

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, JOHANNESBURG**

**CASE NO.: 2026-026936**

In the matter between:

**JACOB GEDLEYIHLEKISA ZUMA** 1<sup>st</sup> Applicant

and

**THE CHAIRPERSON OF THE COMMISSION** 1<sup>st</sup> Respondent

**SECRETARY OF THE COMMISSION** 2<sup>nd</sup> Respondent

**ADVOCATE ISHMAEL SEMENYA SC** 3<sup>rd</sup> Respondent

**COMMISSIONER FRANS KGOMO** 4<sup>th</sup> Respondent

**COMMISSIONER ANDREA GABRIEL SC** 5<sup>th</sup> Respondent

**THE CALATA GROUP** 6<sup>th</sup> Respondent

**THABO MVUYELWA MBEKI** 7<sup>th</sup> Respondent

**NATIONAL PROSECUTING AUTHORITY** 8<sup>th</sup> Respondent

**MINISTER OF JUSTICE AND CONSTITUTIONAL  
AFFAIRS** 9<sup>th</sup> Respondent

**PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** 10<sup>th</sup> Respondent

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**7<sup>TH</sup> RESPONDENT'S PRACTICE NOTE**

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## DATE OF HEARING

16 – 17 March 2026

## FOR THE 7<sup>th</sup> RESPONDENT

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## NATURE OF APPLICATION AND QUESTIONS BEFORE THE COURT

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1. The application was filed as one of urgency and seeks to challenge the first respondent's decision not to recuse herself 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 (**“Commission”**).

2. The seventh respondent has sought leave to be joined as a co-applicant in the applicant’s review of the recusal decision.
3. This gives rise to the following questions, for the Court’s determination:
  - 3.1. Were the applicant(s) required, in terms of section 47(1) of the Superior Courts Act 10 of 2013, to seek permission of the Chief Justice before instituting these review proceedings?
  - 3.2. Did the first respondent’s decision constitute administrative action reviewable under the Promotion of Administrative Justice Act 3 of 2000 (**“PAJA”**), or does it constitute the exercise of public power reviewable under the principle of legality?
  - 3.3. Have the applicants established grounds for urgency? Furthermore, is the review premature in that it ought instead to be instituted upon completion of the work of the Commission?
  - 3.4. Has the first respondent committed errors of law and/or fact, or acted inconsistently with the principle of legality, in the following respects:
    - 3.4.1. The application of an incorrect legal test in relation to the alleged delay in bringing the recusal application;
    - 3.4.2. The improper assessment of her prior institutional affiliations and their bearing on a reasonable apprehension of bias;
    - 3.4.3. The improper assessment of the implications of her rulings regarding Adv Semanya SC’s recusal and the leading of the Calata witnesses;

- 3.4.4. The over-reliance on the temporal scope of the Commission's terms of reference; and,
  - 3.4.5. The fact that the recusal ruling appears to have been issued by a single member in circumstances where it ought to have been a panel decision.
- 3.5. Has the seventh respondent / second applicant sought competent relief, and in particular, does the relief sought infringe the principle of separation of powers?

## **SUMMARY SUBMISSIONS**

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4. The seventh respondent's / second applicant's case is that:
- 4.1. The applicants were not required to seek permission in terms of section 47(1) of the Superior Courts Act 10 of 2013 because the first respondent was not acting in a judicial capacity.
  - 4.2. The first respondent's ruling falls to be reviewed and set aside in terms of the PAJA, alternatively under the principle of legality.
  - 4.3. This review is not prematurely sought.
  - 4.4. The evidence presently before the Commission, including material placed before it by other witnesses, demonstrates that matters falling within the Commission's mandate arise from institutional processes and decisions in which the Chairperson herself was previously involved, thereby giving rise to a reasonable apprehension of bias.
  - 4.5. There was a reasonable apprehension of bias in the manner in which the first respondent ruled on Adv Semenya SC's recusal and the leading of the Calata witnesses.

- 4.6. The reliance on the temporal scope of the Commission's terms of reference is misplaced and devoid of context.
- 4.7. The recusal ruling ought to have been a decision of the panel rather than that of a single member.
- 4.8. The relief sought by the seventh respondent / second applicant is competent.

## **READING THE PAPERS**

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The 7<sup>th</sup> respondent submits that the Court needs to read the papers filed.

## **ESTIMATED DURATION**

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2 days.