

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

18 APRIL 2019

DAY 86

FINAL

20

PROCEEDINGS ON 18 APRIL 2019

CHAIRPERSON: Good morning, good morning everybody. Thank you let us proceed. Your mic. Put on yours as well Major General Booysen. Thank you.

ADVOCATE VERUSHKA SEPTEMBER: Thank you Chair. Good morning. Yesterday Mr Booysen we ended your evidence on you telling the Commission about Mr Toshan Panday and Colonel Madhoe having been arrested on criminal charges relating to bribery/corruption, is that correct?

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

ADVOCATE VERUSHKA SEPTEMBER: We remain then to be with use of the timeline on Exhibit ZD page 3.

CHAIRPERSON: And which block are we on today?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Page – sorry block – we moving onto block 27.

CHAIRPERSON: 27 okay thank you.

ADVOCATE VERUSHKA SEPTEMBER: In that regard can I ask you to turn to page 15 in bundle ZA of your main affidavit while keeping this particular diagram page open.

20 CHAIRPERSON: Did you say ...(intervenes).

ADVOCATE VERUSHKA SEPTEMBER: So it is ...(intervenes).

CHAIRPERSON: Did you say page 15?

ADVOCATE VERUSHKA SEPTEMBER: Page 15.

CHAIRPERSON: Okay.

ADVOCATE VERUSHKA SEPTEMBER: To start, I now direct your

attention to paragraph 49 of your statement. General Booysen following the arrest of Colonel Madhoe and Mr Toshan Panday are you aware of what transpired following the arrest?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: To an extent I am Chair.

ADVOCATE VERUSHKA SEPTEMBER: Please inform the Commission about what you know?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair soon after both had been arrested and had appeared the Commercial Crimes Court in
10 Durban the investigator officer alerted me that the prosecutor in the matter Advocate Bheki Manyathi had received a communicate from I do not know in what form – well I did not know at that stage in what form, had received a communicate from Advocate Mgwebe from the NPA head office. He was I think the head of the commercial crime section at the National Prosecuting Authority.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And he showed me a letter which Advocate Mgwebe had written to Advocate Manyathi. The extent of the letter was basically interrogating why Madhoe had been –
20 Colonel Madhoe had been charged or prosecuted. There was one reference – in the – this communicate stating besides a scrap piece of paper what other evidence is there against Madhoe. I think the scrap piece of paper they probably referred to is the note on which I wrote the date at the funeral.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: After that Advocate Manyathi penned a detailed legal opinion comprising a number of pages setting out the extent of the evidence against Madhoe and he concluded his legal opinion by stating that he intends indicting Madhoe in the high court for corruption.

ADVOCATE VERUSHKA SEPTEMBER: If I can then ask you to turn.

CHAIRPERSON: I am sorry he – did he ...(intervenes).

ADVOCATE VERUSHKA SEPTEMBER: Apologies.

10 CHAIRPERSON: As far as you know did you – did he then send that opinion to Advocate Mgwebe?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I know that he did do that Chair.

CHAIRPERSON: Yes okay thank you.

ADVOCATE VERUSHKA SEPTEMBER: In that regard can I ask you to turn to Annexure JWB5 which starts on page 91 of that same bundle ZA. This particular document is titled Internal Memorandum and it is sent from Advocate L S Mgwebe Special Director SCCU to Advocate W Miller Acting Regional Head SCCU Durban and cc is Advocate Mlotshwa
20 Acting Director of Public Prosecution Kwa-Zulu Natal. It is dated on the front page as 9 January 2012 and the subject title is referenced as Colonel Navin Madhoe with particularity to additional details. Notwithstanding the date on this particular page if I can ask you to just turn to page 94 of that same bundle. There is in fact a date mentioned there though the 4th of December 2011 and it is signed off by Advocate

L S Mgwebe or rather not signed off by Advocate L S Mgwebe. Is this the particular document that you were referring to?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is the document but I have it as Advocate Lawrence Mgwebe that is how he is known.

ADVOCATE VERUSHKA SEPTEMBER: Thank you. Is it correct that this particular document concerned representations that were made to his office as you have previously indicated?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is my interpretation of the document Chair.

10 ADVOCATE VERUSHKA SEPTEMBER: Thank you.

CHAIRPERSON: One can say that in the first paragraph in that letter that document it is a letter from Advocate L S Mgwebe dated 9 January 2012 addressed to Advocate W Miller at regional head CCU Durban and a copy sent to Advocate Mlotshwa acting Director of Public Prosecution Kwa-Zulu Natal. And in the first paragraph he says that his office that is Advocate Mgwebe received on 6 December 201, it says 201 it must have been 2011 – must have intended 2011 his office received representations from the lawyer representing Colonel Madhoe in the abovementioned matters. He then says a copy of the said
20 representations is attached here for your information. So it would appear that arising from some representations made by the lawyer for Colonel Madhoe he then decided to make certain enquiries. Okay thank you.

ADVOCATE VERUSHKA SEPTEMBER: Thank you Chair. Can you just very simply explain what exactly does representations mean?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair my understanding of representations are that if you as an accused feel that there are no – that there is no evidence against you or that there might be a prosecution for ulterior purposes that one could then bring that to the attention of the NDPP or in this particular instance I would have thought it should have been sent to the DPP and if they had not had any closure that it would then be advanced to the NDPP.

CHAIRPERSON: Excuse me.

ADVOCATE VERUSHKA SEPTEMBER: In that regard can I then ask
10 you whether or not Advocate Lawrence Mgwebe ought to have received these representations directly from the attorneys of Colonel Madhoe.

CHAIRPERSON: Well I am not sure why you think he should deal with that. Somebody a lawyer is instructed by an accused person and the lawyer decides to make representations. If he are indeed the – is the lawyer who decides where he will or she will send those representations. Even Advocate Mgwebe does he have a – does he have a choice of whether he receives them or not. If they are sent to him they land on his desk, they land on his desk.

ADVOCATE VERUSHKA SEPTEMBER: As it pleases Chair. I would
20 like the witness though to clarify to us whether or not it was in fact well within the right of mister – of Advocate Mgwebe to consider the representations as he did?

CHAIRPERSON: Well I am not sure you might know something that I do not know yet but an accused lawyer decides that on behalf of his client or her client he or she wants to make representations to the NPA.

He or she decides to make representation to the prosecutor or she – he or she decides to make representations to somebody much higher up I am not sure that it is something that we really want to spend time on at this stage.

ADVOCATE VERUSHKA SEPTEMBER: Ja. Chair, this particular witness will be talking to the proper channels that ought to have been followed in this particular process.

CHAIRPERSON: By whom – followed by whom?

ADVOCATE VERUSHKA SEPTEMBER: By an accused person and in
10 this particular instance.

CHAIRPERSON: Yes but if the accused person decides not to follow or does not know how does that assist us? Or does not know what the correct procedure is. It is different if the point being made is something about Mr Mgwebe.

ADVOCATE VERUSHKA SEPTEMBER: That is ...(intervenes).

CHAIRPERSON: Is there a point that is sought to be made about Mr Mgwebe?

ADVOCATE VERUSHKA SEPTEMBER: That is in fact the point Chair.

CHAIRPERSON: And what is the point?

20 ADVOCATE VERUSHKA SEPTEMBER: The point is that through the evidence of General Booyen the representations ought not to have been considered.

CHAIRPERSON: Ought not to have been?

ADVOCATE VERUSHKA SEPTEMBER: Ought not to have been considered.

CHAIRPERSON: Well are we at the stage where they are being considered? All I know is there has been – Mgwebe had received some representations and he is asking for comment from the prosecutor.

ADVOCATE VERUSHKA SEPTEMBER: As it pleases Chair. Can I maybe just rephrase my question to the General instead?

CHAIRPERSON: Ja maybe otherwise maybe at some stage later maybe there might have – there might be a proper foundation for what you or Major General Booysen might have in mind but as things stand it does not appear to me that it is really something that one can make much
10 point about representations being sent to a wrong person by an accused lawyer.

ADVOCATE VERUSHKA SEPTEMBER: As it pleases Chair.

CHAIRPERSON: That is assuming it is a wrong place to send them.

ADVOCATE VERUSHKA SEPTEMBER: As it pleases Chair.

CHAIRPERSON: H'mm.

ADVOCATE VERUSHKA SEPTEMBER: General Booysen in your experience what was the proper channels to process the representation?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I specifically
20 mentioned this in my statement because Advocate Mgwebe his name will crop up on a few other occasions later in my statement.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In my experience and were a number of years and I have canvassed this with a number of prosecutors.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Normally if you want to make representations

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In this particular instance it should have gone to the DPP or at – or to Advocate Miller

CHAIRPERSON: H'm

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Who was the head of the office in Durban.

10 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I understand the Chair's concern about the attorney writing directly to the NDPP office they could have been unaware of the procedure but my problem is that I feel that Advocate Mgwebe should not have entertained the representation. He should have referred it in its entirety back to the DPP's office to deal with it. If the accused was still not satisfied he could then escalate it to the NDPP's office. That is how I have experienced it over the years. So I just found it a bit odd that Advocate Mgwebe would entertain this – looks more – rather a complaint than a
20 representation of the attorney of Mr Madhoe.

CHAIRPERSON: Yes. No it may well be I do not know. It may well be that it was a wrong procedure. It may well be that it was a wrong place to send them to on the part of the accused's lawyer. I am just saying at this stage it does not appear to me that there is proper foundation for anything for us to canvass more. Maybe when other aspects of Major

General Booysen's evidence have been dealt with we might come back to it if there seems to be something. One – I do not know what the procedure is. Do we know? Do you know Major General whether there is a procedure set down in policies or regulations or the statute the relevant – the statute?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair not in terms of statutes. Not in the National Prosecuting Authority Act neither in the Constitution but the protocol that we have been following over the years.

10 CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I have extensively canvassed this with a number of prosecutors.

CHAIRPERSON: Ja, ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The protocol is ... (intervenes).

CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Go to the DPP.

CHAIRPERSON: Ja.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: In this instance he should have gone to the head of the office Advocate Miller.

CHAIRPERSON: Ja, ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Then the DPP. If they were still not satisfied then go to the NDPP.

CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I do not have a

problem with the fact that they had sent it directly to the NDPP's office to Advocate Mgwebe.

CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: My concern is why did Advocate Mgwebe deal with the matter instead of referring it back to the DPP's office. My concern is why did Advocate Mgwebe deal with the matter instead of referring it back to the DPP's office.

CHAIRPERSON: Ja. Okay what we will do I think canvass other matters later on see whether there is proper basis to come back to the
10 question. Okay let us see whether the other evidence will provide anything. One has got to bear in mind if there are no rules or statutory provisions or policies that specify where representations should be directed and maybe there is just a practice. One must also check whether there is a discretion to refer or not to refer or whatever and what we want to make of it – what is sought to be made of it.

ADVOCATE VERUSHKA SEPTEMBER: As it pleases Chair. I have just got two quick questions in relation to this then.

CHAIRPERSON: Ja.

ADVOCATE VERUSHKA SEPTEMBER: If I can ask you to turn to page
20 92. Can you read paragraph 2 into the record please?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The complete paragraph?

ADVOCATE VERUSHKA SEPTEMBER: Just – not the sub-paragraphs.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Okay.

ADVOCATE VERUSHKA SEPTEMBER: Just the top paragraph – first

headliner.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Okay.

“In order for this office to meaningfully respond to the said representations the prosecutor dealing with the matter must please ensure that the following is submitted to this office.”

CHAIRPERSON: I am sorry where is that?

ADVOCATE VERUSHKA SEPTEMBER: On page 92.

CHAIRPERSON: 92. Yes thank you.

- 10 ADVOCATE VERUSHKA SEPTEMBER: Is it correct then that following on from the paragraph 2 there is a list of various points for analysis by the prosecutor?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is indeed so Chair.

- CHAIRPERSON: I think going back to what we were talking about and this is for later on if we look at the issue it may be that Major General you want to say nothing more than simply this that it was strange that this is how this – these representations were dealt with or that this is the person who dealt with them because the practice following and you
20 – maybe you say no more than that. But you will decide if you want to say no more than that or whether you want to infer something more. So you can just – it depends what you have in mind. So if you want to say something more than that it looks strange or something like that then you will say so and then we can look at that and then.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I am happy to

stay – to proceed.

CHAIRPERSON: To put it that – yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The reason – and as
Chair will see later on

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: There is a whole
chapter that deals with certain prosecutors at the National Prosecuting
Authority.

CHAIRPERSON: Yes. Yes.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: That were always
invariably involved in these ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In certain
investigations.

CHAIRPERSON: Yes, yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And Advocate Mgwebe
was one of them ...(intervenes).

CHAIRPERSON: Yes.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: So this was merely to
set the tone ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Where I started to
experience ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: For the very first time.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Some sort of I do not want to call it interference in this instance ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But later on ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It is clear to me that there was definitely interference. So this is merely setting the tone
10 ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: For what is going to happen later on when I discuss the prosecutors.

CHAIRPERSON: Yes yes okay, okay. No that is fine. Thank you.

ADVOCATE VERUSHKA SEPTEMBER: In that regard could I then also just highlight that paragraph 3 on page 92 asks very particular factual detailed questions which runs for at least one and a half pages, is that correct?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

20 ADVOCATE VERUSHKA SEPTEMBER: Then can I ask you to turn to page 96 of the same bundle. It appears to be a document which is marked Memorandum.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

ADVOCATE VERUSHKA SEPTEMBER: Can you please – and it is dated sorry 22 January 12 presumably 2012. It is an eight page

document. Can you please identify what this document is?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair this is the response I referred to earlier on that was penned by Advocate Bheki Manyathi the prosecutor in the matter.

CHAIRPERSON: Yes.

ADVOCATE VERUSHKA SEPTEMBER: And is it your understanding that this was in fact the memorandum of response to the letter from Advocate Lawrence Mgwebe?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is my
10 understanding Chair.

ADVOCATE VERUSHKA SEPTEMBER: If I can then ask you to quickly turn to page 103 and read the conclusion into the record?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair the conclusion it is in paragraph 26.

“In my view the case against Madhoe is overwhelming and I recommend that he must be indicted in the high court.”

ADVOCATE VERUSHKA SEPTEMBER: Thank you. Do you know what is the current employment status of Advocate Manyathi?

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair what I can say is I bumped into Advocate Manyathi at the high court in Durban during one of our appearances and he actually called me aside. He sent someone to fetch me and we went around the corner. And he said to me General you know I am not happy with what is happening here he said to me. Because at that time we were being prosecuted. And he

indicated to me that his stance in this matter had caused him to be overlooked for promotion.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And that he intended resigning from the NPA ...(intervenes).

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which – and I saw him a couple of months later on the beachfront and he stopped by and showed me his car that he had bought and he had told me that he had
10 actually gone into private practiced.

CHAIRPERSON: Yes, yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So as far as I know he is currently in private practice.

CHAIRPERSON: Yes. Okay thank you.

ADVOCATE VERUSHKA SEPTEMBER: Do you know whether or not whilst Advocate Manyathi was still part of the prosecutorial service whether or not he was promoted in any way?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I am being – I am testifying now what I have been told by Advocate Manyathi. He was
20 short listed for a promotional post but after he had penned this legal opinion he was overlooked for promotion and either removed from the post or overlooked for promotion. The indications were that he was going to be promoted.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And what I understood

from him is that because of his stance in this matter he did not get promoted.

CHAIRPERSON: Ja. There is a limit to where – how far one can go with matters which are based on what someone else has said and we just need to tread with care.

ADVOCATE VERUSHKA SEPTEMBER: As it pleases Chair.

CHAIRPERSON: Okay.

ADVOCATE VERUSHKA SEPTEMBER: During June 2012 there was a change to the encumbrance to the acting DPP position. We are now on
10 page ...(intervenes).

CHAIRPERSON: Well before – I am sorry before we got there. Advocate Mgwebe requested information from the prosecutor in the Madhoe matter and the prosecutor furnished a comprehensive response at the end of which he said there was an overwhelming case against Madhoe, Colonel Madhoe. We should – I want to know what happened – what decision if any was taken after that as far as you know and what happened out of those representations and so on, do you know?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I do Chair.

CHAIRPERSON: Yes. Tell me.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair soon after this event a new acting DPP was appointed in KZN Advocate Moipone Noko and a month or two I cannot recall exactly how long after her appointment she withdrew the charges against Panday and Madhoe.

CHAIRPERSON: H'mm. But you do not know the circumstances you just know that the charges – there was a new provincial Director of

Public Prosecutions and soon after that appointment the charges were withdrawn?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is ...(intervenes).

CHAIRPERSON: That is what you know.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

CHAIRPERSON: Yes. Okay thank you.

ADVOCATE VERUSHKA SEPTEMBER: Following the withdrawal of the charges can I ask you to turn to page 105 please?

CHAIRPERSON: Did you – I am sorry, did you ever enquire in one way
10 or another from the NPA what the basis was for the withdrawal of the charges?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair two significant things occurred at the time. The investigating officer enquired from her as to why the charges were withdrawn and she would not respond to the investigating officer. She did not give reasons at that time.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The second thing is the investigating officer reported to me that she did – Advocate Noko did not want to return the docket. So she kept the docket with her.

20 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: For quite a period of time.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Much later she issued a media statement and I do quote that in my affidavit Chair.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That she had withdrawn the charges in the interest of justice or words to that effect but that I do have the exact words.

CHAIRPERSON: Okay. Ms September will direct you to that part of your statement if – when she wants to do that because it would be good to know. And did they stay withdrawn – they have never been reinstated, those charges?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I do speak to
10 that a bit later on in my statement. What happened is about two years ago.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I – and in conjunction with a journalist had written a book about my what happened to me and the book had appeared online I think the Monday and I think that was the Thursday.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: We were on our way to Cape Town to attend the launch of the book.

20 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then she told me that was now Jessica Pitchford we were both going to Cape Town for the release of the book. And she had just watched the – on the cell phone the news. It was then announced by Advocate Shaun Abrahams that Panday and Madhoe would be prosecuted. I had not heard

anything about it again until much later when I bumped into another journalist in Durban Tania Broughton and she said to me she had seen the lawyer of Panday and Madhoe at the high court and enquired from them what they were doing there and he then told her that they were – that they had filed a review application for the decision to prosecute them and that case referred specifically to the attempt to bribe me.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I do deal with that extensively later on.

10 CHAIRPERSON: Later on. No that is fine. That is fine. Thank you.

ADV VERUSCHKA SEPTEMBER: If I can then by the direction of the Chair take you to page 105. Is that the media statement that you referred to earlier?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is the media's – that is right Chair.

ADV VERUSCHKA SEPTEMBER: This media statement is dated 3 April 2013 and it is titled "Graft charges against Panday withdrawn". It appears to have been published on the iol.co.za website. Can I ask you to read the last two paragraphs into the record please?

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: "Earlier this year the provincial prosecution boss Advocate Moipone Noko instructed that the charges against him and supply chain unit police Navin Madhoe involving an alleged attempt to bribe KZN Hawks Head Johan Booyesen with R2 million be provisionally

withdrawn. She said that while there was a prosecutable case she had concerns regarding “justice” based on representations which Panday had made and which needed further investigation.”

ADV VERUSCHKA SEPTEMBER: If I can then ask you to turn the page and read the third short paragraph – sentence rather into the record.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: “But State Advocate Dorian Paver said the state could not proceed “because of problems regarding their preparation of evidence”.”

10

ADV VERUSCHKA SEPTEMBER: So is it to be understood that despite all of the evidence that had been investigated and collated Advocate Noko shortly after her appointment as the Acting DPP withdrew the charges against Colonel Madhoe and Mr Toshan Panday?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I am not a prosecutor and I do not want to pretend that I am a prosecutor.

CHAIRPERSON: H’mmm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But I have worked with prosecutors.

20 CHAIRPERSON: H’mmm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: For more than 30 years.

CHAIRPERSON: H’mmm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: After I joined the detectives more than 30 years ago.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I think I am in a position to more or less say when there is at least a prima facie case and a prosecutable case.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In this particular instance Chair every conceivable type of evidence is in that docket.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Physical evidence.

10 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I.e. fingerprints.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Act 70 interceptions.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: A 252(a) authorisation by the DPP.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Eyewitness statements how the money was put in the boot of my car.

20 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: There is even a bank note.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In the notes that linked with an account of Toshan Panday.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The evidence was overwhelming.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But in spite of the overwhelming evidence.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The charges were withdrawn.

10 CHAIRPERSON: H'mm and the police officers who were involved in arresting Colonel Madhoe who observed what happened in the basement on the day in question have at all material times being available to give evidence. I would imagine.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair every single witness from the ...(intervenes).

CHAIRPERSON: Obviously you have been available?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes. Every single witness.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Had been available all along.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: One witness unfortunately passed away I think now in December.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Len Sheriff.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But over and above that all the witnesses every single one of them are available to testify.

CHAIRPERSON: Yes. Just, you mentioned earlier on and maybe Ms September was still going to deal with that but I just want to know now – you mentioned that you learnt at some stage that apparently Mr Panday was bringing a review application in relation to the decision to reinstate charges. Did you ever receive any court application papers
10 as an interested party to see that indeed there was a review application and you had to deal with it?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I also deal with that a bit later on but I can answer you now.

ADV VERUSCHKA SEPTEMBER: Please do.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: What happened is I found it strange at the time that there is a review application and I am not even aware of it. I would have at least expected myself to have been a co-respondent. Subsequent to that I received a phone call from Advocate Mxolisi Nxasana who had informed me that he had seen the
20 founding affidavit deposed to by Colonel Navin Madhoe in the review application and I cannot remember who favoured me with a copy. I might have gotten it through a journalist and I read the founding affidavit and the founding affidavit number one Madhoe lies under oath there because he says that he is a witness in the Cato Manor case which he is not. He has never been on the witness list. He has never

been a witness but that is not the real problem. The real problem with the founding affidavit is that it is an attack on Advocate Nxasana, an attack on myself, an attack on Mr McBride from IPID. According to the founding affidavit it was a conspiracy between myself and Advocate Nxasana to have them re-prosecuted and they also made certain allegations against Mr McBride. Now the fact that we were not co-respondents I was expecting Advocate Abrahams to at least deny the allegations and ask us for confirmatory affidavits or at least inform us to make affidavits to support him in opposing the review application.

- 10 The review application was opposed but the fact that we were kept out of the loop tells me that I suspect it was a paper exercise but they never intended prosecuting them but what had happened Chair I established about probably about two months or three months ago that the matter had been struck off the roll.

CHAIRPERSON: So that matter has been – that review application has been pending as far as you know for how many years now or from when?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No Chair. It was struck off the role now.

- 20 CHAIRPERSON: Ja. Well I mean you mean the criminal matter or the review application?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No – so they took the decision to prosecute by Abrahams.

CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: On review. That was

– so they must have been informed two years ago when they decided to prosecute them. They were going to take the matter on review.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So it had been in and out of court for a while and about two or three months ago.

CHAIRPERSON: Oh, the criminal matter?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No the review matter Chair.

CHAIRPERSON: The review matter?

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: The review.

CHAIRPERSON: The review matter has been in court a few times. Is that what you are saying?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is right Chair.

CHAIRPERSON: But you say it has been struck off the roll?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It was struck off the roll.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And my understanding is that Advocate Wendy O'Brien from the Commercial Crime Court in
20 Durban they are preparing to now re-prosecute Madhoe and Panday.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: For the attempt to bribe me.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But Chair at this

junction maybe I must just also make it easier to understand.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: There are different cases.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That we probably – that I mention in my ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: My statement.

10 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The main corruption charge of R60 million.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That case was declined to prosecute a good couple of years ago.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And when I eventually went back to work after my suspension was lifted.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: I wrote to the then new NDPP Advocate Nxasana.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Giving my views on those charges.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And he had appointed Advocate Gerrie Nel.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: At the NPA Office to review all those cases.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: My understanding is and once again I am not officially being informed of this.

CHAIRPERSON: Yes.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: My understanding is that and this I also learnt through the media.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: When it was reported that the review matter for the criminal case of attempted bribery had been struck off the role the journalists then approached the National Prosecuting Authority to ask them why are they now not proceeding with that matter and the answer they got was well they are waiting for the other matter as well. That is the 60 million one.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: So that matter had also been taken review.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So in my view the attempt to bribe me can proceed without the other matter.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is still under review.

CHAIRPERSON: H'mm. Okay, thank you.

ADV VERUSCHKA SEPTEMBER: Thank you Chair. That then leaves us with the last block on the time sheet – timeline sorry. If I could ask you to just turn quickly to Exhibit ZC and in particular page 2. At paragraph 6 you document additional evidence relating to the Toshan Panday corruption investigation and in particular regarding the release of the R15 million. Can you please inform the Chair about such
10 evidence?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair what had happened is on and off there were attempts to have the 15 million released. Fortunately for myself and unfortunately for Mr Panday I had someone from our Financial Department who would tell me there are moves afoot to have the money released. They devised a number of strategies. For instance they tried to have the money paid out of National Office. They were communicating directly to National Head Office. I do not know whom at National Head Office and at one stage I had asked this person and I do not even want to disclose the gender of
20 this person because that person would be ostracised.

CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: At one stage I had been informed – I had asked this person is it possible to have money paid out at National Head Office if it is a Provincial matter.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I was informed it was indeed the case. So between myself and the Head of Finances at the time Brigadier Kemp.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: We agreed that that person would go in at night and check on the system.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Because it would be logged at night.

10 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then it would be paid out the following day.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So for a protracted period of time I had this person going at night to see if it was loaded.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: On the system and if it had been.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: I would have been contacted.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So that I could prevent the money.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: To be paid out.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I also approached General Ntanjana at the time.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The one that passed away.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I told him
10 because I know that there – and I managed to get hold of the
communication between his office and our Legal Department and it was
clear from that that they were contemplating paying out the money.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I told him – I said
to him if you guys are going to pay out this money while it is a subject
of a corruption investigation you are going to make yourselves guilty of
corruption as well.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But Chair that
20 ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: What then happened
is I get a frantic call from a person – well in our engagements with
Mr Panday's lawyers they threatened me with all types of things and I
told them well let us go to court then.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: If you can prove that the state owes you the money.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I will be happy to release the money.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then it was on the 1st of January. I cannot recall the year. I got a frantic call from a
10 person by the name of Captain Stevens.

ADV VERUSCHKA SEPTEMBER: Can I just interject and ask you did you receive this call before or after Toshan Panday and Colonel Madhoe were arrested?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes.

ADV VERUSCHKA SEPTEMBER: Sorry.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

ADV VERUSCHKA SEPTEMBER: Apologies. Not arrested – before or after the charges were in fact withdrawn. Can you recall?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I suspect it was
20 after. I will just have to check the timeline.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: There were so many.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Events happening at the same time and some of them I only learnt about afterwards.

CHAIRPERSON: Yes. So – but you think it was after?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I think it was after Chair.

CHAIRPERSON: Ja, okay.

ADV VERUSCHKA SEPTEMBER: After they were arrested or after the charge ...(intervene)?

CHAIRPERSON: After the withdrawal of the charges.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I think after they were withdrawn.

10 ADV VERUSCHKA SEPTEMBER: Okay. Please proceed.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair so I got this frantic call and I recall vividly I was at the dam on the day. It was the 1st of January with my family and when I left the dam – when I had reception on my phone again I saw I had a number of missed calls. So I phoned the person back and it was a Captain Stevens and he told me that he had been approached by Mr Toshan Panday and Toshan Panday wanted him to assist him to have the money released the R15 million.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Toshan Panday devised a strategy or a plan to have the money released. So he said to Captain Stevens you from police side you must create documents and I will create invoices. So he was going to create invoices for R15 million.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But you cannot just

send invoices if there was not a service required from the police.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So he said to Stevens you must fabricate.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Call up instructions for policeman.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: During the soccer -
10 World Cup Soccer period.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then I will do invoices.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: To match those figures.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Then we can present it and then the idea was then that Booyesen would be happy to release
20 the money.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I immediately on the 1st of January phoned Captain Pelser once again. I said to him get us 252(a) authority which he did and I told ...(intervenens).

ADV VERUSCHKA SEPTEMBER: Can I just interrupt you again? Just

clarify again what Section 252(a) is.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair my understanding of 252(a) authority it is the Criminal Procedure Act. It authorises an ostensible illegal act.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And we normally use those in sting operations.

CHAIRPERSON: H'mm.

ADV VERUSCHKA SEPTEMBER: Thank you very much.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Chair we had this
10 252 authority and having had experience of how they operated I called in the investigators and I said to them you need to do – not that they had not done it previously but I wanted to ensure that everything was done according to the book.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I enlisted the assistance of Crime Intelligence and there were subsequent meetings between Mr Toshan Panday and Captain Stevens. There were probably about 19. Of the 19 about six ...(intervenes).

CHAIRPERSON: Meetings? 19 meetings?

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

CHAIRPERSON: Between the two?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Between the two.

CHAIRPERSON: Okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So we had Stevens wired every time he met Panday.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: With a camera.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And a recorder.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So the recordings were audio and visual.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So there – over these
10 number of meetings 16 of them were recorded audibly and visually.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: At one stage Stevens had a problem switching on the camera and ...(intervenes).

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That particular meeting was not recorded.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But every time that they met he would report there before the time to the investigators.

20 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It would be reported to the DPP dealing the 252(a).

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And during some of these meetings Panday was getting anxious because Stevens was

working too slowly.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And Stevens was making excuses by saying well there are people who need to co-operate from supply chain management. So Panday at one stage gave Stevens R2 000.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: As a bribe to be paid to one of the people at supply chain management.

10 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But Stevens came back with the money. We took the money. Put it in an exhibit bag and it was kept as an exhibit.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: At a subsequent meeting Panday once again complained that Stevens was taking too long. So Stevens said to him well look some of these documents have to be signed by a Brigadier.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Now the person in charge of deployment at the time was a Brigadier Vernon Hunter.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Madhoe says to him but you have to – well then you have to forge his signature. Now Chair there was a previous matter completely unrelated to this that

Panday had been involved in but completely unrelated to this.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It was a civil matter in which he had put in false claim.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And the – when we did the Act 70's we picked up on the Act 70's that a couple of million Rand was going to be paid out to him.

CHAIRPERSON: H'mm.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: And that there was a problem with the claim. So we enforced – informed the insurers and in that particular instance what he had done was he had cut and paste the signature of ...(intervenes).

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Of a deceased person. So he tells Stevens when you forge these signatures do not cut and paste. You must make different ones.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So it looks authentic.

20 CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: We then went to – as part of the 252(a) operation went to Brigadier Vernon Hunter and we told him look this is what is going on. Your signature is going to be forged.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which he agreed to.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: On the particular day that that was done we had the LCRC. That is the local fingerprint office come to the office.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And in their presence each document that had been created by Stevens was photographed before the signature was.

10 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Placed thereon and then afterwards.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And Hunter was present as well where his signature was forged as part of the 252(a) operation.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair what also happened is in this process Panday was getting quite frantic because
20 Stevens was taking too long. So Stevens said to him well you know I have to print this stuff and Panday then – they were close to Gateway then. I cannot remember whether he had gone there himself.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Or sent someone to buy a computer and a printer from Dions and he gave him the whole

bag with the computer and printer and everything with the receipt still inside there.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Stevens came back and he handed that over to us as well. That was also handed in as exhibits.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair this continued for a period of time and eventually there was enough evidence.

10 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: To arrest Panday once again.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He was arrested eventually.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He appeared in court but unfortunately that case had also been withdrawn.

20 CHAIRPERSON: By – and do you know who made the decision to withdraw this time?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair this time I think there might be – and I do not want to cover me up for the prosecutor.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But I think there might be a little bit of a valid explanation from the prosecutor's side.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: To give them the benefit of the doubt.

CHAIRPERSON: Okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: A number of these recordings had to be transcribed.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I think it was a White person who had done the transcriptions and ...(intervenes).

10 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: There if you do not live in Durban and if you do not know the language how the Indians talk you might ...(intervenes).

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: You might get it wrong. So because I could see from the transcriptions it was an Afrikaans person.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Who had transcribed it. So the prosecutor was not happy with that.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: What subsequently happened to that case it was sent – at a later stage I will talk about that as well.

CHAIRPERSON: H'mm.

ADV VERUSCHKA SEPTEMBER: If I can just interrupt you and ask you to turn to page 3 and please identify who was the actual – apologies – page 3 of ZC. On the top of page 3 you were informed that the charges were provisionally withdrawn. Please identify who the prosecutor was.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: They were provisionally withdrawn by Advocate Dorian Paver.

CHAIRPERSON: Okay, thank you. Thank you.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair much later when I – and I will speak to this later on.

10 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: When Mr McBride started investigating all these issues.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I handed the docket over to IPID.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: My understanding was that they had – and I speak under correction, that they had the recordings transcribed again – once again.

20 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But to date no one has appeared in that matter.

CHAIRPERSON: In court. H'mm, okay thank you.

ADV VERUSCHKA SEPTEMBER: To your knowledge has the R15 million been paid to Mr Toshan Panday?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair before I respond to that I just want to add when the invoices that Panday eventually created the understanding is that we owed – well according to him we owed him R15 million but if my memory serves me correctly the invoices that they eventually created amounted to R17 million. Chair as far as I am aware to date that R15 million has not been paid out.

CHAIRPERSON: Thank you.

ADV VERUSCHKA SEPTEMBER: Can I then take you to page 18 of your affidavit? It is at this juncture that you deal with additional
10 investigations that you were involved in. Perhaps not in as much detail as the Toshan Panday investigation and in that regard the next investigation that you deal with in your affidavit is one which you have titled the “Amigos” case. In very simple terms please explain what this “Amigos” case concerned.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair what happened is when the Hawks were established they combined Commercial Crime, Organised Crime and the Scorpions. That was an interim arrangement and they then formed the Hawks. So I inherited, for lack of a better description, the investigation from the Commercial Crime Section.
20 There was this one investigation that was known as the “Amigos” case which related to the fraudulent acquisition of water purification plants for hospitals. I know in KZN and a few other provinces as well. There were a number of accused. One of them – a prominent accused in this matter was a Mr Gaston Savoi. I think he was a Bulgarian businessman and he was charged inter alia with two politicians – Mike Mabuyakhulu

and Peggy Nkonyeni. They were both part – members of the legislature in KwaZulu-Natal at some time or other.

ADV VERUSCHKA SEPTEMBER: If I can just interrupt for the record can you please spell Peggy Nkonyeni and Mike Mabuyakhulu?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Nkonyeni is N-k-o-y-e-n-i and ...(intervenes).

CHAIRPERSON: There will be an N before the Y.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Sorry Chair.

CHAIRPERSON: There is an N for Nellie before Y. I think you omitted
10 the N. N-k-o-n-y-e-n-i.

ADV VERUSCHKA SEPTEMBER: Thank you Chair.

CHAIRPERSON: And Mabuyakhulu is M-a-b-u-y-a-k-h-u-l-u.

ADV VERUSCHKA SEPTEMBER: Thank you Chair.

CHAIRPERSON: Because it is here. You can even just give the spelling yourself Ms September.

ADV VERUSCHKA SEPTEMBER: Thank you Chair.

CHAIRPERSON: Okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Chair they were
20 among the accused – Mr Savoi and Mabuyakhulu and Nkonyeni. What happens on a monthly basis – I will call the investigators and then they have to give feedback especially on the high-profile cases and the investigating officer in this particular matter was Lieutenant Colonel Piet du Plooy. So the investigation had already been in an advanced stage when Du Plooy came over to me. So I was not privy to the extent of the evidence in the docket but nevertheless Chair

Du Plooy then reported to me that the then Acting DPP in KZN Advocate Simphiwe Mlotshwa there was pressure on him to withdraw the charges against Mabuyakhulu and Nkonyeni. So I said to him Piet what does the evidence look like and he said to me no sir there is – there is a solid case. I never physically checked the dockets but he assured me that there was a solid case and I said to him what is the position of Mr Mlotshwa in the matter – Advocate Mlotshwa and he said no Mlotshwa is proceeding with the matter. He is – he is going ahead full steam. So I was happy with that.

- 10 ADV VERUSCHKA SEPTEMBER: Thank you. Are you aware as to whether or not a forensic investigation was conducted in this particular matter?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I am aware Chair.

ADV VERUSCHKA SEPTEMBER: Who conducted that forensic investigation?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: If my memory serves me correctly it was also Price Waterhouse Cooper.

- ADV VERUSCHKA SEPTEMBER: Are you aware of any particular events relating to the involvement of Price Waterhouse Cooper's and
20 the prosecutors involved – and prosecutors involved in this matter?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair Colonel du Plooy had reported to me at some stage that he and one of the forensic auditors had been summoned to Pretoria by Advocates Mogwebe and Mosing and the meeting was about this particular investigation and I can recall when they had come back that

Du Plooy was unhappy. I did not go into the detail of the – of what had occurred at the meeting but they conveyed to me that when they arrived there that it was clear to them that there was a notion that there is no evidence against Nkonyeni and Mabuyakhulu and I think it was Du Plooy who still said well to either of the two advocates – either Mosing or Mogwebe. It looks as if you have made up your mind already to not proceed and he basically excused himself from the meeting.

CHAIRPERSON: So he must have felt quite very – quite strongly?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He did Chair.

10 CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Du Plooy did feel strong about it.

CHAIRPERSON: Yes. Okay.

ADV VERUSCHKA SEPTEMBER: You said that you inherited this matter. In what year did you inherit the matter? If I could take you to paragraph 58 ...(intervenes).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Ja Chair that was when I became the Head of the Hawks in 2010.

CHAIRPERSON: Yes.

20 ADV VERUSCHKA SEPTEMBER: Okay and in paragraph 61 which is at page 19 of your affidavit you document what the current status is or rather what the.

CHAIRPERSON: I am sorry Ms September. Let us – the two investigators went to see Advocate Mogwebe ?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No Chair. It was the

investigator Lieutenant Colonel Piet du Plooy.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And the forensic investigator from the audit company. I cannot recall.

CHAIRPERSON: Oh. Yes ...(intervenes).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Who that person was.

CHAIRPERSON: Yes, okay. They did – ja, the investigator plus the person from the forensic investigation team?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

10 CHAIRPERSON: They went to see Advocate Mogwebe .

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And Advocate Mosing.

CHAIRPERSON: And Advocate Mosing.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Anthony Mosing.

CHAIRPERSON: Yes and the report you got was that the two advocates were saying that there was no evidence against Mr Mabuyakhulu and Ms Nkonyeni.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It was a verbal report that I received.

CHAIRPERSON: Ja, a verbal report that you've got ja.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes, and the way I've articulated that in my statement is that they went along with the notion that the evidence was not sufficient to proceed against those two whereas du Plooy felt that there was enough evidence and that's why he said to the Advocate it looks like you've made your mind up already.

CHAIRPERSON: Yes, yes, now what I want to find out is what

happened subsequent to that meeting, what happened to – is there any decision that was taken by Advocate Mogwebe and Advocate Mosing or pursuant to those views that they expressed according to what you were told?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair not by the two of them but there was a ...(intervenes).

CHAIRPERSON: It was a change of leadership?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: There was a significant change on leadership in KZN when Advocate Simphiwe
10 Mlotshwa was unceremoniously pushed aside in my view and replaced by Advocate Moipone Noko.

CHAIRPERSON: And Advocate Mlotshwa had been acting Provincial Director of Public Prosecutions.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's correct Chair the appointed DPP at the time was the current NDPP, Advocate Shamila Batohi who had then gone to The Hague and to the International Court.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Advocate Simphiwe Mlotshwa was appointed as the acting and at this juncture he was
20 relieved of his duties and replaced by Advocate Moipone Noko

CHAIRPERSON: Yes, and the replacement was it on an acting basis?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Also on an acting basis Chair.

CHAIRPERSON: Yes, okay alright, thank you.

ADV VERUSCHKA SEPTEMBER: Thank you Chair. You have just

mentioned about the change in leadership, I'm not quite certain if you dealt with this part, but have – what in fact happened shortly after the change in leadership?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair exactly two weeks after Advocate Moipone Noko took up her post she would do the charges against only two people of a number of accused, Mabuyakhulu and Peggy Nkonyeni, and I still asked I think it was Mr Pieter – Colonel du Plooy Colonel du Plooy how much evidence is there and I think someone still made the statement if she had really gone through the
10 evidence that there was it would have been equivalent of reading a bible per day for 14 days.

CHAIRPERSON: H'mm. So he seems to have shared the view that you mentioned earlier on that somebody said there was overwhelming evidence or was that in regard to the other case of Madhoe, I thought you said somebody, I don't whether Mhlotshwa or somebody said there was overwhelming evidence but I may be confusing the Amigo case with the Madhoe case.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No, no in the Madhoe case it was my view, in this matter it was the view of Lieutenant
20 Colonel du Plooy who reported to me.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He was confident that they had a strong case.

CHAIRPERSON: Yes, yes, okay. And from what he told you Advocate Mhlotshwa was confident as well?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Absolutely Chair.

CHAIRPERSON: Yes, okay thank you.

ADV VERUSCHKA SEPTEMBER: Is Advocate Noko who withdrew the charges against those two particular individuals in this case the same Advocate Noko who withdrew the charges against Colonel Madhoe and Mr Thoshan Panday?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is so Chair.

CHAIRPERSON: The withdrawal of the charges against Mr Panday and Colonel Madhoe it did also happen after Advocate Noko had replaced
10 Advocate Mhlotshwa?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair, within two weeks after Advocate Noko taking up a post as acting DPP she withdrew the charges against Mabuyakhulu and Nkonyeni.

CHAIRPERSON: Yes, yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then I think about two or three months later she withdrew the charges against Panday and Madhoe.

CHAIRPERSON: Madhoe, okay, thank you.

ADV VERUSCHKA SEPTEMBER: Are you aware General Booyesen
20 whether or not there was a change to the prosecutor who was assigned to this particular case?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair obviously the investigator is giving me feedback I knew who the advocates were that were dealing with the matter so the advocate that dealt with the matter at that stage was Advocate Ndunjwa.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He was the prosecutor, this investigation had a number of legs there was one in the Eastern Cape that I recall and we had the KZN leg, and Advocate Ndunjwa from the DPP's office in KZN he was dealing with the matter, and I know for a fact that Advocate Ndunjwa also felt strongly about the case and after the charges were withdrawn the docket was taken away from him and handed over to Advocate Wimbane from the Commercial Crimes Court in Durban.

10 CHAIRPERSON: Okay.

ADV VERUSCHKA SEPTEMBER: What is the current status of the criminal matter against the two individuals whom you have mentioned, such being Peggy Nkonyeni and Mike Mabuyakhulu?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair as far as I know there was at one stage a review application in the High Court in Pietermaritzburg and I cannot recall who brought it, it could have been the DA, I don't know what that was about, and I've also been informed by the investigating officer that Mr Gaston Savoy, I suspect that he wants to bring an application for a permanent stay of prosecution and I
20 don't want to speculate, I'm merely talking from what I've heard from the investigators because his argument is why are they withdrawing charges against those two and not against the rest of the accused, but I do not know the detail of that matter, but as it stands ...(intervenes).

CHAIRPERSON: The prosecution has never been pursued even against those other accused who – against whom now withdrawal happened?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No I think it's proceeding Chair against those.

CHAIRPERSON: Oh, it's proceeding against those.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: As far as I'm aware it's still on the roll.

CHAIRPERSON: Okay, okay.

ADV VERUSCHKA SEPTEMBER: Just to make sure I too understand it's proceeding against all other accused other than Peggy Nkonyeni and Mike Mabuyakhula against whom the charges were withdrawn?

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's so Chair.

ADV VERUSCHKA SEPTEMBER: Thank you. That then takes us to the next investigation that you deal with in your affidavit, from page 19 paragraph 62 to 74, this particular investigation you have marked as looting of the secret services account. Is that correct?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's correct Chair.

CHAIRPERSON: Before you start with that just to go back on the Amigos case that's been pending for a long time and did you say it was roundabout 2010 or thereabout when it started, as far as you know?

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I was appointed as the Head of the Hawks in KZN in 2010, and I think that case when I inherited it with Du Plooy being the investigating officer it could have been a year prior to that, or even more, but I cannot recall.

CHAIRPERSON: So certainly when you were appointed in 2010 it was already pending?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's right Chair.

CHAIRPERSON: In the sense of it being under investigation with no appearance in court already, or do you think there had been appearance in court already by the time you were appointed?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No Chair when I was appointed by then I can recall they had the – all the accused sitting there in the box, there's a newspaper photograph and that's where the name Amigos came from.

CHAIRPERSON: Yes, ja, ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So when I inherited
10 Du Plooy with his investigation that already appeared a number of times.

CHAIRPERSON: So to say the least it's been going on you would say no less than nine years?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I would even say 10 years Chair.

CHAIRPERSON: Or even 10 years. And as far as you know are you able to say or maybe you are not able because you might not have looked at the evidence, are you able to say roundabout when as far as you know there was enough evidence for the trial to proceed?

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair when I – when Du Plooy came over to me from Commercial Crime what I did not mention is prior to them coming over to me I was a Brigadier in charge of Organised Crime and my counterpart for Commercial Crime was Lategan, Brigadier Lategan. Now once every quarter or every now and again we had to – the two of us had now to go and give feedback

pertaining to our investigations to the person who was then my immediate supervisor, Commissioner Pat Brown, General Pat Brown and I could recall, although I did not take much notice of Lategan's feedback but I could recall that there was discussions between him and Brown that they were getting questions from I think it was the Portfolio Committee, I'm not too sure because I did not really pay attention to his cases, because it didn't concern me at that time, where questions were asked about the detail of the investigation, and I recall that Brown always used to say to Lategan just give them the necessary, the case
10 has been remanded, or still under investigation, but when I – when Du Plooy came over to me by then the investigation was complete and I say this Chair for the following reason, they were charged for racketeering, now in terms of the Prevention of Organised Crime Act I think it's Section 21, you can only prosecute a person for racketeering if there's an authorisation by the NDPP, so the NDPP would not have authorised that investigation if it had not been completed, so in my view when Du Plooy came over to me with his investigation and having already having been – having appeared in court, as far as I'm concerned the investigation was complete.

20 CHAIRPERSON: Okay no that's fine. I do seem to remember that there may have been a case involving Mr Savoy, which went up to the Constitutional Court, it may have had something to do with ...(intervenues).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No Chair I know about that, Mr Savoy they applied to the Constitutional Court to say that

certain aspects of the Prevention of Organised Crime Act were unconstitutional, I actually attended that particular case at the Constitutional Court but I cannot remember the phrase but they say it was an academic argument, they should wait for such a case to come and then argue it.

CHAIRPERSON: Ja, no I think I remember that case because I would have sat in the matter, but that might be part of the reason for the delay in the finalisation of the matter if there was a challenge to the statutes that might be part of the reason for the delay.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: That could be Chair but I think that matter had been disposed of ...(intervenes).

CHAIRPERSON: A long time ago.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: About seven years ago.

CHAIRPERSON: Yes, okay, thank you. I think let's take the short adjournment, and we will resume at 11:30. We adjourn.

ADV VERUSCHKA SEPTEMBER: Thank you Chair.

REGISTRAR: All rise.

INQUIRY ADJOURNS

20 INQUIRY RESUMES

CHAIRPERSON: Major General Booyesen yesterday I intimated that we might use two hours today to hear your further evidence. Two hours would take us to 12:00. Is it fine with you if we go up to 12:30?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I am in your hands.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Thank you very much.
Thank you. Okay.

ADVOCATE VERUSHKA SEPTEMBER: Thank you Chair. Just before the adjournment we were about to start on the next investigation that you were involved in and that takes us to page 19 of your affidavit which is in bundle ZA and in particular paragraph 62. You have titled or rather named the investigation Looting of the Secret Services Accounts. In very simple terms can you please explain what this investigation concerned?

- 10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair this investigation related to the abuse of the Secret Services Accounts. The Secret Services Account is monies that must be utilised by crime intelligence for covert operations specifically for organised crime. The Secret Services Account is not being audited in the similar fashion as the open account is being audited. Although there are committees at parliament that have – that has oversight over their budget. But be that as it may some time ago and I cannot recall the exact period this – the whistle-blower in this whole matter was a person by the name of General Mark Hankel from Crime Intelligence who wrote a report about
- 20 how this fund was being abused by individuals within Crime Intelligence. And at the time I think General Dramat was the Head of the Hawks, the National Head, and he appointed Colonel Kobus Roelofse from the Western Cape who I would describe as the Chief Investigator in the looting of the Secret Services Account. That investigation pointed fingers towards the then Head of the Divisional

Commissioner of Crime Intelligence Lieutenant General Richard Mdluli. So that investigation had been going on for quite a while and I also know at the particular juncture within that investigation that General Shadrack Sibiya from Gauteng had also reopened the – an investigation into the murder of a person. I think it was in Vosloosrus, I cannot recall exactly where, in which it was alleged that Richard Ndluli also had a hand in. That investigation – I am not privy to that investigation although a lot of reporting about that had been done in the media. But where my involvement comes in is at a much later stage when this

10 investigation had been initiated the then acting National Commissioner at the time from the police General Mkwanazi. I do not know whether he had been informed by sources within Crime Intelligence but he instituted a separate leg of investigations relating to the abuse of the Secret Services Account in Kwa-Zulu Natal. I had a Brigadier at some point who worked with me in KwaZulu-Natal Brigadier Simon Madonsela. He is not related. I was – being asked the question but he is not related to Thuli Madonsela the Advocate. So his wife had taken ill and he asked for a transfer to Pretoria which I arranged for him. When he arrived in Pretoria one of the first investigations they

20 allocated to him I think it was allocated to him by General Mothiba was to investigate KZN leg of the looting of the Secret Services Account by Crime Intelligence. I recall Madonsela coming to me expressing his frustration because Crime Intelligence failed or refused to make certain documents available to him to assist in the investigation. So I – he would often come to me in Durban because we had – we were quite

close and we are still close. And I would say to him, Simon the best way to get these documents is to 205 it and just for – to explain 205 again. It is Section 205 subpoena in terms of The Criminal Procedure Act whereby we obtain documents from institutions or individuals that can assist us in our investigation. And he would continuously say to me no they promised they would give it to him and then he would come back and say no they frustrating him. And I recall at one juncture they came to my house and they showed me the dockets and I asked Brigadier Madonsela if I could make copies of the dockets and he said
10 to me no I cannot make copies of the dockets. And I asked him if he would mind if I take notes from the dockets. He said no that is fine.

ADVOCATE VERUSHKA SEPTEMBER: Can I just interrupt you there for a second? Is it then our understanding – is then your evidence sorry that you assisted Brigadier Madonsela?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes.

ADVOCATE VERUSHKA SEPTEMBER: In his investigation in relation to the KZN arm of the looting of the Secret Services Accounts?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is right Chair.

ADVOCATE VERUSHKA SEPTEMBER: So were you formally involved
20 in the process?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No I was not Chair.

CHAIRPERSON: Okay you said they came to you one of them was Mr Madonsela and who else was with him when you asked if you could make copies of those documents?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair there were three

people well two of them I knew very well. It was Brigadier Simon Madonsela and then there was another person as well as Lieutenant Zungu and they also had working with them a Captain Heerlal. Heerlal was from Pretoria and Zungu and Madonsela originated from KZN.

CHAIRPERSON: The documents that they came to show you were they documents that they had obtained by following your advice?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No Chair.

CHAIRPERSON: Oh okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: At that juncture Chair
10 they were all affidavits.

CHAIRPERSON: Okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And some documents, police documents.

CHAIRPERSON: Okay. Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And Chair I made – I wrote down ...(intervenies).

CHAIRPERSON: You made notes

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I made notes. I wrote down the name of each witness in that – of each statement that was
20 filed in the docket.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So I would write down and if it was a police person I would write his or her persel number down so it would be easy to locate them afterwards.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And if it was a private person I would write his contact details down and then I would just write a little praisee of the witness or person said in his statement.

ADVOCATE VERUSHKA SEPTEMBER: Can I just at this juncture take you to page 131 of your affidavit please? Not of your affidavit of bundle ZA.

CHAIRPERSON: Is it 131 of Exhibit ZA?

ADVOCATE VERUSHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Okay.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair those are my contemporaries hand written notes a copy thereof.

CHAIRPERSON: Yes.

ADVOCATE VERUSHKA SEPTEMBER: Can you please proceed then to just explain as you were explaining the order of what you had documented and the nature of its contents?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Chair that is basically what I did. I made a short praisee of what each witness said and I kept those notes. It was common cause in KZN especially amongst the Crime Intelligence Fraternity that Brigadier Simon
20 Madonsela and myself were just more than colleagues we were actually personal friends.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I know his children, he knows my children, he visits me, I visit him etcetera.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And he would frequent my office and they knew that I was assisting him.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And advising – not assist him but advising him.

CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In this particular matter.

CHAIRPERSON: Yes.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: This thing carried on about having these documents provided to him from Crime Intelligence. So eventually he took up my advice and he applied for a Section 205 subpoenas which were granted.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I recall him coming to my office and saying to me he is going to court now. That particular morning the magistrate had made a ruling that they must submit the dockets and he was very excited that he was eventually going to get those dockets to formalise his investigations. And then the
20 next moment he left for court and the next moment about an hour later he phones me. And I said to him – we call each other Mfwethu. I said to him Mfwethu where are you now? He says, no I am on my way back to Pretoria. I said, I thought you at court. He says no when they arrived at court a Senior Officer from Crime Intelligence had come to court and told the magistrate that there was an agreement of some

sorts.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But it is not necessary any longer for the documents to be released.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Brigadier Madonsela got into his car and he drove back to Pretoria.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So he phones me
10 back from Pretoria and he says to me – he is very upset now because –
I said to him what happened? He says no when he arrived at Pretoria
he went to General Mothiba's office and he was told to hand over all
the dockets, all fifteen dockets to General Mothiba.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He then said to me
Mothiba said to him well this is an instruction from the National
Commissioner at the time Ria Phiyega – General Ria Phiyega.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I think he still
20 said to me that Mothiba had told him he can clarify this with General
Godfrey Lebeya who is the current head of the Hawks.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Simon got into his
car according to him and he went to General Lebeya and General
Lebeya confirmed that General Phiyega had given an instruction that

those dockets must be taken away from him. I recalled sometime afterwards I was in his ...(intervenenes).

CHAIRPERSON: I am sorry the instruction as you understood it from General Phiyega was that the docket that Brigadier Madonsela had in regard to this investigation should be taken away from him.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is what Madonsela told me.

CHAIRPERSON: Yes Okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair.

10 CHAIRPERSON: Would that amount to saying he must not continue with the investigation if that docket was taken away or there may have been different dockets he could still continue with the investigation.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No. No General – Chair it was taken away from him and that was not the first time.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Because on a previous occasion those dockets had been taken away from him and I cannot recall the exact details and it was sent to the Inspector General.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I remember there was a fallout in the media about the dockets being sent to the Inspector General and now my view is the Inspector General cannot adjudicate upon dockets. That has got to go to the prosecuting authority. But be that as it may I think Simon told me it was either six weeks or three months that those dockets were with the Inspector General and they

were eventually returned to him with not a single entry made in those dockets. So he proceeded up until the time he applied for the 205's and then he was called back and for the second time the dockets were taken away from him.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And according to him what he was informed by General Mothiba and General Lebeya that those were on the instructions of General Ria Phiyega.

CHAIRPERSON: H'mm. But now they were taken away from by whom
10 and where were they taken to? Do you know?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair they were taken away – physically taken away from him.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And they were handed over according to Madonsela and a person that for a while still remained on the investigation they were handed to Captain Heerlal.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I do speak about Heerlal a bit later on Chair.

20 CHAIRPERSON: Yes okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Because there was some developments later on.

CHAIRPERSON: Okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which also became very suspicious to me.

CHAIRPERSON: Oh okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But the point I am making Chair is that this is a high level investigation. It is allocated to a Brigadier.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Who is doing what he has to do. It gets taken away from him and then handed over to a less experienced investigating officer.

CHAIRPERSON: So he was much more experienced than the person
10 that was given the dockets? So he was much more experienced than the person that was given the dockets?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I would say if you can – if I can draw a parallel Madonsela would have been like a SC and Heerlal was like a junior lawyer who finished university.

CHAIRPERSON: H'mm okay. Okay alright thank you.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I recall a while after that there was some investigation about those dockets.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And Brigadier
20 Madonsela was visiting me at my son's house in Pretoria.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And they received a phone call and I can understand a little bit of Zulu.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So – but I could hear

he was very annoyed. So he put the phone down and I said to him, what was that about Simon? He said to me, no he was phoned legal services they now need a statement from him about what had occurred there. And he said to me General I am gatvol and he told this person he is not going to make a statement. I said but Simon make a statement. He said but who is back me up? I say I can guarantee you General Lebeya will back you up. He says but I do not have Lebeya's number. I have him General Lebeya's number I said speak to General Lebeya. So he phoned General Lebeya, the current head of the Hawks
10 and Lebeya confirmed with him on the phone that he will support him. He will make a statement that it was indeed General Phiyega who instructed that those dockets be taken away from him.

CHAIRPERSON: H'mm. Okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair then much later when Mr McBride came on board he got to know about those dockets. So he approached me and asked me would it be possible for me to get hold of those dockets. I said well look I can try. So through my contacts I made enquiries and Zungu was also part of the investigation. I do not know whether they approached Heerlal or be that as it may he
20 said no they will see what they can do. And then a week or so later Zungu came to me with what was supposed to be copies of the dockets.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But when I saw him approaching me I realised there was something wrong because I knew the volume of the docket before and what he was bringing to me on

face value was less than I had seen previously.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So I went through the statements and compared it with my list and every single witness who implicated Richard Mdluli and a number of other officers all those statements were removed from the docket or from – they were not part of the docket.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So whether it was
10 taken out by Heerlal or whether it was taken out by someone else I do now know but every single statement that incriminates Richard Mdluli and other senior officers were sanitized from the docket.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I then made an affidavit describing as I described to Chair now the circumstances. And I listed each witness and what they more or less said and I handed that with a copy of my ...(indistinct) notes to Mr McBride.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So I suspect that they
20 still busy with that investigation Chair.

CHAIRPERSON: H'mm. How long ago was that when you handed that over to Mr McBride?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I would say about 18 months ago.

CHAIRPERSON: Okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But in between I have been engaging with Mr McBride.

CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But between him and myself then we suspended, then he is suspended, then I am back and then he is suspended again. And then when he gets back I will enquire from him. Then he tells me no things have gone missing out I will testify later on about an exhibit.

CHAIRPERSON: Yes.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: That I handed to him in a very, very serious matter that after when he returned from work he phoned me and he said to me, he calls me chief and I call him boss. He said Chief that exhibit ...(intervenes).

CHAIRPERSON: Well he told us I think last week when it was – he was called for the first time Boss.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No Chair we ...(intervenes).

CHAIRPERSON: Yes but he did not say it was you it was somebody else.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: No we come from the same area in Durban. He is from Wentworth and I am from Amanzimtoti.

CHAIRPERSON: Oh okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So we grew up on the wrong side of Durban.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So he said to me hey Chief have you got – have you still got a copy of this recording? And I said no I do and I said what happened to the one I gave you? He said no while he was suspended when he got back it had gone missing.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So I do not know what happened to those 15 dockets the investigations regarding that.

CHAIRPERSON: Yes.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: I have not spoken to him recently about that.

CHAIRPERSON: H'mm. No thank you.

ADVOCATE VERUSHKA SEPTEMBER: Is it correct then that you do not conclusively know the reason for why the statements incriminating Richard Mdluli and other police officials were not included in the bundle of documents you received?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I do not Chair. I can only speculate.

20 CHAIRPERSON: All you are saying is you found it strange that documents of witnesses that you – I mean statements of witnesses that you had seen which incriminated a particular individual were all now not there in the file when you saw it? That is what you are saying.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is true Chair and something I omitted to tell you. There were also correspondence which I saw in the dockets and it was correspondence from a General Godfrey

Lebeya who at that time was a Deputy National Commissioner in which he gave certain instructions, those were copies of those instructions that there should be an investigation against Richard Mdluli and there were a whole list and I think I might have listed some of the names.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Of People that had been promoted in terms of the Secret Services Account. So what they do Chair if there is a covert investigation they take a profile of a particular individual if it is for instance in a drug related matter – I will
10 identify a policeman say in the Western Cape that fits a profile of a drug dealer. I will recruit that policeman and he resigns from the police. They take him off the system. He then becomes an agent.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So everyone thinks he has left the police but in the meantime he is an agent.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So what they did with the – in the Secret Services Account they would appoint people like that as agents. Some of them I think some of them had never even
20 seen the inside of a police station but all of a sudden they now agents and some of them were promoted as far as I know up to the rank of Colonel and I know individuals that still hold the rank of Colonel who had been promoted in terms of the Secret Services Account. So that is how they abused it.

CHAIRPERSON: H'mm, Thank you.

ADVOCATE VERUSHKA SEPTEMBER: If I can then take you to page 20 of your affidavit and in particular paragraph 64.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Sorry?

ADVOCATE VERUSHKA SEPTEMBER: So it is page 20 of your affidavit paragraph 64. Can you please inform the – or rather your evidence in your affidavit focuses on one particular example in relation to the looting of the Secret Services Accounts? Can you please inform this Commission of this particular example you refer to and why it – why this particular example was so important to highlight?

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair one of the transactions that at some juncture had been investigated was a fence that was built around the residence of the then Minister of Police Minister Nathi Mthethwa to the amount of R195 581,45.

ADVOCATE VERUSHKA SEPTEMBER: Where was this fence built?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It was built around his private residence I think around about Empangeni Chair. Now Chair at the time when the looting of the Secret Services Account surfaced it was reported that the fence had been paid for through the Secret Services Account, their funds. And its common cause at the time
20 because it had been reported in the media that the matter had been investigated by the Auditor General at the time who exonerated the then Minister of Police.

CHAIRPERSON: Who had investigated?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The Auditor General.

CHAIRPERSON: Yes okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But Chair in my view and I have – I am including documentation in my statement.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The understanding was that the Minister at the time was unaware.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Now subsequent to that there was an engagement with ...(intervenes).

CHAIRPERSON: The – I am sorry the – as you understand it the idea
10 was that the Minister was unaware of what?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Of where – that the money had come from the Secret Services Account.

CHAIRPERSON: H'mm okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Chair if I can digress a little bit. Recently there was a radio interview between myself and Karima Brown from 702.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Where I mentioned this and no sooner had I arrived home the Minister – the then Minister
20 Nathi Mthethwe had made contact with Karima Brown from 702 and said to her that I am clasping at straws and I am basically – he basically said that I am not talking the truth. So she invited me back to the studio the following evening because she said she would invite the Minister. So I said – she asked me if I would come so I said well tell the Minister I will meet him the studio tonight. I went back to the

studio he did not pitch. So they did a radio interview with him. Now during that radio interview he once again said that I am clasping at straws and he explained that as Minister he was entitled to security upgrades at his house in terms of the Ministerial Handbook. And that the Ministerial Handbook says that he can get security upgrades to R100 000 and he was unaware that they overspent. The point I am making Chair is I went and I had a look at this – at the Ministerial Handbook. According to the Ministerial Handbook he is entitled. The Minister is entitled but it must be at his request number 1. Secondly
10 there must be a risks assessment and then thirdly the Department of Works will then deal with the matter. And the Ministerial Handbook is clear it says security upgrades up to the amount of R100 000.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Any amount in excess of that will be for the account of the Office Bearer.

ADVOCATE VERUSHKA SEPTEMBER: Can I interrupt you there then and take you to excerpts of that Ministerial Handbook you refer to which is at page – starts at page 113. Thank you. Is it correct that these are extracts of the Ministerial Handbook that you were referring
20 to?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: They are Chair.

ADVOCATE VERUSHKA SEPTEMBER: Can I ask you to please turn to page 115 and read only the first sentence into the record?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: "This handbook is a guideline for benefits and privileges to

which Ministers and their families are entitled in execution of their duties.”

ADVOCATE VERUSHKA SEPTEMBER: In correction to your reading it is not Ministers but members.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Sorry, sorry Chair.

ADVOCATE VERUSHKA SEPTEMBER: Is that correct? Can I then ask you to turn to page 117 please? Is it correct that member at the top is defined to include a Minister?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It does Chair.

10 ADVOCATE VERUSHKA SEPTEMBER: Is it also correct that National members means Minister – a Minister amongst others?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is my understanding Chair.

ADVOCATE VERUSHKA SEPTEMBER: And in the definition of private residence which is the sixth definition it is defined to me in a privately owned house, is that correct?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

ADVOCATE VERUSHKA SEPTEMBER: Can I then take you to page 118. This document is titled Annexure E and named Policy on Security
20 Measures at the Private Residences of Public Office Bearers. Can you please read the first line beginning with the word cabinet and then paragraphs 1 and 2 into the record please?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: “Cabinet approved on the 11 June 2003 the following provisions of the above policy. The Minister of Public Works may

approve a state contribution of a non-recoverable maximum amount of R100 000 or the total cost of security measures not exceeding R100 000. Should the cost of the security measures be more than R100 000 the difference shall be borne by the Public Office Bearer."

ADVOCATE VERUSHKA SEPTEMBER: And then at page 120. Can I ask you to read paragraph 11 into the record please?

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: "Security measures may be implemented at Public Office Bearers private residences occupied on a regular basis in the areas other than Cape Town or Pretoria."

ADVOCATE VERUSHKA SEPTEMBER: Do you know where the private residence of Minister Nathi Mthethwa is situated which benefited from the building of a fence?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It is in the area of Empangeni Chair.

ADVOCATE VERUSHKA SEPTEMBER: Thank you. And it is correct that your testimony was that the cost of the fence exceeded R100 000?

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: That was my evidence Chair.

ADVOCATE VERUSHKA SEPTEMBER: Ought the – or rather – where was the funds for the payment of the building of a fence ought to have secured from?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair it is my

understanding that it should have at least have come from an open account and not from the Secret Services account. That is the first call.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Secondly it should have come in my view from the Parliamentary Budget.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Or then secondly the police's budget.

10 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Via the Department of Works.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then the excess I think it is R193 000 should have been borne by the Officer Bearer which was the Minister at the time.

CHAIRPERSON: H'mm. So you say the source of the funding was the wrong source. The amount expended was the wrong amount insofar as wrong amount that was paid by the state because it exceeded R100 000
20 and the procedure followed – you say – was a wrong procedure because this issue is supposed to be handled by the Department of Public Works and not through the Secret account?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Those are the points I am making but there is one extra point I would like to make Chair.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: During the conversation with Karima Brown on 702.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The Minister attempted to justify the building of the fence around his house which I do not have a problem with.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But he at least now knows that the money came from the wrong funds. I do not know
10 whether any attempts were made to.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Reallocate those funds and get the funds from the proper budget.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And whether any attempts were made to repay the R90 000-odd.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which was in excess of the R100 000 that he was entitled to.

20 CHAIRPERSON: H'mm. Do you see he did not know that it came from the Secret fund account?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is my understanding of what came out of the Auditor General's report at the time Chair.

CHAIRPERSON: Yes, okay.

ADV VERUSCHKA SEPTEMBER: And then just for the record if I can take you to page 20 paragraph 65 of your affidavit. You refer there to an interview on Radio 702 on the 17th of October 2018. Is that in fact the date of the interview to which your evidence concerning the interview relates?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is the date Chair.

ADV VERUSCHKA SEPTEMBER: Thank you. If I may just at this particular stage place something on record Chair.

CHAIRPERSON: Huh-uh.

- 10 ADV VERUSCHKA SEPTEMBER: Paragraph 68 of the witness' affidavit refers to an Annexure JWB10.

CHAIRPERSON: Huh-uh.

ADV VERUSCHKA SEPTEMBER: Which is in the enclosed part of the bundle.

CHAIRPERSON: Huh-uh.

ADV VERUSCHKA SEPTEMBER: It is a document marked "secret".

CHAIRPERSON: Huh-uh.

- ADV VERUSCHKA SEPTEMBER: It has a stamp on it which declassifies the document. However we are in the process of just
20 clarifying the actual status of this document.

CHAIRPERSON: H'mm.

ADV VERUSCHKA SEPTEMBER: And so that evidence is not going to be referred to at this stage until such proper confirmation is sought.

CHAIRPERSON: Ja, okay alright.

ADV VERUSCHKA SEPTEMBER: Thank you Chair.

CHAIRPERSON: Thank you.

ADV VERUSCHKA SEPTEMBER: If I can now take you then to page 23 of your affidavit which starts the next investigation that your evidence concerns and that investigation ...(intervenes).

CHAIRPERSON: I am sorry. Just in case I miss something. Going back to the investigation that Brigadier Madonsela was doing. The docket was taken from him and given to somebody else much junior to him and then at some stage you understand that the docket was sent to the IGI. Is it the IGI? The Inspector General and then when it came
10 back there were no notes to indicate that any work had been done on it and is that how far you know about what happened with that investigation?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair can I just get the sequence right?

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Madonsela was investigating.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then when he
20 started probing.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The dockets were taken away from him and sent to the Inspector General.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I think it was

Faith Radebe at the time.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: There were quite a lot of complaints in the media about it.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Then it was either six weeks or three months later.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The dockets were
10 returned to Madonsela.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Simon Madonsela.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: With no entries whatsoever been made. So they were basically like there for that period of time without any progress whatsoever.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He then continued with the investigation.

20 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Sought my advice which I gave him.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Came to my house that is when I made the notes.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Eventually applied for the 205's.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: They were authorised but when he went to court to now get the documents he was recalled to Pretoria by Jona Mothiba.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Dockets were taken
10 away from him and then handed to a junior member.

CHAIRPERSON: Oh, okay. So I got some of these steps in the wrong sequence?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: Okay. I thought that when the files – docket was taken away from him that was after the – well when they were taken to – the docket was taken to the Inspector General that was before the 205's – he applied for the 205's?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

CHAIRPERSON: So he applied for the 205's after the docket had come
20 back from the IGI and then at a certain stage the docket was taken away from him and given to somebody much junior to him to investigate?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

CHAIRPERSON: And has – and that is where the whole thing ended as far as you know?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Until I ...(intervenes).

CHAIRPERSON: Or stopped?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is where it stopped Chair until my affidavit to with my notes over to Mr McBride.

CHAIRPERSON: McBride yes, but Mr McBride would have been investigating the conduct of police officers in relation to that investigation and not doing the actual investigation?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair not really. What happened is when McBride came on board.

10 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: When he phoned me and asked me what was going on and I gave him a – described to him what was going on and he asked me for a report which I did the same evening.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And he immediately sent an investigator down and ...(intervenes).

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: He set the wheels in motion to have all these investigations.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which had become dormant to ...(intervenes).

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: To rekindle them.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And while we were having these discussions he still joked and he said to me watch I will be the next one to be suspended.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I said no they will never suspend you because you have got the right credentials and lo and behold he was eventually suspended.

CHAIRPERSON: H'mm. Ja, okay. Thank you. So for all intents and
10 purposes as far as you know that investigation does not appear to have been taken further after the docket was taken from Brigadier Madonsela and given to somebody else?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair according to me those dockets have gone nowhere.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Even whilst being at
IPID.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I am alive to what has
20 happened at IPID with Mr McBride.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: His suspensions and trying to keep him out of his job.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So there were other

investigations also that we communicated with – to each other.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That I know – and he expresses his frustrations at some points and I will perhaps talk about that later.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That when he gets back from suspension things had gone missing.

CHAIRPERSON: H'mm.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: People from his office had been suspended or fired.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So what happened to those dockets.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I really cannot tell you Chair.

CHAIRPERSON: H'mm. Okay, thank you.

20 ADV VERUSCHKA SEPTEMBER: Chair before we move onto the next investigation and guided by your direction of course.

CHAIRPERSON: Huh-uh.

ADV VERUSCHKA SEPTEMBER: I am not sure if this particular chapter would finalise by the time that you have directed and so I am happy to.

CHAIRPERSON: Start it even if we do not finalise it.

ADV VERUSCHKA SEPTEMBER: I am happy to continue.

CHAIRPERSON: Just use the time.

ADV VERUSCHKA SEPTEMBER: Okay. No problem. So at page 23 of your affidavit paragraph 75. Are you there General Booyesen? You talk about another investigation although your involvement in this particular investigation was quite different. This investigation you have called the Cato Manor investigation. In very simple terms please explain what this investigation entailed and in particular what your involvement in this investigation was and is.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair after I had arrested Colonel Madhoe or had him – caused him to be arrested for the attempt to bribe me Chair would recall that he had shown me some photographs. It was in early December 2011. Major General Deena Moodley the Head of Crime Intelligence at KwaZulu-Natal came to my office and he said to me that there were two reporters from the Sunday Times, Stephan Hofstatter and Mzilikazi wa Afrika.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: The way he described it to me it sounded like he had actually been part of this meeting. That is now General Moodley.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And that they were going to run a story that Sunday that I am basically the head of a death squad.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That this one unit that ultimately reported to me – Cato Manor – had committed extra judicial killings and that I was the leader of the so-called death squad.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And they were going to phone me – I think he said the Saturday evening for my comments to basically catch me off guard.

CHAIRPERSON: H'mm.

- 10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then proceed with publishing the story the Sunday. I immediately asked my attorney Mr Carl van der Merwe to contact the then editor of the Sunday Times Mr Ray Hartley.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: To ask him that we want in terms of the audi alteram partem rule.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: We would like a proper opportunity to.

- 20 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: To explain what.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: What the
...(intervenes).

CHAIRPERSON: To respond to the allegations?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is right Chair.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which they agreed to and then I think it was on the Wednesday – following Wednesday Mr Stephan Hofstatter arrived at my office and wa Afrika was not there and he dialled in and so wa Afrika was on the line.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And they started with all the allegations and we had a long discussion and it made it clear to
10 Mr Hofstatter that the photographs that they had which I had seen some of them were not even scenes where Cato Manor had been involved in. One particular one which was eventually published and I think it is one of the most gruesome ones was spread over almost half a page of a number of people who had been shot dead on a light delivery vehicle and I indicated to him that look the photographs that you guys have not all those people were shot by Cato Manor. They then came with a story that – and this eventually becomes the nub of one of the complaints against me Chair. They said to me that their information is that in a
20 shootout in Howick on the freeway. I cannot now actually recall if it is N1 or N2 – that I was in a police helicopter and that I basically blocked the vehicle and my guys came and shot the people in the car almost like in the movies. So I said to them look you have got a version. I have a different version. My version is I was sitting in my office at that time. I only heard about it afterwards.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I then went to the police's air wing and where I took the police chopper and I only arrived there quite sometime later. I said what you need to do is to establish the objective facts. Just go to the police's air wing.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And find out what time they picked me up because it is all logged in the helicopter's logbook. They also then indicated to me that they had interviewed Mr Madhoe.

CHAIRPERSON: H'mm.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Who by now is an accused.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Who accused me of all sorts of things and that he was – according to Madhoe he was actually investigating me for atrocities.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which I thought was a joke because he is from supply chain management. I do not even think he can investigate shoplifting.

20 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I said to – and Madhoe accused me of not handing in the exhibits to the police's exhibit register and I said to him – I looked out of my window – I said there is the police station – Durban Central – go and ascertain the facts. Chair it was clear to me that the nature of the conversation they

had already written their story and they are not going to change it.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which they did. They are following week on the 11th of December 2011 the article appeared – big heading “Shoot to Kill” and I still phoned General Dramat my immediate Head. I said to him look this thing is in the paper. He advised me a day or two later that he would be appointing General Jan Mabula from North West and also two other Generals, General Badi, I cannot recall her first name from the Eastern Cape, and
10 General Lindsay Ntsika. I think she was from one of the other provinces – just to come and investigate the articles in the newspaper.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But Chair a couple of days later only Jan Mabula arrived at my office – General Jan Mabula with a Colonel Manu. Colonel Manu I later – he has since passed away – I established that he was actually of torture in a different matter in the High Court here in Gauteng. So I said to Mabula – Jan – I said Jan because I was expecting him to investigate. So I said look I will make my office at your disposal if you want to use my secretary or typewriter
20 – have anything typed or make photocopies and I also instructed whomever at my office to co-operate with Mabula.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He departed and then – that was just before Christmas. He said no they will be back after Christmas. So after Christmas they come back again but they are very

evasive Chair. I mean we are colleagues. We are Generals together and I have done him favours in the past.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But all of a sudden he is – I could just sense that there was something and I could not put my finger on it. Then later on I get a call from one of my – the same Warrant Officer Mostert who had engaged Panday and he said to me General one of my informers phoned me and they had been – the informer had now been approached by some of Mabula's team and they
10 are putting pressure on them to make certain statements.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That was also reported by Mostert to Colonel Hoosain and Hoosain still wrote a letter expressing his concern that the informer had now being exposed.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But then something else happened Chair. The same Zungu who was involved in the – in the looting of the Secret Service's account investigation he was now with Crime Intelligence. So I receive a call through a colleague of mine
20 saying that Zungu wants to see you. At that time I was very suspicious about what was happening. So I did not know what to make of – because I had not seen for quite some time.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So I said to this colleague of mine tell Zungu to meet me outside Kentucky in

Amanzimtoti. So I drove out to Amanzimtoti and I – because I did not know what the purpose of the visit was I decided to record the conversation but Zungu was a bit – he was faster than I was. So he was waiting under a tree while I was sitting in the car busy preparing to get the recorder right. The next moment he knocked on my window.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So I said Zungu jump in the car. So he said to me General I have got a serious concern. I said what is wrong Zungu. Now since that day Zungu's name is
10 Kentucky. I call him Kentucky. So I said to Zungu what is the problem. He says to me no General Mabula's detectives who are now investigating the so called extra judicial killings had called him to their hotel where they were staying in Durban. In one of the cases where it is alleged that Cato Manor had done – committed an extra judicial killing was the shooting of a person by the name of Bongani Mkhize. Zungu was the investigating officer in a different matter where Nkosi Zondo was murdered and which suspect had been sought and Mkhize was one of the suspects been sought for the killing of Nkosi Zondo.

20 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So – and he had made an affidavit in one of the dockets that Mkhize was been sought.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So they tried to get him to change his statement – Mabula's team tried to get him to change

his statement.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And he refused and he says when – he says eventually he just said look his – I am uncomfortable what is going on here now. He is going to excuse himself.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And he said almost like in a – it was like a veil threat. We will be back.

10 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And that is when he left and he decided to come and inform me.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I then started to wonder what is going on here. They are supposed to be objective in their investigations.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Now they are trying to get people to change statements.

20 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: They are going to informers. I think that recording might still be available where one of the informers had a second meeting with them which we recorded.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So they were putting

pressure on people to implicate detectives of Cato Manor in wrongdoing. Then I received a strange phone call from a journalist. I cannot recall her name. She was from a television station and I recall at one stage she also spoke on CNN but not about our case.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But she always used to come and talk to us in Durban and then she said to me General I believe they are going to charge you for racketeering. So I said to her you must be joking. They do not know what racketeering is because I
10 have been trained in racketeering by Michael Johnson from the US. I have been trained by prosecutors.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Here in South Africa. They surely do not know what racketeering is.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Chair so this whole thing carried on and on and on and then on one particular day I was informed that Mabula and his team were done here to arrest some of the Cato Manor guys. So I told – I phoned Colonel Olivier who was
20 their immediate Commander and I said to Willie get the guys together. They are going to arrest them. Let them hand themselves over.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So they all went to the office and Carl van der Merwe the attorney then phoned Mabula and said we understand you want to arrest the guys and Mabula and them

denied it initially. Some reporters would phone them because the reporters now had got wind of this story and they could see the activity at the one hotel that they were staying at but they all denied that they were about to arrest the Cato Manor guys but they remained at the office throughout the night and then early that morning some of the detectives of Cato Manor's wives started calling in to say look there are armed police outside the house here and – so they all decided to go home and as they went home at or about – most of the instances the media was already waiting there. They were arrested in full view of the
10 media. They were then taken to a central point at the airport – at the police's air wing where they were paraded in front of the cameras. Chair subsequent to that they had to reappear in court in August. I think they appeared in June or July. They had to reappear in August.

ADV VERUSCHKA SEPTEMBER: Of which year if I may interject?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That was 2012.

CHAIRPERSON: H'mm.

ADV VERUSCHKA SEPTEMBER: Thank you.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I get this call from a – he as then Colonel Barraza Ncube.

20 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And he says to me General can I see you but by then I had gotten uncomfortable and I had written to Mabula and his team. We had written to the Prosecuting Authority. If they want to arrest me by all means.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I will present myself wherever you want me.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And we did that on more than one occasion.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And on this particular day I was driving in my car and I received – I got a phone call from Colonel Barraza Ncube. He said to me General I would like to see you.

10 So I said to him well do you want to arrest me. He says oh maybe. So I said to him well it is not a joke. If you want to arrest me tell me. He says no he has got a warrant for my arrest. I said fine.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Where would you like me to meet you. So I suggested we will meet at my office.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Drove back to my office and I sat there in my boardroom. Then I went to all my staff because I did not want them to come barging in there and
20 ...(intervenes).

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So I called all my staff and I said look this is what is going to happen.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So do not be upset

and go back to your offices and carry on with your work. About 20 minutes later I phoned him I said I am still waiting for you. He said no they are coming now. So in the meantime I got a phone call from a member of the Special Task Force.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Now the Special Task Force are people who deal with terrorists and hostage situations and I happened to work with these guys over years. They all knew me. So he said to me General we are on our way to come and arrest you. I
10 said no I know. I am waiting for you guys. He said but we have got instructions to handcuff you. I said well then you have to comply with your instructions.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then a few minutes later they arrived at my office in the boardroom. By then I had summoned my attorney.

CHAIRPERSON: So specific instructions had been given that you be handcuffed?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

20 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So they arrived there with the Special Task Force in their camouflage and I sat in my office and Brigadier Ncube sat across me and he showed me the warrant of

arrest. I said well I am entitled to a copy. He gave me a copy. I then asked him for a copy of the founding affidavit and he did not even know what a founding affidavit was. I had to explain to him what a founding affidavit was. Chair it was actually a farce the way I was arrested because it looked like I was arresting him because I was taking all the notes and he was just sitting there. It was clear that he was under instructions and after the formalities had been concluded he said look they have – we have to go but they have to handcuff me. So I said to him Colonel you have got the Special Task Force. These youngsters
10 are fit and strong.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I am much older than them. I mean – surely I do not pose a danger. No, no, no they have got to follow rules. I said well then do what you have to do.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: They then took cable ties and tied my hands in front of me and then they escorted me out of the lift. The cleaner was still there and the cleaner often comes to my office. I give him some of my sandwiches and he looked at me – what
20 is going on now. We got into the car and we drove to my house and I looked around and there was an entourage of media people following us. So they obviously altered the media as well. We arrived at my house. My domestic she is used to that I bring people home and she always offered them water and she still offered them water, but when she realised no there is something else going on she got nasty with

them. I said no Dorothy (foreign word) and stay calm. Chair we went to my – they ransacked my house. I do not know what they were looking for and then at some point Ncube says to me where is your official firearm. I said you see Ncube you are only interested in embarrassing me by handcuffing me in front of the people and dragging me out of the office.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But the most important thing you should have done is to look where my firearm is.

10 So I lifted my pants and I said there is my firearm.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And he still said you could have shot us. I said exactly.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then I handed my firearm to them but I first said to them I want them to take a photograph.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which they did because they had the police photographer there.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I said I want to see the photograph and I had a look at it and I could not see my bathroom in the background because I wanted to use that photograph. I had to ask them to take another one which they did.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then Chair we went to the air wing. Chair I have – I am one of the police officers that have probably flown – who is not part of the air wing – that has probably flown the most in the police helicopter over the years. The police air wing is a secure place. It has got a probably a four metre high fence.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: When you enter there
10 you have got to buzz and they look at you and they identify you. They open this huge gate and then you proceed. On this particular day and after they had arrested me that gate was standing open. We drove in and it looked like the Oscars. It was just paparazzi and cameras. So we drove around the back. They took me in the back and a few of the other guys who they had also now arrested. So we went in and they started with the – but it was clear to me that Ncube – and I still said to him you are playing with time here because I need to – I want to go and apply for bail.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then he would look halfway through the forms and then he made a mistake. Then he would start all over again clearly playing for time. Then a Task Force member came into my office. He said to me they have just been admonished by General Mabula. I said why. He said no because we did not take you in the front where the media was. So I got up and I

Barraza excuse me one second. I went to Mabula I said to him – I said to him Jan I do not mind if you arrest me or investigate me but do not make a circus of this thing. Then he said no it is not him. It is Len Angus from IPID. I went to Len Angus I said to Len Angus listen you want to make a circus well let us put a tent around this place then. So he said no, no, no. He has got no problem if we leave that we should go around the back again and then when they finally processed us by now it is too late to go to court. So I knew now tonight I am sleeping inside the cells.

10 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Myself and a couple of my colleagues.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So – and Angus comes back to me and he says to me Mabula is adamant we must go through the front. I said now well then we go through the front where the media is and I was walking in the front with the rest of my guys behind me and then Angus came to me. He said to me General if it is going to make you feel more comfortable I can take your coat and put it
20 over your head. I said to him Len I have never had any reason to hide my face, I am not going to hide my face, I want to walk out and I will face the cameras, I turned around and I said to my guys those of you who want to cover your faces, you're welcome to do so, I am not going to do that, and we all walked out and the flashes going and Chair it was actually embarrassing, not the media, the media knew me, but going

through that passage with junior police officers, constables, sergeants, all standing there with their cell phones, here comes the General in handcuffs, that to me was probably the most embarrassing.

They put us in a vehicle and we were taken to Durban North Police Station, where we were detained for the night and the following we appeared in court and we were granted, well they did not oppose bail and we were granted R5 000 bail each, and then Chair later on we were charged for racketeering, those were the charges against us and the main allegation was that a number of shooting incidents over a
10 period of three and a half years they alleged that those shootings were extrajudicial killings. At least Chair five of those people that they were accused of having killed unlawfully at least five of those matters' inquest proceedings had been finalised and magistrates had made findings ruling in favour of the Cato Manor members.

In other cases I'm aware of, had already been to the DPP for decision, they were nolle prosequi declined to prosecute, some were still under investigation. So Chair as Chair is aware once you are prosecuted you are entitled to copies of the docket, so they provided us with copies of the dockets and at that point Chair I thought when all
20 this is going on you start to doubt yourself, and then you start to wonder where did I do something wrong, and you toss and turn in bed and I thought okay the thing it can be they must have fabricated a case against me and they must have taken false statements.

So I took the dockets home and now I'm reading through the dockets, there were 23 dockets Chair, but I don't figure anywhere, I'm

not finding the statements that I thought were fabricated statements. There were three statements where my name appear, the one is from a Captain, I think it's Pillay, who says he went to the Howick shooting scene, when he arrived there he saw the police helicopter standing on the freeway, and he also saw General Booyesen there, that's the sum total of his evidence.

The other one was the crew of the helicopter who says they picked up General Booyesen at the Airwing, we flew there, we landed, Booyesen had a look at the scene, we flew back. That was the full
10 extent of his statement. There was a third statement, that person's name was Cochrane, there was a third statement by Shamila Williams from IPID in which she attended to a shooting in Durban North at some stage. I happened to arrive at that scene five hours afterwards and she merely mentions in her statement that after she had attended the scene I also saw her and I think at that stage, I can't remember if it was a Brigadier or a General but she says I saw General Brigadier Booyesen, but that is much later. That was the sum total of my names in the docket.

CHAIRPERSON: In the docket ja.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Chair I immediately approached my attorney and I said to him look I'm not happy with this, I mean how can you charge a person or racketeering, I have been trained Chair in racketeering, I've ...(intervenes).

CHAIRPERSON: You know what it is.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I know Chair and as

Provincial Head of the Hawks we have seen a couple cases through of racketeering, I know what it takes to convince the NDPP to sign that Section 21 certificate, so I took the matter on review Chair, the decision to prosecute me on the basis of legality and irrationality. I filed my founding affidavit and then in the answering affidavit of the then acting in DPP Advocate Nomgcobo Jiba she files three extra statements that did not form part of the docket, the one is of a deceased person who does not implicate me in the offence that I was being charged for, he merely mentions somewhere that he had heard –
10 now this person is now dead Chair, this person had heard two other people saying that they shoot the people in the taxi violence issues and then they collect money and then they pay Cato Manor and big boss boys.

Now Chair as far as I'm concerned that's hearsay twice removed, but I won't go into that, but the two people that they mention are – well up until recently were both still alive, they were never approached to confirm those discussions, to the contrary when those statements were discovered to us through Crime Intelligence I gave it to Colonel van der Vyfer I said do you know these people, they then
20 eventually traced them and showed them the statements, and they then went to their attorney, which was Malloy & Partners and ironically who then spoke to Advocate Stix Mdladla who then took statements from those people that apparently had said that they collected money for Cato Manor and when which they disavowed every single aspect of the statement, in fact the person that – the deceased person that

apparently had made that statement was out on bail himself for murder. So that statement is one of the statements which Jiba attaches, there's another one, an unsigned statement from a Greek citizen, who happen to be a friend of mine, he is no longer a friend of mine Chair, in which he makes wild allegations but nothing pertaining to racketeering. It's more mischievousness than the commission of offences, but that particular document is not signed, and then there are two statements of a Colonel, a very controversial colonel in KZN, Colonel Rajen Aiyer, but Chair if you read those statements it looks like a – it's incoherent to say the least, but nowhere does it talk about any offence, it's pure, pure office politics.

But Jiba then says she considered evidence under oath, evidence in the dockets and evidence under oath. I – and then the one statement taken from Aiyer was dated two weeks after she had authorised the prosecution. The one of Dannicas is not under oath, it's not signed, it's for all intents and purposes no one knows where it comes from at that time, so I filed a replying affidavit in which I accuse of being mendacious and I explain to her how could you have considered evidence which objectively seen could not have existed at the time that you took the decision. She did not take up my invitation, long story short Chair Judge Gorvan ruled in my favour, he said none of the evidence in the dockets link me to the Commission of any offence, none of the statements that Jiba belatedly added links me to the – well they don't link anyone to the Commission of an offence.

Subsequent to that Chair normally the police are supposed to

be ...(intervenes).

CHAIRPERSON: So the review application succeeds?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It succeeded Chair.

CHAIRPERSON: Yes and the decision to charge you is set aside – was set aside as a result of the review?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No the – Chair so in order to prosecute a person for racketeering there must be two predicate offences.

CHAIRPERSON: Yes.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: So what they did is the one incident that I had gone to Howick for ...(intervenes).

CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And sometimes I wonder where, how senior advocates understand the law, for racketeering you must have committed two predicate offences, now what they did in that particular instance they alleged that at the Howick matter where I flew to, the allegations that I flew there and I planted an AK47 on the scene, but Chair in the book that I wrote that's what – I put that on the cover because it was taken by a newspaper
20 photographer to – I still can't find the AK47 that I was supposed to have planted there.

CHAIRPERSON: So what I am interested in is what was the actual order, the effect of the order in the review application?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But Chair what was set aside, the Judge set aside the predicate offences that was murder,

because they alleged that I – there's a common purpose for the Howick matter and possession of unlicensed firearm, the AK47, possession of unlicensed ammunition for the AK47 and defeating the ends of justice for planting the firearm.

Chair there is not even remotely a suggestion or nothing whatsoever in the dockets that remotely suggests something like that, it's something that they made up.

CHAIRPERSON: H'mm, h'mm.

ADV VERUSCHKA SEPTEMBER: Chair to just assist with the review.

10 CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: Noting the time though, at paragraph 154 a copy of the actual judgment appears.

CHAIRPERSON: Ja, what's the order, is the order a short order, is it a long order?

ADV VERUSCHKA SEPTEMBER: Chair if I may with your leave just read quickly.

CHAIRPERSON: Ja.

ADV VERUSCHKA SEPTEMBER: At page 180 which is paragraph 36, at the end of that paragraph the Judge finds that – and I read :

20 "I can conceive of no test for rationality, however relaxed, which could be satisfied by her explanation. The impugned decisions were arbitrary, offend the principle of legality, and therefore the Rule of law, and were unconstitutional."

In paragraph 38 the first sentence reads:

"I hasten to emphasize that this outcome is based purely on the facts of the present case."

And paragraph 39 ...(intervenes).

CHAIRPERSON: It's the order that I am really interested in.

ADV VERUSCHKA SEPTEMBER: The order is that save for the interdict which Mr Booyesen sought the remaining prayers were granted ...(intervenes).

CHAIRPERSON: Oh, and the prayers ...(intervenes).

ADV VERUSCHKA SEPTEMBER: In that ...(intervenes).

10 CHAIRPERSON: Ja, okay.

ADV VERUSCHKA SEPTEMBER: In that, if I could it states that there – at page 183:

"There's no basis for the interdict sought by Mr Booyesen in paragraph 3, either in the form sought or in any other form."

CHAIRPERSON: Okay now that's fine.

ADV VERUSCHKA SEPTEMBER: And then:

20 "In the result the order is granted that in terms of paragraphs A, B, C, D and F referred to in paragraph 3 of the judgment."

Effectively all the decisions are set aside.

CHAIRPERSON: Ja, okay.

ADV VERUSCHKA SEPTEMBER: Save for the interdict.

CHAIRPERSON: Okay no that's fine, I will have a look. So the review application was successful, and after that the criminal proceedings

against you arising from that were gone?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: They were withdrawn in court chair.

CHAIRPERSON: They were withdrawn in court. That might be the convenient time for us to adjourn for today, and then when we resume then we can continue, but at least we've reached a point where you brought a review application, and it was successful and the criminal charges were withdrawn and then we can take it further next time.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Thank you Chair.

10 CHAIRPERSON: Is that fine with you?

ADV VERUSCHKA SEPTEMBER: As it pleases Chair.

CHAIRPERSON: Okay alright, we are going to adjourn, we are not going to sit next week, we will continue on the 2nd of May, so you can then continue with your evidence. Is there anything Mr Pretorius wants to say?

ADV PAUL JOSEPH PRETORIUS SC: No Chair, thank you.

CHAIRPERSON: Okay, alright, thank you.

ADV PAUL JOSEPH PRETORIUS SC: I presume we start at the normal time, 10:00?

20 CHAIRPERSON: Yes we will start at 10:00 on the 2nd of May, we will then adjourn. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

TRANSCRIBER'S CERTIFICATE FOR COMMISSION OF INQUIRY INTO STATE
CAPTURE
HELD AT
PARKTOWN, JOHANNESBURG

DATE HELD : 2019-04-18

DAY: : 86

TRANSCRIBERS : B KLINE; M NETTA; D STANIFORTH

Audio's are typed verbatim, as far as audible/possible



Accura Africa Group

Your Forward-Thinking Partner