



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE  
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING  
ORGANS OF STATE**

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**CHAIRPERSON'S DECISION ON THE APPLICATION FOR LEAVE TO CROSS-  
EXAMINE BROUGHT BY MR AJAY KUMAR GUPTA, MR RAJESH GUPTA AND  
MR DUDUZANE ZUMA**

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**Decision:** Zondo DCJ, Chairperson

**Heard on:** 6 September 2018

**Delivered on:** 13 September 2018

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DECISION

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ZONDO DCJ, CHAIRPERSON OF THE COMMISSION \*

[1] On Thursday last week I heard a number of applications for leave to cross-examine that were brought by various implicated persons. Brigadier General Mnonopi withdrew her application. Ms Lynn Brown's application was postponed. I granted leave to cross-examine to all the other implicated persons except Mr Ajay Kumar Gupta, Mr Rajesh Gupta and Mr Duduzane Zuma and in respect of those implicated persons, I reserved my decisions and indicated that I would announce my decisions in due course.

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\* Subsequent to the delivery of this decision, minor editorial amendments that do not affect substance have been effected. Footnotes relating to statutory provisions and regulations have also been added to ensure a better understanding of the reasons for this decision.

[2] As at the hearing last week, Mr Duduzane Zuma's application fell to be dealt with on a different footing compared to that of Mr Ajay Gupta and Mr Rajesh Gupta. Whereas Mr Ajay Gupta and Mr Rajesh Gupta were outside of South Africa and continue to be outside of South Africa and are not prepared to return to the country to give evidence in this Commission and only tendered to give evidence from outside of South Africa, Mr Duduzane Zuma is within the country. However, his position as of last week was that he elected not to avail himself to this Commission to give evidence on the basis that he was facing criminal charges which relate to the same events about which he would otherwise be giving evidence in this Commission. While the position taken by Mr Ajay Gupta and Mr Rajesh Gupta remains unchanged, Mr Duduzane Zuma's position has since changed. Through his attorneys he has informed this Commission that he avails himself to give evidence before the Commission.

[3] The Commission wishes to commend Mr Duduzane Zuma for making the decision to co-operate with the Commission and for voluntarily changing his mind. As a result of this latest development on the part of Mr Duduzane Zuma, his application now falls into the same category as the other applications which I granted last week. I, therefore, grant Mr Duduzane Zuma leave to cross-examine Mr Jonas and, as I indicated last week in respect of the other applications that I granted, I shall allocate for his cross-examination of Mr Jonas immediately before the commencement of cross-examination.

[4] That leaves me with the joint application brought by Mr Ajay Gupta and Mr Rajesh Gupta to which I now turn.

**Should leave be granted to Mr Ajay Gupta and Mr Rajesh Gupta to cross-examine Mr Jonas, Ms Mentor and Mr Maseko?**

[5] All Counsel, including Mr Hellens SC who appeared on behalf of Mr Ajay Gupta and Mr Rajesh Gupta in regard to the evidence of Mr Jonas, and Mr Joubert SC who appeared on behalf of Mr Ajay Gupta and Mr Rajesh Gupta in relation to the evidence of Ms Mentor, and on behalf of Mr Duduzane Zuma in respect of Mr Jonas' evidence, already accepted that no implicated person or witness has a right to cross-examine in this Commission. They accepted that, as Chairperson of the Commission, I have a discretion to grant or refuse leave to cross-examine.

[6] This understanding of the position on Counsel's part is borne out by the provisions of both Regulation 8(3) of the regulations applicable to this Commission and Rule 3.7 of the rules of this Commission. Regulation 8(3) reads:

“(3) Any witness appearing before the Commission may be cross-examined by a person only if the Chairperson permits such cross-examination should he deem it necessary and in the interest of the function of the Commission.”<sup>1</sup>

Rule 3.7 is to the same effect. It reads:

“In accordance with Regulation 8.3, there is no right to cross-examine a witness before the Commission but the Chairperson may permit cross-

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<sup>1</sup> Regulations Governing the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State published in the Government Gazette of 9 February 2018 in Government Notice No. 41436.

examination should he deem it necessary and in the best interest of the work of the Commission to do so.”<sup>2</sup>

[7] From a reading of Regulation 8(3) and Rule 3.7, it would therefore seem that the Chairperson would exercise his discretion in favour of granting leave to cross-examine a person or witness should he deem it necessary and in the best interests of the work of the Commission.

[8] I deal now with the case of Mr Ajay Gupta and Rajesh Gupta. They have said that they want to participate in the proceedings of the Commission and are prepared to testify before this Commission and make themselves available to be cross-examined without appearing physically or personally before this Commission within the borders of this country. They say that they are presently in the United Arab Emirates. They say that they have no intention of ever returning to South Africa for any reason whatsoever. They say that the reason why they will not return to South Africa is in effect that they are afraid that the Hawks will arrest them as a result of what they call incompetence on the part of the Hawks and they may also be criminally charged by the National Prosecuting Authority which they also say is incompetent. They refer to certain judgments that they use to support their contention.

[9] Mr Ajay Gupta and Mr Rajesh Gupta have told this Commission that they are prepared to physically or personally appear before the Commission at a venue that may

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<sup>2</sup> Rules Governing Proceedings of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State published in the Government Gazette of 9 February 2018 in Government Notice No. 41436.

be agreed upon that must be outside the country. They say that, if that option is not acceptable to the Commission, they are prepared to give their evidence via a video link conference from outside the country. In a supplementary affidavit filed yesterday, Mr Ajay Gupta emphasises not just the issue of incompetence on the part of the Hawks and the NPA but also says that the Hawks and NPA are irresponsible in the exercise of the power that they have. With regard to the Hawks, he refers to their power to arrest. In regard to the National Prosecuting Authority, he refers to their power to institute criminal proceedings. In the supplementary affidavit, Mr Ajay Gupta states that they respect the South African legal system and the judiciary of this country. It seems that in effect he is making the point that they have no complaint about the South African legal system as such nor have they any complaint about the judiciary of this country. Their complaint seems to be confined to how the Hawks exercise their power and how the NPA exercises their power.

[10] Mr Maleka SC, who presented argument on behalf of the Commission's Legal Team, submitted that Mr Ajay Gupta and Mr Rajesh Gupta are fugitives from justice and, as such, their application for leave to cross-examine should be dismissed because they are not prepared to physically appear before this Commission within the borders of this country. I understood Mr Hellens to dispute this contention, namely, the contention that Mr Ajay Gupta and Mr Rajesh Gupta are fugitives from justice. To the extent that they may be fugitives from justice, it seems appropriate to have regard to the attitude of our highest Court, the Constitutional Court, towards fugitives from justice who seek to avail themselves of Court processes from a legal system that they seek to evade. That is an attitude in terms of which a Court would decline to consider any attempt by a fugitive from justice to use Court processes of a legal system whose processes they seek to evade.

This can be seen from the decision of the Constitutional Court in *Ex Parte Hansmann* 2001 (2) SA 853 (CC). In that case, Mr Hansmann had been convicted but he lodged an appeal. He lost his appeal. He then disappeared but brought an application in the Constitutional Court for special leave to appeal against his conviction but did not disclose his address in his application and said that he also had no contact number. His bail had been estreated and a warrant of arrest had been issued against him. The police had been unable to trace his whereabouts. In a short judgment the Constitutional Court refused even to consider his application on the basis that he was a fugitive from justice. The Constitutional Court said:

“Not only is the applicant a fugitive from justice but he has withheld that fact from this Court. In these circumstances it would not be appropriate to consider his application and we accordingly decline to do so”.<sup>3</sup>

[11] In the present case I am prepared to deal with the matter on the basis that Mr Ajay Gupta and Mr Rajesh Gupta are not, strictly speaking, fugitives from justice. I do so without making any decision about whether or not they are fugitives from justice. However, I would say that, if they are not fugitives from justice, it must be that that is because of some minor difference or technicality between a fugitive from justice and themselves. I say this because on their own version, the reason why they do not want to come back to South Africa is that they fear that they may be arrested by one of the law enforcement agencies in this country because, as they put it, of their incompetence and irresponsibility in the exercise of their power. They are, therefore, running away from the justice system and seek to stay out of the reach of the processes of our legal system.

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<sup>3</sup> Para 3.

[12] It seems appropriate to consider the question whether Mr Ajay Gupta and Mr Rajesh Gupta have a valid and lawful reason for refusing to return to South Africa and personally and physically appear before this Commission to put their side of the story against allegations and evidence against them. During argument I asked Mr Hellens whether it was his submission that Mr Ajay Gupta and Mr Rajesh Gupta have a lawful reason or a valid reason for not returning to the country and appearing before this Commission. In response Mr Hellens told this Commission what his instructions were in this regard.

[13] Mr Ajay Gupta's and Mr Rajesh Gupta's stated reason for not being prepared to return to the country and give evidence before this Commission is in effect that the alleged incompetence or irresponsibility of the Hawks may result in them being arrested when they should not be arrested and the alleged incompetence and irresponsibility of the NPA may result in the NPA preferring criminal charges against them in circumstances where no charges should be preferred against them.

[14] During argument I mentioned to Mr Hellens that I was unable to follow this logic when this was cited as a reason for not being prepared to return to South Africa by people who accepted the judiciary of South Africa as independent and that, therefore, if they were to get arrested or criminally charged in circumstances, where they were not supposed to be arrested or in circumstances where there were no proper grounds for the arrest or where they were charged criminally in circumstances where there are no proper grounds for them to be charged criminally, they would be entitled to approach the Courts

and they would get protection of the courts. I understood Mr Hellens' answer to this to be in effect that by the time that they would get judicial protection, they would have been arrested even if for a very short time. That may be so but it seems to me that that is simply not a sufficient reason for their stance. Our constitutional and legal framework in this country is one of the best in the world. Our Constitution has checks and balances to ensure that any abuse of power by the police, once brought before the courts, will be dealt with by our courts in accordance with our Constitution and the law. In this regard our courts have wide powers which they do not hesitate to use in appropriate cases to vindicate the rights of individuals or groups who may be victims of the abuse of power and our courts grant individuals and groups effective remedies where they are entitled to such remedies. In the circumstances I am of the view that Mr Ajay Gupta and Mr Rajesh Gupta have no lawful reason or valid reason for not being prepared to return to South Africa and appear before this Commission and give evidence and answer whatever questions may be put to them while they appear before this Commission physically and personally.

[15] It was argued that this Commission should consider travelling to a destination outside of South Africa in order to hear the evidence of Mr Ajay Gupta and Mr Rajesh Gupta. Where Mr Ajay Gupta and Mr Rajesh Gupta have no valid reason for being unprepared to return to this country and appear before this Commission, it seems to me that the issue of this Commission travelling overseas to hear their evidence must be rejected. I can see no reason why we would have to incur the costs that would have to be incurred if this Commission were to travel overseas in order to hear their evidence. Accordingly, the suggestion falls to be rejected.



[16] It was also suggested that the Commission should consider hearing Mr Ajay Gupta's evidence and Mr Rajesh Gupta's evidence via a video link conference. In support of this and the other suggestion with which I have just dealt, it was submitted that it was vitally important that this Commission should seek to establish the truth of what happened and that the credibility of whatever findings that this Commission may ultimately make will be weakened if the evidence of Mr Ajay Gupta and Mr Rajesh Gupta has not been secured. The answer to this is that while it is true that it would be desirable for this Commission to hear the evidence of Mr Ajay Gupta and Mr Rajesh Gupta, in so far as they may be implicated in various allegations or in so far as they may have knowledge of important incidents relevant to the terms of reference of this Commission, two or three points must also be borne in mind in this regard:

- if the evidence of Mr Ajay Gupta and Mr Rajesh Gupta does not get heard by this Commission and if their side of the story does not get told to this Commission, it will primarily be because they elected not to return to this country to put their side of the story before this Commission in circumstances where they had no valid reason whatsoever for being unprepared to return to this country and to give their evidence – a country whose legal system they say they respect and a country whose judiciary they acknowledge as independent. If this Commission does not hear Mr Ajay Gupta's side of the story – if it does not hear the evidence of the Gupta brothers – it will not be because this Commission did not want to hear their side of the story. It will be because they chose to turn their backs to this country and refused to make use of a fair opportunity to be heard this Commission affords to every implicated person, so that they may tell their side of the story;

- this Commission may well hear good evidence from other witnesses or implicated persons who may realise that the right thing to do is to take this Commission and the whole nation into their confidence and tell the nation all that they know about the allegations of state capture and about serious acts of corruption and fraud and in the process they may implicate the Gupta brothers quite seriously and credibly in wrongdoing in circumstances where, by their own election, Mr Ajay Gupta and Mr Rajesh Gupta will not have told their side of the story before this Commission; and
- the fact that this Commission will afford all implicated persons, including Mr Ajay Gupta and Mr Rajesh Gupta, a fair opportunity to come and tell their side of the story which will enhance the findings and the report of this Commission. The world will know that they elected not to use an opportunity that was afforded to them.

[17] It was also argued that this Commission should grant the Gupta brothers' request that their evidence be presented by way of a video link conference because this Commission had already done this in the case of certain international expert witnesses. It is true that the Commission allowed this during its first week of hearings. This was done on the basis that there was a valid reason why the two witnesses could not be in South Africa at the time but also it was on condition that they should subsequently come to South Africa and appear personally before the Commission and take an oath and confirm that the evidence they gave via the video link conference was true. I made this a requirement because I was not certain whether a witness who does not personally and physically appear before the Commission but who is thousands of kilometres away from where the Commission is sitting can be

said to be before the Commission for purposes of the requirements of an oath. One of those witnesses will come to South Africa soon and will appear personally and physically and testify before this Commission. Furthermore, the evidence of the two witnesses related to their academic research and publications. In the case of Mr Ajay Gupta and Mr Rajesh Gupta, they are not prepared, as I understand the position, ever to physically and personally appear before this Commission within the borders of South Africa.

[18] There are other difficulties too about the submission that I should allow the Gupta brothers to testify via a video link conference. Section 3(1) of the Commissions Act<sup>4</sup>, which is applicable to this Commission, provides:

“3(1) For the purpose of ascertaining any matter relating to the subject of its investigations, a commission shall in the Union<sup>5</sup> have the powers which a Provincial Division of the Supreme Court has within its province to summon witnesses, to cause an oath or affirmation to be administered to them, to examine them, and to call for the production of books, documents and objects.”<sup>6</sup>

[19] I draw special attention to the provision relating to a summons calling for the production of books, documents and objects. Since Mr Ajay Gupta and Mr Rajesh Gupta are in another country, this Commission would not be able to compel them to produce any documents that it may want them to produce. The Commission would be at their mercy in such a case. They could ignore any order or instruction issued by the

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<sup>4</sup> Commissions Act No 8 of 1947.

<sup>5</sup> The Commissions Act still refers to the Union. It means the Republic of South Africa.

<sup>6</sup> The reference to the Supreme Court is a reference to the High Court.

Commission and this Commission could do nothing about that. The regulations applicable to this Commission also have a provision that relates to the production of books and it would therefore mean that this Commission would also not be able to exercise the powers conferred upon it in terms of the regulations with regard to compelling any witness to produce books and other documents and objects.<sup>7</sup>

[20] Section 6(2)<sup>8</sup> of the Commissions Act makes it a criminal offence for a witness to give false evidence knowing it to be false or which he or she does not believe to be true. However, if Mr Ajay Gupta, while giving evidence via the video link conference gave false evidence that he knew is false or had no grounds to believe is true, his conduct would not be a criminal offence because he would be outside of South Africa and the Commissions Act has no extraterritorial application. This means that, if I were to accept the suggestion of a video link conference for Mr Ajay Gupta and Mr Rajesh Gupta, I would in effect create two classes of witnesses. The one category would be of those witnesses who agreed to appear before the Commission physically and personally and give their evidence who would be subjected to criminal prosecution if they gave false evidence knowing to be false. The other category would be that of Mr Ajay Gupta and Mr Rajesh Gupta who would not face any criminal sanctions if they did exactly the same thing. That means that those who gave evidence against Mr Ajay Gupta and Mr Rajesh Gupta would be subject to harsh rules and there would be different rules for Mr Ajay Gupta and Mr Rajesh Gupta. They would enjoy special treatment that no other witness

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<sup>7</sup> See Regulations 9(6).

<sup>8</sup> Section 6(2) reads: “Any person who after having been sworn or having made affirmation, gives false evidence before a commission on any matter, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment.”

who appears before the Commission would enjoy. This Commission sees no reason to give Mr Ajay Gupta and Mr Rajesh Gupta any special treatment and it will not do so.

[21] I am aware of a judgment of Satchwell J in regard to the matter of *Uramin Incorporated in British Columbia vs Perie* 2014 JDR 0285 (GSJ) wherein she dealt with the issue of a video link request and granted it. One, that was a civil matter, two, she did not consider any specific statutory provision such as the ones that apply in this case, but also, in that judgment, she made it quite clear that “. . . each application for the use of video linkage to procure evidence of witnesses” will depend on its “own particular facts and circumstances”.<sup>9</sup> In this regard I want to emphasise that this Commission is bound by the provisions of the Commissions Act as well as the Regulations and must act within those Regulations and the Commissions Act. I point out, however, that the Constitution is the supreme law of the land and is obviously applicable here.

[22] There was also argument by Mr Hellens that, if I granted leave to cross-examine, I should make a ruling that witnesses who will be cross-examined by implicated persons should not be shown the statements or affidavits which contain the versions of implicated persons. Mr Hellens argued that such a ruling was vital for the effectiveness of cross-examination because, if a witness was shown an implicated person’s version before cross-examination, he or she could adjust his or her evidence. He argued that it was necessary to retain a certain element of surprise for a witness in order to ensure an effective cross-examination.

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<sup>9</sup> *Uramin Incorporated* at para 3.

[23] As I pointed out to Mr Hellens at the hearing, even in an adversarial context, such as we find in a case in a High Court where a motion matter is referred to oral evidence, one does find that a witness is cross-examined after having read a version of the cross-examiners' client or witness and cross-examination can be quite effective even in that scenario. Mr Hellens' response to this was that, although this is true, the cross-examination that takes place in such a scenario would not be as effective as in a trial where the witness had not seen the cross-examiner's client's version or witness' version of events.

[24] It seems to me that a number of factors militate against Mr Hellens' submission. First of all, this is a commission of inquiry and not a criminal trial or civil trial, a fact which Mr Hellens acknowledged right from the beginning of his address. The Commission's operations are based on the fact that it has investigators who would investigate various matters and interview potential witnesses. When they do so, they would ordinarily interview other persons including those who may be implicated and compare their versions with that of a witness they would have interviewed earlier. They could, after interviewing an implicated person, go back to the witness they had interviewed first and put to him or her the version or explanation given by an implicated person in respect of any allegations. That is before statements could be handed over to the Commission's Legal Team. It is inherent in that arrangement that a witness' version could be known to an implicated person and vice versa before the matter is handed over to the Commission's Legal Team.

[25] Furthermore, an implicated person would have been furnished with a witness' version or statement before he or she prepared his or her response or statement or affidavit. That is in accordance with the rules of the Commission.<sup>10</sup> If Mr Hellens' contention is correct, then it would mean that the cross-examination of implicated persons will be less effective because they would have seen the witness' version before they got cross-examined. Therefore, the witness and the implicated person would be treated unequally. It seems to me that, because implicated persons get the witness' statements or relevant portions thereof, there nothing wrong if a witness is also afforded the opportunity of seeing the statement or affidavit of the implicated person.

[26] I do not think that, when members of the Commission's Legal Team have received an implicated person's affidavit and made it available to a witness, they will do anything more than to establish whether the witness persists in his or her version in respect of those areas where it is in conflict or is inconsistent with that of the implicated person's version and, if the witness does, whether he or she is able to assist the Commission as to where the truth lies.

[27] At this stage I just wish, before I conclude, to go back to the question of the video link. I want to point out that, again, the giving of evidence through a video link that would happen if I granted the suggestion made on behalf of Mr Ajay Gupta and Rajesh Gupta would raise the question whether or not it can be said that a witness who is thousands of kilometres away from where the Commission is sitting is "before" the Commission. This is important because the Commission's Act as well the Regulations

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<sup>10</sup> See Rule 3.3 of the Rules of the Commission.

applicable to the Commission are replete with provisions which make it quite clear that the witness who gives evidence must be or is contemplated to be a witness appearing before the Commission.<sup>11</sup> It does not appear to me that, if a witness is thousands of

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<sup>11</sup> Section 3(2) reads:

“A summons for the attendance of a witness or for the production of any book, document or object before a commission shall be signed and issued by the secretary of the commission in a form prescribed by the chairman of the commission and shall be served in the same manner as a summons for the attendance of a witness at a criminal trial in a superior court at the place where the attendance or production is to take place.”

Section 3(4) reads:

“Any person who has been summoned to attend any sitting of a commission as a witness or who has given evidence before a commission shall be entitled to the same witness fees from public funds, as if he had been summoned to attend or had given evidence at a criminal trial in a superior court held at the place of such a sitting, and in connection with the giving of any evidence or the production of any book or document before a commission, the law relating to privilege as applicable to a witness giving evidence or summoned to produce a book or document in such a court, shall apply.”

Section 6(1) reads:

“Any person summoned to attend and give evidence or to produce any book, document or object before a commission who, without sufficient cause (the onus of proof whereof shall rest upon him) fails to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the enquiry or until he is excused by the chairman of the commission from further attendance, or having attended, refuses to be sworn or to make an affirmation as a witness after he has been required by the chairman of the commission to do so, having been sworn or having made affirmation, fails to answer fully and satisfactorily any question lawfully put to him, or fails to produce any book, document or object in his possession or custody or under his control, which he has been summoned to produce, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.”

Section 6(2) reads:

“Any person who after having sworn or having made an affirmation, gives false evidence before a commission on any matter, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment.”

Regulation 6 reads:

“Any person appearing before the Commission may be assisted by an advocate or attorney.”

Regulation 7 reads:

“The Chairperson or an officer generally or specifically authorised thereto by the Chairperson may, where necessary, administer an oath to or accept an affirmation from any person appearing before the Commission.”

Regulation 8(3) reads:

“Any witness appearing before the Commission may be cross-examined by a person only if the Chairperson permits such cross-examination should he deem it necessary and in the best interest of the function of the Commission.”

Regulation 9 reads:

“Where, at the time of any person appearing during or at any aspect or stage of the inquiry, or presenting information to or giving evidence to or before the Commission, member of the general public are or have been excluded from attendance at any stage or aspect of the inquiry or at the proceedings of the Commission, the Chairperson may, on request of such person, direct that no person



kilometres away from where the Commission is sitting and only his or her picture appears in a screen before the Commission, that witness can truly be said to be “before” the Commission. The Commission would not be able to exercise any powers over that witness by virtue of the fact that he or she is physically not before the Commission. As I have indicated, the Commission would then create two rules, one for those witnesses who appear physically and personally before the Commission who would be subject to criminal sanctions if they conducted themselves in a certain manner while giving evidence and the category of witnesses of those persons who would give evidence thousands of kilometres away from the Commission over whom the Commission would not be able to exercise any power at all.

[28] In the circumstances the conclusion that I have therefore reached in regard to the application by Mr Ajay Gupta and Mr Rajesh Gupta is that, as long as they are not prepared to personally and physically appear before the Commission within the borders of South Africa and where this Commission can exercise its powers over them, their application cannot be granted. Once they are within the borders of South Africa and are prepared to appear physically and personally before the Commission, I would have absolutely no difficulty in granting them leave to cross-examine for, it is quite clear, that at least Mr Ajay Gupta is seriously implicated, and it would be fair that he be granted an opportunity to cross-examine any witness who implicated him. The position, therefore, remains that they must make their decision. If they make the decision to place a

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shall disclose in any manner whatsoever the name or address of such person or any information likely to reveal his or her identity.”

Regulation 10(6) reads:

“For the purposes of conducting an investigation the Chairperson may direct any person to submit an affidavit or affirmed declaration or to appear before the Commission to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated, and may examine such person.”

condition before this Commission that they will only give evidence or give their side of the story to this Commission while they are outside of the country and they are not prepared to come back to South Africa and give their evidence before this Commission, then I will be unable to grant them leave to cross-examine. If they change their mind, this Commission will have no difficulty in granting their application. In the circumstances, the application brought by Mr Ajay Gupta and Mr Rajesh Gupta for leave to cross-examine Mr Jonas, Ms Mentor and Mr Maseko on the basis on which it has been brought is dismissed.