

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

CASE NO: 2026-026936

In the matter between:

JACOB GEDLEYIHLEKISA ZUMA

First Applicant

and

**THE CHAIRPERSON OF THE COMMISSION:
COMMISSIONER SISI KHAMPEPE**

First Respondent

SECRETARY OF THE COMMISSION

Second Respondent

ADVOCATE ISHMAEL SEMENYA SC

Third Respondent

COMMISSIONER FRANS KGOMO

Fourth Respondent

ADVOCATE ANDREA GABRIEL SC

Fifth Respondent

CALATA GROUP

Sixth Respondent

THABO MVUYELWA MBEKI

Seventh Respondent

NATIONAL PROSECUTING AUTHORITY

Eighth Respondent

**MINISTER OF JUSTICE AND CONSTITUTIONAL
AFFAIRS**

Ninth Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Tenth Respondent

**JOINT PRACTICE NOTE
(Special Allocation)**

1. Introduction

- 1.1. This matter has been set down for hearing as a special motion on 16-17 March 2026 before a Full Court as per the directive issued by the Honourable Acting Deputy Judge President. The matter has been specially allocated to Honourable Acting Deputy Judge President Modau, Honourable Judge Baqwa and Honourable Judge Modiba. The parties were directed, inter alia, to submit this joint practice note.

2. Contact details of counsel

- 2.1. Counsel for the first applicant (***Former President Jacob Zuma / First Applicant***)

- 2.1.1. Dali Mpofu SC
Tel: 010 900 2170
Cell: 083 260 1433
Email: dali.mpofu@yahoo.com / mpofupa@pabasa.co.za
- 2.1.2. Hangwi Matlhape
Tel: 010 900 2170
Cell: 083 503 4121
Email: matlhapeh@gmail.com
- 2.1.3. Nqabayethu Buthelezi
Cell: 082 801 4611
Email: benny@buthelezi.org
- 2.1.4. Katlego Monareng
Tel: 010 900 2170
Cell: 082 084 0870
Email: katlego@pabasa.co.za

2.1.5. Khosi Pama
Cell: 082 890 9267
Email: KhosiPama@gmail.com

2.2. **Counsel for the Second Applicant (*Former President Thabo Mbeki / Second Applicant / Seventh Respondent*)**

2.2.1. Ngwako Maenetje SC
Cell: 083 459 6358
Email: maenetje@duma.nokwe.co.za

2.2.2. Nyoko Muvangua
Cell: 072 415 3817
Email: nyoko@group621.co.za

2.2.3. Phumzile Sokhela
Cell: 068 587 1653
Email: sokhela@group621.co.za

2.3. **Counsel for the first to fifth respondents (*the Commission parties*)**

2.3.1. Tembeka Ngcukaitobi SC
Cell: 066 214 5508
Email: tembeka.ngcukaitobi@gmail.com

2.3.2. Makhotso Lengane
Cell: 084 567 8293
Email: Lengane@group621.co.za

2.4. **Counsel for the sixth respondent (*the Calata Group*)**

2.4.1. Howard Varney

Cell: 083 261 7062

Email: howardvarney@gmail.com

2.4.2. Dasantha Pillay

Cell: 082 771 0878

Email: dasantha.pillay@gmail.com

2.5. Counsel for the eighth respondent (NPA)

2.5.1. Name: Makhosi Gwala SC

Cell: +27 73 872 5859

Email: mgwala@law.co.za

2.5.2. Name: Yanela S Ntloko

Cell: +27 82 044 8108

Email: yntloko@counsel.co.za

2.6. Counsel for the tenth respondent (President Ramaphosa)

2.6.1. Name: Timothy Bruinders SC

Cell: (082) 551-9293

Email: bruinders@group621.co.za

2.6.2. Name: Irene de Vos

Cell: 079 440 7710

Email: irededevos@law.co.za

3. Nature of the application and relief sought

This is an urgent application for relief to:-

- 3.1. Declare the conduct of the first respondent in dismissing the application for her recusal to be unconstitutional and invalid in terms of section 172(1)(a) and 38 of the Constitution.
- 3.2. Review and set aside the decision of the first respondent delivered on 30 January 2026 on the grounds of PAJA, alternatively on the basis of the principle of legality.
- 3.3. Direct that the first respondent be removed from being a member and/or Chairperson of the Commission, alternatively directing the tenth respondent to terminate her appointment as such with immediate effect.
- 3.4. Declare all acts, decision, directives and proceedings undertaken by the Commission with the involvement of the Chairperson of the Commission whether directly or indirectly, are unlawful and of no force or effect, and constitute a nullity.
- 3.5. Recognise the seventh respondent as a co-applicant and joining Former President Mbeki as the second applicant.
- 3.6. Grant further alternative just, equitable and/or appropriate remedies in terms of section 172(1)(b) of the Constitution and/or section 8 of PAJA.
- 3.7. Grant punitive costs against opposing respondents and/or personal costs against the first respondent.

4. Issues to be determined

- 4.1. Three sub-applications serve before this Court: Former President Zuma's application to compel the Commission to produce full and complete record as required by Rule 53, Former President Mbeki's

application to be recognised as a co-applicant, and the (main) review application.

- 4.2. In respect of Former President Zuma's application to compel, he contends that this application must be determined upfront. The notice of motion did not contemplate any delivery date for the supplemented record as requested, and the Commission has not delivered same. The first applicant will therefore file separate heads of argument dealing specifically with the interlocutory application.
- 4.3. In respect of Former President Mbeki, the relief sought is for Former President Mbeki to be admitted as a co-applicant.
- 4.4. In respect of the main application the applicants have raised the following preliminary legal issues:-
 - 4.4.1. the application to compel;
 - 4.4.2. the application to be recognised as a co-applicant;
 - 4.4.3. the status of the answering affidavit in the proceedings before the Commission for the Chairperson's recusal;
 - 4.4.4. the non-opposition of the order of termination by the President;
 - 4.4.5. the nullity of the impugned decision on the basis of the non-participation of the other two Commissioners.
- 4.5. The first to the sixth respondents ("opposing respondents") oppose the contemplated relief in the main application. The eighth, ninth and tenth respondents abide the decision of the court. The eighth and tenth respondents have filed explanatory affidavits.

- 4.6. The opposing respondents raise the following preliminary legal objections:-
- 4.6.1. lack of permission in terms of Section 47(1) of the Superior Courts Act;
 - 4.6.2. prohibition against midstream reviews;
 - 4.6.3. the doctrine of separation of powers;
 - 4.6.4. abuse of process;
 - 4.6.5. unreasonable/undue delay.
- 4.7. The applicants oppose these grounds of objection.
- 4.8. In respect of the main application, the following issues require determination by this Court:-
- 4.8.1. The declaratory order sought in Prayers 2 and 7.
 - 4.8.2. The review relief sought in Prayers 2 and 3.
 - 4.8.3. The consequential order for just and equitable relief alternatively directing the President to terminate the appointment in Prayer 6; and/or
 - 4.8.4. The scale and nature of the costs order.
- 4.9. The opposing respondents seek all applications and/or issues referred to above to be dismissed with costs.

4.10. The eighth and tenth respondents have filed separate explanatory affidavits.

4.11. The eighth respondent will be present in Court at the hearing of this matter and will be available to assist the Court and to provide any clarification that this Honourable Court may require in relation to the contents of its explanatory affidavit or any matter arising therefrom.

5. Summary of submissions by Former President Zuma

5.1. Former President Zuma submits that his application to compel production of the record must be determined upfront as the outcome thereof is likely to have ramifications for the future conduct of the main application.

5.2. Former President Zuma submits that the relief sought against the tenth respondent is not opposed by the tenth respondent, therefore should be granted on an unopposed basis.

5.3. He further submits that:-

5.3.1. the impugned conduct of the Chairperson is in breach of various fundamental rights and/or other provisions of the Constitution;

5.3.2. the impugned decision/ruling is reviewable and ought to be set aside in terms of PAJA;

5.3.3. the impugned decision/ruling is reviewable in terms of the principle of legality;

- 5.3.4. the conduct and/or decision ought properly to be set aside with further just and equitable remedies including the removal of the Chairperson;
 - 5.3.5. alternatively to 5.3.4 the President ought to be directed to terminate the Chairperson's appointment; and/or
 - 5.3.6. the first respondent is to pay the costs on the punitive and/or personal scale with the punitive orders to be paid by all the opposing respondents, jointly and severally, the one paying the other to be absolved.
- 5.4. The main grounds for the relief sought are allegations of:-
- 5.4.1. actual bias based on alleged misconduct in the form of coaching one side in the Semenya SC recusal application (this is asserted only by President Zuma); and
 - 5.4.2. a reasonable apprehension of bias based on allegations of institutional and/or subject matter bias owing to the Chairperson's vocational history and more specifically her historical links with the TRC and the NPA.

6. Summary of submissions by Former President Mbeki

- 6.1. The applicants were not required to seek permission in terms of section 47(1) of the Superior Courts Act 10 of 2013 because the first respondent was not acting in a judicial capacity.
- 6.2. The first respondent's ruling falls to be reviewed and set aside in terms of the PAJA, alternatively under the principle of legality.

- 6.3. This review is not prematurely sought.
- 6.4. The evidence presently before the Commission, including material placed before it by other witnesses, demonstrates that matters falling within the Commission's mandate arise from institutional processes and decisions in which the Chairperson herself was previously involved, thereby giving rise to a reasonable apprehension of bias.
- 6.5. There was a reasonable apprehension of bias in the manner in which the first respondent ruled on Adv Semenya SC's recusal and the leading of the Calata witnesses.
- 6.6. The reliance on the temporal scope of the Commission's terms of reference is misplaced and devoid of context.
- 6.7. The recusal ruling ought to have been a decision of the panel rather than that of a single member.
- 6.8. The relief sought by the seventh respondent / second applicant is competent.

7. Summary of submissions by the Commission

- 7.1. In terms of section 47(1) of the Superior Courts Act 10 of 2013, the applicants were required to obtain permission to cite the Chairperson. The proceedings are void ab initio insofar as the applicants have failed to do so.
- 7.2. The present application constitutes an abuse of court.
- 7.3. The applicants impermissibly contemplate a midstream review.
- 7.4. PAJA is of no application to the Chairperson's ruling sought to be reviewed and set aside.

- 7.5. The applicants' delay in bringing their respective applications for the Chairperson's recusal renders them non-suited.
- 7.6. The Chairperson need not have deposed to an answering affidavit in proceedings for her own recusal.
- 7.7. The recusal ruling handed down by the Chairperson need not have included her co-commissioners.
- 7.8. Relief contemplating that the President be directed to remove the Chairperson offends against the doctrine of separation of powers.
- 7.9. The Chairperson is not a witness before the Commission and need not recuse herself on the basis that her erstwhile co-workers are contemplated to appear before the Commission.
- 7.10. The Chairperson's previous institutional roles in the TRC and NPA are distinct from the Commission's mandate and do not necessitate her recusal.
- 7.11. The Chairperson correctly applied the applicable test for recusal insofar as no evidence was placed before the Commission indicating a reasonable apprehension of the Chairperson's bias.
- 7.12. Any challenge of the Commission's temporal scope is to be directed towards the Commission's Terms of Reference and does not signal necessity for the Chairperson's recusal.

8. Summary of submissions by the Calata Group

- 8.1. The (main) review application brought by the first applicant is opposed on the basis that the first respondent's decision not to recuse herself is lawful and constitutionally compliant.
- 8.2. The application by the seventh respondent to be joined as second applicant is brought opportunistically and should be rejected by this Court.
- 8.3. The first applicant and seventh respondent have not made out a case for overturning the first respondent's decision not to recuse herself in terms of PAJA or the principle of legality.
- 8.4. The first applicant and seventh respondent have not made out a case of reasonable apprehension of bias, or of procedural unfairness in relation to the decision of the Chairperson to allow the Calata Group to lead its witnesses at the Commission of Inquiry.
- 8.5. The first applicant failed to put up evidence to support their allegation of misconduct in the Semenya SC recusal application.
- 8.6. The recusal applications brought by the first applicant and seventh respondent were brought with undue delay.
- 8.7. The Commission of Inquiry remains properly constituted and it is in the interests of justice that its work proceeds without further undue interruption.
- 8.8. An order instructing the tenth respondent to terminate the appointment of the first respondent as Chairperson of the Commission of Inquiry would violate the doctrine of separation of powers.

8.9. There is no basis for the relief of nullification of the proceedings of the Commission of Inquiry, as brought by the seventh respondent.

8.10. In respect of the tenth respondent's explanatory affidavit:-

8.10.1. The affidavit was brought without a condonation application for late filing and is not properly before the Court.

8.10.2. Should the Court consider the affidavit, the claimed ignorance from the tenth respondent of the first respondent's background should be dismissed by the Court.

9. Summary of submissions by the NPA

9.1. The National Prosecuting Authority ("NPA") has elected to abide the decision of this Honourable Court in relation to the review proceedings presently before it. That position was adopted in order to avoid unnecessary duplication of argument and to allow the Court to determine the issues raised by the parties who actively seek relief.

9.2. Notwithstanding its decision to abide, the NPA considers it necessary to record that should the allegations advanced by the Applicant concerning private communications between the Chairperson and Adv Semenya SC be established, such circumstances would raise serious concerns regarding the fairness and integrity of the adjudicative process.

10. Summary of submissions by President Ramaphosa

The President filed short submissions, 18 pages only, which appear at CL 054-73.

11. Estimated duration

11.1. Two days for the interlocutory application, preliminary points and the merits.

11.2. The parties will endeavour to agree on timelines for argument over the weekend.

12. Need to read the record

Yes. While the papers are relatively voluminous, the parties request the Court to read the full pleadings. However it is not necessary for the Court to read the full Rule 53(1)(b) record unless specifically directed to specific documents by the parties in their pleadings, heads of argument or oral arguments.

JOINTLY SUBMITTED ON 13 MARCH 2026 BY COUNSEL FOR ALL THE PARTICIPATING PARTIES INDICATED ABOVE