

1. INTRODUCTION

I Brigadier Thulani Douglas Shabalala with force number, 0476689-0 was appointed as the chairperson to preside over case number PPS: 04/2023.

On the 08 August 2023, The Head Presidential Protection Service (PPS): Major General WP Rhooode recommended my appointment to the Divisional Commissioner of Protection and Security Services (PSS), Lieutenant General MM Mothlala.

On the 31 August 2023 the appointment was approved as a Chairperson of the Disciplinary Hearing in terms of Regulation 11(1) of the Disciplinary regulation 2016 on case 04/2023 with conditions that the matter be prioritize and finalized on time by the Divisional Commissioner PSS.

I am a seasoned officer within the South African Police Service with 27 years of experience and I had presided over numerous disciplinary cases throughout the span of my career.

This document serves as a report of the sequence of events in order to substantiate the final outcome of the disciplinary hearing (refer to the aforementioned case).

2. SEQUENCE OF EVENTS

2.1 Date: 01 April 2025

- (a) **The Departmental Hearing Chairperson:** Brigadier Thulani Douglas Shabalala
- (b) **The Employer Representative:** Captain Pandle.
- (c) **The Fellow employees represented:** Colonel ED Sampson and Warrant Officer Sithole (Follow Employees representatives initially and later changed).
- (d) **The additional POPCRU Employees Representatives:** Gloria Nyeki, TK Nkadameng and Nomsa Dladla.
- (e) **The final additional Employees Representatives, SAPU:** Jabu Mabena and Hlongwana.

2.2 On the 02 October 2024 hearing, POPCRU withdrew on representing all the accused members.



2.3 **On the 28 January 2025, the Employees withdrew** fellow employees' representatives, **Colonel ED Sampson and Warrant Officer Sithole.**

2.4 **Hearing Interpreters were as follows:**

- (a) Phindile Hlongwane from English to isiZulu
- (b) Captain Dr Nivhelandzi from English to shiVhenda
- (c) Siyopi Malinga from English to siSotho
- (d) Swafo English to sePedi

2.5 **Below the name list of the charged members of Presidential Protection Service are as follows:**

- (a) Member one (01), Service number 7128034-1 Warrant Officer SM Kojoana
- (b) Member two (02), Service number 7039641-8 Warrant Officer JM Mampuru
- (c) Member three (03), Service number 7128750-7 Warrant Officer Mofokeng
- (d) Member four (04), Service number 7190324-1 Sergeant HM Ramokgonami
- (e) Member five (05), Service number 7166794-6 Warrant Officer PM Boshielo
- (f) Member six (06), Service number 7162755-3 Warrant Officer CM Mkhize
- (g) Member seven (07), Service number 7168851-2 Warrant Officer LA Rambau
- (h) Member eight (08), Service number 7132954-4 Warrant Officer MF Tshidada

2.6 **FIRST APPEARANCE: HEARING DATE: 21 – 22 July 2023**

2.6.1 Colonel Molotsi, the employer representative, withdrew, therefore the hearing was postponed.

2.6.2 Lieutenant Colonel Bississur was appointed as the second Employer Representative, but she later withdrew.

2.6.3 Captain Pandle was appointed as the third Employer Representative to which he accepted his appointment and role thereof.

2.6.4 The employees were asked whether they preferred an interpreter and all confirmed that they were comfortable proceeding in English and did not require an interpreter.

2.7 HEARING DATE: 22 – 24 November 2023

- 2.7.1 The hearing began at 9:00 a.m. on 22 November 2023, at Maupa Naga's Protection and Security Service Divisional Office.
- 2.7.2 Captain Pandle serves as the state's employer representative.
- 2.7.3 Colonel ED Sampson and Warrant Officer Sithole serve as Employee Representatives.
- 2.7.4 The pre-trial service began, and the Chairperson detailed the hearing instructions to the Employer and Employee Representatives.
- 2.7.5 The Employees Representative contested that the Chairperson is biased and is in favour of the Employer Representative. The Employees Representatives provided no reason to give rise to that effect.
- 2.7.6 Therefore, the Chairperson considered the request and ruled that there are no valid reasons or indication that the Chairperson is biased.
- 2.7.7 As a result, the hearing resumed and was postponed for 17-21 December 2023, at the request of the Employees Representatives.
- 2.7.8 The Employees Representative requested a postponement for 17-21 December 2023 because they were attending a Criminal case, and the Employees Representative were committed with work responsibility.

2.8 HEARING DATE: 17 – 21 December 2023

- 2.8.1 The hearing began in Maupa Naga's Protection and Security Service Divisional Office.
- 2.8.2 Colonel ED Sampson, the Employees Representative, stated in lumine that the complaint against the members should be withdrawn immediately.
- 2.8.3 The Employees Representative was unable to provide substantive arguments to support the withdrawal of Departmental proceedings against the members.
- 2.8.4 The Employees Representative requested that the trial be rescheduled for 1–4 February 2024 due to work commitments that needed to be performed by Employees Representative.

2.9 HEARING DATE: 01 – 04 February 2024

- 2.9.1 The hearing began in Maupa Naga's Protection and Security Service Divisional Office.



2.9.2 Captain Pandle, the Employer Representative, expressed concern that Colonel Sampson, the Employer Representative, is conflicted based on the following:

- (a) He is a full Colonel in the PPS Component.
- (b) He is a Commander of Support, meaning he is directly involved, as employee relations falls directly under the ambit of the support function.
- (c) Therefore, he cannot charge and represent members simultaneously.

2.9.3 The Chairperson declared that the Commander of the Support Section who is also an employee representative Colonel Sampson cannot be a player while also serving as a referee, as he is directly conflicted about the situation and as a result he is dismissed from the hearing. Employees requested a postponement in order to exercise their right to new representation.

2.10 HEARING DATE: 04 – 08 March 2024

2.10.1 The hearing began in Maupa Naga's Protection and Security Service Divisional Office.

2.10.2 POPCRU (Glory Myeki and TK Nkadimeng) identified themselves as representing members, along with Warrant Officer Sithole, as Employees Representative.

2.10.3 POPCRU requested Colonel Sampson's reinstatement as part of the Employees Representative team.

2.10.4 Captain Pandle, the Employer Representative, consented on the condition that the hearing be expedited and finalized. The Chairperson decided to participate based on POPRU's request and the Employer Representative's approval.

2.10.5 POPCRU requested time to review the prior Employees Representative point-in-Lumina presentation. POPCRU felt uncomfortable with the presentation presented by previous Employees Representative, felt that is too weak for the Chairperson to rule or take a decision.

2.10.6 The hearing was then adjourned in order to meet with members or Employees and prepare a proper presentation.

2.10.7 POPCRU also indicated that they will be presenting additional experts (Ms Nomsa Dludla) to the next hearing date.

2.10.8 POPCRU, Employer Representative (Warrant Officer Sithole) and Employees requested a long Postponement due to the upcoming election commitments, as they had duties which needed to be performed. The postponement was agreed upon by the Employer Representative.



2.11 HEARING DATE: 13 – 15 May 2024

- 2.11.1 The hearing was cancelled due to the national election and all participants work commitments due to the functions that needed to be performed by PPS and PSS respectively.

2.12 HEARING DATE: 02 – 03 July 2024

- 2.12.1 The hearing began in Maupa Naga's Protection and Security Service Divisional Office.
- 2.12.2 Warrant Officer CM Mkhize reported sick, and his medical certificate was not produced during the hearing.
- 2.12.3 Based on the unavailability of the aforementioned member, the hearing was postponed until 27 August 2024.

2.13 HEARING DATE: 06 – 08 August 2024

- 2.13.1 The hearing was held in Maupa Naga's Protection and Security Service Divisional Office.
- 2.13.2 POPCRU appealed to the Chairperson that Colonel Sampson be allowed to form part of the defence team.
- 2.13.3 The Employer representative did not object and he prayed for a smooth of hearing proceeding.
- 2.13.4 The apology offered by Colonel; Sampson to the chairperson and Employer Representative was accepted for the benefit of the smooth running of the hearing. (Without any further hindrances) the chairperson allowed him and the POPCRU to continue to represent the members on the matter.
- 2.13.5 On the 07 August 2024, POPCRU put on record that they are withdrawing their participation on the hearing. On both, representing the members and observer Status. However, fellow Employees representative Colonel Sampson and Warrant Officer Sithole requested bilateral discussion with POPCRU (Mr Nkandimeng and Ms Gloria Nyeki), for a few minutes requested (which becomes hour and half).
- 2.13.6 Hearing resumed and POPCRU reached the agreement with Employees that they continuing represent members. Further request postponement for further consultation with members by Mrs Nomsa Dlodlu on the next hearing date.
- 2.13.7 Fellow Employees representative raised the matter that, an employee Warrant Officer Mkhize is not well, however they can continue.



2.14 HEARING DATE: 27 August 2024

2.14.1 The hearing began in Maupa Naga's Protection and Security Service Divisional Office.

2.14.2 The hearing began on 27 August 2024, but was unable to proceed for the following reasons:

- (a) Employee Representative, Warrant Officer Sithole, was not present. Colonel ED Sampson, a co-representative, said that Warrant Officer Sithole was not present because the State did not provide transportation and lodging for him.
- (b) Ms Nomsa Dludla, the POPCRU representative, requested a postponement because it was her first time representing the members and she had not received a briefing from them. She further apologized for not being available for a week as she had family commitments to attend to.
- (c) The Chairperson was dissatisfied with the justifications given for the absence of the Employee Representatives.
- (d) To avoid fruitless and wasteful expenditure, it was agreed that any absences must be recorded prior to the hearing date.
- (e) The Hearing was postponed for 02 - 04 October 2024.

2.15 HEARING DATE: 01 – 04 October 2024

2.15.1 The hearing began in Maupa Naga's Protection and Security Service Divisional Office.

2.15.2 POPCRU Representatives, Mr TK Nkandimeng and Ms Dludla, highlighted a lack of collaboration by members, hence POPCRU withdrew their services with immediate effect.

2.15.3 The hearing began on 02 October 2024, and was adjourned indefinitely for the following reasons:

- (a) Colonel ED Sampson, the Employees Representative, was not there, but Warrant Officer Sithole indicated that he was conducting interviews.
- (b) When questioned further about the three (03) members who were not there, Warrant Officer Sithole, the employee representative, clarified that:
- (c) Warrant Officer CM Mkhize took family responsibility leave.
- (d) Warrant Officer PM Boshielo was absent due to illness, and upon receipt of the employee's medical certificate, it will be delivered to the Chairperson and Employer Representative.

- (e) Sergeant HM Ramokgonami was absent due to illness, and the employer representative and chairperson will receive a medical certificate from the employee.

It should be noted that this issue has been deferred and postponed nine times, sometimes without good cause.

After careful study, it has been decided that the hearing's final date will be 21 October 2024, at 8:30 a.m. at the Maupa-Naga Building.

2.16 HEARING DATE: 21 October 2024

- 2.16.1 At the Protection and Security Service Divisional Office in Maupa Naga, the hearing began.
- 2.16.2 Despite their Representative, Warrant Officer Sithole, being present at the hearing, all eight (08) members were absent from the hearing.
- 2.16.3 The member's persistent absence from the hearing was brought to the attention of fellow Employees Representative Warrant Officer Sithole.
- 2.16.4 The hearing was rescheduled for 28 October 2024.
- 2.17 HEARING DATE: 28 – 29 October 2024**

- 2.17.1 The hearing began at the Protection and Security Service Divisional Office in Maupa Naga.
- 2.17.2 There was only one employee present during the hearing together with Employees Representative Warrant Officer Sithole, who was unable to provide an explanation for the absence of the other seven (07) employees.
- 2.17.3 In accordance with Regulation 15 (5)(a)(i), Captain Pandle, the employer's representative, pleaded with the chairperson to suspend the members.
- 2.17.4 The members were suspended indefinitely by the chairperson in accordance with Regulation 15 (5)(a)(i).

2.18 HEARING DATE: 11 – 12 December 2024

- 2.18.1 The Employer Representative reconvened the hearing in accordance with Sub Regulation 5 (a) (ii), which began with the Employees Representative, Colonel ED Sampson, and Warrant Officer Sithole explaining why the members were not present.
- 2.18.2 The Employee Representative was unable to explain and substantiate the cause of the non-attendance of the members.
- 2.18.3 The agreement between the Employer Representative and the Employees Representatives states that the Employees Representative will transmit the written reasons for the employees' non-attendance at the hearing.

- 2.18.4 After receiving written justifications, the Chairperson will decide whether or not to lift the suspension.
- 2.18.5 The matter was then rescheduled for 04 February 2025, with the agreement that valid reasons would be provided to the Chairperson prior to the hearing, for his consideration in order to uplift the suspension of the members.
- 2.18.6 **On the 26 January 2025 SAPU** sent an email seeking a virtual meeting. The agenda points were as follows:
- (a) SAPU was the newly appointed employee representative that was elected by the eight members.
 - (b) The criminal case was postponed to 04 January 2025.
 - (c) The suspension of the members was addressed as per Regulation 15 (5). The members substantiated and lamented the cause of their absence to the Chairperson in order for an informed decision to be established.
 - (d) As a result of the aforementioned, the Chairperson requested that the meeting be rescheduled for 28 January 2025, due to National Police Day on 26-27 January 2025, which will be held in Durban as he (the chairperson) had to perform duties during this event.
- 2.19 **HEARING DATE: 28 January 2025 (Virtual meeting)**
- 2.19.1 The virtual hearing/meeting was held on the aforementioned date. Employees introduced the new representatives.
- 2.19.2 SAPU's new delegates were announced as Mr. Jabu Mabena and Mr. Paul Hlongwane.
- 2.19.3 Employees claimed that Colonel ED Sampson and Warrant Officer Sithole, who served as former Employee Representatives, deceived them, therefore they had changed their representation.
- 2.19.4 The Employees Representative presented a submission under Regulation 15 (5) (a)(i), requesting that the Chairperson review and set aside the suspension under Regulation 15 (5)(c), or not set aside.
- 2.19.5 The Employer Representative found the arguments stated by SAPU to be genuine and valid.
- 2.19.6 Consequently, the Chairperson lifted the suspension.



2.20 HEARING DATE: 17 – 19 February 2025

- 2.20.1 The hearing began in Maupa Naga's Protection and Security Service Divisional Office.
- 2.20.2 Mr Mabena and Mr Hlongwane, members of the South African Police Union (SAPU), represent the employees. Employees claimed that Colonel ED Sampson and Warrant Officer Sithole, who served them previously as Employee Representatives, deceived them. Therefore, they had changed their representatives.
- 2.20.3 The matter was then postponed for 16 – 19 March 2025 on request of new Employees Representative (SAPU) for comprehensive consultation with their new clients.
- 2.20.4 The Union requested interpreters for the next Hearing.

2.21 HEARING DATE: 16-19 March 2025

- 2.21.1 Employer representative presented the case levelled against the Employees; subsequently the members denied the case levelled against them.
- 2.21.2 The Employer requested the adjournment based on the fact that his witnesses were not summoned to attend the hearing.

2.22 HEARING DATE: 31 March 2025

- 2.22.1 The hearing started at 10:00 at Maupa Naga, Protection and Security Service Divisional Office.
- 2.22.2 Captain Pandle, Representing the Employer read the charges levelled against the members.
- 2.22.3 Mr Jabu Mabhena and Mr Hlongwane Representing All Employees:

Warrant Officer SM Kojoana, Warrant Officer JM Mampuru, Warrant Officer Mofokeng, Sergeant HM Ramokgonami, Warrant Officer PM Boshielo, Warrant Officer CM Mkhize, Warrant Officer LA Rambau, Warrant Officer MF Tshidada.
- 2.22.4 Captain Pandle, the employer representative, reported during the hearing that complainants Mr. Malan, Mr. Bezuidenhout, and Ms. Avontile were scheduled to testify, and they were notified accordingly.
- 2.22.5 The aforementioned complainants were not in attendance of the hearing, without informing the employer representative or explaining their absence. To which the employer representative had no reasons as to why Mr. Bezuidenhout, and Ms. Avontile were not in attendance.



2.22.6 Mr. Malan was the only witness that sent a letter stating that he is not a witness or a complainant, and thus will not attend the hearing; he is unwilling to testify.

2.22.7 The matter was deferred until 01 April 2025, to allow the employer representative to communicate with his witnesses or complainants, as agreed to by the employee representative (SAPU).

2.22 HEARING DATE: 01 April 2025

2.22.1 The hearing started at 10:20 at Maupa Naga, Protection and Security Service Divisional Office.

2.22.2 Captain Pandle Representing the Employer, Mr Jabu Mabhena and Mr Hlongwane Representing All Employees:

Warrant Officer SM Kojoana, Warrant Officer JM Mampuru, Warrant Officer Mofokeng, Sergeant HM Ramokgonami, Warrant Officer PM Boshielo, Warrant Officer CM Mkhize, Warrant Officer LA Rambau, Warrant Officer MF Tshidada

2.22.3 Colonel Shange, Section Commander and Deputy President of Team Convoy, was due to testify on 01 April 2025.

2.22.4 Captain Pandle, the Employer Representative, informed the committee that Colonel Shange was unavailable to testify due to a duty commitment and engagement in the Western Cape. Her two (02) statements cannot be tested because she was absent.

2.22.5 The Employees Representatives (SAPU) requested an hour's adjournment to allow the employer representative to gather all witnesses.

2.22.6 When the hearing resumed after one hour and thirty minutes, the employer representative, Capt Pandle, said that he could not find all of the complainants' witnesses who were scheduled to testify. As a result, he has decided to close the matter.

3. READING OF CHARGES AS PER ALLEGED INDIVIDUAL MEMBER BY EMPLOYER REPRESENTATIVE

3.1 Captain Pandle, the Employer Representative, read the charges made against each employee respectively on the 17 February 2025 at approximately 10:30.

3.2 Captain Pandle, an Employer Representative, made the following accusations against each member:

3.3 Accused number one (01), with service number 7128034-1 **Warrant Officer SM Kojoan** charged with the following charges, namely:

3.3.1 **Regulation 5 (3)(a)** – failed to comply with, or contravenes an Act, regulation or legal obligation.



- 3.3.2 **Regulation 5 (3)(b)(ii)** – to undermine the policy of the Service
- 3.3.3 **Regulation 5 (3)(u)** – contravenes any prescribed Code of Conduct of the Service or the Public Service, whichever may be applicable to him or her.
- 3.3.4 **Regulation 5 (4)(0)** – Malicious damage to property of a serious nature.
- 3.3.5 **Regulation 5 (4)(x)** – Any Act of misconduct which detrimentally affects the image of the Service or brings the Service into disrepute, or which involves an element of dishonesty.
- 3.4 Accused number two (02), with service number 7039641-8 **Warrant Officer JM Mampuru** charged with the following charges, namely:
- 3.4.1 **Regulation 5 (3)(a)** – failed to comply with, or contravenes an Act, regulation or legal obligation.
- 3.4.2 **Regulation 5 (3)(b)(ii)** – to undermine the policy of the Service
- 3.4.3 **Regulation 5 (3)(u)** – contravenes any prescribed Code of Conduct of the Service or the Public Service, whichever may be applicable to him or her.
- 3.4.4 **Regulation 5 (4)(0)** – Malicious damage to property of a serious nature.
- 3.4.5 **Regulation 5 (4)(x)** – Any act of misconduct which detrimentally affects the image of the Service or brings the Service into disrepute, or which involves an element of dishonesty.
- 3.5 Accused number three (03), with service number 7128750-7 **Warrant Officer Mofokeng** charged with the following charges, namely:
- 3.5.1 **Regulation 5 (3)(a)** – failed to comply with, or contravenes an Act, regulation or legal obligation.
- 3.5.2 **Regulation 5 (3)(b)(ii)** – to undermine the policy of the Service
- 3.5.3 **Regulation 5 (3)(u)** – contravenes any prescribed Code of Conduct of the Service or the Public Service, whichever may be applicable to him or her.
- 3.5.4 **Regulation 5 (4)(0)** – Malicious damage to property of a serious nature.



3.6 Number four (04), with service number 7190324-1 **Sergeant HM Ramokgonami** charged with the following charges, namely:

- 3.6.1 **Regulation 5 (3)(a)** – failed to comply with, or contravenes an Act, regulation or legal obligation.
- 3.6.2 **Regulation 5 (3)(b)(ii)** – to undermine the policy of the Service
- 3.6.3 **Regulation 5 (3)(u)** – contravenes any prescribed Code of Conduct of the Service or the Public Service, whichever may be applicable to him or her.
- 3.6.4 **Regulation 5 (4)(0)** – Malicious damage to property of a serious nature.
- 3.6.5 **Regulation 5 (4)(x)** – Any act of misconduct which detrimentally affects the image of the Service or brings the Service into disrepute or which involves an element of dishonesty.

3.7 Number five (05), with service number 7166794-6 **Warrant Officer PM Boshielo** charged with the following charges, namely:

- 3.7.1 **Regulation 5 (3)(b)(ii)** – to undermine the policy of the Service
- 3.7.2 **Regulation 5 (3)(u)** – contravenes any prescribed Code of Conduct of the Service or the Public Service, whichever may be applicable to him or her.

3.8 Number six (06), Service number 7162755-3 **Warrant Officer CM Mkhize** charged with the following charges, namely:

- 3.8.1 **Regulation 5 (3)(a)** – failed to comply with, or contravenes an Act, regulation or legal obligation.
- 3.8.2 **Regulation 5 (3)(b)(ii)** – to undermine the policy of the Service
- 3.8.3 **Regulation 5 (3)(u)** – contravenes any prescribed Code of Conduct of the Service or the Public Service, whichever may be applicable to him or her.
- 3.8.4 **Regulation 5 (4)(0)** – Malicious damage to property of a serious nature.
- 3.8.5 **Regulation 5 (4)(x)** – Any Act of misconduct which detrimentally affects the image of the Service or brings the Service into disrepute or which involves an element of dishonesty.

3.9 Number seven (07), with service number 7168851-2 **Warrant Officer LA Rambau** charged with the following charges, namely:

3.9.1 **Regulation 5 (3)(b)(ii)** – to undermine the policy of the Service

3.9.2 **Regulation 5 (3) (u)** – contravenes any prescribed Code of Conduct of the Service or the Public Service, whichever may be applicable to him or her.

3.10 Number one (08), with service number 7132954-4 **Warrant Officer MF Tshidada** charged with the following charges, namely:

3.10.1 **Regulation 5 (3)(a)** – failed to comply with, or contravenes an Act, regulation or legal obligation.

3.10.2 **Regulation 5 (3)(b)(ii)** – to undermine the policy of the Service

3.10.3 **Regulation 5 (3)(u)** – contravenes any prescribed Code of Conduct of the Service or the Public Service, whichever may be applicable to him or her.

3.10.4 **Regulation 5 (4)(0)** – Malicious damage to property of a serious nature.

3.10.5 **Regulation 5 (4)(x)** – Any act of misconduct which detrimentally affects the image of the Service or brings the Service into disrepute, or which involves an element of dishonesty

4. INDIVIDUAL PLEA

The Employees individually denied all allegations levelled against them and individually pleaded not guilty in all charges respectively.

4.1 MITIGATION

The defence (SAPU) sought clarity on the following issues:

- (a) Who opened the charges against the members?
- (b) Who is the complainant?
- (c) Who conducted investigation?
- (d) Who formulated the charges levelled against the members?
- (e) Who are the witnesses?
- (f) Where did the incident happen?

- (g) Why did the incident happen?
- (h) When did the incident happen?
- 4.1.1 The defence (SAPU) raised the question about Complainant (s), about their existence.
- 4.1.2 The defence (SAPU) thought that the accusations against the members were prepared by Independent Police Investigation Directorates (IPID) in response to viral video dissemination in South Africa.
- 4.1.3 The defence (SAPU) requested that the Employer Representative present the author or SANRAL expert who captured the footage.
- 4.1.4 The defence (SAPU) also wanted to know who performed the internal investigation and what suggestions he or she made.
- 4.1.5 The defence (SAPU) is questioning Lieutenant Colonel Shongwane's role in the matter.
- 4.1.6 The defence (SAPU) questions the function of the Deputy President Convoy Leader or Commander on the specific day in issue.
- 4.2 The Employer Representative conveyed on the following Complainants and Witnesses.
 - (a) The investigating officer Lieutenant Colonel Mashabela;
 - (b) Author or originator of viral video footage, or SANDRAL;
 - (c) Employees Relations Officer Lieutenant Colonel Shongwane;
 - (d) Complainant Mr Fischer;
 - (e) Complainant Mr Malan;
 - (f) Complainant Mr Bezuidenhout;
 - (g) Complainant MS Avontile;
 - (h) Deputy President Convoy Team Leader or Commander Colonel Shange.
- 4.3 **The investigating Officer Lieutenant Colonel Mashabela** was the first to give testimony under oath.
 - 4.3.1 He explained that he looked at the widely shared video footage and came to the conclusion that members should respond to these questions during the hearing.

4.3.2 He considered the following charges against the members to be tested at the hearing:

(a) Regulation 5 (4)(x)

(b) Regulation 5 (3)(t)

4.3.3 SAPU questioned that members are charged with five charges, and some with two charges? How many charges he levelled or he recommended?

4.3.4 He confirmed only two charges to different members.

4.3.5 The investigating Officer confirmed that he never charged the members with any additional charges other than the Regulation 5(4) (x) and Regulation 5 (3) (t), therefore he denied the extra charges.

4.3.6 SAPU further questioned the Investigating Officer about the Viral Video Footage, whether is he relay on?

He did not have an answer to the question. He confirmed that he never had a contact or communication with SANRAL to confirm the originality, or Author of the Viral Video Footage.

4.3.7 SAPU asked the Investigating Officer, whether his still stand with his charges that he levelled against members? He replied by saying "NO", he was of the view that upon the appointment of Employer Representative there will be a session to streamline the charges, which never happened.

4.4 **The Employees Relations Commander, Lieutenant Colonel Shongwane** was called to testify in terms of the charges levelled against the members.

4.4.1 Lieutenant Colonel Shongwane confirmed that all five charges were formulated by the IPID.

4.4.2 He clarified his extra role as IPID case Coordinator within the Presidential Protection Services.

4.4.3 SAPU questioned the role of the Investigating Officer under SAPS Regulation 16 processes. He (Lieutenant Colonel Shongwane) emphasized that the purpose is to get statements from the complainant and witnesses, as well as to formulate any accusations. Recommend the charges or not. SAPU underlined that Lieutenant Colonel Shongwane interfered with the inquiry, therefore all IPID-formulated allegations were presented at the court without supporting evidence from the PPS-appointed Investigating Officer. Lieutenant Colonel Shongwane refuted SAPU's charges. SAPU emphasized that the question of the complainant and the author of the viral film is still unknown, and the employer has no answer as the viral video in question was captured by an unknown person and the authentication certificate of the video was not placed on file when the ER received the file.

- 4.4.4 Employer Representative did not deny that the charges were formulated by IPID.
- 4.5 **The Complainant Mr Fitcher** was called to testify in terms of the charges levelled against the members under oath.
- 4.5.1 He mentioned that he is a member of the South African Defence Force, with a five (05) year service. He is based at Labatswana Military base.
- 4.5.2 He was a driver of a motor vehicle, blue VW Polo, with a registration number NKR, belonging to his girlfriend.
- 4.5.3 He was with Avontile, Malan and Bezuidenhout in the motor vehicle.
- 4.5.4 They were driving from South direction to Pretoria.
- 4.5.5 The two (02) black BMW X5 stopped and blocked them.
- 4.5.6 One (01) of the Black BMW occupant pointed a fire-arm towards their direction, and he thought that they were being hijacked. He (Mr Fitcher) stopped the vehicle.
- 4.5.7 One (01) person exited the black BMW and hit the back window with the butt of the firearm and the glass shattered. He got injured, and he fainted.
- 4.5.8 He could not see or identify the person who assaulted him with the butt of the firearm, as he fainted.
- 4.5.9 He only regained consciousness at the military base.
- 4.5.10 SAPU inquired about the empty alcohol bottles in the trucks, which Mr Fitcher acknowledged and went on to explain that they were celebrating Avontile's birthday party. They had been drinking at a party the day before. They kept empties to obtain a discount when they bought booze.
- 4.5.11 He confirmed that the incident took place between 14:00 and 15:00, and did not open any case, however IPID opened the case as they visited him to obtain a statement from the Military Base on unknown dates.
- 4.5.12 SAPU also inquired as to why he had not filed the case with the police. He stated that he had no interest because he couldn't even identify the guy, he hit with the pistol bud. However, SAPU went on to ask if he could identify one of the eight members accused of assaulting him. He responded no, he couldn't recognize him among the members in front of him.
- 4.5.13 SAPU asked him if he had seen viral video and confirmed that the IPID showed him.

- 4.5.14 SAPU asked him if he is aware of video footage that is viral, and he confirmed that he have seen the video. He first seen video when IPID Investigator show him. He could not further comment, when asked about the video.
- 4.5.15 Questions were raised by the employer representative to Mr Fisher, and further the employer representative led the witness to give his testimony.
- 4.5.16 Thereafter, the witness was cross examined by the employees' representatives, to which they focused on discrediting the witness based on alleging that he was under the influence of alcohol and that he did not have a valid driver's license. SAPU further asked the witness as to whether the video was taken by his companions or not, and if they are the author of the viral video, to which the witness denied as it was deemed impossible.
- 4.5.17 After the cross examination the employer re-examined the witness, to which the witness testified that he was not conscious throughout the altercation and could not testify further from being stopped and hit with the butt of the firearm. Witness could not even identify anyone of the members.
- 4.5.18 The Employer Representative did not prepare his witness for possible questioning by Employees Representatives and did not cross examine his witnesses.

4.6 Admissibility of video footage

SAPU argued that the video footage cannot be utilized as there are possibilities of tampering, does not have an author or originator to testify. The author of the video footage is unknown, and the question arose as to whether SANRAL or a private person who took a video. The authenticity of the video was questioned. Due to the lack of evidence based on the authenticity of the video footage and author, SAPU argued that the video footage should be dismissed as inadmissible evidence.

- 4.7 **The Employer Representative** confirmed that the video cannot be used as he does not have an Author or Owner and does not form part of exhibit for the case in question.
- 4.7.1 The authenticity of the video footage cannot be presented by Employer Representative.
- 4.7.2 Therefore, the Chairperson cannot rule as video footage is not forming part of exhibits, as the Employer Representative said that the viral video footage is not forming part of evidence (Viral Video Footage Exclusion as evidence by Employer Representative)

5. LIMITATIONS

- 5.1 Unavailability of the complainant.
- 5.2 Unwillingness of witnesses to testify.

- 5.3 Unknown author of the video footage, authenticity, relevance, reliability.
- 5.4 Unavailability of the Commander to testify at the hearing, the convoy commander's testimony would have yielded nothing crucial. During the interview with the commander, she informed the ER that when the "threat" was detected by the CAT, the rest of the convoy sped up and left CAT to attend to it. She did not witness anything on the day. A further delay would have caused more waste and fruitless expenditure.
- 5.5 Unavailability of the IPID to testify.

6. VERDICT BY CHAIRPERSON

- 6.1 The Employer levelled the cases of expeditious process, wherein the hearing conducted at normal process. It has caused confusion and compromise the SAPS disciplinary regulation of 2016 as per charge Regulation 5(4)(o) – Malicious damage to property of a serious nature and as per charge Regulation 5(4)(x) – Any act of misconduct which detrimentally affects the image of the Service or brings the Service into disrepute, or which involves an element of dishonesty and it could not be defended by the Employer representative as why this matter was not referred to Expeditious process, because it is serious in nature.
- 6.2 It was established that there was a contradiction on the allegation levelled against the member by the investigating officer as he charged the members with only two (02) charges which is Regulation 5(4)(x) and Regulation 5(3)(t) **whereas** the Employer Representative presented the following charges from the IPID:
- (a) Regulation 5 (3)(a)
 - (b) Regulation 5 (3)(b)(ii)
 - (c) Regulation 5 (3)(u)
 - (d) Regulation 5 (4)(0)
 - (e) Regulation 5 (4)(x)

Therefore, the IPID were not summoned to testify as they were part of formulation of charges.

- 6.3 Unavailability of the complainant to testify and test his or her submissions.
- 6.4 Unavailability of Deputy President of South Africa team leader Colonel Shange to testify.
- 6.5 Unavailability of viral video author or owner, or SANRAL to testify as Employer Representative did not summon them to appear at the hearing.
- 6.6 The employer failed to formulate charges as per Investigating Officer recommendations.

- 6.7 The employer failed to secure the hearing attendance of Complainant, Witnesses, Team leader Commander and SANRAL or author of the video footage.
- 6.8 The employer failed to request a postponement to secure attendance of all the role player including Commander Colonel Shange.

7. RULING

The employer and employee representatives were each accorded with the full opportunity to present their defence to which the Audi Al Partem rule was consistently applied.

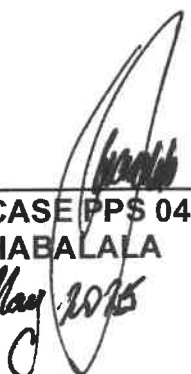
The video footage would have been a key piece of evidence, however its authenticity could not be proven and therefore was regarded as inadmissible in the hearing. The lack of witnesses also diminished the arguments of the employer representative as he did not have sufficient evidence to substantiate any claims made on behalf of the employer.

Based on the limited information including the non-attendance of Complainant, Witnesses, Team leader Commander, and SANRAL or Author of the video footage and on the standard of proof as it requires the party (employer representative) with the burden of proof to demonstrate that it is more likely than not their claim of defence will succeed.

The employer representative failed in providing substantial evidence as there was an unavailability of compliant statements, witnesses to testify, authentication of video footage and numerous contradictions with regard to the argument of the employer representative and investigating officer.

The presiding officer applied equally the rule of law on the standard of proof in terms of a balance of probabilities and found the members not guilty as there was no substantial evidence based on what was presented to him as the presiding officer, which results in the members being **found not guilty** on all charges levelled against them.

Case finalised.



BRIGADIER
THE CASE PPS 04/2023 HEARING CHAIRPERSON
TD SHABALALA
23 May 2015