

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

30 JULY 2020

DAY 241



Gauteng Transcribers
Recording & Transcriptions

22 Woodlands Drive
Irene Woods, Centurion
TEL: 012 941 0587 FAX: 086 742 7088
MOBILE: 066 513 1757
info@gautengtranscribers.co.za

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, *in as far as it is audible*, the foregoing is a **VERBATIM** transcription from the soundtrack of proceedings, as was ordered to be transcribed by Gauteng Transcribers and which had been recorded by the client

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

CITY OF JOHANNESBURG OLD COUNCIL CHAMBER

158 CIVIC BOULEVARD, BRAAMFONTEIN

DATE OF HEARING:

30 JULY 2020

TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN;



Gauteng Transcribers
Recording & Transcriptions

PROCEEDINGS RESUME ON 30 JULY 2020

CHAIRPERSON: Good morning Ms Wentzel, good morning everybody. Are you ready?

ADV WENTZEL: Good morning Chair. Yes I am ready Chair. Chair the first issue to address this morning is an application for a postponement that has been brought by Colonel Mhlongo. He was asked to testify today. He is being implicated by General Booyesen and he was asked to testify in respect of those aspects raised by General Booyesen.

10 Perhaps it is appropriate that my learned colleagues address you on the postponement and after that with your leave I will make certain submissions to you with regard to that application.

CHAIRPERSON: But with what we are supposed to do today?

ADV WENTZEL: Today we have three witnesses who are set down. The first is Colonel Mhlongo. The second is Terence Joubert and the third is Edward Zuma. If – I can – if you would like me to deal with all three at this stage I will or
20 would you like to deal with the first deal with this application.

CHAIRPERSON: Ja so tell me what is – what is the position with them?

ADV WENTZEL: With the other witnesses?

CHAIRPERSON: With the ones you have mentioned.

ADV WENTZEL: Yes. With regard to Colonel Mhlongo he

has brought an application which we will deal with. I can address you on the background to his evidence just for the purposes of public and understanding what his evidence is about.

CHAIRPERSON: Ja no I understand the context.

ADV WENTZEL: Yes.

CHAIRPERSON: I just want to – you to address me on what is going to happen – what is the plan about those three witnesses?

10 **ADV WENTZEL:** So the plan about the application for a postponement is the attitude of the evidence leaders. It is that that application should be granted. Although I would like to address you on the issues that have been raised in the affidavit. Just to place on record what has transpired between the commission and Mr Mhlongo's attorneys. But after discussion with them it is felt that there are aspects that merit a postponement and the reasons for that are that affidavits have come in late. The second is that one of the main aspects that in respect of which Mr Mhlongo was
20 implicated was that a person called Terence Joubert had deposed to an affidavit annexed to General Booyens' affidavit in which he had stated that he had been approached by Colonel Mhlongo in order to dig up dirt on Advocate Nxanana.

CHAIRPERSON: Well you - you are now going into the –

into aspects of the postponement application.

ADV WENTZEL: Yes.

CHAIRPERSON: I thought you wanted to do that later?

ADV WENTZEL: Yes I am just indicating.

CHAIRPERSON: I wanted you to tell me.

ADV WENTZEL: Okay.

CHAIRPERSON: Who is – what are your plans about the three witnesses that is all I wanted to hear.

ADV WENTZEL: Yes. In respect of the second witness who
10 is Mr Joubert what has transpired Chair is that he deposed to – which is also related to Colonel Mhlongo’s affidavit. He deposed to an affidavit in support of an affidavit deposed to by General Booysen. In that affidavit he indicated that he had been approached by Mr – Colonel Mhlongo.

CHAIRPERSON: Ja. No you are going into the merits. I wanted you to say so and so will testify, so and so will testify, so and so will not testify.

ADV WENTZEL: No.

CHAIRPERSON: You can deal with the reasons later.

20 **ADV WENTZEL:** Yes.

CHAIRPERSON: If they have – if anybody is not going to testify.

ADV WENTZEL: Yes thank you Chair. The long and short is that Mr Joubert will not testify today but Edward Zuma will testify.

CHAIRPERSON: Let me hear the – Mr Mhlongo's application. Yes. Just place yourself on record again.

ADV MONALA: Thank you. Chairperson I am Monala ME. I am instructed by Maringa Attorneys and we both appear for Colonel Mhlongo.

CHAIRPERSON: Yes.

ADV MONALA: Who is then scheduled to give testimony today.

CHAIRPERSON: Yes.

10 **ADV MONALA:** And we have since then prepared an application for the postponement of his testimony.

CHAIRPERSON: Yes.

ADV MONALA: And if you permit me then Chair, I will take you through the application.

CHAIRPERSON: Yes.

ADV MONALA: Chairperson the starting point is that Colonel Mhlongo has given a notice in terms of Rule 3 informing him that he was implicated by General – yes Major General Booyesen.

20 Now he was referred specifically I believe to paragraph 42 up until paragraph 46 of Booyesen's affidavit and there there arose two issues.

The first was that there is a recording which evidences wrongdoing on the part of Mhlongo and the other part was that there is also an affidavit that evidences his

wrongdoing on his part. So there were two complaints that he had then to address.

In dealing with the complaints he asked then to receive a copy of this recording which is mentioned as the first complaint. And we have since then been told that even if that recording is to be given, we would require specific equipment in order for us to be able to listen to that. But we have now been told that arrangements are being put in place to enable us to listen to that recording. So that would then
10 address the first complaint that we have in relation to the audio that is the audio equipment.

CHAIRPERSON: When was the first request made for that recording?

ADV MONALA: So Chairperson what you would have noted is that when the affidavit was presented that is the first affidavit an answering affidavit was put up and after the answering affidavit was put up a replying affidavit followed.

Now when we received the replying affidavit we then responded with a supplementary affidavit and it is in that
20 supplementary affidavit that we then mentioned that we require to be placed in possession of those recordings. I am trying Chairperson to get

CHAIRPERSON: Yes.

ADV MONALA: The date of the supplementary affidavit but I can assure you Chairperson it is sometime in September.

CHAIRPERSON: Last year?

ADV MONALA: September last year yes 2019.

CHAIRPERSON: Yes.

ADV MONALA: So that was then put in and there was correspondence all along.

CHAIRPERSON: After that?

ADV MONALA: After that.

CHAIRPERSON: Yes.

ADV MONALA: The latest part of that correspondence
10 concluded on the 23rd Thursday last week – 23 July 2020.

CHAIRPERSON: Yes.

ADV MONALA: And it was then that we were told that even if we were to be given that you will not be able to listen to it because it requires specific equipment.

CHAIRPERSON: Oh that is now recently?

ADV MONALA: Yes. We were told then recently.

CHAIRPERSON: Yes.

ADV MONALA: So that is insofar as that complaint is concerned. But related to that complaint Chairperson there
20 would have been two other affidavits that then followed. That is the affidavits of Padayachi I believe it is – ja it is General Padayachi. Yes so those two affidavits the one gives somewhat of an account of what is being said in those recordings.

CHAIRPERSON: Yes.

ADV MONALA: However, we are of the view that what is stated there it is not necessarily a verbatim account of what transpired there. And we want to ascertain ourselves as to whether that which is being said is exactly as it appears from the recording. And that affidavit Chair was then availed I believe on the 10th or the 9th July 2020. That is the first leg of the complaint. That is the basis for our postponement.

The second leg pertains to an affidavit of Terence Joubert. What has happened here Chairperson in the first
10 affidavit which was given there was an affidavit attached I believe it is the affidavit dating 2013.

CHAIRPERSON: Hm.

ADV MONALA: We responded to that allegation and put up an affidavit of 2016.

CHAIRPERSON: And that was last year?

ADV MONALA: Yes that is...

CHAIRPERSON: When you responded and put up a 2016 affidavit.

ADV MONALA: Yes indeed it was last year.

20 **CHAIRPERSON:** Yes.

ADV MONALA: So when we put up that 2016 affidavit we then said as far as we are aware there is an affidavit that says that first affidavit is wrong and that is a forgery and all of those things.

So we then proceeded with the matter on the basis

that there is no first affidavit. In fact, the correct position is as set out in the second affidavit. Now recently Chairperson Terence Joubert has changed to – he has deposed to a third affidavit and that affidavit we received on Sunday this is the 26 July. We received that affidavit on Sunday.

In this third affidavit he now resuscitates the first affidavit and he says the second affidavit was wrong and that is the affidavit on which we then relied all along.

CHAIRPERSON: Hm.

10 **ADV MONALA:** So the sum total Chairperson of all of this is that we need to reconsider our position in relation to those options that are available in terms of Rule 3.

CHAIRPERSON: Ja.

ADV MONALA: And decide whether or not this would be the best way or that would be the best way.

CHAIRPERSON: Hm.

ADV MONALA: And for that purpose, Chair we require a postponement in order to deal with those aspects.

CHAIRPERSON: Okay no that is fine.

20 **ADV MONALA:** Thank you Chairperson.

CHAIRPERSON: Yes why – why was – why did the commission not give the recording much earlier to Mr Mhlongo? Switch on the microphone.

ADV WENTZEL: Chair with respect as was indicated by my learned colleague there was a lot of correspondence that

followed that first request. What the commission first thought was requested was the recording that was played during the evidence of Colonel Booysen. And there was correspondence stating that.

Then the issue of the recording of the transcript – I mean the recordings – the 70 recordings those recordings were never in the possession of the commission. The commission has never had them. Summons was issued and Colonel Padayachi provided those recordings to the
10 commission yesterday.

For the first time the commission saw certain transcripts relating to Colonel Mhlongo relating to those recordings. It is our understanding that there are very strict requirements with regard to the evidence chain of those recordings.

CHAIRPERSON: That recording that you talking about is the one that General Booysen testified about, is it not?

ADV WENTZEL: That is the recording that the commission initially thought was being requested. When it then became
20 apparent that the recording that was requested is the actual Act 70 recordings done by Colonel Padayachi.

CHAIRPERSON: No, no.

ADV WENTZEL: The commission has never been in possession of those recordings.

CHAIRPERSON: No, no let us get clarification.

ADV WENTZEL: Yes.

CHAIRPERSON: During his evidence Major General Booyesen if I recall correctly testified about a certain recording.

ADV WENTZEL: Yes.

CHAIRPERSON: I am asking whether the recording that Mr Mhlongo asked for is the recording that Major General Booyesen testified about.

ADV WENTZEL: Chair if you are talking about the recording
10 on the telephone done by Terence Joubert that recording was provided. It was provided pursuant to a Rule 3.3 Notice.

CHAIRPERSON: No, no. no.

ADV WENTZEL: And it was subsequently provided.

CHAIRPERSON: No, no I am not talking about that one. Maybe – it may be that Major General Booyesen talked – testified about two recordings.

ADV WENTZEL: Yes.

CHAIRPERSON: Well I think both are important.

ADV WENTZEL: Chair.

20 **CHAIRPERSON:** There is the recording he testified the one that I remember well he testified about is the one relating to or connected with the – the investigation of Mr Panday.

ADV WENTZEL: Yes.

CHAIRPERSON: That – that was done in terms of some statutory provisions.

ADV WENTZEL: Yes.

CHAIRPERSON: Ja. Is that the one that Mr Mhlongo asked for?

ADV WENTZEL: Well it appears that that was requested at a later stage and it arose in these circumstances Chair. What occurred is that in fact the affidavit of Colonel Padayachi annexed to Booyens' affidavit did not deal at all with Colonel Mhlongo's evidence.

CHAIRPERSON: Okay.

10 **ADV WENTZEL:** What occurred is that...

CHAIRPERSON: Okay which recording does Mr – did Mr Mhlongo asked for? That is what I am trying to – I want to identify it first.

ADV WENTZEL: Yes.

CHAIRPERSON: So we know what we talking about.

ADV WENTZEL: Yes it was that recording but Chair you will remember.

CHAIRPERSON: It was which recording?

ADV WENTZEL: It was the Act 70 recording.

20 **CHAIRPERSON:** Okay yes now we know what you talk about. That is...

ADV WENTZEL: Yes.

CHAIRPERSON: That one Major General Booyens did testify about that I recall.

ADV WENTZEL: Yes.

CHAIRPERSON: Yes.

ADV WENTZEL: Now what then occurred is General Booyesen testified this is what was told to me by Colonel Padayachi who was the person in charge of the Act 70 interceptions. He was the person who actually listened to the recordings. So you will remember Chair that the response that then came was I do not need to deal with this because it is hearsay. do not need to deal with this because it is hearsay.

10 **CHAIRPERSON:** What response are you talking about? Why would I know that response?

ADV WENTZEL: Oh Chair in the application to adduce evidence it – and in fact there was not an application brought by Colonel Mhlongo to adduce evidence. It was an application in terms of which he deposed to an affidavit in which he said, I would like to just place this affidavit before the commission and he did not ask that he actually testify before the commission. That was an issue that then arose.

CHAIRPERSON: Yes.

20 **ADV WENTZEL:** When this matter was set down.

CHAIRPERSON: Ms Wentzel. Ms Wentzel you are all over the place.

ADV WENTZEL: Yes.

CHAIRPERSON: I am trying to make sure we are on the same page.

ADV WENTZEL: Yes.

CHAIRPERSON: I thought we have identified what recording you are talking about.

ADV WENTZEL: Yes.

CHAIRPERSON: You see Mr Mhlongo's application for a postponement seems to be based on two things.

1. That he asked for a recording for the recording quite some time back and was only told recently that it is available but the certain equipment would be needed
10 for him to be able to listen to it.

ADV WENTZEL: Yes.

CHAIRPERSON: So I am trying to establish which recording are we talking about?

ADV WENTZEL: We are now talking about.

CHAIRPERSON: And from what you have said it is the recording that Major General Booyens spoke about relating to the interception of telephones.

ADV WENTZEL: Yes.

CHAIRPERSON: Is that right?

20 **ADV WENTZEL:** That is correct.

CHAIRPERSON: Yes. Now why – why was it not supplied to Mr Mhlongo all along?

ADV WENTZEL: Chair because those recordings have never been in the possession of the commission.

CHAIRPERSON: Yes why did the commission not ask for

them?

ADV WENTZEL: Chair as I understand it those recordings cannot be given to the commission. They cannot be handed over to the commission.

CHAIRPERSON: But have they not been given now?

ADV WENTZEL: No Chair they are given to us in a reserved manner and the manner in which they are provided.

CHAIRPERSON: The thing is they could have been given in a reserved manner a long time ago.

10 **ADV WENTZEL:** Chair that might be. But it was not anticipated what – what had occurred and that is why I just would like to give you some background.

CHAIRPERSON: No I do not want a long background.

ADV WENTZEL: No.

CHAIRPERSON: There are two issues. Mr Mhlongo seeks a postponement because despite having asked for the recording many months ago that was not given to him. So that is why I want to know why was that not done? Because we are now faced with a situation where there must be a
20 postponement and yet already last year, he had indicated from what I understand that he – he needed this. And now his application if this was indicated in September last year that means it has been about nine months or ten, I am not sure. It has been about nine months. So my question is, why did the commission not make sure that he got this on

time?

ADV WENTZEL: Chair the answer to this is in fact simple because even if the commission had summons Colonel Padayachi to bring his recording he cannot give that recording to the commission. The commission cannot play that recording.

CHAIRPERSON: Did – what – what did the commission do to try and get the recording?

ADV WENTZEL: Well to be honest Chair what occurred was
10 in preparing for the evidence of Colonel Mhlongo at that stage the – the issue that he had raised was, you do not need to listen to what Colonel Booyesen says Colonel Padayachi told him. Why? Because it is hearsay. As a result of that steps were then taken.

CHAIRPERSON: Well if Major General – Major General Booyesen says I am aware of a certain recording.

ADV WENTZEL: Yes.

CHAIRPERSON: And that recording contains a conversation
20 that is relevant to the work of the commission. Why should the commission not – should the commission not say, let us take steps to get that recording.

ADV WENTZEL: Yes Chair. I appreciate that point. What I have – can only say to you Chair is I did not lead the evidence of Colonel Booyesen. I was not involved in it and it was only in the course of preparation of Colonel Mhlongo's

evidence that this issue arose and steps were then taken.

CHAIRPERSON: But you have been involved in Law Enforcement for quite some time is it not?

ADV WENTZEL: I was but Colonel Booyens' was led before I joined the commission. And to be honest Chair it – I n preparing for this the first thing that occurred to me is we need to get that recording and steps were then immediately taken.

CHAIRPERSON: Ja but...

10 **ADV WENTZEL:** To get that recording.

CHAIRPERSON: But it happens late it should have happened a long time ago and in which case we would not be having to postpone and lose a day. We do not have much time as a commission.

ADV WENTZEL: Yes Chair I...

CHAIRPERSON: And the first people who must make sure we use all the time we have are ourselves as the commission. The legal team has got to make sure that these things are looked at long in advance before – before the date
20 of hearing. As soon as some affidavit comes in, I mean there are work streams in the commission. There is the Law Enforcement Agency. There are people who are dedicated to that including members of the legal team. And I have always said the investigations must be guided and directed by the legal team.

ADV WENTZEL: Yes I understand.

CHAIRPERSON: Which means I am not going to blame the investigators. The legal team are supposed to look at affidavits and say, this is what we need. This is what we need. This witness must be interviewed and so on. We are going to need that. We are going to need that recording and drive the process. And they are the ones who know what will be acceptable legally at the hearing in terms of evidence. And then the – the affidavit that – of Mr Joubert because
10 they rely on two things. It is the fact that they were not given the recording.

2. That they only were given the affidavit – the latest affidavit of Mr Joubert on Sunday.

ADV WENTZEL: Yes.

CHAIRPERSON: Why was that affidavit only obtained so recently or given to them so recently?

ADV WENTZEL: Chair at all times Mr Joubert was represented by an attorney. There was communication – constant communication between the commission and that
20 attorney. It was only as I understand it on Friday or Saturday morning that the affidavit was provided to the commission. Once it was provided steps were immediately taken to write a letter to Colonel – to Mr Mhlongo's attorneys and enclosed that affidavit. So with respect Chair that was not an issue that was within the realm of the commission.

What then transpired is that having had that affidavit.

CHAIRPERSON: Well I guess – I guess that with regard to Mr Joubert the commission may have been content that there are two affidavits deposed to by him. One relied upon by Mr Nxanana in his evidence another one relied upon by Mr Mhlongo in his affidavit.

ADV WENTZEL: Yes.

CHAIRPERSON: And the commission had made arrangements to – for the person who administered the oath
10 to Mr Joubert in regard to the first affidavit to come and give evidence to say he knows Mr Joubert and he took his oath freely and voluntarily in regard to the first affidavit. And then Mr Joubert was going to have to explain on the witness stand why there was a second affidavit.

ADV WENTZEL: Yes.

CHAIRPERSON: So from the commission's side you – there might not have been an arrangement for an affidavit. Mr Joubert would have to explain in the witness stand about how the second affidavit came about.

20 **ADV WENTZEL:** Yes but the fact of the matter is that through his attorney the commission did receive the third affidavit and in that affidavit, he says, my second affidavit is not correct and my first affidavit is correct. He then after that Chair has had communication with the commission saying this third affidavit he has now deposed to is an

affidavit that was not in accordance with his attorney's instructions. As I understand it he still says that the first affidavit is correct but there are certain aspects in it that he does not like. His attorney has now withdrawn and we are now faced with him now having to explain this issue before the commission.

CHAIRPERSON: Ja well he will have to explain. I think what will be necessary is that a date will have to be determined when Mr Joubert must take the witness stand.

10 He can explain whatever he wants to explain on the witness stand. Mr Mhlongo's lawyers will advise Mr Mhlongo about whether it is necessary to file any response to that affidavit but I think what will be important to fix a date let Mr Joubert take the witness stand and – and explain himself.

ADV WENTZEL: And explain.

CHAIRPERSON: Ja.

ADV WENTZEL: Yes Chair.

CHAIRPERSON: Alright that is fine. I am going to postpone the hearing of Mr Mhlongo's evidence to a date to be
20 determined. And if they – if Mr Mhlongo elects to respond to that affidavit we will see when that happens but otherwise the date for Mr Mhlongo's next appearance will be determined. The application brought by Mr or Colonel Mhlongo for the postponement of the hearing of his evidence is granted and a date will be determined for him to appear

before the commission in due course.

ADV WENTZEL: Thank you Chair.

CHAIRPERSON: Thank you. Okay alright.

ADV WENTZEL: Chair if – the matter by – if the proceedings might stand down just for ten minutes so I can take some instructions from William Nicholson about the witness who is due to appear Mr Edward Zuma.

CHAIRPERSON: Well I do not want to adjourn. I want you to take one minute to talk to him and then let us continue.

10 **ADV WENTZEL:** Sure. Perhaps the...

CHAIRPERSON: I think Mr Hulley wants to talk to you as well.

ADV WENTZEL: Chair perhaps if Mr Nicholson can address you because he has been dealing with this.

CHAIRPERSON: Ja well maybe let us talk about I think Mr Hulley you want to I think – allow Mr Hulley to address me.

ADV WENTZEL: Sure. Thank you.

CHAIRPERSON: Ja. They must just sanitise.

ADV HULLEY SC: Good morning, Mr Chair.

20 **CHAIRPERSON:** Good morning.

ADV HULLEY SC: Mr Chair, as the Leader of the Law Enforcement Team, we tender through yourself through the team for Mr Mhlongo, and of course, through the South African public. My sincere apologies in relation to some of the mix-ups that have occurred.

I was in specifically dealing with that particular application but I accept full responsibility and I tender my sincere apologies.

CHAIRPERSON: Yes.

ADV HULLEY SC: We will certainly investigate the matter further and ...[intervenes]

CHAIRPERSON: I think, bring the mic a little bit closer to you ...[intervenes]

ADV HULLEY SC: Pardon me Chair.

10 **CHAIRPERSON:** ...as your voice is not as audible as it should be.

ADV HULLEY SC: Thank you, Mr Chair. As I have said, I sincerely apologise. That I will investigate the matter and I will place a full report before Mr Chair. Just ...[intervenes]

CHAIRPERSON: I must say that of course, you joined the Commission later. As some of the things happened you were not here but ja.

ADV HULLEY SC: I accept the responsibility for that Mr Chair.

20 **CHAIRPERSON:** Yes, yes.

ADV HULLEY SC: Mr Chair, just one matter that has... and I fear that Ms Wentzel may have said something which might have given the incorrect impression and I just wanted her, perhaps through herself, to have corrected it.

CHAIRPERSON: H'm.

ADV HULLEY SC: It must be emphasised that we do not have... the Commission does not have the recording in respect of that and date of discussion.

CHAIRPERSON: Oh.

ADV HULLEY SC: We still do not have the recording. We have listened to the recording.

CHAIRPERSON: Yes.

ADV HULLEY SC: We cannot obtain the recording. What we have managed to get hold of most recently is simply the
10 transcript.

CHAIRPERSON: Yes.

ADV HULLEY SC: And that is what will be made available.

CHAIRPERSON: Oh.

ADV HULLEY SC: What we can make available to the other side, is the opportunity to listen to that recording but the recording itself, even if we had it and even if we made it available to the other side, which as I understand it, we can obtain but even if we did that, they would not be able to listen to it because it is an encrypted... one requires specific
20 machinery ...[intervenes]

CHAIRPERSON: Ja.

ADV HULLEY SC: ...to be able to listen to the recording. So in the first instance, we do not have it. We still do not have it but we have listened to it. And I think this ...[intervenes]

CHAIRPERSON: How do you listen to it without having it?

[laughs]

ADV HULLEY SC: No, no. Because we have got the machinery. We have got the person who has the machinery and who has the recordings.

CHAIRPERSON: [laughs]

ADV HULLEY SC: So we have at least managed to do that. But without the machinery... I suppose we can dispose of the person who has the machinery but we cannot dispose of the
10 machinery.

CHAIRPERSON: Yes.

ADV HULLEY SC: We require the machinery in order to listen to it.

CHAIRPERSON: But I take it...[intervenes]

ADV HULLEY SC: That is as far as we... that is the only point that I wanted to correct.

CHAIRPERSON: H'm. I take it, if somebody within the Commission... if you are able to listen to it, arrangements could be made for them to listen to it, to whatever you
20 listened to it.

ADV HULLEY SC: That is what we have conveyed to our learned friends.

CHAIRPERSON: Yes, yes.

ADV HULLEY SC: And we will do that way. But we will also do is ...[intervenes]

CHAIRPERSON: Ja, you will not be able to give them anything other than the transcript.

ADV HULLEY SC: We will not be able to give them anything other than the transcript. In fact, we cannot even allow them to make a recording of the recording.

CHAIRPERSON: Ja, ja, ja. Okay as long as they can hear what you have heard. Ja, I am sure that should not be a problem.

ADV HULLEY SC: Thank you, Mr Chair.

10 **CHAIRPERSON:** Okay. No, that is fine. Thank you. And then somebody was must talk to me about the witness.

ADV WILLIAM NICHOLSON: Good morning, Mr Chair.

CHAIRPERSON: Good morning, Mr Nicholson.

ADV NICHOLSON: Mr Chair, the... a witness who would have also appeared today is Captain Edward Zuma. Captain Edward Zuma is a retired member of the HAWKS.

When we managed to get hold of him about three weeks ago, I personally spoke to him and he conveyed to me that his wife has contracted COVID or somebody in his household
20 contracted COVID. He is displaying all the symptoms he went for all the tests.

Last week when I got hold of him, he still not had his tests results and I have been trying to get hold of him this entire week and I cannot get hold of him.

The issue is, he is now retired so we can only call him

on his cell phone. He does not even have an email. With regard to... I did convey to him because with the discussion we had with the DCJ, we did convey to him that he may be able to testify remotely.

He said he was willing to do that but since then when I have been trying to phone him to make those arrangements, I just could not get hold of him and I have been phoning him every single day from last week.

With regard to the issue what he will testify about. Mr
10 Terence Joubert is present and I confirm with him again this morning that he does not de-check from the affidavit that was commissioned by Captain Edward Zuma.

CHAIRPERSON: H'm. Well, the thing about Mr Joubert is, he seems to have deposed to an affidavit in 2016 which... in which he denied the affidavit of 2013.

And from what Ms Wentzel was saying, we have an affidavit, the recent affidavit and it appears that he is querying some aspects of that affidavit as well.

So it does make it difficult to know what else he will
20 deny before the next date he takes the witness stand.

ADV NICHOLSON: Indeed, Mr Chair. Mr Chair, as I understand, Mr Joubert does not deny the first affidavit and he still maintains that ...[intervenes]

CHAIRPERSON: As of what day?

ADV NICHOLSON: I beg your pardon?

CHAIRPERSON: As of today?

ADV NICHOLSON: Not as of today.

CHAIRPERSON: He does not deny?

ADV NICHOLSON: No, not as of today. Okay if I can just give a brief background. The affidavit was sent to me late on Friday. That is when I distributed it to the secretariat and I made it available for it to be also distributed to Mr Mhlongo.

Later on Saturday evening, I have received a call from
10 Mr Joubert where he explained to me that his explanation for why he made a second affidavit was not part of his instructions but he stands with the first affidavit.

CHAIRPERSON: Well, is Mr Joubert in this room?

ADV NICHOLSON: He is present.

CHAIRPERSON: It may be that, for what it is worth, even if for whatever reason he might not be able to give evidence that covers everything, it may well be that at least he should take the stand and confirm in front of me whether he still stands by that affidavit of 2013 because if that is... if he
20 does that, we may not need to call Mr Zuma for another date.

ADV NICHOLSON: Indeed Mr Chair.

CHAIRPERSON: It may well be that we might need to do that. But I think counsel for Mr Mhlongo are excused but you might wish to reflect that and maybe discuss with Mr Hulley, Mr Nicholson as to what may need to be done about Mr

Zuma. But I think I will adjourn to enable all of you to talk about what should happen. We will adjourn for ten minutes. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: What have you decided?

MR MANALA: Mr Chair, Mr Joubert is here and he is willing to confirm that affidavit.

CHAIRPERSON: Ja, let us do that. Administer the oath
10 or affirmation.

REGISTRAR: Please state your full names for the record.

MR JOUBERT: Terence John Joubert.

REGISTRAR: Do you have any objection to taking the prescribed oath?

MR JOUBERT: No.

REGISTRAR: Do you consider the oath to be binding on your conscience?

MR JOUBERT: Yes.

REGISTRAR: Do you swear that the evidence you will give
20 will be the truth, the whole truth and nothing else but the truth? If so, please raise your right hand and say so help me God.

MR JOUBERT: So help me God.

CHAIRPERSON: Thank you, Mr Joubert, for coming to give evidence. As I understand the position, you were

going to be able to give full evidence but it appears that there are some procedural issues that have not been sorted out that the legal team needs to attend to and you will be asked to come back on another date but it seems important that you give evidence with regard to at least the aspect of whether or not you acknowledge the affidavit of 2013 as being the – an affidavit that you took and that there are no issues about it because if that is so it would not be necessary for Mr Zuma to be called, who was the
10 Commissioner of Oaths. So I thought let me explain that to you. Mr Nicholson, continue then?

ADV NICHOLSON: Mr Joubert?

MR JOUBERT: Yes, sir.

ADV NICHOLSON: You have a bundle in front of you. If you turn to Y11, you will see the bundle – Mr Chair, it is LEA10.

CHAIRPERSON: H'm?

ADV NICHOLSON: It is LEA10, I think the bundle is being handed to you. I apologise, Mr Chair.

20 **CHAIRPERSON:** Okay, that is bundle LEA10.

ADV NICHOLSON: That is correct, Chair.

CHAIRPERSON: Do not speak too far away from the mic.

ADV NICHOLSON: LEA10 has three exhibits in it. The exhibit we are going to look at, as EXHIBIT Y11. So there is EXHIBIT Y10 and there is EXHIBIT Y11.

CHAIRPERSON: And at what page is it?

ADV NICHOLSON: Mr Chair, it is in folder, in a blue folder.

CHAIRPERSON: Ja but what is the page number?

ADV NICHOLSON: It starts afresh from 1 again.

CHAIRPERSON: H'm?

ADV NICHOLSON: It starts afresh from page 1.

CHAIRPERSON: Page 1.

ADV NICHOLSON: So if you go to the pack you will see
10 the file, there is three blue folders. The first one is Y10,
the second one is Y11.

CHAIRPERSON: Well, if you tell me the page number that
should enable me to go there. At page 31 appears to be
the index. Page 1, page 2 is the filing notice.

ADV NICHOLSON: If the Chair would go to 210, page
210.

CHAIRPERSON: 210?

ADV NICHOLSON: 210. After 210 the Chair would see
that there is a folder Y11

20 **CHAIRPERSON:** Why does it look like the pagination is
not in order here?

ADV NICHOLSON: Chair, what I think this is, I think that
is – possibly it would be preferable if each exhibit goes
into a separate file because then it will run from 1 to the
end of the file but in this case, we have got three different

exhibits. So it runs to 1 to the end of the exhibit. In the next exhibit it starts at 1 again.

CHAIRPERSON: Ja, but I have spoken about that quite a few times, that is not the way the pagination should be done.

ADV NICHOLSON: Indeed, Chair, what I will endeavour to do, since we are only going to deal with one exhibit here, is perhaps to remove the other exhibits out of the file and put them into separate files.

10 **CHAIRPERSON:** I mean, I had a conversation with members of – I think – I do not know if you were there yourself but Mr Hulley and Ms Wentzel were there, we had a discussion, was it early in the week, was it on Monday or was it last week when I clarified this issue of pagination.

ADV NICHOLSON: Indeed I was present.

CHAIRPERSON: Yes, so why is this bundle that was meant to be used today not paginated in the way that I said they should be paginated?

20 **ADV NICHOLSON:** Mr Chair, as I understand, the file is not paginated in the way that the Chair requires from what I understand from the Chair now but each individual bundle ...[intervenes]

CHAIRPERSON: No, I am asking why is it not paginated the way in which I said bundles should be paginated?

ADV NICHOLSON: Chair, this is the way I understood the

file ought to be paginated and the paginating team, the bundle team, also understood it to be this way.

CHAIRPERSON: Well, the pagination is not in order.

ADV NICHOLSON: Will it help, Chair, if we simply removed the bundles. So in other words, we will take out Y10, we will put it in a separate file, we will take out Y11 and we will put it into a separate file and we do the same with Y12.

CHAIRPERSON: The pagination that I have explained is
10 simple. You have page 1 at the beginning and it is sequential up to the end. It makes it easy, you do not need to tell me many things, you just say – or the next document that I am referring you to, you go to page so and so, there is one page 20 in the bundle, there is only page 40, there is only one page 5. There are not many pages filed, you see? If you arrange it to have different pagination for different sections in the file you end up with different page numbers appearing in different sections, that does not make things easy. The best way to do this is
20 – you see, I have to struggle now to find – so there is an affidavit of Mr Joubert that I am coming across somewhere.

ADV NICHOLSON: That is the affidavit we are going to deal with today, Mr Chair.

CHAIRPERSON: It is three pages that the one that I am at...

ADV NICHOLSON: 20, 21 and 22. It is Y11, TJJ020, 21 and 22.

CHAIRPERSON: Mr Joubert?

MR JOUBERT: Yes.

CHAIRPERSON: You know about the three affidavits that we are talking about that you have signed, is that correct?

MR JOUBERT: That is correct.

CHAIRPERSON: Yes, the one was signed in 2013, another one was signed in 2016 and I understand another
10 one was signed recently, is that correct?

MR JOUBERT: That is correct.

CHAIRPERSON: You know also that the one that is signed was deposed to in 2016 effectively disowns the affidavit of 2013, is that correct? It denies what is in that affidavit or denies that you know about that affidavit, is that correct?

MR JOUBERT: Yes, that is correct.

CHAIRPERSON: Yes. And in the third affidavit that you signed recently you explained how the affidavit of 2016
20 came about, is that correct?

MR JOUBERT: That is correct so.

CHAIRPERSON: Yes. Now in the affidavit of 2013 you testified about certain matters that you heard about from Colonel Mhlongo, is that correct?

MR JOUBERT: That is correct, ja.

CHAIRPERSON: And you had recorded him, is that correct?

MR JOUBERT: That is also correct.

CHAIRPERSON: Who did you depose to – before whom did you depose to, that affidavit?

MR JOUBERT: It was commissioned by Captain Zuma at the time.

CHAIRPERSON: Yes.

MR JOUBERT: Ja.

10 **CHAIRPERSON:** And that affidavit, did you depose to it voluntarily and freely?

MR JOUBERT: That is correct, Your Honour.

CHAIRPERSON: Yes and the signature that appears in that affidavit is your signature?

MR JOUBERT: Is mine.

CHAIRPERSON: Yes.

MR JOUBERT: Yes.

CHAIRPERSON: Okay, so you have no queries about the fact that you made that affidavit?

20 **MR JOUBERT:** None whatsoever, sir.

CHAIRPERSON: And you stand by it.

MR JOUBERT: Yes, sir.

CHAIRPERSON: Okay, alright. I think for present purposes that is what we needed to be dealt with. And then another arrangement will be made for you to come

back and then you can give evidence about the content and you will also explain how the second affidavit came about and if in the third affidavit - there is the recent one, there is something that is not true, you will explain that as well.

MR JOUBERT: That is correct.

CHAIRPERSON: Or if you want to put in a supplementary affidavit where you explain some things in the recent affidavit that you feel are not accurate, that is fine as well.

MR JOUBERT: Okay, thank you, sir.

10 **CHAIRPERSON:** Okay, alright. We – I am going to release you and arrangements will be made for you to come back.

MR JOUBERT: Okay.

CHAIRPERSON: So you are excused. But we are going to adjourn just now. On Monday I will be hearing the evidence of Judge Makhubele and for the rest of next week I will hear evidence relating to certain allegations of corruption in the Free State, so that is what will happen next week. For tomorrow I will hear the evidence of Mr
20 Sandile July in relation to the rendition matter and his investigation. That is just for the benefit of the media and the public. We are going to adjourn now for the day. We adjourn.

INQUIRY ADJOURNS TO 31 JULY 2020