

STATE CAPTURE INQUIRY
PARKTOWN, JOHANNESBURG

13 SEPTEMBER 2018

SESSION 1

DAY 12

CHAIRPERSON: Mr Pretorius?

ADV PAUL PRETORIUS SC: Morning Chair.

CHAIRPERSON: Good morning, good morning everybody.

ADV PAUL PRETORIUS SC: Chair, pursuant to your requests, affidavits have now been received from Ajay Gupta and Rajesh Gupta in respect of the Jonas testimony, setting out their attitude towards testifying and the reasons why they have taken the position that they have.

Affidavits have also been received from Ajay Gupta in respect of the evidence of Ms Mentor and Maseko to the same effect so those affidavits are before you. Then Chair, I
10 have a request from Advocate Lebello representing Ms Lynne Brown to inform you that she has elected not to place any further evidence on affidavit before you.

In respect of the notification of judgments, there has been notification either in writing or orally to the various legal representatives regarding the judgments you are about to hand down.

CHAIRPERSON: With regard to what you have just said, with reference to Ms Lynne Brown, I am not sure what its effect is. There was an application that was brought here which was dealt with up to a certain point and then it was decided that it be postponed so I don't know whether the placing of any evidence by way of affidavit that's not going to happen means that the application won't be pursued.

20 **ADV PAUL PRETORIUS SC**: I don't have any information to that effect Chair, but I will find out and inform you later.

CHAIRPERSON: Okay thank you.

ADV PAUL PRETORIUS SC: Her lawyers are here.

CHAIRPERSON: Thank you. I am now going to give my decision in regard to the applications for leave to cross-examine certain witnesses that in respect of which I reserved my decision last week.

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

10 As at the hearing last week, Mr Duduzane Zuma's application failed 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 continued 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 had 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.

20 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, 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 indicate the time, I shall allocate for his cross-examination of Mr Jonas immediately before the commencement of cross-examination.

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 all Counsel including Mr Hellens
10 who appeared on behalf of Mr Ajay Gupta and Mr Rajesh Gupta, in regard to the evidence of Mr Jonas and Mr Joubert who appeared on behalf of Mr Ajay Gupta, Mr Rajesh Gupta and Mr Duduzane Zuma in relation to the evidence of Ms Mentor 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.

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 and I quote:

*"Any witness appearing before the Commission, may be cross-examined by a person,
20 only if the Chairperson permits such cross-examination should he deem it necessary and in the interest of the function of the Commission"*

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-examination should he deem it necessary and in the best interest of the work of the Commission to do so”.

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 interest of the work of the Commission.

I deal first now, 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
10 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 say is also incompetent. They refer to certain judgments that they use to support their contention.

Mr Ajay Gupta and Mr Rajesh Gupta have told the Commission that they are prepared to
20 physically or personally appear before the Commission at a venue that may 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 subsequent 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 and with regard to the Hawks, he refers to their power to arrest and 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
10 confined to how the Hawks exercise their power and how the NPA exercises their power.

Mr Maleka 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 that fugitives from justice who seek to avail themselves of Court processes from a legal system that they seek to evade.

20 That attitude is one that declines to consider any attempt by a fugitive from justice to use Court processes of illegal 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 to 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 extreated 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 and I quote:

“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”.

10 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 of their own version that they 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
20 justice system and seek to stay out of the reach of the processes of our legal system. 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. Mr Ajay Gupta and Mr Rajesh Gupta stated reasons 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 their 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
10 against them.

During argument I mentioned to Mr Hellens that I was unable to follow this logic when this was sighted as a reason by people who accepted the judiciary of South Africa is 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 are no proper grants for the arrest or where they are 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 we will get protection of the Courts.

I understood Mr Hellen's' answer to be in effect that by the time that they get judicial protection they will have been arrested even if for a very short time. That may be so but it
20 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 Court 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 whom may be victims of

the abuse of power and our Courts grant individuals and groups that approach them 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.

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
10 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 cost 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. 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 whatever findings that this Commission may ultimately make, will be weakened if the evidence of Mr Ajay Gupta and Mr Rajesh Gupta
20 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
10 turn their backs to this country and refused to make use of a fair opportunity to be heard that 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 person whom 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.

20 The fact that this Commission afforded or 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, 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. 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 is 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

10 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. There are other difficulties too about the submission that I should allow the Gupta brothers to testify via a video link conference. Section 3 of the Commission's act which is applicable to this Commission, provides and I quote,

20 *“3.1 for a purpose of a certain any matter relating to this subject of its investigations, a Commission in the Union (the Commissions Act still talks about the Union, it means in the Republic) have the powers which a provincial division of the Supreme Court, that is the High Court, has within its province to summon witnesses to cause an oath affirmation to be administered to them to examine them and to call for the protection of books and documents and objects.”*

I draw special attention to the provision relating to someone's calling for the production of books, documents, 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 instruction issued by the 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.

Section 6.2 of the Commission's 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 Commission's Act has no extra-territorial application.

This means that if I were to accept the suggestions 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 give 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 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.

I am aware of a judgment of Sedgwall J in regard to the matter of *Uranium Incorporated in British Columbia versus Perry, 2014 JDR0285 (GSJ)* wherein she dealt with the issue of a video link request and granted it.

1. That was a civil matter
- 10 2. She did not consider any specific statutory provision such as the one's that apply in this case but also in that judgment she made it quite clear and in this regard I refer to paragraph 3 of her judgment that each application for the use of video linkage to procure evidence of witnesses will depend on its own particular facts and circumstances and 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. In this regard I point out however, that the Constitution is the supreme law of the land and is obviously applicable here.

20 There was also argument by Mr Hellens that if I granted leave to cross-examine, I should make a ruling in 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.

As I pointed out to Mr Hellens at the hearing, even in an adversarial context such as we find in a case where a motion matter 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 Hellen's 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. It seems to me that
10 number of factors militate against Mr Hellen's 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 version 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
20 the Commission's legal team. It is inherent in that arrangement that witness's version could be known to implicate a person and vice versa before the matter is handed over to the Commission's legal team.

Furthermore, an implicated person would have been furnished with a witness's version or statement before he/she prepared his/her response or statement or affidavit. That is in

accordance with the rules of the Commission. If Mr Hellen's 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's version before they get cross-examined. Therefore the witness and the implicated person would be treated unequally. It seems to me that because implicated persons get the witness's statements or relevant portions thereof, there is also nothing wrong if a witness is also afforded the opportunity of seeing the statement or affidavit of the implicated person.

I do not think that when members of the Commission's legal team have received an implicate person's affidavit and made it available to a witness, they will do anything more
10 than to establish whether the witness persist in his or her version in respect of those areas where it is in conflict or is in consistent 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.

At this stage I just wish, before I conclude, to go back to the question of the video link and we 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 legislation, the Commission's Act as well the regulations
20 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. It does not appear to me that, if a witness is thousands of kilometres away from where the Commission is sitting and only his or her picture appears

before the Commission through in a screen, that that witness can truly be said to be before the Commission.

The Commission would not be able to exercise any powers over that witness because by virtue of the fact that he or she is physically not before the Commission and 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 sanction 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
10 exercise any powers at all.

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 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 but 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 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.

20 However, the position therefore remains that they must make their decision. If they make the decision to place a condition before this Commission, that they will only give evidence or give their side of the story to this Commission if they are outside of the country and 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.

I dealt last week with the other applications so it is not necessary to say anything in regard to them, I granted the orders, the leave that I granted. At this stage I wish to say something unrelated to these applications but I think Mr Pretorius has something to say.

ADV PAUL PRETORIUS SC: Chair, we note that you did make some comments in
10 relation to the application regarding the ability to have the legal team to put the version of the implicated witness before closing evidence in chief. I don't know if you intend to make a ruling in that regard or we could simply note your comments in that regard.

CHAIRPERSON: I was asked to make a ruling and I have indicated that I do not accept that suggestion that the witnesses should not be given the statements and affidavits of implicated persons.

ADV PAUL PRETORIUS SC: Yes, we note that thank you and the second...

CHAIRPERSON: Unless you said you wanted to have it as an order?

ADV PAUL PRETORIUS SC: No, Chair your...[intervene]

CHAIRPERSON: I thought it's clear from the decision?

20 **ADV PAUL PRETORIUS SC:** Yes. Chair, the second issue is that in order to plan the set downs for the recalling of witnesses, the conclusion of their evidence in chief and cross-examination and in order for a continuous hearing to be possible, we would inquire whether you intend to set time limits for cross-examination.

CHAIRPERSON: I said I intended dealing with that just before cross-examination starts but I guess what you are saying is in terms of planning it might be better for that to be dealt with earlier.

ADV PAUL PRETORIUS SC: Yes, we just thought we would raise the point Chair, it is up to you of course to decide whether and when to do that.

CHAIRPERSON: Well, when Mr Hellens was on his feet last week if I recall correctly, I mentioned for example an hour in regard to I think Mr Ajay Gupta in relation to Mr Jonas, he indicated that that kind of timeframe, that kind of time didn't seem to be problematic for him but I think that I would need to look at each one properly because in regard to some
10 for example, Ms Kaunda seems to be a very narrow issue. In regards to Mr Ajay Gupta in relation okay well that doesn't arise so the one's that really arise would be the ones that I dealt with last week plus Mr Duduzane Zuma's one.

ADV PAUL PRETORIUS SC: Yes Chair.

CHAIRPERSON: Maybe the way to deal with it might be to, I wonder whether we shouldn't invite all sides to make suggestions, written submissions with a clear understanding that really I don't want to give excessive time for cross-examination. I really want to ensure that only the time that is really necessary in terms of fairness is granted.

ADV PAUL PRETORIUS SC: You see Chair, perhaps what we could do is seek
20 submissions in writing regarding to the time period,

CHAIRPERSON: yes

ADV PAUL PRETORIUS SC: submission from the legal team and place those before you so that before we conclude our planning we are in a position to do so.

CHAIRPERSON: Ja, I think, that is what should be done and then obviously the lawyers for other parties, the implicated persons would also need to know how much time is granted for that. I don't know whether you have any suggestion about by when the legal team could put in their short written submissions on the time and what your suggestion would be in regard to the implicated persons because maybe once they have seen the legal team's suggestions, then they could respond to that?

ADV PAUL PRETORIUS SC: Well, we could do that rapidly Chair, perhaps by the end of the week.

CHAIRPERSON: So maybe we could do that by end of tomorrow?

10 **ADV PAUL PRETORIUS SC**: Yes.

CHAIRPERSON: And then maybe they could revert by Monday, they could submit something by Monday, Monday afternoon?

ADV PAUL PRETORIUS SC: Yes DCJ, we will set that in order through the attorneys.

CHAIRPERSON: Yes, yes. Okay that's fine, let's deal with it on that basis then and then I could give directions as soon as possible after that, maybe Tuesday morning.

ADV PAUL PRETORIUS SC: That would be very helpful DCJ.

CHAIRPERSON: Okay, let's do it that way and then in terms of what's going to happen next week, do you have anything?

20 **ADV PAUL PRETORIUS SC**: Yes, the representatives of various banks will be led by Advocate Mokwena in relation to the closure of Gupta related bank accounts and the expert witness who testified via video link will be present to give evidence on Wednesday afternoon.

CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: Then, in relation to further proceedings, we need to plan in accordance with your directions and we will notify the Chair as soon as possible after we have completed that exercise.

CHAIRPERSON: Thank you, thank you. Before we adjourn, I just want to raise something. It was announced I think sometime last week that the former President Jacob Zuma had taken the view that he is not implicated by any of the witnesses so far and therefore that is why he did not apply for leave to cross-examine anybody. Nevertheless, there are some areas where I would like him to deal with, for example, the evidence by
10 Ms Mentor that while she was at the Gupta residence when she got agitated and became loud, the former President emerged from one of the rooms and they spoke and he walked her to the car as well as the evidence by Mr Maseko that he got a call from the former President on the afternoon on which he was leaving his offices to attend a meeting with a Mr Ajay Gupta.

I have invited the lawyers for the former President and indicated my wish that he could put this in an affidavit or could put his version in regard to those aspects in an affidavit to assist the Commission so I have extended that invitation to the former President to assist the Commission by considering to deposing to an affidavit and deal with those two aspects and his attorney is here and he has undertaken to convey that invitation to him.

20 That was the last issue that I wanted to raise and unless there is something else, Mr Pretorius, it would appear that we should then adjourn.

ADV PAUL PRETORIUS SC: Yes, just one matter. It won't take much time Chair. I am informed by the legal representatives of Ms Lynne Brown that they persist with their application but on the basis of the record as it stands and there will be no further oral or

written submissions made on her behalf and it seems to me the position or it seems to the legal team I have consulted with Mr Maleka is that any ruling that you may wish to make or have been asked to make, may be made on the record as it stands at present.

CHAIRPERSON: That is strange?

ADV PAUL PRETORIUS SC: That I can't account for.

CHAIRPERSON: My recollection is that when Mr Lebello moved the application last week, I raised certain issues and he dealt with some. My impression was that we had not finalised the dealing with the matter and that we, the postponement was on the basis that it would be dealt with at a later stage and I would have expected that if they want to
10 pursue it, at least somebody would then still be available to deal with whatever queries had not been dealt with. I am not sure that when we postponed it, all the issues that I had raised, had been dealt with to my satisfaction.

Maybe what we should do is, I should just say that against the background that the matter, argument had not been finalised, they would need to come back so that we can finalise and I can get clarification on whatever remained so I think what should happen is that it should stay postponed but they must indicate once they are ready to have the balance of issues dealt with then an arraignment can be made.

ADV PAUL PRETORIUS SC: Chair, there are really two options. One, the Chair could summons Counsel and ask Counsel expressly what their position is.

20 **CHAIRPERSON**: Isn't their junior Counsel involved in the matter here? I think there is.

JUNIOR COUNSEL: Yes, I am here.

CHAIRPERSON: If you are, maybe take the stand.

JUNIOR COUNSEL: Thank you Chair.

CHAIRPERSON: Is my recollection not correct that when the matter was postponed, argument had not been finalised and there were still issues that needed clarification?

JUNIOR COUNSEL: The primary issue that was outstanding was actuated by the fact that at the time the statement of Buang Mcebisi Jonas was not at hand, at least for us. Now it is available and that for us was the only outstanding issue regarding that application unless Chair, there have been other issues that the Chair wish to raise with us?

CHAIRPERSON: Ja no, I think there was, I was still not very clear about a number of things about the application so I think therefore if you are not going to file anything
10 further, I should say that we should then, you or your leader or both of you must come back so that we can deal with it. I am quite happy to deal with it and raise whatever issues sometime early next week or sometime next week. I think maybe liaise with the Commission's legal team to see what day might be appropriate for that next week because it would be better if we don't just come to the hearing for just that application only but we deal with it when we have other business to deal with.

JUNIOR COUNSEL: Chair, I just got a note from Mr Pretorius that Thursday seems to be possible.

CHAIRPERSON: If it's fine with you, we can deal with it on Thursday then?

JUNIOR COUNSEL: Provisionally I will say its fine, I will check if my leader is available
20 but provisionally it's acceptable I will deal with the application myself.

CHAIRPERSON: Okay that's fine, then we will deal with it on Thursday unless that decision is changed.

JUNIOR COUNSEL: Thank you Chair.

CHAIRPERSON: Thank you very much. There is nothing else Mr Pretorius?

ADV PAUL PRETORIUS SC: No Chair.

CHAIRPERSON: Yes, yes, thank you. I have made directions with regard to what is to happen with regard to the timeframes that must be determined, there is a process and after the Commission's legal team and the lawyers for various implicated persons have made their input as to how much time they should be allowed, I will then make formal directions after that about how much time in each case would be allowed. We therefore adjourn the proceedings and we will continue on Monday at 10:00 am. We adjourn.

CLERK: All rise

10 (Session ends)