

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

CASE NO: CC19/2024

In re: **THE REOPENED INQUEST INTO THE DEATHS OF FORT CALATA, MATTHEW GONIWE, SICELI MHLAULI AND SPARROW MKONTO**

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**ADDRESS ON BEHALF OF THE FAMILIES ON THE POSTPONEMENT**

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**Introduction**

- 1 The families have been dealt yet another bitter blow with this postponement. The postponement of the reopened inquest must be seen in its proper context.
- 2 During August 2023 it was agreed between the NPA and the families that the inquest should be reopened, making it the third inquest into the deaths. The Minister of Justice announced on 4 January 2024 that the inquest would be reopened.
- 3 On 7 February 2024, the families' lawyers, Cliffe Decker Hofmeyr (CDH), sent the NPA a proposed schedule for the hearing setting out the witnesses needed with time estimates for their testimony. The schedule was agreed to at a meeting between the family representatives and the NPA on 22 February 2024.
- 4 On 27 February 2024 the families' lawyers, Cliffe Decker Hofmeyr (CDH) proposed hearing dates (the first 3 weeks of September) to the NPA. The NPA agreed to these dates on 4 March 2024.
- 5 As CDH attorneys heard nothing further from the NPA, on 9 July 2024 they addressed urgent letters to the NPA and presiding judge expressing alarm that that the inquest was in danger of collapse. This concern proved to be prescient, since all efforts thereafter to salvage the inquest came to naught.
- 6 The NPA claims that that their hands were tied as they had not received final confirmation of the dates of the inquest from the presiding judge. Accordingly, they could

not take preparatory steps, such as the issuing of subpoenas. This, with respect, is not an acceptable excuse. The NPA is *dominus litus* in this matter and this Court sits in the same division in which they are based. There is no reason why the NPA could not have extracted the confirmation of the dates, even if it meant knocking on doors or camping in the Registrar's office.

- 7 According to the legal representatives of the former SAP and SANDF witnesses, they were only advised of the reopened inquest and the hearing dates during June 2024. They complained that this was way too late notice for them to organise funding for their legal costs through the State Attorney, as there is a complicated paper trail required, which includes seeking the approval of the SAPS and SANDF. This was the primary reason for the collapse of the inquest.
- 8 It appears that the witnesses were only subpoenaed during the month of August, just weeks before the inquest was due to start.

### **Impact of the postponement**

- 9 The postponement has particularly serious consequences for the families and the wider community.
- 10 In the first place the hopes of the families for some closure after more than 39 years of waiting have been dashed again.
  - 10.1 They have endured decades of cover-ups, obfuscation and idleness on the part of the authorities. All their efforts to see justice done in a criminal court have come to naught.
  - 10.2 Now when a reopened inquest was finally going to happen, they have been let down again, and needlessly so.
- 11 Secondly, the postponement may very well result in a grave miscarriage of justice.
- 12 We have identified some 49 persons who were associated in one form or another with the Cradock 4 case. Virtually all of them have died.
  - 12.1 All 6 members of the police hit squad who murdered the Cradock Four have died. They were:
    - 12.1.1 Major Johan Martin "Sakkie" Van Zyl

- 12.1.2 Lieutenant Eric Alexander Taylor
  - 12.1.3 Sergeant Gerhardus Jacobus Lotz
  - 12.1.4 Warrant Officer Mbalala Glen Mgoduka
  - 12.1.5 Sergeant Amos Temba Faku, and
  - 12.1.6 Xolile Shepard Sakati
- 12.2 Most of the masterminds, who planned or facilitated the operation against the Cradock 4 have died. Including:
- 12.2.1 Colonel Harold Snyman
  - 12.2.2 Colonel Lourens Du Plessis
  - 12.2.3 Major General Nicolaas Jacobus Janse Van Rensburg
  - 12.2.4 General Pieter Johannes Jacobus “Jannie” Geldenhuys
  - 12.2.5 Major General Frederick Johannes van Rensburg
  - 12.2.6 Lt Jacob Jan Hendrick (Jaap) Van Jaarsveld
- 12.3 Most of the members who sat on the State Security Council (SSC) between 1984 and 1985 have died. Of the 27 persons who attended one or both SSC meetings on 19 March 1984 and 10 June 1985, at least 14 have died.
- 13 Since the families launched a civil application to compel the NPA and SAPS to finalize their investigations in July 2021, the following persons of interest died:
- 13.1 Eric Winter (former Cradock Security Branch Commander)
  - 13.2 F W de Klerk (former President)
  - 13.3 Johannes Velde van der Merwe (former SAP Commissioner)
  - 13.4 Adriaan Vlok (former Minister of Police)
  - 13.5 Barend du Plessis (former Minister of Black Education)
  - 13.6 Hermanus Barend du Plessis, (former head of the Security Branch’s Black Affairs unit in Port Elisabeth) died on 16 May 2023.
- 14 The primary reason behind this monumental failure of justice has been the political interference which effectively killed off the bulk of the cases referred by the TRC to the NPA. Those behind these machinations knew that this would be the outcome. They must be held to account.

- 15 All the surviving persons of interest are in the twilight of their lives:
- 15.1 Gerrit Nicholas Erasmus, former Lt General and head of the Port Elizabeth Security Branch, is 88 years old.
  - 15.2 Izak Johannes “Krappies” Engelbrecht, former Major General and head of the SAP’s Counter Intelligence department, is 84 years old.
  - 15.3 Christoffel Pierre “Joffel” Van Der Westhuizen, former Lt General in the SADF and former OC Eastern Province Command, is 82 years old.
  - 15.4 Craig Michael Williamson, former head of Security Branch Intelligence, is 75 years old.
  - 15.5 Lukas Daniel “Neil” Barnard, former Director of the National Intelligence Service, is 75 years old.
- 16 Given the advanced ages of these individuals it is highly likely that some will not be available to testify by the time this inquest is eventually held. This will be devastating for the families. They will yet again be denied the opportunity to hear from those associated with the Cradock 4 case. This would amount to another unforgivable miscarriage of justice.

## **Conclusion**

- 17 Should the question of legal costs for the former state officials and Mbulelo Goniwe, the nephew of Matthew Goniwe, drag on through litigation in multiple courts, it will effectively kill off this inquest.
- 18 A toxic mix of political interference, incompetence and indifference has shut down virtually all the TRC cases over the last two decades. There are only a handful of cases that can be taken forward, and the clock is ticking in all of them. Yet we see little sense of urgency on the part of the authorities.
- 19 Although there have been 5 reopened inquests dealing with apartheid-era cases since 2017, albeit in other divisions, there appears to be little or no learning from those experiences, with no lessons or best practices passed on to new teams.

- 20 It is high time that the NPA, State Attorney and the relevant departments, namely SAPS and SANDF came together to work out a seamless approach to the question of legal costs to avoid this wholly unnecessary fiasco from happening again.

**H VARNEY**

**G SNYMAN**

**MZF SULEMAN**

Johannesburg and Durban

2 September 2024