

APPENDIX 3 : CATO MANOR CASE 108/10/10/2021

On the surface, this case, in which five men have been arrested on two counts of murder and sundry other charges, bears little resemblance to the politically-driven malicious treatment of two experienced law enforcement officers. However, a closer look at the political context in which the crimes were committed, the fact that two community members who came forward with information about the killings were murdered, and the coercion and abuses meted out by task team members, including on community members taken in for questioning, and the political dynamics of all these murders, demands a closer look and suggests that this docket is in urgent need of independent review. There are five accused and different lawyers acting for them. I am not passing judgment on the innocence or guilt of any of them, but merely asking that an experienced, suitably qualified, judicial officers review all the evidence.

In compiling this case study, I have received information from different sources, including people from both factions. Factions are by their very nature fluid entities and allegiances shift (e.g at the time of the 2021 elections former mayor Gumede and the ANC Regional secretary were reportedly in the same faction, but are said to have since parted ways). The fear of some people I have spoken to is palpable and I am concerned about their safety, so my summary below will be of a general nature to try and avoid anyone other than the accused being identified.

The political context

Ward 101 in eThekweni includes both the sprawling Cato Crest shack area and nearby middle class formerly white urban residential areas. In local government elections, it has historically been an ANC stronghold. In the run up to the 2021 local government elections, there were two factions I shall call A and B. Prior to the elections, the sitting councillor, Ngiba was in the A faction which included some senior eThekweni party members. The B faction sided with the ANC Regional Secretary who is reportedly close to former Minister of Police Cele who has, for years, been extremely influential in local politics. The sitting councillor, Ngiba, was not initially standing for re-election in October 2021, and the ANC approved candidate was Siyabonga Mkhize, who was in the B (termed the Unity) faction. Shortly before the elections in October 2021, Mkhize and his co-cavasser Mzukizi Nyanga, were shot dead sitting in the back seat of the vehicle they were

travelling in. The driver and the front seat passenger had fled, apparently upon seeing the gunmen. In the subsequent by-election, Ngiba was re-elected as councilor but in 2023, after his arrest with three others in May 2022 (his younger brother was subsequently added as accused number five) and denial of bail, another by-election was held and a new councilor, Khanyile, won the ward. Like Mkhize, Khanyile is in the B faction; he had been the driver of the vehicle in which the four were travelling when Mkhize and his companion were gunned down.

Investigations and arrests

Speaking at the memorial service for the deceased Mkhize in 2021 then Minister of Police Cele had promised that they would 'get' Ngiba and, shortly afterwards, the political task team was deployed to investigate the murders.

The accused were refused bail after their arrest in May 2022. In an extraordinary move for awaiting trial prisoners, they were sent to the maximum security prison in Kokstad where they spent a year. To reinforce the perception that they were dangerous criminals, including of the magistrate deciding on bail, heavily armed National Intervention Unit members were deployed for the hearing. The court was told that the prisoners posed a security risk. However, one of the task team investigators told them they had received instructions from Cele to send them to Kokstad.

In the mean time, community members, thinking there was progress they did not usually see from their local police stations when people were killed (which I can confirm) provided information when they heard that an outside task team was investigating. However, when two of those who provided information were murdered in January 2023, brothers Jabulane and Mthokozi Nkwenyane (Mthokozi had been tracked to Dududu, south coast, where he was killed), fear gripped community members (these, and other murders, happened while the accused were in Kokstad prison). Referring to these murders X, sounding terrified, points out that the information they had shared about who was behind the killing, including the hitmen and funders, was also known to other community members. X expressed own personal safety fears, saying 'every person who has got information of Mkhize death is killed'

The fears were justified. Other killings followed, including of an MK member (some in the Unity faction had joined MK) and community members spoke of the killers being the same as had ordered the hit on Mkhize and claimed that a man arrested for the killing had confirmed it.

The task team members appeared desperate in their search for evidence against those arrested and community members who were said to be associates of Ngiba were subject to criminal tactics by the task team members : Cellphones, even of those not charged, were seized without court orders and not all were returned (the owners being too scared to open cases). Worst of all was the abuse and torture, not only of the accused, but of people taken in for questioning and not charged. 'Tubing' in which an evidence bag was placed over the faces of those being interrogated, on at least on occasion accompanied by water (not the classic 'waterboarding' but according to a forensic specialist, the use of water for different purposes may be used with the tubing, in which a sense of suffocation is induced. It may lead to death and some report having near death experiences. It is favoured by the sadistic police because it does not leave the obvious injuries that physical abuse does, and although the symptoms of it having happened are known, many doctors lack the knowledge to pick it up. In the case of accuse Mzizi, he was taken to a rural area and subject to abuse, including tubing, in the bushes there. Some of those abused made reports to IPID but have had no feedback (see my covering letter).

This torture, which might be combined with detention of people not charged, went together with statement taking from those being questioned. Some made statements which they later, through their lawyer, retracted. Prosecutor Gcaba is named in alleged statement irregularities. For example, one of those who made a statement denying any knowledge of the Mkhize murder, and was later taken to the prosecutor found that he was expected to sign the statement he had made despite it having been changed, so he made another statement refuting that which had been changed. There is also mention of being told to sign blank pages. Some succumbed to pressure to sign statements because they were terrified of further abuse. Some who had made statements consulted a lawyer who formally advised the prosecutor that they had withdrawn their statements.

The statements which were subsequently withdrawn were in the docket when the further bail hearing based on new facts was turned down in 2023.

It seems that they have now been taken out of the docket, from information provided to accused by lawyers. There will thus be no record of the coercion and illegal interrogation practices of those who were not even charged. According to what one of the accused has been told by his lawyer, the sworn statement used to obtain the warrant for their arrest was only commissioned months after the arrest took place.

Members of the task team often let interesting information slip to the accused. One of them allegedly admitted that evidence implicating them was lacking, saying that the instruction to arrest them had come from General Khumalo and Minister Cele.

Those who have been threatened and brutalized by members of the task team continue to live in fear that those same members will return and resort to the same tactics and possibly even kill them.