

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

23 SEPTEMBER 2019

DAY 169

20

PROCEEDINGS RESUME ON 23 SEPTEMBER 2019

CHAIRPERSON: Mr Petersen. Good afternoon everybody.

ADV ROB PETERSEN: Good afternoon Chair.

CHAIRPERSON: We meant to deal with an application for Leave – for a certain witness to give evidence in “camera” – I say in camera in quotes. There is appearance for the Minister of Police maybe we should let counsel for the Minister place himself on record first.

ADV GRIFFITHS MADONSELLA: Chairperson and the members of the commission I appear together with my learned friend Mr Mlaba for the
10 Minister of Police. My name is Griffiths Madonsella.

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELLA: I am a member of the Durban Bar.

CHAIRPERSON: Thank you very much.

ADV GRIFFITHS MADONSELLA: And so is my junior.

CHAIRPERSON: Thank you. Mr Petersen.

ADV ROB PETERSEN: Chair perhaps I should also identify myself.

CHAIRPERSON: Yes.

ADV ROB PETERSEN: Just for the record.

CHAIRPERSON: Yes.

20 **ADV ROB PETERSEN:** It is Rob Petersen, P-e-t-e-r-s-e-n.

CHAIRPERSON: Yes.

ADV ROB PETERSEN: Senior counsel and a member of the Commission’s legal team.

CHAIRPERSON: Yes.

ADV ROB PETERSEN: Chair the – an application or notice is now

before you concerns the hearing of a witness Lieutenant Colonel Dhanajaya Ganguly Naidoo who I refer to as Colonel Naidoo.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: And measures that in our submission need to be taken.

CHAIRPERSON: H.

ADV ROB PETERSEN: To ensure that this witness who is under witness protection continues to be secure that is to say that his identity should not be disclosed in the next context in which he and his family
10 are living.

CHAIRPERSON: Yes. I have read the application. I have read the opposing affidavit of the Minister of Police. I understand that there were other implicated persons who were served with the application. Have you not received any opposing papers from anyone else?

ADV ROB PETERSEN: Those are my instructions.

CHAIRPERSON: Yes. Okay. Have you...

ADV ROB PETERSEN: However Chair Mr Baloyi has indicated that he is present on behalf of one of the implicated persons and therefore perhaps he should put himself on record at this point.

20 **CHAIRPERSON:** Oh okay.

ADV KGANGELO BALOYI: Thank you. Afternoon Chair. My name is Kgangelo Baloyi from Kgangelo Baloyi Attorneys in Pretoria. I am here for General Mphego. I was also here Chair last week.

CHAIRPERSON: Yes.

ADV KGANGELO BALOYI: Chair we have not filed any opposing

papers.

CHAIRPERSON: Yes.

ADV KGANGELO BALOYI: But we – we would like to make submissions insofar as the applications is concerned. It is going to be very brief Chair.

CHAIRPERSON: Yes.

ADV KGANGELO BALOYI: And perhaps it will help you Chair.

CHAIRPERSON: Yes okay. We will – let us see later on how we deal with that.

10 **ADV KGANGELO BALOYI:** Thank you.

CHAIRPERSON: Okay. Mr Petersen I was saying that I have read the papers with regard to the Minister's papers I have read the affidavit only, I have not read the annexures but the annexures should not tell me anything different from what I see in the affidavit. Have you had a chance to read it and have you made up your mind whether you would like to file an affidavit to respond?

ADV ROB PETERSEN: At this stage no Chairperson. I will be able to make submissions which take that affidavit into account and essentially I will be persisting with the submissions which were filed with you and
20 those are connected with a proposed draft order which – a copy of which has been supplied to both Mr Manonsella and Mr Baloyi prior to this – these – this hearing commencing.

CHAIRPERSON: Well you say at this stage there may be no other stage to – if we go ahead with the hearing now.

ADV ROB PETERSEN: That is so but – Chair.

CHAIRPERSON: You have got to make up your mind. Do you want to file an affidavit or not?

ADV ROB PETERSEN: What I will...

CHAIRPERSON: Before the hearing.

ADV ROB PETERSEN: Yes.

CHAIRPERSON: Is decided.

ADV ROB PETERSEN: The answer to that must be no.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: However what I also mean by at this stage is
10 that if the Minister of Police or any other implicated person wishes in
response to the Rule 3.3 Notice to make an application to give
evidence and or to cross-examine Colonel Naidoo they will have an
opportunity to do that and at that stage it may be necessary to address
particular arrangements which might be called for depending upon what
the outcome of any such application is. But for the purposes of the
general order which we are asking for today it is not necessary to
respond further.

CHAIRPERSON: Yes, no I was talking about filing an affidavit in
response to the Minister's opposition to the application. The part which
20 I do not know whether you have considered is that part where the
Minister says "but this man testified in open – in the open in
disciplinary hearings and he was already under witness protection so
why would he be wanting to testify in camera now. He did not ask to
testify in camera then." So that – that is the part that you might wish
to deal with.

ADV ROB PETERSEN: Well it might be that Chair that you would be in a better position to evaluate the significance of that if you had an affidavit.

CHAIRPERSON: Sorry?

ADV ROB PETERSEN: It might be that you will be in a better position to evaluate that statement – that evidence of the – General if you do have before you an affidavit from the legal team organised by the legal team. However I can say as I stand here that in my submission it is a fundamentally different situation.

10 **CHAIRPERSON:** Hm.

ADV ROB PETERSEN: It was not as I understand it testimony given in public but it was testimony given within the police.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: Service and this commission conducts its hearings in public as far as possible and so the measures proposed...

CHAIRPERSON: Yes But should that not be – should that not be explained ...

ADV ROB PETERSEN: In an affidavit?

20 **CHAIRPERSON:** By Mr Naidoo – Naidoo in – by Colonel Naidoo in an affidavit as to why it is different?

ADV ROB PETERSEN: Yes.

CHAIRPERSON: Otherwise you may be giving evidence from the bar is it not?

ADV ROB PETERSEN: Yes that is indeed the dilemma.

CHAIRPERSON: Yes.

ADV ROB PETERSEN: Consequently if you will then afford us an opportunity to do that.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: And then the application would have to be brought before you again.

CHAIRPERSON: Ja. Ja, no I think it is important because on the face of it absent an explanation from Colonel Naidoo on the face of it the Minister takes an understandable point to say well the disciplinary hearings which took place this man was already under witness
10 protection. He gave evidence and I mean from what he says and from the mere nature of the disciplinary hearings in which he gave evidence he was facing – he was facing the people that he was implicating. So – so I think it is necessary to have an affidavit that deals with the circumstances under which that happened or which places before me the distinction.

ADV ROB PETERSEN: Yes.

CHAIRPERSON: If any as to why that should not be – that should not justify a conclusion that there is no reason why he cannot give evidence in the open in regard to here as well. Particularly because I
20 think anyone reading the hearing that – anyone hearing that would say well most of the time or quite often persons who want to give evidence in camera do not want the persons that they implicate to identify them – to know them and in this case if the position is that he did testify and they were there – they know him. It needs some explanation. It may be that what you have in mind is an explanation which you thought you

could give from the bar is something that would explain it but I think that part does – it would be good if there is an affidavit.

ADV ROB PETERSEN: Yes I will be guided by you.

CHAIRPERSON: Ja.

ADV ROB PETERSEN: I would just like to emphasise and perhaps to the extent that this is being broadcast today it needs to be emphasised.

CHAIRPERSON: Sorry?

ADV ROB PETERSEN: Perhaps because this has been broadcast today it needs to be emphasised.

10 **CHAIRPERSON:** Hm.

ADV ROB PETERSEN: That Colonel Naidoo is under witness protection under the Witness Protection Act.

CHAIRPERSON: Yes.

ADV ROB PETERSEN: That you have already made an order in terms of Section 18 of the Act.

CHAIRPERSON: Yes, yes.

ADV ROB PETERSEN: To protect his identity.

CHAIRPERSON: Yes.

20 **ADV ROB PETERSEN:** So that his – to put it colloquially his cover does not get blown.

CHAIRPERSON: Yes.

ADV ROB PETERSEN: In his new environment.

CHAIRPERSON: Yes. Have you got the order that I made with you.

ADV ROB PETERSEN: Yes I do.

CHAIRPERSON: Because I could just read it again so that everybody

is reminded of it. Okay I think what I will do once we are done is just to read it again so that everybody knows about it.

ADV ROB PETERSEN: Yes, Chair.

CHAIRPERSON: But it would seem to me therefore that the application needs to be postponed to give you an opportunity to obtain an affidavit probably from Colonel Naidoo to deal with that and any other point raised in the Minister's affidavit that may be considered to be one that should be responded to.

ADV ROB PETERSEN: Yes Chair thank you.

10 **CHAIRPERSON**: Yes. And then in terms of the way forward the idea was that Colonel Naidoo would begin to – the plan was that he would begin to give evidence I think on Thursday? That – I think that was ...

ADV ROB PETERSEN: Yes.

CHAIRPERSON: It was meant to be Thursday. There is no reason why we cannot deal with the matter either on Wednesday afternoon or at some stage on Wednesday or Thursday morning as far as I am concerned it need not disturb the day when he was going to – to be here.

ADV ROB PETERSEN: No.

20 **CHAIRPERSON**: But of course there are two witnesses I think who were meant to come before him. So – so it may or it may not be that he would be able to start on Thursday – I am not sure. I think what should happen is that I will hear what Mr Madonsella has to say but it seems to me that we – the application should be postponed. It seems to me that there should be discussions after the application has been postponed

and maybe it should be postponed to a specific date either Wednesday or Thursday morning. Maybe to be on the safe side Thursday morning and if I decide to grant the application that could happen you know immediately before he could start giving evidence. Obviously if I do not grant it then we will take it from there. So maybe it is safer to postpone it to Thursday morning. What is your feeling?

ADV ROB PETERSEN: I would say Chair.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: Far better than Wednesday.

10 **CHAIRPERSON**: Yes.

ADV ROB PETERSEN: But I do have this concern.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: That I do not know what the logistical problems will be in getting an affidavit from Colonel Naidoo who is under witness protection in a location that we do not know. And having that before you in time.

CHAIRPERSON: Yes, yes.

ADV ROB PETERSEN: Now I am now advised that Thursday would be fine logistically.

20 **CHAIRPERSON**: Okay. Okay.

ADV ROB PETERSEN: So if you could postpone it then to Thursday morning.

CHAIRPERSON: To Thursday.

ADV ROB PETERSEN: Would that be at nine o'clock?

CHAIRPERSON: Maybe let us make it – ja maybe we should make it

nine thirty rather.

ADV ROB PETERSEN: Nine thirty.

CHAIRPERSON: Yes. I – I do not expect Mr Madonsella to have a problem with the principle of a postponement. I will hear him just now. Okay alright Mr Madonsella.

ADV ROB PETERSEN: Thank you.

ADV GRIFFITHS MADONSELLA: Yes Deputy Chief Justice I certainly did not have – do not have any principled objections.

CHAIRPERSON: Yes.

10 **ADV GRIFFITHS MADONSELLA:** To the matter being adjourned.

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELLA: I do want to place on record however that it was always our intention to invoke the Provisions of Rule 3.4 and apply for the Minister to deliver his response as well as to apply for a limited form of cross-examination which we – the dilemma which we face in that regard was that the extent to which we can respond to the – to the allegations that have been made by D G Naidoo are somehow related to the objections which we have in relation to him testifying in camera.

20 **CHAIRPERSON:** Yes.

ADV GRIFFITHS MADONSELLA: With the result that it might place us in a dilemma not to be able to address particular matters. Simply because they fall within the space of classified information which is the reason why the application for a – an in camera application is made and we do not know – we cannot have a response relating to other

matters but we cannot answer all the matters because of the sensitivities around the individuals...

CHAIRPERSON: I am sorry Mr Madonsella. I do not know why – maybe you should come a little closer to the microphone I am not hearing every word you say.

ADV GRIFFITHS MADONSELLA: Oh.

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELLA: Can I start by saying. Chairperson the – we have a dilemma we want to respond to the – to the statement
10 appearing in Rule 3.3 affidavit by D G Naidoo. And we intend to bring an application to also be allowed a limited amount of cross-examination in relation to a specific matter under Rule 3.4 I think of the Rules of this Commission. The reason why we cannot finalise our response to the statement as it currently stands at the moment is because of the dilemma which we have as to the extent to which we can be able to respond to the statement by D G Naidoo because his identity has been hidden thus far. And we make the point in our opposition that integral to his very testimony is who he is; his identity. So those issues have been a bit of a dilemma but we are happy with the matter being
20 adjourned to a specific date under the reservation of the rights that we might ask on that very day to be given a limited time to file – depending on the outcome of that application to deliver your applica – our affidavit in response as well as our application for limited cross-examination.

CHAIRPERSON: Hm. Well two matters.

1. The application for Leave to Cross-examine I think you might –

you might wish to deal with it once you have been able to file that application. In terms of your client finding himself in a difficult situation because some information that he might need in order to respond is classified I thought that your client would be in a better position even to assist us. Because you might or might not be aware that Colonel Roelofse who gave evidence last week here gave evidence of the office of the National Commissioner of Police not assisting to declassify information or documents that he says really have no proper grounds to have been classified in the first place you know. And I was actually quite amazed at what he – at the evidence he gave. So one of the things that I raised with him was whether he had approached the Minister of Police to say the National Commissioner or different National Commissioners have not cooperated in the hope that the prescripts allow the Minister of Police to intervene in that situation. Now I do not know whether this is a situation where the Minister of Police has no power to intervene if the National Commissioner of Police will not assist or and so on. So – but I thought that certainly if the Minister of Police needs documents that are classified it should not be a problem.

ADV GRIFFITHS MADONSELLA: Actually it is a problem. Because...

CHAIRPERSON: It is a problem even for him?

ADV GRIFFITHS MADONSELLA: Because he – as I understand the workings of intelligence.

CHAIRPERSON: Ja.

ADV GRIFFITHS MADONSELLA: Sometimes include the Minister.

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELLA: And they have a different line of reporting to I think standing committee or Parliament or the Intelligence.

CHAIRPERSON: Ja.

ADV GRIFFITHS MADONSELLA: As well as the officer of Intelligence. There is a – there are different lines it is not as straight forward as...

CHAIRPERSON: But it would be quite strange to me particularly with
10 regard to documents read that relate to allegations of misconduct within Crime Intelligence which I understand falls within the SAPS which would be under the Minister of Police. It might be different if one was talking about other intelligence bodies that fall under maybe another Minister so it would be strange if even the Minister can be bypassed in terms of important information. But you say your understanding is that sometimes that does happen?

ADV GRIFFITHS MADONSELLA: It does happen yes.

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELLA: As a matter of fact the Minister does
20 not even appoint the National Commissioner as we know.

CHAIRPERSON: Oh. No, no I do not necessarily know that. Okay so – but – but certainly – well I do not know whether you – I mean I can say this arising from Colonel Roelofse's evidence I am very determined that the commission must get a decision from the National Commissioner whether he will or will not declassify the information and

if he will not what the reasons are. From what I have been told it is difficult to understand that there are proper grounds for any refusal or unpreparedness to declassify some of the documents. But I have only heard one side of the story. I have not heard the National Police Commissioner side. But when he is given a chance to say are you prepared to declassify or not he will get a chance. If he says no I am not prepared to then give his reasons. And then we can – we can take it from there. But from what has been explained to me so far on the face of it it just does appear that documents which are important for investigations into crimes; into corruption are not being declassified for reasons that have never even been told to Colonel Roelofse on his version to say we know you have been asking that we declassify these documents; we are not prepared to do so and here are our reasons. That we do not know. So that is the position as far as the commission is concerned. It is going to want to have a decision by the National Commissioner of Police on that. Now what I do not know is whether the Minister of Police was also seeking the assistance of the commission in that regard or whether you are simply saying you and he are going to look at the situation and see what avenues are available to get documents that you need in order for him to respond to these allegations that you need to be declassified.

ADV GRIFFITHS MADONSELLA: My first – our first prize as legal representatives for the Minister is for the matter to be adjourned to a later date than Thursday. Because it is – for he simply reason that the Minister at the present moment is out of the country; he is in China and

we will not be having time to consult with him on the matters which you have raised such as what you have raised. We only have matters which we have consulted with him up until the last time we prepared the affidavit. Now this these matters have been – have arisen as a result of your comments Chairperson we may have to consult with him further on that – in that regard. And we are unable to do so between now and Friday when he comes back from China or Sunday. Our first prize would have been to have the matter adjourned to a later date to allow for that process to take place and for us to be able to prepare affidavit
10 in the spirit or in the atmosphere of calm rather than hysteria because if we have to do so between now and Thursday it would be a rush job rather than a thorough job. So that is our prize. But if we are compelled to for reasons of expediency to do – come on Thursday we are not familiar with the territory of burning the midnight oil we will do in our powers to do that.

CHAIRPERSON: Yes. Well I think what – I think for purposes of Thursday I do not see you needing to file any affidavit because you have filed your response and it is just for the legal team to obtain an affidavit from Colonel Naidoo to respond and then we can deal with the
20 in camera application. As far as any application you might wish to bring for Leave to Cross-examine that you can bring even later.

ADV GRIFFITHS MADONSELLA: Later.

CHAIRPERSON: You can bring that even later even if Colonel Naidoo has to be brought back some other time so that if Leave to Cross-examine is granted. So that can be dealt with later. Would that be

fine?

ADV GRIFFITHS MADONSELLA: That would be fine.

CHAIRPERSON: Okay no that is fine. Thank you.

ADV GRIFFITHS MADONSELLA: Thank you Chairperson.

CHAIRPERSON: Thank you. I do not think Mr Baloyi you should have anything to say.

ADV KGANGELO BALOYI: Thank you Chair. Chair my initial instructions and up until we received the draft order was to concede to Part A and C not Part B.

10 **CHAIRPERSON:** Yes.

ADV KGANGELO BALOYI: And it may be necessary for us to just file a short affidavit.

CHAIRPERSON: Yes.

ADV KGANGELO BALOYI: Outlining why we are opposing this stance that has been adopted by the applicant now Chair. So I will discuss with the evidence leader. It will not be a long affidavit it will just only outline the basis why we are opposing what we see as Part B of that application Chair.

20 **CHAIRPERSON:** My – my concern about you now wishing to file an affidavit is the possibility that the – your affidavit could complicate matters and somebody needing to reply and then it delays us. You have not filed it up to now. We already have to postpone now because the Minister of Police affidavit was late and we postponed to – we are going to postpone to Thursday morning. Tomorrow is a public holiday. You might say it will be short but we do not know. One or other party

might decide well it is short but it needs to be responded to. So it could cause problems. So you might wish to – to just reflect whether you really need to file an affidavit or it is matters that you can deal with the way you had intended to deal with them today?

ADV KGANGELO BALOYI: Chair I – I will reflect on that.

CHAIRPERSON: Yes.

ADV KGANGELO BALOYI: We – I will take instructions but I ...

CHAIRPERSON: Yes.

ADV KGANGELO BALOYI: I believe that it could be prudent to
10 perhaps...

CHAIRPERSON: Yes.

ADV KGANGELO BALOYI: Come and make submissions/

CHAIRPERSON: Yes.

ADV KGANGELO BALOYI: Because if it is not serious issues.

CHAIRPERSON: Yes.

ADV KGANGELO BALOYI: It is just technical issues about the
application.

CHAIRPERSON: Okay.

ADV KGANGELO BALOYI: Thank you very much Chair.

20 **CHAIRPERSON:** No that is fine. The application brought by Colonel Naidoo for an order in effect granting or directing that his evidence be heard in camera is postponed to Thursday this week at half past nine to enable the commission's legal team to obtain an affidavit from him that will deal with certain matters that have been raised in the opposing affidavit of the Minister of Police. So this matter will be heard on

Thursday nine thirty. But before we adjourn I am going to read for the benefit of the public an order that I issued last week in regard – on the 17 September in regard to this particular witness Colonel Naidoo and after that I would like to be updated on arrangements that may have been made between the legal team and – and other legal teams representing other persons in regard to the evidence of the witness who was supposed to give evidence today after this application and thereafter we will adjourn. Let me now read the order that I made just so that the media and the public and everybody is fully informed of the
10 order that I made which continues to be operational. That order read as follows: The heading is “Order by the Chairperson of the Commission in terms of Section 18 of The Witness Protection Act 112 of 1998 and it reads:

“It is hereby ordered that

1. In respect of the person referred to as Colonel
Dhanajaya Gangulu Naidoo in the evidence of Mr
Kobus Demeyer Roelofse before the commission to
day which is still continuing and who is scheduled to
testify before the commission in due course and is a
20 protected person as defined in the Witness
Protection Act 112 of 1998 [The Act].

1.1 No person may publish any information including
an drawing, picture, illustration, painting,
photograph, whether produced through or by
means of computer software on a screen or a

computer printout as contemplated in the Films and Publications Act 1996 or not pamphlet, poster or other printed matter which may disclose.

- 10
- a. The place of safety or location where Colonel Dhanajaya Gangulu Naidoo is or has been under protection. Or where he has been relocated in terms of the act.
 - b. The circumstances relating to his protection.
 - c. The identity of any other protected person and the place of safety or location where such person is being protected.
 - d. Colonel Dhanajaya Gangulu Naidoo's relocation or change of identity.

In effect the order is that nobody may publish anything may disclose the identity of this witness or where he is located or those who are protected persons connected with him."

20 So that order continues to apply. And then Mr Petersen are you able to update me with regard to Mr Sesoko?

ADV ROB PETERSEN: No personally Chair may I hand over to

CHAIRPERSON: Yes.

ADV ROB PETERSEN: Advocate Wentzel for that purpose?

CHAIRPERSON: Yes.

ADV KGANGELO BALOYI: Chairperson as the other evidence leader

addressed the other matters might I and Magena and those representing the Minister be excused?

CHAIRPERSON: Yes you are excused. Thank you.

ADV KGANGELO BALOYI: As Durban is still waiting for us.

CHAIRPERSON: Thank you, you are excused. Yes Ms Wentzel.

ADV SUSAN WENTZEL: Chair unfortunately – Chair unfortunately due to – it seems a misunderstanding Mr Sesoko was informed today that he would not be required to give evidence.

CHAIRPERSON: Sorry.

10 **ADV SUSAN WENTZEL:** He was informed that he would not be required to give evidence because of the change in schedule. He has apparently taken leave and is intending to attend a church conference for the rest of this week. So because the – the time is now going to be limited I would propose that we call Mr Khuba on Wednesday and allow Mr Naidoo to testify Thursday and Friday.

CHAIRPERSON: This is totally unacceptable. This is totally unacceptable.

ADV SUSAN WENTZEL: Chair I can try and get hold of him and explain to him that if he can come for on Wednesday we will do
20 everything we can to make sure he comes on Wednesday.

CHAIRPERSON: This is unacceptable.

ADV SUSAN WENTZEL: I apologise Chair.

CHAIRPERSON: Well I do not know. See what you are going to do but it is really unacceptable. If anybody has been scheduled to appear before the commission nobody has a right to release that person except

myself. I have not released him.

ADV SUSAN WENTZEL: Yes I understand.

CHAIRPERSON: But it might not be his fault.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: It might be a problem between the investigators and the legal team.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: But the legal team should take responsibility for that because they are the ones who should make sure that witnesses know
10 exactly what the position is.

ADV SUSAN WENTZEL: Yes I understand that Chair. Unfortunately I just was not here last week and so I was not informed what was happening until Saturday.

CHAIRPERSON: Okay we are going to adjourn for the day and we will continue on Wednesday. We will see which witness is available but it is an unsatisfactory state of affairs. I think counsel for Mr – Mr Abrahams might wish to say something?

ADV SUSAN WENTZEL: Yes he does.

CHAIRPERSON: Yes do you wish to say something?

20 **ADV MTHETHELELI PHILLIP MHLATSI:** Good afternoon Chairperson.

CHAIRPERSON: Yes good afternoon.

ADV MTHETHELELI PHILLIP MHLATSI: Just for the record I need to place myself on record. My name I Mthetheleli Phillip Mhlatsi from the Bridge Group in Sandton. Chairperson I deem it prudent perhaps at this stage to register a disquiet.

CHAIRPERSON: Hm.

ADV MTHETHELELI PHILLIP MHLATSI: Insofar as notification or communication with the legal representatives.

CHAIRPERSON: Hm.

ADV MTHETHELELI PHILLIP MHLATSI: We received a Rule 3.3 Notice.

CHAIRPERSON: Hm.

ADV MTHETHELELI PHILLIP MHLATSI: On the 10th September.

CHAIRPERSON: Hm.

10 **ADV MTHETHELELI PHILLIP MHLATSI:** Quarter to two.

CHAIRPERSON: Hm.

ADV MTHETHELELI PHILLIP MHLATSI: In fact this morning I entered appearance.

CHAIRPERSON: Hm.

ADV MTHETHELELI PHILLIP MHLATSI: On the supposition that the proceedings would have started at 10.

CHAIRPERSON: Hm.

ADV MTHETHELELI PHILLIP MHLATSI: There was no communication.

CHAIRPERSON: Hm.

20 **ADV MTHETHELELI PHILLIP MHLATSI:** And as you have already remonstrated.

CHAIRPERSON: Hm.

ADV MTHETHELELI PHILLIP MHLATSI: The legal team I do not want to take it further but there really has to be on record the fact that we prepare ourselves to enter and attend these proceedings and the least

that we request from our colleagues is that we need to be informed on time.

CHAIRPERSON: Hm.

ADV MTHETHELELI PHILLIP MHLATSI: Because there are logistical challenges that we might also need to deal with.

CHAIRPERSON: Hm.

ADV MTHETHELELI PHILLIP MHLATSI: But I will take it – I will leave it there.

CHAIRPERSON: Hm.

10 **ADV MTHETHELELI PHILLIP MHLATSI:** But as matters stand we have not been able to agree as to when are we then deferring the evidence leading of Mr Mathew Sesoko.

CHAIRPERSON: Yes.

ADV MTHETHELELI PHILLIP MHLATSI: Would want at least to be given ample time or proper timing as to exactly when will that be done.

CHAIRPERSON: Yes.

ADV MTHETHELELI PHILLIP MHLATSI: As matters stand there has not been any proper commitment.

CHAIRPERSON: Yes.

20 **ADV MTHETHELELI PHILLIP MHLATSI:** From the legal team.

CHAIRPERSON: Yes. No I am – it is quite clear that things have not happened the way they should happen. You should have been informed quite some time back that today we – the commission would only commence at two o'clock because the decision that I would not be available in the morning was made some time back and the legal team

would have known about it. Maybe not everybody in the legal team knew but the information should have been shared with all relevant people particularly anybody who would be involved in today's matters. And lawyers who were going to be here are supposed to have been informed so that they could come only in the afternoon. So it is really regrettable that that was not done.

ADV MTHETHELELI PHILLIP MHLATSI: Yes.

CHAIRPERSON: But I am sure that somebody will offer an apology from the legal team. To the extent that maybe it might be difficult to
10 then get Mr Sesoko to be here on Wednesday when he was told he was not needed here. I mean Ms Wentzel will have to find out who exactly told him that and where did they get that information from. Because I never said that he should be released. Maybe logistically it might be difficult to get him to be here on Wednesday and – and it might be unfair to you in case you have got other commitments on Wednesday to force you to come back on Wednesday when already you were here today and nothing happened. So I think maybe the best way is that I should say the legal team must seek to make such arrangements as can reasonably take care of your own situation as well. Normally when it
20 comes to – to the determination of dates for hearing we – we cannot negotiate them with the lawyers for implicated persons because otherwise practically we just – we would not be able to work. But you were here today expecting that Mr Sesoko would give evidence and that has not happened. I think in that situation attempts must be made to try and accommodate your situation as an exception.

ADV MTHETHELELI PHILLIP MHLATSI: Well – indeed so Chairperson.

Well Chairperson we do not necessarily wish to be a hindrance to the proceedings.

CHAIRPERSON: Yes.

ADV MTHETHELELI PHILLIP MHLATSI: So perhaps my suggestion would be that a new notice is issued out because I am also mindful of the fact that there might be others that are implicated so a date of a Wednesday or a Thursday or Friday as my learned colleague has already indicated that Ms – Mr Sesoko is not available. It might as well
10 as be that it is going to be a date in the future not necessarily this week.

CHAIRPERSON: Hm.

ADV MTHETHELELI PHILLIP MHLATSI: On my part I am prepared to actually even just appraise my client and say...

CHAIRPERSON: Yes.

ADV MTHETHELELI PHILLIP MHLATSI: Look we are not continuing but we have additional time.

CHAIRPERSON: *Ja.*

ADV MTHETHELELI PHILLIP MHLATSI: And I think the best way to
20 proceed would be the new or the issuance of a new notice.

CHAIRPERSON: Well there might not be to issue a new Rule 3.3 Notice as such. They will consider their position because if every implicated person did receive the Notice that the matter would be today and they were not here it might indicated that they do not – they have no intention of attending and that happens quite often. But your – from

your side you – your client wanted you to attend and you are the one that really needs to know. So – but I – they will consider their position and do the necessary. So I think there might need to be discussions between the two of you but if discussions do not bear fruit they need to do what they can do bearing in mind the fact today you had come all the way and the matter did not proceed. But we appreciate your cooperation.

ADV MTHETHELELI PHILLIP MHLATSI: Thank you for your wisdom Chairperson.

10 **CHAIRPERSON:** Thank you. Thank you. We are going to then adjourn until Wednesday morning. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 25 SEPTEMBER 2019