

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

STATEMENT: APPLICATION TO CROSS-EXAMINE

I, the undersigned.


JOSEF ARNDT VENTER

do hereby make oath and state that:

1. I am an adult male attorney practising as a Senior Associate at Webber Wentzel. I am the attorney of record for the families and survivors of apartheid-era crimes (known as the "**Calata Group**").
2. The facts contained in this statement are within my own personal knowledge unless the context indicates otherwise and are to the best of my knowledge true and correct.
3. I depose to this statement on behalf of my clients, who we represent in these proceedings. I am duly authorised to do so.
4. This statement is made in support of an application in terms of Rule 3.7 of the Commission's Rules read with Regulation 8(3) of the Commission's Regulations, to cross-examine Advocate Chris Macadam ("**Adv Macadam**" or "**Macadam**") when he testifies before the Commission.

THE APPLICATION

5. Adv Macadam filed a statement with the Commission. The statement is unsigned but dated 3 March 2026, and he gave oral evidence before the Commission on 18 March 2026.
6. While my clients initially did not intend to cross-examine Adv Macadam, we have determined that such an application is now necessary due to the limited scope of Adv Macadam's evidence-in-chief; and because of various allegations made in these proceedings and in the reopened Cradock 4 Inquest since he testified.

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7. My clients wish to put questions to Adv Macadam and explore his evidence further in relation to the aspects set out below.

Macadam's 2018 affidavit

8. Adv Macadam deposed to a crucial affidavit in 2018 in the Joao Rodrigues stay of prosecution case in *Rodrigues v NDPP & Others* Case No. 76755/18, Gauteng Division (annexed as FA5 to the Calata affidavit in the Calata Group's Bundle 1).
 - 8.1 This affidavit and its annexes explained why the TRC cases did not get off the ground over many years. It referred to the denial of investigative support and included correspondence to this effect from the DSO and SAPS. Amongst the annexes were the Amnesty Task Team reports, including the secret Further ATT report, aimed at imposing a special legal regime for prosecution decisions in respect of the TRC cases.
 - 8.2 Macadam's affidavit (together with the affidavit of Dr TP Pretorius SC admitting that the NPA had been subjected to political interference) prompted the former TRC commissioners, the families and various organisations to start calling for a commission of inquiry in 2019.
 - 8.3 Unfortunately, Macadam's crucial 2015 affidavit was only referenced in passing during his evidence-in-chief and accordingly it has not been properly considered, tested and placed into the evidentiary record of the Commission.
 - 8.4 We wish to traverse with him the detail of his 2015 affidavit and annexes, as they deal directly with matters relevant to this Commission's terms of reference
 - 8.5 Since these important matters were not dealt with in Macadam's evidence in chief, questions by way of clarification will not suffice.

Early TRC investigations

9. We wish to test Macadam's assertion that the Timol case was properly investigated and closed given that at the time, the PCLU did not have any investigating officers on its cases.
10. We wish to enquire whether he knows why:

- 10.1 Only six of the TRC cases were referred by the NDPP between December 2003 and February 2004 to the DSO, and not all the TRC cases; and
- 10.2 Why, besides the PEBCO 3 case which became subject to litigation, the Chikane matter which had been previously investigated as part of the Basson investigations; and the Motherwell case which had been investigated in the early 1990s with a trial and judgment, none of the other cases (Ngulunga, St James Church and Heidelberg Tavern) appear to have been taken forward.

Adv Macadam's evidence about the TRC Task Team and the investigative capacity

11. Macadam's evidence is that the amendments to the Prosecution Policy which came into effect on 1 December 2005 placed a statutory obligation on SAPS and DSO to investigate TRC cases. Macadam testified that the obligation was such that the entities could not decline to investigate and that it would ensure that the PCLU's investigation issues with SAPS and the DSO would be resolved (18 March 2024 transcript p 25).
12. Aside from the fact that the amendments were not a statute and the policy imposed no investigative obligations, we seek his comment on the fact that the investigations did not proceed, and because of the dire state of the TRC cases, Macadam again approached the SAPS in 2008 and 2009 to plead for investigators.
13. We seek his comment and explanation as to why between 2007 (when the Chikane plea bargain happened) and 2016 there was not a single TRC case enrolled for prosecution, nor was there a single TRC related inquest or reopened inquest. The case of Nokuthula Simelane was enrolled in 2016, but only because the family went to court to compel the NPA to make a decision.

Adv Macadam's knowledge about the disappearance of the Cradock 4 docket

14. Macadam did not address the allegation regarding the missing Cradock 4 docket during his evidence-in-chief.
15. Adv Nomgcobo Jiba denies the version of Macadam in his 2021 affidavit (in the Cradock 4 application to compel, that an individual from the office of Adv Jiba (while

she was acting NDPP) requested the Cradock 4 docket from Adv Macadam, which subsequently went missing. The docket was reconstructed in 2019.

Allegations made by two of the Cradock 4 investigators

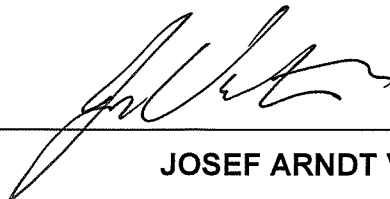
16. Macadam's version also contradicts evidence led on 24 March 2026 in the reopened Cradock 4 Inquest relating to Macadam and the missing docket. The evidence of DPCI investigating officers Captain Tlou Masegela and Colonel Johannes Makua was heard after Macadam testified before this Commission. The transcripts are attached as "A1", "A2" and "A3".
17. Masegela stated that he gave the docket to Macadam's secretary, Ms Swart, in 2015. Macadam was allegedly still in possession of the docket in 2017 because Masegela claims he saw the docket in Macadam's office when he had a meeting with him. We also wish to canvass the matters raised by Masegela in pages 6, 8, 13, 14 - 15, 24, 28 – 31 of the 24 March 2024 transcript. He retired from the DPCI later in 2017.
18. Makua testified that he took over the investigation in 2018 after Masegela retired (24 March 2024 second morning session transcript p 46). He alleged that he approached Macadam after taking over but was not provided the docket. Macadam informed him after several months that the docket was missing. According to Makua, he was stopped by Macadam from making queries with Adv Jiba about the missing docket. Makua was ultimately responsible for reconstructing the missing docket with claimed little assistance from Macadam (24 March 2024 afternoon session transcript p 64 - 71).
19. Makua testified that he did not believe that the docket went missing by accident but that powerful forces were protecting high-ranking suspects in the matter. He claimed that from "*the behaviour of Macadam*", he was the person who was protecting the suspects (24 March 2024 afternoon session transcript p 72 - 73).
20. Macadam's version must be tested against Adv Jiba's denial and the allegations made against Macadam by Masegela and Makua in the re-opened inquest must be put to him.

Other issues to clarify with Macadam

21. The evidence before the Commission is that the majority of the TRC cases have not been investigated and prosecuted, with only a tiny number of cases enrolled and even fewer convictions. The status of many cases that served before the TRC is presently unknown.
22. Our clients wish to establish from Macadam what his view is about this state of affairs, considering that he identified a large number of cases in 2003 for investigation and possible prosecution. (Bundle 8: Adv R Macadam at p 1314).
23. Our clients wish to enquire from Macadam about the unresolved 1993 killing of the 34-year-old development worker and mother of two young children, Clare Stewart. Macadam briefed the TRC Task Team about the Stewart case during its meeting on 4 December 2006 (Ackermann NPA documents from COI bundle at p 84). We wish to establish from Macadam what the briefing entailed and what eventually transpired with case considering that it remains unresolved.

Conclusion

24. The issues outlined above lie at the heart of the Commission's terms of reference and must be tested through cross-examination.
25. It is in the best interests of the work of the Commission that the Calata Group's Counsel be permitted to cross-examine Adv Macadam.
26. In the light of the above, I humbly request the Chairperson to permit the Calata Group's counsel to cross-examine Adv Macadam



JOSEF ARNDT VENTER

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at MUIZENBERG SAPS on 2026-04-20 2026^{NF}, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and

Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

SIFUBA
7269655-4



COMMISSIONER OF OATHS

Full Names: *SIFUBA*

Business Address: *07 SCHOOL RD*

Designation: *CST*

NF *R*

IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, GQEBERHA

CASE NO.: CC19/2024

DATE: 24/03/2026

In the matter between
MATTHEW GONIWE
FORT CALATA
SICELO MHLAULI
SPARROW MKONTO

Deceased

BEFORE THE HONOURABLE MADAM JUSTICE BESHE

ON BEHALF OF THE NPA : ADV COLTMAN
ADV GOVENDER
ADV MVANDABA

ON BEHALF OF THE FAMILIES : ADV VARNEY
ADV BUTHELEZI

ON BEHALF OF RESPONDENTS : ADV MILLER
ADV CILLIERS
ADV SCHOEMAN
ADV SULEMAN

INTERPRETER : MR WABANE



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N.F.

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, *in as far as it is audible*, the foregoing is a **VERBATIM** transcription of the proceedings as was ordered to be transcribed by Encha Digital Transcribers by means of a digital recorder in the matter of:

JUDICIAL INQUEST – CRADOCK FOUR:

MATTHEW GONIWE / FORT CALATA / SICELI MHLAULI / SPARROW

MKONTO

<u>CASE NUMBER</u>	: CC19/2024
<u>RECORDED AT</u>	: LCPE COURT F
<u>DATE HELD</u>	: 24-03-2026
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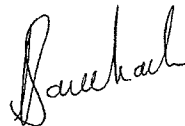
PROBLEMS EXPERIENCED WITH RECORDING

With reference to the record of proceedings, the following problems were experienced on the audio on:

1. Incorrect grammar typed verbatim.
2. Names transcribed phonetically where spelling not provided.
3. Microphones unclear / soft / air conditioner on. Refer to [indistinct] or [inaudible] throughout record of transcription.
4. Parties intervening each other resulted in indistinct or inaudible words and/or phrases.

DATE COMPLETED:

2026-03-25



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COURT RESUMES ON 24 MARCH 2026

[10:03]

REGISTRAR: M'Lady, I call the matter CC19/2024
[inaudible]

COURT: Okay. Okay just ...[intervenes]

MR COLTMAN: May it please the Court, M'Lady.

COURT: Yes.

MR COLTMAN: The next witness is Tlou Phakisa Masigela.

COURT: Maybe for the record, we can state or place it on
the record that Mr De Kock's continuation of evidence by
10 way of cross-examination has been held in abeyance until
Friday.

MR COLTMAN: Yes, indeed, M'Lady.

COURT: Thank you.

MR COLTMAN: And that will be done virtually.

COURT: Thank you.

MR COLTMAN: Thank you.

[Discussion of record]

INTERPRETER: Can you give your full names to the Court
[inaudible]

20 WITNESS: Tlou Phakisa Masigela.

INTERPRETER: Do you have got any objection in taking
the prescribed oath?

WITNESS: No.

TLOU PHAKISA MASIGELA (duly sworn states) [through
interpreter]

AKF 

INTERPRETER: The witness has been placed under oath, M'Lady.

COURT: Thank you.

INTERPRETER: As it pleases.

COURT: I only got the second name, Phakisa. Not the first name. What is the first name?

MR MASIGELA: Tlou, T-l-o-u.

COURT: Tlou, oh, thank you very much and that is elephant.

10 MR MASIGELA: Yes, it is.

INTERPRETER: The witness indicates that he will tender his testimony in English and Afrikaans where he encounters problems, M'Lady. As the Court, pleases. Thank you.

COURT: Thank you.

MR COLTMAN: M'Lady, I was going to just mention the fact that unfortunately we could not make timeless arrangements for an interpreter for this witness because he speaks Tswana, Sotho and Sepedi.

COURT: Okay.

20 MR COLTMAN: *Verstaan u...*

MR MASIGELA: Yes.

COURT: Let us hope Mr Wabane will be able to help. You can sit down Mr Masigela if you wish.

MR MASIGELA: Thank you, M'Lady.

MR COLTMAN: Ja, he has agreed to testify in English.

COURT: Yes.

MR COLTMAN: And he understands Afrikaans very well. In fact, he speaks it fluently.

COURT: Thank you.

EXAMINATION BY MR COLTMAN: Mr Masigela, can I just confirm first that you are a retired Captain in the South African Police Service?

MR MASIGELA: Correct, M'Lady.

MR COLTMAN: And when did you so retire?

10 MR MASIGELA: 2017.

MR COLTMAN: And just for the record, when did you first become a member of the police?

MR MASIGELA: I became a member of the South African Police 13 November 1978.

MR COLTMAN: 13 November 1978.

MR MASIGELA: Yes.

MR COLTMAN: And just not to waste too much of the Court's time, when did you, we know you or your statement is in the record and you were a member of the Directorate
20 of Priority Crimes Investigation.

MR MASIGELA: That is correct, M'Lady.

MR COLTMAN: When you retired.

MR MASIGELA: Yes, M'Lady.

MR COLTMAN: When did you join the DPCI?

MR MASIGELA: I do not have exact date when did I join the

DPCI, but we started the DPCI.

MR COLTMAN: Yes, for how long did you work? Can you remember, in years?

MR MASIGELA: From day one up to the last day I worked in the police.

MR COLTMAN: Let us leave it there for the moment. M'Lady, if I can just point out that Mr Masigela's, there was- Mr Masigela's statement appears in EXHIBIT C at page 323. So it forms part of the Reconstructed Record and it is A,
10 marked A88 in the Reconstructed Record.

COURT: Thank you.

MR COLTMAN: I am going to hand the original statement to him to just please read into the record. Mr Masigela, can you please, Captain Masigela, can you please just read your statement into the record?

MR MASIGELA: Thank you, M'Lady:

20 "I, Tlou Phakisa Masigela, state under oath. I am a retired captain who was employed by the DPCI Station Head Pretoria with ID number 590807 5741 081. My cell phone number 073 3378 582.

I was the investigating officer in this case of Cradock 4. I obtained all relevant statements on this matter. I sent the docket to the NPA for decision and it was

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acknowledged by both a lady Swart who was a clerk there. I know the docket was visible...”

[Intervenes]

MR COLTMAN: I saw the docket.

MR MASIGELA: Ja:

“I saw the docket visibly at the office of Mark Adams and...”

I am sorry, M’Lady, it is not my handwriting this.

10 COURT: Yes.

MR COLTMAN: My apologies. Can I, M’Lady, may I just then refer the ...[intervenes]

MR MASIGELA: But I confirm it is my statement.

MR COLTMAN: M’Lady, if I can quickly....

COURT: Yes.

MR COLTMAN: M’Lady, if I can just, just for ...[intervenes]

COURT: Maybe you can start off with the NPA because it says.

MR COLTMAN: Yes.

20 COURT: NPA but it reads National.

MR COLTMAN: Yes.

COURT: Conventional Arms.

MR COLTMAN: Indeed.

COURT: Control.

MR COLTMAN: Indeed so, I thought I should rather do it.

Can I start with paragraph 2, M'Lady?

COURT: Yes.

MR COLTMAN: "I was the investigator of the case of Cradock 4 matter. I obtained all the relevant statements on this matter and I sent the docket to the National Conventional Arms Control Inspector (NCACI) for decision and it was acknowledged by a lady Swart, who was a clerk there. I saw the docket when I visited the office of Macadam now and again. The reason for visiting him was to get the progress since I sent it for decision. On 2017, I visited the office of Adv Macadam and I found Adv Torrie[?] Pretorius who told me that he is looking for the docket but he could not find it, until I retire."

10

And paragraph 5:

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"I know and understand the content of the statement. I have no objection in taking the prescribed oath. I do consider the oath to be binding on my conscience."

And then you sign the docket. You confirm that this is your statement.

MF 

MR MASIGELA: I confirm it, M'Lady.

MR COLTMAN: Now, Mr Masigela, if I can just, apologies if I say Mr Masigela instead of Captain. No disrespect to you.

MR MASIGELA: No problem.

MR COLTMAN: Captain, just this reference to National Conventional Arms Control Inspector, what was meant there?

MR MASIGELA: M'Lady, there it should be PCLU.

MR COLTMAN: Yes.

10 MR MASIGELA: Instead of that. And then when the statement was obtained from me, I was not aware that whether the unit name changed or not because I was no longer in the service when the statement was obtained from me.

MR COLTMAN: Yes.

MR MASIGELA: Ja, but ...[intervenes]

MR COLTMAN: And PC...

MR MASIGELA: PCLU is a, is a unit at the NPA.

MR COLTMAN: Yes, it was priority crimes.

20 MR MASIGELA: Yes, priority crime.

MR COLTMAN: Litigation Unit.

MR MASIGELA: Yes, sir.

MR COLTMAN: But we in any event see that NP was scratched out which probably would have meant NPA.

MR MASIGELA: Yes.

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MR COLTMAN: Then you indicated in paragraph 3 that “I saw the docket when I visited the office of Macadam.” It is written there “Mark Adam”. And then again in paragraph 4, you referred to Adv Mark Adam. Am I correct that you in fact referred to Adv Chris Macadam?

MR MASIGELA: Correct, M’Lady.

MR COLTMAN: And then in paragraph 3, you then say:

10 “I saw the docket when I visited the office
 of Macadam now and again. And the
 reason for visiting him was to get the
 progress since I sent it for decision.”

Can you just explain that to the Court, please? Can you just elaborate on it?

MR MASIGELA: Thank you, M’Lady. When the docket was still with the Adv Macadam, I used to go to his office and discuss the progress of the docket. Some visit was because of bringing any evidence that was not in the docket or complying with the outstanding instruction he gave to me.

MR COLTMAN: Hmm.

20 MR MASIGELA: So I visited him while the docket was with him and I never took it back.

MR COLTMAN: From him?

MR MASIGELA: From him. While I was discussing the docket, the docket was in his office.

MR COLTMAN: Now, if we can then just go, go back a little

bit. When were you allocated this docket, this matter, to investigate?

MR MASIGELA: The docket, not only that one, the TR dockets which were allocated to me.

MR COLTMAN: The TRC now?

MR MASIGELA: Ja, TRC dockets.

MR COLTMAN: Yes.

MR MASIGELA: Were allocated to me immediately after 2010 World Cup. When I come back to my office, I found
10 these dockets.

MR COLTMAN: So if you can, did you do World Cup duties?

MR MASIGELA: Ja, I was stationed at Johannesburg for World Cup duties.

MR COLTMAN: Yes.

MR MASIGELA: When I come back my, my Commander handed over the dockets to me.

MR COLTMAN: I see. You then started working on this matter?

MR MASIGELA: Ja, I started working on the matter.

20 MR COLTMAN: You said it is not only this matter there were other matters as well?

MR MASIGELA: Yes, it is not, was not only the TR ...[intervenens]

MR COLTMAN: Other.

MR MASIGELA: The Cradock 4 case.

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MR COLTMAN: Now, how did you go about putting this docket together and here we refer to the Cradock 4?

MR MASIGELA: To put the Cradock 4 together was not easy. It was not a complete docket put it together. It was ...[intervenes]

MR COLTMAN: Yes.

MR MASIGELA: Documents and statements laying around in the containers. And then I had to compile them and build the docket from scratch. But it was not so difficult for me to
10 reconstruct the docket because the statements which were in the boxes were marked by the previous investigator of Eastern Cape. And then more about this, there were extra documents in the same box. And then I only use each from the same bundle. If the statement is 8-3 and then there are four 8-3s, I will take only one to reconstruct.

MR COLTMAN: You mean, if you can just, excuse me, can just stop. Are you saying that there would be, say, duplicate copies of some statements?

MR MASIGELA: Yes, for me it sounded like the reason why
20 they are, they are repeating these duplicates is that the statements were used at the hearing of the TRC.

MR COLTMAN: I see. So then you take all these statements or you took some of these statements and then you all compiled it together to reconstruct this docket.

MR MASIGELA: Correct.

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MR COLTMAN: And about how many, I know you do not have the docket, about how many statements do you estimate were there or documents were there in that docket?

MR MASIGELA: The Cradock 4 docket was having more or less 100 statements inside.

MR COLTMAN: Now, we will come back to exhibits. Would that have included other exhibits, say photo albums, etcetera?

10 MR MASIGELA: There were photos which were taken by the police photographers.

MR COLTMAN: Yes.

MR MASIGELA: And I did not repeat them. I took only each of the photos and attached in the docket. And then there was also post mortems in the docket.

MR COLTMAN: And any TRC documentation?

MR MASIGELA: The TRC documentations which were there, I could not attach them inside the docket.

MR COLTMAN: Yes.

20 MR MASIGELA: But I did compile files for them.

MR COLTMAN: Yes, thank you. And did you yourself take any statements?

MR MASIGELA: Yes, even though I cannot remember which statement did I took from whom, because I was taking statements randomly for the TRC cases. But in this

particular case, I can remember that the statement of Major Eric Winter.

MR COLTMAN: Yes.

MR MASIGELA: Who was stationed here at the Port Elizabeth Security Branch.

MR COLTMAN: In the Cradock?

MR MASIGELA: The Cradock, in the Cradock case, I obtained the statement from him.

MR COLTMAN: Yes, and can you remember what, the
10 essence of what he said then?

MR MASIGELA: Eric Winter, he did not want to commit himself in this thing totally, but I did ask him whether he knows about this TRC, the Cradock 4 case.

MR COLTMAN: Yes.

MR MASIGELA: He said yes, he is familiar.


MR COLTMAN: Yes.

MR MASIGELA: And then I asked him about the members of the South African Police Service Security Branch who were involved in this, and he said he knows them all. I
20 asked him whether did he took any part or was he in the plans of this shooting or assassinating the Cradock 4, he said no, he did not.

MR COLTMAN: And then did you visit the family?

MR MASIGELA: Yes, I did visit the family.

MR COLTMAN: And you did statements or take statements

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from them?

MR MASIGELA: I cannot remember obtaining statements from them, but I think the main reason of visiting the families was to update them about the progress of the docket. That the docket is now again alive- is with me. And to inform them about also the presence of the police officers who took part in the assassination of the Cradock 4.

MR COLTMAN: Yes.

MR MASIGELA: Who are still alive.

10 MR COLTMAN: Yes.

MR MASIGELA: I cannot exactly remember all what I said to the families, because when I was in Eastern Cape, I came for, I think three cases here, it was not only for the Cradock 4.

MR COLTMAN: Yes.


MR MASIGELA: Because I remember from here, I was in East London.

MR COLTMAN: And I know you testified that you visited the office of Adv Macadam to try and follow up on any progress
20 made in the case, but what eventually happened?

MR MASIGELA: Thank you. The day when I was speaking to Adv Torrie Pretorius.

MR COLTMAN: Yes.

MR MASIGELA: I thought maybe the docket is still there or it is misplaced or misfiled in their offices. I was not yet

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convinced that the docket is missing.

MR COLTMAN: Hmm.

MR MASIGELA: When I retired, I thought maybe the docket is there and is going to be handed over to a new investigating officer. But only to find out that the docket is no more.

MR COLTMAN: And let us go back to you, you indicated that when you visited Adv Macadam's office you, you saw the docket there in his office. Can you just explain that?

10 MR MASIGELA: Yes, because when I visit him, giving him the feedbacks of the instructions he gave me, which one did I comply, which one is still outstanding.

MR COLTMAN: And what did the, what did the docket look like? Was it in a, I beg your pardon, in a lever arch file or.

MR MASIGELA: Ja.

MR COLTMAN: Or a normal paper file?

MR MASIGELA: The docket was in a lever arch file, as big as those in front of the Judge.

MR COLTMAN: Yes. So then the, so you were then told
20 that the docket is missing. And did you report it to your seniors?

MR MASIGELA: M'Lady, I could not report to my seniors because by that I am no longer in the service. I am at home.

MR COLTMAN: What do you mean? Did you retire?

MR MASIGELA: I retired. Because when I retire I was still convinced that the docket is still in their office. It was 2017 and I retired 2017.

MR COLTMAN: And, I just forgot to ask you this, can you remember when did you, where did you keep this docket or hand the docket over to Adv Macadam?

MR MASIGELA: I do not have the date.

MR COLTMAN: Ja.

MR MASIGELA: But I gave the date and the signature.

10 MR COLTMAN: Yes.

MR MASIGELA: To the current investigator that on this date.

MR COLTMAN: Yes.

MR MASIGELA: I handed over the docket to NPA and this lady signed for it.

MR COLTMAN: That was ...[intervenes]

MR MASIGELA: Ms Swart.

MR COLTMAN: In 2015.

MR MASIGELA: Yes.

20 MR COLTMAN: M'Lady, we will get the date and then we will then, we will hand up or that acknowledgement of receipt to the Court later.

COURT: Okay.

MR COLTMAN: And is it correct that we had a consultation with you on the 3rd of June 2024 and then you informed us

that you had made duplicate, duplicate copies of the docket on the exhibits?

MR MASIGELA: Correct, M'Lady.

MR COLTMAN: And in that consultation or part of the consultation was also Colonel Nkuna. Is that correct?

MR MASIGELA: Correct, M'Lady.

MR COLTMAN: And we know that he is, he is the National Coordinator at the DPCI for TRC cases. Now, is it correct that Colonel Nkuna then or you indicated to join that
10 consultation where you put a box with exhibits marked with your name and the name thereof in the storeroom at the DPCI?

MR MASIGELA: Correct, M'Lady. Let me put it clear.

MR COLTMAN: Yes.

MR MASIGELA: I made a copy.

MR COLTMAN: Ja.

MR MASIGELA: Of the original docket. The missing docket ...[intervenes]

MR COLTMAN: Yes.

20 MR MASIGELA: I made a copy of it. And I made, I put the other correspondences and the copies of the statements who are in both the original and the copy in the box and put them inside the strong-room which is controlled to, not easy to get access to that strong-room which I was convinced that there is a copy of the docket and the box are safe. And

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the day when I made this affidavit, I informed the investigating officer that to be easy for him to reconstruct the docket, he must go to where I worked and let them open the strong-room for him.

MR COLTMAN: Hmm.

MR MASIGELA: He will find a box. I marked that box with my name and on that box I wrote Cradock 4. Out of that box, it is going to be easy for him to can reconstruct the docket.

10 COURT: Where was that taken to, Mr Masigela, where were you working?

MR MASIGELA: I was working at the DPCI Head Office and my office at 217 Visagie Street, Pretoria *Sentraal*.

COURT: Thank you.

MR MASIGELA: Okay, the statement was taken from me at Mabopani Police Station.

MR COLTMAN: Yes, and M'Lady, just for record purposes, it was taken on the 6th of January 2022 at 8:30.

20 MR MASIGELA: Ja, on that date, I informed the investigating officer that he must go to where I worked.

MR COLTMAN: Yes.

MR MASIGELA: And they must let him get inside the strong-room to get the box and look for the duplicate docket of that missing docket.

MR COLTMAN: Yes.

NF 

MR MASIGELA: I later realised that they never gave him the box. But, last year, 2024, when you consulted with me while I was with the TRC Coordinator, Colonel Nkuna.

MR COLTMAN: Hmm.

MR MASIGELA: I repeated this and I told him that Colonel go there and let them open the strong-room. Get the box and then in that box, you will get the documents that are going to assist this investigation. And in the shelves where we put the investigated docket, the closed docket, you will
10 get a copy of the missing docket. Colonel Nkuna reported back to me that very same day.

MR COLTMAN: Hmm.

MR MASIGELA: He said he only found the box. The only docket is nowhere to be found.

MR COLTMAN: Yes, and you, you saw this box and not, not the docket. You say the docket and the box containing other documents were different, at different places.


MR MASIGELA: Yes, at different places.

MR COLTMAN: Yes. And you looked at the, is it correct
20 that you looked at this box and it contains exhibits that is already before this Court.

MR MASIGELA: Yes, M'Lady.

MR COLTMAN: Do you know who took, who took over the investigation from you?

MR MASIGELA: Yes, yes, M'Lady, the current investigator

N.F. 

is Colonel Dweba.

MR COLTMAN: No, no, after you left, after you retired.

MR MASIGELA: I was informed that the person who took over the investigation was Colonel, he was by then Lieutenant Colonel Makua.

MR COLTMAN: Makua.

MR MASIGELA: Ja.

MR COLTMAN: Yes. No further questions, thank you, M'Lady.

10 COURT: Thank you. Ms Buthelezi?

CROSS-EXAMINATION BY MS BUTHELEZI: Nothing from me, M'Lady.

COURT: Thank you. Mr Varney?

MR VARNEY: M'Lady, my junior is going to be cross-examining this witness.

COURT: Okay.

CROSS-EXAMINATION BY MR VARNEY: As M'Lady pleases. Good day, Captain Masigela.

MR MASIGELA: Good morning, sir.

20 MR VARNEY: Good morning. Captain Masigela, I just want to first deal with the initial reconstruction of the docket in 2010. Now, in your evidence you mentioned that you received the docket in 2010 or at least a compilation of a docket in 2010.

MR MASIGELA: Correct, M'Lady.

MR VARNEY: Now, that docket that you received, was it the original brown police-covered docket with a CR number on it?

MR MASIGELA: No, M'Lady, the document was scattered all over. They were not compiled. They were in boxes. I had to search inside the boxes which document relate to another because the boxes were not containing only one docket. There were many docket, different investigating.

MR VARNEY: Was it different investigators relating to the
10 Cradock 4 matter?

MR MASIGELA: No, no, M'Lady. When we received the docket from the TRC, they were not in a form that you can understand that this box is containing only Cradock 4, this one is containing such case. No, they were together as one. You must search around and compile and get the statements which are relating so that you can know which statements, which documents can we use to relate such a docket.

MR VARNEY: And in sifting through these various matters,
20 in relation to the Cradock 4 matter, were there any original statements or the original docket in that, in those boxes you received in 2010?

MR MASIGELA: Correct, M'Lady.

MR VARNEY: In that docket, was the SAP5 investigation diary contained in it?

MF 

MR MASIGELA: Correct, M'Lady. The original documents and the original statements which were there are those that I used to reconstruct the Cradock 4. And the copies, I made the copy, the docket, a copy of that docket.

MR VARNEY: I see. So is it correct to say for all intents and purposes, when you reconstructed that docket, it was a reconstruction of the original docket?

MR MASIGELA: Yes.

MR VARNEY: And once you reconstructed that docket, that
10 docket was then made into a copy?

MR MASIGELA: The copies were already there.

MR VARNEY: I see.

MR MASIGELA: As I indicated that they made many copies and then it came to my mind that why so many copies? These copies were used at the hearings of TRC.

MR VARNEY: In your evidence in describing what information and evidence was in that original docket and its copies, you mentioned that there were approximately 100 statements.

20 MR MASIGELA: Correct, M'Lady.

MR VARNEY: Now, were these 100 statements, 100 individuals or were original statements plus their copies making 100 statements?

MR MASIGELA: Original statements, M'Lady.

MR VARNEY: In that 100 statements, you mentioned one

person being Eric Winter who we know passed, passed on in August 2021. Were there any other significant persons or persons of interest whose statements that you had access to or were contained in this docket that you reconstructed?

MR MASIGELA: Ja, M'Lady. The statements which were in the docket, most of the statements were obtained from people from Eastern Cape. The statements that I attached in the docket from people who are from Pretoria were not inside the box. There were no statements that comes from
10 the members of Crime Intelligence Pretoria.

MR VARNEY: And I just want to separate those two. The members of Crime Intelligence from Pretoria, those statements were from your efforts in investigating.

MR MASIGELA: Correct, M'Lady.

MR VARNEY: Okay. Let us park that on one side. In speaking to the statements that were already there, do you recall any other names apart from Eric Winter that contained statements?

MR MASIGELA: The names that I can, I cannot remember
20 all.

MR VARNEY: Uh-huh.

MR MASIGELA: But I can remember like the names of people who were mentioned in the docket, like Van Zyl, Lotz, Taylor and then the commanders of, there was, like Van Rensburg, I do not know whether he was working for

SAPS or for the Railway. There was a statement also from Security Branch Railway Police, was inside there.

MR VARNEY: Did his- do you recall if the statement included Mr Eric Taylor?

MR MASIGELA: Come again?

MR VARNEY: Do you recall if the statements included a Mr Eric Taylor?

MR MASIGELA: Yes, but I cannot recall all the details of Eric Taylor. And presently, I cannot tell you whether this
10 Eric Taylor, the statement I read, was from the TRC transcript or anywhere else. But I still remember that I read something about Eric Taylor.


MR VARNEY: Now, Mr Eric Taylor died in 2016. Do you recall any statement from a Hermanus Barend Du Plessis who passed away in 2023?

MR MASIGELA: I read about- and then I think the files that I compiled among these files which are in the box, that person's statement might be inside there.

MR VARNEY: You do not recall for sure that his statement
20 was ...[intervenues]

MR MASIGELA: No, I am not sure.

MR VARNEY: Okay. I want to deal next with a discussion in which Mr Lukhanyo Calata in his evidence before this Court. Now, Mr Calata says, said in his evidence that around June 2020, that would have been after your

N.F. 

retirement, that you and him had a telephonic discussion in which you were:

“Very angry about the missing docket because you believed you compiled sufficient evidence for some prosecution to proceed.”

Is that correct?

MR MASIGELA: Correct, M’Lady.


MR VARNEY: Why did you make that statement to
10 Lukhanyo, to Mr Calata, pardon me?

MR MASIGELA: The statement I made to Lukhanyo Calata, I did not know that we knew each other this morning here, physical, facially I did not know him.

MR VARNEY: Uh-huh.

MR MASIGELA: It was, for me, not nice. The news was very bad. I was not expecting him to tell me that the docket is missing now, is nowhere to be found and all right, I became angry. Yes, I became angry why the docket is now gone. But I was not surprised. Why I say I was not
20 surprised is because the very same unit where the docket got lost is where I always took my dockets for decisions and most dockets when they come back, they have been *nolle prosequi*.

MR VARNEY: Those decisions that you are speaking about, and we will deal with your meetings with Adv Macadam and

N.F. 

the NPA after this, but just specifically to your question, when you say that you kept going to the NPA for decisions and you got back a *nolle prosequi*.

MR MASIGELA: Ja.

MR VARNEY: Was that in relation to the Cradock 4 matter or is that a general...

MR MASIGELA: No, other cases.

MR VARNEY: I see.

MR MASIGELA: Other cases.

10 MR VARNEY: Mr Calata went on to say that you said to him that the prosecutors failed you.

MR MASIGELA: Yes, M'Lady, he failed me. I was not expecting such response from the NPA. I thought maybe while the other people who were involved in this, while they were still alive, I was hoping to see a prosecution.

MR VARNEY: And he goes on to say that you informed him that you never felt supported by the NPA or your own superiors at the DPCI. Is that correct?

MR MASIGELA: Yes.

20 MR VARNEY: His statement went on to say that you claimed that the NPA had no interest at all in prosecuting TRC cases. Is that correct?

MR MASIGELA: It might be a misunderstanding because I remember telling that the NPA are withdrawing my cases. I was not meaning to the TRC cases because most of the

TRC cases were still with them.

MR VARNEY: Thank you for clarifying that, Captain. And lastly, in that conversation, he mentioned that you were sent by Adv Macadam to Cradock to update the families of the deceased, i.e. Mrs Calata, the late Mrs Goniwe, Mr Alex Goniwe, Matthew Goniwe's brother, about the state of the investigation. You said that Adv Macadam sent you a few years ago. Firstly, is that correct?

MR MASIGELA: Let me clarify that point. He was supposed
10 to go with me to the Cradock 4 to update the families. The visit that I made to the Cradock 4 families was not an instruction from Macadam. That was the- a normal investigation that I was carrying out with other cases.

MR VARNEY: When you say "he" was to come with me, was it Mr Calata or Adv Macadam, was to come with you?

MR MASIGELA: Adv Chris Macadam.


MR VARNEY: And did you end up meeting with the families to give them an update on the status of the Cradock 4 matter?

20 MR MASIGELA: Yes, M'Lady, I did.

MR VARNEY: And when ...[intervenes]

COURT: But not Mr Calata because you only saw him this morning. You only met him face-to-face this morning.

MR MASIGELA: Yes, M'Lady, but that very same day when I was, when I was meeting the families, I managed to call Mr

N.F. 

Calata's mother. She was in Cape Town.

COURT: Thank you.

MR VARNEY: Now, to clarify, Captain Masigela, while you did meet Mr Calata for the first time this morning, you did have previous telephone conversations with him in which these statements were communicated or clarified.

MR MASIGELA: Yes, telephone communication. I was surprised and I asked him, where did you get my number? He said, look, I am a, I am ...[intervenes]

10 COURT: Journalist.

MR MASIGELA: Journalist.

MR VARNEY: Well, I can tell you, Captain that is the same experience we all had. Now, Captain, dealing with Adv Macadam, I want to go to your statement that was read out this morning. And there is just a few points of clarification that I require and information. And the first is that Adv Macadam filed an affidavit in a rule 43 or in an application in which the families sought to compel a decision by the NPA. And in that affidavit, Adv Macadam suggests that the
20 docket only contained TRC transcripts, an inquiry into a General Henkle. Do you have any comment on that?

MR MASIGELA: No comment. I do not know about that statement he made or that, whatever you just said. It is the first time I hear from him.

MR VARNEY: M'Lady, just for your record, that statement is

in Volume C, pardon me, it is Volume H, page 819.

COURT: Thank you.

MR VARNEY: Captain.

COURT: But do you agree with that proposition that the docket only contained TRC documents and whatever else- I did not get the last one?

MR MASIGELA: No, M'Lady, I do not agree. It cannot be only TRC documents. There were documents like the pictures of the burnt-out Honda Ballade of Mr Goniwe and
10 then a copy of the traffic fines. I think that traffic fine ticket was issued for the very same vehicle and it was squashed somewhere. There are many things that are original not, I cannot attach the transcript of a TRC inside a criminal case. There is no way I can do that.

MR VARNEY: M'Lady, if you may bear with me. Pardon me for that, M'Lady.

COURT: [Inaudible]

MR VARNEY: Adv Macadam, goes on in this affidavit to state that in 2013 the docket, the Cradock 4 docket, was
20 dormant and he transferred the docket in 2013 to the Acting NDPP and it was only in 2019 that it was discovered missing. And this suggests that between 2013 and 2019, nothing was done in that docket or nothing was done to investigate the matter. Do you have any comment on that?

MR MASIGELA: No, I do not have comment on that

because the dates presently I cannot say, I am specific with this date and that date. The only comment that I can say is that the docket was in his office for a quite long time without coming back to me.

MR VARNEY: In your statement in paragraph 3, you mentioned that you would often visit Adv Macadam's office in order to either supplement the docket or discuss the status of investigations. The first question is how often would you go and the second is between what time periods,
10 between what year and what year?

MR MASIGELA: Thank you, M'Lady. At the NPA, the visit that I made at the NPA was quite a lot. The reason being many dockets were there. My dockets and not any other person's dockets, my dockets, my investigation was there and I had to make follow-up for all these dockets. Whenever I am visiting him, I am visiting him for the dockets, not one docket.


MR VARNEY: And ...[intervenes]

COURT: You can you recall how often that will be when you
20 would visit him in connection with the dockets you were carrying?

MR MASIGELA: M'Lady, it might be every week.

COURT: Thank you.

MR VARNEY: And these weekly visits, how long did it last for? Was it since 2010?

NF 

MR MASIGELA: Come again?

MR VARNEY: How long did these weekly visits last for, from what year to what year?

MR MASIGELA: Ever since our unit worked hand-in-hand with them, it never ends. It started when I start at the DPCI until I retired.

MR VARNEY: Captain Masigela, in that instance, we now have two competing versions because Adv Macadam says that in 2013 the docket was with the Acting NDPP.
10 However, on your version, you were having weekly visits on various matters, including the Cradock 4, in which the docket was being updated. Can you help me reconcile which is the correct version?

MR MASIGELA: M'Lady, what I am telling, I said up to 2017, and the last day when I was enquiring about the docket, I never spoke to Chris Macadam. I spoke to Adv Torrie Pretorius. I am no longer sure what made me to ask him whether he was now the Acting Head or the Head, or maybe Adv Macadam was not available. I do not know but
20 the dates that you have just said of the 2013.

MR VARNEY: Uh-huh.

MR MASIGELA: I never mentioned that. It is from him. It is his version. It is from his own, what I mean- nevertheless, I know nothing about the dates that he mentioned. It is from his own experience. And, as I said,

time and again, when I am going there, I am not going specifically for one docket. I am going for many other dockets and I cannot say okay because I am here for another case, I cannot ask about this. I am asking generally for all the dockets he is having.

MR VARNEY: In your investigations, part of these meetings with Adv Macadam, we now know that Colonel Dweba took steps to approach various persons. These persons being, for example, Mr Hermanus Du Plessis, Eric Winter, Adriaan
10 Vlok, Craig Williamson, van der Westhuizen, Louis Barnard, Mr Stemmet etcetera. My question to you is, in your investigations, did you approach these persons as well?

MR MASIGELA: Yes, I obtained a statement from De Kock while he was still serving sentence at Pretoria Prison, he gave me a statement.

MR VARNEY: Are there any others that you recall, that you approached, that are no longer in this docket?

MR MASIGELA: Major General Mokgabudi.

MR VARNEY: Sorry, can you repeat that name?

20 MR MASIGELA: Major General Daniel Mokgabudi. Lieutenant Colonel Josiah Maponyani[?], Colonel Alice[?].

MR VARNEY: Sorry, sorry, Captain, can you repeat the last name?

MR MASIGELA: Alice.

MR VARNEY: M'Lady, it is two minutes to 11. I do

N.F. 

...[intervenes]

COURT: Are you still going to be long?

MR VARNEY: M'Lady, there are a few more questions that I want to go through.

COURT: Okay, just continue for, we still have a few minutes before tea time. Let us see how far we can go.

MR VARNEY: As M'Lady, pleases.

[Discussion of record]

MR VARNEY: M'Lady, might I ask the Court's indulgence to
10 take a tea break because there is instructions that I would
like to...

COURT: Court will adjourn for tea for 15 minutes.

MR VARNEY: As M'Lady, pleases.

COURT ADJOURNS

[10:57]

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, *in as far as it is audible*, the foregoing is a **VERBATIM** transcription of the proceedings as was ordered to be transcribed by Encha Digital Transcribers by means of a digital recorder in the matter of:

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COURT RESUMES:

[11:42]

COURT: You remain still under oath, Captain, you are still under oath.

MR MASIGELA: Yes, M'Lady. (still under oath)

COURT: Yes, Mr Varney.

CROSS-EXAMINATION BY MR VARNEY (Continues): As M'Lady pleases. I am indebted for the indulgence, M'Lady. Captain, in front of you I have put an affidavit from Mister, or Advocate Raymond Christopher Macadam.
10 For Her Ladyship's benefit, this is found in Volume H 818 to page 820. For Her Ladyship's convenience, in case you want to follow, I have printed a copy of that that affidavit.

COURT: Thank you.

MR VARNEY: Captain, earlier in our discussion I brought up an affidavit by Adv Macadam. This is the affidavit dated 24 May 2021 in which Adv Macadam deposed to and was contained in the court application in which the families brought against the NPA to compel a sectorial
20 decision. I am going to take you through this affidavit as it deals with the timelines that you have spoken about, and then I am going to ask for your comment. Now in paragraph 2 it states that,

"I have been requested to make a statement regarding the disappearance of the Cradock

Four Police Docket, which is a TRC case from the offices of the NPA.”

Paragraph 3 says,

In 2013 I, being Adv Macadam, was a deputy director in the PCOU. Adv Abrahams was then acting as the head of the unit, and Adv Jiba was acting as the NDPPO. Ms J Lapinka was acting as the ANDPP’s manager.”

Now is that correct, is that correct from your relocation?

10 MR MASIGELA: No, no, no. About, whoever is mentioned in this statement, I cannot comment. I do not know who is doing what at the NPA, who is the assistant, who is the director. I am not working there, I cannot comment about the statement which is made there by the somebody who is not – he is not putting about me here, he is putting about himself. It is his own vision.

COURT: Okay, we get that. You can comment on who was holding this position at NPA.

MR MASIGELA: It is correct, M’Lady.

20 COURT: Yes, carry on. Maybe you should confine to those parts of the statement that concern the witness, so that we do not go through the same...

MR MASIGELA: Indeed, M’Lady. M’Lady, I am putting these paragraphs to Captain, because it deals with the timeline in which she is giving evidence of containing the

N.F. 

docket, and supplementary ...[intervenes]

COURT: Mister, you are going to get the same response when you say in April 2013 Ms La Pinka wrote to so-and-so, he is going to say I am. I do not know, it is not about me, he did not write to me, so please, I think it is better to confer yourself to those parts that have anything to do with the timelines he has given.

MR VARNEY: Perhaps then, Captain, let us see what paragraph 5 in which Adv Macadams state that he was
10 requested to hand over the docket as it had been called for by the office of the ENGPP. He says he cannot recall who make the request, but we know that is after 26 April 2013 that it was handed over to the office of the ANGPP. Now, earlier you mentioned that you have weekly meetings with Advocate Macadams over a period of time before your retirement, but here Adv Macadams is stating that around 2013 after April, he was requested to hand over the docket to the NGPP.

MR MASIGELA: No, correct. I do not know anything
20 about what he said. I am still sticking on my statement that I made in chief that I was my VC to the MPP [indistinct]. Whenever he took the dockets to whomever, it does not concern him that...

MR VARNEY: He goes on to state in paragraph 6 that he reported, that the response from the NADPP was awaited,

and in October 2023 Mr Nxasana was appointed as the NDPP, and Adv Jiba moved from the ANDPP to the head of the MPS, and thereafter Legal Administration Department. Did you have any discussions with the ANDPP being Ms Jiba, or Adv Jiba, rather?

MR MASIGELA: No. I do not think Adv Jiba knows me. We do not know each other. I know him or her on the media.

MR VARNEY: And you do accept that if Adv Macadam
10 had to hand over the documents to Adv Jiba, you would have to have a conversation with Adv Jiba on the updates and status of the matter.

MR MASIGELA: I cannot comment on that.


MR VARNEY: As the investigating officer during that period, do you have any idea why a request would be made to hand over documents to the ANDPP, Adv Jiba?

MR MASIGELA: No. I do not know the process of the MPA and the advocates at their office. How do they hand over the docket to each other?

20 COURT: Yes, I do not think he would know, mister.

MR VARNEY: As M'Lady pleases. Then let us move on to paragraph 9 of the statement, we turn the page over. It says that,

“In April 2019 Adv Macadam became the acting head of the PCLU and was advised

N.F. 

that the docket had not been located. Adv Mzinyathi, who was then acting as the head, informed him that a proper search and been conducted, but that docket could not be located. At that stage Adv Jiba had had her employment with the NPA terminated by the president and Ms Lepinka was suspended. It served no purpose at that stage to try and locate the docket.”

10 Now, earlier in your evidence you mentioned that there was a safe room or a storage room in which these boxes and the docket was contained. Do you have any comment on paragraph 9?

MR MASIGELA: No.

COURT: Was that not at their offices that he speaks of the box and the storage? I think that was at his offices, unless I am mistaken.

MR VARNEY: Perhaps I can clarify that with the witness.

COURT: Yes, please do.

20 MR MASIGELA: The box with documents had a strong room where Captain Masigela was in a station. It is me, Masigela.

COURT: Yes.

MR VARNEY: And was the NPA aware that this box was stored with Captain Masigela in a stronghold?

MR MASIGELA: No, he cannot. I never discussed where I put my docket, where I saved my docket. To make it clear for now today, the reason of putting the documents and the [indistinct] K docket in the strongroom, it was to safe those document and the docket as a backup. Unfortunately, the backup is also missing.

MR VARNEY: Missing from the strongroom?

MR MASIGELA: From the storeroom. How, I do not know.

10 MR VARNEY: Captain Masigela, how does one access the strongroom? What merely if you were to access these documents, how would you access it?

MR MASIGELA: No, the strongroom, the key, there is no anyone who would have the access to the strongroom. By myself, when I am on duty and I want to get into the strongroom, when I was still working, I know that Colonel Coetzee will hand over the key to me and say open, put whatever you put, lock, bring the key here. When she is like, it is like her office is here, the door of the
20 strongroom is there. There is no way that you can get out of the strongroom with the key without passing her table. So, he must see you when you get in and get out.

MR VARNEY: So, for the purposes of the record and transcription, you are pointing to one or two metres away from you, that the strongroom would have been.

MR MASIGELA: No, I did not make measurements. I was just clarifying with that, the strongroom, how does it at the office of Colonel Coetzee.

MR VARNEY: And who is Colonel Coetzee?

MR MASIGELA: She is a retired Colonel at the DPCI Crime ...[intervenes]

COURT: Is that going to be of any assistance to us, sir?

MR VARNEY: No, M'Lady.

COURT: Please.

10 MR VARNEY: The question was simply to understand how the docket will be going missing. This is a clause of the affidavit of Adv Macadam. He goes on to say in paragraph 11 that,

“I therefore gave the material in my possession to the investigating officer...”

At that time it would have been Colonel Makua,

“...and advised him to reconstruct the docket.

A decision was however taken to refer the case to investigators in the Eastern Cape. I

20 was able to locate considerable additional relevant material to the case which was provided to those investigators.”

The last paragraph, Captain is, that he closes off by saying,

“I do not have evidence at my disposal to

N.F. 

suggest that the docket was stolen. All the material contained in the docket was easily re-obtainable.”

Now my question to you, Captain, was that in your evidence you stated that there were originals and statements taken from persons. Was the docket really, or rather easily reobtainable in the circumstances of having original statements and original evidence from previous investigations?

10 MR MASIGELA: M’Lady, there is no way. Most of the witnesses who made statements in that docket, were old people who were no longer alive, somewhere aging, and then some were no longer in the police. To get original statement from those people, was not easy, because I still remember that I retired, the very same Brigadier of a Colonel of the Railway Police was no longer alive. Most of the people who were there, the senior personnel who made the statements in the docket, were no longer alive. So, how will that get it right to make it original as it was
20 before? It is impossible.

MR VARNEY: Thank you, Captain. In dealing with persons, I have two last questions, and the one is, you have mentioned that one of the persons that you interviewed, was Mr De Kock, or rather approached, was Mr De Kock. At that stage, was Mr De Kock willing to

provide a statement?

MR MASIGELA: Yes, M'Lady, Mr De Kock was supportive. He gave me the statement which I did not doubt.

MR VARNEY: And you recall what the contents of that statement was?

MR MASIGELA: I cannot all recall, but it was all about the firearm, the firearm between himself and Sakkie van Zyl.


10 MR VARNEY: And lastly, Captain, after the docket went missing, you may be aware that the families laid a criminal complaint, a criminal charge to investigate the missing docket. The families approached the investigating officer, requesting that a statement be taken from the previous investigating officers, and my question is, were you approached to provide a statement on the missing docket?

MR MASIGELA: Yes, M'Lady, the statement that I just read when we started with evidence, is the one.

20 MR VARNEY: Thank you, Captain. M'Lady, those are the questions.

NO FURTHER QUESTIONS BY MR VARNEY

COURT: Thank you. Mr Heunis, any questions for the witness?

N.F. 

MR HEUNIS: We have none, M'Lady.

COURT: Thank you. Mr Cilliers?

MR CILLIERS: No questions, M'Lady.

COURT: Mr De Meyer?

MR DE MEYER: M'Lady, not to this witness, I know him too well. [Laughter]

MR MASIGELA: I know you too.

COURT: Mr Schoeman?

MR SCHOEMAN: No questions, M'Lady.

10 COURT: You may be seated anywhere. Thank you very much. Captain, thank you very much. You are excused, you may step out.

MR MASIGELA: Thank you, M'Lady.

COURT: Is that also your clan name?

MR MASIGELA: Tlou, T-l-o-u.

COURT: Is it also your clan name?

MR MASIGELA: Yes.

COURT: All right.

MR MASIGELA: If you want me happy, call me Tlou.

20 [Laughter]


COURT: Ja, that is why when I excused you, I said Tlou.

WITNESS EXCUSED

COURT: Yes, Mr Coltman?

MR COLTMAN: Thank you, M'Lady.

COURT: You start up the next witness's testimony?

N.F. 

MR COLTMAN: Yes, I did. No, the idea was, it was supposed to be at 12 where we were just trying to make contact, because we are having difficulty making contact with him, but we will adjourn.

COURT: We will adjourn.

COURT ADJOURNS [11:32]

COURT RESUMES [12:31]

10 MR COLTMAN: Thank you, M'Lady. M'Lady, apologies for the delay, but my colleague Ms Mvandaba who is now going to lead the witness maybe, or will perhaps explain all the difficulties we have, thank you.

MS MVANDABA: As the Court pleases, M'Lady, and no need for an explanation with your colleagues that are aware of what has been happening. Let us just skip the explanation part and get on to the business.

MR COLTMAN: As the Court pleases, M'Lady, we are all [indistinct] The next witness, M'Lady, to be called is
20 Colonel Johannes Mandla Makuwa is testifying virtually.

COURT: Can you hear us, Mr Makuwa?

MR MAKUWA: That is correct.

COURT: Can you state your full names for the record, please? Good afternoon.

MR MAKUWA: Johannes Maka Makuwa.

COURT: Do you have any objection to taking an oath?

MR MAKUWA: No objection.

COURT: Do you consider the oath as binding to your conscience?

MR MAKUWA: That is correct, M'Lady.

JOHANNES MAKUWA: (duly sworn states)

COURT: Thank you very much.

EXAMINATION IN CHIEF BY MS MVANDABA: Will I be correct to say that you are a retired Colonel from
10 [indistinct] police station?

MR MAKUWA: That is correct, M'Lady.

MS MVANDABA: When did you join the South African Police Service?

MR MAKUWA: I joined the South African Police Service on the 19th December 1985.


MS MVANDABA: And then, when did you go for retirement?

MR MAKUWA: I retired on the date here, August 2024.

MS MVANDABA: When you started with SAPS, where
20 were you attached?

MR MAKUWA: I was attached to the Lebombo Police Uniform, then working as a shift member at the charge office.

MS MVANDABA: And then, when you were retired where attached [indistinct]?

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MR MAKUWA: I was attached to the Directorate of Priority Crime Investigation at Ogies under the Serious Organised Crime Unit, subsection crimes against the State.

MS MVANDABA: Colonel, we are sitting here, we are doing the inquest regarding the case coming along as the Cradock Four. Do you understand?

MR MAKUWA: That is correct, M'Lady.

MS MVANDABA: And your name came up as one of the
10 former investigation officers.

MR MAKUWA: That is correct, M'Lady.

MS MVANDABA: Just give us a background as to when was this case allocated to you as investigating officer?

MR MAKUWA: I was a [indistinct] section commander at Crime Prevention stage and taking charge of cases, all cases for sending the re-investigation of cases concerning the TRC, the Truth and Reconciliation Committee, and then the matter by the time it was investigated by Captain Masigela, and after the
20 [indistinct] when we were going in late, then I took over investigation in 2018.

MS MVANDABA: At the time when Captain Masigela was investigating the case, you are the section commander.

MR MAKUWA: That is correct.

MS MVANDABA: And then, have you ever seen the

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police docket during that time, police docket of this matter, while Captain Masigela was still the investigating officer?

MR MAKUWA: I think the copy which I was investigating also at the time, he was investigated and the whole general docket by then was handed over by Captain Masigela to the NPA, ACRU Unit.

MS MVANDABA: And then now you took over in 2018 to investigate after Captain Masigela left for retirement.

10 Can you tell the Court, what is it that you took over, did you take over the police docket, or what was it?

MR MAKUWA: After Captain Masigela left, and then he handed in most of all the [indistinct] which was in his possession, and by that time the Cradock Four one and the others, he did hand them in, but they were reflecting in his case register and on the system under his name, but he produced a proof of receipt that it handed over the case docket back to the NPA.

20 MS MVANDABA: Now, you must take over the investigation, you already heard of no late man received confirming that the docket is with the NPA, what did you do as the new investigating officer?

MR MAKUWA: I went to the NPA and enquired from Adv Macadams about the Cradock Four, and it was the Cradock Four and some other matters. And then he gave

me, for Cradock Four he gave me some [indistinct] document of two or three pages, which has got the details as what must be investigated and all the [indistinct] He did not give me a docket. He told me that he would still be looking for a case docket, I must come back. So, it took five months, a period of months, if I am not mistaken, it can be up to six or seven months, for me not having this docket, but I kept on enquiring on it. I did not get it up to such time that we end up. There is even
10 a complaint from the Woman Rights Commission about the investigations, and I got back to him, I gave him four – he was also in that meeting of that complaint, because it was the Bishwa meeting, and after they met and I went back to him, make enquiries about the case docket, it was then that he told me that he has been looting, looting, looting. And after some months, it was Glenda (?), she told me that she did not realise that it is one of the case docket which somebody came from the office of Advocate Jiba and then the case docket was handed to
20 the person. And I enquired that as to the details of that person, but unfortunately he could not remember who is that person, and there was no proof of acknowledgement of the receipt by that person.

MS MVANDABA: So, you say that he did not immediately tell you when you were enquiring, but it was after a long

time, after there was also even a meeting with the unionised commission of [indistinct] when he says that now really I got this docket, it is among the documents that were taken to Adv Jiba?

MR MAKUWA: That is correct, M'Lady.

MS MVANDABA: Now you already have this information that the docket was taken. She [indistinct] Adv Jiba as her advocate Makiwane. What was your next step now to getting that docket? You are already aware that it is sent
10 to Adv Jiba.

MR MAKUWA: I discussed it with my commander, who was Brigadier Jack, and he also promise that he will talk to Jiba and that he would come back to me. But he also took long. He never came back to me, and by that time Adv Jiba was no longer at NPA. And then I went back to Adv Macadam to say, and he made me try and contact Adv Jiba and find out as to whether she have the docket. But I did not get her help on that.

MS MVANDABA: Thank you. As now you were
20 investigating, was there an investigation in which yourself would – in fact, just explain your investigation besides looking for the missing dockets. Now you are aware that the docket is not there, and then there is already a complainant about the Cradock Four.

MR MAKUWA: We again had some meetings with these

guys with the Women Rights Commission, and then that is where I could pick up some of the reference numbers of the stations and the case numbers, and then I went down to the Eastern Cape to check for a K docket, and then I found some [indistinct] docket in Kwazakhele. And then it was Kwazakhele, Kwazakhele CAS number. And inside was the SAP case docket, about three of them of Swartkop. And there was not enough evidential material in the case docket, only postmortem reports were in
10 those case dockets. But as for statement and whatever investigation was done, that was [indistinct, coughing] there was lots of months of evidential material.

MS MVANDABA: You say that in the Eastern Cape you found the Kwazakhele sub file, some other [indistinct] inside the five dockets, what was – remember the Kwazakhele CAS of CR as it was known before?

MR MAKUWA: Yes, it was Kwazakhele CR373-6-1985.

MS MVANDABA: So, you say that inside the SAP files that were bearing CR numbers for Swartkop?

20 MR MAKUWA: Ja, it was the SAP3s which is the case docket cover and [indistinct] of those case docket cover, it was [indistinct] the postmortem reports on them.

MS MVANDABA: Let us continue. Now, that is information from Kwazakhele inside that, the sub files of SAP3, postmortems and no statements. What did you do

with it?

MR MAKUWA: As I was making enquiries, there is there and there, and then I understood that there was a former inquest which was held concerning the same cases, but which was held in and [indistinct]. Upon making further enquiries at the High Court in Port Elizabeth for the copies of the inquest, I was informed that the copies of the inquest was five and there at State Archives in King Williamstown. I then contacted Kings Williamstown with
10 the reference number I was given about that inquest, and then I made arrangement they check for me, and then it was confirmed for me that the files were there, and that I made arrangement for them to keep them for me aside, and then I will come to check for the files.

MS MVANDABA: Did you eventually go to King Williamstown Archives to get the file?

MR MAKUWA: Ja. My arrangement was made. Unfortunately my diary of 2019 was stolen, but I, if I remember, not exactly sure, but when I checked on the
20 calendars, it should be in March 2018, I left from Pretoria on Sunday the 18th and then 19, 20 I was in King Williamstown searching on the files and looking for whatever what can I get there. Unfortunately on the files there was not much of evidential material except the court transcript. There was none of this, the copies of

the case docket statement. Then I had been there until when they the 21st March 2018 which was a public holiday and on Women Rights Day, I spent the day, in fact, we spent the day, because I was with Colonel Hatting, and then we continued our investigation on Thursday the 22nd and came back to Pretoria on Friday the 23rd.

MS MVANDABA: So, which is your evidence that they still have the archive, you could not get any original or
10 anything except what you brought at this case before this Court.

MR MAKUWA: That is correct, M'Lady. It is for me the transcript, then it mostly were not typed and it was too difficult and they were mixed up, they were not according to the correct finding. They were just a mix up and then copies of the docket [indistinct], it was never found, M'Lady.

MS MVANDABA: During the time as you were investigating the matter, Colonel, did you obtain any
20 statements, as now you are following up the information that you got from the archive, did you obtain any statement from any witness?

MR MAKUWA: No, I am not sure, but I do not remember of taking any except for me giving my own statement, because I never came across any other witness who

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could be witnessing anything about this case.

MS MVANDABA: Thank you, Colonel. Now, Colonel, we are going to go to the statement that you say that you made as main investigating. M'Lady, we are going to ask the witness to read from his statement that with it C page 1 to 8, or with the typed and original. Can I have the statement inside documents?

MR MAKUWA: That is correct, M'Lady.

MS MVANDABA: Can you read it for the record?

10 MR MAKUWA: Typed and written statement are the same, but my statement.

MS MVANDABA: Yes. You will just read one.

COURT: Can the witness read from paragraph 3, or do we need the personal information as well?

MS MVANDABA: We just need, M'Lady, from paragraph 3, sorry, thank you for that, because we have already placed it on the record. Can you start from paragraph 3, Colonel?

MR MAKUWA: That is correct, M'Lady.

20 "I am assigned to the investigation of the four political activists that were kidnapped and killed in or around Kwazakhele in the district area of Port Elizabeth. According to the investigation leads that exist or a name as Matthew Goniwe, Sparrow Mkonto, Fort

Calata and Sicelo Mhlauli, they were kidnapped, shot, strapped and tortured at four different crime scenes in 1985 by the then members of the State Security Branch of South Africa. That [indistinct] vehicle in which they were driving was also set alight.

10 The postmortem reports indicate that the cause of death in respect of the doctor of the count of the deceased as follows, that of Sparrow Mkonto, a gunshot wound through the head and a stab wound in the heart. Sicelo Mhlauli, multiple stab wounds and their effect. Fort Calata, multiple stab wounds and their effects. Mathew Goniwe, stab wounds in the heart and their effects. Inquest hearing was held by Judge President.

20 Interviews were held of the Eastern Cape division of Supreme Court of South Africa which was concluded on the 28th day of May 1994. The finding was that there brought about by delivery, act committed by unknown person or persons which [indistinct] constitute murder on the part of such person or persons, and however, the judge was not able on the evidence placed before him to

10 identify the murderer or murderers, and accordingly unable to find prima facie that an offence has been committed by any specific person or persons, which offence contributed to or brought about an act of any of the aforementioned four deceased persons. 4K docket [indistinct] upon discovery of the bodies at the crime scenes as follows, Kwazakhele CR3-73-6-1985 was registered in case of Matthew Goniwe. Swartkop CR1-40-6-1985, registered for Fort Calata. Swartkop CR12-7-1985 registered for the murder of Sicelo Mhlauli. Swartkop CR13-7-1985, registered for the murder of Sparrow Mkonto.

20 A suspect in this murder were identified on their application for amnesty during the Truth and Reconciliation Commission, and the outcome of the application were as follows, Harold Snyman was denied amnesty and he is deceased. Lieutenant Eric Alexander Taylor was denied amnesty and he was still alive at that time of my investigations.

Sergeant Gerhardus Johannes Lotz was denied amnesty and he committed

suicide. Sergeant Paku was also deceased. Sergeant Kodua, also deceased, and Sergeant Askasi Shephard Sakati, deceased among the six among the sixth mentioned suspect. Only Lieutenant Eric Alexander Taylor, who was the other at the time of my investigations.

10 I know and understand the contents of the declaration. I have no objection taking the prescribed oath and I consider the prescribed oath to be binding on my conscience."

Which was signed on the 24th of June 2020 at 11 o'clock in Pretoria.

COURT: Thank you. You do not have to read the last paragraph. You confirm the signature that it is your signature.

MR MAKUWA: That is correct, M'Lady, it is mine.

20 MS MVANDABA: Colonel, evidence before Court is later on or after some time, the matters were stretched now down to the provinces and the DPCI, the provincial officers who continue with investigations. Can you confirm that process?

MR MAKUWA: That is correct, M'Lady.

MS MVANDABA: We already had Colonel by that time.

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MR MAKUWA: That is correct, M'Lady.

MS MVANDABA: Now, when the Cradock Four matter was sent down to the Eastern Cape, do you know as to how it was sent to the Eastern Cape, who received the matter in the Eastern Cape?

MR MAKUWA: After there was a team that special to come and check special investigation on the TRC cases, all the cases by then were all centralised in the Head Office in Pretoria. The decision was to [indistinct] them
10 to the provinces. And that of KZN and Eastern Cape, they were so, there was a number and the group was already stationed there, so the position was for them to be sent alive back. And for this Cradock Four matter, there was many cases which were sent to the Eastern Cape. There was a group, number of cases which were handed over to Captain Ben Herr to take them down to the Eastern Cape, and then the others I think they came from Eastern Cape to come and collect them from our office. But I do not remember very well now that they all
20 went out at the same time, but what I remember, it was there where some other five, the cases which were left behind in our office and collected at a later stage. But for myself, I do not remember heading down to the Eastern Cape, because they were compiled and put in booths in my office and then, and the members of the

provinces came in, then we handed them into that.

But that one, I do not remember what it was. One of those people was taken into the Eastern Cape by Captain Herr. I am no longer sure about that.

MS MVANDABA: Thank you, Colonel. Colonel, you have already experienced some challenges into getting the docket, and now the Eastern Cape is taking over. Do you advise your colleagues at the Eastern Cape the difficulties that you were having into getting the original
10 docket into [indistinct]?

MR MAKUWA: Ja. I then at this stage the case was led by a Colonel Gipa (?), and then we had a lot of meetings together, even before they took over the investigations and we had a [indistinct] where they said [indistinct] explain to them the difficulties, I will be having during the investigation of this [indistinct] it was number 61 in July 2020 when we were registered in the case docket, because when we have to take an investigation to the court, we cannot use the inquiry number or that process.
20 So, that is why I registered it as Swartkop CAS 51-7-2020.

MS MVANDABA: Colonel, I am going to refer you – M’Lady, it is going to be EXHIBIT C, the exhibit, M’Lady, at page 53 and 52. I am going to read for you, Colonel. You do not have that exhibit in front of you. I am going

to read, M'Lady, to page 53.

COURT: Sorry, what is that?

MS MVANDABA: The EXHIBIT F. It follows from the affidavit of Mr Salani.

COURT: It is page what?

MS MVANDABA: 158. It reads as follows...

COURT: Wait, what is it that you are reading?

MS MVANDABA: The affidavit of Mr Talape, which is attached to the statement of Captain Masiko was the
10 same that Mr Suleman read from when [indistinct] was
testifying. The interesting part there that I am going to
read, Colonel, is at paragraph 158.

COURT: Maybe you can explain to the witness what you are reading, what you are reading from, the statement [indistinct].


MS MVANDABA: Colonel, I am reading from an affidavit of Mr Talape. It is not coming from your affidavit. But it contains no discussions with him.

COURT: I am trying to find the EXHIBIT C I have there.
20 Mr Macadams affidavit that was sent a day earlier, wait, do I affirm that EXHIBIT C what are you referring to?

MS MVANDABA: M'Lady, it is EXHIBIT F, not C.

COURT: Okay, maybe you should carry on.

MS MVANDABA: At paragraph 158 it reads as follows,
"Colonel Makuwa advised me to take up the

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[indistinct] of the docket that [indistinct]. The implication of what I had, left me previous, as I had suspected all along there was no official investigation taking place.”

That what I am reading for you?

MR VARNEY: M’Lady, I do have a copy of the exhibit for Your Lordship.

COURT: Thank you very much.

MR VARNEY: It would be on page 8 and 9 of the exhibit
10 we handed up, or the bundle was being handed up.


COURT: Yes.

MS MVANDABA: I will repeat what I have for you, Colonel. Colonel Makuwa advised me to take out the [indistinct] of the dockets at the highest levels. The indication of what I had, left me furious, as I had suspected all along there was not credible official investigations taking place. Do you still remember this contravention?

MR MAKUWA: I remember.

20 MS MVANDABA: Why did you suggest, or why did you come to saying that the docket is stolen, part of the docket?

MR MAKUWA: After Colonel Masigela handed over the case to get to the NPA, and when I was looking for the case docket which produced the [indistinct] it was

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received at the NPA, and I went to the NPA and requested and found that it was dealt with by Adv Macadams, and I according enquiry to Adv Macadams, it was then that he [indistinct] that was taken by an unknown person [indistinct] 51. And it took me long, took me some months asking for my [indistinct] to get the clarity from Adv Jiba. And even today the details of that person who took the case docket from this office to the officer to the office of Adv Jiba, because under no
10 circumstances when they handed over the dockets, they must have a trail, a trail or a trail. A case docket from the investigating officers to the prosecution for a decision, it must be acknowledged the receipt.

And then from the process of [indistinct] to wherever that [indistinct] for this docket maybe to the other office also [indistinct] but [indistinct] member of the CE, because this is a very important document whereby [indistinct] would alight from the vehicle who were killed in that matter. So, it was a difficult situation for me, for
20 a responsible person to come and tell me that they were here in my office, they were in Holmes, part of still of Holmes of that investigation by maybe it was not just like a similar case docket. It was a case docket of the evidential material were collected and it was bold [indistinct] taken.

So, if you are allowed to touch the volumes of investigating material, which is a case docket to be removed from our office and then not knowing who is taking those documents, it was unpersonal to me. It was like denying the accused docket. And after we held a meeting of complaints by the family members of the deceased, because during the meeting I said no, no, no, I do not have the case docket. The case docket, I have never seen it, so it seems it was sent to the NPA, and
10 that plays a part of J Macadas to be angry for me, where they even sent an email to my office to take departmental steps because I did not want to work. But I was surprised of on what should I work, because I has to get a case docket to get that addresses of the next of kind of the family to go and [indistinct]. I got up from documents of the TRC which I got from the bidding later after they had a meeting with the guys of the Women Rights Commission. It was then that I act and get that details of the next of kins.

20 And this assists them and the graves of the Cradock Four in Cradock was [indistinct] court [indistinct] that there was [indistinct] in that court.

MS MVANDABA: You just confirmed about the missing evidence. Forget about the [indistinct] M'Lady, that will be all from the side of the State. We explained Colonel

missing dockets and in fact before I sit down, Colonel, Adv Makawu tells you that the docket was in his office, someone came to take it to Adv Jiba. Did you place a [indistinct] from Adv Makanda regarding the removal of the docket from his office to Adv Jiba?

MR MAKUWA: I could not, M'Lady. The situation by that time, it was very tense to my office. And then some of the [indistinct] was to say that we should [indistinct] the office of crimes [indistinct] and make up...

10 MS MVANDABA: Colonel, we do not have to go to those, but it is interesting. In fact, what the State wanted to know is, did you obtain the statement from Adv Macadam explaining to you what happened to the docket. So, is it right, sir, to say that you did not obtain that statement?

MR MAKUWA: He was not of the position to can give me the statement, and then I could not also be able to can get to Adv Jiba for her statement, and then we were even barred to come to the NPA, and it was said that whatever we need, we should try – Colonel Train will call the
20 [indistinct] of the NPA, so by that time we were barred not to come to the NPA.

MS MVANDABA: Thank you, Colonel.

COURT: So it is lunchtime. Can I just get an indication, I think the cross-examination of the witness, Mr Varney, Ms Buthelezi?

MR VARNEY: Yes, M'Lady.

COURT: All right. Let us adjourn for lunch. It is quarter past one already, but can you make it back here at quarter past two? Court adjourns until quarter past two.

COURT ADJOURNS

[13:15]

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, *in as far as it is audible*, the foregoing is a **VERBATIM** transcription of the proceedings as was ordered to be transcribed by Encha Digital Transcribers by means of a digital recorder in the matter of:

MATTHEW GONIWE & 3 OTHERS INQUEST (CRADOCK FOUR)

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With reference to the record of proceedings, the following problems were experienced on the audio on:

1. Incorrect grammar typed verbatim.
2. Where not clear or unknown annotations are furnished, names are transcribed phonetically.
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N.F. [Signature]

COURT RESUMES

[14:15]

COURT: Colonel, you are reminded that you are still under oath.

MR MAKUWO: That is correct, M'Lady.

MAKUWO: (still under oath)

COURT: Thank you. Yes, mister.


MR SULEMAN: Thank, you, M'Lady. Good afternoon, Colonel, Colonel Makuwo.

MR MAKUWO: Afternoon.

10 MR SULEMAN: Colonel, to start off with, I just wanted to get some clarity on, you made mention in your evidence on the South African Human Rights Commission. I wanted to enquire from you whether you were referring to the Foundation for Human Rights and Cliff Decker-Hoffmeyer, who are the legal representatives of the families.

MR MAKUWO: Ja, it was not Human Rights Commission, i was the Foundation for Human Rights who were representatives of the families.

20 MR SULEMAN: Thank you for that. Now, Colonel, I want to start off at the stage where you were first introduced to the docket. And we have an affidavit by Advocate Macadam, in which he says that in April 2019, there was a proper search done for the docket and the docket could not be located. The first question I have for you, Colonel, were you part of the process of looking for the docket, searching for the docket?

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MR MAKUWO: I was not part of that search.

MR SULEMAN: And Advocate Macadam goes on to state that he gave the material in his possession to the investigating officer, Colonel Makuwo, that is yourself, and advised him to reconstruct the docket. Is that correct?

MR MAKUWO: That is not correct, M'Lady. There is no material I received from him. Most of the material I collected, that is why I said I collected such, this, the case docket from which I found in one of the stations there. And then, and then
10 I got it after we had a meeting with the Foundation of the Human Rights, because there I got some leads on what they had in their files. And then with that, what I got from their leads, it helped me to know where to get to. But from Advocate Macadams, it was only a [indistinct], something like a letter. It was a letter with instruction by the time they were instructing us to continue with the investigation. But it was then that when I asked Masigela, he said, no, remember the case docket is still there at the NPA.

MR SULEMAN: And so you did engage with Captain Masigela
20 in the process of reconstructing the docket?

MR MAKUWO: That is correct, and then to me, Captain Masigela just gave me the acknowledgement of receipt of the case docket. It was acknowledged from the NPA.

MR SULEMAN: Did you listen this morning to

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Captain Masigela's evidence?

MR MAKUWO: No.

MR SULEMAN: Captain Masigela stated that he possessed a docket in which contained evidence that in his opinion was sufficient for a prosecutorial decision, and that copies of it were stored at a strongroom in Pretoria. Are you aware of this?

MR MAKUWO: I just came aware of this on my interview this Sunday, there were some copies which were found in my
10 office in Pretoria. But in the same storage where they, it is alleged they found those copies, which is the strongroom in our office, there is a [indistinct] right there where case dockets which were finalised and some which were put on brought forward from our office and from different stations, and all the case dockets were put according to their serial numbers, on years and months. The only what would differ when you are looking at a particular [indistinct] is only a station numbers. But there would be, if it is for a case docket for April, registered in April you would, April 2020, you would
20 get them all in one, in the April month, and only for 2020. Then you would get them there. So we searched with the help of Lieutenant Colonel Coetzee, who was in charge of the storeroom by that time. I could not, we could not get it.

MR SULEMAN: And when you say you could not get it, this is the docket for the Cradock 4 matter.

MR MAKUWO: Copy of the Cradock 4 case docket.

MR SULEMAN: Now, Mr or rather Advocate Macadam in his affidavit states that a decision was taken to refer the case to investigators in the Eastern Cape, and he was able to locate considerable information or additional material which was provided to those investigators. Now, your evidence earlier was that you were conducting investigations to reconstruct the docket, and I wanted you to comment on Advocate Macadam's statement.

10 COURT: Did he not do so during, when he was led by Ms Mvandaba?

MR SULEMAN: As M'Lady pleases.

MR MVUNDO: I will not know what transpired when the matter was already in the Eastern Cape. But during my time as the investigator it was so difficult for me. And if I should have received the copy of the case docket it would have been simple for me to expedite the investigation.

MR SULEMAN: Okay, then can we then move on to your statement, which was already read out to you? There is two
20 questions I have in the statement. The first is, in paragraph 7, you make reference of four CR numbers. M'Lady, that is page 2 of his statement.

COURT: Yes, thank you.

MR MAKUWO: In paragraph 7?

MR SULEMAN: Paragraph 7, yes. Are you at paragraph 7?

MR MAKUWO: Yes.

MR SULEMAN: Okay. Now, according to the family's record, there are five CR numbers, the fifth one being CR 212/06 of 1985, which dealt with the suspected to be burnt out Honda Balade. Were you aware of this fifth CR number and file?

MR MAKUWO: I am not aware of it as during my investigation, I did not come across any document with that CR number. I should have made a follow-up on it. If it is a CR number, I should have visited the station where it was
10 registered just to check if maybe I can get something out of it.

MR SULEMAN: Thank you. And the second part in paragraph 8, on the last bullet point, you stated that Lieutenant Eric Alexandra Taylor, who is still alive, this affidavit was dated 2020 according to the records, Mr Taylor passed away in 2016.

COURT: The witness did indicate that he was still alive at the time of making the statement. He did make that claim.

MR SULEMAN: M'Lady, the clarity I am seeking from the
20 witness is that the statement is dated 2020, whereas Mr Taylor passed on in 2016. I just wanted to know whether that was an error or the context of that statement.

COURT: Okay, carry on.

MR MAKUWO: Ja, this was the information we were getting when we were doing the investigation, but unfortunately, as

it is long back, I should have, maybe if I should have seen the, my investigation diaries and all that, like I should been able to elaborate further as to. But I think it was the way when we were enquiring, possibly it should be also with the Home Affairs issue. I am not sure now [indistinct].

MR SULEMAN: Thank you, Colonel. Colonel, I then want to move on to your communication with the families. M'Lady, I am going to be referring to the extracts from Mr Calata's statement. Colonel, Mr Lukhanyo Calata stated that around
10 1 April 2020, you called his mother, Ms Nomonde Calata, and she had some bad news in relation to the investigation. He then called you back, and you confirmed that the original case docket was missing. Is that correct?

MR MAKUWO: That is correct so, M'Lady.

MR SULEMAN: The statement goes on to state that Advocate Macadam advised you that the docket had been handed over to someone who claimed to have been sent by Advocate Jiba, the former acting NDPP. And you indicated that you were deeply troubled with what was happening with the
20 investigation.

MR MAKUWO: That is correct, M'Lady.

MR SULEMAN: Now, I would like your comment further on the next sentence which is, Mr Calata says that you said to him that you do not believe that the docket went missing accidentally, and you were concerned that powerful forces

were protecting the suspects, in particular the high-ranking suspects. Do you confirm that you communicated that sentiment to Mr Calata?

MR MAKUWO: That is correct.

MR SULEMAN: And why did you communicate that with Mr Calata?

MR MAKUWO: We had a meeting. It was a virtual meeting, if I remember very well. And then I was not [indistinct] on what was said, because according to the deceased's family,
10 it was not, it was like we are not doing our job accordingly. And it was a worry to me, because I was keen to do the job. And I would like to see my ability trying to get to the end of this so that the family members can get a closure. And it was because during my investigation, there was a time when I visited that ladies, and they expressed their unhappiness about the investigation of this matter, like it is not taken care of. And then that was worrying me, because in my conscience I wanted to investigate a matter, but there were obstacles which were preventing me to investigate a matter.
20 What I suspected was that the case docket was handed over to the NPA. And then as I was in charge of all the former TRC investigation matters, we were dealing with Advocate Singh at the NPA in head office. At the beginning, except this case, most of the cases, there was a success. Things were going all right. And then while busy doing the

investigations, Advocate Macadams who turned to be no longer happy for me, as I used to come most of the time, demanding the original case docket from him and asking him that I would like him to make contact with Advocate Jiba, because if he does not know who took the case docket from his office to Advocate Jiba, did he ever verify with Advocate Jiba whether she needs to see the case docket or not. So I could not get such answers. To such an extent that at the NPA we were stopped from visiting Advocate Singh on
10 any other matter.

COURT: Yes, I think we have heard that from the witness.

MR MAKUWO: And we were stopped.

COURT: You did state that earlier, Mister. Do we need to hear that again? That they were barred from the offices of the NPA? He has already given that evidence.

MR SULEMAN: As M'Lady pleases, in his evidence-in-chief, he was also curtailed halfway, and I thought he would give him the opportunity to complete his thoughts. However, M'Lady, perhaps then I can ask questions that direct him
20 towards the paragraphs that are ...[intervenes]

COURT: Yes, maybe you should.

MR SULEMAN: Colonel, in that, before I ask the question. Colonel, in the evidence you have just given, you have not mentioned who stopped you. Who was it that stopped you from taking the matter forward?

MR MAKUWO: It was said in the parade in our office, on our daily morning meeting, that the NPA is complaining about our visit that side because each and every member used to get to the NPA to consult with a particular advocate who would be handling this matter there. So the order was that we do not have to come to the NPA anymore which should there, and Colonel [indistinct] was appointed as the coordinator between us and the NPA. And then they were issued with the access cards at the NPA. And then it was said that we should
10 not come there anymore. What we could do is only to send emails. And ...[intervenes]

COURT: Does that answer your question as to who barred them from the offices? I think that was the question.

MR SULEMAN: Yes, M'Lady. The next, Colonel, you did mention that you were barred in evidence-in-chief. Is this the barring that you are speaking about now?

MR MAKUWO: That is correct.

MR SULEMAN: Colonel, to finish off this conversation with Mr Calata, who did you think were these powerful forces that
20 you communicated that were protecting the suspects?

MR MAKUWO: I would not know, but on my side, the behaviour of Advocate Macadams, to me, it was like he is protecting the suspect.

MR SULEMAN: Well, let us then move on, Colonel. I am then going to M'Lady, Mr Lukhanyo Calata's affidavit in the

application to compel, which is in volume H. I just want to, there were certain statements made regarding Colonel Makuwo that I am going to be putting to him for comment. The first is that around August 2019, the families, together with the investigating officer, Brigadier Marion, shared a 12-part TRC record, which included a minute of a confession of the late Mr Eric Taylor. This confession came about as a result of a meeting with a Dominees Charl Coetzee. He goes on to say that once he was advised that you were the new
10 investigating officer, all the information and leads were provided to you to compile that docket. Is that correct?

MR MAKUWO: Ja, I had most of the documents from the Brigadier Marion, and they are the ones who help me to get the direction as to where to go to.

MR SULEMAN: And Mr Calata goes on to state that in response to queries made by his attorneys, that is Cliffe Dekker Hofmeyr to Advocate Macadam, they were advised that a decision in the Cradock 4 matter could only be made once investigations in other TRC cases, such as Pebco
20 Three, the Motherwell bombing, and the Mthimkulu case, has been finalised. Firstly, Colonel, are you aware of this decision to first investigate all of these other cases before making a decision on the Cradock 4?

MR MAKUWO: Ja, when consulting with Advocate Macadam, that is what he also was telling me to say, in fact, for these

cases to be all right [?], they link together with Motherwell and Pebco Three. And then I demanded the Motherwell document, because when you get to his office on the passage, there was a shelf which was, there was some lying [?] files marked on the Pebco Three and Motherwell. So I asked him one day to say, but I see these files here. It is about the Motherwell case and the Pebco Three, and it is a TRC investigation. Why can you not also hand them up to us? He said, no, there is not that much in here. I will hand
10 in the main material. So it was his instruction also that they should be investigated altogether. But my argument with him was that, but then this, I do not see the linkage. He said, no, the link is because of the suspects are the same people. But I said, but now for me, because I did not have the Motherwell investigation and the Pebco Three investigation, I would not know. And maybe it will help me if I can get those dockets or files which you do have for these other cases.

MR SULEMAN: And during your tenure as investigating officer, did you receive the dockets for those matters?

20 MR MAKUWO: No, I did not.

MR SULEMAN: Moving on to that same year, in August 2020, when there was a video conference, when there was a video conference between the families, yourself, Colonel Repa and the investigating team, Mr Calata in his affidavit states that Advocate Sakata who was part of the meeting, mentioned that

N.F. 

the families will to have to wait for a fully investigated docket before he and the NPA could apply their minds and make a decision. Now, Colonel, before you comment on it, that is a different approach that the NPA is taking compared to waiting for the Motherwell incident and Pebco Three to be completely investigated. Do you have any comment on that?

MR MAKUWO: Can you take me back again?

MR SULEMAN: Sure. So, in a meeting in August 2020, there was a video conference attended by Mr Calata on behalf of
10 the families, his legal team, Advocate Sakata, yourself, Colonel Repa and other members of the NPA. And during this meeting, after a PowerPoint presentation was presented, Advocate Sakata mentioned that the families would have to wait for a fully investigated docket before the NPA could apply their minds and make a decision on whether to prosecute or not. Do you recall this meeting?

MR MAKUWO: I recall the meeting, but even though I do not remember the content. But I think, if I remember very well, it could be that time, I do not remember whether it was before
20 or after that meeting whereby Mr Calata called me, and it was then that I said to him, no, no, no. According to what [indistinct] I do not see any linkage. The linkage, yes, the suspect can be the same, but I do not see any linkage that one case can be delayed waiting the investigation of another case.

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MR SULEMAN: Thank you, Colonel. And now moving on to the investigations. Now, you have already dealt with your investigations and the information you have collected, and I do not want to revisit that. But the only question I have for you is that we find in the record that Colonel Dweba, who was the IO in this matter, was able to approach multiple persons who are alive. Those being, for example, Herman du Plessis at that time, Eric Winter, who then passed, Adriaan Vlok, Craig Williamson, who is alive, and many others. My
10 question is, were you able to, in your investigations, locate persons of interest and approach them for statements?

MR MAKUWO: I was unable, because even on my office it was hard for me to proceed with this investigation. Moreover, because I was in Pretoria, and most of this investigation, witnesses and whatever, you should get to the Eastern Cape for investigation. And it was very hard for me to get down to the Eastern Cape to do the investigation. And my last time going there, I went there officially, but I was even stopped in order to get back to the office while I was on the way down
20 in Aliwal North by my immediate commander at the time. And I could not understand the reason why I should turn back to the office, because I had already made an appointment with the state [indistinct] down in King William South, and they were waiting for me. But to my surprise, my brigadier was ordering me to get back, and then, and that if I can proceed

N.F. 

to get down there, I would be defying his instructions. So, 2017, 18, 19, the working condition in our office was very bad by that time. And then, I was one of those people who were no longer needed at that office because of the political influence, whereby we were told that we are the old police officials who should move out of crimes against the state, so that they can get the new blood to come and do the investigation in that office. So, that was the situation. Everything, transport-wise, most of the time, our itineraries
10 were not approved, because we have to discuss the matter with my commander to say, I would like to get to the Eastern Cape for a week to go and work on this matter. Then they would say, no. Then we would be given the new stuff and all the like. But really, it was just to prevent us. And then my commander by then was Brigadier Xaba [?], who was fighting for me on the phone, like [indistinct] that investigation. And after coming back from King William's Town I never had any chance of continuing with the investigation. And then they were just lying in my office until such time that they were
20 handed over to the new appointed group to deal with, to deal specifically with the TRC cases in the Eastern Cape.

MR SULEMAN: Mr, pardon me, Colonel Makuwo, I just want to clarify, you mentioned Brigadier Xaba, was he the immediate commander who asked you to return back from the Eastern Cape?

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MR MAKUWO: He was my immediate commander. He is the one who called me to get back to the office. But I told him, because I am going to do the official work and I have been authorised from the office. By that time, he was either on sick leave or on leave. And then, because it was a Sunday, when we were on our way to going down there, then he ordered me to go back. And if I cannot return back to the office, I must know that I am defying his instructions. I did not know the reason why.

10 COURT: Yes, I think you've answered the question.

MR SULEMAN: Were you ever told the reason why?

MR MAKUWO: He did not tell me the reason why I should go back. And because I informed him, because no Brigadier, the thing is, I have already made an appointment and they are waiting me down there in King William's Town.

MR SULEMAN: Sorry, Colonel.

MR MAKUWO: And ...[intervenues]

MR SULEMAN: I am sorry to cut you off. Perhaps I can rephrase the question. Once you came back, or later on, did
20 you ever find out what the reason was for calling you back?

MR MAKUWO: Oh, I was not told the main reason why. I think it was just that attitude now towards me.

MR SULEMAN: Okay. Before we, before we close off, I want to just revisit what you mentioned about the need for new blood to come in and what you call the political influence.

NAF 

What are you referring to and who is it that communicated that with you?

MR MAKUWO: You know, by that time, our office was dealing with crimes against the state. And some of such crimes, it was including cases whereby politicians are involved in. And by that time, there was a lot of cases investigated by our office which were the cases including the factions within the ANC about the faction of the former president and the other ...[intervenes]

10 COURT: Just repeat the question for me please, Mr Suleman.

MR SULEMAN: Sure, M'Lady. The question was, the colonel mentioned that there were political influences and that they told him that young blood or new blood is needed. And my question was, who mentioned to him that new blood needed to come in and what political interference was he referring to?

COURT: Did you get the question, Colonel?

MR MAKUWO: That is correct. The political interference there, it was not exactly over the cases, but it was about
20 making it hard for us to do the work. So, and then the work which we have to do in Cradock 4 was one of the work I was supposed to do. But the political issues which was affecting our office by that time, and then I was one of the people who wanted to be removed out of the office to say that sometimes when we have given instructions to do certain investigations,

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we investigate and then we come back with a preliminary investigations which possibly, when we discussed it with the NPA, they will tell that there is no case there. And then we close the matter. And you will find that maybe it was a matter of that faction complaining against the other factions. So then it was said no, people like us, we are not good for that office. Then everything started just getting hard [?] over us. And for that, for us to be, work under hard conditions and it influenced the investigation of other cases by our office.

10 MR SULEMAN: Thank you, Colonel. Colonel to now go to the missing docket. The families approached Brigadier Louw regarding the opening of a criminal docket. And one of the enquiries made was whether or rather to approach yourself for a statement in relation to the missing docket. Were you ever approached to commit to a statement regarding your knowledge, if any, on the missing docket?

MR MAKUWO: No, M'Lady, I was, at no stage was I ever been approached for such.

MR SULEMAN: M'Lady, those are my questions. Thank you
20 very much, Colonel.

COURT: Thank you, Mr Suleman. Mister, any questions Mr Heunis?

MR HEUNIS: We have no questions. Thank you, M'Lady.

COURT: All right.

MALE SPEAKER: No questions.

N.F. 

MR SCHOEMAN: No questions.

COURT: Thank you, Mr Schoeman. Thank you very much, Colonel, thank you for indulging us. You may be excused now.

WITNESS EXCUSED

MR MAKUWO: Thank you, M'Lady.

COURT: Yes?

MS MVANDABA [?]: As the Court pleases, M'Lady. M'Lady, that was the only witness for the day. May the matter be
10 remanded, to roll it over until tomorrow. Tomorrow we will be on Teams [indistinct].

COURT: All right.

MS MVANDABA: I am not sure if the Court is going to give us time or?

COURT: You let me know what time you will be ready.

MS MVANDABA: 10 o'clock. 10 o'clock M'Lady.

COURT: Will that suit you, Mr Heunis?

MR HEUNIS: That is perfectly suitable, thank you, M'Lady. We have arranged for a witness to be ready by then. And the
20 necessary infrastructural arrangements are being made as we speak. May I ask that the interpreter be present? It may not be necessary to make use of his eloquent services, but it might be necessary.

COURT: Thank you. You have noted that, Mr Wabane?

INTERPRETER: As it pleases the Court, M'Lady.

N.F. 

COURT: Thank you. But just to remind me, you will not be gracing us with your presence tomorrow with the ...[intervenes]

MR HEUNIS: No, we will be with Mr Stemmet with your permission. Thank you.

COURT: All right. Okay, at this stage, the proceedings will be adjourned for continuation tomorrow at 10 o'clock or as soon thereafter as we can be ready.

COURT ADJOURNS

[14:52]

10 MATTER POSTPONED UNTIL 25 MARCH 2025

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