

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

09 OCTOBER 2019

DAY 180

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PROCEEDINGS RESUME ON 9 OCTOBER 2019

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

ADV PAUL JOSEPH PRETORIUS SC: Morning Chair.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Chair perhaps the parties should place themselves on record and then if I may address you after that?

CHAIRPERSON: Yes okay alright. Thank you.

ADV REG WILLIS: Morning Chair.

CHAIRPERSON: Good morning.

10 **ADV REG WILLIS:** As introduced to you in chambers I am Advocate Willis. I appear with my learned friend Ms Gaba we are from the Johannesburg Bar we are instructed by Maphalla Mokate Conradie Attorneys.

CHAIRPERSON: Yes.

ADV REG WILLIS: And we appear for Mr Wakeford.

CHAIRPERSON: Thank you.

ADV REG WILLIS: To whom you granted leave on Monday to cross-examine and have his evidence led. Thank you Mr Chairperson.

CHAIRPERSON: Thank you very much.

20 **ADV DEON POOL:** Good morning Chair.

CHAIRPERSON: Good morning.

ADV DEON POOL: I am Advocate Deon Pool. I am appearing on behalf of Mr Agrizzi and Mr Vorster.

CHAIRPERSON: Yes.

ADV DEON POOL: And I am appearing instead of Advocate Witz and I

retain the instruction from Witz Attorneys in this instance.

CHAIRPERSON: Yes.

ADV DEON POOL: For purposes of today's proceedings.

CHAIRPERSON: Yes.

ADV DEON POOL: As it pleases.

CHAIRPERSON: Thank you. Yes Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: Chair briefly as stated in chambers it is perhaps necessary for a short adjournment and if I can just explain that to you.

10 You granted an order Chair on the 7th October granting Leave to Mr Wakeford to cross-examine Messrs Agrizzi and Vorster and for certain other matters to take place.

 The position is today that Messrs Agrizzi and Vorster will apply for a postponement for various reasons that will become apparent in due course.

 That at present is intended to be opposed by Mr Wakeford. However the differences between the parties and a thorough joint submission to you Mr Chair is yet possible if the parties can be given an opportunity to speak to the investigator involved.

20 Part of the dispute between Messrs Agrizzi and Vorster on the one hand and Mr Wakeford on the other relates to factual matters of which there would be records in the Bosasa documentation. That Bosasa documentation is at present under the control of one or other curators who are in dispute as to who the curator lawfully is. That matter will be resolved by the Supreme Court of Appeal later in

November when an appeal comes before it.

The documentation relative to these disputes were summons as far back as June by the investigators but that execution of that summons was resisted on the basis that the dispute had to be resolved before a curator properly appointed could release the documentation. And that is the explanation for the curators of Bosasa in liquidation or to not to comply with the summons. That documentation may be relevant to either party in promotion of either party's version of the facts. We do not know that yet until that documentation has been
10 examined. So Chair what I have suggested to the parties is that they confirm the position with the investigators and then make an informed decision as to whether it would not be preferable to wait for the outcome of that part of the investigation before proceeding. Otherwise it may result in a multiplicity of hearings which might benefit no-one but I will make submissions on behalf of the legal team in due course depending on the outcome of that discussion.

So in short Chair we asking for a very short adjournment so that the parties may speak to the investigator to ascertain whether further information might be necessary for proper examination to take
20 place.

CHAIRPERSON: Would – what fifteen minutes be enough for that purpose?

ADV PAUL JOSEPH PRETORIUS SC: Perhaps twenty Chair.

CHAIRPERSON: Maybe twenty?

ADV PAUL JOSEPH PRETORIUS SC: Yes please.

CHAIRPERSON: Okay. I will grant that. What may have to be taken into account is that there may be no guarantee that the decision of the Supreme Court of Appeal would mean the end of that dispute. In the sense that obvious I do not know the papers I – and so on. In the sense that there is still the Constitutional Court in case somebody is unhappy and if they can find an issue that falls within the jurisdiction of that court.

ADV PAUL JOSEPH PRETORIUS SC: Yes. Chair it...

CHAIRPERSON: In terms of possible delays.

- 10 **ADV PAUL JOSEPH PRETORIUS SC:** No I understand that but in any event the commission would take steps.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: Then to compel production of the information.

CHAIRPERSON: Hm. Ja no I am mentioning this just so that everybody as they confer with one another they do not necessarily work on the basis that once there is a decision of the Supreme Court of Appeal it necessarily will mean the end of the litigation. It might not.

ADV PAUL JOSEPH PRETORIUS SC: Yes that is true Chair.

- 20 **CHAIRPERSON:** Ja. Ja that is the only point ja.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: Okay alright. It is nearly twenty past ten. I will adjourn until twenty to eleven.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Yes we adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: Thank you. The contemplated meeting has been held. It has gone some way to bringing about some consensus of course it is all subject to your decision Chair but at least the parties have [intervenes].

CHAIRPERSON: Yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Have reached a degree of consensus. But Mr Willis would like to place some matters on record.

CHAIRPERSON: Yes okay. Well maybe before Mr Willis does that I must just say that for what it is worth when the decision to grant Mr Wakeford Leave to Cross-examine the two witnesses when that decision was announced or made and announced a few days ago and I indicated that the cross-examination would take place today. I think I said today. It was on the understanding that all parties concerned were available. It may be that there was some misunderstanding in terms of the availability of all parties but certainly it was on the understanding that
20 the legal team understood the parties to be available and their lawyers or at least that is what I understood and I may have misunderstood something but otherwise I would not have issued a decision a few days ago and say cross-examine must start in two days or three days' time. I would not have done that. I would have given everyone enough time. So it was only done on the understanding that there had been

communication between the legal team and the – all the legal – the lawyers for the various parties and my understanding was that they were available. If I had understood differently I would have arranged that they should be another time. So I thought maybe I must just make that clear that that is the context in which I said the cross-examination would take place today.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Thank you. Yes.

ADV REG WILLIS: Thank you Mr Chairman. Chair the – before
10 communicating in precise terms.

CHAIRPERSON: Yes.

ADV REG WILLIS: My instruction.

CHAIRPERSON: Yes.

ADV REG WILLIS: Although Mr Pretorius has indicated that there is
consensus.

CHAIRPERSON: Yes.

ADV REG WILLIS: That we will concede the circumstances.

CHAIRPERSON: Ja.

ADV REG WILLIS: That prevail. I would just like to – I have been
20 instructed and wish to place the following on record Mr Chairman.

CHAIRPERSON: Hm.

ADV REG WILLIS: The first is a dissatisfaction on the part of our client Mr Wakeford as to the commitment by Mr Agrizzi and Mr Vorster to these proceedings and to being willing to be cross-examined and to hear his evidence. You were handed when we saw you in chambers the

application for a postponement.

CHAIRPERSON: Yes.

ADV REG WILLIS: Mr Chairman I am not going to labour the issues but must place on record that this affidavit that was placed before you ignores the facts in relation to the history of this matter. The facts in relation to the last few days are as you know them.

CHAIRPERSON: Yes.

ADV REG WILLIS: But the affidavit does two things. It misrepresents the facts over the past number of months in fact since the 26th February
10 when our application – our client's application was brought.

ADV PAUL JOSEPH PRETORIUS SC: Hm.

ADV REG WILLIS: It strives to then tar our client with the results of today.

CHAIRPERSON: Hm.

ADV REG WILLIS: This affidavit is wilfully misleading of you Mr Chairman and this commission.

CHAIRPERSON: Hm.

ADV REG WILLIS: But it serves no purpose in me taking it any further. Mr Agrizzi knows the facts and this will probably become material in the
20 future in his cross-examination as to his credibility and his reliability.

CHAIRPERSON: Hm.

ADV REG WILLIS: That speaks to the disparity of commitment and the frustration our client has – has experienced since the 29th January when he was implicated by Mr Agrizzi before this commission without compliance of the rules – with the rules of this commission that was

necessarily directly Mr Agrizzi's fault but those were circumstances that prevailed.

CHAIRPERSON: Ja.

ADV REG WILLIS: For Mr Wakeford. Mr Chairman Mr Wakeford has declined all opportunity to respond to the media in good faith and in accordance with your own comments in this commission. He has – he has had to forego work opportunities, employment opportunities. You would have read in his application that his tenure came to an – an employment tenure came to an end in April. And he has also had to
10 experience a continual fleshing out of new facts and new information in the affidavits that have come before this commission. The purpose of these submissions Mr Chairman is in as much as he concedes the circumstances today and consensually you may order a postponement of the proceedings he asks that – that you order the parties to return as soon as at all possible in accordance with the diaries of yourself and the various other stakeholders in this – in this commission. Mr Chairman the – the discussions that endured in the adjournment between the investigating team and the legal team and the two other legal teams was to the effect that there is some outstanding information
20 which either – which will either suit one or other party or narrow the issues. In those circumstances and in keeping with his commitment to cooperate he is not left with any opportunity but to accord with the advises given and the good faith dealings in particular by the legal team for the commission and the investigating team. Those are the submissions save if there is anything else that we can be of assistance

with.

CHAIRPERSON: No that – that is fine. I am quite alive to the fact that Mr Wakeford launched his application many months ago and that there has been some delay in dealing with it. But I also do know that at a certain time when I thought it could be dealt with I heard that he was intending to file some further affidavits so we had to give him that opportunity. But the bottom line is that we want to try and as far as possible be fair to everybody. So – so it would not have been fair to everybody to proceed today in the circumstances which prevail. So –
10 so – so that is fine. So I – I will postpone the matter at this stage without fixing a date but with a clear understanding that everything that needs to be done should be done to make sure that we can fix a date as soon as possible. What still remains in regard to the Leave to Cross-examine that has been granted is the question of how much time will be [intervenes]

ADV REG WILLIS: Indeed so.

CHAIRPERSON: Yes – so [intervenes]

ADV REG WILLIS: I was going to ask after that shortly.

CHAIRPERSON: Yes. In due course that will have to be determined. I
20 am quite happy – I am quite happy if the legal team and your side and I do not mind everybody if they have got some submissions to make with regard to how much time should be set aside to make submissions and obviously at some stage I will decide. As of today I intended that I would determine that at the beginning of the cross-examination if the cross-examination was going to proceed. But there is room for various

submissions to be made – maybe written submissions ahead of the actual commencement of the hearing. So – so maybe I can leave that part to be agreed upon among all the legal teams in terms of who might want to submit – deliver written submissions – short written submissions on that by when and take from there. But should no submissions or notices be made ahead of the first day of the cross-examination I would then make the decision at the commencement of the hearing. But it might be preferable if it is done earlier than that because then everyone has an idea of how much time is allocated and
10 therefore what are the important issues to focus on within the time allocated. But I think I can leave that to the various legal teams to agree upon and then that can be brought to my attention in due course.

ADV REG WILLIS: That is a – thank you Mr Chairman.

CHAIRPERSON: Yes.

ADV REG WILLIS: That is a salient suggestion we will take advantage of it and hopefully agree that and have that – well the submissions referred to you.

CHAIRPERSON: Yes.

ADV REG WILLIS: If we cannot agree on it and you can decide ahead
20 of time.

CHAIRPERSON: Yes.

ADV REG WILLIS: It would be very helpful if one [indistinct] knows ahead of time.

CHAIRPERSON: Yes.

ADV REG WILLIS: What to expect.

CHAIRPERSON: Ja.

ADV REG WILLIS: Mr Chairman one last comment per instructions of our client is to thank you for the alacrity with which you dealt with his application once it was placed before you.

CHAIRPERSON: Thank you very much.

ADV REG WILLIS: Thank you Mr.

CHAIRPERSON: Thank you.

ADV REG WILLIS: Chairman.

CHAIRPERSON: I do not know if counsel for Mr Agrizzi and Mr Vorster
10 who has – wishes to say anything?

ADV DEON POOL: If it pleases the honourable Chairperson there are just certain matters that I just have been instructed to just record.

CHAIRPERSON: Yes.

ADV DEON POOL: At your discretion.

CHAIRPERSON: Yes.

ADV DEON POOL: I have taken cognisance of Advocate Willis' comments regarding the affidavit that was submitted and in order to comply with the substantive application requirement before this commission. I will pass those comments on to Mr Witz and they can be
20 dealt with by him accordingly.

CHAIRPERSON: Yes.

ADV DEON POOL: Just as far as Mr Agrizzi is concerned and I have appreciation for the fact that Mr Wakefield – Mr Wakeford is to a certain extent has placed before your honourable self the fact that he is severely prejudiced. I do believe that that ought to be balanced by the

fact that Mr Agrizzi has not sought an indulgence of this kind before this commission at any point in time since he has been part of these proceedings. He had been present at every single instance that he has been required to do so. The nature of these proceedings is that prejudice will be suffered by implication. It is – these proceedings are laying a scalpel into the bare essentials that undermine our democracy if that was not true the President would not have ordered it and Your Honourable Self would not have been presiding in this matter for the time that you have been. My bottom line is that the rules of natural
10 justice in respect of providing Mr Agrizzi and every party here an opportunity to deal with these matters properly and appropriately so that everything can be laid bare and there is a complete understanding of the nature of whatever went on is important. As far as the times just for the intra – or for the information of – of the various parties I have been advised that times have been suggested and they are similarly contained. Periods of either the 18th – the week of the 18th to the 21st November or the 2nd to the 6th December. Those might be dates that can be kept in mind. My further instruction is that depending of course on Your Honourable – The Honourable commissioners discretion an
20 direction that Mr Agrizzi's team would not at least three days in order to cross-examine Mr Wakeford and as for the remainder I believe that that has been dealt with by either Mr Willis or the other members of this commission.

CHAIRPERSON: Ja okay alright.

ADV DEON POOL: Thank you Sir

CHAIRPERSON: You must just – or those advising Mr Agrizzi must just remember to have a look at the rules and see whether there are any procedural steps that must be taken.

ADV DEON POOL: I will advise them accordingly.

CHAIRPERSON: Taken care of first yes. Yes.

ADV DEON POOL: Thank you Sir.

CHAIRPERSON: I must just say for what it is worth as different sides contemplate making submissions with regard to the time that they can be allowed that I should consider allowing for cross-examination. They
10 should take into account that I am inclined not to allow too much time but at the same time I do not want to be unfair and therefore two parties and allow too little time.

ADV DEON POOL: Honourable Chairman I think we will [intervenes]

CHAIRPERSON: But I – ja you will bear that in mind.

ADV DEON POOL: Yes we – I think we all agree that we serve at your discretion.

CHAIRPERSON: Yes.

ADV DEON POOL: And at your pleasure in this instance and we take your direction accordingly.

20 **CHAIRPERSON:** Yes. I think the first time when I determined allocated time for cross-examination was with regard to I think Ms – the cross-examination of Mr Jonas. I do not know whether also Ms Mentoor. I think at that time I may have granted an hour or two or thereabout. Yesterday not – well not yesterday – ja I think in the past it was about an hour or two but obviously it depends on the issues and

how fast they are. But I just want everybody to take that into account.

ADV DEON POOL: I have – I take that into consideration thank you Sir.

CHAIRPERSON: Yes. Thank you very much. Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair. Just three points. Firstly the legal team appreciates the cooperation of the parties. It is obviously best for the investigative work of the commission that evidence and cross-examination takes place on as thorough an investigation into the underlying facts as possible. The
10 second point is that the – to place the history of this matter in its proper context it was concluded by the filing of a reply on behalf of Mr Wakeford of some 290 pages on the 1st October.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: In other words very recently. So in assessing the delay that must be taken into account. And thirdly it is important to put one matter straight and on the record Chair. It has been said today and in public and in correspondence many times that Mr Agrizzi implicated witnesses without compliance with the rules. That is not correct. There was a – if – if regard is had to the record which is
20 available for all to read the evidence of Mr Agrizzi was given after a comprehensive and proper application in terms of the rules that he do so without the issue of 3.3 Notices in particular circumstances that were placed in evidence before you Chair.

CHAIRPERSON: Yes. Yes. Yes.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

CHAIRPERSON: So in other words you just remind everybody that to the extent that there might not have been any Rule 3.3 Notices that were issued it was under circumstances that the legal team submitted justified doing that.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: And that was placed before the commission.

ADV PAUL JOSEPH PRETORIUS SC: Yes. And you permitted it Chair.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: In terms of the rules.

10 **CHAIRPERSON:** Yes.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: Yes,

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Yes thank you. We – I am going to postpone the cross-examination of Mr Agrizzi and Mr Vorster by counsel for Mr Wakeford. I am not going to fix any date because that must still be worked out. But attempts will be made to fix a date as soon as possible and I have no doubt that the investigation that must be carried out in order to facilitate that cross-examination is going to be done as soon as possible. So the cross-examination of Mr Agrizzi and Mr Vorster is postponed sine die and another date will be determined in due course. That is going to – that play puts us at the end of the proceedings for – of today. We – Mr Pretorius are not having any witnesses tomorrow and Friday. Is that – is that confirmed?

20

ADV PAUL JOSEPH PRETORIUS SC: Friday is still relatively

uncertain. I say relatively uncertain the witness for that day will probably not appear but there is a chance that it can still be arranged and notification can be given to today.

CHAIRPERSON: So somebody must just let me know but certainly not tomorrow there is no witness tomorrow?

ADV PAUL JOSEPH PRETORIUS SC: Correct Chair.

CHAIRPERSON: And with regard to that there will be no hearing on Monday and Tuesday next week as well.

ADV PAUL JOSEPH PRETORIUS SC: Correct Chair.

- 10 **CHAIRPERSON:** There will be a hearing on Wednesday involving a witness from the Free State Government in relation to Estina. So – yes – so the public will be advised about Friday either sometime today or tomorrow.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

CHAIRPERSON: We adjourn. We adjourn.

INQUIRY ADJOURNS SINE DIE