



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 123874/2025

(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: 9 SEPTEMBER 2025
SIGNATURE [Redacted Signature]

In the matter between:

LIEUTENANT GENERAL SHADRACK SIBIYA

Applicant

and

THE SOUTH AFRICAN POLICE SERVICE

First Respondent

**THE NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE – GENERAL
SEHLAHLE FANNIE MASEMOLA N.O.**

Second Respondent

MINISTER OF POLICE

Third Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA Fourth Respondent

Summary: Application for a declaratory order that an instruction by the National Commissioner of Police to a subordinate to “stay at home” until an investigation in his office as to possible wrongdoing is completed fell outside the Commissioner’s powers, dismissed. Interim order to stay disciplinary proceedings until a separate Commission of Enquiry complete its processes refused. Appropriate costs order made.

ORDER

The application is dismissed with costs.

J U D G M E N T

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and is handed down electronically by circulation to the parties’ legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 9 September 2025.

DAVIS, J (Mngqibisa-Thusi J et Moshwana J concurring)

Introduction

[1] On 6 July 2025 the Provincial Commissioner of Police for KwaZulu-Natal, Lieutenant General Mkhwanazi, held a media briefing during which serious concerns were expressed regarding the existence and operation of a sophisticated criminal syndicate that has allegedly infiltrated law enforcement and intelligence structures in South Africa, undermining the South African criminal justice system. It was also alleged that political and executive level interference in the functioning of the South African Police Service has occurred.

[2] Pursuant to the above, the President of South Africa (the President), by way of Proclamation Notice 269 of 2025 appointed a Judicial Commission of Enquiry into criminality, political interference and corruption in the criminal justice system, in terms of Section 84(2)(f) of the Constitution (“the Commission”).

[3] In the meantime, the National Commissioner of the South African Police Service, General Sehlahle Fannie Masemola (“the Commissioner”) has ordered the applicant to “stay at home” while a separate investigation regarding his conduct relating to 121 case dockets was conducted. These dockets were previously the subject matter of criminal investigations conducted by a Ministerial Multi-Disciplinary Task Team (also referred to as the Political Killings Task Team). The Task Team had been disbanded during the 2024 December holidays by a previous Minister of Police. This investigation has now been completed and a Notice of Intention to Suspend has been issued by the Commissioner against the applicant.

[4] The applicant, on an urgent basis, seeks to have the “stay at home order” declared unlawful and furthermore seeks an interdict halting any disciplinary steps of whatever nature against him pending finalisation of the work of the

Commission. The application is opposed by all the respondents save the President.

Parties

[5] The applicant is Lieutenant General Shadrack Sibiya who is the Deputy National Commissioner: Crime Detection.

[6] The Commissioner was cited as the second respondent and the Minister of Police as third respondent. The President featured as the fourth respondent. The first respondent was cited in generic fashion as “the South African Police Service”.

The relief sought by the applicant

[7] The applicant launched an urgent application on the same day that the Notice of Intention to Suspend was issued. Subsequent thereto and to the exchange of papers, the applicant has requested the Acting Deputy Judge President, Judge (Ms) Molopa-Sethosa to constitute a full court for the hearing of his application on a subsequently designated date, being 3 September 2025. That is how the matter came before us, by which time the issue of urgency was no longer in dispute.

[8] The relief claimed by the applicant was of a dual nature. Firstly, a declaratory order was sought and secondly an interim interdict was sought.

[9] Due to the intricacy of arguments presented to the court on behalf of the applicant, it is apposite to quote the relief sought from the applicant’s notice of motion:

“2. That the second respondent’s decision to direct the applicant to stay at home pending an investigation be declared as

unlawful, void and of no force or effect and/or reviewed and set aside and the status quo ex ante be restored;

3. *That, pending the conclusion of a Judicial Commission of Enquiry announced by the fourth respondent on the 13 July 2024, the second respondent be interdicted from instituting parallel proceedings and action against the applicant, which includes, inter alia, suspending, investigating and/or disciplining the applicant, in relation to the allegations made by the SAPS KZN Provincial Commissioner and any other matters which may form part of the terms of reference and mandate of the abovementioned Judicial Commission of Enquiry;*
4. *In the alternative to prayer 3 and/or in consequence of any decision made in terms of prayer 3, such or any decision be suspended from being taken or implemented pending the outcome of the Judicial Commission of Enquiry mentioned in prayer 3 above”.*

Nature of and requirements for the relief sought

[10] Although the relief sought in paragraph 2 of the applicant’s notice of motion alludes to a review of the Commissioner’s instruction, what it amounted to was request for a declaration of invalidity. The applicant alleged that the conduct of the Commissioner concerned a breach of his contract of employment and that the Commissioner’s stay at home instruction exceeded the Commissioner’s powers, resulting in a “rule of law harm” that entitled the applicant to a declaratory order.

[11] This court's jurisdiction to hear the matter and to grant declaratory relief was not disputed by the respondents.

[12] The declaratory relief was final in nature. In this regard, the *Plascon Evans*-principle¹ will find application. This will result in the applicant only being successful in the event of a factual dispute, if he remains entitled to the declaratory relief on the version of the Commissioner, together with those parts of his factual averments which remain uncontroverted.

[13] The remainder of the relief amounted to an interim interdict for which purposes the *onus* is on the applicant to prove a *prima facie* right (even if it is open to some doubt), a reasonable apprehension of irreparable harm, an absence of any other suitable remedy and that the balance of convenience favours him above other parties.

Applicant's case

[14] The applicant commenced his attack on the Commissioner's conduct by alleging that since the media briefing by General Mkwanazi referred to above, "... *there has been widespread speculation regarding the veracity of the SAPS Provincial Commissioner: KZN's allegations against various people within the security cluster including me*". He went on to say that his reputation has been tarnished and his ability to be treated fairly has been prejudiced. The applicant then alleges that the stay-at-home instruction issued by the Commissioner was made on the strength of the as yet untested allegations.

[15] The principal basis of the applicant's attack on the "stay at home order" was that the South African Police Discipline Regulations, Promulgated in terms of the South African Police Act no. 68 of 1995 forms part of his contractual terms

¹ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

of employment. These regulations do not make provision for any “*stay at home orders*”. Based on this, the allegation that the Commissioner had acted without any power was formulated as follows in the founding affidavit:

“The disciplinary regulations do not contemplate or empower the National Commissioner to direct me or any other SAPS employee to stay at home pending an investigation or under any other circumstances at all”.

[16] The applicant furthermore labeled the Commissioner’s instruction as a “*disguised precautionary or even punitive suspension*”.

[17] The further point is then made that in terms of Regulation 10(2) of the Discipline Regulations the Commissioner is only entitled to suspend the applicant after he has afforded him a reasonable opportunity to make written representations and after he has considered such written representations.

[18] Regarding the interim interdict and why no disciplinary steps should be taken against the applicant pending finalisation of the Commission’s report, the applicant stated that the Commissioner’s “*purported decision to initiate an investigation against me is also unlawful because it obstructs and undermines the work of the impending commission*”. He makes this statement because he said the decision to investigate him was made by the Commissioner in response to the same allegations that the President relied on to establish the Commission.

[19] For purposes of the above, we were directed to the terms of reference of the Commission. These are the following:

“1. Where the criminal syndicates, including but not limited to drug cartels, have infiltrated or exert undue influence over the

South African Police Service, including the political killing task team and crime intelligence, the Johannesburg Metropolitan Police Department, the Ekurhuleni Metropolitan Police Department, the Tshwane Metropolitan Police Department, the National Prosecuting authority, the State Security Agency, any member of the Judiciary, including the Magistracy and of courts administration, the Department of Correctional Services, and any other institutions and/or organs of state within the criminal justice system.

2. *The nature, extent and consequences of such infiltration or influence, including:*
 - 2.1 *the facilitation of organised crime;*
 - 2.2 *the suppression or manipulation of investigations;*
 - 2.3 *inducement into criminal or other unlawful actions, including corruption of law enforcement leadership;*
 - 2.4 *commission of any other criminal offences;*
 - 2.5 *intimidation, victimisation or targeted removal of witnesses, potential witnesses or persons making protected disclosures or officials resisting criminal influence;*
3. *The role of senior officials of SAPS, JMPD, EMPD, TMPD, NPA and SSA and of members of the judiciary including magistracy, current or former who may have:*

- 3.1 *aided or abetted the alleged criminal activity;*
 - 3.2 *failed to act on credible intelligence or internal warnings; and/or*
 - 3.3 *benefitted financially or politically from the syndicates' operations.*
4. *The role of any member of the National Executive responsible for the criminal justice system whether they were complicit, aided and abetted or participated in the acts listed in paragraphs 1 to 3 above or by omission.*

....

7. *Once established, the commission shall also consider prima facie evidence relating to the involvement of individuals currently employed with the law enforcement or intelligence agencies and, where appropriate, the commission must make recommendations regarding the employment status of such officials including whether they should be suspended pending the outcome of further investigations"*

[20] In his founding affidavit, the applicant alleged that the Commissioner's conduct "*... constitutes an unlawful usurpation of the powers and functions, and is, therefore, a deliberate subversion of the Commission and the president*".

[21] The applicant furthermore alleges that the Commissioner was motivated by malice and was biased against him. He furthermore intimated that, as the Commissioner was also implicated in the allegations made by the KZN Provincial Commissioner, any investigation initiated by him, including disciplinary

proceedings, would amount to a conflict of interest and should therefore simply also be quashed. In fact, the applicant alleges that as the “*stay at home order*” was unlawful and was issued by an implicated person, it was tainted and that it tainted any further process including the subsequent notice of suspension.

[22] Consequently, the applicant argued that the conduct in respect of which he would charge in a disciplinary hearing “*intersects*” so closely with the terms of reference of the Commission, that the Commission and not even any impartially constituted disciplinary body, would be the more “*appropriate*” body to determine whether there should be disciplinary action taken against him or not.

The Commissioner’s case

[23] The legal framework within which both the applicant and the Commissioner operates has conveniently being set out in the Commissioner’s affidavit. This starts with the objectives of the police service which are succinctly set out in Section 205(3) of the Constitution: “*The police service is to prevent, combat and investigate crime, to maintain public order, to protect and secure the habitants of the Republic and the property and to uphold and enforce the law*”.

[24] In terms of Section 207(2) of the Constitution, the Commissioner is mandated and instructed to exercise control over and manage the police service in accordance with the National Policing Policy and the directions of the Cabinet Minister responsible for policing. Other than receiving policy decisions from the executive in an oversight capacity, the Commissioner is to function independently. He has autonomy in the exercise of his discretion in relation to the control and management of the police service within the prescripts of governing legislation.

[25] Although the obligation of the Commissioner to manage the Police Service may stem from section 207 of the Constitution, his powers have been

circumscribed in subsidiary governing legislation, which is the South African Police Act, the Regulations for the South African Police Service and the Discipline Regulations².

[26] The South African Police Service Act stipulates that the National Commissioner may exercise his powers and duties as follows:

- “1. *Section 11(1) the National Commissioner may exercise the powers and shall perform the duties and functions necessary to give effect to Section 218(1) of the Constitution;*
- (2) *Without derogating from the generality of sub-section (1), the powers, duties and functions referred to in that sub-section shall include the power, duty and function to*
 - (d) *Organise or re-organise the service at National level into various components, units or groups;*
 - (e) *Establish and maintain training institutions or centres for the training of students and other members;*
 - (f) *Establish and maintain bureaus, depots, quarters, workshops or any other institution of any nature whatsoever which may be expedient for the general management control and maintenance of a service; and*

² The South African Police Act 68 of 1995, the Regulations for the South African Police Service published in Govt Notice R203 in Government Gazette 719 dd 14 February 1964, as amended and the South African Police Service Discipline Regulations, 2016.

- (g) *Perform any legal act or act in any legal capacity on or behalf of the service.”*

[27] The Regulations for the South African Police Service further provides for the Commissioner’s powers to give orders and instructions as follows:

“Regulation 6 orders an instruction:

- (1) The Commissioner may issue orders and instructions concerning all matters which –*
 - (a) In terms of the Act or these Regulations shall or may be prescribed by him;*
 - (b) Are not inconsistent with the Act or these regulations and which he deems necessary or expedient for efficient administration or the achievement of the objects of the Act or these regulations;*
- (2) Orders and instructions of a permanent nature may be issued by the Commissioner as standing or force orders;*
- (3) Commanders may issue orders and instructions which are not inconsistent with the Act, these regulations or orders and instructions issued by the Commissioner;*
- (4) Orders and instructions issued in terms of sub-regulations 1, 2 and 3 shall be obeyed by all members to whom such orders and instructions are applicable”.*

[28] The two provisions of the Discipline Regulations applicable to this matter are Regulations 8 and 11. The relevant portions thereof read as follows:

“8(1) A supervisor must ensure that the investigation into the allegations of misconduct is completed within 30 calendar days or as soon as practically possible thereafter and if satisfied that the alleged misconduct is of a serious nature and justifies the holding of a disciplinary hearing. Refer the outcome of the investigation to the employer representative within 7 working days to initiate a disciplinary enquiry. The employee must be informed of the alleged misconduct and pending investigation ...

11(1) A suspension or temporary transfer is a precautionary measure to the National, Provincial or Divisional Commissioner may suspend or temporarily transfer an employee, provided that before effecting such a suspension or transfer such an employee is afforded a reasonable opportunity to make written representations”.

[29] None of the aforementioned prescripts were in dispute in this application.

[30] The Commissioner further stated his position as follows:

“I am fully aware of my duties and the fact that I must exercise my powers within the limits and provisions of the relevant legislative prescripts but I deny that I am not empowered to take decisions and give orders in accordance with my mandate to exercise control over and manage the police service. This will include my authority to order a preliminary investigation and the authority to order a senior

police officer to stay at home to ensure a fair and transparent preliminary investigation. In taking the decisions and giving the order complaint of I had the intention and duty to ensure that the integrity of the police service is protected and that the process embarked upon is fair and equitable to all the parties involved and serve the interests of the people of the Republic of South Africa.

[31] The conduct complained of by the applicant relates to the 121 dockets which were under investigation by the Task Team. It is therefore necessary to have regard to the context within which the handling of the dockets occurred.

[32] Due to the escalation of political violence and killings and particularly in KwaZulu Natal up to 2018, the president established an Inter-ministerial Committee consisting of the Ministers of State Security Agency, Defence, Police, Justice and Correctional Services under the chair of the Minister of Police and the Minister of Defence.

[33] This Committee established a multi-disciplinary team, consisting of members of the South African Police Service, members of the National Prosecuting Authority, State Security Agency and the Department of Justice and Correctional Services. They developed a strategy for the investigation and prosecution of politically related cases in KwaZulu Natal.

[34] The strategy which was developed led to the formation of the Political Killings Task Team. The Task Team was appointed in various phases and for the period 2024/2025 was under the control of Lieutenant General S D Khumalo as the project manager since from his inception 2018 when he started out in that position as a Brigadier. The work of the Task Team fell within the mandate of the Commissioner who monitored the work. For this purpose, he received regular

feedback from the Provincial Commissioner of KwaZulu Natal as well as from Lieutenant General Khumalo.

[35] The Commissioner claims that the work of the Task Team was highly successful and resulted in stabilising the politically motivated crime and in particular politically motivated murders in KwaZulu Natal to the satisfaction of the National Steering Committee and the Inter-ministerial Committee. In the Eastern Cape the task team also investigated national high priority crimes.

[36] During the Commissioner's annual vacation leave in the festive season from 31 December 2024 to 13 January 2025, the then Minister of Police, Mr Mchunu, who approved the Commissioner's leave, forwarded a directive to the Commissioner's office on 31 December 2024 ordering the deactivation and disbandment of the Task Team. This was apparently based on his observations that the further existence of the team was no longer required nor was it "*adding value to policing in South Africa*". The direction called for the disestablishment of the Task Team.

[37] Although he was on leave, the directive came to the attention of the Commissioner on 2 January 2025. He states that it came as quite a surprise and a shock to him as there was no coordination or consultation with him or any of the structures under his control prior to the directive being issued. Upon the Commissioner's return from leave on 14 January 2025 he accepted that the directive fell within the oversight powers of the Minister but formed the view that the insistence on the immediate disestablishment and deactivation of the Task Team overreached into his Constitutional mandate as National Commissioner.

[38] On 14 January 2025 the Commissioner had a discussion with the applicant who presented a letter on how to close the Task Team in line with the Minister's directives. The Commissioner was not satisfied with the proposal and expressed

the view that it would be irresponsible to simply disband the Task Team and remove the case dockets from them as that would have a detrimental effect on the investigation of the matters. It would also cause problems and possible complications in relation to the prosecution of matters already in court and might detrimentally affect witnesses in witness protection programmes as well as be disruptive for the families that were affected by the killings. He was also concerned about the possibility of civil claims against the police service.

[39] The applicant had informed the Commissioner that the Task Team should be closed down similarly to the way in which the Scorpions had been, namely by having the members individually called into office with the dockets whereafter the dockets would be handed over and the members would receive a new deployment. The Commissioner was of the view that this would be irresponsible and advised the applicant to consult with Major General Rabie, Head of Strategic Management to draft an amended plan for closing down the Task Team. He also issued such instructions to Major General Rabie to assist with a phasing out plan.

[40] On 15 January 2025, whilst the Commissioner was consulting with Major General Sebola, the applicant presented him with an amended plan directed at the Divisional Commissioner: Crime Intelligence, facilitating immediate closure of the Task Team and the handing over of case dockets at a Divisional level. The Commissioner was requested to sign the instructions. The proposed plan once again negated the Commissioner's instruction that there should be a gradual wind down of operations. The Commissioner was therefore not prepared to sign the document and instructed that he would personally develop a plan to be presented to the Minister.

[41] With the help of Lieutenant General Khumalo, the Divisional Commissioner of Crime Intelligence, a plan was developed by the Commissioner to address the winding down of the Task Team in such a way that it would not

negatively impact on the investigations of the case dockets. The Commissioner proposed presenting this plan to the Minister on 20 January 2025 but when the Minister was not available to receive the report, it was handed to his chief of staff on 22 January 2025.

[42] In the end, a disbandment implementation plan drafted by General Khumalo was only presented at a ministerial briefing on 6 March 2025. This plan advised the Minister that in order to avoid adverse effects and possible unnecessary civil claims and to ensure the continuity of cases, particularly those that are under investigation and those that are in court, the disestablishment and disbandment will take the form of a phased-out approach. After discussion, the plan was slightly amended to provide that the dockets would go to the individual police stations from whence they had arisen for further investigation, including the handling of the dockets already on the court roll. The applicant was present at this meeting.

[43] The Commissioner's position is that it came to his attention that contrary to his direct instructions of 14 January 2025, the applicant proceeded to give directives and instructions to the task team to immediately hand over dockets to the head office. In support of this contention, the Commissioner annexed letters given under the hand of the applicant on 17 January 2025, 4 February 2025 and 22 April 2025.

[44] In the first of these letters, being annexure "FM4" to the answering affidavit, the relevant paragraph regarding case dockets read as follows:

"All case dockets must be hand delivered to a location designated by the Divisional Commissioner for Detective and Forensic Services who must establish a secure depository for case files and the evidence to ensure the continuity and prevent any loss or tampering.

These dockets will then be reallocated to appropriate investigated units with the capacity to continue the investigations”.

[45] In the second of these letters (annexure “FM5” to the answering affidavit), the handover of case dockets to the Divisional Commissioner of Crime Intelligence was repeated. In the third letter (annexure “FM6” to the answering affidavit), reference was made to the two previous letters, and the instruction was repeated as follows:

“In compliance with the directive of the Minister of Police on 31 December 2024 and subsequent directives on the matter, you will advise that this process should be finalized by Thursday, 24 April 2025. This includes the transfer of all dockets, closed, currently under investigation and in court to the Division: Detective and Forensic Services”.

[46] Upon finding out of the above, the Commissioner formed the view that the effect of the handover of the dockets to a Division in head office was that they would be removed from investigators and (even if only temporary at least) that they will remain dormant at head office until assigned to an investigator but without any plan for such future investigations yet in place.

[47] The position was exacerbated by a request for funding by members of the Serious and Violent Crime Investigations, Murder and Robbery in the Division: Detective and Forensic Services for additional funding. The request for additional funding was approved by the applicant on 8 July 2025. The Commissioner refused the request for funding claiming it will result in a double spending of funds *“on the same function”*. In refusing the funding, the Commissioner also added the following to the information note presented to him as a request for funding:

“Why are dockets at HQ as it was agreed that some dockets from the Task Team be returned to station of origin.”

[48] Upon making enquiries, it then appeared to the Commissioner that the applicant *“... might have deliberately ignored my instructions and acted contrary to his obligations in terms of his appointment, which necessitated an investigation as to his intentions and motives and interest in the disbandment of the task team”*. This prompted the Commissioner to do two things. The first was to issue a notice as contemplated in Regulation 8(1) of the Discipline Regulations and the second was to issue a stay-at-home instruction.

[49] The notice in terms of Regulation 8(1) read as follows:

“You are hereby notified of alleged misconduct and a pending investigation against you in terms of Regulation 8(1) of the Discipline Regulations for the South African Police Service, 2016, promulgated in terms of the South African Police Service Act 1995 as you allegedly committed serious misconduct ... by contravening Regulation 5(3)(b)(i) of the South African Police Service Discipline Regulations 2016 in that you allegedly committed misconduct in that during or between January 2025, February 2025 and April 2025 at or near SAPS Head Office Pretoria you allegedly gave instructions that the case dockets of the political killings task team in KwaZulu-Natal be withdrawn from the task team in KwaZulu-Natal to the Divisional Commissioner: Detective and Forensic Services which resulted in the investigation of the case dockets having been hindered and/or delayed”

[50] Two further possible contraventions of the Discipline Regulations were also mentioned as instances of misconduct to be investigated. The Section 8(1) notice was dated 14 July 2025.

[51] On the same day and by way of a separate written letter the Commissioner instructed the applicant “... *to stay at home pending the outcome of an investigation*”. The applicant complied with this instruction. Regarding the issue raised by the applicant as to whether the stay at home order amounted to a suspension or not the Commissioner stated that “... *this stay at home order was in no way intended to be precautionary suspension in accordance with the South African Police Service Disciplinary Regulation 2016 but merely to ensure that the applicant, who is a high ranking Deputy National Commissioner, was not present in his office while the preliminary investigation took place to embarrass him and to ensure that witnesses would freely and voluntarily participate in such investigation without the pressure of possible intimidation created by his presence*”.

[52] The applicant’s urgent application was launched on 25 August 2025. It did however not contain any reference to a Notice of Intention to Suspend issued in terms of Regulation 10, which had been served on him on 20 August 2025. Reference to this notice was only introduced by the applicant in a belatedly delivered supplementary affidavit. This supplementary affidavit was, insofar as it introduced the fact that the Notice of Intention to Suspend had been issued, admitted by the court. This was done on the basis that, even if the Commissioner had not had the opportunity to respond to the supplementary affidavit, the State Attorney had at least had the opportunity to respond to the applicant’s objection to the notice. For sake of completeness, I mention that two subsequent supplementary affidavits had been tendered by the applicant, the last of which was only filed the day before the hearing of the application. These affidavits

sought to introduce extraneous hearsay evidence relating to conduct ascribed to the President and to the current Minister of Police as well as comments made in various media reports. Due to the nature of the evidence sought to be introduced by these supplementary affidavits, their admission into evidence was refused and Adv. Premhid who acted for the applicant, did not persist with their introduction.

[53] I shall briefly deal with the Notice of Intention to Suspend, which the applicant introduced by way of the said supplementary affidavit.

[54] After having finalized the intended investigation and having concluded that there is a case to answer that the applicant had contravened or disregarded the Commissioner's direct instruction regarding the handling of the case dockets, the Commissioner issued the notice in terms of Regulation 10(2) of the South African Police Service Discipline Regulations, 2016, the relevant parts of which read as follows:

"You are hereby notified that your suspension or temporary transfer under Regulation 10(1) of the South African Police Service Discipline Regulations 2016 will be considered on the grounds that you allegedly committed serious misconduct ... by contravening Regulation 5(3)(b)(i) ... in that you allegedly committed misconduct in that doing or between January 2025 and July 2025 and at or near SAPS Head Office Pretoria you allegedly gave instructions that the case dockets of the political killings task team in KwaZulu-Natal be withdrawn from the task team in KwaZulu-Natal to the Divisional Commissioner Detective and Forensic Services which resulted in the investigation of the case dockets having been hindered and/or delayed and whereas these instructions to withdraw the said case dockets to a central point was done without the knowledge and/or authorization of the National Commissioner".

[55] Further charges of misconduct also featured in this notice, all of which relate to the case dockets and the last of which read as follows:

“By contravening Regulation 5(4)(x) in that you committed acts of misconduct which detriment all affect or affected the image of the South African Police Service or brings the SAPS into disrepute and which involves an element of dishonesty by acting contrary to the instructions of the National Commissioner relating to the winding down of the political killings task team between January and July 2025”.

[56] The applicant, through his attorneys, on 21 August 2025, *inter alia* accused the Commissioner of attempting to preempt the granting of the relief claimed by the applicant in this application and demanded that the notice be withdrawn. The applicant’s attorneys also demanded that the Commissioner withdraw his opposition to the applicant’s application and tender the costs thereof. The letter concluded as follows: *“We will also ask the court to make a finding of constructive contempt and/or order a personal and punitive costs order against you to be paid on an attorney and client scale (where at the urgent court hearing or on a later date) due to the fact that you are the deponent of an answering affidavit but also the signatory of the notice and which conduct is the very subject matter of the existing litigation”.*

[57] The State Attorney, acting on behalf of the Commissioner replied to the above-mentioned threat by stating that the Commissioner was acting in accordance with disciplinary processes and procedures *“and will continue to do so until ordered by the court to the contrary. You are well aware that our client stated in his answering affidavit that if the disciplinary investigation is concluded and shows a need for the issuing of a notice of intended suspension or temporary transfer, your client would be served with such notice”.*

[58] One should also add to what has been stated by the State Attorney that the Commissioner had, in his answering affidavits, confirmed not only the above, but also that any disciplinary process would be processed in terms of the Discipline Regulations and be chaired by an independent officer, from outside the province. The Commissioner himself would not be involved in such a disciplinary process.

Evaluation

[59] Without delving into the merits of the misconduct accusations leveled against the applicant, it appears from the facts as set out above that procedurally very little is in dispute. It is the contentions of the parties which need to be evaluated by this court.

[60] The first point of departure on behalf of the applicant was the claim that the Commissioner simply had no power to issue the stay-at-home instruction. The contention was that the Minister only had those powers afforded to him by the statutory instruments referred to earlier and that, as no "stay at home order" has been provided for the Discipline Regulations, the Commissioner had no power to issue such an instruction.

[61] What is clear from the facts is that at the time when the order was given in the form of an instruction, the Commissioner did not purport to act in terms of the Discipline Regulations. The instruction was neither seen as nor implemented as a suspension. The instruction did not impact on the applicant's remuneration, employment or security.

[62] On behalf of the Commissioner, it was argued that not each and every operational order is codified in either of the sets of regulations. To do so would be impractical, if not impossible. At any given time, any commander may give instructions or orders to subordinates as the exigency of the circumstances require. It was argued that the stay-at-home instruction was no more than an

instruction to a senior officer to keep away from the “*scene of the crime*” so that he is not further implicated or embarrassed by the investigation and that the investigation may proceed unhindered. For purposes of the investigation, it also prevented subordinates from being intimidated by his presence.

[63] It was contended on behalf of the Commissioner that he had demonstrated that the stay-at-home instruction was suitable, necessary, reasonable, relevant, rational and proportional under the circumstances.³ We agree.

[64] The attempts by applicant’s counsel to convert or elevate the stay-at-home instruction to a suspension is not supported by evidence. The fact that the Discipline Regulations does not make provision for such an order does not mean that such an instruction by a senior officer to a subordinate cannot be made. We therefore conclude that the instruction was not unlawful.

[65] There are two further reasons why the declaratory relief sought in this regard should not be granted. The first is the issue of mootness and second the discretionary nature of such orders.

[66] In respect of the issue of mootness it was contended on behalf of the Commissioner that the instruction had now served its purpose. The investigation was complete, and the decision has been taken to initiate disciplinary proceedings against the applicant. The next step, namely, to implement a suspension or not, was halted by way of the applicant’s own urgent application. Once this is dealt with, the suspension of the applicant and the remainder of the disciplinary processes provided in the Discipline Regulations will take its course. There is

³ *Heyneke v Umhlathuze Municipality* (D908/09) [2010] ZALC57 (2010) 31 ILJ 2608 (LC) (24 March 2010, para. 128 to 129).

therefore no point in granting a declaratory order in respect of something which has already been overtaken by events, and which will serve no further purpose.

[67] In response to the proposition put to the applicant's counsel, namely that the relief claimed in respect of the stay-at-home instruction may be moot and of no effect, counsel countered that case law provide that even in circumstances of mootness, an order may still be granted. This general proposition is however subject to the qualification that a court will only do so if it is in the interests of justice to decide an issue.⁴

[68] The Constitutional Court has summarised the relevant factors to be considered whether it is in the interests of justice to decide a matter which is largely moot, in *MEC for Education KwaZulu-Natal v Pillay*⁵. These factors include the nature and extent of the practical effect that any possible order might have, the importance of the issue, the complexity of the issue, the completeness or otherwise of the arguments advanced and by resolving disputes between different courts. In the present instance, once the stay-at-home instruction had served its purpose and had no adverse impact on the applicant's employment contract, none of these factors feature.

[69] The applicant's counsel argued that an order was still necessary as the alleged unlawfulness of the order "tainted" the subsequent notice issued in terms of Section 10(2). We fail to see how this could be so. The subsequent notice was separately issued in terms of the Discipline Regulations, following on the investigation of conduct. It was therefore devoid of any alleged "taintedness". The notice itself was also not otherwise independently attacked by the applicant. The validity of the issuing thereof therefore does not require a determination or

⁴ *Van Wyk v Unitas Hospital* 2008 (2) SA 472 CC; *Minister of Tourism v Afriforum NPC* CCT318/21 (8 February 2023) at par. [27].

⁵ 2008 (1) SA 474 CC.

declaration in respect of the stay-at-home instruction. In view hereof we exercise our discretion against the granting of the declaratory relief.

[70] It is now necessary to consider whether the applicant has made out a case for the interdictory relief sought.

Ad prima facie right

[71] The applicant does not have a right to have disciplinary proceedings halted or suspended. The “right” which the applicant seeks to assert is a self-constructed right. He claims that everyone implicated by the allegations which form the subject matter of the Commission, have a right to a free and fair hearing before the Commission.

[72] The above assertion misconstrues the nature of the Commission. Although the Commission may, at the conclusion of its investigation, make recommendations to the President regarding disciplinary steps and the continuation of employer/employee relations, the Commission is neither a court nor of itself a disciplinary tribunal. Witnesses, even though they may themselves be implicated in allegations, may be subpoenaed and have the obligation to appear before the Commission. The proceedings before the Commission are however not “hearings” in the conventional sense.

[73] The nature and function of a commission has aptly been described in *Canada (AG) v Canada (Commission of Inquiry on the Blood System)*⁶, quoted recently with approval in *Memela v Chairperson of the State Capture Commission of Inquiry and Others*⁷, as follows: “A commission of inquiry is neither a criminal trial nor a civil action for the determination of liability. It cannot establish either criminal culpability or civil responsibility for damages.

⁶ [1997]3 SCR 440.

⁷ (34177/22) [2025] ZAGPPHC 816 (14 August 2025).

Rather, an inquiry is an investigation into an issue. Event or series of events. The findings of a commission are simply findings of fact and statements of opinion reached by the commission at the end of the inquiry. They are based upon and flow from a procedure which is not bound by the evidentiary and procedural rules of a courtroom. There are no legal consequences attached to the determinations of a commission. They are not enforceable and do not bind courts considering the same matter". For these reasons, once a commission has concluded its work and made recommendations to the President, it is still up to him to implement those recommendations. The same happened with the so-called State Capture Commission. The purported right which the applicant seeks to assert, is accordingly misplaced.

[74] Moreover, the applicant seeks to contend that separate disciplinary proceedings against him for disobeying lawful instructions issued by his superior, would not only interfere with the work of the Commission but, on his version obstruct it. There is no factual basis for this assertion. From the evidence already summarised, it is clear that the disciplinary charges, even though they may notionally "intersect" (to use a term deployed by the applicant's counsel) with the investigation of allegations which form the subject matter of the Commission's term of reference, the "parallel process" of the envisaged disciplining of the applicant would not affect any other findings which the Commission may independently make. Simply put, the disciplining of the applicant and the work of the Commission are two different things, even if the applicant's motive for having disobeyed an order, may be of interest to the Commission.

[75] In a last-ditch attempt, the applicant contends that the Commissioner is biased against him and conflicted and that this should be the reason why the Commission would be the appropriate body to discipline the applicant. In fact,

in written Heads of Argument submitted on the applicant's behalf, the following contention is put forward:

“If General Sibiya is guilty of an offence, he will be imminently disciplined by the Commission. If the Commission thinks Lieutenant Sibiya is innocent, then the Commissioner can discipline in due course.”

[76] This contention, as already indicated, misconstrues the function and powers of the Commission. Moreover, the contention impermissibly subjugates disciplinary proceedings to the proceedings before the Commission.

[77] We therefore find that the applicant has not established a *prima facie* right to have the envisaged disciplinary proceedings against him halted, suspended or stayed as claimed in the notice of motion.

Apprehension of harm

[78] The applicant firstly relied on the decision in *Gordhan v Public Protector & Others*⁸ and in particular the following statement from that judgment:

“Being prosecuted, disciplined and investigated most certainly constitutes harm and the harm may be irreparable and irreversible by the time the review application is heard, especially so if the review application is successful”.

[79] The reliance on this portion of the judgment is misplaced. The facts in the case of the applicant are distinguishable from those in the *Gordhan*-matter. In addition, there is no review pending as in the *Gordhan*-matter.

⁸ [2019] 3 All SA 743 GP par. [51].

[80] As an additional or alternative argument, the applicant again claims that disciplinary proceedings against him would “obstruct” the work of the Commission. As already indicated, this contention is without merit.

[81] The applicant alleges that the disciplinary process would expose him to the risk of “double jeopardy”. This argument again misconstrues the functioning of the Commission. The Commission does not sit as a disciplinary tribunal nor as a court of law.

[82] The last argument advanced under this rubric in the Heads of Argument delivered on behalf of the applicant was that “... *the very act of being subjected to this kind of process is itself spurious with the effect they are vexatious*”. In the context of the evidence referred to above, it cannot be found that the disciplinary charges are *prima facie* spurious. This court need not adjudicate the veracity or correctness of the charges but, on the face of it they do not appear to be without foundation to the extent that it can be labelled “spurious”. It must follow that proceeding therewith would not *per se* be vexatious. Moreover, insofar as the applicant may have defences to the charges levelled against him or even wishes to pursue his allegations of bias, the appropriate forum and occasion for him to raise them would be at a disciplinary hearing itself. His current version put forth in his replying affidavit to the effect that he had complied with all the Commissioner’s orders and instructions, if correct, would be a complete defence to the disciplinary hearing which had not yet commenced.

[83] There is no evidence of any reasonable apprehension that the applicant would not be able to put forward his version before an independent disciplinary tribunal and accordingly this second requirement for an interim interdict has also not been satisfied.

No other suitable remedies

[84] As already indicated above, the applicant has a suitable alternative remedy, namely, to put forward whatever defences he may have against the charges levelled against him at the disciplinary hearing. Rather than obstructing the work of the Commission as claimed by the applicant, it may be eased if he already produces evidence of an absence of wrongdoing at an early stage, even at a disciplinary hearing.

Balance of convenience

[85] The assertion put forward on behalf of the applicant in the Heads of Argument filed on his behalf under this rubric is rather astounding. It commences as follows:

“The balance of convenience favours that the tainting and obstruction of the commission’s work be curtailed by ordering the National Commissioner to await the finalisation of its processes, not lease for want of lawfulness on his part”.

[86] There is no evidence that proceeding with any disciplinary proceeding against the applicant would “taint” any work of the Commission. As already indicated, the disciplinary process would in no way hinder or obstruct the work of the Commission and the Commission may continue to gather evidence regarding the allegations made by General Mkhwanazi of historical facts or previous interference in police investigations.

[87] The second contention put forward on behalf of the applicant in this regard is equally unfounded. It reads *“the issues that underlie the National Commissioner’s allegations are presumably a matter of record, which can be*

proven at any future date. There is no need shown for the National Commissioner to forge ahead now simply to be expedient”.

[88] The contents of this contention are self-destructive. If facts relating to the non-compliance with an order by the Commissioner are so easily determinable that it is “a matter of record”, then there is no reason to delay any process which would be reliant on such evidence. In fact, expediency would be what one would expect. This is especially so where the Commissioner has a Constitutional duty and obligation to exercise control over and manage the police service. He would be failing in his duties if he were not to act against officers who fail to comply with orders.

[89] Contrary to the principle of expediency in dealing with matters of discipline and maintaining the order of command, the applicant’s contention, if upheld, would result therein that disciplinary proceedings against him be suspended for the duration of the Commission’s investigations. Although envisaged that the work of the Commission might be completed within a period of 3 or 6 months, the terms of reference provide that the President may extend that term from time to time. If any lesson is to be learned from history regarding the operation of Commissions, it is that they develop a life of their own which often extends beyond the originally contemplated time period. When one weighs up the possible indeterminable period of suspension of disciplinary proceedings, should the applicant’s contentions be upheld, against the benefits of finality to be obtained by expedient disciplinary proceedings, the latter clearly trumps the former.

[90] It is trite that in any employer/employee relations expediency in finalising disputes should be an objective. The indeterminate continuation of a possible toxic relationship should be avoided.

[91] Neither the stay-at-home instruction nor any contemplated disciplinary action has prejudiced the applicant's safety. Insofar as there may have been concerns, the Commissioner has instructed a risk assessment to be conducted, which assessment on 22 July 2025 indicated that the applicant might be subject to high risk. The Commissioner accordingly ordered static and transit security to be provided to him. The National Intervention Unit, Pretoria, was tasked to provide such static and in transit protection for the applicant. The team, under the control of Brigadier Seloane was deployed on 25 July 2025. The applicant however, informed Brigadier Seloane on 27 July 2025 that he was withdrawing the protection team as he was not happy with their selection. He indicated that he would select his "own team of people" who previously worked with him. The Commissioner reiterated that the South African Police Service has complied with its obligation to provide security to the applicant and will continue to do so in accordance with accepted policies. The final requirement for an interim order has therefore also not been met by the applicant.

Conclusion

[92] In the premises, the court declines to grant a declaratory order as claimed by the applicant and finds that the applicant has not satisfied the requirements for an interim interdict. Neither of the two sets of relief can therefore be granted.

Ad costs

[93] The customary rule is that costs follow the event.

[94] The applicant contends that, in the event that he is not successful in his application, that he should be "immunised" from an adverse cost order. In support of this contention the applicant relies on the *Biowatch*-principle.

[95] In *Biowatch Trust v Registrar Genetic Resources & Others*⁹ it was clarified that public interest litigants acting in good faith will not have to fear that costs be awarded against them. This was stated as a general principle in Constitutional litigation, following on a previous finding to this effect in *Affordable Medicines*¹⁰ as follows:

“The award of costs is a matter which is within the discretion of the court considering the issue of costs. It is a discretion that must be exercised judicially having regard to all relevant considerations. One such consideration is the general rule in constitutional litigation that an unsuccessful litigant ought not to be ordered to pay the costs. The rationale for this rule is that an award of costs might have a chilling effect on the litigants who might wish to vindicate their constitutional rights. But this is not an inflexible rule. There may be circumstances that justify departure from this rule such as where the litigation is frivolous or vexatious. There may be conduct on the part of the litigant that deserves censure by the court which may influence the court to order an unsuccessful litigant to pay costs. The ultimate goal is to do what is just having regard to the facts and the circumstances of the case”.

[96] The rationale for the above was further expounded in *Biowatch* at par 23 thereof where *inter alia* the following has been stated as further factors to be considered:

“Secondly, Constitutional litigation, whatever the outcome, might ordinarily bear not only on the interest of the particular litigants involved but on the rights of all those in similar circumstances

⁹ (10) BCLR 1014 (CC) at par [24].

¹⁰ *Affordable Medicines Trust & Others v Minister of Health & Others* 2006 (3) SA 247 CC at par [138].

Thirdly it is the state that bears the primary responsibility for ensuring the both the law and state conduct are consistent with the constitution – if there should be a genuine, non-frivolous challenge to the constitutionality of a law or of state conduct, it is appropriate that the state should bear the costs if the challenge is good but if it is not, then the losing non-state litigant should be shielded from costs consequences of failure. In this way the responsibility of ensuring that the law and state conduct is constitutional is placed at the correct door”.

[97] We are of the view that the above principles do not find application. No law or any “state conduct” has been challenged on a Constitutional basis by the applicant. His assertion was simply that the Commissioner had overstepped the bounds of his powers in the context of a simple disciplinary proceeding. There was also no assertion that the rights claimed, such as there may have been, would find general application and that the litigation was in the interests of similar litigants generally.

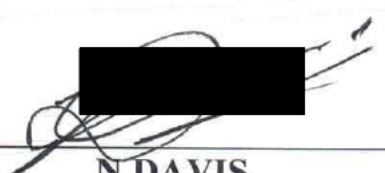
[98] Moreover, as already indicated in paragraph [20] above, the applicant made overbroad and unfounded allegations to the effect that the Commissioner was contemptuous of the proposed Commission. The making of such allegations without foundation amounts to vexatious litigation.

[99] Taking all the above factors into consideration, in the exercise of our discretion, we find no cogent reasons to depart from the general rule.

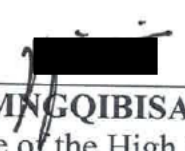
Order

[100] In the premises the following order is made:

The application is dismissed with costs.


N DAVIS
 Judge of the High Court
 Gauteng Division, Pretoria

I agree


N P MNGQIBISA-THUSI
 Judge of the High Court
 Gauteng Division, Pretoria

I agree


G N MOSHOANA
 Judge of the High Court
 Gauteng Division, Pretoria

Date of Hearing: 03 September 2025

Judgment delivered: 9 September 2025

APPEARANCES:

For the Applicant:

Adv K Premhid together with
Adv F Sangoni &

Ms I Macingwane (Pupil)

Attorney for the Applicant:

Ian Levitt Attorneys, Johannesburg

For the 1st, 2nd and 3rd Respondents:

Adv S Coetzee SC

Attorney for the 1st, 2nd and 3rd Respondents: State Attorney, Pretoria