

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

14 AUGUST 2020

DAY 251



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 14 AUGUST 2020

CHAIRPERSON: Good morning Ms Gcabashe, good morning everybody.

ADV GCABASHE SC: Good morning Chairman.

CHAIRPERSON: Are we ready?

ADV GCABASHE SC: Yes we are Chairman.

CHAIRPERSON: Yes.

ADV GCABASHE SC: Chairman this morning the evidence of Ms Sylvia Seipati Dhlamini should have been heard.

10 There have been [indistinct 00:00:43] Ms Dhlamini's legal counsel [indistinct 00:00:53] SC is here representing her and she would like to – to move an application. If I might ask her to put herself on record and to address you?

CHAIRPERSON: Yes, no that is fine.

ADV GCABASHE SC: Thank Chairman.

CHAIRPERSON: Thank you. May you just sanitise the podium first.

ADV KOVICH: Good morning Chair.

CHAIRPERSON: Good morning.

20 **ADV KOVICH:** Chair I – my name is Hashiela Kovichi and I am representing Ms Dhlamini in this matter before the commission. Chair as you [indistinct 00:01:50] that the reason for my presence here is to request a postponement on behalf of Ms Dhlamini as she cannot be here today. There has been a second application filed yesterday which

I am not certain if the Chair had had regard to the papers – to the second application but essentially the second application sets out that Ms Dhlamini has been exposed during the course of the weekend to certain family members who have now been tested positive for Covid – for the Covid-19 virus. As a result, she has to now quarantine herself and she cannot be here today.

CHAIRPERSON: Hm.

ADV KOVICH: The – Ms Dhlamini had in those papers
10 set out the reason for that and she had also submitted...

CHAIRPERSON: And where is the second application?

ADV KOVICH: Chair may I beg leave to hand it up to yourself. My attorney has just arrived. If you could just give me a minute's indulgence so that I can do so?

ADV GCABASHE SC: Chair if I might be of assistance?

CHAIRPERSON: Ja.

ADV GCABASHE SC: You will find it at page 41 to 55 of the bundle that you have been given this morning. It was inserted this morning.

20 **CHAIRPERSON:** Oh okay.

ADV GCABASHE SC: Thank you Chairman.

CHAIRPERSON: I can see it ja. Okay. It is a – oh it is the notes of motion that is not signed but the affidavit is signed. Yes. Ja continue.

ADV KOVICH: Chair may I still beg leave to hand up a

further copy?

CHAIRPERSON: No I have got – I have got.

ADV KOVICH: Thank you Chair.

CHAIRPERSON: Ja. I was not aware that it has been put in here.

ADV KOVICH: Chair I would like you to refer you to the relevant paragraphs where we – upon which we seek for the postponement and that is essentially – I believe that your – bundle might be paginated Chair mine is not. If I
10 refer you to paragraph 7 which is on page 2 of her affidavit.

CHAIRPERSON: Ja.

ADV KOVICH: She sets out that she had already participated in her first consultation with the legal – with the evidence leader on the 11 August 2020 that was the first consultation.

The second consultation was scheduled for the 13 August 2020 that was yesterday afternoon. She then – she had also made the necessary arrangements to be here the
20 previous day the 12 August 2020 and she intended to consult with her legal team as well as myself and to also to – as well as her counsel and also to attend the second consultation.

However, during the course of the 11 August 2020 certain of her family members informed her that they have

been tested positive for Covid-19.

She has been since been exposed to them on the various occasions specifically the funeral that happened over the weekend of the 8th and the 9th which included the vigil ceremony as well and she then went on the 12th in paragraph – she went – she sets out that she went on the 12th August 2020 to her doctor who then advised her that she should stay in quarantine for a period of – until the 23 August 2020.

10 Chair in that regard I would like to refer you directly to the medical letter – the certificate from the doctor. It is SSD12. It is annexure SSD12.

CHAIRPERSON: Hm.

ADV KOVICH: Page – page 53 Chair.

CHAIRPERSON: Yes, no, no I have quickly read through the affidavit. Subject to what Ms Gcabashe is going to say it does appear that the – the fact that she needs to quarantine herself requires that the hearing of her evidence be postponed. What I do not know is whether if
20 somebody had been in contact with somebody who has tested positive and they are quarantining themselves whether if they do not feel sick there would be any problem with giving evidence over a video link because the [indistinct 00:04:53] are no longer going to give evidence Monday, Tuesday, Wednesday subject to the availability of

all concerned it may be that we could consider whether we could arrange if she does not feel sick and counsel who might need to consult with her is able to consult with her on Zoom or whatever. That could assist because then we would not take too long before we have her evidence. Do you know anything about whether that kind of arrangement is something that could be looked at Counsel?

ADV KOVICH: Chair this is the – I mean you have addressed me on that and I am going to have to take
10 instructions but the other difficulty is that I think it would be to the advantage of Ms Dhlamini if she has the second consultation with the legal team because that is when she is going to be given – I mean she has been – she will be – she will have sight of the evidence bundles.

CHAIRPERSON: Hm.

ADV KOVICH: And she will be in a better position to be able to assist the commission and to give evidence because right now I – I must also add Chair that I have not – I – in the second – in the first application I have not even
20 had an in person consultation with Ms Dhlamini as yet and I have not been able to consult with her at all.

But the issue is that I think that for her benefit and for the commission's – for her to assist the commission properly if that second consultation which was supposed to be a face to face consultation and it was supposed to

happen last night would really assist her to – a great deal. And in that regard, I seek your indulgence to the extent that we can actually have the physical consultation.

CHAIRPERSON: Well you see I hear from a lot of lawyers that during Level 5 and Level 4 of the lockdown they were not sitting at home doing nothing they were consulting with clients without a physical contact using technology Zoom and so on and a lot of work was happening. Indeed, within the commission I understand that a lot of work was being
10 done through those kinds of consultations.

So I am wondering whether there is any impediment to do – to doing it that way because even she is needs to be taken through the bundles of evidence that she will need to deal with if she is – if bundles are couriered to her and when she has a consultation either with you or with the evidence leader you have the same documents that she has in front of her and the pagination is the same it ought to be possible to consult.

Or do you think there might be some difficulties with
20 that?

ADV KOVICH: Chair there are some logistically difficulties and I am not – I do not want to delay the commission's work and I am not speaking on behalf of Ms Dhlamini at this moment.

The only difficulty that I am aware of with regard to

Ms Dhlamini is the fact that she sits in Kroonstad and she cannot move from there in order to get the evidence – in order to travel to her office even to get all the other documents and the affidavits that she had had regard to previously.

CHAIRPERSON: Hm.

ADV KOVICH: She will have to make arrangements for that. Now that it being a weekend and Chair I am – we must also bear in mind that although the commission had
10 advised her that there is – I mean she is aware of all the witnesses that have testified

She specifically set out in her affidavit only in respect of two witnesses and after the first consultation with the evidence leader it came to light after I have now been on brief that we might have to supplement the – her affidavit and not extensively Chair because I think the issue is to try to get her here as soon as possible.

So we are only asking – so what I am asking and requesting the Chair is to give me a short indulgence but
20 just a reasonable indulgence so that if she is not tested, I will make sure that she has all the bundles. I am not sure what the commission leader – I mean the evidence leader would like to do?

Would they like to ask her to look at it electronically or not? But I think that within the span of the – of next

week it is a bit too soon and I am really asking for that indulgence so that I will be given – so she will be given at least sufficient time to prepare. I have not even had the benefit to consult with her Chair and the reason why I am saying that is – and this goes to the first application.

I do not want to belabour the point and it is not an issue anymore due to the compounded effect of the this second application but her counsel – her previous counsel was ready to consult with the commission already and he
10 unfortunately was tested for Covid positive on the weekend of the 2nd.

And it was only when the commission advised us after a postponement was sought on the 4th, we were advised that on the 5 August we – the legal representatives for Ms Dhlamini was advised that it is not going to go past the commission she has to be ready.

On the 8th when she was supposed to – of August 2020 when she was supposed to meet the evidence leader that is a day her aunt's funeral took place. I mean the vigil
20 took place on the 8 August 2020 and on the 9 August 2020 she – that is when the funeral took place. And in that time, she was unable to travel. She was going to come up in the week so that I could consult with her.

Now with her condition being like that and the fact that she would not have all the documents I think that we

need to give her – it is just a few days to get all of the documents, to get all the information. It includes several witnesses it is not only those in respect of which she supplemented.

Having said that I also understand that we cannot prejudice this commission and its work and we cannot ask for an unreasonable delay. That is why in her first application she just asked for a few days however with this issue I – it is not that there has not been on-going
10 consultations with her because we are trying to get her up to speed.

But I think that during the course of next week if she is given that time to go through the evidence properly, she will be ready to assist the commission.

CHAIRPERSON: If we go beyond next week, we might have to use an evening session. We have begun to have evening sessions.

ADV KOVICH: Yes.

CHAIRPERSON: For the commission. What happens is
20 that during the day I would hear evidence of witnesses who were scheduled to give evidence on that day and then in the late afternoon when we are done with the day's witness about four o'clock or five o'clock I start another session with another witness whose evidence might have nothing to do with what I was hearing during the day and we go into

six, seven, eight, even half past eight. We might even go to nine because we are trying to finish the work because we have very little time left.

You see for a number of weeks from now there are witnesses scheduled. There may be some changes here and there but I was hoping that if we postpone the hearing of her evidence, we would be able to proceed on one of the days next week when I know – on one of the days when where some or other witness will not appear. But the week
10 after that is quite full and I think the week after that is full. The – the Estina matter I think she is the – if I am not mistaken, she is the last witness.

There might be one or two others but we are – we are about to wrap up and I would like to have it wrapped it as soon as possible.

So – so if we – if next week is difficult for – for her and yourself if we go to that other week, we might have to do an evening session. Either that week but latest that other week I would not like us to go beyond that.

20 **ADV KOVICH**: Yes.

CHAIRPERSON: You understand that? You accept that?

ADV KOVICH: Yes I am – I am in your – I am in your Chair's hands.

CHAIRPERSON: Ja.

ADV KOVICH: In that regard.

CHAIRPERSON: Ja. Well let me hear Ms Gcabashe what she has to say? You wish to – you might wish to take your books there.

ADV GCABASHE SC: Thank you Chairman.

CHAIRPERSON: Yes.

ADV GCABASHE SC: Chairman the legal team has actually prepared some submissions because we thought we should place on record the facts as we have understood them.

10 I beg leave to hand up to you even if it is just for your records Chair.

CHAIRPERSON: Yes okay.

ADV GCABASHE SC: The submissions we have prepared.

CHAIRPERSON: Hm.

ADV GCABASHE SC: The submissions deal with both the first and the second application.

CHAIRPERSON: Yes.

ADV GCABASHE SC: And we – we focussing those submissions on the – on the notices that were served on
20 the fact that there are 3.3 Notices that we believe Ms Dhlamini has had at least a year to attend to etcetera, etcetera.

I really do not want to dwell on that Chairman simply because the new application really has overtaken the issues that we raise in relation to the first application.

Unfortunately, this Covid pandemic has got all of us running helter skelter so I – as you seem to be indicating Chair I understand why she is not here today.

So on the basis the second application we are not opposing the relief sought.

I think what is more important Chairman is for me to address you on the practicalities of how we go forward.

The legal team is ready to proceed but I have understood why counsel who is new on the matter feels she
10 really does need to get on top of some of the material that we discussed at the consultation of the – of the 11th. It is rather unfortunate that Ms Dhlamini's erstwhile senior counsel who was very familiar with all the facts I actually had a short discussion with him really is indisposed and there is nothing anybody can do about that.

So I think the request is reasonable for a little bit of time. What I was going to suggest Chairman is that we possibly try Saturday if the Chairman and the teams would be available on a Saturday because we need at least a
20 whole day to take her through the issues that arise from various witnesses. But that also arise from the functions that she discharged.

Night sessions Chair we would probably need at least of those to complete her evidence. So I think that in relation to the practicalities we will be ready on whichever

date that you set. We have kept our diaries clear and I – I would at least like a full day Chair whichever you split it if we do the night sessions. Thank you Chairman.

CHAIRPERSON: No, no that is fine. I forgot about Saturdays we – we did last year begin to sit on Saturdays. Was it not with you?

ADV GCABASHE SC: It was.

CHAIRPERSON: It was.

ADV GCABASHE SC: Chairman but fortunately even that
10 was cancelled.

CHAIRPERSON: Oh.

ADV GCABASHE SC: At the last minute for whatever reason.

CHAIRPERSON: Oh.

ADV GCABASHE SC: We then moved it.

CHAIRPERSON: Oh okay.

ADV GCABASHE SC: And it was fortunate if I might say Chairman because both Ms Buthelezi and I had weddings to attend on that particular Saturday.

20 **CHAIRPERSON:** Ja.

ADV GCABASHE SC: So we reinstated our old appointments.

CHAIRPERSON: Ja so...

ADV GCABASHE SC: But yes we are available Chairman.

CHAIRPERSON: Yes, yes.

ADV GCABASHE SC: To work on Saturdays.

CHAIRPERSON: So we could look at a Saturday or we could look at an evening session and if it is an evening session we might have to do it on two evenings in succession.

ADV GCABASHE SC: Correct Chairman.

CHAIRPERSON: Ja. Ja. No, no that is fine. I think I will look at the dates and then we will accept date if it is a – in case we find a normal day – business day then we can use
10 it but there – it is maybe unlikely. But then we can look either at two evening sessions or look at a Saturday. Ja.

ADV GCABASHE SC: Yes Chairman might I point out that her doctor's note says she should self-isolate until the 23rd August.

CHAIRPERSON: Oh okay.

ADV GCABASHE SC: That might be a consideration you want to bear in mind.

CHAIRPERSON: Oh okay. Oh no, no – ja that is important. That is important so it cannot be earlier than
20 the 23rd?

ADV GCABASHE SC: Well I suppose not Chairman. The other way of dealing with it of course is to ask to go and be tested.

CHAIRPERSON: Ja.

ADV GCABASHE SC: And wait for those results.

CHAIRPERSON: Ja.

ADV GCABASHE SC: It is really a practical conundrum.

CHAIRPERSON: Ja. Ja. Well – ja maybe one can wait and she – maybe she probably would know her results sometime next week.

ADV GCABASHE SC: I suggest we simply ask her to come up anytime from the 23rd.

CHAIRPERSON: Yes.

ADV GCABASHE SC: She must be available at short
10 notice.

CHAIRPERSON: Ja. Ja.

ADV GCABASHE SC: And the people she has implicated should know that we could call her on short...

CHAIRPERSON: Ja.

ADV GCABASHE SC: Our rules fortunately allow for that Chairman.

CHAIRPERSON: Ja.

ADV GCABASHE SC: On very short notice to come through for an evening session or a Saturday session.

20 **CHAIRPERSON:** Ja. No that is fine. I think her counsel must just tell her that as soon as that period has expired, she – if she has not heard from the commission in terms of the date by the time it expires, she must be ready to be called at short notice. But I think we might have to just to fix a date as long it does not fall within – before the expiry

of that date – of that period.

ADV GCABASHE SC: Yes Chairman.

CHAIRPERSON: Ja. So that also there is certainty on everybody in terms of everybody and their – they can make their arrangements. Okay no that is fine.

ADV GCABASHE SC: Thank you Chairman.

CHAIRPERSON: Ja. The hearing of the evidence of Ms Silvia Seipati Dhlamini is adjourned to a date to be determined. We adjourn.

10 **REGISTRAR:** All rise.