



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

Case No.: CC66/2024

In re: Inquest into the Highgate Hotel attack and the deaths of-

- 1. STANLEY HACKING**
- 2. DOUGLAS WILLIAM GATES**
- 3. ROYCE MICHAEL WHEELER**
- 4. DEON WAYNE HARRIS**
- 5. DERIC JOHN WHITFIELD**

(1)	REPORTABLE: <input checked="" type="radio"/> YES / NO
(2)	OF INTEREST TO OTHER JUDGES: <input checked="" type="radio"/> YES / NO
(3)	REVISED.
<i>28 November 2025</i> DATE	
<i>[Signature]</i> SIGNATURE	

JUDGMENT

POTGIETER J

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INTRODUCTION

[1] On 1 May 1993, at approximately 22h00, unidentified gunmen armed with automatic rifles launched a deadly attack on the unsuspecting patrons who, at the time, were frequenting the Highgate Hotel situated at 2 Voortrekker Road, Cambridge, East London, Eastern Cape. Five people were killed, and several others were wounded during the incident.

[2] The present proceedings in terms of the Inquests Act, 58 of 1959 ('the Act'), are a belated sequel to that occurrence. It is not entirely clear why it took more than three decades for these proceedings to materialise. There can be no doubt that this must have added significantly to the anguish and trauma of the affected parties. It is a blight on the efforts of the country to come to terms with its disgraceful past that this matter was seemingly allowed to simply linger for far too long. It is neither helpful nor constructive to compare the history of this matter to investigations of similar incidents that also occurred during the past political conflict, but suffice it to say that it is difficult to ignore the impression that this matter was previously treated with indifference. In some material respects, the police investigation was substandard, and after such a significant time lapse, relevant records, information, and exhibits have become untraceable or are no longer available. Nonetheless, the patent gratitude of the affected parties that the matter has finally received the necessary attention stands as a testament to their admirable magnanimity and generosity of spirit.

CONTEXT OF THE ATTACK

[3] During the period relevant to these proceedings, South Africa was emerging from almost 5 decades of oppressive and racially discriminatory Apartheid rule and was well on its way to becoming a constitutional democracy. The Interim Constitution, Act 200 of 1993, which provides for an entrenched Bill of Rights, was drafted between May and November 1993 and assented to on 27 January 1994. It commenced on 27 April 1994

and governed South Africa's first democratic non-racial elections. It was replaced by the final Constitution, Act 108 of 1996, on 4 February 1997.

[4] By May 1993, the country was in a state of transition and intense political conflict. The assassination of Mr Chris Hani on 10 April 1993 sparked widespread and escalating violence and demonstrations across the country, causing a climate of increasing political instability and volatility, with the potential of the country descending into a spiral of chaos. There was growing resistance to the inevitable political change from the right-wing groups, and there was a third force at work coordinating deadly attacks and fomenting so-called 'black on black' violence, particularly involving supporters of the African National Congress ('ANC') and the Inkatha Freedom Party ('IFP'). By way of illustration, townships in the then Pretoria, Witwatersrand and Vereeniging ('PWV') Area, such as Boipatong and Thokoza, were sites of intense conflict and deadly violence, leaving scores of people dead and rendering the affected areas effectively ungovernable. Deadly clashes took place in Thokoza between ANC and IFP supporters on 22 May 1993, leading to at least nine deaths and 69 injuries, the vast majority among the non-IFP group, according to the Truth & Reconciliation Commission ('TRC') final report. The incident reportedly resulted from a march by ANC supporters from the Thokoza Stadium to the Alberton police station to present a memorandum. The violence erupted when the marchers reached the Thokoza hostel compounds (housing mainly IFP supporters). Armed IFP supporters were present outside the hostel, and both sides engaged in shooting. Afterwards, both sides gave conflicting accounts of the incident. The ANC claimed police shot at marchers, while the IFP hostel-dwellers stated that the police fired tear gas at them. I should add that both accounts are in keeping with the fact that some state actors instigated so-called 'black on black' violence at the time.

[5] The purpose of those who were behind these incidents was to derail the negotiations to end Apartheid rule. The country was on the proverbial knife-edge. A coalition of 21 right-wing parties, the Afrikaner National Front, was founded in May 1993, signalling increased resistance to the political negotiations. This era was probably the bloodiest in the history of the liberation struggle. It was only steadfast, insightful, and committed

political leadership that had managed to keep the country on the right course to a political settlement and transition to a constitutional democracy.

[6] The Highgate attack was undoubtedly a false flag operation. The perpetrators clearly intended to pass the incident off as a racially inspired armed attack on defenceless white citizens by the Azanian People's Liberation Army ('APLA'), the military wing of the Pan Africanist Congress ('PAC'), likely to fuel inter-racial conflict and undermine a political settlement. That false impression has been debunked and rebutted in the present proceedings, as more fully appears from the summary of the evidence that accompanies this judgment as Annexure 'A'. I should point out that the then commander of APLA, Mr Letlapa Mphahlele, testified and effectively refuted the view that APLA was responsible for the attack or that the telephone call a few days later to the Citizen Newspaper by a Mr Karl Zimbiri claiming responsibility for the attack on behalf of APLA, was genuine. I will return to this issue later in the judgment.

[7] Ironically, the 1993 Nobel Peace Prize was shared by the South African political leaders, Mr Nelson Mandela and Mr FW de Klerk, as it was stated 'for their work for the peaceful termination of the apartheid regime, and for laying the foundations for a new Democratic South Africa'.

BRIEF OVERVIEW OF THE INCIDENT

[8] The incident occurred on a Saturday evening at a time when the hotel was busy. There were patrons in all the bars, namely the Public/Men's Bar, the Ladies Bar, and the Open Arms Bar. The attack started around 22:05, reportedly in the Public Bar, when a gunman entered through the door armed with an automatic rifle (confirmed to have been an AK-47) and started firing indiscriminately at the patrons, spraying them with bullets. A hand grenade and a teargas canister were also detonated in the bar. Another gunman entered the Ladies Bar and fired at the patrons, also with an AK-47. One of the patrons, Mr Edward Beyman Lombard, returned fire from the direction of the bar counter with a .38 Special Rossi revolver. Mr Lombard testified that he is a reasonable shot and he is convinced that

he struck the attacker on the body with a few rounds. He expressed the view that the attacker must have been wearing body armour because the bullets did not affect him.

[9] The attackers intended to cause maximum harm and loss of life. According to the relevant ballistics report, exhibit 'N', fifty-six 7.62 x 39mm (assault rifle) calibre spent cartridges were recovered at the scene. Nineteen were fired from one rifle and twenty-eight from a second rifle. Seventeen 7.62 x 39mm calibre discharged bullet points were recovered. Four were fired from one rifle and six from the second. One bullet was recovered from the leg of a survivor, Mr Karl Webber, who was shot in the Ladies Bar. It came from the second rifle.

[10] Nine .38 Special spent cartridges, all fired from the same revolver, were recovered at the scene. One discharged .38/.357 calibre bullet point was also found in the door frame at the hotel entrance, which was fired from the position occupied by Mr Lombard.

[11] Various bullet holes were found. Seven in the foyer leading to the Ladies and Open Arms Bars, which were fired from the hotel entrance. One was fired through the wooden panel of the door of the Open Arms Bar. Seven more resulted from shots fired inside the bar from the direction of the door. Three holes towards the back of the bar were caused by gunfire from a direction consistent with the position of Mr Lombard. Thirty holes were found in the Public Bar, mostly through the bar counter, caused by gunfire from the direction of the bar door.

[12] A teargas grenade was detonated inside the Public Bar. A hand grenade was lobbed over the counter and landed in the adjacent pool room, where it exploded and damaged the wall. The explosives expert, Mr Charl Naude, in his report exhibit 'O', had regard to the used teargas canister and the fly-off levers of the strike (igniting) mechanisms of both devices that were found afterwards inside the bar. He identified the teargas canister as a hand smoke/anti-riot grenade deployed to emit teargas. These grenades were manufactured at the Swartklip Products factory in Mitchells Plain, Cape Town, and were primarily supplied to the police and the defence force, as well as to the TBVC States

(Transkei, Bophuthatswana, Venda, and Ciskei). He identified the type of hand grenade by means of the fly-off lever and the damage which resulted when it exploded, causing a typical crater associated with high-explosive hand grenades. He concluded that it was an RPG-5 anti-personnel fragmentation grenade. These were manufactured either in China, the Soviet Union, or other Eastern Bloc countries and were never procured by the South African Defence Force.

[13] Mr Deric Whitfield, one of the patrons who was shot in the Public Bar, managed to crawl to the front parking area, where he later succumbed. Four patrons were shot and killed in the Ladies Bar: Mr Douglas William Gates, Mr Stanley Hacking, Mr Deon Wayne Harris, and Mr Dave Royce Michael Wheeler. In addition, a total of 7 people were injured in the attack.

[14] Eyewitnesses testified that the attackers were wearing balaclavas. There was an indication that they had black cream on their faces, and one attacker was wearing police issue boots.

[15] After the attack, the perpetrators nonchalantly left the scene. They were apparently in no hurry to get away and seemingly had no fear of being arrested. Two of them were seen by a witness, Ms Broderick, who lived close to the hotel as they were moving on Voortrekker Road, which runs past the hotel. One assailant had a rifle openly slung over his shoulder.

[16] Security forces and emergency services arrived at the hotel shortly after the incident and took control of the crime scene.

NATURE OF THE PROCEEDINGS

[17] An inquest is a judicial investigation into a death not due to natural causes, where no resultant criminal proceedings are instituted. Section 5¹ of the Act requires, in such a

¹ The section provides as follows:

case, that the prosecuting authority submit the relevant documentation to the magistrate of the district where the incident occurred, who is in turn obliged to ensure that an inquest is held into the incident and that the documentation is provided to the judicial officer who is to hold the inquest.

[18] Section 6² authorises the Minister of Justice to request the relevant judge president to designate a judge to hold an inquest at any place determined by the judge. I should add that this procedure was followed in the present matter, where I determined that the proceedings would be held at the Special Investigating Tribunal premises in East London, mainly for the convenience of the victims, the next-of-kin of the deceased, and the other affected parties.

[19] At the commencement of the proceedings, I granted an order in terms of section 6A³, that a joint inquest be held into the deaths of all 5 deceased. The matter then proceeded on that basis and was held in public. Attorneys and counsel represented some of the victims and affected families. The Director of Public Prosecutions was represented by a team of 6 counsel.

5 When inquest to be held

- (1) If criminal proceedings are not instituted in connection with the death, or alleged death, the public prosecutor referred to in section 4 shall submit those statements, documents and information submitted to him to the magistrate of the district concerned.
- (2) If on the information submitted to him in terms of subsection (1) it appears to the magistrate that a death has occurred and that such death was not due to natural causes, he shall, subject to the directions of the Minister, take such steps as may be necessary to ensure that an inquest as to the circumstances and cause of death is held by a judicial officer in terms of section 6 ...

² The section is to the following effect:

6 Judicial officer who is to hold inquest

An inquest shall be held –

...

- (d) where the Minister has so requested a judge president of a provincial division of the Supreme Court, by any judge of the Supreme Court of South Africa designated by the judge president concerned, and notwithstanding anything to the contrary in any law contained, such inquest may be held at any place from time to time determined by such judge.

³ The section provides in relevant part that:

6A Multiple deaths which are connected

- (1) Where more than one death has occurred, the attorney-general or the public prosecutor within whose area of jurisdiction the incident is alleged to have occurred may request the judicial officer who is to hold an inquest to hold a joint inquest into the deaths of the persons involved.
- (2) After the hearing of the request referred to in subsection (1) the judicial officer may order that a joint inquest shall be held if he is of the opinion that the deaths concerned are connected.

[20] The object of the Act is 'in the interest of the public and for the administration of justice, to conduct an official investigation into and to obtain a finding by a judicial officer on whether or not the death of a person who has died from other than natural causes was caused by an act or omission which includes or amounts to an offence by anybody.'⁴ Section 16(2) of the Act requires the court to record findings as to the identity of the deceased, the cause or likely cause of death, the date of death, and whether the death was brought about by any act or omission *prima facie* involving or amounting to an offence on the part of any person.

[21] The courts have frequently commented on the purpose of an inquest. The Appellate Division stated in *Tiley*⁵:

The function of an inquest is to determine the identity of the deceased person; the cause or likely cause of death; the date of death; and whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person ... The underlying purpose of an inquest is to promote public confidence and satisfaction; to reassure the public that all deaths from unnatural causes will receive proper attention and investigation so that, where necessary, appropriate measures can be taken to prevent similar occurrences, and so that persons responsible for such deaths may, as far as possible, be brought to justice.

[22] The court in *Tiley*⁶ further referred with approval to the following dicta in *Timol*⁷:

[F]or the administration of justice to be complete and to instill confidence, it is necessary that, amongst other things, there should be an official investigation in every case where a person has died of unnatural causes, and the result of such investigation should be made known. Therefore, the Inquests Act provides that, if there is reason to believe that a death has occurred, that such death was not due to natural causes and that it was not followed by the institution of criminal proceedings, there shall be an inquest as to the circumstances of the death.

⁴ LAWSA Vol 20(2) para 251.

⁵ *Marais NO v Tiley* 1990(2) SA 899(A) at 901E-G.

⁶ At 901G-J.

⁷ *Timol & Another v Magistrate, Johannesburg & Another* 1972(2) SA 281 (T) at 287H-288A and 292A-B.

...

[T]he inquest must be so thorough that the public and the interested parties are satisfied that there has been a full and fair investigation into the circumstances of the death.

[23] In *De'Ath*⁸ the court referred to the historical position regarding inquests:

The predecessors of the Act show clearly that the purpose of all inquests is to investigate whether, when someone has died or is suspected of having died otherwise than of natural causes, his death has been the result of a criminal offence, and, if so, who the offender is. An inquest is not aimed at proving anyone's guilt, but is most certainly aimed at ensuring that, if possible, where guilt exists, it will not remain hidden.

[24] The court in *Padi*⁹ referred to the following statement in an academic article emphasising the public importance of inquests, which are particularly pertinent to the present matter:

By statute, the inquest serves to ascertain the identity of the deceased, cause of death, date of death, and whether or not the death was brought about by any act or omission involving an offence on the part of any person. Where sufficient evidence is brought to light, the inquest yields to a criminal prosecution.

An inquest's most important function is not this simple determination of facts, however. Public satisfaction is its *raison d'être*; to reassure the public that every possible step will be taken to prevent similar deaths in the future; preserve, where pertinent, the integrity of the State by refuting all allegations of official misconduct, malfeasance, or negligence; and where the State's, an agency's or person(s)'s culpability is substantiated, bringing forth criminal indictments, remedial measures and policy changes necessary to quickly restore confidence in the central authority.¹⁰

⁸ *De'Ath (substituted by Tiley) v Additional Magistrate, Cape Town* 1988(4) SA 769 (C) at 775G; cf *In re: Goniwe & Others (Inquest)* 1994(3) SA 877 (SE) at 878A-E (*Goniwe*).

⁹ *Padi & Another v Botha NO & Another* 1996(3) SA 732 (W) at 740J - 741B.

¹⁰ DJ Akerson *An Inquest – Law Inquest* (1989) 5 SAJHR 209.

[25] The importance of properly investigating deaths is explained as follows in *Van Heerden*¹¹:

The State has an interest in the proper investigation of deaths due to other than natural causes. Even if nobody can be held responsible for a death in a particular case, it may still remain pertinent to determine the circumstances and cause of death in order that appropriate measures can be taken to prevent similar occurrences.

[26] As indicated, the Act obliges the judicial officer to make findings as to the identity of the deceased, the cause or likely cause of death, the date of death, and whether *prima facie* the death resulted from an offence committed by any person¹². Where it is not possible to make any one of such findings, this fact must be recorded by the judicial officer.¹³

[27] The courts have adopted differing approaches to the standard of proof applicable to findings under section 16(2) of the Act. Section 16(2)(d) was amended by Act 45 of 1990, which introduced the term '*prima facie*' in relation to the cause of the death under investigation. Pursuant to the amendment, the court is required to make a finding whether the death was caused by conduct which *prima facie* amounts to or involves an offence.

[28] Commenting on the previous version of section 16(2)(d), ie, excluding the words '*prima facie*', the court pointed out in *Claassen*¹⁴ that the subsection does not indicate what standard of proof should be applied. The court thus accepted that in the absence of

¹¹ *Van Heerden & Another v Joubert NO & Others* 1994(4) SA 793 (A) at 795D.

¹² Section 16(2) provides that:

16 Finding

...

(2) The judicial officer holding an inquest shall record a finding upon the inquest –

(a) as to the identity of the deceased person;

(b) as to the cause or likely cause of death;

(c) as to the date of death;

(d) as to whether the death was brought about by any act or omission *prima facie* involving or amounting to an offence on the part of any person.

¹³ Section 16(3) provides that:

(3) if the judicial officer is unable to record any such finding, he shall record that fact.

¹⁴ *Claassen v Landdros, Bloemfontein* 1964(4) SA 4 (O) at 11C.

any other obvious standard, the judicial officer was required to decide on a balance of probabilities.¹⁵ The test envisioned by the Legislature was accordingly unclear.

[29] The court in *Webster*¹⁶ dealt with the interpretation of the amended subsection and concluded that the test to be applied is the criminal standard, namely, proof beyond a reasonable doubt. The court further held that the words '*prima facie*' were introduced in the subsection merely to show that inquest findings are not final and binding determinations immediately affecting the legal rights and obligations of the affected parties. The latter remains to be determined in subsequent civil or criminal proceedings.

[30] The court in *Goniwe* differed from the decision in *Webster*, indicating that when the amendment was introduced, it was already known that inquest findings are not finally determinative of any legal rights or obligations. No amendment was accordingly necessary to clarify this fact. The decision in *Claassen* shows that the test to be applied was not clear. This was the mischief that the amendment sought to address; it was not to clarify a well-established position. The court indicated that:

The section, as I read it, now provides that the presiding officer must record a finding in terms of s 16(2)(d) if, in his opinion, the evidence establishes *prima facie* that an offence causing the death of the deceased has been committed by any person. This conclusion is, in my view, supported by the fact that s 16(1) of the Act specifically requires proof beyond a reasonable doubt for a positive finding that a death has occurred in a case where no body is found. When s 16(2)(d) was amended the Legislature, in my opinion, provided for a different standard of proof.¹⁷

[31] The court continued to consider the exact meaning of the words *prima facie* in this context. It rejected the contention that the applicable test is that applied in a discharge

¹⁵ It is stated as follows in the original text: 'Art. 16(2)(d) dui nie aan watter maatstaf eerste verweerder moes gebruik het om tot n bevinding te geraak nie. Vir doeleindes van hierdie uitspraak sal dit aanvaar word – aangesien daar geen ander voor die hand liggende maatstaf is nie – dat eerste verweerder geroepe was om op n oorwig van waarskynlikhede te beslis.'

¹⁶ *Inquest into the Death of Dr David Joseph Webster* Unreported WLD judgment by Stegmann J dated 22/1/1993 referred to, but not followed in *Goniwe* (supra note 8) at 879A–F.

¹⁷ At 879 E – F.

application in a criminal trial or for absolution from the instance in a civil trial and pointed out that it is problematic to apply a test applicable to adversarial proceedings in inquisitorial proceedings, such as an inquest. The court went on to say that:¹⁸

In deciding whether a *prima facie* case has been established some regard must, in my opinion, be had to the reliability and credibility of witnesses if they had given evidence at the inquest. The fact that evidence has been produced which, if accepted, would prove that some person has committed an offence which brought about the deceased's death will, in my opinion, not be sufficient to justify a positive finding if it is obvious to the officer presiding at the inquest that there is no prospect of such evidence being believed at a subsequent criminal trial.

[32] Insofar as the applicable standard of proof is concerned, the court stated that:¹⁹

Bearing in mind the object of an inquest it is my opinion that the test to be applied is not the 'beyond reasonable doubt' test but something less stringent. In my opinion, the test envisaged by the Inquests Act is whether the judicial officer holding the inquest is of the opinion that there is evidence available which may at a subsequent criminal trial be held to be credible and acceptable and which, if accepted, could prove that the death of the deceased was brought about by any act or omission which involves or amounts to the commission of a criminal offence on the part of some person or persons.

[33] In the matter of *Padi*,²⁰ the court considered the above-mentioned conclusions in the matters of *Webster* and *Goniwe* concerning the standard of proof applicable to findings in terms of section 16(2)(d) of the Act. The court supported the reasons advanced in *Goniwe* for disagreeing with the conclusion in *Webster* that the standard is proof beyond a reasonable doubt. Reference is then made to the unreported judgment of Levy J delivered on 23 June 1994 in the Namibia High Court in the inquest into the death of Adv ATEA Lubowsky that fully supports the rejection by the court in *Goniwe* of the beyond a

¹⁸ At 879H – 880A.

¹⁹ At 880B-C.

²⁰ *Supra* note 9.

reasonable doubt standard in *Webster*, describing it as 'obviously incorrect'. Levy J then commented as follows with regard to the application of the standard:²¹

However, I respectfully do not agree with Zietsman JP when he says in respect of the words '*prima facie*' that 'the test envisaged by the Inquests Act is whether the judicial officer ... is of the opinion that there is evidence available which may at a subsequent criminal trial be held to be credible and acceptable'. For reasons I have already stated, there may be no criminal trial. The judicial officer is required on the evidence and documentation submitted to him to decide whether or not a witness is 'credible and acceptable' and if he is not his evidence must be rejected. If the judicial officer rejects that evidence, he may nevertheless be left with some remaining evidence '*prima facie* involving' a person or 'amounting to an offence' by a person. If the person so incriminated gives evidence in the inquest court, which is acceptable to the judicial officer and which gainsays the 'remaining evidence', there is then no '*prima facie* evidence involving or amounting to an offence. Should the evidence not be acceptable to the inquest officer, the remaining evidence may well '*prima facie* involve' a person or 'amount to an offence'.

[34] The court in *Padi*²² supported the approach of Levy J to the application of the standard, which differs from that set out in *Goniwe*. The court indicated that the judicial officer holding the inquest is not required to determine the section 16(2)(d) findings, with reference to the credibility and acceptability that the evidence at the inquest might enjoy in a criminal trial. An inquest would not necessarily result in a criminal prosecution. It is an independent, separate process of significant import. The findings must be based on the presiding officer's own impressions and insights, and directed at the object of the inquest and fulfilling the task of the presiding officer. In this regard, presiding officers are not required to place themselves notionally in the shoes of the criminal court.

[35] I agree with the conclusion that the beyond reasonable doubt standard does not apply to inquests. I respectfully disagree with the application of the '*prima facie* test set out in *Goniwe* and approach the present matter on the basis set out in *Padi* and *Lubowski*, with

²¹ This extract has been reproduced in (and is quoted from) *Padi* at 739G-I.

²² At 740G-I.

which I concur. The credibility and acceptability of the evidence must be decided on the totality of the evidentiary material placed before the hearing. The critical question is whether, in the opinion of the presiding officer, the evidence, on the face of it (or at first sight), indicates that the death resulted from criminal conduct on the part of a person or persons. In my view, this exercise is best captured by the following description of a *prima facie* case set out in *Mazibuko*²³ (and to be applied *mutatis mutandis*), namely whether 'a court, applying its mind reasonably, could conclude on the evidence in the case that the injuries to the plaintiff were caused by the negligence of the insured drivers'.

[36] Applying the last-mentioned approach to the present matter, the issue is whether the court could conclude, applying its mind reasonably to all the evidentiary material, that the deaths were caused by criminal conduct on the part of a person or persons. This is the approach that I will adopt to the matter.

THE EVIDENCE

[37] Extensive evidence was presented at the hearing, which lasted approximately five weeks. To promote a better understanding of the expansive account of the evidence that was led contained in the summary annexed to this judgment, I will proceed to give an overview of the evidence under the following subheadings: (a) the affected individuals; (b) early interactions with the authorities and the APLA theory; (c) the role of Dr Edelmann; (d) investigation by Captain Darryl Els; (e) intimidation and surveillance; (f) encounters with informants and witnesses; (g) systemic, investigative, and institutional failures; (h) the fingerprints debacle; (i) ballistics and explosives failures; (j) other investigative lapses; (k) failure to hold a timely inquest; (l) political interference; and (m) narratives.

²³ *Mazibuko v Santam Insurance & Another* 1982(3) SA 125 (A) at 133E-F.

Overview of the evidence

(a) The affected individuals

[38] The evidence showed that the victims, survivors, and affected relatives were deeply impacted by this senseless attack.

Victims

[39] Royce Michael Wheeler was a 46-year-old married man who was shot and killed.

[40] Deric John Whitfield was a 42-year-old married man and a respected businessman. During the shooting, he sustained a bullet wound to the chest and abdomen, which resulted in his death.

[41] Stanley Hacking was a 65-year-old widowed father. He was a regular patron at the hotel. He sustained bullet wounds to the chest, which ruptured his heart and lungs, resulting in his death.

[42] Deon Wayne Harris, the youngest victim, was a 26-year-old man with a bright future ahead. He was watching rugby on the day of the massacre. He sustained bullet wounds to his right and left lungs, which killed him. Deon would have celebrated his 27th birthday on 13 May, which was also the date that his sister, Lyndene Page, was due to give birth to his first niece.

[43] Douglas William Gates, a well-known and loved figure in East London, was 56 years old. He had a deep love for animals and worked at the SPCA. Douglas sustained a bullet wound to the abdominal wall, rupturing the blood vessels in his groin and buttocks, which led to his death.

Survivors

[44] Survivors described how their lives were not only devastated on the night of 1 May 1993, but in the decades that followed.

[45] The immediate aftermath of the Highgate Massacre left survivors and victims' families not only dealing with catastrophic physical and psychological trauma but also confronting the justice system, seeking justice for over three decades.

[46] Neville Beling ("Neville") was 20 years old at the time of the attack. He is a survivor of the Highgate Massacre. He is permanently disabled as a result of being shot. Neville sustained multiple gunshot wounds to his left arm, leg, and back, never worked again after the attack, and endured more than 15 major surgeries, developing sepsis and suffering multiple instances of heart failure due to anaesthesia. His life has been one of physical suffering and emotional trauma, compounded by the lack of justice. He testified in the inquest.

[47] Karl Andrew Weber was 37 years old at the time of the attack. He is another survivor who continues to live with emotional and physical scars. He was at the Ladies' Bar at the hotel when gunmen opened fire. He was shot, which resulted in his left arm being amputated below the elbow, rendering him partially disabled with only 40% functionality in his remaining right arm. This led to the loss of his job, home, car, and relationships. He also testified in these proceedings.

[48] Bureaucratic indifference was exemplified when Weber was initially denied a disability grant, with authorities arguing he still had one functional arm and both legs, receiving only R460.00 per month after legal intervention.

[49] Another survivor, William Freddie Baling, was 45 years old at the time. He went to the hotel with his brother, Keith Baling. They went to the public bar where they intended to play pool. He was shot in his lower back, which resulted in serious injuries. He has also

been in and out of the hospital ever since the attack. He indicates that he has not gone a single day without pain since the Highgate Massacre and says that he has never been able to return to work since.

[50] Megan Nadine Boucher was 22 years old at the time of the shooting. She was present with Karl Webber, Doreen Rossouw, and Douglas William Gates. Whilst sitting at the old Ladies' Bar, she was shot in her right leg, which resulted in serious mental and physical injuries.

[51] Nkosinathi Alfred Gontshi was a barman at the hotel and on duty on the night in question. He was 30 years old. Nkosinathi was sitting behind the bar counter when gunmen opened fire, which resulted in a gunshot wound to his right leg. Although he survived the attack, he has since passed away.

[52] Doreen Rossouw, another survivor who has since passed away, was at the Highgate Hotel having a drink with a colleague when gunmen opened fire. She was 57 at the time of the shooting and sustained injuries as a result of being shot in the leg.

[53] Finally, Charles John Bodington was 40 years old at the time and sustained serious injuries in the attack.

Relatives

[54] As indicated, Lyndene Page is the sister of Deon Wayne Harris. She was 25 years old and pregnant with her first child at the time of the attack, which resulted in the untimely death of her brother.

[55] She has fought to keep the story of her brother alive and to demand accountability. Her advocacy reflects the resilience of the families who have had to endure the burden of living without loved ones, losing their solace and support.

[56] Bernice Whitfield was left without money or food to support her three children after the death of her husband, Deric Whitfield, having not received any insurance payout. Ten months later, she lost her 20-year-old daughter, Chantelle, in a hit-and-run incident that police never meaningfully pursued.

[57] Yvette Wheeler, the daughter of the late Royce Michael Wheeler, confirmed that her father was the sole breadwinner of their household when he was murdered and that their family lost their house after his death. Further, she could not afford to go to university as a result of the dire economic impact of losing her father had on their family.

[58] The prolonged delay in addressing the Highgate Massacre has meant that some family members have since departed. Among those are:

- 58.1 The parents of Neville – Neville Beling Snr, who passed away on 8 June 2016, and Zilla Beling, who passed away on 24 November 2017.
- 58.2 The father of Lyndene Page and the late Deon Wayne Harris, Neville Henry Harris, died on 18 August 2002. Lyndene's mother, Cynthia Lynette Harris, passed away on 22 July 2023

[59] They went to their graves without closure.

(b) Early interactions with the authorities and the APLA theory

[60] Initially, survivors accepted the widespread media and police attribution of the Highgate Massacre to the Azanian People's Liberation Army ('APLA'). Neville Beling testified that he believed this narrative until 2005, when, during a mediation with former APLA commander Letlapa Mphahlele ("Mphahlele"), he was told that the attack did not match APLA's operational style and that a "third force" might have been involved. This revelation fundamentally altered the survivors' views of the Highgate Massacre and

catylased the formation of the Highgate United Group to seek a coherent investigation from the authorities.

[61] Karl Weber described in his testimony the profound psychological impact of learning that the accepted or dominant narrative might be false. He described how some of the survivors, when they felt insecure or threatened, received personal protection arranged by Mphahlele. Such support was not forthcoming from the South African Police Services ("SAPS").

(c) **Role of Dr Edlmann**

[62] Dr. Tessa (Theresa) Edlmann's ("Dr. Edlmann") involvement marked a critical turning point in the survivors' and families' quest for justice. Her December 2006 memorandum to the National Prosecuting Authority ('NPA') formally requesting renewed investigation and regular quarterly updates represented the first systematic attempt to re-engage official channels.

[63] Dr. Edlmann helped to organise the first gathering of Highgate Massacre survivors in September 2006 at the Kennaway Hotel, East London. This was their first meeting in 13 years, where an emotional reunion exposed deep anger and confusion among survivors who had all along firmly believed that APLA was responsible.

[64] Dr. Edlmann's support extended far beyond organising meetings to encompass comprehensive advocacy and personal care for survivors over two decades. Through the Spirals Trust, she facilitated critical reconciliation processes, including the 2005 mediation between survivors and former APLA Director of Operations, Mphahlele.

[65] She provided extensive personal support to survivors like Neville Beling, facilitating his medical treatment, surgeries, and accommodation during health crises, while highlighting his immense courage and resilience despite overwhelming physical and emotional trauma.

[66] Dr. Edlmann also documented the severe neglect experienced by survivors, revealing that, contrary to assumptions about white victims having adequate insurance/financial stability, many lived in dire poverty, such as Francina Wheeler, the widow of Royce Michael Wheeler, who resided in a garage without running water, as she received no insurance payout.

[67] Her work involved coordinating multiple families and survivors, as is apparent from her 2006 memorandum, ensuring they remained collectively engaged with authorities and maintaining detailed records that would later prove crucial to this inquest.

(d) Investigation by Captain Darryl Els and betrayal of the survivors

[68] In 2007, the survivors' desperation for answers led them to fund their own investigation, raising R5,000.00 to send SAPS Captain Daryl Els ("Els"), who had been the investigating officer from 13 May 1994 to 5 December 1998, on an investigation mission to Gqeberha/Port Elizabeth and Cape Town. Els claimed to have discovered evidence linking the attack to military-trained operatives of the Hammer Unit who had used a training site near Addo Elephant Park, where structures mimicking the Highgate Hotel were allegedly used for training.

[69] However, after completing his mission and claiming he had identified the perpetrators in a telephone call with Neville Beling, Els abruptly stopped communicating, later claiming his laptop containing all evidence had been stolen, leaving the families further traumatised.

[70] Els' investigation introduced tantalising, but ultimately unverifiable leads, including claims about Wayne Grobler ("Grobler") allegedly confessing to driving the getaway vehicle and Pieter John Woest Hall as giving the order, along with Major General CP van der Westhuizen, Andries Struwig, Captain FP du Preez, and Sergeant Major MD Hom as

participants. This explosive confession was relayed to the court through Frans Swele Molokome ("Molokome"), who supposedly also heard this evidence at Grobler's house in Cape Town. No formal statement was submitted by him at the time of allegedly hearing Grobler's confession. Grobler later denied ever meeting Els and having resided in Cape Town.

(e) Intimidation and surveillance

[71] The survivors' pursuit of truth was accompanied by incidents suggesting active intimidation, including but not limited to:

71.1 The mysterious 1995 shooting at Neville Beling's home, where automatic gunfire narrowly missed his cousin, and police later claimed the recovered projectile was just "a piece of metal". This demonstrated the dangers faced by those seeking answers.

71.2 Lyndene Page also recalled what she suspected was phone tapping in 2010, when she and Neville Beling noticed strange noises and echoes on their calls before a meeting at Highgate.

[72] According to Lyndene and Neville, when they attempted to report their concerns about phone tapping to the Cambridge Police Station, Colonel Steven du Rand ("Du Rand") refused to take a formal statement, citing fears for his own safety and family, advising them to slip their statement under his office door after hours. Significantly, neither in his statement nor his testimony did Du Rand deny that this happened. He simply claimed that he could not remember. In my view, the version of the survivors can safely be accepted over that of Du Rand.

(f) Encounters with informants and witnesses

[73] The investigation conducted by the survivors and the victims' families attracted various accounts from informants, which, for the most part, amounted to a wild goose chase.

[74] Lyndene and Neville indicated that Frederick Doug Petzer (Dirk) ("Petzer") told them that his brother, Sergeant Zieg Petzer, warned him that "it is going down tonight". He claimed that his brother phoned him from a payphone inside the Highgate Hotel to say "it has gone down, it has happened" minutes after the Highgate Massacre had taken place.

[75] The present investigation officer, Captain Peterson, records that Petzer claimed that when he spoke with Lyndene and Neville, he was intoxicated. Petzer himself denied saying this.

[76] Further uncertainty arose from a chance approach to the family by Edward Baymen Lombard ("Lombard"), a former Rhodesian Army soldier, at Morgan's Bay during a private ceremony to scatter the ashes of Deon Wayne Harris. According to Lyndene, Lombard claimed that he had been with Deon during the Highgate Massacre, had pushed him down when the shooting started, and returned fire at the attackers. The randomness of his sudden appearance at a private family event understandably raised the family's suspicions.

[77] Over time, other figures stepped forward with fragments of information and theories that tended to complicate, rather than clarify.

[78] The families received an anonymous digital tip in 2012 from a source on MXit, an online chat platform, who claimed to possess footage of the attack. All to no avail. Neville disclosed this tip to the police, who obtained the necessary section 205 subpoena and executed a raid on the property where these tapes were allegedly held. Unfortunately, there was nothing related to the Highgate Massacre on these tapes, and they were mostly just pornography.

[79] Karl Weber testified about a former intelligence operative, Alan Douglas Elsdon ("Elsdon"), who reached out to him. Karl recounted that Elsdon said he had served in the police's Crime Intelligence Service since 1973 and later worked as a private investigator. However, Elsdon later testified that he had actually been a member of the Security Branch. Elsdon volunteered theories about planning, authorship, and targeting concerning the operation. In a subsequent call with Karl's attorney, Paige Winfield ("Winfield") of Cliffe Dekker Hofmeyr ("CDH"), he identified two men (one deceased) as supposed suspects based on a source he called "Hennie" (later identified as Hendrick Louw), who refused to reveal what he knew when approached by Winfield.

[80] In messages introduced from Annexure B to Karl's affidavit, being screenshots of his conversations with Elsdon, the latter dismissed suggestions that ballistic exhibits were posted to Cape Town as "nonsense," insisted Highgate (not Orange Grove) was the intended target, and opined that the attack was "a bright idea from someone higher up" rehearsed in detail.

[81] Roland Parker's ("Parker") evidence independently corroborates the pattern and tenor of Elsdon's approach. Parker testified that Elsdon contacted him via Facebook Messenger on 30 January 2025, soon after footage of the inquest inspection in loco was posted on Facebook. Elsdon demanded secrecy and expressly cautioned Parker not to inform Neville, Dr. Edlmann, or the legal teams. Elsdon asked Parker to send him reports on the daily inquest court proceedings and to confirm whether the "Hammer Unit" had

been mentioned. Elsdon passed on articles and an e-book ("My Cryptic Life") about the Hammer Unit to Parker and claimed that the unit was dangerous and still active.

(g) Systemic, investigative, and institutional failures

[82] Retired Brigadier Clifford Marion ("Marion"), the private investigator for the families, set out a litany of investigative lapses and blunders.

[83] Marion testified that "certain shortcomings amount to gross negligence on the part of the responsible authorities," notwithstanding the involvement of senior and experienced police officers in the investigation. He summarised multiple lapses, including:

- 83.1 The scene was not properly investigated,
 - 83.1.1 No effort was made to lift fingerprints from the spent cartridges and grenade levers,
 - 83.1.2 Elimination prints were not taken;
- 83.2 Crucial evidence, such as the ballistic and fingerprint evidence, was lost.
- 83.3 Important statements linking identity photo parades were not completed;
- 83.4 The docket was dormant and seemingly missing for several years, resulting in virtually no investigations during a period of more than 11 years from December 1998 to August 2010;
- 83.5 In addition, there were unexplained and lengthy investigative delays, indicating that the investigations were conducted with little or no urgency.
- 83.6 In particular, these included several key aspects that were not investigated:

83.6.1 the alleged Citizen Newspaper call on 3 May 1993, claiming that APLA was responsible for the attack, was not traced;

83.6.2 the call allegedly made from the Highgate Hotel phone booth was not traced;

83.6.3 the alleged getaway vehicle with the number plate starting with the letters and number XB 3 was not traced;

83.6.4 fingerprints were not lifted from the AK-47 cartridges or the fly-off levers of the grenades found on the crime scene.

[84] Marion indicated that suspects often leave trace prints on ammunition while loading it, and such prints could have been matched against the AFIS system introduced in 2000-2001 or the Home Affairs ABIS database. However, there is no evidence suggesting such items were tested for prints, and not a single officer on the scene confirms or states this happened.

[85] Captain Peterson's characterisation of this failure as "a serious blunder" highlights the magnitude of this neglect, particularly when contrasted with the elaborate fingerprint elimination exercise that apparently followed the incident, involving 64 individuals whose prints could not be matched against negligible or non-existent scene evidence.

[86] Several police officers who were involved in the crime scene investigation and subsequent tasks, such as photo ID parades, did not make statements, including:

86.1 Warrant Officer Venkile, Sergeant Rutters, Warrant Officer Roos, and Sergeant Els;

- 86.2 Sergeant Bossr, who attended the crime scene from 1 May 1993 to 2 May 1993, who only submitted an affidavit some 31 years later on 3 February 2025;
- 86.3 Sergeant Brandt, the explosives expert who attended the scene;
- 86.4 Sergeant Wayne Xavier Rutters, who conducted photo identifications with various witnesses soon after the attack, testified that he normally would have compiled a statement documenting the identifications as per standard procedure. He could not recall whether he made a statement or not, but admitted that the omission was "disturbing" given the high-profile nature of a case involving five murders;
- 86.5 Warrant Officer David Henry Roos also conducted photo identification parades, in which positive identifications were apparently made. He did not depose to any statement in connection with his investigations. When Roos testified, he claimed to have no recollection of his investigative steps. The complete absence of any recollection by Roos of his involvement in the investigation exemplifies the chaotic and shockingly poorly documented nature of the initial investigation;
- 86.6 Dean George Venish was a Constable or Lance Sergeant in the Dog Unit in 1993, and one of the first responders on the scene. He witnessed one of the injured patrons refer to the attackers as "those bloody whites". No statement was taken from him until 2012, nearly 19 years after the incident. Venish expressed surprise at this delay, stating, "I was surprised that nobody was coming."

[87] Certain affidavits were missing from the docket, including that of:

- 87.1 Captain Schwartz, who attended the crime scene from 3 May 1993 to 12 May 1993; and

87.2 Lieutenant Colonel W J De Lange, a member of the Security Branch whose affidavit, filed as A51, prompted the arrests of Xolile Ngxabane and Dumisile Nontshokweni.

[88] Four warrants of arrest are missing from the docket.

[89] The docket is entirely silent on why Mtutuzeli Mama was arrested and charged on 29 April 1994 and the charges were withdrawn against him on 2 May 1994.

[90] All the ballistic evidence, including all cartridges (except for the projectile recovered from Neville Beling), was apparently stolen from the Cape Town Post Office on 14/15 July 1995.

[91] Colonel Victor Jacobus Van der Merwe ("Van der Merwe"), who prepared the ballistic report, expressed bewilderment that someone would target a package containing spent cartridges with no commercial value. The loss of the cartridges prevented them from ever being uploaded onto the Integrated Ballistics Identification System ("IBIS"), which was introduced in 1997, thus permanently closing the possibility of linking any recovered weapons to the massacre.

[92] According to Marion, in his experience, it was never standard procedure to send important exhibits by post. He asserted that it was standard procedure to protect the integrity of the chain of custody by hand-delivering exhibits to the forensic science laboratory.

[93] Marion concluded that:

“... this investigation was grossly substandard. But for these blunders, this investigation may have solved this brutal crime, particularly if forensic evidence had been properly collected, safeguarded, and tested. Such gross incompetence inevitably gives rise to a deep suspicion on the part of the survivors, families, and members of the public that the investigation was designed to fail. I fully understand the sentiment.”

[94] Some of these lapses are dealt with in greater detail in the summary of evidence that accompanies this judgment, marked Annexure ‘A’.

(h) The fingerprints debacle

[95] A consideration of the forensic examination of the Highgate Massacre crime scene revealed serious failures in basic evidence preservation and collection, especially in relation to fingerprints. These lapses fundamentally compromised the investigation from its inception.

95.1 Constable Johannes Frederick van Deventer du Plessis (“Du Plessis”), the crime scene photographer, arrived at the Highgate Hotel at approximately 22h40 on 1 May 1993. He was also a fingerprint expert, and confirmed that prints should have been taken from critical pieces of evidence, including the teargas canister and grenade, and teargas levers; however, he did not know or could not recall whether that was done or not.

95.2 The fifth and current investigation officer, Captain Peterson, conceded that a failure to lift prints would be a “terrible blunder,” emphasising that

fingerprinting should have been a basic investigative step, particularly given the gravity of a case involving five fatalities.

95.3 Captain Kelvin Cecil Swartbooï ("Swartbooï"), a SAPS fingerprint expert who examined, during January 2025, archived fingerprint evidence from the Highgate scene, acknowledged significant gaps in the original forensic examination, including the failure to fingerprint the 56 x AK-47 cartridges, the grenade lever, and the teargas canister lever, stating that if he had conducted the crime scene investigation, he would have fingerprinted these items.

[96] The investigation diary entry at C6 dated 2 May 1993 stated that fingerprints were lifted from the scene, yet by the start of the inquest, Captain Peterson found no records or documentation confirming this, and when he contacted the LCRC office, they claimed that a rainstorm had destroyed many records at the former Oxford Street premises.

[97] However, after a search for the missing fingerprint exhibits, which was started on 27 January 2025 through the LCRC archives, an envelope containing seven Foliens from the scene of the Highgate Massacre was discovered on 30 January 2025. The Folien had been so poorly stored, however, that it was completely unusable. That begs the question as to how such crucial exhibits (but not others) could have been found after a relatively short period of searching (approximately three days), and further as to how such critical evidence could have been stored so ineptly as to render it worthless.

[98] The original LCRC docket containing critical information, such as photo logs and evidence chain documents, has never been located. Du Plessis explained that the office had moved three times since 1993, which, in my view, does not in any way provide a justifiable explanation.

[99] The investigation diary entry at C6 dated 2 May 1993 confirmed that Lieutenant Stassen, Sergeant Naudé, and Constable Du Plessis attended the scene to conduct a forensic analysis. Du Plessis confirmed that his role was limited to photography while Stassen and Naudé were responsible for actual fingerprint collection.

[100] Consequently, Stassen, the senior fingerprint officer, became a crucial missing link in understanding the forensic failures.

[101] Stassen's inability to confirm whether critical evidence was fingerprinted, despite being the senior officer responsible for forensic investigation, exemplifies the systematic breakdown in evidence collection and documentation. His admission that he gave minimal instructions to his team and did not follow up on whether chemical fingerprinting was subsequently conducted represents a fundamental abdication of supervisory responsibility.

[102] The absence of a proper command structure compounded these failures. According to Stassen, Lieutenant-Colonel Knoetze, the LCRC commander, arrived at the scene but immediately departed upon seeing him present. Inexplicably, a lieutenant was left to supervise a mass murder scene without oversight.

[103] This created a situation where, as Stassen explicitly admitted, "nobody" was responsible for ensuring Sergeant Naude performed his work properly, with Naude working "on his own time" despite Stassen outranking him as a lieutenant, as against Naude's rank as sergeant. This reveals a complete breakdown in the chain of command and quality control at one of the most serious crime scenes in East London's history.

[104] The forensic investigation's credibility was further undermined by Stassen's contradictory testimony about his activities during the seven hours at the scene. While initially claiming in his YouTube post to have been "incredibly busy," he later admitted under cross-examination to not conducting an initial scoping of the scene and spending virtually all of his time "outside talking to colleagues". He claimed quite astoundingly that his subordinates needed no supervision as they were experienced.

[105] A further investigation diary entry at C55, dated 27 May 1993, noted that fingerprints and palmprints were taken from potential suspects and handed to LCRC, with an elimination report pending. Yet, no such report exists in the docket.

[106] It is little wonder that Marion was moved to describe the crime scene and subsequent investigation as a "disgrace".

(i) Ballistics and explosives failures

[107] The bungling of the handling of the ballistics evidence eliminated any possibility of linking the weapons used to their sources or to other crimes.

[108] As stated, Van der Merwe, the ballistics expert who analysed the crime scene evidence, revealed that the original forensic docket containing all ballistic exhibits, including 56 spent cartridges, bullets, reports, and covering letters, was apparently stolen from the Cape Town Post Office in July 1995.

[109] This theft meant that the cartridges and their headstamps, which would have identified the country of origin, manufacturer, and lot numbers of the ammunition, could never be analysed. According to Van der Merwe, such evidence could have been used

to trace whether the ammunition came from domestic sources like Pretoria Metal Pressings (“PMP”) or foreign suppliers.

[110] Van der Merwe determined that at least two AK-47 rifles were used in the attack, with 19 spent cartridge cases matching one weapon and 28 matching a second, but, as mentioned above, the theft of these exhibits meant they could never be uploaded onto the IBIS system, thereby eliminating any possibility of future matches if the weapons were recovered.

[111] The explosives evidence was similarly mishandled, with critical identification opportunities lost. Charl Jurgens Naudé (“Naudé”), the ammunition expert called by the families, identified the teargas grenade as locally manufactured by Swartklip Products and primarily used by the police and selected army units, while the hand grenade lever was consistent with Soviet F1 or RDG series grenades.

[112] Despite these items possibly bearing fingerprints, Du Plessis confirmed that no fingerprints were taken from either the teargas canister or the grenade metal levers.

[113] Van der Merwe's crime scene observations documented approximately 30 bullet holes in the public bar area alone, with seven in the passage leading to the Ladies' Bar, seven in the Open Arms Bar, and three fired from behind the bar counter, possibly from civilian return fire. His analysis of the Ladies' Bar, where four victims died, noted the complete absence of bullet marks on walls or ceilings, which he interpreted as indicating the assailant's bullets found their targets with unusual accuracy and proficiency, suggesting either semi-automatic fire or controlled bursts rather than the full-automatic spray typical of untrained operators.

[114] Van der Merwe explained that AK-47 cartridges from Russian or Chinese origin often include minimal markings, sometimes merely numbers such as "531," while South African-manufactured ammunition from PMP could be distinguished by specific characteristics. Upon examining photographs of the crime scene, he observed unusually shiny cartridge cases that could possibly have indicated PMP manufacture, but without the physical exhibits, these assessments remained speculative, and Van der Merwe declined to make assumptions in this regard.

[115] The explosives evidence pointed to military or police sources. Naudé's expert analysis determined that the CS teargas grenade was manufactured by Swartklip Products (later absorbed into Rheinmetall Denel Munition) and distributed through SAP central depots or military depots such as De Aar, Naboomspruit, or Jan Kempdorp for controlled distribution to trained personnel.

[116] The hand grenade components, specifically the UZRGM fuse fly-off lever, were identified by Naudé as Soviet-manufactured, typically smuggled into the country from Soviet bloc states. Naudé's examination of blast damage at points X, Y, Z, and A1 in the photographs of the scene, found that it was consistent with an RDG-5 grenade (which is classified as an offensive grenade with more so-called "explosive power" having 100 grams of TNT compared to an F1 grenade's approximately 60 grams of TNT) rather than an F1, based on the absence of large floor gouges and the specific carbonisation pattern left by TNT.

(j) Other investigative lapses

[117] The investigation into the Highgate Massacre was characterised by a pattern of negligence that extended far beyond the initial crime scene failures.

[118] Captain Peterson, who inherited the investigation in August 2021, testified that the docket he received contained 76 statements, many of which were copies, uncommissioned, or unsigned, with statements A2, A3, A4, A7, A8, A9, A10, A12, A13, A15, A16, A17, A18, and A49 among those lacking proper commissioning.

[119] The investigation diary revealed a disturbing pattern of instructions having been ignored and duties neglected, with multiple entries between June and August 1994 showing commanders instructing that an inquest docket be prepared, yet it was never completed despite assurances that statements were being typed.

[120] The peculiar interventions of various "investigators" reveal a pattern of not just gross incompetence but, it appears, deliberate misdirection. Elsdon testified that Els had told him the SAPS prevented him from fully investigating the Highgate Massacre and that a covert SADF group known as the Hammer Unit was responsible. Elsdon provided Captain Peterson with the names of two alleged Hammer Unit members, the brothers Marius and Fanie van Zyl, in February 2023, yet none of these so-called leads proved to be fruitful.

[121] The investigation's treatment of APLA-related evidence reveals selective blindness. Dumisani Ncamazana ("Ncamazana"), who was convicted for, inter alia, a separate 1994 Highgate attack, explicitly denied involvement in the 1993 Highgate Massacre and rejected various claims that he had admitted responsibility as "not true."

[122] More significantly, Letlapa Mphahlele testified unequivocally that APLA was not responsible for the May 1993 attack, listing multiple reasons why it was inconsistent with APLA operations: attackers wore balaclavas (never used by APLA), used tear gas for retreat (unprecedented in APLA operations), faces were painted (not typical), and the weapons used were not consistent with APLA's arsenal at the time. He emphasised that all APLA operations during his tenure were meticulously documented and archived, but

no records exist of the May 1993 Highgate attack despite extensive state raids on these archives.

(k) Failure to hold a timely inquest

[123] One of the most troubling aspects that has emerged during the hearing is the extraordinary delay of 32 years in establishing an inquest.

[124] Despite the legal requirement that an inquest be held whenever someone dies from unnatural causes and no criminal trial ensues, no inquest was convened in 1993 or the years thereafter. Section 5(2) of the Inquests Act requires that a magistrate "shall ensure that an inquest is held" when deaths occur from unnatural causes without prosecution.

[125] The investigation diary shows that Captain Ian Swarts ("Swarts") repeatedly instructed between June and August 1994 that an inquest docket be prepared, yet these directives were systematically ignored without explanation.

[126] Captain Peterson confirmed that, despite the legal requirement, no inquest was convened in 1993 or the years immediately following.

[127] When the docket was forwarded to the Attorney General's office between November 1994 and January 1995, it was returned with no recommendations for further investigation, effectively abandoning the case.

[128] This represents a cynical failure of the justice system. As a result, the burden of seeking justice fell entirely on the traumatised survivors and bereaved families, who were

forced to become their own investigators while struggling with severe physical disabilities and psychological trauma.

[129] The families were subjected to what Dr. Edlmann characterised as repeated cycles of false hope.

[130] The docket's transfer to the TRC created a hiatus in the investigation, with Captain Peterson confirming that during this period, no police officer was actively working on the case since the docket was apparently not in their possession.

[131] When Lieutenant Colonel Mahlangu queried in the investigation diary on 5 August 2014 whether there was any evidence, Nel's response simply noted it as a "CATS enquiry" and TRC case without addressing the evidentiary issue.

[132] The 32-year delay, combined with the State's abdication of its investigative duties and the burden placed on traumatised survivors to pursue their own justice, represents not merely procedural failure but a fundamental breach of the constitutional promise of dignity and justice for all citizens.

[133] I am constrained to say in the circumstances that the 32-year delay in holding an inquest, combined with the systematic failures documented here, actually approaches the fundamental dereliction of a constitutional duty, rather than just mere neglect.

(l) Political interference and 'closure' of apartheid era cases

[134] This inquest has also touched on the broader context of why so many apartheid-era atrocities, including the Highgate Massacre, were not pursued by prosecuting authorities following the winding up of the Truth and Reconciliation Commission ('TRC').

[135] Advocate Mthunzi Mhaga ("Mhaga"), a Special Director and Head of the Legal Affairs Division in the National Prosecuting Authority ('NPA'), testified that between 2006 and 2009, he was based at the Priority Crimes Litigation Unit (PCLU) working on the TRC cases. More particularly, he worked on the Highgate matter between 2006 and 2007.

[136] Mhaga confirmed that during these years, the NPA had no investigative support and was unable to investigate the TRC cases, including the Highgate case. Nonetheless, he attempted to carry out informal or preliminary investigations himself to try and get the case off the ground, even though he possessed no investigative powers and enjoyed none of the resources of the police. Unsurprisingly, he was unable to make any progress.

[137] The families' legal team placed on record that political interference in the work of the NPA brought a halt to the investigation of the TRC cases, between 2003 and 2010, when both the Directorate of Special Operations and the SAPS refused to investigate the cases, even though they concerned the most serious crimes involving murders and massacres.

[138] Indeed, the Court was informed that the families of the Highgate victims (along with other victims of apartheid-era crimes) have recently initiated litigation against the South African Government, seeking constitutional damages and an inquiry into the systemic suppression of these cases. Correspondence featuring in this litigation was put up confirming that the NPA was denied investigative support during this period.

(m) Narratives

[139] Since nobody applied for amnesty for the Highgate Massacre, and no one with real inside information has come forward, there are no identifiable individual suspects in this matter.

[140] What is left are several narratives or theories that might serve to explain the Highgate Massacre. However, there is no hard evidence to sustain any of the narratives.

[141] Louise Flanagan, in her report "Attack on the Highgate Hotel: The Eastern Cape context" ("the Flanagan Report"), notes:

"Highgate was not an armed robbery. There does not appear to be any evidence that this attack targeted an individual over a personal grievance. This attack appears to be political violence, carried out at a time when political violence was being used to whip up support for certain groups, encourage fear, and encourage anger towards other groups, during a crucial time of negotiations and transition."

[141] The Court had the benefit of hearing the expert evidence of Brigadier Marion, who explored five possible narratives:

141.1 The APLA narrative.

141.1.1 The APLA narrative originated on the night of the massacre, according to the Investigation Diary entry at 23:30 on 1 May 1993. The press ran sketches nationwide with a R150 000.00 reward authorised by Major General Huggett and Minister Hernus Kriel,

attributing the attack to APLA. Some 64 persons connected to APLA and the ANC were questioned, with fingerprints and palm prints checked. Several were arrested, and at least one (Mama) was formally charged, though charges were later withdrawn.

- 141.1.2 Marion noted Flanagan's research showing the South African Police ('SAP') raided PAC homes and offices nationwide on 25 May 1993, arresting 81 PAC members and seizing documents. Despite these raids occurring weeks after Highgate, there did not appear to be anything uncovered linking APLA to the Highgate Massacre. Large numbers of PAC/APLA files seized during the 1995 SADF raids in Umtata and Lesotho similarly revealed no Highgate connection. APLA commander Mphahlele commented on the absence of evidence in these files.
- 141.1.3 Marion quoted Flanagan's critical observation: "If this attack was carried out by an APLA unit, what happened to those involved? Why did they not claim amnesty, as for similar attacks?" The standard APLA practice involved geographically separate groups knowing of operations. However, it is the operational unit and commanders who would claim media responsibility.
- 141.1.4 Marion concluded that, in his view, the investigation pertaining to APLA had been thoroughly conducted, with APLA command categorically denying involvement. He noted APLA claimed responsibility for 36 of 64 attacks listed in Robert John Tyrrell's ("Tyrrell") report. Thus, suspects' particulars, fingerprints, and weapons from other attacks should have been linked to this attack by now, at least by way of the palm-prints and ballistic evidence. However, he acknowledged that the possibility cannot be ruled out that renegade APLA operatives committed the attack and kept quiet

and did not apply for amnesty, though this remains in the realm of conjecture or speculation.

141.2 The Hammer Unit narrative.

141.2.1 This theory emerged during Els's private investigation in 2006 when he told Neville Beling that a "Third Force" called the Hammer Unit was involved. At a Kennaway Hotel meeting on 28 November 2006 in East London with survivors and Mphahlele, Els stated that the attackers were not APLA, listing multiple inconsistencies, namely:

- (a) Attackers wore black/dark blue, used AK-47s, hand grenades, and teargas, which APLA did not;
- (b) APLA used R1s, R4s and R5s as they could not get AK-47 ammunition;
- (c) Withdrawal under teargas was a first;
- (d) Some attackers had black camouflage paint, suggesting they were white;
- (e) No vehicles were reported stolen/hijacked before the attack, unlike typical APLA operations;
- (f) Attackers showed greater training and shooting accuracy than in APLA incidents;

- (g) AK-47s were never linked ballistically before or after, suggesting they were used specifically for that attack and destroyed;
- (h) Police received no intelligence reports on Highgate, unlike other attacks, and
- (i) No relevant documentation existed in the seized APLA files.

141.3 The Disgruntled Patrons narrative.

141.3.1 This narrative arose from multiple incidents on 1 May 1993, where black patrons experienced discrimination at the Highgate.

(a) The bar lady served cigarettes to two black males around 10h00, but told them they were out of stock for beer. Marion noted that it was highly unlikely that the Highgate would have actually run out of beer.

(b) One of the persons at the hotel, Arnott, told a black male who was using the public payphone that the phone was not a public phone and that there was a public phone down the road. The black male ignored him and continued using the phone. Eventually, he ordered them to leave the premises. They left the premises and drove off in a blue and white Toyota or Mazda bakkie with a white canopy in the direction of Summerpride.

141.3.2 Claassen furthermore observed two black men enter the Men's Bar at 11:25, with one grinning at him before they left after a hand gesture from barman Gontshi.

141.3.3 Marion noted this narrative suggested aggrieved patrons may have returned that night to exact vengeance against the white patrons and staff. This narrative, however, carries a low likelihood.

141.4 The Askari narrative.

141.4.1 Marion provided extensive detail on the Askari narrative, which Flanagan's research suggested as particularly compelling. Askaris were turned liberation movement members who underwent military training outside South Africa, were arrested on return, and either turned by the Security Branch's C1 unit or voluntarily became informers. They were trained in the use of Eastern Bloc weapons, including AK-47 rifles, Tokarev and Makarov pistols, limpet mines, Soviet F-1 hand grenades, and RDG-5 anti-personnel fragmentation grenades - matching Highgate evidence.

141.4.2 The East London Askari unit was established in the late 1980s (likely 1987-1988) under Eugene de Kock's overall Vlakplaas command. They initially rented a farm in the Summerpride area near the Johnson & Johnson factory and possibly on the Thornycroft Road, less than 5km from the Highgate Hotel, before moving to Greenfields in mid-1992. The unit grew from about 10 members in 1989 to a larger group by April 1993.

141.4.3 Eugene De Kock's amnesty testimony confirmed that he supplied Eastern Bloc weapons to East London operatives under Captain Willie de Lange's command, stating weapons were "for clandestine, covert operations which would have led to the death or injury of the enemy" and would "leave the impression that the Security Police

could not be connected... it would point in the wrong direction." Eugene De Kock testified he provided "four AK-47 assault rifles with magazines and 16 hand grenades" to East London operatives.

- 141.4.4 Alfred Benjamin "Ben" Bambatha's affidavits to Minister Sydney Mufamadi confirmed Askaris received "extensive firearms training" at locations including Westbank Prison shooting range and Mooiplaas Security Branch training area, with specialized Task Force training. Bambatha referenced planting weapons, including F1 hand grenades, at crime scenes. The unit's operations included murders rather than arrests, planting weapons to justify killings, executing alleged guerrillas following abduction, and effecting the disappearance of targets intending to join exiled movements.
- 141.4.5 Crucially, the Askari units were closed down at the end of April 1993, with Askaris paid out, just days before the Highgate attack. The SAPS payout list (Exhibit "CRMC2") revealed significant discrepancies: black Askaris received between R27 000.00 and R476 000.00 (most around R150 000.00), while white supervising officers received substantially more - P.J. Van Dyk (R796,525.73), E.A. De Kock (R1,001,444.46), and J.S. Vermeulen (R1,102,929.93). Marion noted that it is not known whether the discrepancy was known to the Askaris, but as suggested by Flanagan, the abrupt dismissal could have prompted some or a few of the Askaris to attack the Highgate Hotel with weapons at their disposal as an act of reprisal for their poor treatment.
- 141.4.6 Flanagan identified four crucial aspects: Askaris knew the Summerpride area well enough to identify escape routes; they likely knew Highgate was a police hangout where senior officers frequented; they had police weapons training, including from special

task force trainers; and they had access to unaccounted-for weapons provided by Eugene De Kock.

141.4.7 Captain Peterson's investigations traced and interviewed three Askaris: Fokazi, Oliphant, and Twala, all of whom denied involvement

141.5 The False Flag narrative.

141.5.1 Marion contextualised this narrative within the fragile 1993 transition period when the Transitional Executive Council announced elections for 27 April 1994. He testified: political violence was often used to try to sabotage the negotiation process, polarise communities, and erode trust. The Highgate Massacre might not be an isolated and seemingly random attack but rather part of a broader scheme orchestrated by those aiming to manipulate the fragile political climate.

141.5.2 He detailed how false-flag operations are designed to appear as though they were perpetrated by an entity other than the group actually responsible, calculated to generate sympathy for the attacked group and justify retaliatory operations. The TRC found the South African state responsible for various false-flag operations, including arranging Eastern bloc weapons caches to justify attacks on Botswana (1988), bomb explosions at Joubert Park and J.G. Strydom Hospital (1989), attacks on SAP Flying Squad headquarters using AK-47s and RGD-5 grenades (1989), planting arms at Khanya House and COSATU buildings, and various bombings of railway stations and power plants.

- 141.5.3 The day after Highgate, both the ANC and the Democratic Party suggested it was carried out by those wanting negotiations to fail. ANC Border official Mcebisi Bata stated that some people in the right wing are trying to whip up emotions, and some in the South African security forces, who are trying to mobilise whites against negotiations. Democratic Party MP Andre de Wet also said something to the effect of: "I'm personally not convinced it's APLA... As we move closer to an interim government and joint control of the security forces, such attacks will continue and escalate".
- 141.5.4 Flanagan's research revealed a covert SADF/SAP group operated in the Eastern Cape led by SADF officer Anton Nieuwoudt with access to weapons from Eugene de Kock, suggesting renegade elements might have carried out Highgate as a false-flag operation to instigate right-wing backlash and derail democracy.

Summary of the evidence

[142] An in-depth account of the witnesses' testimonies appears more fully from the summary of the evidence annexed to this judgment marked 'A', which must be regarded as having been incorporated herein.

CONCLUSION

[143] Even though the Highgate attack counts among the most devastating incidents of its nature at the time, we are nowhere closer to complete answers more than 30 years later. The attack was meticulously planned and callously executed with the precision of highly trained operatives. Its consequences were lethal, having virtually destroyed the

lives of the many affected parties who are left without any real redress. Its sheer wickedness is beyond comprehension. It is disconcerting in the extreme and an utter travesty if not a disgrace that so little effort has been made right from the inception to properly deal with this matter.

[144] The many examples of bungling, lapses, failures, and neglect in dealing with the matter are fully documented in this judgment. This includes improperly investigated crime scenes, failure to lift fingerprints from cartridges and grenade levers, missing elimination prints, lost ballistic and fingerprint evidence, incomplete statements linking photo parades, dormancy of the docket for over 11 years, and unexplained, lengthy investigative delays showing a complete lack of urgency. This state of affairs is simply shameful, and the main reason why this matter has seemingly landed in a dead-end. I agree with Brigadier Marion that the investigation was grossly substandard and but for these blunders, the investigation may have solved this brutal crime, particularly if forensic evidence had been properly collected, safeguarded, and tested. This incredibly gross incompetence inevitably gives rise to the suspicion that the investigation was designed to fail. I should, however, hasten to add that this inquest is capable of being reopened should the situation change or new information become available.

[145] In my view, the Highgate attack was more than likely a false flag operation, partly intended to wrongly implicate APLA. However, the narrative that APLA was responsible has been convincingly debunked in these proceedings, in particular by the evidence of Mr Mphahlele, as well as the expert testimony of Mr Robert Tyrrell, which can be accepted without reservation. Added to this is the evidence that the faces of the attackers were smeared black; the comment by one of the patrons referring to the attackers as whites; the credible and detailed evidence of Mr Karl Weber that one of the attackers was wearing police issue boots; the accuracy of the attack; the lack of any APLA operatives having applied for amnesty in respect of the incident; and the unusual modus operandi of the attackers, such as the use of AK-47s, the inability to link the spent AK-47 cartridges found on the crime scene to any other attack showing that 'clean' weapons were used, and the

use of tear gas as a cover to withdraw from the crime scene. The cumulative effect of all this militates against the involvement of APLA. Furthermore, on all accounts, Karl Zimbiri, who purportedly took responsibility on behalf of APLA for the Highgate attack, was a fictitious figure conjured up to perfect the false implication of APLA in this despicable deed.

[146] The remaining narratives can be safely discounted, save that the involvement of the Hammer Unit remains a possibility. It cannot presently be put higher than that. In my considered view, the involvement of elements within the Apartheid security forces is more probable than not.

[147] Being acutely aware that it was not possible to accomplish closure in this matter, I proceed to make the undermentioned findings in terms of section 16(2) of the Inquests Act.

FINDINGS

[148] In the result, I make the following findings:

(a) The identities of the deceased are –

(i) **STANLEY HACKING;**

(ii) **DOUGLAS WILLIAM GATES;**

(iii) **ROYCE MICHAEL WHEELER;**

(iv) **DEON WAYNE HARRIS**; and

(v) **DERIC JOHN WHITFIELD**.

(b) The cause of death of each one of the deceased is multiple gunshot wounds inflicted by an assault rifle(s).

(c) The date of death of each one of the deceased is 1 May 1993.

(d) The deaths were brought about by the offence of premeditated Murder in that the deceased were wrongfully and intentionally shot with an assault rifle(s). (I should add that the same applies to the survivors). The identity of the individual perpetrators is unknown, save that *prima facie* they were probably members of a renegade covert group within the Apartheid security forces, seemingly intent on derailing the political transition at the time, who staged the attack, to falsely implicate APLA.

CLOSING REMARKS

[149] It remains for me to express sincere appreciation for the invaluable assistance of both legal teams, as well as the investigating officer, Captain Peterson, who all helped to make this very difficult task somewhat manageable. Also, for the participation of all the witnesses, in particular, the survivors and affected families. It is my earnest wish that you will find closure in the fullness of time and that justice will eventually prevail. Last but not least, to the court's support

staff who perform an indispensable and often less conspicuous role. Not forgetting the members of the Media who conscientiously reported on the proceedings, thereby sharing the story of the Highgate Massacre with the nation.



A handwritten signature in black ink, appearing to be 'D.O. Potgieter', is written over a horizontal line. The signature is stylized and somewhat illegible. A small number '1' is written above the line on the left side.

D.O. POTGIETER

JUDGE OF THE HIGH COURT

APPEARANCES

- Counsel for The State: Adv F Bosman, Adv D Govender, Adv J Coltman, Adv N Mvandaba, Adv G Namba and Adv G Busakwe, instructed by National Director of Public Prosecutions, Makhanda
- Counsel for Victim Families: Adv H Varney SC and Adv R Richards, instructed by Cliffe Dekker Hofmeyr Inc, Johannesburg
- Dates of hearing: 27 January 2025 – 31 January 2025, 3 February 2025 – 7 February 2025, 24 March 2025 – 27 March 2025, 11 August 2025 – 13 August and 1 September 2025 – 4 September 2025
- Date of delivery of judgment: 1 December 2025