

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

Case Number: _____

In the matter between:

LUKHANYO BRUCE MATTHEWS CALATA	First Applicant
SINDISWA ELIZABETH MKONTO	Second Applicant
NOMBUYISELO NOLITHA MHLAULI	Third Applicant
and	
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	First Respondent
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	Second Respondent
NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE	Third Respondent
MINISTER OF POLICE	Fourth Respondent
CHRISTOFFEL PIERRE VAN DER WESTHUIZEN	Fifth Respondent
HERMANUS BAREND DU PLESSIS	Sixth Respondent
ERIC WINTER	Seventh Respondent
CRAIG WILLIAMSON	Eighth Respondent
ADRIAAN JOHANNES VLOK	Ninth Respondent
GERRIT NICHOLAS ERASMUS	Tenth Respondent
IZAK JOHANNES ENGELBRECHT	Eleventh Respondent

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BAREND JACOBUS DU PLESSIS

Twelfth Respondent

FREDERIK WILLEM DE KLERK

Thirteenth Respondent

JOHAN VELDE VAN DER MERWE

Fourteenth Respondent

LUKAS DANIEL BARNARD

Fifteenth Respondent

DANIEL JACOBUS LOUIS NEL

Sixteenth Respondent

SAMUEL JOHANNES DE BEER

Seventeenth Respondent

SUPPLEMENTARY FOUNDING AFFIDAVIT

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I, the undersigned,

LUKHANYO BRUCE MATTHEWS CALATA

do hereby make oath and state that:

INTRODUCTION

- 1 I am the first applicant herein.
- 2 The first respondent delivered its record in terms of Rule 53(1)(b) on 13 October 2021, some 2 days after the date the NPA was directed to file its record by Deputy Judge President AP Ledwaba at the Case Management Meeting held on 4 October 2021.
- 3 This affidavit is aimed at supplementing my founding affidavit as I am entitled to do in terms of Rule 53(4) of the Uniform Rules of Court.
- 4 I will first provide general comments on the whole of the record provided by the first respondent and then specific comments on the only new document provided, namely the affidavit of Christopher Raymond Macadam ("Macadam") dated 24 May 2021.

GENERAL COMMENTS ON THE RECORD

- 5 The record provided by the first respondent comprises 2 bundles. The first bundle is the bundle of supplied documents and the second bundle is titled "Privileged and Confidential" and was not provided. Except for one document,

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the first bundle consists entirely of documents from the two inquests into the Cradock Four and Truth and Reconciliation Commission (“TRC”) records. The withheld second bundle consists of the reconstructed investigation docket and 3 documents, namely 1 memorandum, 1 report and 1 affidavit.

- 6 It is noteworthy that the NPA chose not to provide a single document dealing with the political interference that resulted in the suppression of hundreds of cases that had been referred by the TRC to the NPA for further investigation (“the TRC cases”), including the Cradock Four case. This is a disturbing omission given that in my founding affidavit I advanced this issue as the single biggest reason for the blocking of the investigation into murders of the Cradock Four.
- 7 The table of contents of the record is reproduced below:

BUNDLE 1 (RULE 53 RECORD)

1. RECORD OF THE FIRST AND SECOND INQUESTS IN 1-2491 THE CRADOCK FOUR MATTER:

- ▶ Volume 1 First Inquest Annexures 1-408
- ▶ Volume 1.2 Truth and Reconciliation 409-804
 - Sub vol 1- Background, TRC transcripts (409-506)
 - Sub vol 2- Findings of 1st & 2nd Inquests (510-568)
 - Sub vol 3- Evidence of 2nd Inquest (573-676)
 - Sub vol 4- Evidence of 2nd Inquest cont. (682-804)
- ▶ Volume 2 Second Inquest Statements 805-1266
- ▶ Volume 3 Various documents on the Inquests 1267-1677
- ▶ Volume 4 Second Inquest no CC 7 /93 1678-2109
 - Findings 1678-1761
 - Statements, Minutes of c01mnnittee meetings 1762-2491
- ▶ Volume 5 First Inquest 2110-2491
 - Transcripts 2110-2274
 - Pathologists' Reports, 2275-2320
 - Investigation Diaries 2321-2468

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2. ADV ACKERMANN' S FILE – 2492 – 3155

- ▶ Research 2492 – 2532, 2535 - 3038
- ▶ Internal emails 2533 - 2534
- ▶ Final Investigation Correspondences 3039 - 3137
- ▶ Correspondences between NPA, NDPP and 3138-3152 applicants' attorneys
- ▶ Raymond Christopher Macadam's affidavit 3153-3155

BUNDLE 2 "PRIVILEGED AND CONFIDENTIAL"

3. RECONSTRUCTED DOCKET - 1-607

- Volume 1 1 -151
- Volume2 152-607

4. NDPP INTERNAL CORRESPONDENCE & AFFIDAVIT -VOLUME3

- ▶ Memorandum dated 3 August 2021 by Mr LM 1-5 Sakata to Adv R de Kock
- ▶ Report of Adv Ackermann dated 20 August 2021 6-15
- ▶ Short affidavit of Colonel Mthetheleli Dweba of the SAPS dated 7 September 2021 16

Bundle 1

- 8 Bundle 1, except for the Macadam affidavit, consists essentially of documents recovered by our investigator Brigadier Clifford Marion (Ret.) ("Marion") and our legal team. These were handed over to DPCI investigators and the NPA from July 2019 onwards and comprised records from the TRC and the 2 inquests. Marion advised the DPCI investigators to uplift the complete Zietsman Inquest record from the Cory Library at Rhodes University in Grahamstown.
- 9 The only correspondence provided is what was already in the possession of my attorneys: namely communications between Marion, my attorneys and the NPA and the Directorate for Priority Crime Investigation ("DPCI").
- 10 The index in respect of the file of Adv Ackermann lists the following items: research, internal emails, and final investigation correspondences. The index is somewhat misleading as it gives the impression that these items were

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generated by the NPA when in fact they are TRC products, compiled by TRC staff members. Again, these materials were already in possession of my legal team and were made available to the DPCI.

Bundle 2

- 11 We assume the investigation docket was held back because it is still the subject of an ongoing investigation. The withholding of the entire police docket in bundle 2 belies any claim that the NPA and its staff was deflected from the task of completing its deliberations and making a decision.
- 12 In short, the NPA has provided nothing in relation to its own deliberations and decision making, or lack thereof.
- 13 The index of bundle 2 raises certain questions.
 - 13.1 We note that the reconstructed docket is not itemized in the index.
 - 13.2 The docket has only 607 pages which is surprisingly short given that the documentation provided to the DPCI, including the inquest and TRC records, comprises several thousand pages.
 - 13.3 We do not know if the docket excludes such records, but according to Macadam the original docket, aside from an investigation into a General Hankel, comprised the TRC Amnesty and Inquest records, so presumably the reconstructed docket would also have included such records.
 - 13.4 Accordingly, we would have expected to have seen a very substantial docket that included not only the historical inquest and TRC records, but

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considerable work conducted from 2019. This does not seem to be the case and raises worrying questions as to the state of the investigations.

13.5 The slim investigation docket appears to suggest that the investigation is not complete, and to date, has not been a comprehensive investigation. If we are correct in this regard, it would seem to confirm the very worst fears I expressed in my founding affidavit.

13.6 We note the 3 standalone documents referred to, namely:

13.6.1 The 5-page memo from Adv Livingstone Sakata (Acting: DPP Eastern Cape Division) to Adv R de Kock dated 3 August 2021,

13.6.2 The 9-page report of Adv Ackermann dated 20 August 2021.

13.6.3 The 1-page affidavit of Colonel Mthetheleli Dweba of the SAPS dated 7 September 2021.

13.7 These 3 documents all post-date the launch of our application on 20 July 2021, which suggests that it was the application that prompted this flurry of activity.

13.8 Secondly, we note that all 3 documents are particularly slim, comprising only a few pages, and in the case of the Col Dweba, only one page. We submit that this does not bode well for the case and suggests that the officials in question did not have much to report on.

COMMENTS ON THE MACADAM AFFIDAVIT

14 The Macadam affidavit dated 24 May 2021 deals exclusively with the missing docket investigation. It is not clear whether the affidavit is part of the docket of

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the missing docket investigation or whether it is simply an affidavit found in the file of Adv Ackermann. The record makes no reference to the missing docket investigation. No claim of privilege is made over this docket, but it is not listed or provided.

- 15 Macadam simply states he was requested to make out an affidavit in respect of the missing docket, but he does not disclose who asked him.

Handover of docket to office of Acting NDPP

- 16 Macadam states that during April 2013, while he was deputy director of the Priority Litigation Crimes Unit ("PCLU") and Adv Shaun Abrahams ("Abrahams") was the acting head, they received a request for information about the Cradock Four case from a Ms Lepinka who was the personal assistant to the then Acting NDPP, Adv Nomgcobo Jiba. Abrahams responded to the request. Macadam does not disclose what the nature of the request was, or what the response of Abrahams was.

- 17 Macadam then alleges that at a "certain stage", without disclosing the date, he was asked to hand over the docket to the Office of the Acting NDPP. Macadam alleges that he cannot recall precisely who made the request and he does not disclose who physically received the docket from him. This presumably took place between April and October 2013, as during October 2013 Mr Mxolisi Nxasana was appointed NDPP.

- 18 Macadam then avers that at a "certain stage", without disclosing a date, that Adv T P Pretorius SC ("Pretorius"), then Acting Head of the PCLU, asked him about the Cradock Four docket, and he advised Pretorius that "it had been

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uplifted from our office". Macadam does not disclose why Pretorius was seeking the docket. This exchange must have happened between December 2015, when Macadam returned to his normal duties after working on foreign bribery cases, and April 2019 when he assumed the position of Acting Head of the PCLU.

Conclusions on Macadam affidavit

- 19 Macadam's affidavit is notable for its lack of important detail and for what it does not disclose. Surprisingly, Macadam attempts to minimize the significance of the disappearance of the docket.
- 20 What is evident from the Macadam affidavit is that, at the very least, no investigations on the Cradock Four docket occurred between 2013, when he was asked to hand the docket over to someone in the office of the Acting NDPP, and 2019 when he took steps to assist the investigating officer to reconstruct the docket. This is a period of some 6 years. This idleness is entirely consistent with the suppression of the TRC cases set out in my founding affidavit.
- 21 It is also evident that in this 6-year period, Abrahams, Pretorius and Macadam took no steps to recover the docket, let alone carry out any work on the Cradock Four case. Such shocking omissions are wholly consistent with the overall strategy of ensuring that the TRC Cases never saw the light of day.
- 22 The real reason for the willingness of the NPA to disclose the Macadam affidavit appears from its concluding paragraphs where Macadam says that the original docket only comprised of an investigation into one General Hankel

(who seems to have been the victim of a smear campaign) and the Inquest and TRC records, which were “easily re-obtainable”. Macadam appears to be saying that the fact that the docket went missing was of little or no consequence, given that it consisted largely of documents in the public domain, which could be easily accessed.

- 23 If the docket was in fact confined to the documents alleged by Macadam, it also confirms that prior to 2013, little or no substantive work was carried out on the docket in the decades ensuing since the Zietsman Inquest and the TRC. This is also consistent with the political suppression of the TRC cases set out in my founding affidavit.

Macadam’s claims conflict with views of investigating officers

- 24 The claims of Macadam appear to conflict with that of the former investigating officer, Captain Masegela of the DPCI (“Masegela”), who advised Brig Marion on 1 August 2019 that a fully investigated docket had been handed over to Macadam. It also conflicts with what Masegela told me on 1 June 2020, namely that the missing docket contained sufficient evidence for some prosecutions to commence. Tellingly, Masegela claimed in his conversation with me that the NPA was not interested in pursuing actual prosecutions in the Cradock Four case.
- 25 Macadam concludes that there is no evidence to suggest that the docket was stolen or destroyed. By implication he is suggesting that the investigation docket into one of South Africa’s most historic and emblematic cases simply went missing from the office of the most senior ranking prosecutor in the land, by accident.

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- 26 The apparent view of Macadam that there is nothing suspicious about the disappearance of the docket is contradicted by the views of the current investigating officer, Colonel Makua ("Makua"). Makua told me on the phone on 1 April 2020 that he "was deeply troubled at what was happening with the investigation." He said to me that he did not believe that the docket went missing by accident and he was concerned that "powerful forces were protecting the suspects, in particular the high-ranking suspects."
- 27 Given the circumstances, I respectfully submit that Macadam's assertion should not be taken seriously. Macadam, in my view, is attempting to write off the disappearance of the docket from the offices of the NPA as a non-event. Presumably he is attempting to minimise the significance of the missing docket to deflect attention and criticism from himself and the NPA. He and the NPA should be censured for their role in the disappearance of the docket, in particular for not taking early and expeditious steps to locate and recover the docket between 2013 and 2019.

CONCLUSION

- 28 While the NPA disclosed no information dealing with its failure to make a decision in the Cradock Four case, it can be safely concluded from the index of the record and the Macadam Affidavit that the Cradock Four case has been terribly neglected over many years by the NPA. Not only was it specifically suppressed together with the other TRC cases, but it appears that the neglect may continue to the present day.

29 In the circumstances, I submit that a proper case has been made for the relief sought and I persist with my prayer for an order as set out in the notice of motion.

[Handwritten signature]

LUKHANYO BRUCE MATTHEWS CALATA

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was sworn to before me and the deponent's signature was placed thereon in my presence at Milneron on this the 26th day of **October 2021**, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

[Handwritten signature]

COMMISSIONER OF OATHS

FULL NAMES: *Mphahlele M BODUA*

DESIGNATION: *clt*

ADDRESS: *Koebeg Road
Milneron*



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