-Commissioners did not concur in her ruling.

**Ad Paragraphs 166-174**

238 I highlight that the present urgency before the Honourable Court has been precipitated only by the applicants' own conduct in delaying their respective applications for the Chairperson's recusal.

**Ad Paragraphs 175-178**A handwritten signature in black ink, consisting of a stylized 'W' or 'H' shape with a vertical line extending downwards.

PC

239 I have already set out the basis on which the requested relief cannot be sustained.

240 Save to deny that the relief is to be granted, and that the Chairperson's ruling is unlawful, I admit these allegations.

*President Mbeki's further affidavit*

**Ad Paragraphs 1-6**

241 Save to deny that the facts stated by President Mbeki are true and correct, I admit these allegations.

**Ad Paragraphs 7-29**

242 I have already traversed the reasons for which the Chairperson cannot be recused on the basis that she is a competent witness before the Commission and reiterate the relevant allegations to the extent necessary.

243 I further deny that the Chairperson had any role in the NPA's Human Rights Investigation Unit.

**Ad Paragraphs 30-34**

244 I deny these allegations to the extent that they relate to President Mbeki and matters about which I have no personal knowledge.



PC

**PRESIDENT RAMAPHOSA'S EXPLANATORY AFFIDAVIT**

245 As this affidavit was being finalised, my attorneys received an explanatory affidavit by President Ramaphosa. Since the affidavit makes statements that require the attention of the Commission, I have been advised to respond to its contents, which I do below.

**Ad paragraphs 1 to 4**

246 I note that the President does not oppose the application. I submit that the President's decision to abide the decision of the Court is of no legal consequence. The fact that the President does not oppose the application does not trump the duty of this Court to decide whether or not the application has any merit.

**Ad paragraphs 5 and 6**

247 I note the attributes mentioned by the President as to why he considered Justice Khampepe to be suitable to Chair the Commission. It bears mentioning that Justice Khampepe also has an impeccable history as an attorney, senior members of the National Prosecuting Authority and involvement in this country's Truth and Reconciliation Commission and a strong reputation of independence, which were also necessary attributes for the appointment to the role of Chairperson of the Commission. All these attributes have made Justice Khampepe eminently qualified for the role of Chairperson.



**Ad paragraphs 7 and 8**

248 These are noted, and have been canvassed in response to the affidavits of the applicants.

**Ad paragraph 9**

249 The allegations set out in this paragraph ought to be struck out as irrelevant and vexatious. This is a review application. Only those facts that were before the decision-maker are admissible. President Ramaphosa has not applied for the introduction of new evidence on review. These allegations are therefore irrelevant to the issue before the Court. At any rate, they are deal with below.

Ad paragraph 9.1

250 This allegation is correct. I submit that it has no bearing on whether or not the application should succeed. It is also public knowledge which was known to the President and his advisors at the time of the Chairperson's appointment.

**Ad paragraph 9.2**

251 It is not clear what is the source of this statement by the President. No confirmatory affidavit is attached from any person with direct knowledge of the averment. Significantly, neither the President nor any of the applicants identify the alleged role the Chairperson is said to have played in the Human Rights



Investigation Unit of the NPA. As a matter of fact the Chairperson was never involved in the Human Rights Investigation Unit of the NPA at all.

**Ad paragraphs 9.3 to 9.5**

186 These decisions are public knowledge. That has been the case for many years. They were also known to the President at the time he made the decision to appoint the Chairperson.

**Ad paragraph 10**

187 These allegations are denied. It is not correct for the President to state that he was unaware (or could not reasonably be aware) of the allegations in paragraphs 9.1, 9.3, 9.4 and 9.5. These allegations were all public knowledge. The Chairperson's own profile which is on the website of the Constitutional Court states: "In 1995 she was appointed by former President Mandela as a TRC Commissioner and in the following year she was a member of the TRC's Amnesty Committee. She was then employed by the Department of Justice and Constitutional Development as Deputy National Director of Public Prosecutions, a post she held from September 1998 to December 1999." It is reasonable to assume that the President would have had regard, at least to the profile of Justice Khampepe, which is on the website of the Constitutional Court at the time of the making of the appointment.

189 Similarly, it is manifest that the Chairperson was a member of the Amnesty Committee of the TRC. The President, himself, admits that he found the

  
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decisions in issue from publicly available sources. Hence it is denied that he was not aware of the decisions made by Justice Khampepe in her capacity as a member of the TRC Amnesty Committee.

**Ad paragraph 11**

190 The President's understanding of the law is correct. The President is bound by the decision to appoint the Chairperson as a judge. If he does not agree with his own decision or believes that he acted irrationally in so doing, he has the option of approaching the Court for a self-review. He has not done that, which means that he remains bound by his own decision.

**Ad paragraph 12**

191 There was no duty on the part of Justice Khampepe to inform the President about information which is readily at the disposal of the President, which at any rate, is irrelevant to the decision at hand.

**Ad paragraph 13**

192 It is not correct that the President has no legal avenues available. He is entitled to bring a self-review application to set aside his own decision. To succeed, the President would need to plead that his own decision was unlawful and unconstitutional. In his entire affidavit nowhere does he in fact say that his decision is unlawful and unconstitutional. He merely refers to what he would have done, which is legally irrelevant.

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**Ad paragraph 14**

193 It will not be permissible for the Court to base its decisions on speculative assertions. The known facts are that the allegations contained in paragraph 9 of the President's explanatory affidavit were known publicly since the 1990s. The Chairperson's resume and profile has always referred to the previous roles that were played by the Chairperson at the NPA and the TRC. This was never hidden.

194 Moreover the President states that if he had known about these allegations he would have not have appointed Justice Khampepe. What is important is that the President does not submit that the reason he would not have appointed the Chairperson is that such appointment would have been unlawful and unconstitutional. He merely states that the decision would have attracted public criticism or been the subject of review proceedings. The fact of the matter is that there has been no "public criticism" of the decision to appoint the Chairperson. The fact that two former presidents do not agree with the decision does not translate into "public criticism". It is also correct that applications for recusal have been brought. However, they have no merit. Surely the President is not suggesting that he would avoid appointing a Judge to Chair a Commisison merely because a meritless recusal application can be brought.

195 Again, I emphasise that the President has elected not to challenge his own decision by a self review. If he believed that the decision was wrongful and

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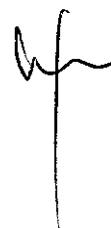
ought to change, that is the only legal avenue open to him, which he has thus far not exercised.

**Ad paragraph 15**

196 The allegations are noted. What is particularly notable is that the President is not advancing an argument that Justice Khampepe can reasonably be perceived as not bringing an open and impartial mind to the proceedings. Nor does he say that Justice Khampepe's role is reasonably impacted by any of her previous roles. And he is also not saying that there will be no public confidence in the work of the Commission chaired by Justice Khampepe. Insofar as these issues mentioned in paragraph 15 are imperatives for the Commission of this kind is concerned, I also agree. But I reject any suggestion that they apply to the person of Justice Khampepe.

**Ad paragraph 16**

197 The approach by the Minister was improper and amounted to unlawful and unconstitutional interference with the work of the Commission, which impacts the independence of the Commission and that of the broader judiciary. Once a judge has been appointed to Chair a Judicial Commission of Inquiry, he or she is expected to carry out his or her functions with the requisite level of independence. The executive is also expected to respect the independence and autonomy of the Commission. The fact that the President sanctioned an unconstitutional approach by the Minister to a Judge is itself regrettable.

  
PC

198 Instead of the unconstitutional conduct of the President and the Minister, the correct approach would have been to bring judicial review proceedings to set aside the President's decision.

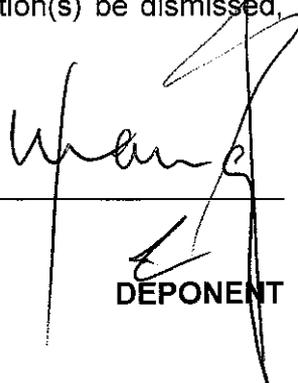
199 It also appears that the President believes that the Chairperson of the Inquiry should have yielded to an illegal executive instruction to resign her appointment. I am advised that it was correct for Justice Khampepe to refuse to follow the executive instructions to resign her appointment.

### CONCLUSION

200 For all the reasons above, I submit it is abundantly clear that the various allegations by the applicants hold no merit.

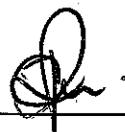
201 It follows that the basis of their challenge and reliance upon PAJA is entirely misplaced and cannot be sustained.

**WHEREFORE** I respectfully submit that the present application(s) be dismissed, with costs.

  
\_\_\_\_\_  
DEPONENT

I certify that the Deponent acknowledged that he knows and understands the contents of this declaration, and that I duly administered the oath as prescribed by the Regulation Notice R1258 of July 1972, and that thereafter the said deponent in

my presence signed the declaration at Bryanston on this the 06 day of March 2026,  
and the deponent's signature was placed thereon in my presence.



**COMMISSIONER OF OATHS**

**Phathutshedzo Cansly Ramaru**  
Commissioner of Oaths (RSA)  
Practicing Attorney  
66 Peter Place, Hurlingham, Sandton

"ISI"

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## The Chairperson

**Justice Sisi Khampepe**

Sci-Bono Complex

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Johannesburg, 2196

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**C/O Secretary of the Commission**

By email: [secretary@trc-inquiry.org.za](mailto:secretary@trc-inquiry.org.za)

Your reference

Our reference

Date

A Thakor / N Thema / J Venter / LM  
Doubell  
4005095

11 August 2025

Dear Justice Khampepe

## INTRODUCTION TO LUKHANYO CALATA AND 21 OTHER FAMILY MEMBERS

1. We act for Lukhanyo Calata and 21 other family members, who are victims or are related to victims of apartheid-era crimes.
2. We write to place our clients on record as parties who have a direct and substantial interest in the work of your Commission.
3. We also represent the Foundation for Human Rights. A list of our clients and the families they represent is annexed to this letter marked "A".

## Background

4. Our clients' cases were amongst those referred by the Truth and Reconciliation Commission (TRC) to the National Prosecuting Authority (NPA) for possible prosecution of the alleged perpetrators who were not amnestied (**the TRC cases**). The families are still waiting for justice and closure nearly three decades later.
5. We acted for the family of Nokuthula Simelane in 2015 who applied to Court for an order compelling a prosecutorial decision in *Nkadimeng v NDPP and Others*, Gauteng Division, Case no 35554/2015. In that matter we put up supporting affidavits from former NDPP Adv Vusi Pikoli and former head of the Priority Crimes Litigation Unit, Adv Anton Ackermann SC who both confirmed that the TRC cases had been blocked by political interference (**the interference**).

2025 08 11 WW Letter To Judge Khampepe

Senior Partner: G Driver Managing Partner: S Patel Partners: BW Abraham RB Africa C Alexander AK Allie NG Alp TB Ball DC Bayman AP Blair K Blom N Blom AJR Booysen AR Bowley M Bux V Campos RI Carrim T Cassim SJ Chong ME Claassens KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies KM Davis PM Daya L de Bruyn PU Dela M Denenga C Dennehy DW de Villiers HM de Villiers ST Dias BEC Dickinson DA Dingley W Drue E Durman GP Duncan CP du Toit TC Dye L Dyer SK Edmundson LF Egypt KH Eisler JC Els S Farren K Fazel G Fitzmaurice JB Forman L Franca M Garden MN Gibson H Goolam C Gopal CI Gouws PD Grealy L Green O Gusha JM Harvey JS Henning KR Hillis CM Hoffeld PM Holloway SJ Hulton KT Inglis ME Jarvis JC Jones CM Jonker S Jooste LA Kahn L Kamukwamba M Kennedy A Keyser GR Kgalle

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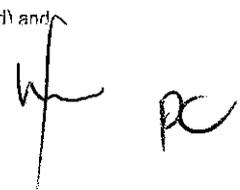
6. In 2018, acting for the family of Ahmed Timol, we filed the aforesaid affidavits before the full court in *Rodrigues v NDPP & Ors* [2019] 3 All SA 962 (GJ) which found that political interference in the TRC cases had occurred.
7. Between 2019 and 2024, our clients, other families and the former TRC Commissioners requested the President on multiple occasions to establish a commission of inquiry into the interference. These requests were ignored.
8. On their behalf we also requested the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (**the Zondo Commission**) in 2019 to investigate the interference. Although the Zondo Commission started some investigations during 2020 it was not able to complete its inquiries before its closure in 2021.

#### Litigation

9. On 17 January 2025, our clients launched an application under case no 2025/5245 in the High Court sitting in Pretoria, seeking a declarator on the breach of various constitutional rights by the state arising from the blocking of the TRC cases. They also sought constitutional damages and the establishment of a commission of inquiry into the interference.<sup>1</sup>
10. The President and most of the respondents withdrew their opposition to the litigation on 18 February 2025. On 26 February 2025 the President indicated in a media statement that he was agreeable to establishing a commission of inquiry and expressed a desire to engage in mediation on the balance of the relief.
11. During the settlement negotiations the President's legal representatives confirmed the decision of the President to establish a commission but renounced his offer of mediation on the question of constitutional damages, stating that the proposed commission would handle that aspect. While our clients agreed to an inquiry into the interference, they rejected the proposal that the commission deal with the damages claim.
12. On 29 May 2025, in direct response to the relief sought by our clients, and as undertaken during settlement negotiations, the President promulgated the establishment of a Commission of Inquiry into the interference (**the Commission**). The terms of reference were largely agreed to between the parties, bar the 2003 commencement date of the period to be investigated, and the question of damages sought by the families in the litigation.
13. Subsequently the President applied to reinstate his opposition to the application and sought a stay of the proceedings, pending the outcome of the Commission, which was opposed by the families. Oral arguments were heard before the Pretoria High Court on 6 August 2025, and judgment is awaited.

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<sup>1</sup> An overview of the court application can be downloaded on this link: [A full set of the court papers \(signed and stamped\) and](#)

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Page 3

**Request for meeting**

14. We request a meeting with you at your convenience, alternatively with senior members of your team. We have assembled a considerable volume of information over several years which we would like to share with you.
15. We also wish to suggest a list of persons of interest the Commission may wish to approach; as well as various sources of information that the Commission may wish to explore. In addition, we would like to suggest potential witnesses we believe ought to appear in the hearings. ~~We further wish to request that we be granted permission to lead certain witnesses and cross-examine others, subject to the Commission's directions.~~
16. We respectfully request to be put on the mailing list of interested parties impacted by the work of the Commission so that we receive timeous notifications of important messages from the Commission's secretariat. We are reachable via the contact details below.
17. We look forward to hearing from you.

Yours faithfully



**WEBBER WENTZEL**

Asmita Thakor

Partner

Direct tel: +27 11 530 5000

Email: [asmita.thakor@webberwentzel.com](mailto:asmita.thakor@webberwentzel.com)

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Received a copy hereof this the \_\_\_\_\_ day of  
August 2025.



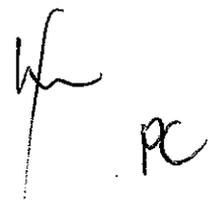
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Page 4

### ANNEX "A"

- 1) Likhanyo Bruce Matthews Galata – representing the family of the late Fort Galata, one of the Cradock Four activists abducted and murdered near Port Elizabeth in 1985.
- 2) Alegria Kutsaka Nyoka – representing the family of the late Caiphus Nyoka murdered by the police in Daveyton in 1987.
- 3) Bonakele Jacobs – representing the family of the late Mxolisi 'Dicky' Jacobs, who died in security detention in the Upington Prison in 1986.
- 4) Fatima Haron-Masoet – representing the family of the late Imam Haron, tortured and killed in security detention in Cape Town in 1969.
- 5) Tryphina Nomandlovu Mokgatle – representing the family of the late Zandisile Musi as well as other Cosas Four families, including the families of Eustice 'Bimbo' Madikela, Ntshingo Matabane and Fanyana Nhlapo. In 1982, Madikela, Matabane, Nhlapo were murdered by the Security Branch, while Musi was seriously injured.
- 6) Karl Andrew Weber – a survivor of the Highgate Hotel Massacre in East London on 1 May 1993.
- 7) Kim Turner – representing the family of the late Dr Rick Turner murdered at his Durban home in 1978.
- 8) Lyndene Page – sister of the late Deon Harris, who died at the Highgate Hotel Massacre on 1 May 1993.
- 9) Mbuso Khoza – representing the family of Musawakhe 'Sbho' Phewa, who was forcibly disappeared in 1987.
- 10) Neville Beling – a survivor of the Highgate Hotel Massacre in East London on 1 May 1993.
- 11) Nombuyiselo Mhlauli – representing the family of the late Sicelo Mhlauli, one of the Cradock Four.
- 12) Sarah Bibi Lail – representing the family of the late Dr Hoosen Haffejee, tortured and murdered at Durban's Brighton Beach police station in 1977.
- 13) Sizakele Ernestina Simelane – representing the family of the late Nokuthula Simelane, who was abducted, tortured, and forcibly disappeared by the Security Branch in 1983.
- 14) Sindiswa Elizabeth Mkonto – representing the family of the late Sparrow Mkonto, one of the Cradock Four.
- 15) Stephans Mbuti Mabelane – representing the family of the late Matthews 'Mojo' Mabelane, who died in security detention at the Johannesburg's John Vorster Square, in 1977.
- 16) Thuli Kubheka – representing the family of Ntombikayise Priscilla Kubheka, who was forcibly disappeared in 1987, near Winkelspruit, KZN.
- 17) Hlekani Edith Rikhotso – representing the family of Ignatius 'Iggy' Mthebule, who was forcibly disappeared in 1987.
- 18) Tshidiso Motasi – representing the family of the late Richard and Busisiwe Irene Motasi murdered by the SAP at their home in Hammanskraal in 1987.
- 19) Nomali Rita Galela – representing the family of the late Twasile Champion Galela, one of the PEBCO 3 activists abducted, tortured, and murdered by the Security Branch at Post Chalmers in 1985.
- 20) Phumeza Mandisa Hashe – representing the family of the late Siphso Hashe, one of the PEBCO 3.
- 21) Mkhontowesizwe Godolozzi – representing the family of the late Qaqawuli Godolozzi, one of the PEBCO 3.
- 22) Mogapi Solomon Tihapi – representing the family of Nicholas Ramatua 'Boiki' Tihapi, who was forcibly

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Honourable Madam Justice, Khampepe  
C/o The Secretary  
Ms Mphothu Thokoa  
Sci-Bono Complex  
Cnr Miriam Makeba and Helen Joseph  
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By email: [secretary@trc-inquiry.org.za](mailto:secretary@trc-inquiry.org.za)

Your reference  
TRC Cases Inquiry

Our reference  
A Thakor / N Thema / J Venter / LM  
Doubell  
4017862

Date  
18 September 2008



Dear Madam Justice, Khampepe

## POSITION OF THE EVIDENCE LEADER VIS-À-VIS CERTAIN ASPECTS OF THE EVIDENCE

1. We refer to the above matter.
2. It has come to our attention that the chief evidence leader, Ishmael Semenya SC ("Mr Semenya"), represented the National Director of Public Prosecutions ("the NDPP") and the Minister of Justice ("the Minister") in *Nkadimeng and Others v National Director of Public Prosecutions and Others* [2008] ZAGPHC 422.
3. In the foregoing matter, Thembi Nkadimeng (now Simelane) and the wives of the Cradock Four ("the applicants") challenged the amendments in Appendix A to the Prosecution Policy titled: "PROSECUTING POLICY AND DIRECTIVES RELATING TO THE PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST AND WHICH WERE COMMITTED ON OR BEFORE 11 MAY 1994" ("the amendments").
4. The applicants contended that the amendments amounted to "a backdoor amnesty" and an unlawful attempt to shield apartheid-era perpetrators from justice. Judge M F Legodi declared the amendments to be unconstitutional and set them aside.
5. Our clients (who include the Simelane and Cradock Four families) intend to put up the amendments to the Prosecution Policy as a key example of how the South African government sought to intervene and block the bulk of the TRC cases from proceeding.
6. In order to avoid any public perception of partiality or conflict we respectfully request that

2025 09 18 WW Letter To The TRC COI (Evidence Leader)(23289180.2)

Senior Partner: G Driver Managing Partner: S Patel Partners: BW Abraham RB Africa C Alexander AK Allie NG Alp TB Ball DC Bayman AP Blair K Blom N Blom AJR Booysen AR Bowley M Bux V Campos RI Carrim T Cassim SJ Chong ME Claassens KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies KM Davis PM Daya L de Bruyn PU Dela M Denenga C Dennehy DW de Villiers HM de Villiers ST Dias BEC Dickinson DA Dingley W Drue E Durman GP Duncan CP du Toit TC Dye L Dyer SK Edmundson LF Egypt KH Eiser JC Els S Farren K Fazel G Fitzmaurice JB Forman L França M Garden MM Gibson H Goolam C Gopal CI Gouws PD Grealy L Green O Gusha JM Harvey JS Henning KR Hillis CM Holfeld PM Holloway SJ Hutton KT Inglis ME Jarvis JC Jones CM Jonker S Jooste LA Kahn L Kamukwamba M Kennedy A Keyser GR Kgalle MT Kgoadi A Khumalo KE Kilner MD Kota JC Kraamwinkel AC Kruger S Kruger J Lamb LC Lambrechts LM Lamola B Lötter E Louw CF Mackenzie M Mahlangu V Mannar CCT Marupen-Shkaidy G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer A Mhlongo AJ Mills D Mito M Mkhabela DR Mogapi P Mohanlal L Moolman LE Mostert VM Movshovich M Mpungose A Muir C Murphy D Naidoo P Naidoo DC Nchabeleng DP Ndiweni ST Ngcamu LM Nkanga C Nöthling PD Novotny M Nxumalo AN Nyatumba MB Nzimande A October L Odendaal N Paige AS Parry GR Penfold SE Phajane M Philippides BA Phillips MA Phillips CH Plenaar MP Pool DJ Rafferty D Ramjattan GI Rapson K Rew G Richards-Smith SA Ritchie J Roberts BJ Rule S Rule G Sader H Samsodien DA Serumula KE Shepherd ZK Sibeko N Singh N Singh-Nogueira CF Sieberhagen P Singh S Sithole J Smit C Smith P Soni MP Spalding MW Straeuli LJ Swaine Z Swanepoel WV Tembedza A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tlhavani G Truter PZ Vanda SE van der Meulen JP van der Poel MS van der Walt CS Vanmali N van Vuuren JE Veeran HM Venter B Verheul MG Versfeld TA Versfeld C Vertue T Viljoen DM Visagie EME Ward D Wessels AWR Westwood RH Wilson JS Whitehead KD Wolmarans

**WEBBER WENTZEL**

in alliance with > Linklaters

Page 2

Mr Semenya not be involved in any of the deliberations or leading or cross examination of witnesses in relation to the amendments of the Prosecution Policy. As there is in any event likely to be a division of labour amongst the evidence leaders, we believe this to be a practical and sensible suggestion.

7. Since the Commission must be seen by the community of victims and families and the wider public to be scrupulously independent, we trust that you will give our proposal serious consideration.
8. We look forward to hearing from you at your earliest convenience.

Yours faithfully



**WEBBER WENTZEL**

Asmita Thakor

Partner

Direct tel: +27 11 530 5875

Email: [asmita.thakor@webberwentzel.com](mailto:asmita.thakor@webberwentzel.com)





"IS3"

19 September 2025

**Webber Wentzel**

90 Rivonia Road, Sandton

Johannesburg, 2196

Your Ref: A Thakor / N Thema / J Venter / LM Doubell 4017862

Dear Lize-Mari,



**RE: POSITION OF THE EVIDENCE LEADER VIS-À-VIS CERTAIN ASPECTS OF THE EVIDENCE**

1. I acknowledge with thanks your letter dated 18 September 2025 in which you raise concerns held by some of your clients about Adv Semenya SC having acted for the NPA concerning the lawfulness of the Prosecutorial Policy of the NPA.
2. I have sent your letter to Adv Semenya SC for his response.
3. He advises me that Judge Legodi, in that matter, was not called to decide whether there was any interference with the investigation or prosecution of the TRC cases which is the mandate of this Commission.
4. Having considered the concerns of your client and having heard Adv Semenya SC's response, I am minded going with a solution you propose. The concerns expressed by your client are noted. I make no decision on them. I will have another member of the Evidence Leader deal with this aspect.

W  
PC

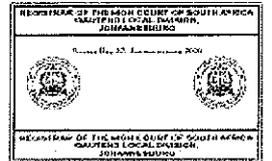




I hope this assuages your clients' concerns.

Regards,

**Khampepe J**  
Chairperson



PC



"IS4"

**Adv M Thokoa**

Secretary: Commission of Inquiry, Stopped TRC Investigations and/or Prosecutions

By email: [secretary@trc-inquiry.org.za](mailto:secretary@trc-inquiry.org.za)

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Docex 26 Johannesburg  
T +27 (0) 11 530 5000  
F +27 (0) 11 530 5111  
[www.webberwentzel.com](http://www.webberwentzel.com)

Your reference  
TRC Cases Inquiry

Our reference  
A Thakor / N Thema / J Venter /  
LM Doubell / 4017862

Date  
25 September 2025

Dear Adv Thokoa,

**Meeting with the legal team for Calata and twenty-five others**

1. We confirm that we act on behalf Lukhanyo Calata and twenty-five others, who are survivors and families of victims of apartheid era gross human rights violations, as well as the Foundation for Human Rights.
2. To date, we have shared all our operational documents with the Commission, including the following:
  - 2.1 List of complainants;
  - 2.2 List of implicated and potentially implicated persons (including statement extracts on each person);
  - 2.3 List of contextual and direct witnesses;
  - 2.4 List of documents on record;
  - 2.5 List of documents to locate or subpoena;
  - 2.6 Proposed hearing schedule for November 2025; and
  - 2.7 Availability of statements for the November hearing.
3. We have also delivered the following letters to the Commission:
  - 3.1 Introduction to Lukhanyo Calata and 21 other family members, dated 11 August 2025;
  - 3.2 Summarised recordal of the 8 September 2025 pre-hearing meeting, dated 9 September 2025;
  - 3.3 Letter regarding the Commission's regulations and rules, dated 18 September 2025;

Senior Partner: G Driver Managing Partner: S Patel Partners: BW Abraham RB Africa C Alexander AK Allie NG Alp TB Ball DC Bayman AP Blair K Blom N Blom AJR Booysen AR Bowley M Bux V Campos RI Carrim T Cassim SJ Chong ME Claassens KI Collier KM Colman KE Coster K Couzyn DB Cron PA Crostland R Cruywagen JH Davies KM Davis PM Daya L de Bruyn PU Dela M Denenga C Dennehy DW de Villiers HM de Villiers ST Dias BEC Dickinson DA Dingley W Drue E Durman GP Duncan CP du Toit TC Dye L Dyer SK Edmundson LF Egypt KH Elser JC Els S Farren K Fazal G Fitzmaurice JB Fortman L Franca M Garden MM Gibson H Goolam C Gopal CI Gouws PD Grealy L Green O Gusha JM Harvey JS Henning KR Hillis CM Hofeld PM Holloway SJ Hutton KT Inglis ME Jarvis JC Jones CM Jonker S Jooste LA Kahn L Kamukwamba M Kennedy A Keyser GR Kgalle MT Kgoadi A Khumalo KE Kilner MD Kota JC Kraamwinkel AC Kruger S Kruger J Lamb LC Lambrechts LM Lamola B Lötter E Louw CF Mackenzie M Mahlangu V Mannar CCT Marupen-Shkaldy G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer A Mhlongo AJ Mills D Milo M Mkhabela

- 3.4 Letter regarding the Commission's evidence leader, dated 18 September 2025; and
- 3.5 Letter regarding the Commission's operational mandate, dated 18 September 2025.
4. We now write to the Commission to request a meeting with the Secretariat, in particular the Evidence Leaders.
5. We propose the following agenda for such a meeting:
  - 5.1 Planning for the November hearing:
    - 5.1.1 Confirming the schedule: allotted times and dates;
    - 5.1.2 Notifying and preparing witnesses and their logistical support; and
    - 5.1.3 Agreeing on the examination and cross-exam of witnesses.
  - 5.2 When the persons of interest are expected to respond to the extracts forwarded to them.
  - 5.3 Issue of locating outstanding documents or issuing subpoenas for their production.
  - 5.4 Planning for the next hearing (early next year) which should focus on the persons of interest:
    - 5.4.1 Proposed dates; and
    - 5.4.2 The witnesses to call.
  - 5.5 Response of the Commission to our letter on the proposed amendments to the Regulations and Rules (which may impact on the conduct of the upcoming hearings).
  - 5.6 Response to our letter on the proposal to seek an extension to the COI's operational mandate.
6. We would appreciate your response and proposed meeting times at your earliest convenience.

Yours faithfully



**WEBBER WENTZEL**

Asmita Thakor

Partner

Direct tel: +27 11 530 5875

Email: [asmita.thakor@webberwentzel.com](mailto:asmita.thakor@webberwentzel.com)



**Adv M Thokoa**

Secretary: Commission of Inquiry, Stopped TRC Investigations and/or Prosecutions

By email: [secretary@trc-inquiry.org.za](mailto:secretary@trc-inquiry.org.za)

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[www.webberwentzel.com](http://www.webberwentzel.com)

Your reference  
TRC Cases Inquiry

Our reference  
A Thakor / N Thema / J Venter /  
LM Doubell / 4017862

Date  
29 September 2025

Dear Adv Thokoa,

**COMMISSION OF INQUIRY: HEARING SCHEDULE AND WITNESSES**

1. We act on behalf Lukhanyo Calata, twenty-five other survivors and families of victims of apartheid era gross human rights violations and the Foundation for Human Rights.

Hearing schedule

2. On 24 September 2025, we provided you with a proposed draft hearing schedule for the Commission's review.
3. We understand that the Commission has provisionally approved this hearing schedule. We suggest that it be circulated to the parties as soon as possible.

Witnesses

4. We confirm the arrangement reached between the Commission's evidence leader, Adv Semenya SC and our lead counsel, Adv Varney, that Adv Varney will lead the evidence of our clients' witnesses during the public hearings.
5. Our clients' witnesses are:
  - 5.1 Lukhanyo Calata
  - 5.2 Thembisile Simelane
  - 5.3 Yasmin Sooka
  - 5.4 Adv Dumisa Ntsebeza SC
  - 5.5 Ole Bubenzer
  - 5.6 Michael Schmidt
  - 5.7 Adv Anton Ackermann SC

**Senior Partner:** G Driver **Managing Partner:** S Patel **Partners:** BW Abraham RB Africa C Alexander AK Allie NG Alp TB Ball DC Bayman AP Blair K Blom N Blom AJR Booysen AR Bowley M Bux V Campos RI Carrim T Casslin SJ Chong ME Claassens KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies KM Davis PM Daya L de Bruyn PU Dela M Denenga C Dennehy DW de Villiers HM de Villiers ST Dias BEC Dickinson DA Dingley W Druce E Durman GP Duncan CP du Toit TC Dye L Dyer SK Edmundson LF Egypt KH Eiser JC Els S Farren K Fazel G Fitzmaurice JB Forman L Franca M Garden MM Gibson H Goolam C Gopal CI Gouws PD Grealy L Green O Gusha JM Harvey IS Henning KR Hills CM Hoffeld PM Holloway SJ Hutton KT Inglis ME Jarvis JC Jones CM Jonker S Jooste LA Kahn L Kamukwamba M Kennedy A Keyser GR Kgalle MT Kgoatl A Khumalo KE Kilner MD Kota JC Kraamwinkel AC Kruger S Kruger J Lamb LC Lambrechts LM Lamola B Lötter E Louw CF Mackenzie M Mahlangu V Mannar CCT Marupen-Shkaldy G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer A Mhlongo AJ Mills D Milo M Mkhabela

W  
PC

- 5.8 Adv Vusi Pikoli.
6. To the extent necessary we may seek the opportunity to re-examine the abovenamed should anything material arise in cross-examination by other parties.
7. We confirm that our clients are available on the allotted dates. We confirm that Ole Bubenzer (who is based in Germany) will testify via video link; and that the Commission will assist with logistical arrangements for Ackermann SC (who is based in Hermanus).
8. We confirm that we have provided the Commission with digital links to the statements of the above-mentioned witnesses. Certified hard copies will be provided in the near future. These witnesses will confirm their statements when under oath on the stand.
9. In respect of the witnesses listed below, we confirm that the Commission's evidence leaders will consult with them, ensure their presence at the hearing and lead them:
- 9.1 Adv Chris Macadam - 082 498 6033
- 9.2 Imtiaz Cajee - 082 445 2086
- 9.3 Adv Torie Pretorius - 084 821 1378
- 9.4 Adv Paddy Prior - [paddyprior@law.co.za](mailto:paddyprior@law.co.za)
- 9.5 Judge Vincent Saldanha - Western Cape Division of the High Court, Cape Town
- 9.6 Adv Bulelani Ngcuka - <https://www.linkedin.com/in/bulelani-ngcuka-b29170125/>
- 9.7 Andrew Leask - <https://www.linkedin.com/in/andrew-leask-58a6a941/> (AfriForum Private Prosecutions Unit)
10. We advise that we have provided digital links to the affidavits of Mr Cajee, Adv Pretorius and Adv Macadam (filed in the Rodrigues matter). These witnesses can also be asked to confirm their statements when under oath on the stand.
11. To the extent necessary, the evidence leaders will have to secure statements from Adv Prior, Judge Saldanha, Adv Ngcuka and Mr Leask.
12. We are advised that Adv CB Ferreira is deceased. He can be removed from the schedule.

Cross-examination

13. We hereby apply to cross-examine Adv Ngcuka, Adv Macadam and Adv Pretorius. We may have follow up questions for Adv Prior, Judge Saldanha, Mr Leask and Mr Cajee, which, if necessary, can be put to them by way of cross-examination.

Yours faithfully

  
**WEBBER WENTZEL**

Asmita Thakor  
Partner

Direct tel: +27 11 530 5875

Email: [asmita.thakor@webberwentzel.com](mailto:asmita.thakor@webberwentzel.com)





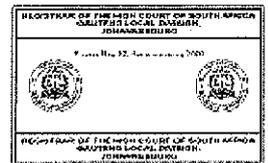
"ISG"

27 October 2025

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)

PRE-HEARING OF 27 OCTOBER 2025



- 1 Regarding the objection against the leading of witnesses by their legal representatives when so requested and the contention that all evidence before the Commission must be led exclusively by the Evidence Leaders, the Commission advises that:
  - 1.1 first, formal objections must be filed by no later than Wednesday, the 5<sup>th</sup> of November 2025;
  - 1.2 second, written submissions must be forwarded to the Commission by no later than the 7<sup>th</sup> of November 2025; and
  - 1.3 finally, oral submissions will be heard on the 10<sup>th</sup> of November 2025.

Yours faithfully

Adv AM Thokoa  
Secretary



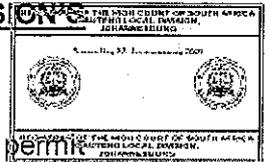


"IS7"

27 October 2025

Dear Interested and Affected Party

**E: REQUEST FOR INFORMATION ON THE MAKING OF THE DECISION TO PERMIT WEBBER WENTZEL TO LEAD SOME OF THE COMMISSION'S WITNESSES**



1 In response to the request for information on how the decision to permit Webber Wentzel to lead various witnesses before the Commission, the Evidence Leaders Team responds as follows:

- 1.1 The conversation between the Evidence Leader, Adv Semenya SC, and Adv Varney SC regarding Adv Varney SC's request to lead the evidence of certain witnesses before the Commission was verbal; and
- 1.2 Advocate Varney SC's request was considered and granted in line with Rule 3.1 of the Commission's Rules.

Kind Regards,

*[Handwritten signature]*  
Adv I Semenya SC  
Chief Evidence Leader

*[Handwritten initials]*  
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"IS8"

IN THE COMMISSION OF INQUIRY INTO STOPPED TRC INVESTIGATIONS AND/OR  
PROSECUTIONS

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RULING

---

After having heard the parties, the Commission makes the following ruling:

1 In respect of requests by parties to lead witnesses, the Chairperson of the Commission will make such decisions in terms of Rule 3.1 of the Commission's Rules.



2 There is currently a request by the Calata Group to lead the following witness.

- 2.1 Lukhanyo Calata
- 2.2 Thembi Simelane
- 2.3 Yasmin Sooka
- 2.4 Dumisa Ntsebeza SC
- 2.5 Ole Bubenzer
- 2.6 Michael Schmidt
- 2.7 Anton Ackermann SC
- 2.8 Adv Vusi Pikoli

3 The reasons for the Calata Group's request to lead these witnesses are set out in their submissions, dated 7 November 2025.

4 The substantive objections of other parties to the Calata Group leading the aforesaid eight witnesses are set out in their written submissions.

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

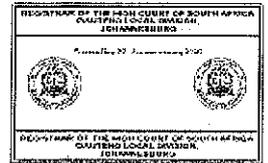
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rc

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 a letter addressed to the Chairperson, copied to all parties.

BY RULING OF THE COMMISSION

28 November 2025



hf  
pe

"IS9"

**Thembelihle Vika**

**From:** Lutho Dzedze  
**Sent:** Thursday, 18 December 2025 10:50  
**To:** Thembelihle Vika  
**Subject:** FW: RULING - OBJECTIONS

**From:** Lutho Dzedze  
**Sent:** Wednesday, 03 December 2025 11:44  
**To:** 'Secretary' <secretary@trc-inquiry.org.za>  
**Subject:** RE: RULING - OBJECTIONS

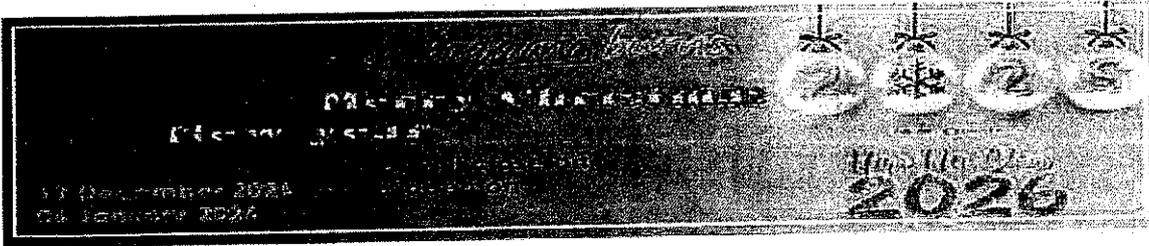
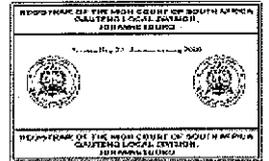
Dear Advocate

We confirm receipt of the ruling with thanks.

Kindly confirm for our records whether the Chairperson will provide reasons for her ruling.

Kind regards,

Lutho Dzedze  
Associate



<b>Gqeberha Office</b> 82 - 84 6th Avenue Newton Park PO Box 70472 Newton Park, 6055 Tel: (041) 364 2039 Fax: (041) 364 2066 E: info@boqwanaburns.com	<b>Johannesburg Office</b> 1st Floor 357 Rivonia Boulevard Rivonia PO Box 3056, Rivonia, Johannesburg, 2128 Tel: (011) 234 0648	<b>King Williams Town Office</b> 1st Floor Sutton Square 8 Queens Road PO Box 16136 Amathole Valley, 5616 Tel: (043) 642 2070	<b>Plettenberg Bay Office</b> Bitou office Centre 1 Rietvlei Road, N2 Plettenberg Bay PO Box 70472 Newton Park, 6055 Tel: (044) 633 5966 E: info@boqwanaburns.com
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Due to the risk of e-mail-related fraud, it is crucial that you telephonically confirm our banking details prior to making any payment to us.  
**WE WILL NOT ACCEPT ANY RESPONSIBILITY FOR ANY PAYMENTS MADE INTO THE WRONG BANK ACCOUNT.**

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*Wf*  
*PC*  
*Tm 077-1527*



"ISIO"

03 December 2025

**BOQWANA BURNS INC.**  
Boqwana House  
84 – 6th Avenue  
Newton Park, 6045

Your ref: Mr I Armoed/Aneesa

Email: [irvine@boqwanaburns.com](mailto:irvine@boqwanaburns.com)  
[aneesa@boqwanaburns.com](mailto:aneesa@boqwanaburns.com)



Dear Sir/Madam,

**RE: RULING – OBJECTIONS**

1. I am instructed to respond to your email dated 3 December 2025 enquiring whether the Chairperson will provide reasons for her ruling of 2 December 2025.
2. Rule 3.1 gives the Chairperson the power to give directions for the presentation of witness's evidence and does not require reasons to be furnished for a direction made in terms of that rule.
3. No reasons will follow.

Yours faithfully

**Adv AM Thokoa**  
Secretary



TM 077-1529



**MINISTER  
JUSTICE AND CONSTITUTIONAL DEVELOPMENT  
REPUBLIC OF SOUTH AFRICA**

Private Bag X276, PRETORIA, 0001 - Momentum Centre, 329 Pretorius Street, PRETORIA - Tel: (012) 406 4669 - Fax: (012) 406 4680  
Private Bag X256, CAPE TOWN, 8000 - 120 Plein Street, CAPE TOWN - Tel (021) 467 1700, - Fax: (021) 467 1730

**Honourable Madam Justice, Khampepe**

C/o The Secretary

Ms Mphothu Thokoa

Sci-Bono Complex

Cnr Miriam Makeba and Helen Joseph

Newtown

Johannesburg



By email: [secretary@trc-inquiry.org.za](mailto:secretary@trc-inquiry.org.za)

Dear Madam Justice, Khampepe

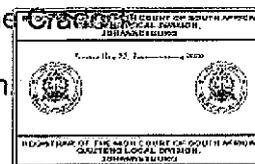
**POSITION OF THE EVIDENCE LEADER VIS- A VIS CERTAIN ASPECTS OF THE  
EVIDENCE: TRUTH AND RECONCILIATION COMMISSION OF INQUIRY**

1. The letter from Webber Wentzel, attorneys acting on behalf of the Applicant, dated 18 September 2025, regarding the involvement of Adv. Semanya, the Chief Evidence in the Commission, in the amendments in Appendix A to the prosecution Policy titled "Prosecuting Policy and Directives Relating to the Prosecution of Offences emanating from conflicts of the past and which were committed on or before 11 May 1994" has reference.

1

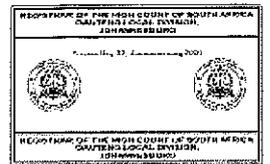
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/pc

2. The policy amendments were meant to deal with prosecution of cases arising from conflicts of the past which were committed before the 11 May 1994
3. I have been advised that ***Nkadimeng and the widows of the Cradock Four, under Nkadimeng and Others v National Director of Public Prosecutions and Others***, challenged the prosecution policy amendments on the basis that they introduce a prosecutorial indemnity and therefore unconstitutional. These policy amendments were declared unconstitutional. The widows of the Cradock Four and others are the complainants or witnesses in the Commission.
4. In your letter dated 19 September 2025, you advised Webber Wentzel that you note the concerns made by the Complainants and you make no decision thereon. You proposed that another member of the Evidence Leader deal with the aspect of the Prosecution Policy.
5. I accept the submission made by Adv. Semenya SC in the letter referred to above, that the Commission is called upon to decide whether there was any interference with the investigation or prosecution of the TRC cases.
6. The amendments are at the centre of the issues to be decided by the Commission in that a decision not to prosecute was made on the basis of the Policy Amendments and are at the centre of this Inquiry. Adv. Semenya SC played a pivotal advisory role in the policy amendments.



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7. I am of the view that any conflict of interest or perceived conflict interest regarding the impartiality of the evidence leaders will affect the integrity of the commission and defeat the main objective of establishing the Commission.
8. For the sake of the Commission, I therefore request that you consider whether the decision to keep Adv. Semenya SC as the evidence leader, would be appropriate to preserve and maintain the integrity of the Commission.
9. I trust you find the above to be in order.



Yours Faithfully

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

**MS MT KUBAYI (MP)**

**MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

DATE: 03/11/2025

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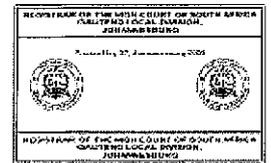


"ISA2"

03 November 2025

Honourable Minister MT Kubayi  
Department of Justice and Constitutional Development  
Momentum Centre  
329 Pretorius Street  
Pretoria

Email: LeboTshabalala@justice.gov.za



Dear Honourable MT Kubayi,

RE: POSITION OF THE EVIDENCE LEADER VIS- A VIS CERTAIN ASPECTS OF THE EVIDENCE: TRUTH AND RECONCILIATION COMMISSION OF INQUIRY

- 1 Your letter dated 3 November 2025 is acknowledged with thanks and its contents noted.
- 2 I deliberately decided not to address the possible conflict of interest in the work Adv Semanya SC would have done in the *Nkadimeng and Others v National Director of Public Prosecutions and Others (32709/07) (2008) ZAGPHC 433 (12 December 2008)* matter and the Terms of Reference of this Commission.
- 3 The request in your letter "that I consider whether the decision to keep Adv Semanya SC as evidence leader, would be appropriate to preserve and maintain the integrity of the Commission" is a matter that would require the

Wf  
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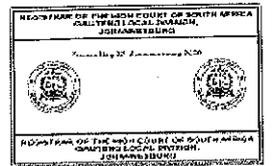


decision by the Commission. To that end, a formal recusal application is required.

4 I await your urgent response.

Kind Regards,

Khampepe J  
Chairperson



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'IS13'

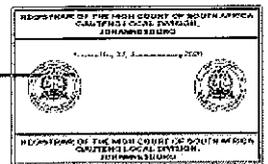


**THE JUDICIAL COMMISSION OF INQUIRY TO INQUIRE INTO ALLEGATIONS REGARDING EFFORTS OR ATTEMPTS HAVING BEEN MADE TO STOP THE INVESTIGATION OR PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES**

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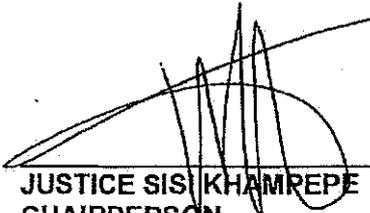
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**IT IS ORDERED THAT:**

1. The National Prosecuting Authority and the Department of Justice are to file their founding papers in the application for recusal on **Wednesday, 12 November 2025**;
2. An answer by **Monday, 17 November 2025**;
3. A reply, if any, by **Thursday, 20 November 2025**;
4. Written Argument to be filed by the parties by **Monday, 24 November 2025**;  
and
5. Oral argument is to be heard on **Wednesday, 26 November 2025**.

  
**JUSTICE SIS KHAMREPE**  
**CHAIRPERSON**



# "ISI4"

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

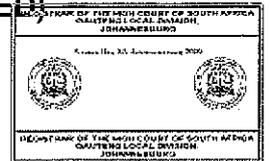
HELD AT THE SCI-BONO DISCOVERY CENTRE, NEWTOWN JOHANNESBURG

BEFORE:

THE HONOURABLE JUSTICE SISI KHAMPEPE- CHAIRPERSON (JUDGE RETIRED)

THE HONOURABLE JUSTICE FRANS DIALE KGOMO, (JUDGE RETIRED)

ADVOCATE ANDREA A GABRIEL SC



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## RULING ON RECUSAL APPLICATIONS 04 DECEMBER 2025

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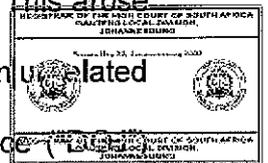
### A. Introduction

1. This Commission of Inquiry ("Commission") was established by the President of the Republic of South Africa, pursuant to Proclamation Notice 264, published on 29 May 2025. The Commission is appointed to "investigate matters of public and national interest concerning allegations regarding efforts or attempts having been made to stop the investigation or prosecution of Truth and Reconciliation Commission ("TRC") cases."
2. The Commission was scheduled to hold its first session of public hearings from 10 to 28 November 2025, at which it would have received the evidence from

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the applicants in proceedings under the North Gauteng Division of the High Court, Pretoria, in the case of *L B M Calata and 22 Others v the Government of the Republic of South Africa and Five Others* (case number 2025-005245) (“the Calata group”).

3. On the first day of the hearing, 10 November 2025, the Commission issued directions which set dates for the bringing of applications for the recusal of the chief evidence leader, Mr Ishmael Semenya SC (“Semenya SC”). This arose because of indications in objections filed with the Commission, on an unrelated procedural matter. In those objections, the Department of Justice intimated that a recusal application would be brought “in due course” while the National Prosecuting Authority (“NPA”) suggested that this application ought to be determined on affidavit.
4. Ultimately, two applications for the recusal of Semenya SC served before the Commission, brought by the DOJ and the NPA (“the applicants”). Affidavits were served and written submissions were filed in accordance with the timelines set by the Commission. Oral argument was heard on 26 November 2025.
5. The grounds for the recusal revolved primarily around Semenya SC’s representation of both the DOJ and NPA in the matter of *Nkadimeng and Others v NDPP and Others*, case number 32709/07, which culminated in a judgment by Legodi J on 12 December 2008. This prior representation and related conduct on the part of Semenya SC is said to create a conflict of

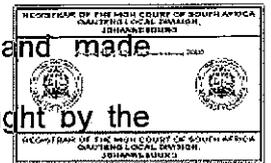


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interest and a reasonable apprehension of bias against the DOJ and the NPA, by Semenya SC's continued participation in this Commission.

6. The Commission also considered the affidavit and submissions filed by Webber Wentzel attorneys on behalf of the Calata group. The Calata group affirmed confidence in Semenya SC's impartiality but ultimately sought that he steps down on grounds of efficiency and practicality.

7. The evidence leaders also filed affidavits by Semenya SC and made submissions, the import of which was to resist the recusal sought by the applicants.



8. For the reasons described below, the Commission finds that the applicants have failed to discharge the requisite burden of proof by applying the incorrect legal test and by failing to establish the necessary factual evidence. The recusal applications must therefore be dismissed, for the reasons set out in this Ruling.

**B. The Role of Evidence Leaders in a Commission of Inquiry**

9. It is important to understand the role of evidence leaders in a commission of inquiry.

10. The Rules governing the Commission<sup>1</sup> defines "Commission's Evidence Leader" as "the team of lawyers appointed by the Chairperson to assist the

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<sup>1</sup> The Rules were published in Proclamation Notice 285 of 2025 on 29 August 2025.

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Commission in the investigation and with the presentation of evidence and arguments before the Commission in regard to the matters referred to in the Terms of Reference.” Semenya SC is the chief evidence leader in that team of lawyers who have been appointed by me as Chairperson of the Commission.

11. The evidence leaders are accordingly required to assist and facilitate the work of the Commission. In doing so they must investigate and marshal the presentation of evidence to the Commission. They bear the overall responsibility of leading evidence before the Commission, although subject to the direction of the Chairperson.<sup>2</sup>



12. It is instructive to consider the analysis by Judge Nugent in his Ruling of 2 July 2018, in the Commission of Inquiry into Tax Administration and Governance by the South African Revenue Service, which succinctly captures the roles and responsibilities of evidence leaders:

*“[29] I think it is important also to say something of the role of counsel appointed to assist the Commission, who also came in for insult in the course of the submissions. While often called ‘evidence leaders’ that is a misnomer. The process of a commission of inquiry is inquisitorial, unlike that of a court. That means it must make its own inquiries, seek out evidence itself, and interrogate the veracity of*

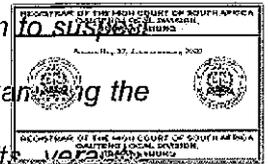
<sup>2</sup> Rule 3.1 provides:

*“Subject to anything to the contrary contained in these Rules or to the Chairperson’s directions in regard to any specific witness, the Commission’s Evidence Leader bears the overall responsibility to present the evidence of witnesses to the Commission.”*

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evidence where that is required. Counsel appointed by a commission facilitates the performance of all those functions under the direction of the commission.

[30] When oral evidence is to be heard it will be presented to the commission by its counsel. Where counsel has no reason to suspect the veracity of the testimony, counsel play their part by guiding the witness through the testimony, so as to ensure that relevant testimony is extracted. Where there is reason



to suspect the testimony might not be true, they play their part by examining the witness, vigorously, if that is required, to test its veracity.

Indeed, it might be that a witness is called solely for vigorous examination, so as to extract information that the commission requires. And if a witness has given testimony when there has been no reason to suspect it might be false, and it turns out later that that might not be the case, then the witness is liable to be recalled, and examined more thoroughly. In short, the approach counsel will take to oral evidence will be dictated by the exigencies of the case. Some cases will require the witness to be guided. Other cases will require the witness to be interrogated. And some cases might require a bit of both.

[32] What is called for from counsel for a commission, and from the commission itself, is an open but inquiring mind, the meaning of which I had occasion to explain in the Supreme Court of Appeal,

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*That case concerned the functions of the Public Protector but it applies as much to a commission of inquiry:*

*'That state of mind is one that is open to all possibilities and reflects upon whether the truth has been told. It is not one that is unduly suspicious but it is also not one that is unduly believing. It asks whether the pieces that have been presented fit into place. If at first they do not then it asks questions and seeks out information until they do. It is not a state of mind that remains static. If the pieces remain out of place after further enquiry then it might progress being a suspicious mind. And if the pieces still do not fit then it might progress to conviction that there is deceit. How it progresses will vary with the exigencies of the particular case. One question might lead to another, and that question to yet another, and so it might go on.'*



*It is in that state of mind that counsel go about their work.<sup>3</sup>*

13. From this it is apparent that evidence leaders play a key role in assisting the Commission in executing its mandate and in seeking out and presenting evidence before the Commission. They may make decisions about the type and manner of evidence to be placed before the Commission, yet this is done subject to the direction of the Chairperson of the Commission. Even the leading and questioning of witnesses is subject to the control and direction of

<sup>3</sup> Available at <https://www.politicsweb.co.za/documents/moyane-vs-sars-inquiry-judge-nugents-ruling>.

the Chairperson of the Commission. They may also provide legal advice to the Commission from time to time.

14. However, none of this elevates evidence leaders to decision makers, that function being the exclusive domain of the Commission. Indeed, on this fact all parties were *ad idem*.

**C. The Applicable Legal Test for Recusal**

15. With that background, it becomes necessary to determine the correct legal test to apply for the recusal of evidence leaders. The applicants asserted one test, while the evidence leaders and the Calata group asserted another test.



**C1. The SARFU test**

16. The applicants advocated for the test set out in *President of the Republic of South Africa v South African Rugby Football Union* 1999 (4) SA 147 (CC) ("SARFU"). The import of that test is that recusal will be granted if it is established that a reasonable, objective and informed person would, on the correct facts, apprehend that the judge (or decision maker) will not bring an impartial mind to bear on the case at hand. The test is an objective one and the onus of establishing that the test has been met rests upon the applicant.<sup>4</sup>
17. On this basis the applicants contend that they hold a reasonable apprehension

<sup>4</sup> SARFU, at paragraph 48.

of bias arising from Semanya SC's prior representation of them in *Nkadimeng*.

18. In my view, the *SARFU* test is inapplicable because evidence leaders are assistants to the Commission, but they are not the decision makers. They therefore cannot be equated to judges or those who are vested with decision making powers, as was the position in the *SARFU* case and the line of cases that subsequently followed and applied that test.

C2. The *Porritt/Killian* test



19. The evidence leaders and the Calata group advocated for the use of the test akin to the recusal of prosecutors. They did this upon the basis that prosecutors are not judges, as is the position with evidence leaders who are not decision makers.
20. That test was established in *Porritt and Another v The NDPP and Others*.<sup>5</sup> In that matter the recusal of a prosecutor was sought upon the basis that he had previously played a role in the compelled questioning of an accused in a prior investigation. The concern was that this prior role as interrogator had robbed the prosecutor of impartiality and lack of bias expected of a prosecutor. The court *a quo* had applied the *SARFU* recusal test to disqualify the prosecutor. On appeal, the SCA found that the court *a quo* had incorrectly applied the *SARFU* test, because prosecutors are not decision makers as is the case with

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<sup>5</sup> 2015 (1) SACR 533 (SCA); (978/13) [2014] ZASCA 168 (21 October 2014).

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magistrates and judges:

[11] *There is a fundamental difference between the role and functions of a prosecutor as opposed to those of a magistrate or a judge. The judiciary is held to the highest standards of independence and impartiality because they are the decision-makers in an adversarial judicial system. Prosecutors neither make the final decision on whether to acquit or convict, nor on whether evidence is admissible or not. Their function is to place before a court what the prosecution considers to be credible evidence relevant to what is alleged to be a crime. Their role excludes any notion of winning or losing. It is to be efficiently performed with an ingrained sense of dignity, the seriousness and the justness of judicial proceedings.*



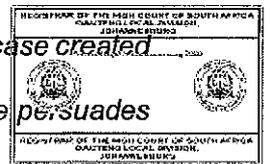
21. There are obvious differences between a criminal trial and a commission of inquiry. Unlike court cases, commissions of inquiry are inquisitorial and are not adversarial. A commission actively seeks out its own evidence, tests that evidence and bases its recommendations thereon.
22. Allied to this is the fact that evidence leaders assist a commission of inquiry in that task. Theirs is not to attempt to secure a conviction or to represent one party in an adversarial dispute. What is required of evidence leaders is that they bring an open and enquiring mind to bear upon their tasks and to execute their duties subject to the directions of the Commission.
23. I am therefore of the view that the *Porrit* test is more apposite than the *SARFU* test, when the recusal of an evidence leader is sought. This is for the

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elementary reason that evidence leaders are not decision makers, and they function subject to the direction of the Commission, as already pointed out.

24. What then is the test to be applied when seeking the recusal of an evidence leader. In *Porritt*, the SCA referred to its earlier decision in *DPP, Western Cape v Killian* [2007] SCA 169 (RSA), where the test for the recusal of a prosecutor was formulated as follows:

*"The question remains whether the prosecutor's dual role in this case created a substantive unfairness per se. Neither precedent nor principle persuades me that it did. Whether fulfilment of that dual role does involve or bring about substantive unfairness in an ensuing criminal trial will be a matter to be decided on the facts of each case by the trial court. Unfairness does not flow axiomatically from a prosecutor's having a dual role."*<sup>6</sup>



25. Applying the *Killian* test, the issue that falls for determination is whether Semenya SC's role in *Nkadimeng*, and the other alleged conduct, would result in substantive unfairness in the ensuing work of this Commission.
26. I turn to the application of that test next, with respect to the various complaints asserted by the applicants.

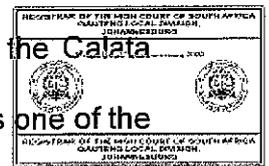
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<sup>6</sup> At paragraph 18 in *Porritt*, citing paragraph 28 in *Killian*.

D. Applying the Test

*Prior Role in Nkadimeng*

27. As the Calata group point out they brought a narrowly tailored constitutional and administrative law challenge to the 2005 amendments to the prosecution policy. They maintain that they did not know then, in 2005, that the prosecution policy would be one of several means through which the prosecution of TRC cases would be retarded. That claim was squarely asserted by the Calata group in January 2025 in the pending High Court litigation, which is one of the claims that led to the establishment of this Commission.



28. The applicants claim that the prosecution policy will play a central role in the commission of inquiry.

29. The Minister of Justice, who deposed to the affidavit on behalf of the DOJ, puts it this way:

*"32. From these submissions, it is evident that Semanya SC played a crucial and intricate role in formulating and defending the rationale and constitutional validity of the Policy amendments on behalf of the prosecuting authority. His arguments went to the core of upholding the Policy framework that is now, years later, at the centre of this Commission's inquiry."*

30. Advocate Mhaga, a Special Director of Public Prosecutions and head of the legal division of the NPA, deposed to an affidavit for the NPA. The concern

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was expressed this way:

"28. The Commission's inquiry into the alleged political interference is predicated upon the contention that the Prosecution Policy was crafted and implemented to prevent the prosecution of apartheid-era crimes. In contrast, Adv Semenya's previous professional position was to uphold and vindicate the policy's lawfulness and constitutionality, both in argument before the Court and in written advice to the NPA. It is the NPA's view that having taken ~~such a~~ position, he cannot now be seen to approach the same ~~question~~ with the detachment and neutrality required of an Evidence Leader.



31. However, as the Calata group and the evidence leaders point out, the amendments to the prosecution policy are simply one of the means through which the Calata group claims that the prosecution of TRC cases was retarded. I agree.
32. Furthermore, as the evidence leaders point out, the *Nkadimeng* judgment is final and the issue of the constitutionality of the amendments to the prosecution policy is *res judicata*. It has been so for the last 17 years.
33. In my view, the terms of reference of this Commission are far wider than a special focus on the amendments to the prosecution policy. We must now inquire into whether efforts were made to stop or interfere with the prosecution of TRC cases. This involves a wide-ranging spectrum of investigation and inquiry.

34. I therefore find that there is no overlap between the subject matter in *Nkadimeng* and the terms of reference of this Commission. Although there may well be reference to the 2005 amendments to the prosecution policy, in the ensuing work of the Commission, this is a documented, historical fact about which there is unlikely to be any controversy.
35. The argument therefore that unfairness will flow from Semenya SC's prior role in *Nkadimeng* is misplaced. It is as well to point out again that the role of evidence leaders, including the questioning of witnesses, is always subject to the direction of the Chairperson of the Commission, which is a key safeguard to ensure that the Commission's proceedings are conducted in a fair manner.
36. I can therefore not envisage that any substantive unfairness would emanate from Semenya SC's prior role in *Nkadimeng*.



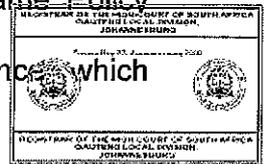
***Access to Confidential or Privileged Information Resulting in a Conflict of Interest***

37. The NPA has presented contemporaneous memoranda from advocate Mpshe SC, the former Acting National Director of Public Prosecutions, and a confirmatory affidavit from him which demonstrates that Semenya SC consulted with its officials before and after the constitutional challenge to the amendments to the prosecution policy.
38. From this the NPA asserts that Semenya SC would have received confidential or privileged information relating to the amendments to the prosecution policy.

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In particular they allege that he would have received “confidential legal strategies, institutional deliberations, and internal assessments regarding the policy’s rationale and purpose”, which it is alleged are the “same matters on which the Commission must now make factual and legal findings.”<sup>7</sup> This the NPA asserts gives rise to a “direct and irreconcilable conflict of interest”.

39. The DOJ made similar claims. In her affidavit, the Minister of Justice explained that Semenya SC was “intimately involved in defending the same Policy amendments now being relied upon by those alleging interference which “gives rise to a clear and unavoidable conflict of interest.”<sup>8</sup>



40. The problem for the applicants, however, is that they were unable to explain the nature of the confidential or privileged information. Although the NPA referred to an opinion received from Semenya SC, that opinion was not produced. Similarly, the allegations in Mpshe SC's affidavit (for the NPA), about the nature of the consultations with Semenya SC, were couched in broad generalities rather than providing evidence of confidential or privileged information imparted to Semenya SC.<sup>9</sup>

41. It is settled law that evidence is required to succeed in establishing that counsel has a conflict of interest, arising from the imparting of prior confidential or

<sup>7</sup> Paragraph 27 of the affidavit of Advocate Mhaga for the NPA.

<sup>8</sup> Paragraph 34 of the affidavit of the Minister of Justice for the DOJ.

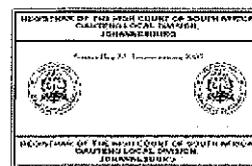
<sup>9</sup> For example, in paragraph 8 of the affidavit of Mpshe SC, it is said:

*“I further confirm that, in the course of these engagements, Adv Semenya SC became privy to confidential discussions, internal assessments, and legal reasoning relating to the Prosecution Policy and its underlying rationale. Those matters are substantially identical to the issues now before the present Commission.”*

privileged information. This standard is the outcome of the decision in *Moyane v Ramaphosa and Others* (82287/2018) [2018] ZAGPPHC 835; [2019] 1 All SA 718 (GP), at paragraph 19.<sup>10</sup>

42. In the end, the applicants have failed to establish that any confidential or privileged information was provided to Semenya SC. Accordingly, the applicants have failed to establish any conflict of interest on the part of Semenya SC.

43. Therefore, no substantive unfairness arises from this claim.



***The Alleged Irregular Agreement with the Calata Group on the Leading of their Witnesses***

44. The applicants alleged that Semenya SC had irregularly permitted Advocate Varney to lead the evidence of certain witnesses for the Calata group. This is a discrete issue and was dealt with by the parties through an agreed formulation on 28 November 2025, which is reflected in Ruling 1 which I handed down on that date. My decision is reflected in my subsequent Ruling handed down on 2 December 2025.

45. Consequently, no substantive unfairness can be said to flow from this procedural issue, which has nevertheless now been resolved.

<sup>10</sup> Read with the decisions in *Wishart v Blieden* NO 2013 (6) SA 59 (KZP), at paragraph 39 and *Netcare Hospitals (Pty) Ltd v KPMG Services (Pty) Ltd* [2014] 4 All SA 241 (GJ), at paragraph 89.

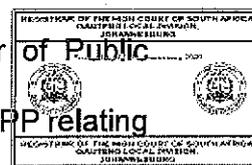
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***The Ginwala Commission of Inquiry***

46. The DOJ contended that Semenya SC was appointed as an assessor in and legal advisor to the Ginwala Commission following the suspension of the former National Director of Public Prosecutions, Advocate Vusi Pikoli, on 23 September 2007.

47. However, as was pointed out by the evidence leaders, that involved an entirely separate issue, about the fitness of a former National Director of Public Prosecution's to hold office. The sole charge against the former NDPP relating to the handling of the TRC cases. The charge was, in fact, subsequently withdrawn by government at that inquiry.



48. Consequently, no substantive unfairness can conceivably flow from Semenya SC's prior role in the Ginwala Inquiry.

***Summation***

49. Based on the foregoing, I am of the view that the applicants have not established any meritorious basis upon which to conclude that Semenya SC's continued participation in this Commission will result in substantive unfairness to them.

50. The proceedings of this Commission will be conducted in terms of its published Rules, the evidence leaders work under the direction of the Commission and the proceedings are subject to the control and direction of the Chairperson of

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the Commission.

**E. Addressing the Calata Group's Pragmatic Concerns**

51. Advocate Varney for the Calata group submitted that his clients affirmed their confidence in Semenya SC and in his ability as Chief Evidence Leader. They submitted that they are "of the view that Semenya SC is not biased for or against any party" and that they "have faith in him acting impartially and objectively."



52. Despite this, the Calata group sought that Semenya SC step down because of pragmatic and efficiency concerns. This was said to have arisen from a prior ruling by the Chairperson which provisionally assigned matters dealing with the amendments to the prosecution policy to another evidence leader.

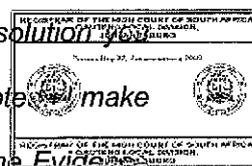
53. That assignment arose because of a letter dated 18 September 2025 from Webber Wentzel, the attorneys for the Calata group. That letter referred to Semenya SC's role in *Nkadimeng* and they proposed that Semenya SC be excluded from dealing with matters relating to the amendments to the prosecution policy in order to address the families' concerns and to avoid any public perceptions of conflict or bias:

"6. *In order to avoid any public perception of partiality or conflict we respectfully request that Mr Semenya not be involved in any of the deliberations or leading or cross examination of witnesses in relation to the amendments of the Prosecution Policy. As there is in any*

*event likely to be a division of labour amongst the evidence leaders, we believe this to be a practical and sensible suggestion."*

54. In response thereto, I recorded on 19 September 2025 that I made no decision on those concerns but stated that I was minded adopt the route proposed by the Calata group. I recorded as follows:

"4. Having considered the concerns of your client and having heard Adv Semenya SC's response, I am minded going with a solution ~~to~~ propose. The concerns expressed by your client are noted ~~to~~ make no decision on them. I will have another member of the Evidence Leader deal with this aspect."



55. The Calata group then contended that based on that prior Ruling, Semenya SC ought not to have interviewed Dr Ramaite SC, the former Acting National Director of Public Prosecutions, on 13 November 2025, during which interview the amendments to the prosecution policy surfaced.
56. The Calata group submitted that that interview was in breach of the 19 September 2025 Ruling because it effectively excluded Semenya SC from being involved in that interview. They submitted that the Ruling meant that Semenya SC would have to be excluded from a large part of the work of the Commission, given that he would not be able to deal with various National Directors of Public Prosecutions and their evidence on the amendments to the prosecution policy.
57. When the communication of 19 September 2025 is analysed, it is clear that I

made no decision on the concerns raised by the Calata group but merely, as a preliminary measure, adopted the proposal submitted by the Calata group at the time. This exercise preceded the hearing of these recusal applications, where the issues have been fully ventilated and all the parties have made their submissions.

58. 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*.



59. If the restrictions placed on Semenya SC are lifted, the pragmatic concerns regarding his inability to perform his tasks efficiently are rendered moot. That will then dispel the efficiency concerns raised by the Calata group.

60. In any event, the breach of the 19 September 2025 preliminary direction was not an issue that was raised on application by the Calata group. Semenya SC has therefore not had an opportunity to respond to this issue and the Commission is unable to make a ruling in respect thereof.

**F. Delay in the Recusal Applications**

61. I deem it necessary to say something about the applicants' delay in instituting the applications for the recusal. These applications were only brought as a result of direct questioning by the Commission on the first day of the public hearings in this matter. In the result, on 10 November 2025 I issued timeline directions on the filing of papers for the recusal applications. This became

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necessary because the applicants had, prior thereto, merely intimated that the applications would be brought, a most undesirable state of affairs, in light thereof that the Commission was to have commenced its first sitting from 10 to 28 November 2025.

62. The DOJ states that the conflict only crystallised when their representatives learnt on 27 October 2025 that Semenya SC had reached an agreement with Advocate Varney that Varney would lead the evidence of certain of the Calata group witnesses. This was approximately two weeks before the first public hearings of the Commission and prior to the recusal application being brought.



63. It is common cause that the NPA's junior counsel was sent Webber Wentzel's letter of 18 September 2025 and that she was also sent the Chairperson's response of 19 September 2025. That was some seven weeks prior to the NPA's recusal application being launched.

64. It is trite law that applications for recusal must be brought as soon as the cause for concern becomes known.<sup>11</sup> In this case, and particularly on the part of the NPA, an inordinate amount of time passed before the recusal applications were brought.

65. This delay and the applications for recusal resulted in the adjournment of the first sitting of the Commission, during which it was to hear the evidence of eight

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<sup>11</sup> *Bernert v Absa Bank Ltd* 2011 (3) SA 92 (CC) (CCT 37/10, [2010] ZACC 28), at paragraph 71: "It is highly desirable, if extra costs, delay and inconvenience are to be avoided, that complaints of this nature be raised at the earliest possible stage."

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witnesses over the course of three weeks. The prejudice to all concerned is obvious and substantial and it is to be deprecated.

**G. Conclusion and Ruling**

66. Based on the foregoing, I am of the view the Commission has decided that the applications for recusal must be dismissed.

67. I accordingly make the following Ruling:



(a) The applications for the recusal of Semenya SC as Chief Justice, brought by the Department of Justice and the National Prosecuting Authority are dismissed.

(b) The preliminary directions previously issued by the Chairperson on 19 September 2025, concerning the restriction of Semenya SC's participation in deliberations, questioning or cross-examination relating to the amendments to the prosecution policy are hereby uplifted.

**JUSTICE SISI KHAMPEPE  
CHAIRPERSON**

**04 DECEMBER 2025**

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