

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

CASE NO: 26936/2026

In the matter between:

JACOB GEDLEYIHLEKISA ZUMA

APPLICANT

And 18 other Applicants

And

CHAIRPERSON OF THE COMMISSION	1ST RESPONDENT
SECRETARY OF THE COMMISSION	2ND RESPONDENT
ADVOCATE ISHMAEL SEMENYA SC	3RD RESPONDENT
COMMISSIONER FRANS KGOMO	4TH RESPONDENT
ADVOCATE ANDREA GABRIEL SC	5TH RESPONDENT
THE CALATA GROUP	6TH RESPONDENT
THABO MVUYELWA MBEKI	7TH RESPONDENT
NATIONAL PROSECUTING AUTHORITY	8TH RESPONDENT
MINISTER OF JUSTICE & CONSTITUTIONAL DEVELOPMENT	9TH RESPONDENT
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	10TH RESPONDENT

FILING SHEET

DOCUMENT FILED: 08TH RESPONDENT'S EXPLANATORY AFFIDAVIT

DATE ON THE ROLL: 16 - 17 MARCH 2026

SIGNED AT PRETORIA ON THIS THE 06TH DAY OF MARCH 2026.

FILED BY:

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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

CASE NO: 2026-026936

JACOB GEDLEYIHLEKISA ZUMA

Applicant

and

THE CHAIRPERSON OF THE COMMISSION:

COMMISSIONER SISI KHAMPEPE

First Respondent

SECRETARY OF THE COMMISSION

Second Respondent

ADVOCATE ISHMAEL SEMENYA SC

Third Respondent

COMMISSIONER FRANS KGOMO

Fourth Respondent

ADVOCATE ANDREA GABRIEL SC

Fifth Respondent

CALATA GROUP

Sixth Respondent

THABO MVUYELWA MBEKI

Seventh Respondent

NATIONAL PROSECUTING AUTHORITY

Eighth Respondent

MINISTER OF JUSTICE AND CONSTITUTIONAL AFFAIRS Ninth Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Tenth Respondent

EXPLANATORY AFFIDAVIT

I, the undersigned,

M.C. T.D.T

MTHUNZI COLUMBAS MHAGA

do hereby make oath and state:

- 1 I am an adult male and the Special Director of Public Prosecutions and Head of the Legal Affairs Division ("LAD") within the National Prosecuting Authority ("NPA"), duly appointed as such by the President of the Republic of South Africa Cyril Matamela Ramaposa, in terms of section 13(1)(c) of the National Prosecuting Authority Act 32, 1998 ("NPA Act"). I assumed office on 1 June 2020. I am an admitted advocate of the High Court of South Africa, having been admitted as such on 17 October 2002. I act on behalf of the National Prosecuting Authority ("the NPA") in these proceedings.
- 2 The facts deposed to herein fall within my personal knowledge and are, unless the context indicates otherwise, true and correct.

A REASON FOR THE AFFIDAVIT

- 3 This affidavit is filed for the limited purpose of placing the NPA's position before this Honourable Court in light of developments that have arisen subsequent to the filing of the NPA's notice to abide in these proceedings.

B NPA'S POSITION

- 4 The NPA has elected to abide the decision of this Court in respect of the review proceedings presently before it. That position was adopted in order to avoid unnecessary duplication of argument and to allow the Court to determine the issues raised by the parties who actively seek relief.
- 5 The NPA records, however, that its notice to abide does not constitute a waiver of any rights, nor does it amount to an acceptance of the factual allegations advanced by any of the parties in these proceedings.

M.C. 707

- 6 The present review concerns the decision of the Chairperson of the Commission refusing to recuse herself, notwithstanding the application brought by Former Presidents Mbeki and Zuma seeking her recusal.

- 7 While the NPA has taken note of the allegations raised across both applications, the particular allegations that necessitate the filing of this affidavit arise from the application brought by former President Zuma. Those allegations concern circumstances which, if established, would bear directly on the procedural fairness of the process in which the NPA participated and in which its institutional interests are implicated. In particular, the allegations suggest that the recusal proceedings may have been influenced by private communications between the Chairperson and a party affected by the NPA's position. Should those allegations prove to be correct, the integrity of the process in which the NPA advanced its position would be called into question, with the result that the NPA's rights and interests in ensuring a fair, impartial and properly constituted adjudicative process may be materially affected. It is for that reason that the NPA considers it necessary to place its position before this Court and to reserve its rights pending the proper ventilation of those allegations.

- 8 One of the principal grounds advanced by former President Zuma in support of the recusal application concerned allegations that the Chairperson had engaged in private communications with Adv Semanya SC, who was at the time the subject of the recusal application brought by the NPA. The allegation, in essence, is that the Chairperson advised Adv Semanya SC on how to respond to the NPA's recusal application, including identifying matters which he should address in his response and referring him to legal authorities which might be relied upon in opposing the application.

- 9 If established, such conduct would raise serious concerns regarding the appearance of impartiality in the adjudication of the recusal application. The difficulty lies not only in whether any actual bias can be demonstrated, but in the broader principle that justice must not only be done, but must manifestly be seen

to be done. Where a presiding officer is alleged to have engaged privately with a party whose interests are directly implicated in the proceedings, and particularly in relation to how that party might respond to an application brought by an opposing party, the perception of neutrality may be materially compromised.

- 10 In those circumstances, the NPA's right to have its application determined by a decision-maker who is, and is seen to be, impartial and independent would be implicated. The integrity of the process through which the NPA sought relief would likewise be placed in question, as the opposing party would have been afforded the benefit of guidance emanating from the very person tasked with adjudicating the dispute. The consequence is not merely procedural irregularity, but the potential erosion of the fairness of the process itself, which the NPA, as a litigant before the Commission, was entitled to expect and rely upon.
- 11 More specifically, it has been alleged that on or about 5 November 2025, the Chairperson communicated directly with Adv Semenya SC by way of her private email address, rather than through the official communication channels of the Commission. In that correspondence, the Chairperson is alleged to have drawn Adv Semenya SC's attention to legal research which, in her view, would be helpful to his position in relation to the recusal proceedings. It is further alleged that the Chairperson suggested that this material be shared with counsel representing Adv Semenya SC in those proceedings so that it could be incorporated into the response to the recusal application.
- 12 It has further been alleged that, on another occasion, the Chairperson communicated with Adv Semenya SC by way of WhatsApp messaging, in which she is said to have alerted him to particular aspects of the NPA's founding affidavit in the recusal application that he should "watch out for" or address in his response. These communications are alleged to have included references to specific allegations contained in certain paragraphs of the founding affidavit,

thereby directing attention to matters that might require answering in the opposition to the recusal application.

- 13 If correct, these allegations suggest communications of a nature that go beyond incidental or administrative engagement, and instead relate directly to the substance of a pending recusal application which the Chairperson herself was required to determine. The alleged communications therefore concern the provision of guidance to a party whose position was directly implicated in the recusal proceedings, at a time when the Chairperson was seized with the responsibility of adjudicating that very dispute.
- 14 These allegations go directly to the question whether the Chairperson was disqualified by reason of bias or a reasonable apprehension of bias from adjudicating the recusal application.
- 15 As matters presently stand, the alleged communications themselves have not been placed before this Court, nor have they been disclosed to the NPA. In the absence of the underlying email and WhatsApp correspondence, the NPA is not in a position to meaningfully engage with the substance of the allegations or to assess their context, authenticity, or implications. Those communications, if they exist, would be of central importance to the NPA because they would reveal the nature, scope and content of the alleged exchanges, the circumstances in which they occurred, and whether they bear upon the fairness of the recusal proceedings. Without sight of the actual communications, the NPA is unable to properly evaluate the seriousness of the allegations, determine their legal significance, or take an informed position on the appropriate procedural steps that may arise from them. It is precisely for this reason that the NPA considers it necessary to place its position on record and to reserve its rights pending the disclosure and proper ventilation of the alleged communications.

- 16 The NPA nevertheless considers it necessary to place on record that if the allegations concerning these communications were to be established, their implications would be profound.

C QUESTIONS ARISING FROM THE ALLEGED COMMUNICATIONS BETWEEN THE CHAIRPERSON AND ADV SEMENYA SC

- 17 In light of the seriousness of the allegations and their potential implications for the integrity of the proceedings, the NPA respectfully submits that the Court would benefit from clear and candid answers from the Chairperson on the following issues:

17.1 Whether the Chairperson at any time communicated directly with Adv Semenya SC outside the formal processes of the Commission in relation to the recusal application brought by the NPA.

17.2 Whether, on or about 5 November 2025, the Chairperson sent any communication to Adv Semenya SC from her private email address, and if so:

17.2.1 the contents of that communication;

17.2.2 the purpose for which it was sent; and

17.2.3 whether it contained references to legal research, authorities, or materials which could assist Adv Semenya SC in responding to the recusal application.

17.3 Whether the Chairperson at any stage suggested or provided legal authorities, research material, or lines of argument to Adv Semenya SC, or recommended that such material be shared with his legal representatives, in relation to the recusal application.

M.C. T.D.T

- 17.4 Whether the Chairperson communicated with Adv Semenya SC via WhatsApp or any other messaging platform concerning the recusal application, and if so:
- 17.4.1 when such communication occurred;
 - 17.4.2 the substance of those communications; and
 - 17.4.3 whether they referred to specific paragraphs or allegations contained in the NPA's founding affidavit in the recusal of Adv Semenya SC.
- 17.5 Whether the Chairperson advised, guided, or alerted Adv Semenya SC to aspects of the NPA's recusal application which he ought to address in his response.
- 17.6 Whether the Chairperson provided any indication to Adv Semenya SC as to how the allegations in the recusal application might be answered or dealt with, including advising him to respond to particular paragraphs or issues raised by the NPA.
- 17.7 Whether the Chairperson offered any assistance, directly or indirectly, to Adv Semenya SC in preparing his response to the recusal application which she herself was later required to determine.
- 17.8 Whether any such communications, if they occurred, were disclosed to the parties participating in the recusal proceedings at the time when the Chairperson adjudicated that application.
- 18 While the questions set out above may, in other procedural contexts, resemble interrogatories, that is not the case in the present matter. They are not posed for the purpose of obtaining discovery or eliciting evidence in the ordinary course of

litigation. Rather, they arise directly from the allegations that have been placed before this Court and are directed at clarifying circumstances that go to the fairness and integrity of the adjudicative process itself. Where allegations concern communications between a presiding officer and a party affected by proceedings that the same presiding officer was required to determine, the Court is entitled to be fully apprised of the relevant facts. The questions are therefore raised not as a procedural device, but as matters on which candour and transparency are necessary to enable the Court to properly assess the issues bearing on the lawfulness and propriety of the process under review.

- 19 The NPA respectfully submits that candid clarification of these matters is necessary not only to resolve the factual dispute raised by the allegations, but also to ensure that the Court is fully apprised of all circumstances relevant to the fairness, impartiality, and integrity of the recusal proceedings, particularly in circumstances where the alleged communications concern guidance given to a party in relation to an application that the Chairperson herself was later called upon to decide.
- 20 If it were demonstrated that the Chairperson privately advised Adv Semanya SC on how to oppose the recusal application brought by the NPA, including directing him to legal authorities and aspects of the pleadings to address, this would mean that the very application in which the Chairperson was called upon to determine her own impartiality had effectively been prejudged.
- 21 In such circumstances, the process by which the recusal application was determined would be fundamentally compromised. The provision of advice to one party on how to oppose an application that the decision-maker herself was required to adjudicate would constitute the clearest form of procedural prejudice and would give rise, at the very least, to a reasonable apprehension of bias.

22 The NPA therefore records that, although it has filed a notice to abide at this stage, it expressly reserves all of its rights should the factual position concerning the alleged email and WhatsApp communications be confirmed through lawful disclosure or other appropriate processes.

23 The purpose of this affidavit is accordingly limited. It is to ensure that the NPA's procedural stance is properly recorded before this Court, namely that its present decision to abide should not be construed as foreclosing any future steps that may become necessary should the alleged communications be substantiated.

D CONCLUSION

24 In the circumstances, the NPA reiterates that its present decision to abide the outcome of these proceedings should not be understood as an abandonment of its interest in ensuring that the process in which it participated was conducted in a manner consistent with the principles of fairness, transparency and impartial adjudication. The allegations referred to above raise issues which, if substantiated, would bear directly on the integrity of the recusal proceedings and the fairness of the process afforded to the NPA.

25 For this reason, the NPA has considered it necessary to place its position on record and to identify the matters on which clarity would assist this Court. The questions set out above are directed at ensuring that the Court is placed in possession of all relevant facts in order to properly assess the issues arising from the review of the Chairperson's refusal to recuse herself.

26 The NPA accordingly respectfully requests that the Court take note of the concerns raised herein and of the NPA's express reservation of its rights should the factual position concerning the alleged communications be established through lawful disclosure or other appropriate processes. In doing so, the NPA remains guided by its obligation to uphold the rule of law, the fairness of

adjudicative processes, and the constitutional principle that justice must not only be done, but must manifestly be seen to be done.


DEPONENT

I certify that the Deponent has acknowledged that he/she knows and understands the contents of this affidavit, which was signed and sworn to before me at PRETORIA on this 06 day of March 2026, the regulations contained in Government Notice R1258 of 21 July 1972, as amended, having been complied with.


COMMISSIONER OF OATHS

Thapelo Debe Tiveni
Constable
123 Westliche Avenue Silverstone
Bethany

SOUTH AFRICAN POLICE SERVICE
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
PRIVATE BAG X1500
2026 -03- 06
PRETORIA 0001
SECTION: ASSET FORFEITURE INVESTIGATION