

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

**09 OCTOBER 2020**

**DAY 280**



**Gauteng Transcribers**  
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 09 OCTOBER 2020**

**CHAIRPERSON:** Good morning Mr Pretorius, good morning everybody.

**ADV PRETORIUS SC:** Good morning Chair.

**CHAIRPERSON:** Are you ready?

**ADV PRETORIUS SC:** Yes we are Chair.

**CHAIRPERSON:** Yes let us start.

**ADV PRETORIUS SC:** Set down for this morning Chair is an application to authorise the issue of summons in respect  
10 of the former President Mr Zuma.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** Long heads have been prepared and they have been delivered to you.

**CHAIRPERSON:** Hm.

**ADV PRETORIUS SC:** We have prepared a note for oral argument which summarises the major points to be made and if I could take a few minutes to put those before you?

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** Notice of this application was given  
20 by email to Mr Zuma's attorneys on Friday 18 September 2020. That appears at page 781 of the bundle that you have.

The application its time and date was also announced publicly on the 21 September 2020 that appears at page 790 of the bundle.

In response to those notices Mr Zuma's attorneys addressed a letter to the Chair giving notice of application for the Chair's recusal. That is at page 791 of the bundle.

Paragraph 12 of that letter at page 794 says the following:

10           “Until this application for your recusal is finally determined President Zuma will take no further part in this commission and the Chairperson is entitled to take any such step as he deems lawful and appropriate. We reiterate that President Zuma has questioned the lawfulness of the establishment of this commission; he persists with this issue and reserves all his rights in this regard.”

That is clear notice that this application will not be opposed at least through any attendance before you Chair.

20           Chair this application was originally brought in January 2020. It was postponed. It has now been brought and the facts supporting the application have been updated to the present time and there is an amended notice of application to cater for the new dates.

All these papers have been served on Mr Zuma's attorneys.

At page 715 this may become controversial at a

later stage Chair of the bundle before you the terms of the postponement of the application in January 2020 appear.

**CHAIRPERSON:** What is the page?

**ADV PRETORIUS SC:** 715.

**CHAIRPERSON:** I see there is a handwritten pagination as well as a red pagination with the right numbers.

**ADV PRETORIUS SC:** Yes we looking at the red numbers today Chair.

**CHAIRPERSON:** Oh 715 I have got. Yes.

10 **ADV PRETORIUS SC:** Where you stated as follows from line 10.

“The commission’s legal team will deliver a replying affidavit on or before close of business Friday 24 January. That is 1.

20 With regard to what is going to happen in regard to this application that is the application for a summons in January 2020 Chair and the further appearance before the commission of the former President what has been agreed in the discussion involving myself and counsel on both sides is that this application is to be adjourned to a date to be arranged and I hasten to say arranged does not mean agreed.”

So by your directive Chair you recorded an

agreement between the legal representatives of both parties that the application for a summons would be adjourned to a date to be arranged and this is the date so arranged.

**CHAIRPERSON:** Well I must just say also that that emphasis there where I say:

“I hasten to say arranged does not mean agreed.”

**ADV PRETORIUS SC:** Yes.

10 **CHAIRPERSON:** Has a context.

**ADV PRETORIUS SC:** Correct.

**CHAIRPERSON:** And the context is that I think on the same day if I am not mistaken but at some stage early this year when there was appearance for Mr Zuma his counsel argued that previously it had been said that dates – he would appear – that is Mr Zuma on dates to be arranged and they had construed that to mean it would be days that would be agreed with them.

**ADV PRETORIUS SC:** Yes.

20 **CHAIRPERSON:** I made it clear on that occasion when they were they appearing that that is not what was meant.

**ADV PRETORIUS SC:** Correct.

**CHAIRPERSON:** What was meant was the dates would be arranged within the commission and that I – I decide dates.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** I have occasion to look at the transcript of that – of that date and counsel for Mr Zuma accepted and understood that explanation and had no problem with it.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** He just said that previously they had understood it differently. So the question of this commission not agreeing dates with the lawyers and witnesses was dealt with at that time. And it was accepted  
10 that the commission will fix dates and obviously if Mr Zuma has a problem with the particular dates that have been fixed he could bring an application and show that he has got good reasons not to be available and then if I am satisfied obviously I would change the dates. So that is the context.

**ADV PRETORIUS SC:** Yes Chair and that – that position is confirmed in the Rules of the Commission.

**CHAIRPERSON:** Yes, yes.

**ADV PRETORIUS SC:** Where the rules and the consistent  
20 practice I might add is that you as Chair determine the dates, the order of appearance and in fact who will or will not give evidence.

**CHAIRPERSON:** Yes. Yes.

**ADV PRETORIUS SC:** So Chair the rules, the record as well as the consistent practice are all confirmed by the

arrangement now that you determine the dates.

**CHAIRPERSON:** Hm.

**ADV PRETORIUS SC:** Chair the power of the commission lest there be any doubt certainly in the public mind to issue summons is set out in Section 31 of the Commission's Act which states very clearly that you as the commission have the power of a court of law to compel attendance by way of summons.

10 So that is a statutory power that you have and it is a power equivalent to that of the High Court. That section is quoted in the long heads before you Chair at Footnote 2.

Chair insofar as there may be any dispute as to whether this application for the authorisation for the issue of summons can and should be granted it can be resolved by reference to legal principle and by reference to what are incontrovertible facts.

There are in our submission grounds to issue the summons.

20 **CHAIRPERSON:** Yes I think – I think it is important for you to read that section that gives me that power.

**ADV PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** For the benefit of everybody.

**ADV PRETORIUS SC:** Section 3 of the Commission's Act deals with the commission's powers as to witnesses. Section 3.1 reads:



“For the purpose of ascertaining any matter relating to the subject of its investigations”

That is quite a wide remit Chair.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:**

10 “A commission shall in the union now the republic have the powers which a Provincial Division of the Supreme Court of South Africa has within its Province to summons – to summon witnesses. To cause an oath or affirmation to be administered to them. To examine them and to call for the production of books, documents and objects.”

Section 3.2 reads:

20 “A summons for the attendance of a witness or the production of any book, document or object before a commission shall be signed and issued by the Secretary of the Commission in a form prescribed by the Chairman of the Commission and shall be served in the same manner as a summons for the attendance of a witness at a criminal trial in a Superior Court at the place where the attendance or production is to take place.”

Two points Chair the – that arise out of that for present purposes at least is that the issue of a summons may in terms of that section be affected for the purpose of ascertaining any matter relating to the subject of its investigations.

And that is a matter within your discretion in terms of the Act and our submission will be at the end of our short address Chair that the issue of summons in this matter is a reasonable exercise of that discretion.

10 **CHAIRPERSON:** On – on the wording of that section it seems quite clear that as long as a summons – as long as there is a summons is issued for the purposes – for the purpose of ascertaining a matter relating to the subject of the commission’s investigations. That is enough.

**ADV PRETORIUS SC:** That is the qualifying...

**CHAIRPERSON:** That is the only requirement.

**ADV PRETORIUS SC:** Requirement yes Chair.

**CHAIRPERSON:** For example it does not have to be shown that the person who is being summoned does not cooperate  
20 or cooperates. It is enough if...

**ADV PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** There is a matter that the commission seeks to ascertain that relates to a subject of its investigation. Obviously if a person is not cooperating there is even stronger ground.

**ADV PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** For that. But it seems that even without knowing whether somebody will cooperate or will not cooperate if the commission is satisfied that that person has information that relates to a matter that is the subject of its investigations the commission may summon that person.

**ADV PRETORIUS SC:** Correct Chair.

**CHAIRPERSON:** Ja.

10 **ADV PRETORIUS SC:** If there is any issue to be raised.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** Or if on a particular date which the summons authorises for the appearance a person who is subject to such a summons has every right.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** To deal with those matters.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Either before you or in a court of law.

20 **CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** So there is no question of any legal infringement of anybody's rights here.

**CHAIRPERSON:** Yes. Yes.

**ADV PRETORIUS SC:** Quite simply Chair you exercise your discretion on the qualifying requirements.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** And that then authorises the lawful issue of a summons.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Chair I might add that the procedural device under Section 3 of the Act is not an uncommon recourse for commissions and especially this commission. So this commission has issued over 2500 summonses and those are summonses which include  
10 summonses to appear and summonses to produce documents. 99 summonses have been issued for witnesses to appear.

So Chair it is not an uncommon procedural mechanism.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** And in fact it is a necessary mechanism for this commission to do its work.

**CHAIRPERSON:** Yes. Yes. Of course if one says, is there a matter that this commission seeks to ascertain from Mr  
20 Zuma that relates to the subject of its investigation we have got to deal with that as well.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** Because – to show whether this requirement of the statute is complied with – is present. And one way of doing so I guess would be to go to the

Terms of Reference.

**ADV PRETORIUS SC:** Yes we will do that Chair.

**CHAIRPERSON:** Ja okay.

**ADV PRETORIUS SC:** The – we can read the Terms of Reference if you wish.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** We have them here.

**CHAIRPERSON:** I think – I think we should – we should do that – you should do that at least those that may appear  
10 relevant.

**ADV PRETORIUS SC:** Yes. There are two points there Chair. The first is that insofar as Mr Zuma's evidence is subject to the investigation of the commission one could have reference to the Terms of Reference themselves but also to the witnesses who have come before the commission. 34 witnesses have implicated Mr Zuma.

Now over and above the requirement of the Section 3.1 and the requirements of the Terms of Reference which delineates the mandate on your Chair for your investigation  
20 there is a duty at common law and it is being emphasised in a number of recent judgments that obliges the commission to call Mr Zuma to answer those allegations.

If I may just read one passage of a judgment in the matter of Msiza versus Advocate Motau and the Prudential Authority of the South African Reserve Bank. Paragraph 55

of that judgment reads:

“In my view where an investigator of  
forturea a commission knows or is expected  
to foresee that his findings, remarks and  
conclusions will have consequences for the  
party on whose behalf an investigation is  
conducted and for the party against whom  
findings will be made he is obliged to listen  
to both sides and the party who is likely to  
10 be affected by adverse findings is entitled  
to demand the right to be heard before an  
adverse remark or finding conclusion or  
decision is made against him or her.”

So quite apart from the mandate contained in your  
Terms of Reference Chair and quite apart from the  
Provisions of Section 3 of the Commission’s Act the  
qualifying provisions there is a duty in law to hear the  
other side.

20 It is not a choice Chair that you have. You have a  
duty to do so.

**CHAIRPERSON:** Well of course the passage that you read  
relates to the observance of the Audi Alteram Partum Rule.

**ADV PRETORIUS SC:** Correct Chair.

**CHAIRPERSON:** Now one should not take that part too far  
because the Audi Alteram Partum Rule is there for the

benefit to – for the benefit of the person who may be adversely affected by my decision. He has a right to wave that right to say well I do not want to be heard. That he has a right to do and I cannot force him for purposes of observing that right but where I can force him as I understand the law is where I believe that he has information that may assist the commission in its investigation but then in that case I am forcing him not for purposes of hearing his side of the story I am forcing him  
10 in order to do my work to investigate the issues that I am supposed to investigate.

So as I understand the position

1. I need to observe the Audi Alteram Partum Rule until such time that I am satisfied that he is not interested in being afforded that opportunity. But the fact that he is not interested in being afforded that opportunity does not preclude me from saying come I want to know certain issues that you appear to have knowledge about.

20 **ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** And it is in regard to that certain part it seems to me where he cannot say leave me alone I am not interested in being heard by you.

**ADV PRETORIUS SC:** Yes Chair the – that in our view is accurate subject to one qualification which I will come to in

a moment.

Of course there is distinction between the duty on the commission to give every opportunity to an implicated person who states his or her side of the case. And the implicated person then has an election whether to exercise that right to speak or not to speak.

The duty of the Chair to investigate arising out of the Terms of Reference and that is a duty in respect of which the Chair has no discretion. You must investigate  
10 and we will come to the grounds upon which we submit Chair and you have said that there is a duty on this commission to explore those to investigate those issues where the former President has evidence or can give evidence to inform your findings.

**CHAIRPERSON:** I mean there can be no doubt that if on information available to me or evidence submitted to the commission by other witnesses there can be no doubt that if I form a view that a particular person may have knowledge or does have knowledge of matters that are  
20 relevant to what I am investigating I must take steps to get that person to come and testify.

**ADV PRETORIUS SC:** That is correct Chair.

**CHAIRPERSON:** If I do not do that I would be failing in my duty.

**ADV PRETORIUS SC:** Yes. Chair in correspondence and



this is the qualification I have to the propositions that have been put now.

The former President has asserted that he is exercising a right not to participate in the matters of the commission and by exercising that right he is in fact participating.

There is no right not to respond to a 3.3 Notice implicating a witness. That witness has an election. He may say or she may say, I am not going to respond or I am  
10 going to respond. But there is no right not to deal at all with the matters which are the subject of the commission's Terms of Reference if the commission determines that a person must come.

So insofar as there is alleged by Mr Zuma's legal representatives to be a right not to respond that is incorrect. It is not a right not to come to the commission. There is no such right.

There is an election not to answer a Rule 3.3 Notice to put a version or to cross-examine a witness. But there  
20 is no right to say I am not coming to the commission at all.

**CHAIRPERSON:** It seems to me that the position is if Mr Zuma or anybody who is said to be implicated by a witness, a certain witness is served by the commission with a Rule 3.3. Notice to say here is a statement from a witness who seems to implicate you in wrongdoing that the commission

is investigating. I mean that notice in terms of the Rules of the Commission advises the recipient of a Rule 3.3 Notice that you have a right to apply to the commission for Leave to Cross-examine this witness. You have a right to apply to the commission for Leave to give evidence yourself and contradict whatever the witness is saying. You have a right to apply to the commission for Leave to call witnesses who can corroborate what you say – your story.

It explains all of those things. But you are not  
10 forced to make those applications.

**ADV PRETORIUS SC:** Correct.

**CHAIRPERSON:** You are free to say I am not going to make that application – those applications. Those people can implicate me as much as they want, that is fine. But once the commission says we are aware that you do not think you are implicated; we are aware that you have chosen not to apply for Leave to Cross-examine these witnesses but nevertheless we want you to come and answer questions provided the commission has grounds to  
20 believe that you may have knowledge of matters that are – that it is investigating you cannot refuse lawfully.

**ADV PRETORIUS SC:** Correct. Correct.

**CHAIRPERSON:** Obviously if there is a specific reason why you cannot appear on a specific date that is different then you put your case before the commission to say, on

that date – on that date I have to see a doctor. I am not well bla, bla, bla. If the commission is satisfied that it is a genuine reason it will give another date.

But of course with reference to the recent correspondence from Mr Zuma's attorneys one of the reasons that have been given recently why Mr Zuma was not prepared to come to the commission on the 21 to

**ADV PRETORIUS SC:** 25.

**CHAIRPERSON:** 25 September is this one. It appears in  
10 he – the letter of his attorneys dated Tuesday September 1  
2020 paragraph 5.

“Further we wish to point out that President Zuma is preparing for his much anticipated criminal trial the importance of which cannot be over emphasised. It is rather unfair to expect President Zuma to simultaneously consider evidence and affidavits of more than 30 witnesses in order to make himself ready to appear  
20 before the commission on 21 to 25 September 2020.”

And then later on in – in the same letter at paragraph 2 they say:

“In the circumstances we are instructed to inform the commission as we hereby do that

for all the reasons mentioned above President Zuma will not be able to attend the proceedings scheduled on the dates of 21 to 25 September 2020.”

In other words one of the reasons that they advance as to why Mr Zuma would not be attending – able to attend the hearing on 21 to 25 September 2020 is that he was busy preparing for his criminal trial. Is that a good enough reason not to appear before the commission?

10 **ADV PRETORIUS SC**: Well in our submission no because the – the point about that – that paragraph in that letter is that is a situation that will prevail for the life of the commission.

And the commission must conclude its evidence by September and one of the reasons procedural reasons for the issue of summons is to enable the commission to consider the former President's evidence before the commission ends which is in December. Certainly the evidence must end by December to enable you Chair to  
20 write your report by March next year.

So in the circumstances – particular circumstances of this case our submission is that it is not a good enough reason to – to refuse to appear. But if the former President does believe it is you Chair will exercise your discretion in terms of your mandate and you will exercise your discretion

in terms of the directives that govern your chairing of the commission. If he believes there are grounds not to appear on a particular date he is free to – to raise those with you.

**CHAIRPERSON:** Well on the information...

**ADV PRETORIUS SC:** But not in those general terms.

**CHAIRPERSON:** Provided – on the information provided this is not a case where he was saying the dates that you have given me on which to appear before the commission  
10 fall – are the same dates when I must – I am supposed to appear in the High Court for my criminal trial. That would be different. That would be different.

But that is not what the letter was saying. It was simply saying he is busy preparing for his criminal trial. It does not say when the criminal trial is going to happen. But in the end even if the criminal trial was going to happen soon he would have to appear before the Commission and then apply for more time with the criminal trial and say: I have been busy with the Commission.

20 **ADV PRETORIUS SC:** Correct.

**CHAIRPERSON:** I am now asking for you to give me more time in order to prepare for the trial

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** Not to say: I am not going to appear before the Commission because I am preparing for a criminal

trial that is going to come at some stage on some dates that maybe have not even been determined.

**ADV PRETORIUS SC:** Yes, Chair. Quite frankly, Chair. The Commission has a job to do. It is obliged to do it. The fact that there are other matters that the former president must attend to may or may not be relevant, but it is certainly no basis for a blanket refusal to come on those grounds at all and frankly on any date.

**CHAIRPERSON:** Ja. And you see, as I see it, that  
10 particular statement in the letter means that that is a belief that he holds that because he is preparing for this criminal trial, he does not have to come to the Commission.

And if that is so, if he has that believe, how can he come before the Commission at any stage before his trial happens?

Because the closer the... as he approaches the trial dates of the criminal matter, the more time he would want to spend preparing for that criminal trial.

**ADV PRETORIUS SC:** Correct, Chair.

20 **CHAIRPERSON:** So the question is. Can that person ever come before the Commission voluntarily before his criminal trial happens?

**ADV PRETORIUS SC:** Not on what is contained in that letter.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** So whilst the requirement to appear in another forum may be a reason to ask for particular dates to be changed, certainly not as it appears there, grounds for a blanket refusal to come before the Commission.

**CHAIRPERSON:** H'm, h'm. Yes.

**ADV PRETORIUS SC:** Chair, the issues that we have covered in our written submissions, therefore covered two principle contentions.

The first is to say that Mr Zuma's evidence is both  
10 necessary and desirable for the work of the Commission. That we will establish and have dealt with in detail in the written submissions.

The second is why it is necessary that summons be issued to secure Mr Zuma's appearance at the Commission to give evidence.

Now Chair, that is an added reason but it is not a necessary reason. In regard to the first issue, if I may refer to paragraph 12.1 of the written submissions.

In summary Chair, Mr Zuma's evidence is a necessary  
20 part of the Commission's work for at least the following reasons.

Firstly, much if not most of the corruptions, an act which might constitute State Capture occurred during his term of office as President of the Republic.

Secondly, the Commission's Terms of Reference refers

to Mr Zuma directly in a number of paragraphs. If I may just ask you, Chair, to look at page 808 of the bundle.

**CHAIRPERSON**: Well, I am going to... I was going to go straight to the Terms of the Reference.

**ADV PRETORIUS SC**: Yes, they are there.

**CHAIRPERSON**: Yes. Well, you could read the relevant parts that refer to him.

**ADV PRETORIUS SC**: I will do that. The Terms of Reference are... they are included in the bundle.

10 **CHAIRPERSON**: Okay.

**ADV PRETORIUS SC**: Paragraph 1.2 reads:

“Whether the president...

And that is a reference to the former president.

“...had any role in the alleged office of cabinet positions to Mr Mcebisi Jonas and Ms Mentor by the Gupta family as alleged.”

Terms of Reference 1.3:

20 “Whether the appointment of any member of the National Executive Functionary and/or office bearer was disclosed to the Gupta family or any other authorised person before such appointments were formally made and/or announced and if so, whether the President or any member of the National Executive is responsible for such conduct.”

Terms of Reference 1.4:



“Whether the President or any member of the present or previous members of this National Executive including deputy ministers or public official or employer, any state owned entities breached or violated the Constitution or any relevant ethical code or legislation by facilitating the unlawful awarding of tenders by SOE’s of any organ of state to benefit the Gupta family or any other family, individual or corporate entity doing business with government of any organ of state.”

Terms of Reference 1.5. Sorry, 1.9.

“The nature and the extent, if any, in the awarding of corruption, if any, in the awarding of contracts and tenders to companies, business entities or organisations by government department, agencies and entities.

In particular, whether any member of the National Executive (including the President), public official, functionary of any organ of state or influenced the awarding of tenders to benefit themselves, their families or entities in which they held a personal interest.”

Those are direct references to the former President, Chair. Terms of Reference 1.1 and 1.7 contain indirect references to the former President.

Terms of Reference 1.7 reads:

“Whether any member of the National Executive...

Which will include the president.

“...and including deputy ministers, unlawfully or corruptly or improperly intervened in the matter of the closing of banking facilities for Gupta owned companies.”

And then 1.1:

10 “whether and to what extent and by whom attempts were made through any form of inducement or for any gain of whatsoever nature to influence members of the National Executive...

Which would include the former President.

“...including deputy ministers, office bearers and/or functionaries employed by office bearers of any state institution or organ of state or directors of boards of SOE’s.

20 In particular, the Commission must investigate the veracity of allegations that the former Deputy Minister of Finance, Mr Mcebisi Jonas and Ms Mentor were offered cabinet positions by the Gupta family.”

Now the offer of cabinet positions is a matter which caused directly with the... but all those Terms of Reference, obviously, obliged you Chair to investigate matters, related

to the conduct directly or the former President.

**CHAIRPERSON:** I think if you go back to... or maybe I can just have a look. One point one, among others, that is of the Terms of Reference:

“Among others, requires this Commission to investigate the veracity of allegations that former Deputy Minister of Finance, Mr Mcebisi Jonas and Ms Mentor were offered positions by the Gupta family.”

10 Now, one of the matters on which Mr Zuma may assist the Commission is this. Mr Jonas gave evidence that on the 23<sup>rd</sup> of October 2015, he met with one of the Gupta brothers and Mr Duduzane Zuma and Mr Hlongwane at the Gupta residence.

And he said the Gupta brother who appears to have been Tony Gupta, told him that Mr Nhlanhla Nene was going to be fired as Minister of Finance because he was not working with them and they wanted Mr Jonas to agree to the Minister of Finance and then if he would work with them.

20 Six weeks after that, Mr Nhlanhla Nene was fired. And the media statement that was issued by Mr Zuma said that Mr Nhlanhla Nene had done a stunning job as the Minister of Finance.

And it was said that Mr Nhlanhla Nene was dropped from cabinet because he was to be the government’s candidate for

a position in the ...[intervenes]

**ADV PRETORIUS SC:** Brics Bank.

**CHAIRPERSON:** Brics Bank, I think. But the job never happened. And I have heard evidence from somebody from the bank who said that is not how the bank... that bank operates. It has got policies and procedures and Mr Zuma had no say, had no power to force the bank to take Mr Jonas.

Mr Jonas himself said the... his position as Minister of Finance was higher than the position that Mr Zuma was  
10 talking about in the bank.

And Mr Nene said, actually, the... Mr Zuma's reason for dropping him, that he was to go to that job, was a fabrication. That is what Mr Nene said before me under oath here.

So the question is. How come somebody from the Gupta family knew in advanced that Mr Nene was going to be fired? Then Mr Nene gets fired. The President says: This man has done a stunning job. But he fires him, nevertheless.

The man goes and stays at home. The job that has...  
20 that the President talked about, does not materialise. And Mr Nene said: He never even phoned me after I had left and sitting at home and to check whether anybody had contacted me about this job.

And then, when Mr Jonas gave evidence, he said the Gupta brother who was in that meeting, among others things,

said to him: If you need advisors or you need support staff when you become Minister of Finance, we will provide.

And the replacement of Mr Nene, Mr Van Rooyen - I have heard that evidence – comes to National Treasury on the first day of his appointment, comes with certain advisors and those advisors seem to have connections with the Gupta family.

**ADV PRETORIUS SC:** Correct.

**CHAIRPERSON:** And Mr Jonas says, at that meeting, the  
10 Gupta brother also told him that there are people that they work with and he says one of them is Mr Brian Molefe, another one is Ms Lynne Brown, Minister of Public Enterprise at that time.

And when Mr Gordhan gave evidence before the Commission he said he heard that when he was fired in 2017 by Mr Zuma, Mr Zuma told the Top Six of the ANC that he wanted to replace him with Mr Brian Molefe.

And the Commission subsequently asked some members of the Top Six, Mr Gwede Mantashe, Dr Zweli Mkhize and Ms  
20 Duarte, Jessie Duarte to depose to affidavits to say: Do you know anything about this?

And the Commission has got affidavits from them. They did not give any problems. They supplied affidavits.

And those affidavits do say, indeed Mr Zuma did suggest to the Top Six that he wanted to replace Mr Gordhan with Mr

Brian Molefe. The same Mr Brian Molefe that Mr Jonas says he was told by the Gupta brother worked... was working with the Gupta's.

And then of course, we all know, it is in the public domain that Mr Brian Molefe resigned from Eskom after the Public Protector's report.

I think he said he wanted to clear his name of whatever but later went to parliament. I think he went to parliament about a month or two before Mr Gordhan was fired. And then  
10 Mr Gordhan was fired. Mister...

I think the three members of the ANC Top Six who have provided affidavits, said that the Top Six rejected Mr Zuma's suggestion to replace Mr Gordhan with Mr Molefe.

And then what we do know is that Mr Gordhan was then succeeded by Mr Gigaba.

And what we do know, it is in the public domain, is that it did not take long after that before Brian Molefe resigned from parliament.

**ADV PRETORIUS SC:** Correct.

20 **CHAIRPERSON:** And Mr Zuma must enlighten the Commission on all of these matters.

**ADV PRETORIUS SC:** Yes, Chair. Chair, there are, apart from those Terms of Reference, there are other Terms of Reference where Mr Zuma's evidence would be necessary for the Commission to complete its investigations adequately.

The 1.6 which talks about government advertising in the New Age Newspaper and other undue benefits to the Gupta family.

There has been evidence directly implicating the former President. Mr Sundaram's evidence, for example, where you have asked for information from the former President which has not been forthcoming.

So there are a number of... there is the evidence, for example, of the exchange and the study of the former  
10 President at his residence in Pretoria, Chair. Where the Gupta's demanded "favours" from the then Minister Shabangu in relation to mining licenses.

All those issues are issues that need to be addressed. And the evidence to date is replete with such examples where it is necessary for you Chair to investigate these matters as a matter of your Terms of Reference.

**CHAIRPERSON:** H'm. I mean, I am hearing evidence these days relating to Eskom. And hearing evidence from Mr Tsotsi and from Mr Nick Linnell. It is to the effect that, Ms Dudu  
20 Myeni called Mr Linnell to Pretoria and said you... I need you to come and meet with the president. He came.

The president did not meet them then but then he was told: Go to Durban. They have been meeting at the President's official residence on Sunday the 8<sup>th</sup> of March. He went there. Mr Tsotsi was called there.

And a discussion took place which was to the effect that there should be an inquiry into the affairs of Eskom and certain executives must be suspended.

Ms Lynne Brown, I have read her affidavit that she has given to the Commission. If I understood her evidence in the affidavit correctly. She says she knew nothing about that meeting in Durban and yet, she was Minister of Public Enterprises.

And both Mr Linnell and Mr Tsotsi say that President  
10 Zuma took part in that meeting. I have seen the statement by Ms Dudu Myeni who denies that Mr Zuma took part in that meeting.

I have heard evidence that in regard to Eskom and a board meeting that was supposed to happen on the 26<sup>th</sup> of February, was cancelled because Mr Zuma called the chairperson of the board the night before and called the acting DG of the Department of Public Enterprises and said that meeting must be cancelled.

**ADV PRETORIUS SC:** Yes.

20 **CHAIRPERSON:** And the acting DG at the time says, when the President called her because he said he could not find the minister or deputy minister.

When she said: But we cannot interfere. Or something to that effect. He says, Mr Zuma said: Well, that meeting must be cancelled and dropped the phone.



Now with regard to Eskom. The evidence that is unfolding and there are more witnesses who will come and maybe the picture will change when everybody has given evidence.

But at this stage, the evidence that seems to emerge suggest that there may well be credence to the proposition that certain decisions that were made by the Eskom Board were dictated to the Exco Board from outside Eskom.

And certain executives were removed. And then Mr  
10 Brian Molefe and Anoj Singh from Transnet were then seconded to Eskom to take some of the positions of the executives who were suspended and then allowed to leave or kicked out.

And I have heard certain evidence about allegations relating to Mr Brian Molefe and Anoj Singh of Transnet, who were leading evidence of some of the people who the board had asked to Mr Brian Molefe and to Mr Anoj Singh when they were at Transnet, about money that they say they have got from the Gupta's in the night and so on.

20 Of course, they will come and give their evidence and maybe one will get a different picture and maybe one would come to the conclusion that nothing like that ever happened. But these, all of these things cannot be ignored.

**ADV PRETORIUS SC:** Correct.

**CHAIRPERSON:** I cannot ignore these things when I asked

the question: Should I call Mr Zuma to appear? I cannot ignore those if I am going to do my job properly.

**ADV PRETORIUS SC:** H'm, h'm. And you have been cautious to say that no findings have been made.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** But you have evidence before you ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** ...which requires investigation.

10 **CHAIRPERSON:** H'm.

**ADV PRETORIUS SC:** And as night follows day, evidence implicating the former President must be examined, including through the evidence of the former President himself.

**CHAIRPERSON:** H'm.

**ADV PRETORIUS SC:** There are other examples. Chair, the record is ...[intervenes]

**CHAIRPERSON:** Ja, is replete.

**ADV PRETORIUS SC:** ...replete of such evidence.

**CHAIRPERSON:** Yes.

20 **ADV PRETORIUS SC:** Direct interference in the activities of law enforcement agencies.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Appointments and dismissals.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** The meeting with Gavin Watson

...[intervenes]

**CHAIRPERSON**: Yes.

**ADV PRETORIUS SC**: ...in relation to the BOSASA prosecution.

**CHAIRPERSON**: Yes.

**ADV PRETORIUS SC**: Those sorts of issues ...[intervenes]

**CHAIRPERSON**: Yes.

**ADV PRETORIUS SC**: ...need to be dealt with.

**CHAIRPERSON**: I mean, there was evidence by some of  
10 the people who were senior officials within the Intelligence  
community that their departments had... or units had  
conducted certain investigations of criminal nature.

And the minister serving under Mr Zuma or State Security, Dr Cwele called one of them to a meeting at the airport where he told them, according to the evidence placed before me that President Zuma had said that the investigation should be stopped. I need to look to all of those things.

**ADV PRETORIUS SC**: Correct.

20 **CHAIRPERSON**: How can I ignore those things?

**ADV PRETORIUS SC**: Yes, Chair.

**CHAIRPERSON**: How can I ignore all of those things? And all I am doing, I am doing my job to establish exactly what happened.

**ADV PRETORIUS SC**: Correct.

**CHAIRPERSON:** So that I can prepare reports that is based on evidence that has been presented by cross-section of people. And if he is implicated, I am giving him an opportunity to come here and clear his name.

But I want to know what he has to say about those things. He might he does not want to clear his name. That is fine.

But I want to know what he knows about the things that have been said.

10 **ADV PRETORIUS SC:** Yes. Chair, in summary then. In evidence before you and to date, and I stress to date, because there is more to come.

Mr Zuma has been or may be implicated by the evidence of at least 34 witnesses. That perhaps is enough to qualify, certainly under Section 3(1) of the act.

Chair, in relation to the second issue that is why there is an added reason that it is necessary and desirable for a summons to be issued.

20 The Commission, quite apart from its mandate, the law, but as a practical consideration, requires certainty in regard to the fact of Mr Zuma's appearance and the dates of his appearance.

We are simply so close to the end of the Commission's hearings that the proper and efficient functioning of the Commission would be rendered impossible unless we have

that certainty and you are entitled to take that into account in the exercise of your discretion.

The history of Mr Zuma's cooperation or lack thereof with the Commission, is set out in the written submissions. Paragraphs 18 and 19, Chair, you during 2018, requested Mr Zuma through his legal representatives to provide a response to the evidence of Ms Mentor and Mr Maseko. That has not been forthcoming.

You will recall the well-known areas of interest  
10 undertaken. There have been and this... the paragraphs of the heads and perhaps, I should just mention one or two.

The most recent undertaken. Just to put that in its context. At the last appearance of the former President where he seized to answer questions, to put it at its lightest.

An arrangement was made and an agreement was reached that the legal team would provide a document containing areas of interest.

There was an agreement and repeated promises that that areas of interest document would be responded to. It  
20 has not been responded to.

In his opposing affidavit dated the 13<sup>th</sup> of January 2020, that is the opposing affidavit to this application, Mr Zuma stated:

"I will be sending the Commission my responses to the areas of interest sent to me. This was already

prepared but could not be completed when I fell ill.”

Now we are ten months later Chair. That document still has not been forthcoming.

**CHAIRPERSON**: Well, in terms of the agreement that was reached on the 19<sup>th</sup> of July, when he was before the Commission, you were... the legal team of the Commission were required to furnish his lawyers within, I think, two weeks with a document that would indicate the areas of interest in the various affidavits that he had to focus on and  
10 responding.

And the agreement was that, as far as I can recall, once you had furnished his lawyers with such a document, which you did around, I think, on the 30<sup>th</sup> of July.

**ADV PRETORIUS SC**: It was slightly later.

**CHAIRPERSON**: Oh.

**ADV PRETORIUS SC**: It was in the first week.

**CHAIRPERSON**: Or first week, ja.

**ADV PRETORIUS SC**: Of the following month.

**CHAIRPERSON**: Yes. Once you had done that...

20 **ADV PRETORIUS SC**: I am told it was the 30<sup>th</sup>, Chair.

**CHAIRPERSON**: Yes, I think it was.

**ADV PRETORIUS SC**: But there were some administrative hiccup.

**CHAIRPERSON**: Ja, I think a lot of ...[intervenes]

**ADV PRETORIUS SC**: In any event, it was delivered.

**CHAIRPERSON:** Ja. Once you had done that, you and Mr Zuma's counsel were supposed to agree a date by when they would file his affidavit or affidavits.

And if the two of you did not agree, the arrangement was that you would then bring that issue to me and I will decide the timeframe.

Now from what I read, one, they did not file affidavits. Two, they did not... they do not seem to have reached any agreement with you.

10 And they promised at some stage, I think from what I read in the correspondence exchanged between yourself and them, that Mr Zuma's affidavit or affidavits would be filed on the 13<sup>th</sup> of September, last year. That did not happen.

Subsequently, they kept on promising that they would be filed. They have never been filed.

And no condonation application has been filed and no explanation, as far as I recall, has been proffered to say what is the difficulty to the extent that he may be saying in his affidavit, at a certain stage he fell ill and that impacted  
20 the preparation.

It seems that that was long after the deadline had happened. And there was simply nothing coming from them.

**ADV PRETORIUS SC:** Well, Chair there were repeated undertakings.

**CHAIRPERSON:** H'm.

**ADV PRETORIUS SC:** On 12<sup>th</sup> September 2019, Mr Zuma’s attorneys confirmed that he would provide his answers to the areas of interest document previously provided to him. And then Chair, on the 30<sup>th</sup> of September, Mr Zuma’s attorneys requested a “indulgence” to provide the Commission with the answers to the areas of interest by 20 October 2019 and simply after that nothing has been forthcoming.

Even in January this year, in opposition to the application it said the document is ready, I just cannot  
10 finalise it. Ten months later we still do not have the document here.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** So the import, let alone the implications of that are clear.

**CHAIRPERSON:** Of course, Mr Zuma’s might not be here today but they had filed his affidavit opposing this application. One of the issues that arises is this, when I invited Mr Zuma last year to appear before the Commission from the 15 to the 19 July, they criticised me for inviting  
20 him saying that that is not provided any rule saying in terms of what rule are you inviting our client, you know? And when it was – you know, it was just a courtesy, you know, to say let us not issue a summons because he has promised to cooperate with the Commission, they seemed to have an objection to say why are you not acting in terms



of the rules ...[intervenes]

**ADV PRETORIUS SC:** Of which led to summons.

**CHAIRPERSON:** Now the legal time has now applied that I should authorise a summons, then they oppose that and say you make it as if he is not cooperating. So when you act and show courtesy and say come and appear before the Commission without issuing a summons, you are criticised. When you say okay, let us issue a summons, then you are criticised.

10 **ADV PRETORIUS SC:** Then you not being polite.

**CHAIRPERSON:** I mean, there are many people who have been requested by the Commission to appear before the Commission and they have never had any hesitation. We have told, you know, Mr Zuma's attorneys before – I was looking at the correspondence here, that I told the President, current President that before the Commission finishes its work it would be important that he comes and gives evidence before the Commission because the matters that the Commissioner is looking at, state capture, 20 happened at a time when he was Mr Zuma's deputy. The current President had no hesitation, he said you are right, I am going to come. You tell me when I must come and I will come and I said the ANC must also come and I was told the ANC has no hesitation to come.

The Commission has approached other leaders of

the ANC, Mr Mantashe, and asked them to file affidavits without compelling them and they responded by filing affidavits. Mr Mantashe, Dr Zweli Mkhize, Ms Jessie Duarte, the President himself was asked, without being compelled, to file an affidavit about whether had had any interactions with the Guptas. He filed his affidavit, he did not have to be compelled.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** He did not complain that there was no  
10 rule for making such a request.

**ADV PRETORIUS SC:** Yes. Chair, I must stress that the application by the legal team has not been prompted by the notion, which is a preposterous notion, frankly, that you are not allowed to issue polite invitations because the law does not expressly say, you know, you may do so. There are good legal and factual grounds quite apart from that. But the proposition that you are not entitled by law to issue a polite invitation to witnesses to come before the Commission to give evidence voluntarily cannot stand.

20 **CHAIRPERSON:** Ja, I mean, all it seems is I am not supposed to ask him to come, I am not supposed to authorise a summons to be issues to compel him to come, so ...[intervenes]

**ADV PRETORIUS SC:** But when you do...

**CHAIRPERSON:** So I guess I am supposed to just fold my

hands and not do anything.

**ADV PRETORIUS SC:** Yes, Chair. The test, of course, is you have a duty, you have a discretion, you have a mandate and you have the power and that must be exercised reasonably in terms of discretion and all the facts that are incontrovertible, Chair, and I will deal with some more now and make it certainly beyond, in our submission, any doubt that that discretion would be reasonably exercised.

10 **CHAIRPERSON:** I think the one question that I think you will need to deal with is to the – it is two questions, one is whether when the point Section 3.1 says that the Commission has got power to summon witnesses, we know that this Act is a 1947 Act, it is very old, at that time there was only one way of summoning that could happen. One question is whether that summoning in this day and age would include summoning a witness to appear and give evidence by video link or in any other way that may be done with technology. I raise that because you will  
20 remember that in his attorney's letters one of the things they say is that because of his age and Covid-19 his doctors have advised him to limit his movement.

So the normal way of – when a summons is issued in any court to be served on somebody to appear before that court, it means that that person must physically come

to the court.

Now the question of Covid-19 may well be something that needs to be looked at. I do not have a problem if – I will not have a problem if he were to say for Covid-19 reasons I would prefer to give evidence via video link. As long as he does so within the borders of the Republic and not from outside, I would not have a problem, I have indeed authorised the giving of evidence by some witnesses via video link. I think one of them was Mr  
10 Mkhwanazi who asked when – I do not know which level, at level we were in, said for Covid-19 reasons he was reluctant to travel and he asked if he could give evidence via video link, I authorised that, it happened. So I could do the same with Mr Zuma if he has a legitimate reason that because of his age.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** So – but the question is whether summon witnesses as used in Section 3.1 is wide enough to encompass that meaning.

20 **ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** Of course maybe if it does not, if it not wide enough to encompass that meaning, it may be that the summons might include something to which we will say if he wishes to give evidence via video link and he advises the Commission timeously on those dates then his

appearance, via video link, will be deemed to be compliance with the summons. I am not sure. What do you say about that issue?

**ADV PRETORIUS SC:** Yes, Chair. The section has a timeless element to it because it says you, as a Commissioner, have the powers that the High Court has and that power has been interpreted and applied over time. In fact the legal team has done an opinion on this which we can let you have, obviously, but I do think it is somewhere  
10 in your own archives as well, the many files that you have. I am told that there is no sound, Chair.

**CHAIRPERSON:** Oh.

**ADV PRETORIUS SC:** Perhaps it is important that there should be sound.

**CHAIRPERSON:** No, it is important.

**ADV PRETORIUS SC:** Purely coincidental, Chair.

**CHAIRPERSON:** Well, maybe I should adjourn while they are attending to it.

**ADV PRETORIUS SC:** Thank you, Chair.

20 **CHAIRPERSON:** Yes. We will adjourn for a few minutes. Hopefully they can sort out the sound quickly. We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** I understand the sound is back.

**ADV PRETORIUS SC:** Yes thank you Chair. Chair we

were dealing with the import and meaning in today's technological age of the provisions of Section 31 of 1947 Commission's Act. The powers of the Court ...[intervenes]

**CHAIRPERSON:** I am sorry Mr Pretorius, I just wanted to say – I just wanted to say that the regulations of this Commission, which were promulgated by Mr Zuma when he was President include Regulation 10[6] and Regulation 10[6] says:

10           “For the purposes of conducting an investigation the Chairperson may direct any person to submit an affidavit or affirmed declaration or to appear before the Commission to give evidence or to produce any document in his or her possession or under his or her control, each has a bearing on the matter being investigated and may examine such person.”

**ADV PRETORIUS SC:** Yes Chair and those regulations have been promulgated under the amended 1947 Act, which says that the President may issue regulations to expand the powers of the Commission.

20           **CHAIRPERSON:** Yes, yes.

**ADV PRETORIUS SC:** Chair the 1947 Act, which gives powers to the Commission which are equivalent to the powers of the High Court is instructed, because the powers of the High Court have been developed over time through the application of the summons provisions and the giving of

evidence provisions to take account of technology. There is the judgment of Satchwell, J, the technology of the video link is now accepted both in other jurisdictions and South Africa as an efficient and effective way of providing oral evidence both in chief and in cross-examination and that this is simply another tool for securing effective access to justice.

We have the example of children giving evidence via video link, we have the example of *in camera* witnesses, or witnesses who don't give evidence directly but over video and sound links, so there is no reason why a person whose immunity is threatened by Covid conditions shouldn't also be catered for under the expanded technological rubric of the giving of evidence.

Of course you make the qualification which is important that the witness must be within the jurisdiction of the Court, so that the evidence that is given can be accounted for in terms of the law within the borders of the country.

**CHAIRPERSON:** Yes, the one approach may be to take the summoning to be wide enough to include a video link, another approach might be what I said earlier on to have the summoning as it would be in a summons but to have something that says either maybe in the summons that says if the witness, if Mr Zuma through arrangements with

the Commission appears via video link on the days that are specified that will be deemed to be compliance with the summons.

**ADV PRETORIUS SC:** Yes Chair. In fact I think that has been provided for in other cases specifically *in camera* witnesses.

**CHAIRPERSON:** Yes, because then it gives him an opportunity that if he has no problem giving evidence but he has a problem because of his age and Covid 19 then  
10 that is taken care of, it can't be advance as a reason for not appearing whereas if that is not done he might say the Covid situation is a good enough reason for me not to appear so but if one – if that is dealt with that way then he can't advance that, that reason.

**ADV PRETORIUS SC:** Okay, yes. And the powers that you have are based in statute as well as in regulations which have been empowered by statute expressly, as well as the general power that during the charge of the procedures, and this is essentially given the authority is a  
20 procedural matter.

Chair if I may just finish the list of issues where the former President has been requested to assist you in your investigations.

You requested the President to respond to the application made by Ms Reddy Tlabe, that was an



application made by her to give evidence and to cross-examine the former President, arising out of his own evidence and in that respect a request was made and there has been no response to that.

You have issued at least two 10.6 directives, the provision to which you have just referred Chair, requiring him to respond, and this is more than an invitation Chair, this is an exercise of the compulsory power, to respond to the evidence of Messrs Tsotsi, Linnell and Matona and to  
10 respond to the evidence of Mr Popo Molefe in the Eskom and in the PRASA matters respectively. Those have not been complied with.

**CHAIRPERSON:** Well one of those, I forget which one, was I signed the regulation 10.6 directive, I think on the 28<sup>th</sup> of August. That may have been the one relating to the affidavit of Mr Tsotsi and so on, or it may have been the one relating to Mr Popo Molefe's affidavit in evidence about PRASA issues and subsequently I signed another directive requiring Mr Zumato file affidavits.

20 So this is different, in the past there was a request in 2018, that request has never been complied with, there was an undertaking that the he would file an affidavit dealing with responding to General Maseku's evidence and Ms Mentoor's evidence. That has never been filed.

Then last year when he appeared before the

Commission there was an agreement, you referred to it  
...[intervenues]

**ADV PRETORIUS SC:** Yes followed up by several  
promises.

**CHAIRPERSON:** Yes, and agreement that was concluded  
with him through his lawyers, and which I announced  
publically and I remember after announcing the terms of  
that agreement I called upon you and his counsel to  
confirm that I had correctly recorded the terms and both of  
10 you confirmed and he had agreed through his lawyers to  
file an affidavit, or affidavits responding to various  
affidavits of witnesses who ...[intervenues]

**ADV PRETORIUS SC:** The areas of interest documents?

**CHAIRPERSON:** Yes, that affidavit, those affidavits have  
never been furnished, so whether you request him to file an  
affidavit you request him nicely, you don't get an affidavit.  
Whether there is an agreement with his lawyers or an  
affidavit he will file affidavits, you don't get those affidavits  
and now when you issue a directive, because  
20 ...[intervenues]

**ADV PRETORIUS SC:** Which came as a criminal sanction.

**CHAIRPERSON:** Sorry?

**ADV PRETORIUS SC:** The directive now carries a  
criminal sanction.

**CHAIRPERSON:** Yes, now the last time I heard was that

the directive that I issued on the 28<sup>th</sup> of August compelling him to file an affidavit I cannot remember whether it was in regard to the Eskom matter and the Durban meeting or whether it was in regard to PRASA, but the deadline which had been given the last time I had it had come and gone and he had not filed any affidavit and in regard to another one I suspect that the deadline has come and gone, but I don't – I haven't been told whether he has filed an affidavit.

10           So whether you make a request nicely he won't file an affidavit. Whether you reach an agreement with him and he undertakes to file an affidavit he won't file it. When I issue a directive in terms of the regulations, at least in regard to one he did not file an affidavit within the time that was given and to my knowledge he did not file an application to request an extension of time and in terms of the regulations as amended failure to comply with a directive issued by the Chairperson in terms of Regulation 10[6] failing to comply with it without sufficient cause is a  
20 criminal offence.

**ADV PRETORIUS SC:** Correct. Chair there were two further invites of a less formal nature to respond to Mr Human's affidavit dealing with the evidence of Mr Sunderam and an invitation to respond to the affidavits of Mr Megwe and Ms Pillay also dealing with the evidence of

Mr Sunderam, those have not been complied with either.

Importantly for the question of an appearance Chair you have set aside at least five separate weeks in the calendar of the Commission for the appearance of Mr Zuma, which have not been adhered to and what you directed Chair was that if he wasn't to appear or had good reason not to appear he should make formal application, that hasn't been received either.

**CHAIRPERSON:** It was never done.

10 **ADV PRETORIUS SC:** There has never been a formal application, we have always had to deal with allegations and correspondence, and of course that is more than just a formal requirement because if Mr Zuma's legal representatives were to come before you to make an application not to appear in any one of those five weeks you would have the opportunity of interrogating that. If it is just simply sent to you in a letter you don't have that opportunity at all, so it is more than just a procedural requirement it is a substantive requirement.

20 So Chair in summary then, unless there is any further issue you want to raise the two questions really before you are would it be a reasonable exercise of the power that you have to issue summons in these circumstances, given the terms of reference, given your duties, given the provisions of Section 31, given the

provisions of Section 10[6] that must be answered in the affirmative. There are the added considerations that we have just outlined that make it practically necessary for summons to be issued and we therefore ask for an order in terms of the amended Notice of Application.

**ORDER**

Having read the affidavits placed before me and having listened to submissions made by counsel representing the Commission's legal team I am satisfied that this is a matter  
10 in which I should grant the application.

I am satisfied that a proper case has been made out for an order authorising that the Secretary of the Commission should sign and issue a summons against Mr Jacob Gedleyihlekisa Zuma, former President of the Republic of South Africa to appear before the Commission at ten o'clock on the 16<sup>th</sup> to the 20<sup>th</sup> of November 2020 in this venue on each one of those days, therefore I am going to make the following order:

20

1. The Secretary of the Commission is hereby authorised and directed to sign and issue a summons in terms of Section 3 [1] read with [2] of the Commissions Act H of 1947 requiring Mr Jacob Gedleyihlekisa Zuma, former President of the Republic of South Africa to

appear before the Commission at ten o'clock on the 16<sup>th</sup> to the 20<sup>th</sup> of November 2020, both days inclusive for purposes of giving evidence before the Commission and being questioned in order to ascertain certain matters relating to the subject of the investigations of the Commission.

10 2. Should Mr Jacob Gedleyihlekisa Zuma make appropriate arrangements with the Commission prior to the dates referred to above to give evidence via video link and he subsequently gives evidence on those days via video link that will be deemed to be sufficient compliance with the summons, and the Secretary of the Commission should include advice or words to this effect in the summons so that Mr Zuma will know that such appearance will be deemed to be sufficient compliance with the summons.

Is there something that I am ...[intervenes]

20 **ADV PRETORIUS SC:** No Chair that is – we will assist the Secretary in the drafting of the summons in accordance with your order.

**CHAIRPERSON:** Yes, yes. That is the order I am making.

**ADV PRETORIUS SC:** Thank you Chair. May we be excused.

**CHAIRPERSON:** Yes, you are excused. We will take a

short adjournment and once the witness here for today is ready then I will be called.

We adjourn.

**INQUIRY ADJOURNS**