

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

Case No: 2026-026936

In the matter between:

JACOB GEDLEYIHLEKISA ZUMA 1st Applicant

and

THE CHAIRPERSON OF THE COMMISSION 1st Respondent

SECRETARY OF THE COMMISSION 2nd Respondent

ADVOCATE ISHMAEL SEMENYA SC 3rd Respondent

COMMISSIONER FRANS KGOMO 4th Respondent

COMMISSIONER ANDREA GABRIEL SC 5th Respondent

THE CALATA GROUP 6th Respondent

THABO MVUYELWA MBEKI 7th Respondent

NATIONAL PROSECUTING AUTHORITY 8th Respondent

**MINISTER OF JUSTICE AND CONSTITUTIONAL
AFFAIRS** 9th Respondent

**PRESIDENT OF THE REPUBLIC OF SOUTH
AFRICA** 10th Respondent

FILING SHEET

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SIGNED AND DATED AT JOHANNESBURG ON THE 06TH of MARCH 2026



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5th Respondent

THE CALATA GROUP

6th Respondent

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7th Respondent

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8th Respondent

**MINISTER OF JUSTICE AND CONSTITUTIONAL
AFFAIRS**

9th Respondent

**PRESIDENT OF THE REPUBLIC OF SOUTH
AFRICA**

10th Respondent

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REPLYING AFFIDAVIT TO THE CALATA ANSWERING AFFIDAVIT

I, the undersigned,

THABO MVUYELWA MBEKI

do hereby make oath and state that:

- 1 I am an adult, and the former Deputy President (1994 until 13 June 1999) and President (14 June 1999 to 24 September 2008) of the Republic of South Africa.
- 2 Unless otherwise stated or so indicated by the context, the facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct. Where I make submissions of a legal nature, I do so on the advice of my legal representatives. I accept such advice as correct.
- 3 I have read the answering affidavit deposed to by Mr Lukhanyo Calata ("**Mr Calata**") on behalf of the Calata Group. Mr Calata's affidavit is also in response to my affidavit and application to review the Chairperson's ruling.
- 4 The allegations contained in Mr Calata's affidavit that I do not explicitly admit are denied.

REQUESTION FOR THE COURT'S PERMISSION TO FILE THIS AFFIDAVIT

- 5 I am aware that as things currently stand, I am cited as a respondent in Mr Zuma's application. To that extent, I am advised that I am not entitled to file a

further affidavit as of right, unless so permitted by this Honourable Court. I hereby ask the Court's permission to file this affidavit. I file it for two reasons in sequence:

5.1 The *first* is that there is presently an application before this Court, that I be considered and treated as a second applicant. If the Court were to grant that request, then I would be entitled to file a replying affidavit.

5.2 The *second* reason is this: I am advised that in terms of rule 6(5)(e) of the Uniform Rules of Court, a respondent may file a further affidavit in order to give effect to the consideration that it is in the interests of justice for a court to adjudicate a dispute on the basis of all the relevant facts.

6 I submit that the facts that I set out in this affidavit, in response to Mr Calata's affidavit, are all relevant to the issues in dispute before the Court.

THE CHAIRPERSON IS A COMPETENT WITNESS BEFORE THE COMMISSION

7 On 24 February 2026, I sought leave to file a further affidavit after Mr Zuma filed his supplementary affidavit on 19 February 2026. In that affidavit, I explained that Justice Khampepe is a competent and compellable witness before the Commission, because she had worked alongside Judge Saldanha in the National Prosecuting Authority's Human Rights Investigating Unit ("HRIU") in 1998/1999. Judge Saldanha is a witness before the Commission and has been asked to testify on whether in his capacity as commanding officer of the HRIU, he had

access to information concerning decisions, discussions, or policies affecting the investigation and prosecution of TRC-related cases.

- 8 The Calata Group's affidavit (delivered on 27 February 2026) does not address this. The presumption, therefore, is that they do not dispute the allegations in my further affidavit.

IMPERMISSIBLE AFTER THE FACT JUSTIFICATIONS

- 9 In their answering affidavit, the Calata Group advances a new justification, not advanced by the Chairperson in her ruling, for why bias cannot reasonably be apprehended. This new justification, which relates to the alleged discussions between army and police officials and ANC government officials, is irrelevant. The Calata Group cannot, after the ruling, seek to justify it for reasons not advanced by the Chairperson.

- 10 In addressing the Calata Group's case, which is largely one based on delay, I also address their impermissible new justification to show that it too cannot breathe legal legitimacy into the impugned ruling. I stress, however, that it is entirely unacceptable for the Calata Group to give new justification which is an afterthought, not borne out by the record and aimed at curing an otherwise mortal error in Justice Khampepe's findings on the temporal line in the Commission's Terms of Reference.

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THE ALLEGED DELAY

- 11 Justice Khampepe found that: (a) I delayed unreasonably in bringing the recusal application, (b) I failed to provide a proper explanation for the delay, (c) the delay demonstrates that my apprehension of bias is not reasonable.
- 12 My complaint about the findings on delay is two-fold.
- 12.1 First, Justice Khampepe treated delay as a decisive or overriding consideration rather than a contextual factor to be weighed after the proper application of the recusal test.
- 12.2 Second, she failed to apply the correct principles that are relevant to the assessment of delay. She did not do a balancing of factors when determining delay. Importantly, she did not consider that if she was obliged to recuse herself and failed to do so, the Commission's proceedings would be nullified.
- 13 In their answering affidavit, the Calata Group does not address these two complaints *at all*. They merely reiterate what they had submitted before the Commission, which we addressed fully in our replying affidavit before the Commission (Rule 53 Record CaseLines p077-389 from para 13).
- 14 By reiterating their stance on delay, they seek to draw this Court into the same erroneous approach that ultimately led to Justice Khampepe's findings on delay. In other words, they want the Court to look at: (a) the extent of the delay (which they say is 204 days); (b) the reason for the delay, namely, that the Chairperson's

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handling of the complaints against Mr Semenya SC crystalised the need to bring the recusal application (which they say is fanciful) and; (c) the fact that we participated in the Commission until December 2025 when we brought the application for her recusal (which they say demonstrates that bias was not reasonably apprehended).

15 This approach is wrong.

On the waiver point

16 The Calata Group submits that the right to bring recusal proceedings was waived because we participated in proceedings before the Commission. This is wrong. As I understand it, it is firmly established that the question whether a litigant should be allowed to raise the issue of recusal at a later stage, despite an earlier opportunity to do so, implicates the *interests of justice* and not waiver.

17 Second, I am advised that when delay is alleged in instituting a recusal application, the decisive question is the interests of justice. The factors relevant to this inquiry include, but are not limited to, the extent and cause of the delay, the prejudice to other litigants, the reasonableness of the explanation for the delay, the importance of the issues to be decided, and the prospects of success. None of these factors is decisive. The enquiry is one of weighing each against the others and determining what the interests of justice dictate. So the correct application of the law requires a weighing and a balancing.

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- 18 The Calata Group invites this Court to look only at the period of the delay and to reject the reason for the delay as fanciful. They jettison the balancing exercise, and request that this Court do the same. This Court should decline this invitation.
- 19 It should properly balance the various factors and answer the question whether it is in the interests of justice to permit the applicants, having knowledge of all the facts upon which recusal is sought, to wait (until an adverse judgment on the merits) before raising the issue of recusal.
- 20 The extent of the lateness (if any) is one factor. However, lateness must be assessed on the correct facts. It is common cause that the Commission did not start its work in May 2025, even though the Chairperson was appointed then and the terms of reference issued then. The Commission only started its work in September 2025 and I was only issued with a Rule 3.3 notice on 25 September 2025 (and former Ministers Mabandla, Didiza and Kasrils) and 21 October 2025 (in respect of former Minister Nqakula). It is also only from this date that we were directly affected by the institution of the Commission. At that stage, Justice Khampepe's prior institutional roles were known to me. It is also common cause that after the Commission started its work, and especially from 27 October 2025 until early December 2025, several important events happened and decisions were taken by the Chairperson in the Commission's proceedings. These events include the pre-hearing meeting of 27 October 2025, when objections were raised to the existence of the private and undisclosed arrangement between Adv Semanya SC and Adv Varney concerning the leading of evidence, Adv Semanya's SC breach of a directive by the Chairperson not to interview NPA

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witnesses to avoid any conflict of interest issues, and the Chairperson's handling of that breach. The subsequent manner in which those objections were addressed on the one hand (including the Chairperson's procedural rulings, her endorsement of the arrangement, and her refusal to provide reasons), viewed alongside her previous involvement in the TRC and the NPA, gave rise to a reasonable apprehension that the Commission's processes were not being approached with the requisite institutional neutrality and openness of mind. These subsequent events and decisions did not exist, nor could they reasonably have been anticipated at the time of the Chairperson's appointment.

21 It is thus incorrect to suggest that the basis for the recusal application existed at the inception of the Commission. The case for recusal is more nuanced than this. The applicant's case is that the Chairperson's prior institutional association with the TRC and the NPA, and the Chairperson's conduct during the short life of the Commission and, more specifically, her handling of procedural objections and arrangements involving the Chief Evidence Leader, Adv Semenya SC, and the Calata Group's counsel, Advocate Varney, must be viewed cumulatively. These two grounds must be viewed in context, and taken as a whole. They are mutually reinforcing.

22 The corollary is that the period of 7 months that the Calata Group speaks of is exaggerated. The period of lateness, if there is any, must be determined in context, looking at the facts and the grounds of complaint in their fullness. But even if they are correct and the application is late by 7 months, this is not an isolated and decisive factor. As I understand it, the inquiry is broader than just

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how late the application is brought. A presiding officer should also look at other factors, like the explanation provided, the importance of the issues and prospects of being successful in the application. The period of lateness and the explanation for why the application was only brought in December is clearly addressed above.

23 A second factor is the importance of the issue. The importance of the issues raised in the Commission's Terms of Reference cannot be overstated. The Commission's investigation and recommendations centre around interference in TRC cases. This is an issue that touches the lives of the many victims of apartheid – including the Calata Group. It is also an aspect that touches my life for the reason, inter alia, that a culpable finding of interference by the Chairperson could result in criminal charges being brought against me and the former members of the executive. The recusal application itself raises an important issue, namely, whether structural, historical and institutional proximity to the subject matter of a Commission of Inquiry taken together with the presiding officer's handling of objections that were formally raised by parties would give rise to a reasonable apprehension of bias. The applicants have good prospects of being successful in the application.

24 There is a further important issue when the interests of justice is considered. If the Chairperson ought to recuse herself but refuses to do so, any subsequent step taken in the Commission proceedings would be a nullity. This means that if the Chairperson ruling is overturned, and the Commission proceeds, anything

done in the Commission becomes a nullity. It is thus in the interests of justice and the public interest that the delay be overlooked.

25 Lastly, the prospects of success. There are good prospects of being successful in the application. There is a reasonable explanation for why the application was only brought in December 2025 – the overlapping institutional roles and the manner in which Justice Khampepe handled the objections relating to Adv Semenya SC crystallised the need to bring the recusal application. The application was brought shortly after the rulings on these objections.

26 These factors must all be balanced against each other. This was not done by the Chairperson.

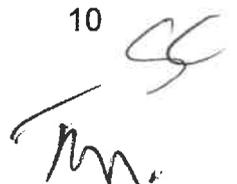
PRIOR INSTITUTIONAL ROLES

27 The primary ground of complaint raised in the founding and answering affidavit is that Justice Khampepe misdirected herself as to the applicable legal test for reasonable apprehension of bias. She effectively imposed a standard akin to proof of actual bias.

28 In their answering affidavit, the Calata Group does not address this complaint at all. Instead, they reiterate, to a great extent, what they said before the Commission.

The TRC roles

29 The backbone of the Calata Group's reason for why Justice Khampepe is not disqualified to sit as the Chairperson despite her prior roles as TRC

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Commissioner and Amnesty Committee member is that the “*question of political interference did not and could not have featured during the operational period of the TRC.*” In other words, Justice Khampepe did not assess political influence during the TRC, therefore there is no logical link between what she did in the TRC and what she does now as the Chairperson. Requiring a link between what Justice Khampepe did in the TRC and what she does in the Commission conflates the test for reasonable apprehension of bias and actual bias. It is an error of law.

The NPA roles

30 The Calata Group has provided a new justification for why the ruling should not be reviewed.

31 They contend that:

“unless the Chairperson can be connected to the discussions [between former police and army generals and representatives of the ANC government in the late 1990s and early 2000s] which she cannot, the fact that they were taking place while she was with the TRC and the NPA is entirely irrelevant.”

32 This is a new justification or reason that was not traversed before the Commission and by the Chairperson. It is impermissible for the Calata Group to give new rationalisations in their answering affidavit which are an afterthought,

disconnected from the record and are aimed at remedying an otherwise fatal error exposed by these review proceedings.

33 It is especially impermissible for them to do so when, in their answering affidavit before the Commission, their stance was completely different. In their answering affidavit before the Commission, the Calata Group agreed with us that the Commission's temporal inquiry should not be artificially confined to a narrow post-2003 window, because doing so would be irrational. Their view was that the inquiry must interrogate the broader genesis of events, including discussions and interactions dating back to at least 1998.

34 This was a significant concession. It reinforced the broader concern that the Commission is traversing a historically layered terrain in which the Chairperson previously occupied senior institutional roles. The Calata Group's acceptance of a broader temporal frame confirms that the inquiry overlaps with periods and processes in which the Chairperson was institutionally involved, thereby heightening, rather than diminishing, concerns about perceived detachment.

35 The suggestion by the Calata Group that "*active interventions to block . . . prosecutions of the TRC cases only commenced around mid-2003, more than 3 years after Judge Khampepe had left the NPA*" is undermined by their concession and stands in sharp contrast with the case put forward before the Commission. Their case before the Commission is premised on what they allege in their founding papers before the High Court. From about paragraph 376 of their founding affidavit before the High Court, the Calata Group appear to explain

the motive behind the alleged political interference. I annex the Founding Affidavit as “RA1”.

36 In my assessment of these paragraphs, the apparent motive for political influence stems from, inter alia, the TRC’s refusal of amnesty for collective responsibility to the ANC 37, alleged talks between the ANC and former generals on how to avoid prosecutions after the TRC through a new indemnity mechanism, and my failed attempts to amend the TRC legislation to allow for amnesty for collective responsibility without the need for individual disclosure. I have set out these allegations in the founding and answering affidavit before this Court. (CaseLines from 009-19 para 48).

37 This suggests a motive for interfering with TRC prosecutions – for self-preservation. In other words, the logic is that if apartheid error non-amnestied generals and others were prosecuted, the ANC 37 could too be prosecuted. This is indeed the theme in the High Court affidavits filed by the Calata Group and is an issue that will confront the Commission.

38 The irrationality of 2003 as the temporal starting point is shown up by the Rule 3.3 Notice that I got from the Commission (Rule 53 Record CaseLines 077-492) which requires me to answer to allegations that date as far back as 1998.

39 In any event, the Calata Group’s insistence that Justice Khampepe needed to be “in the room” for her to be disqualified reflects, yet again, that they apply a higher standard than what is required for an apprehension of bias.

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40 It is also telling that the Calata Group does not say anything about the role that they said the Chairperson played in the NPA's HRIU, which was established to make recommendations about the prosecution of TRC matters.

THE CHAIRPERSON'S HANDLING OF THE SEMENYA SC OBJECTIONS

The leading of witnesses' decision

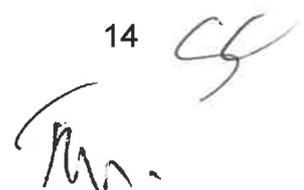
41 When one reads the affidavits before this Court, including the Calata Group's answering affidavit, and the affidavits before the Commission, the following is plain:

41.1 The Rules of the Commission were promulgated on 29 August 2025.

41.2 Rule 3.1 of the Rules provide that the Evidence Leaders bear the overall responsibility to present the evidence of witnesses to the Commission.

41.3 The Commission started to issue Rule 3.3 notices to interested parties, including to me, in September 2025.

41.4 On 27 October 2025, the Commission convened a pre-hearing meeting with all the parties. At this meeting, it was revealed that on 29 September 2025, a private agreement was concluded between Mr Semenya SC acting on behalf of the Commission and Adv Varney acting on behalf of the Calata Group. In terms of the agreement, Adv Varney would lead all 8 witnesses of the Calata Group – and not the evidence leaders. This arrangement obviously affected all the parties before the Commission.

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- 41.5 This agreement was not disclosed to the other parties when it was made, or after (until it was probed at the pre-hearing meeting). The Calata Group says that the letter confirming the arrangement was uploaded onto SharePoint, but it is plain from the transcript of the prehearing meeting that the majority of the parties did not have access to SharePoint.
- 41.6 Many parties objected to this arrangement and a formal objections and answer process was followed. My attorneys submitted written objections to the arrangement.
- 41.7 The hearing for the formal objections was set down for 28 November 2025. However, on the day of the hearing, the parties agreed and consented to an order which stipulated that the Chairperson should determine the objections on the papers without the need for oral argument and then issue a ruling.
- 41.8 On 2 December 2025, the Chairperson issued a one-line ruling, granting the Calata Group permission to lead their own witnesses. She did not provide any reasons.
- 41.9 My attorneys requested reasons. The Chairperson issued a ruling refusing to provide reasons.
- 41.10 From the record, it is clear that at no point did the Chairperson seek to properly investigate the existence, nature and propriety of Adv Semenya's private arrangements with Adv Varney. She did not determine

whether there was a lawful request to deviate from Rule 3.1. She did not consider whether the arrangement jeopardised procedural fairness. She did not try to ascertain whether there was disclosure of relevant correspondence to all the parties pursuant to the private arrangement.

41.11 She instead endorsed the private arrangement.

42 Nothing that the Calata Group says in their answering affidavit unsettles the above common cause facts.

43 My submission is that a reasonable observer, apprised of these facts, would be alarmed that Justice Khampepe endorsed an irregular and undisclosed private arrangement, declined to interrogate it, and treated serious objections by multiple parties as insignificant and not worthy of engagement. They would apprehend that Justice Khampepe may not bring an impartial mind to procedural matters and that involve Mr Semenya SC and the Calata Group.

44 It does not matter that there was no review of the Chairperson's ruling on the issue; various causes of action can arise from the same set of facts.

The Semenya SC recusal

45 Again, when one reads the affidavits before this Court, including the Calata Group's answering affidavit, and the affidavits before the Commission, the following is plain:

45.1 In the wake of the pre-hearing meeting of 27 October 2025, it was revealed that:

45.1.1 on 18 September 2025 the Calata Group had addressed a letter to the Chairperson and raised with her a potential conflict of interest concerning Mr Semenya SC, who had previously advised the NPA on the issue of amendments to the NPA's prosecutorial policy. This topic is directly linked to the matters before the Commission. The Calata Group requested that Mr Semenya SC not be involved in any deliberations or leading of witnesses relating to the amendments to the NPA's prosecution policy.

45.1.2 Justice Khampepe wrote back on 19 September 2025 and agreed with the proposal that Mr Semenya SC does not participate in any deliberations or leading of witnesses relating to the amendments to the NPA's prosecution policy.

45.2 Several parties were dissatisfied and sought Mr Semenya SC's recusal as Chief Evidence Leader. On 10 November 2025, the Commission directed that the founding papers in the recusal application be filed by 12 November and answering papers by 18 November. The hearing would take place on 26 November 2025.

45.3 On 13 November 2025, while the recusal proceedings were ongoing, Mr Semenya SC conducted interviews with the former Acting National Director of Public Prosecutions, Dr Silas Ramaite. During that interview,

he traversed aspects of the prosecution policy – contrary to Justice Khampepe’s directive of 19 September which was supposed to create a buffer between Mr Semenya SC and issues relating to prosecuting policy.

45.4 The NPA subsequently raised Mr Semenya SC’s conduct in a supplementary affidavit in the recusal application.

45.5 In light of Mr Semenya SC’s conduct, the Calata Group who initially abided the Chairperson’s decision in the recusal application agreed that Mr Semenya SC ought to be recused because he placed himself in breach of the Chairperson’s directive.

46 Mr Semenya SC breached a directive by the Chairperson that was supposed to create a buffer between him and issues regarding the NPA’s prosecution policy. The directive was not made for the sake of it. It was made to ensure that the conflict-of-interest concern is neutralised. The Calata Group agreed that the proper course of action was for Adv Semenya SC to be recused. Instead of recusing him, the Chairperson regularised his conduct after the fact in her ruling dated 4 December 2025.

47 It is this handling of the complaint that I am opposed to. That I did not bring an application for the recusal of Adv Semenya SC takes matters nowhere – it cannot insulate the Chairperson’s subsequent rulings, procedural choices, or supervisory omissions from scrutiny, where those decisions themselves give rise to a reasonable apprehension of bias.

48 The Chairperson's own supervisory handling of the objection, her endorsement of a departure from the Commission's processes, and her approach to enforcing her own directive, viewed cumulatively, could reasonably give rise to an apprehension that the process is not being managed with the requisite procedural neutrality.

49 I reiterate that the complaint is about Justice Khampepe's handling of Mr Semenya SC's conflict issue and how this would lead to a reasonable, informed observer apprehending a lack of impartiality. The complaint calls into question her conduct in compromising the integrity of the evidence leading process.

ALLEGED INCOMPETENT RELIEF

Setting aside the appointment of Justice Khampepe

50 In the notice of motion filed with my further affidavit, I seek an order from this Court directing the President to terminate Justice Khampepe's appointment as Chairperson with immediate effect. The Calata Group contends that this relief is incompetent.

51 They say that this Court cannot grant this order because the appointment of a Commission of Inquiry is an executive power vested only in the President in terms of section 84(2)(f) of the Constitution. As such, the appointment of a Commission is not administrative action, and since I do not allege that the President acted contrary to the principle of legality, nor do I seek to review the

decision to appoint Justice Khampepe, the relief sought (of terminating her appointment) is incompetent.

52 It is important to clarify that the relief I seek is not to set aside the Commission. I seek an order directing the President to terminate the Chairperson's appointment. This relief is sought as consequential relief upon a finding by this Court that Justice Khampepe ought to recuse herself and only if it is considered necessary that it be granted. This will be addressed further in legal argument.

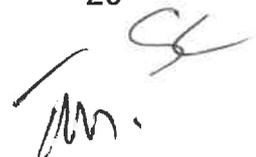
The nullity relief

53 I deny that the nullity relief is extraordinary.

54 The Court will, no doubt, have regard to the many judgments that hold that if the Chairperson's ruling is overturned by this Court on the basis that Justice Khampepe ought to have recused herself as Commissioner and Chairperson of the Commission, anything done with her involvement in the Commission is a nullity. This will be addressed further in argument.

The joinder relief

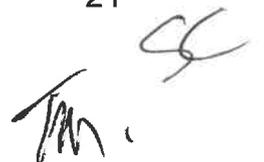
55 The Calata Group opposes the application for my joinder as a co-applicant to these proceedings.

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56 The entire basis for the opposition is that (a) my attorneys on 3 February 2026 stated the intention to review the ruling; (b) I filed a founding and answering affidavit on 13 February 2026 – apparently without a notice of motion; (c) I filed a notice of motion and supplementary affidavit dealing with joinder on 19 February 2026; (d) my application is opportunistic and I have displayed a cavalier approach to the recusal proceedings.

57 None of the factors that the Calata Group raises has anything to do with what a court considers when deciding an application for intervention as a co-applicant and joinder as such – especially for a party that is already joined as a respondent. The primary consideration is direct and substantial interest in the judgment and order of the court. I qualify to be recognised and permitted to intervene or be joined as a co-applicant on these considerations.

58 The Calata Group's objection is in fact futile since they acknowledge that I support the relief that Mr Zuma seeks and that I have introduced additional grounds of review in support of that relief. They have responded to the affidavit that I have filed and addressed each of the grounds of review that I have raised. To all intents and purposes, they have already treated my affidavit in substance as an application for the review of the recusal ruling. What remains for the Court is merely a formal procedural recognition that I am indeed in substance an applicant together with Mr Zuma. It is difficult to understand the logic of the objection. There is no prejudice that the Calata Group will suffer if I am

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recognised as a co-applicant and none has been alleged. This matter will be addressed further in legal argument.

SEQUENTIAL RESPONSES TO THE ANSWERING AFFIDAVIT

Ad paragraphs 1 to 3

59 I note the allegations in these paragraphs. I deny that the allegations in the affidavit are all true and correct.

Ad paragraphs 4 to 5

60 I note the allegations in these paragraphs.

Ad paragraph 6

61 I note the opposition by the Calata Group.

62 I deny the remainder of the allegations in the paragraph.

Ad paragraphs 7 to 9

63 I note the allegations in these paragraphs.

Ad paragraphs 10 to 11

64 I deny that there are “extreme constraints of time”.

65 Mr Zuma launched the application on 6 February 2026. My affidavit was filed on 13 February 2026, just five days later. It was filed before the other respondents filed answering affidavits so that they could respond to it in their answering affidavits. Mr Zuma filed a supplementary affidavit on 19 February 2026. Each of the steps I have taken was to align with the time frames stipulated in Mr Zuma’s application to avoid disturbing the hearing dates.

66 It is true that I filed a further affidavit on 24 February 2026. That affidavit, which is succinct, addressed a single issue – namely, the compellability and competence of Justice Khampepe as a witness. That affidavit deals with issues that the Calata Group is well aware of. They could deal with that affidavit, even if they did so after 27 February 2026 or they could have sought an indulgence to file the answering affidavit on 06 March 2026 – which is when the Commission proposed to file its answering affidavit. The fact that they chose to say nothing at all must be taken to mean they do not dispute the allegations.

67 It is true, I am presently not participating before the Commission and neither does my legal team (except to observe the proceedings). The fact that the Calata Group is participating in the Commission while dealing with this application is a consequence of the Commission proceeding despite the legal challenge.

68 I have no knowledge of the remainder of the allegations in these paragraphs.

Ad paragraphs 12 and sub-paras

69 To the extent that they relate to me, I deny that the allegations in this paragraph – for reasons set out earlier in this affidavit.

Ad paragraphs 13 to 16

70 I admit the allegations in these paragraphs.

Ad paragraphs 17 to 19 and sub-paras

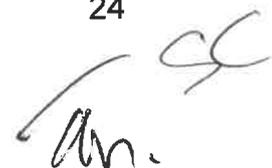
71 Mr Zuma will address these allegations.

Ad paragraphs 20 to 25 and sub-paras

72 I deny that I “piggy backed” Mr Zuma’s application.

73 I also deny that the “long standing practice” of not filing a separate affidavit applies in this instance where the material facts underpinning the recusal grounds were in Justice Khampepe’s peculiar knowledge.

74 I admit the remainder of the allegations in these paragraphs.

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Ad paragraphs 26 to 31

75 I deny that the affidavit filed on 13 February 2026 was not accompanied by an a notice of motion. The proposed notice of motion was filed as annexure "TMM2" (CaseLines 009-111).

76 In any event, the objection regarding the filing of a notice of motion is wholly academic. The meritless procedural objection by the Commission's attorneys was fully addressed by the filing of a notice of motion and short supplementary affidavit that introduced no further material facts. The facts relevant to my support of Mr Zuma's application are fully set out in the affidavit filed on 13 February 2026. There has been ample time in urgent proceedings for all the respondents to respond to that affidavit.

77 I admit the remainder of the allegations in these paragraphs.

Ad paragraphs 32 to 41

78 Mr Zuma will respond to these allegations.

Ad paragraphs 42 to 44

79 It is important that I correct what the Calata Group alleges in paragraph 44.1. They say that I allege that the Chairperson, as Deputy NDPP, "played a role" in the NPA's HRIU. The allegation that Justice Khampepe "played a role" in the

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HRIU was made by the Calata Group in a letter dated 11 November 2025. They made the allegation first. I reiterated it in my recusal application before the Commission.

80 I have set out my grounds of review in my founding papers. To the extent that the Calata Group has correctly captured these, the allegations are admitted.

Ad paragraphs 45 to 48

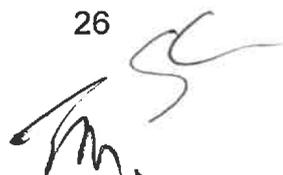
81 I have set out my grounds of review in my founding papers. To the extent that the Calata Group has correctly captured these, the allegations are admitted.

Ad paragraphs 49 and sub-paras to 51

82 I have set out my grounds of review in my founding papers. To the extent that the Calata Group has correctly captured these, the allegations are admitted.

Ad paragraphs 52 to 61

83 These are legal arguments which my legal team will address in due course.

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Ad paragraphs 62 to 102

84 These allegations are directed at Mr Zuma. To the extent that there is overlap in the grounds of review, and for reasons set out in my founding papers, I deny that the review application ought to be dismissed.

Ad paragraphs 103 to 124

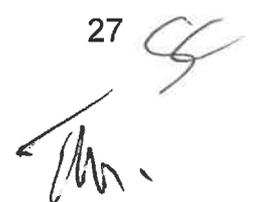
85 I have addressed these allegations before this Court. I have also addressed these allegations in the Commission. I deny the allegations for the reasons that I have set out before.

Ad paragraphs 125 to 134

86 I have addressed these allegations before this Court. I have also addressed these allegations in the Commission. I deny the allegations for the reasons that I have set out before.

Ad paragraphs 135 to 139

87 I have addressed these allegations before this Court. I have also addressed these allegations in the Commission. I deny the allegations for the reasons that I have set out before.

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Ad paragraphs 140 to 147 and sub-paras

88 I have addressed these allegations before this Court. I have also addressed these allegations in the Commission. I deny the allegations for the reasons that I have set out before.

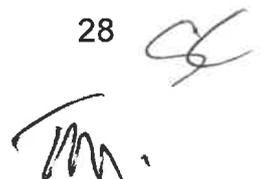
Ad paragraphs 148 to 154

89 I have addressed these allegations before this Court. I have also addressed these allegations in the Commission. I deny the allegations for the reasons that I have set out before.

Ad paragraphs 155 to 157

90 For reasons set out in my founding papers, I deny the allegations in these paragraphs.

91 I am advised that the nullification of the proceedings and the termination of the Chairperson's appointment are issues of law which will be argued in due course. I am also advised that prejudice must be considered from the perspective of all the parties before the Commission, including the rule of law.

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Ad paragraphs 158 to 168

92 I addressed these allegations earlier in this affidavit. I reiterate that there is no request to this Court to set aside the establishment of the Commission.

Ad paragraphs 169 to 180

93 I addressed these allegations earlier in this affidavit. A case for joinder has properly been made. Any other consideration is irrelevant.

94 It is incorrect and inappropriate for the Calata Group to refer to my application both here and before the Commission as opportunistic. It is also inappropriate to describe my approach as “cavalier”. Calling the application cavalier does not address the merits of the grounds of review. It is atmospheric.

95 The Calata Group will appreciate that a recusal application is not easily brought, primarily because of the presumption that judges are impartial. It is not careless of me to take time to properly apply my mind to my complaints and then to take care in how I fashion my application. This is not cavalier – it is a responsible use of state resources.

Ad paragraphs 181 to 182

96 I deny the allegations in these paragraphs.

97 The failure by the Calata Group to address the affidavits *ad seriatim* demonstrates that the facts that are set out in the affidavits are common cause and should be accepted as such.

CONCLUSION

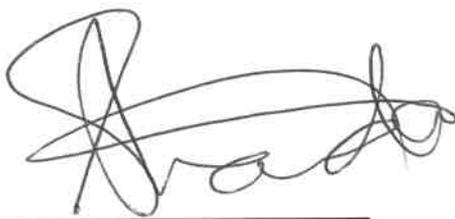
98 In the result, I pray for an order in terms of the Notice of Motion and/or alternative relief as this Honourable Court may deem appropriate.



THABO MVUYELWA MBEKI

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and deposed before me at JOHANNESBURG on this the 06TH day of **March 2026**, and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972, as amended, and Government Gazette Notice R1648 of the 19th of August 1977, as amended, have been complied with.

*



COMMISSIONER OF OATHS

Silvester T Chanda CA (SA)
Commissioner of Oaths
1 Mellis Road
Sandton, 2191
Date: 06/03/2026