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18 JUNE 2018

Mr Dario Milo
Webber Wentzel Attorneys

Dear Dario,

Re: Report of the review commissioned by SuperSport

I enclose a copy of my report on the review I have conducted. A signed copy of the report is available for collection at my office.

In the light of public concern arising from the allegations I have investigated, I recommend that SuperSport should seriously consider the release of the report, but not the bundle of documents which accompanied it, to the public, except aspects of the report that are confidential.

Yours Faithfully



Vincent Maleka SC

To: **Webber Wenizel Attorneys**

**Report on the review of the altercation that took place at
Studio 1 of SuperSport on 19 May 2018**

A. *Introduction*

1. On 19 May 2018 Messrs Ashwin Willemse, Naas Botha and Nick Mallett attended studio 1 at SuperSport to execute their contractual functions and duties as rugby analysts on two Super Rugby matches. Both were broadcast on live television. The first was the game between the Sharks and the Chiefs, held at Jonsson Kingspark Stadium from 15:05, kick-off; and the second was between the Lions and the Brumbies held at Emeralds Airline Park Stadium from 17:50, kick-off. In both matches Ms Motshidisi Mohono was the anchor, and Mr Mandla Ntsibande was the studio producer.

2. For the most part, the established order of rugby analysis and commentary progressed fairly well, and uneventfully. By the end of the analysis of the match between the Sharks and the Chiefs, the performance of the analysts, and of course the anchor, impressed Mr Malcolm Russell, a broadcast and presentation advisor employed by SuperSport, who there

and then addressed a congratulatory email to all of them, recording their impressive performance.¹

3. A serious disturbance to the established order of rugby analysis and commentary took place during the post-match commentary of the match between the Lions and the Brumbies when Mr Willemse walked off the set during the studio live broadcast. He said on-air before he walked off that he felt undermined by his fellow analysts and audibly complained that they had patronised him. The text of Mr Willemse's statement to this effect is as follows:

"I think it's important for me because, you know, I've played this game for a long time. Like most, like all, of us here, you know. As a player, I was labelled a 'quota player' for a long time. And I've earned hard, and worked hard to earn, my own respect in this game. So I'm not going to be patronised by two individuals that have played in an apartheid, a segregated era, and come and want to undermine, you know. And so I think, I think, for me, I've had my fair share. So I can't work with people who undermine other people. And you know you can sit and you can laugh about it [Nick Mallett

¹ The text of the email reads as follows -

"This is the first time I have done an 'everyone in the team' mail. I am not about to single anyone out for special recognition because the work was all round exceptional. The discussion and vibe had your audience, I am certain, pinned to their seats.

Well done. Congratulations.

Mal"

[interjection] but you know exactly what happened. It's fine, I don't mind being ridiculous. I'm glad it happens on air so people can see [Motshidisi Moihono interjection] because you two sit here. No it's fine."

4. Mr Willemse then proceeded to remove his lapel microphone and walk off the set of the studio. Mr Willemse's colleagues then proceeded to complete the broadcast in studio.

5. What followed thereafter was a public outcry broadly manifested on social media platforms. There was widespread attribution of racism by those who dissected the audio-visual footage of Mr Willemse's conduct. A reasonable summation of the public mood at the time is usefully essayed by Professor Jonathan Jansen when he said, *inter alia*,

"The live incident caught on tape went viral on social media and, true to form, many white South Africans launched into Ashwin for being disrespectful and unfairly charging his co-presenters, Nick Mallett and Naas Botha, as being patronising bigots. Black South Africans, in the main, instantly expressed solidarity with Ashwin and even the new Minister of Sports would, within hours, put out a statement of support while calling for a swift investigation."

And also:

"So far, black and white South Africans played dutifully to their historical script – blacks saw white racism, whites saw black petulance. That split in opinion is not unexpected in our divided country; the much more interesting question is: Why do two groups of people staring at the same event on television 'see' two completely different realities?"²

6. Flowing from the public outcry and after the failure of internal attempts to resolve the issue, SuperSport decided to conduct an independent review of the cause(s) of the statement and the walkaway by Mr Willemse. I have been requested to carry out that investigation. My mandate is set out in written terms of reference included in the brief from the instructing attorneys, dated 25 May 2018.
7. I have now concluded my investigation. In this report I describe the model of investigation I adopted, the facts revealed therefrom, my evaluation and analysis of information I gathered and the findings I make based on that information, and also the recommendations I make to SuperSport pursuant to paragraphs 2.3.4 and 2.3.5 of the terms of reference.
8. The report will be accompanied by two bundles of documents of information I considered for the purposes of the investigation. The

² See the opinion piece by Professor Jonathan Jansen, entitled "Is your response to Ashwin Willemse scripted by race?", published in the Business Day edition of 24 May 2018.

documents include media reports on the incident, the curricula vitae of persons I interviewed and transcript of their version of events.

E. *The methodology of investigation*

Viewing of audio visuals

9. I began by reviewing the recorded audio-visual of the live studio broadcast relating to the commentary and analysis of the match between the Lions and the Brumbies. The visual depicts three distinct segments of the commentary:

9.1. The first is the pre-match commentary. It was introduced by the anchor, announcing that they will be crossing to the live broadcast of the Lions and Brumbies match "*at quarter past five this afternoon*".

9.2. That announcement was understood by the analysts present in the studio to imply that there was enough time for all of them to provide their pre-match analysis and commentary of the game.

- 9.3. Next, the anchor introduced a topic for commentary. It related to the changes made to the Lion's side, and invited the analysts' views thereon.
- 9.4. Mr Mallett provided a detailed analysis on the changes, and his analysis proceeded for approximately one minute. Thereafter, the anchor turned to Mr Botha and invited him to comment on the form of Mr Eiton Jantjies, who plays for the Lions. Mr Botha provided his analysis against the background of live pictures from the stadium, depicting the warm up by Mr Jantjies. Now and then Mr Mallett would add his views to the points made by Mr Botha, in a manner that revealed a collegial conversation between them. The inputs from both takes about few minutes.
- 9.5. Then, the anchor suddenly announces that it is time to join the live broadcast of the match at the Emirates Airline Park stadium.
- 9.6. Throughout the pre-match commentary Mr Willemse did not have the opportunity to provide a pre-match analysis. He stood next to a touch-screen television monitor and listened to the analyses of his colleagues, as they were led by the anchor.

- 9.7. I shall explain the significance of the pre-match studio broadcast in section C of this report, when I evaluate the conspectus of the information before me.
- 9.8. The second segment of the studio broadcast was the half-time commentary. It too was introduced by the anchor by announcing the half-time score, and without delay invited Mr Willemse to provide his analysis of the match up to that point.
- 9.9. Mr Willemse immediately provided his comments, both verbally and by telestrating on the touch screen. As he telestrated, he would play few video clips of the match and invited first Mr Botha and later Mr Mallett to analyse several talking points of the game. Both responded and Mr Willemse led the analysis on the talking points. Throughout, the anchor was listening and the analysts were lively engaged in the half-time commentary, which in all lasted for 3 minutes 41 seconds. The half-time commentary was concluded when the anchor announced the return to the live broadcast of the second half of the game.
- 9.10. The third segment was the post-match commentary. Again, it was introduced by the anchor who announced the final results of the match. She turned to Mr Willemse and solicited his views on one of the talking points of the second-half, and the performance of

the teams. Mr Willemse stood next to the touch screen, and held the running order in his right hand.³ He turned to Mr Botha and invited him to express his views.

9.11. Mr Botha declined the invitation, for he conceived and said that he had already spoken much more during the earlier segments of the commentary, and that Mr Willemse should have a fair opportunity to express his views.

9.12. The response from Mr Willemse was that there was no need *“to patronise each other”* and he then invited Mr Mallett to express his views on the game. Mr Mallett took up the invitation and provided a detailed analysis of the second half performance.

9.13. At the end of Mr Mallett’s analysis, Mr Botha chipped in to speak on a gamechanging event for the Lions, a high tackle by a Brumbies player on Mr Jantjies which led to a second yellow and therefore a red card and its effect on the game. Once more, the talking point was analysed with the assistance of the footage clipped from the earlier broadcast of the game.

³ The running order and its purpose are explained in paragraphs 19-20 below.

9.14. Through her summation, the anchor invited Mr Willemse to express his concluding thoughts on the game. It was at that point in time that Mr Willemse uttered the statements I have described in paragraph 3 above, and walked off the set. The following part of the studio conversation reflects the change in the mood, thereafter

"... that was unfortunate because the match was going so well, and so was our conversation. Lots of players that have also done really really well in this game as well. It would have been great to hear Ash's thoughts, especially because he had so much to say regarding the match. It is an unfortunate way for us to end this, our coverage, of the live Super Rugby today. But gentleman, as we close because we do still have a lot of time..."

9.15. The anchor closed the proceedings by reflecting on the unexpected turn of events and the unfortunate manner in which the studio broadcast ended.

10. I called for and reviewed audio visual of studio broadcast which involved participation of the same analysts and anchor, to gain a sense of their studio working relationship, and to assess whether there is some evidence which could explain the incident of 19 May 2018. The studio broadcast of

10 March 2018 – for the Super Rugby matches of the Sharks v the Sunwolves and the Lions v the Blues – was the only match in this batch where Mr Botha, Mr Willemse and Mr Mallett all participated as analysts.⁴

11. The audio visual of 10 March 2018 reveals a demonstrable animation by all involved and collegial participation in the commentary and analysis of the games. The studio set up was the same as that of 19 March: the anchor was behind the desk and joined by Mr Mallett, on the immediate left and Mr Botha almost to the end of the desk, and Mr Willemse was standing next to the touch screen television monitor and working on the controls to lead discussions through clipped footages.
12. From my consideration of the audio visuals of 19 May and thereafter of 10 March 2018 there is no overt the conduct by Mr Mallett or Mr Botha that suggest unfair treatment directed towards Mr Willemse. I do not find a pattern of behaviour which could, over a span of time, lead to a build up of a grievance which could provide a reasonable explanation of the incident of the post match commentary on 19 May 2018.

⁴ I also received video footage of the SuperSport rugby analyzes and commentaries on the following dates: 24 March 2018 when the panel comprised Mr Xola Ntshinga (the anchor), Mr Mallett, Mr Botha and Mr Willemse; 21 April 2018 when the panel was made up of Mr Ntshinga (the anchor), Mr Mallett, Mr Hanyani "Shimmy" Shimange and Mr Willemse; and 24 April 2018 where the panel included Ms Mohono (the anchor), Mr Mallett, Mr Victor Matfield and Mr Willemse.

Inspection on site

13. On 29 May 2018 I carried out an inspection of studio 1 at the SuperSport premises in Randburg, Johannesburg. I did so to gain an appreciation of the roles and responsibilities of individuals who are critical to the studio broadcast, and the interface between the anchor and analysts, on the one hand, and the production crew, on the other. The inspection was led by Mr Thato Monale, the Executive Producer for Rugby, and Mr Mandla Ntsibande, the Studio Producer for Rugby.
14. The inspection turned out to be valuable. It provided a perspective of time management (not readily apparent from viewing the studio visuals) on the off-the-cuff decisions which have to be made on time management, mainly by the production manager of the day (Mr Ntsibande on 19 May), that is necessary to seamlessly orchestrate live broadcast of a match(es) and stadium(s) and studio broadcast commentary, commercial and ad-breaks, recall and audio-video clips required by analysts for important talking points for their pre-match, half-time and post-match analyses, and also communication between studio crew and the anchor and analysts.
15. The inspection and results thereof are also crucial because they help provide clear or reasonable answers to some publicly expressed theories and speculations about the possible causes of the incident of 19 May 2018.

I refer to those matters of speculation and explain how the evidence I gathered from the inspection explains away those theories.

16. On 9 June 2018 I attended the rugby match of the Springboks and England at Emirates Airline Park Stadium. There, I viewed the live studio production and broadcast of the match in the OB Van. The executive producer was Mr Monale and the studio producer was Mr Ntsibande. The first hand experience of that production and live broadcast gave me insight and first hand understanding of the enormity of the task and time management that is required in respect of the live sports production decisions.

Interviews with role players

17. The next phase of the investigation involved separate interviews with role players. They took place as follows:

- 17.1. On 31 May 2018 I interviewed Mr Botha. The interview took place for approximately 4 hours. Mr Botha gave useful background information of his rugby career, his achievements as a player and thereafter as an analyst for SuperSport. He also gave a detailed account of his version of the incident which led to the walk away. I evaluate the version of Mr Botha in section C of this report.

- 17.2. On 4 June 2018 I interviewed Ms Mohono who was the anchor on 19 May 2018. The interview lasted for about 3 hours. She explained her academic qualifications, generally and specifically insofar as they related to the sport of rugby. She also indicated when she began to anchor live studio broadcasts on rugby games, and her roles and responsibilities. I shall analyse the effect of the input I gathered from Ms Mohono in section C of the report.
- 17.3. On 5 June 2018 I met Mr Mallett and interviewed him for approximately 3 hours. He too described his achievements in the sport of rugby, both as a club coach here and abroad, and as a national coach for South Africa and Italy. He explained when he joined SuperSport as part of "*the Talent*" recruited for live professional commentary and analysis of rugby matches televised by or through SuperSport channels.
- 17.4. Mr Mallett also explained how he prepares for rugby commentary, and how he generally participates in commentaries and analysis with his colleagues..
- 17.5. On 5 June 2018 I met with Mr Willemse. The meeting was arranged by me in discussion with Mr Willemse beforehand. He was accompanied by his family and legal representatives.

- 17.6. I was unable to interview Mr Willemse on that day because his legal representatives indicated, in the main, that the review process I was mandated to undertake was not the appropriate forum to ventilate the issues relating to the incident of 19 May 2018. The meeting ended on the note that Mr Willemse would confer with his legal team which would thereafter advise whether he would agree to and take part in the interview.
- 17.7. On my request, Webber Wentzel sought to establish whether Mr Willemse had made up his mind to participate in the review process. The upshot of their correspondence and telephonic discussion with Mr Willemse's legal representatives over the period 7 June to 14 June is that he could not commit one way or the other to the interview.
- 17.8. On 15 June 2018 Mr Willemse's attorneys directed a letter to Webber Wentzel for my attention. In it they recorded that Mr Willemse "*declines*" the opportunity for an interview with me. Reasons for his decision are set out in that letter. The essence of the reasons, as I piece them together from that letter are that the 19 May incident was rooted in racism and he informed the CEOs of his submission to that effect.

- 17.9. In the letter Mr Willemse's attorneys make it clear that he persists with his view that racism was the cause of the incident and the narrative perpetuated by SuperSport that there was no racism reinforces his view and infringed his human rights and dignity. They specifically reserve Mr Willemse's right to redress that infringement in an appropriate forum. I include a copy of the letter in the bundle of documents which accompany this report.
- 17.10. I should add that the legal representatives of Mr Willemse conceive the present review process as an attempt "*to administer a balm (of some sort) to injuries inflicted upon Mr Willemse's rights to dignity and not to be discriminated against based on the colour of his skin*".
- 17.11. I take note of the contents of the letter and regret the fact that Mr Willemse elected not to attend the interview and share his version of events with me. This report is impoverished by the absence of Mr Willemse's version of events. He is aggrieved by what happened on 19 May 2018 and considers racism to have inspired the conduct of his colleagues.
- 17.12. In the absence of a version from Mr Willemse, I considered it appropriate to solicit assistance from an expert in race relations, to help me assess whether the conduct of Messrs Botia and

Mallett manifest overt or subtle forms of racism or unfair professional treatment of Mr Willemse. Webber Wentzel procured the services of Prof Adam Habib who has written and opined extensively on matters of racism and race relations. I shall explain the assistance I obtained from him, in discharging my mandate at paragraphs 47 to 49 below.

17.13. On 8 June 2018 I separately met with the chief executive officers of SuperSport and MultiChoice, Mr Gideon Khobane and Calvo Mawela. I interviewed them in the light of a joint statement they released to the media on 21 May 2018 in which they communicated their conclusion, based on their internal review, that they did not establish evidence of racism as the cause of the incident of 19 May 2018.

17.14. I sought to establish from them what information they had procured and how it was obtained to justify their conclusion. They explained that on Monday, 21 May 2018 they met separately with each individual who was part of the studio broadcast of 19 May, including Messrs Willemse, Botha, Mallett and Monale, as well as Ms Mohono.

17.15. At the end of the separate meetings, they convened a joint meeting in which these participants were present and conveyed their

conclusion, based on the interviews held separately with them. They then noted that they could not find evidence of racism or conduct to that effect, and proposed that a joint statement be issued on behalf of all the participants and SuperSport.

17.16. A draft statement was prepared for consideration by all concerned. Mr Willemse objected to aspects of the statement. In the end and in response to a question from the media, Messrs Khobane and Mawela communicated their conclusion to the media, and indicated that there was no evidence of racism that could serve as the basis of Mr Willemse's walk off the set.

17.17. From Tuesday, 22 May 2018 to Thursday, 24 May 2018 Mr Willemse met with the CEOs. At those meetings he indicated that there was racism which led to the 19 May incident. In the light of his complaint of racism SuperSport and Multichoice decided to institute the present review.

17.18. I have now obtained a copy of the draft statement and notes of the meeting kept by Mr Mawela. I say a little more about the information obtained from Messrs Willemse, Botha and Mallett during the interview by the CEOs, in section C of this report.

17.19. On 11 June 2018 I interviewed Professor Habib. He had already reviewed the audio-visual of the 19 May incident. He referenced useful literature on the test for determining subtle racism, and detection of signs of such conduct.

17.20. I have no difficulty in accepting the expertise and views of Professor Habib on this issue. He has written extensively on the controversial topic, has analysed and expressed invaluable contributions on cases of rank racism and subtle forms of racism, with reference to live examples in our country. I therefore rely on Prof Habib's assistance in my analysis, in section D of this report.

18. After the interview process, I proceeded to consider literature on subtleties of racist conduct, including information obtained from Professor Habib. The evaluation that follows is based on information I obtained through the above explained process of investigation.

C. *Analysis and evaluation*

The running order

19. From my interview with Messrs Monale and Ntsibande I established that there is always thorough preparation for the live broadcasts of rugby

matches and live on site and studio commentary involving "Talent", during each rugby season. Preparatory steps include the following:

- 19.1. A workshop is held before the commencement of each rugby season. There, a discussion of the proposed rugby programme and planning is explained to "Talent". After the workshop the executive producer finalises the rugby programme that will guide the implementation of the broadcast.
- 19.2. The production manager decides which analysts and anchors should be paired together for studio or live broadcasts to provide their analyses and commentary.
- 19.3. On each Monday preceding a Saturday of each broadcast, the studio/executive producer distributes to the selected analysts and anchor a draft of the running order that will guide the planned broadcast. The analysts and anchor review the draft running order and make their inputs to the extent they so desire. The studio producer/executive producer finalises the running order, having regard to inputs from the analysts and anchor.
- 19.4. A final version of the running order is distributed to each of the participating analysts and anchor by the Thursday preceding the Saturday of the broadcast. Each analyst is expected and ought to

prepare himself or herself for the broadcast, and will generally conduct research of the teams and players involved to guide their analysis and comments on the day of the broadcast.

19.5. Analysts and anchors are expected to arrive at the SuperSport premises at least an hour before the commencement of the studio broadcast for final preparation, including the make-up of their faces, strapping of the microphones and ear pieces. At that stage there will be a common understanding of how the broadcast will evolve, in line with the running order.

19.6. I have considered the running order of 19 May 2018. It details each broadcast activity and commencement thereof, as well as the duration of each activity, with reasonable precision. There could not have been any confusion or misunderstanding of what was expected from the analysts and the anchor during the live studio broadcast.

20. I have referenced the above preparatory work, the involvement of selected analysts and the anchor because I was informed by Mr Khobane that when he interviewed Mr Willemse on 21 May 2018, Mr Willemse complained that there were no rules regulating the conduct of the parties during the live broadcast and for that reason he walked off the set when he felt patronised and undermined by his fellow analysts. I later assess the

weight of this explanation, against the background of the above preparatory steps and other relevant information gathered from the interviews I described above.

Professional and personal relationship

21. During my interviews with the role players I sought to establish the nature and degree of professional and personal relationship between the analysts and the anchor, in order to assess whether there could be some prior professional or personal incident that could have given rise or contributed to the incident of 19 May 2018.
22. From a perspective of personal relationship, I have established that Messrs Willemse, Botha and Mallett do not have a mutual affection or bond that approximates friendship. They ordinarily meet at the SuperSport premises when they fulfil their contractual duties. They exchange pleasantries and would share jokes at times, but in a decent and respectful manner.
23. There is no incident of a personal nature, such as an unresolved grudge, resentment or annoyance that I established as a possible or reasonable explanation for the incident of 19 May 2018 or as a causative contributory factor of that incident.

24. From a professional perspective I have established that all the analysts and anchor are highly knowledgeable in the sport of rugby. The analysts, in particular, have played or coached the sport at the highest professional level and have achieved remarkable accolades during their career. They are clearly proud of their achievements.
25. I have also established that they treat their contractual obligations seriously and present professional image and inputs consistent with the ethical norms of decency and respect. No doubt each holds strong views and defends their perspectives during their contributions. Although I did not interview Mr Willemse I was informed by both Messrs Mallett and Botha that Mr Willemse was no push over, and would strongly defend his views whenever he differed with their views.
26. I should mention, at this stage that Mr Mallett indicated that he and Mr Willemse were often on the opposite side of the debates during match analyses and commentary. He felt more than once that they often contradicted each other. He referenced emails which he addressed to management of SuperSport wherein he requested that he should not be rotated together with Mr Willemse for live studio broadcast. For example, on 6 October 2016 he wrote to Mr Scott Steward, an Executive Producer at SuperSport, in the following terms,

"I really enjoy working with 'Eobs' and Xola, Scott. They are a real

pleasure. Xola asks very good questions and Bobs knows enough about rugby to produce interesting clips for discussion. Unlike with the complex Ashwin, there are no agendas.

It would be great if Ashwin could be moved to the morning show where we don't have to work together. I think he talks garbage, we irritate the hell out of each other and the working environment is just unpleasant and tense. I am very happy to work with Breyton, Shimmy or Bobs instead as, unlike with Ashwin, I respect their hard work and rugby opinions.

Perhaps you can keep raising this with Thato and Alvin as things will not improve. I have tried hard enough for 5 years!

Cheers

Nick"

27. On 10 September 2017 Mr Mallett wrote to Mr Maicom Russell, wherein he (Mr Mallett) indicated how well he worked with other colleagues such as "X" (Xola Ntshinga), Jean de Villiers and Breyton Paule. Again, on 21 April 2018 Mr Mallett wrote an email to Messrs Russell, Monale and

Alvin Naicker, recording the pleasure he experienced when he worked with "Shimmy" (Mr Hanyani Shimange).

28. There is no doubt that Mr Mallett felt uncomfortable in working with Mr Willemse, and expressed his preference to work with other colleagues, including those mentioned in his emails. In section F of this report I set out the conclusion I draw from this set of emails, in the light of Mr Mallett's version and also the version of Mr Khobane, when he interviewed Mr Willemse who confirmed that there were disagreements between them that affected their working relationship.

Off air events of 19 May 2019

29. Before the pre-match broadcast there was a collegial off air discussion which took place. Mr Mallett referenced a jest by Mr Willemse directed at him. Both appreciated the jocular effect of it, were amused by it and laughed it off. Nothing of consequence arises from this off air incident.
30. Before the half-time commentary, Mr Mallett stepped outside to buy coffee. At that stage Mr Willemse was outside the studio having a smoke. Mr Mallett asked Mr Willemse whether he would care for a cup of coffee or a cool drink. He declined the offer, but graciously. This off the air incident reflects a sensible relationship between colleagues, at least at that stage of the proceedings.

31. Then, there was a more crucial off the air incident that took place shortly before the commencement of the post-match live studio broadcast. Both Mr Botha and Mr Mallett spoke about that incident, and their versions corroborate each other. They indicated that both of them felt concerned that Mr Willemse was not afforded time to express his view on the Lions/Brumbies match before the game commenced (due to a technical error when they all thought they had more time than usual to discuss the match about to be watched) and indicated that Mr Willemse should have more time to do so when the post-match segment of the commentary commenced. It was done in a jocular but friendly manner.
32. Mr Botha confirms that shortly before the resumption of the post-match commentary he said to Mr Willemse: "Okay Ashwin, it's all yours", and then laughed. He said they always laughed and did not consider what he said or the laughter to be patronizing to Mr Willemse.
33. Mr Mallett recalls that he heard Mr Willemse saying to Mr Botha that he did not find the whole thing amusing, or words to that effect. He, Mr Botha, considered that as banter as they would sometimes tease each other off air. However they did not consider that Mr Willemse would be angered by the offer made by Mr Botha. Mr Mallett said, in this context:

"No, no I had absolutely ... when he said 'I don't find this amusing' then? Listen I thought two things, either, because he does it he pulls

a strong face and he says: 'I'm warning you don't talk to me like that' and then he laughs. So he has an ability to laugh back at you and tease you ... he will not laugh back at you but take it, take the josh or it can be that Ashwin, he really is cross and angry and I'm bloody, I was nervous that it was Ashwin who was very angry and I don't think Naas picked that up, I don't think. Because I don't think Naas, when he says this, Naas says it was such a bloody normal sort of joking ... he says no, no I used up all your time and he's talking to him as a mate. He's talking to him as someone that you tease, that you joke with and that you are completely ... he is completely unaware Naas, that there is a possibility that Ashwin is really angry. Because first of all he did apologise about it and secondly we all knew that it was a timing mistake. So there's absolutely no intention of Naas to undermine him. Absolutely 100% not. And me laughing, I was actually hoping that Ashwin was going to laugh back and say no well I didn't get a lot of time. You know, but he didn't, he reacted in a completely different way."

34. Ms Mohoro also confirmed the off-air banter. She said the following:

"... Prior to all of that, prior to getting back on air, I'm having a conversation with AJ [Mr Anthony Jerome Banks, the studio director] who is explaining to me we are going to go with venue then we are going to come back and then you must link to the

Sharks man of the match. While I am talking to AJ, I'm hearing the banter between these three: "No, no it is fine we will go with Ashwin first because he did not have enough time to speak in the transition time" but it is very jokey, jokey. And I can, while I am talking to AJ I can hear that Ash is irritated by it, by the jokey nature of what they are saying and then he says something like: Oh I see you guys are patronizing me, you think this is funny', but at the time I am not really thinking something serious is happening. Because the banter is just that, the banter. So when we go on air here and I go straight to Ashwin and he throws it straight to the desk "Hello" and then I am like, okay this is serious so what happened, what is going on and that is when the moment transpires"

35. From the above it becomes immediately clear that Mr Willemse used the word "*patronizing*" during the off air incident, in his conversation with his colleagues. Neither Mr Mallett nor Mr Botha read much from the use of the word. They did not pick up signals of annoyance from Mr Willemse, for they thought his response to their offer to be a joke, consistent with their general off air disposition.
36. In my view, that off air incident explains why Mr Botha offered the commentary to Mr Willemse when the post-match commentary began. It also explained why Mr Mallett initially declined Mr Willemse's invitation to take up the commentary when Mr Botha indicated that it was the time

for Mr Willemse to speak, because he (Mr Botha) had taken "*all the time*" earlier.

37. Moreover, Mr Willemse used the same word "patronizing" or its cognate, at least twice during the on air broadcast, when Messrs Botha and Mallett deflected his invitation to begin the post-match analysis back to him, and laughed at the same time. He clearly felt undermined by them. I shall express my conclusion on the significance of this off-air incident or its contributory effect to the live broadcast incident of 19 May 2018.
38. In my view, there is a clear connection between the off-air incident which took place shortly before the live broadcast of the post-match commentary of the Lions/Brumbies rugby match and Mr Willemse's walk off the studio set. Two critical factors lead me to this conclusion. The first is the repeated use of the word "*patronizing*" by Mr Willemse during the off-air incident and live broadcast of the post-match commentary, when he addressed his fellow analysts. The second is his complaint that they should not laugh at him. He raised this complaint off-air and on-air.
39. In the section that follows, I set out the findings I make flowing from the above incidents, and other factors on what is the reasonable explanation for the 19 May 2018 on-air incident.

D. Findings

40. It will be recalled that paragraph 2.1 of the terms of reference requires that I investigate and determine the causes of the statement and resultant walkout by Mr Willemse.

41. I start with the perception or belief that there was conduct motivated by racism on the part of Messrs Botha and Mallett which caused Mr Willemse to make the statement referred to in paragraph 3 above and to walk off the set on 19 May 2018. It is the logical starting point, in the light of the subsequent attitude adopted by Mr Willemse that there was racism which caused the incident.

42. Scholars on the phenomenon of racism acknowledge that it is a complex and enduring social phenomenon. It is broadly defined as *“a phenomenon that maintains or exacerbates avoidable and unfair inequalities in power, resources, or opportunities across racial, ethnic, cultural or religious groups in society”*.⁵

43. Racism manifests itself at institutional, interpersonal and individual levels. At a personal level racism can be expressed through beliefs such as

⁵ Jessica Walton et al: “It Depends How You’re Saying It”: The Complexities of Everyday Racism, published in International Journal of Conflict and Violence Vol. 7(1) 2013, page 75.

negative or inaccurate stereotypes; or through emotion such as fear or hatred; or through behaviour or practice such as unfair treatment;⁶ or through unconscious bias.⁷ Scholars also acknowledge that the old form of racism, manifested through naked or overt conduct, has now been replaced with new forms of racism, variously called "*everyday racism*", "*subtle racism*" or "*contemporary racism*".⁸

44. From the media reports I have read, and the written statements made by Mr Willemse's legal representatives, there is no suggestion that the alleged racism was institutional because it was structurally or culturally encouraged by SuperSport. I proceed to assess allegations of racism at a personal level, and shall to that extent, assess whether the conduct of Messrs Botha and Mallett during the off-air and on-air incidents of 19 May 2018 manifest naked or subtle racism.
45. I do not find evidence of naked racism on the part of Messrs Botha and Mallett. My conclusion in this regard is based on the following considerations:

⁶ Jessica et al, *supra*, page 75.

⁷ Colleen Sheppard "Institutional Inequality and Dynamics" published in Windsor Yearbook of Access to Justice (2013) 103, at pages 109 to 110.

⁸ Hsin-Ya-Liao et al "Perception of Subtle Racism: The Role of Group Status and Legitimizing Ideologies" published in The Counseling of Psychologist 2016, Vol. 44(2) 237, at page 239.

- 45.1. What Messrs Botha and Mallett conveyed to Mr Willemse during the off-air incident was not based on a belief held by them of superiority, based on their race or skin colour, or cultural or social background. They were motivated by a common concern that Mr Willemse was not afforded enough time to express his analysis before the commencement of the live broadcast of the Lions/Brumbies rugby match.
- 45.2. Both of them confirmed that they did not use or direct overt racist terms such as *"quota player"* when they engaged with Mr Willemse during the off-air incident. They also indicated that they did not reference their past background and achievements in the sport of rugby during years of apartheid or sports segregation in their off-air conversation with Mr Willemse.
- 45.3. Second, there is nothing in the audio-visual clip of the post-match studio broadcast of 19 May 2018 which reveals utterances by Messrs Botha and Mallett of naked racism directed towards Mr Willemse. Ms Mohono heard what Messrs Botha and Mallett said to Mr Willemse. Mr Monale also heard what they said during the live broadcast. Both Ms Mohono and Mr Monale did not regard or consider the utterances of Messrs Botha and Mallett to Mr Willemse as being racist.

- 45.4. Third, I place weight on the collective opinion of Ms Mohono and Mr Monale. The opinion that there was no overt racism is held by persons across race and gender diversity who would ordinarily be sensitive to utterances that are overtly racist. The fact that they did not hold such an opinion is weighty enough, in my view.
- 45.5. Fourth, during his interview with the CEOs of MultiChoice and SuperSport on 21 May 2018 Mr Willemse was asked whether he considered the conduct of Messrs Botha and Mallett to be motivated by racism. Mr Willemse indicated that he did not regard their conduct as racist. Mr Willemse was also asked whether he considered Messrs Botha and Mallett to be racists. He indicated that they were not, in his view. He was then asked whether he would be prepared to still work with them. He indicated a willingness to do so.
- 45.6. I have no reason to doubt the above version as was conveyed to me separately by the CEOs. I do not have any other version from Mr Willemse which casts doubt on the version of the CEOs. I accordingly accept that version.
46. I also conclude that the conduct of both Messrs Botha and Mallett during the off-air conversation with Mr Willemse and also during the live studio broadcast of the post-match commentary of the Lions/Brumbies rugby

match does not manifest naked racism and was not motivated by racist considerations.

47. I now turn to assess the more difficult question whether the conduct of Messrs Botha and Mallett manifests subtle racism. I was assisted by Prof Habib in answering this question. Prof Habib indicates that subtle racism may manifest itself in two ways. He says in this regard:

"The second problem is, more subtle versions of this and there are two subtle versions of this. One that is intended and one that is not intended. So, let me give you an example: One of the things that has emerged in South Africa, in South African literature is the importance of a consciousness, it is important for a consciousness of whiteness. There's a big literature that is ... and the argument of this literature is the following: It says, that if you are not implicitly aware that you have to be conscious of what privileges you have, simply as a result of a particular social history in which white was advantaged."

48. In respect of the first form of subtle racism, Professor Habib suggests that one has to consider the question of malevolent intent of the person accused of racism. Where such intent is absent, then it will be difficult to conclude that such a person acted through or on the strength of subtle racism.

49. In respect of the unintended form of subtle racism Prof Habib suggests that the question of context, pattern of previous behaviour and a legitimate authority to make a judgment on that conduct becomes important. I understand the question of the context and pattern of behaviour as relevant factors of an inquiry into the existence or absence of unintended subtle racism. I was unsure about the third consideration relating to the legitimate authority to make a judgment. I asked Prof Habib to explain this consideration. And this is how he articulated it:

"It is absolutely crucial and who makes this judgment call absolutely crucial because that's why you ... what's the word, the balance of power. You're displaying power but you want power to be measured and balanced and who you choose is as important act in enabling balance to be displayed. So that's how I come to the thing, I can't... you're right there isn't a need judge in implicitness."

50. Having regard to the guidance provided by Professor Habib I do not find evidence of intended subtle racism on the part of Messrs Botha and Mallett. Their conduct was not motivated by malevolent intent, or a desire to hurt Mr Willemse. There is a rational explanation or justification for their conduct: They regretted the fact that Mr Willemse was not afforded a prior opportunity to express his commentary or analysis before the commencement of the Lions versus Brumbies rugby match, and sought to

compensate by affording Mr Willemse the first opportunity to comment when the post-match segment of the commentary commenced.

51. There is no suggestion, and I could not find factual indication or a basis for an inference that both Messrs Botha and Mallett had co-ordinated their conduct off air and conspiratorially repeated it on air in order to belittle, embarrass or unfairly treat Mr Willemse by insisting that he should start or lead the post-match commentary. On the contrary, Mr Mallett started with the post match commentary, when Mr Willemse invited him to do so, second time around.
52. Neither Mr Botha nor Mr Mallett was responsible for the failure to afford Mr Willemse a prior opportunity for commentary or analysis of the rugby match. Both of them, as did the anchor, laboured under the mistaken belief that there was more time for all the analysts to state their views during the pre-match commentary segment of the live studio broadcast.
53. The first segment of the commentary was orchestrated and directed by the anchor who started with Mr Mallett and thereafter turned to Mr Botha. She was cut-off by the studio producer when the countdown for live broadcast of the match took place. She did not have enough time to solicit the views of Mr Willemse before the commencement of the live broadcast of the rugby match, nor indeed to take the match predictions from the analysts, as, I was informed, she customarily does.

54. I also do not find evidence of unintended subtle racism, having regard to considerations of context and pattern of behaviour. My conclusion takes into account the following objective considerations:

54.1. The mood of the day was fairly jovial, across all the analysts, particular as between Messrs Willemse and Mallett. I have already referenced the joke exchanged by Messrs Mallett and Willemse before the commencement of the prematch broadcast. I have also referenced the pleasantry extended by Mr Mallett to offer to buy coffee or a cool drink for Mr Willemse during the break.

54.2. Secondly, I was informed that there is a rule of thumb concerning the half-time commentary. That rule dictates that the anchor should immediately go to the analyst who is standing next to the touchscreen to lead the half-time commentary. The basis of this rule, I gathered, is that there is not enough time to fit in detailed commentary during that segment, and that the analysts have to canvass talking points of the rugby match under time pressure.

54.3. On 19 May 2018 Mr Willemse was the analyst next to the touchscreen. It was therefore logical that he should lead the half-time commentary. He did so and invited both Messrs Botha and Mallett to take the viewers through the talking points of the match. He

telestrated, and his fellow analysts expressed their view. There was no indication of anger, annoyance or grievance which could be detected from the behaviour of Messrs Botha and Mallett, at least at that point in time.

54.4. Thirdly, I have not come across any pattern of behaviour indicating that Messrs Botha and Mallett resorted to the device of inviting Mr Willemse to speak first, in order to undermine him, when they responded to his analysis. I have already alluded to the fact that as analysts and professionals they expressed strongly held views and defended them, at times. That is to be expected in professional discourse requiring a debate and justification of comments made.

55. I therefore conclude that there was no subtle form of racism that motivated the conduct of Mr Willemse.

E. *Other possible causes*

56. I now turn to consider whether there are other possible causes of the statements made by Mr Willemse and his walk-away from the live broadcast, given the surrounding circumstances.

57. There is a suggestion on social media that Mr Willemse spent most of the time outside the studio during the live broadcast of the second half of the Lions/Brumbies rugby match and, for that reason he was unable to lead the analytical discussion when the post-match commentary resumed. It is suggested that he was therefore not comfortable to accept the offer made by his fellow analysts to initiate and lead the commentary.
58. There is no credible information to support that suggestion. The information I gathered indicates the contrary. For instance, Mr Botha confirms that Mr Willemse was in the studio for the most part during the live broadcast of the second half. He may have gone out for a smoke break, but that in that event it would be for a relatively short period of time. Mr Mallett confirms that version of Mr Botha.
59. Mr Botha also indicated that it is not unusual for an analyst to take a short break during the broadcast of a live match, or to attend to other personal matters such as answering a mobile phone during the broadcast. I find that there is nothing unusual or untoward in the fact that Mr Willemse may have taken a short break during the live broadcast of the second half of the rugby match.
60. I therefore conclude that the 19 May 2018 incident cannot be explained on the basis of the suggestion or suspicion that Mr Willemse was, for the most

part, not present in the studio when the second half of the rugby match was televised.

61. There is also a suggestion on social media that the 19 May 2018 incident may reasonably be explained by reason of Mr Mallett's earlier conduct which could be interpreted as undermining Mr Willemse. Two previous incidents of such conduct are raised as evidence to support that contention. The first is that at some occasion Mr Mallett corrected Mr Willemse use of English. The second is that Mr Mallett openly suggested that Mr Willemse spoke "*nonsense*", when he expressed a view that one rugby player qualified for selection for the national team.
62. Mr Mallett accepted that he corrected Mr Willemse's use of English on one occasion. He indicated that that is not unusual as he adopts the same stance in respect of other fellow commentators across the colour-line. He also indicated that on some occasions he would correct Mr Botha's use of the English language. It is a personality trait which he developed from his father, who was an educationalist, and was reinforced when he too became an English teacher.
63. Mr Botha accepts that here and there Mr Mallett would correct or assist him with the use of English language. He found nothing untoward about this. On the strength of this, I do not regard the conduct of Mr Mallett as a sign of covert or subtle racism.

64. Moreover, Mr Willemse did not raise the question of language, and in particular Mr Mallett's desire to correct his fellow analysts for whom English is not their first language, as a reason for the incident of 19 May 2018 during his interview by the CEOs on 19 May 2018.
65. Mr Mallett also accepts that he did, on one occasion, express strong dissent from the view expressed by Mr Willemse, and had used strong language, which in retrospect may have been inappropriate. Again, that was a once off incident which occurred in the past before the incident of 19 May 2018.
66. I have already indicated that robust debate between professional analysts was part and parcel of their professional relationship. In fact, Mr Monale indicated that the robustness of the debate between Messrs Willemse and Mallett, often when it revealed the contradictory stance they both displayed during the analyses was important to the studio show and enriched the commentary. It is for that reason that they would prefer to rotate both Messrs Willemse and Mallett in the same panel, despite the fact that Mr Mallett had previously complained to them and expressed the preference that he should be rotated away from Mr Willemse.
67. Furthermore, on this issue I take into account that Mr Willemse is described by his colleagues, including Ms Mohone and Mr Mallett himself, as a strong person who would stand his ground and defend his viewpoint.

This too may explain why he did not raise this historic episode as an explanation for the 19 May 2018 incident in his interviews with the CEOs.

68. Finally, and on the assumption that Mr Willemse may have been affected by the above previous conduct of Mr Mallett, that on its own would relate to Mr Mallett and would not implicate Mr Botha because he was not party to those incidents. On the audio visuals of the incident, Mr Willemse directed his complaint to both Messrs Botha and Mallett, and did not treat them differently. The past conduct of Mr Mallett does not explain why Mr Botha would have been treated the same, when he ought not have been the target of the complaint, were Mr Mallett's past conduct to be the reason for Mr Willemse's complaint.

69. There are two factors which provide a reasonable explanation for the incident of 19 May 2018. The first is the technical assumption made by the anchor and shared by both Messrs Botha and Mallett that there was enough time for all the analysts to express their pre-match analysis or commentary of the Lions/Brumbies rugby match.

70. When Ms Mohono introduced that segment of the commentary by announcing that they will cross live to the live broadcast of the match at 17:15, everyone assumed that there was sufficient time for all the analysts to express their views. It turned out that the assumption made was mistaken because the switch to the live broadcast of the match happened

immediately after Mr Botha expressed his views and before Mr Willemse could express his own.

71. The domino effect of this technical assumption was that everyone in the panel felt guilty that Mr Willemse did not have any time to express his views. They all agreed, off-air that Mr Willemse will be afforded the first opportunity to provide his views during the post-match segment of the commentary and analysis.
72. It is for that reason that both Messrs Botha and Mallett invited Mr Willemse to start with the post-match commentary, and indicated that it was all his time. It is reasonable to assume that Mr Willemse may have regarded the common stance adopted by both Messrs Botha and Mallett as patronizing when they insisted that he should speak, on each occasion when he invited them to speak.
73. The whole panel, including the anchor were desirous to ensure that Mr Willemse has a chance to express his view. The closing part of the studio broadcast, especially the closing comments of the anchor, reflects she regretted that Mr Willemse's comments on the match were not obtained before he walked off the set.
74. My conclusion in this regard also takes into account the following utterances of Mr Willemse when he formulated his response to the

invitation by his fellow panelists that he should start with the post-match commentary –

"... let's keep the order here".

And:

"Let's stick to habit" or "Talk Nick, have it ... all yours."

75. The order or habit to which Mr Willemse referred could reasonably be the order of commentary which had previously taken place. It seems to me that he expected that order to continue and felt patronized or undermined when his fellow analysts sought to insist on a different order.
76. I should make it clear that I have drawn the above conclusion without any version or explanation from Mr Willemse, other than the contents of the letter from his legal representatives. In the absence of any version from Mr Willemse himself, I can only make a conclusion on the information placed before me and the reasonable inferences I draw from that information.
77. I should also make it clear that the conclusion I have drawn is not based on any adverse inference I make from the fact that Mr Willemse elected not to

participate in the review process. The choice not to participate was his to make, and nothing untoward arises therefrom. I thus relied on the interviews he held with the CEOs on 19 May 2018 in assessing what his contemporaneous explanation was of the 19 May 2018 incident.

F. *Recommendations*

Credible team feedback

78. I was struck by the level of extra-ordinary effort which goes into the preparation of the live broadcast of rugby matches and the studio broadcast of the analysts' performances. I have explained that level in detail and I do not repeat it in this section of my opinion.
79. I was surprised, though, that there is not a collective feedback mechanism which authentically evaluates or appraises the performance of the analysts, even if the purpose of that evaluation is simply to promote or coordinate teamwork amongst the analysts.
80. The lack of collective feedback may undermine the thorough preparation which precedes the live and studio broadcast.

81. I accept that the studio analysts would generally be men and women who have played the sport of rugby at a high professional competitive level and would have achieved celebrated accolades in that regard. In other words, they would be men and women who are far more knowledgeable about the sport of rugby than members of the studio crew including the executive producer.
82. However, when analysts appear in the studio to provide their analysis and commentary, they do so in terms of a contract with SuperSport and for the purposes of promoting the SuperSport brand. They would therefore not be at liberty to behave in a manner or say things that indiscriminately and gratuitously undermine that brand.
83. I accept that on some occasions, such as on 19 May 2018 Mr Russell would have provided feedback to the analysts and the studio crew by congratulating them on their performance relating to the Sharks and the Chiefs. That, in my view, is not enough because it is not systematic and is also not based on sound business processes to avoid a recurrence of mistakes such as those of 19 May 2018.
84. Taking all of the above considerations into account, my recommendation is that SuperSport management should consider the establishment of team feedback which should take place immediately after the end of each studio

broadcast, in order to solicit the views of all the analysts about their performance and room for improvement.

Management's sensitivity towards analysts' requests

85. A workplace environment which is characterised by employee dissatisfaction would ordinarily impact upon the productive capacity of that employee or affect his or her mood. Left unchecked, the dissatisfaction may lead to adverse consequences which may impact on client service.
86. I accept that a distinction should be made between a workplace involving independent contractors such as analysts who are professional persons. However, they too may be subjected to a workplace environment which they regard as toxic or unsatisfactory. Where that happens management of SuperSport should be sensitive and devise means to deal with it.
87. In this case Mr Mallett addressed several emails to the management of SuperSport complaining about lack of satisfactory professional relationship with Mr Willemse. He expressed preferences to work with others and recorded the joy he experienced when paired with other analysts.

88. Of course, Mr Mallett has no right to choose who he should work with. I am not suggesting that SuperSport should accord him that right. The point though is that where he raises his concerns with the management of SuperSport, they should be investigated and resolved through a credible process, to avoid a continuing or lingering dissatisfaction. *
89. In the light of these factors, I suggest that SuperSport should consider the formulation of a code of conduct for "Talent" as a whole which sets out grievance procedures and credible mechanisms to resolve those grievances, especially when they deal with interpersonal or professional relationships that impact upon teamwork.

Studio layout

90. In the studio the anchor and two analysts will sit behind the desk and the analyst who operates the touch-screen will stand next to the television monitor. Everyone accepts that a touch-screen is a vital analytical tool that promotes the analytical messaging of the studio experience for the benefit of viewers at home. On the face of it that layout is harmless, and the studio experience brought about by touch-screen and its benefits are undeniable.
91. I was informed that SuperSport took the view that Black analysts should be preferred to operate the touch-screen because of its sophistication and

in order to undermine the publicly held view that they do not have the technical skill-set or craft to operate sophisticated equipment such as the touch-screen and to telestrate through it. That is a legitimate consideration which should be encouraged.

92. There is though a silent message which is communicated by the studio layout of that kind. It creates a perception that the touch-screen operator who is always Black operates equipment on the instruction of other analysts. On 19 May 2018 the studio analysts behind the desk were White, and the touch-screen operator was Black. As he was operating the touch-screen he would be requested by the other two studio analysts to locate segments of the clip that was cut for the talking points of the commentary.
93. There is a need to avoid the above silent message without dispensing with the use of the touch-screen. That can be done by rotating the touch-screen operators across the colour-line. I cannot conceive of any reason why that cannot be done.
94. I therefore recommend that "Talent" should be required to operate the touch-screen across the colour-line.


G. Conclusion

95. The incident of 19 May 2018 was unexpected. It took Ms Mohono, Messrs Botha and Mallett by surprise. All of them have expressed emotional suffering they have endured from and since that incident. During the interviews with them, I gained a reasonable picture of how they have been emotionally affected by that incident.
96. There is a need for proper counselling to assist them in overcoming the difficulties that they experienced from that incident. There is also a need to ensure that that counselling takes place individually and collectively to ensure that they rebuild the spirit of teamwork which prevailed before that incident.
97. Whilst I have not had the benefit of speaking to Mr Willemse I reasonably assume that he too would have been emotionally impacted by that incident. Subject to contractual rights and obligations between the parties, I consider it appropriate that he too should be afforded the opportunity and benefit of counselling so that he rebuilds the spirit of teamwork, to the extent possible.
98. Finally, I point out that the conclusions I have expressed in this report have no binding effect upon any of the parties involved in the 19 May incident. I consider it appropriate that the continuing allegations of

racism should dispositively be resolved by an appropriate forum of competent jurisdiction which has the authority to make findings of fact and conclusions of law that are binding on the parties involved in those allegations.

99. It is not clear to me that Mr Willemse will approach an appropriate forum to ventilate his claim of racism. SuperSport should take the initiative to refer Mr Willemse's allegations of racism to the Human Rights Commission for final resolution.

DATED AT SANDTON ON THIS THE 18th DAY OF JUNE 2018.



Vincent Maleka SC