

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

**12 FEBRUARY 2021**

**DAY 343**



**Gauteng Transcribers**  
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 12 FEBRUARY 2021**

**CHAIRPERSON:** Good afternoon Mr Hulley, good afternoon everybody.

**ADV HULLEY SC:** Good afternoon Chairperson.

**CHAIRPERSON:** Yes are you ready?

**ADV HULLEY SC:** Thank you Mr Chair. Mr Chair today we intend leading the evidence...air today we intend leading the evidence.

**CHAIRPERSON:** I am sorry. Will somebody just adjust the  
10 air conditioner it is making too much noise.

**ADV HULLEY SC:** Yes that is it.

**CHAIRPERSON:** Ja. Yes okay.

**ADV HULLEY SC:** Thank you Mr Chair. Mr Chair today we intend leading the evidence of a Colonel W S Mhlongo; you will recall that he was to testify if my recollection serves me correctly on the 30<sup>th</sup> of July of last year.

**MR PAMENSKY:** Hm.

**ADV HULLEY SC:** He brought an application for a  
20 postponement one day before that hearing which Your Lord – which you granted in Mr Chair. And then we are going to hear also the evidence or the plan is to hear the evidence also of Mr Terence Joubert. He in fact was supposed to testify also on the 30<sup>th</sup> of July of last year and in fact did testify to a very limited extent on one very narrow aspect but then the balance of his evidence was – was postponed

to the hearing for today.

Now before you Mr Chair you would have a bundle of documents which is marked Bundle LEA10. Bundle LEA10 consists of four different compartments you will find in that bundle an Exhibit Y10 which relates to the testimony that is relevant to Colonel Mhlongo.

Then you will find a Y11 Exhibit Y11 which is relevant to the testimony of Mr Terence Joubert and then you will find a bundle or Exhibit Y12 and that relates to  
10 Captain Edward Zuma.

You will recall that as a result of the evidence of Mr Joubert which was given on the last occasion the necessity or the need for Captain Joubert – Zuma to come and testify has fallen away so we will not delve into his testimony today.

And then in Exhibit Y13 you will find the ...

**CHAIRPERSON:** By the way did is it Colonel or Zuma did he testify? He did?

**ADV HULLEY SC:** He did not.

20 **CHAIRPERSON:** He did not.

**ADV HULLEY SC:** It was – it became unnecessary for him to testify because he was a Commissioner of Oaths of one of the affidavits relating to ...

**CHAIRPERSON:** Oh yes and – and Mr Joubert indicated that he was not ...

**ADV HULLEY SC:** He did not dispute that he was the – that he was the Commissioner of Oaths and that...

**CHAIRPERSON:** Ja okay, okay and that was placed on record?

**ADV HULLEY SC:** Correct that was placed – and that was why he led that limited evidence.

**CHAIRPERSON:** Yes. Okay.

**ADV HULLEY SC:** And then you will find a bundle – an Exhibit Y13 and that relates to a Mr Brian Padayachee.  
10 That evidence relates to certain recordings and transcripts of recordings that were taken in terms – in terms of the Act 70 process. That evidence will not be led today so we would be confined essentially to Exhibits Y10 to Exhibits Y11 today.

During the course – during the course of the evening late yesterday there was ...

**CHAIRPERSON:** The evidence relating to the recording why will it not be led today?

**ADV HULLEY SC:** In relation to Mr Padayachee or rather  
20 Colonel Padayachee what had happened was that we...

**CHAIRPERSON:** Oh he is the one who needs to give evidence about it.

**ADV HULLEY SC:** He would need to give evidence about those matters.

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** The – depending on whether there is a challenge to the – to any aspect of his evidence he may or may not be required to give evidence.

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** Hither to there has been no challenge but there has also been no indication of whether there will be a challenge or will not be a challenge.

As between – when I say that I am talking about formally; informally we have been advised that there will be  
10 a challenge which means that there will be a necessity for him to come and testify and to pay the transcripts.

But his evidence does not go any way beyond.

**CHAIRPERSON:** Well...

**ADV HULLEY SC:** The actual content of what is on the recordings.

**CHAIRPERSON:** Ja. His evidence relates to the authenticity of the recording?

**ADV HULLEY SC:** So his evidence relates to the circumstances in which the recordings were obtained.

20 **CHAIRPERSON:** Okay ja.

**ADV HULLEY SC:** And there may be a challenge to the legality I understand.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** Informally and I say informally because it has been conveyed to us but never been put – never

been put as a formal challenge but I accept that there will be a challenge with that and then secondly so it will be a challenge to the legality and there may well be a challenge also to the authenticity and our learned – our learned friends will let us know as far as that is concerned.

**CHAIRPERSON:** By the - was there a recording of the conversation between Mr Joubert and Colonel Mhlongo?

**ADV HULLEY SC:** There was indeed but that stands on a separate footing because...

10 **CHAIRPERSON:** Yes that is separate from the one you are talking about.

**ADV HULLEY SC:** Correct. So we must distinguish – in fact the – well some confusion has been caused in these proceedings because of the different recordings that have been floating about.

There are in fact three sets of recordings. Colonel Padayachee refers to one set of recordings which at the moment consists of seven different – different recordings that have been transcribed.

20 The recordings relate to a number of different witnesses and for present purpose I will not identify who the witnesses are but – or who the different people are that those – of the speakers on those recordings.

So that stands separately.

Then in relation to the second recording that is a

recording that was between Ms – Colonel Mhlongo and Mr Joubert.

Then there was a third recording that was between as I understand it between Ms Queen Mhlongo and Mr Mhlongo and that recording is the one recording that has apparently gone missing. There has been a confusion as to which of the different recordings have gone missing. That is the recording that has in fact gone missing.

**CHAIRPERSON:** Okay no that is fine.

10 **ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** Okay.

**ADV HULLEY SC:** So there will be an application for a postponement and I will introduce my learned friend shortly insofar as that is concerned.

Then if the – the – if the evidence is led Mr Joubert will testify via a video link. We – he will be testifying from the MTA offices in KwaZulu Natal and Colonel Mhlongo would also be testifying via a video link and he will be testifying from his home.

20 Mr Joubert is not represented in these proceedings but Colonel Mhlongo is represented; he is represented by Mr – Advocate Manala and SC and Advocate Madiba. At this stage we believe that Advocate Manala will launch the application for a postponement at this stage.

**CHAIRPERSON:** Ja where is the – where are the papers



for the postponement application?

**ADV HULLEY SC:** If I can beg leave – pardon me My Lord.

I can beg leave to ...

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** Arrange for it to be handed up.

**CHAIRPERSON:** And then Counsel for Mr Mhlongo can then place themselves on record.

**ADV HULLEY SC:** If I might just before Advocate Manala does so just draw one further thing to your attention? If  
10 we do get to the evidence of Colonel Mhlongo dependent on what happens with the application for a postponement he will be take – he will be testifying through an interpreter.

**CHAIRPERSON:** Okay.

**ADV HULLEY SC:** Thank you. We have made arrangements for that.

**CHAIRPERSON:** Where is the interpreter? Is...

**ADV HULLEY SC:** The interpreter is present.

**CHAIRPERSON:** Ja.

20 **ADV HULLEY SC:** I found the documentation.

**CHAIRPERSON:** But I need to ...

**ADV HULLEY SC:** Yes.

**CHAIRPERSON:** See the documentation. Have you made sure that it is – it is worded correctly because some of the certificates are not worded correctly?

**ADV HULLEY SC:** What I will do it I will try to read through it because it was given to me just shortly before and trying to prepare for the postponement application.

**CHAIRPERSON:** Ja I think –

**ADV HULLEY SC:** But I will read through it quite fast.

**CHAIRPERSON:** Reverend Stamela will know which ones – which wording is correct because he – he is supposed to have kept previous ones that I said would be correct. So – but in the meantime I will deal with the postponement  
10 application so that might give time if – in case the wording is not correct for it to be done in accordance with previous ones – certificates.

**ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** And – and then once we are done depending on the outcome of the postponement application then I can look at the documents.

**ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** Ja. Counsel for Mr Mhlongo you can – they will sanitise and then – the podium and then you can  
20 come forward.

**ADV MANALA:** Good afternoon Chairperson.

**CHAIRPERSON:** Good afternoon.

**ADV MANALA:** Chairperson firstly let me express some gratitude to my learned friend Mr Hulley. He has elevated me too soon I am not yet there but we hope will that some

time in life.

**CHAIRPERSON:** Maybe he is prophesying. Let us hope so. So you must embrace the prophecy.

**ADV MANALA:** Hence I express sincere gratitude to him.

**CHAIRPERSON:** Yes.

**ADV MANALA:** Yes Chair I am Manala and ME I appear together with my learned friend Mr LJ Madiba and we are instructed by Mr Maringa of Maringa Attorneys.

**CHAIRPERSON:** Yes and is the surname Mnala or  
10 Manala?

**ADV MANALA:** Manala, M-a-n-a-l-a.

**CHAIRPERSON:** Oh M-a-l-a-l-a

**ADV MANALA:** That is certain.

**CHAIRPERSON:** Oh okay alright. Thank you. You from the Durban branch of the Bar?

**ADV MANALA:** No I am from the Tshwane Society of Advocates it is based Tshwane with Themba 00:10:40.

**CHAIRPERSON:** Okay alright.

**ADV MANALA:** Thank you. Chairperson as it has been  
20 said by our learned friend...

**CHAIRPERSON:** Well before you proceed why is it not a good enough reason for me to dismiss this application that your instructing attorney cannot spell practicing correctly?

**ADV MANALA:** He cannot spell?

**CHAIRPERSON:** Practicing.

**ADV MANALA:** Well I suspect it would have been a case of an auto correction so the computer would have jumped. Yes indeed that is not correct.

**CHAIRPERSON:** So you are defending him?

**ADV MANALA:** It does indeed happen.

**CHAIRPERSON:** Well I – in 1999 after I had been appointed to the then Transvaal Provincial Division and in my first admissions that I was doing I found that a lot of lawyers do not know how to spell the verb practise. They  
10 always put c which is for a noun instead of s and I thought that I needed to give them quite a hard time for that and say at least you if you know how to – to spell practise if you want to practise.

**ADV MANALA:** Yes. No, no.

**CHAIRPERSON:** Okay alright let us proceed.

**ADV MANALA:** Yes we are well aware that we should not make that mistake now anymore.

**CHAIRPERSON:** Yes.

**ADV MANALA:** But now Chairperson you are – you have  
20 already been told that there is an application for postponement and that the application was formally transmitted to the commission yesterday.

So part of the explanation would be to address you as to why the application was made late in the proverbial eleventh hour.

You would also have seen that the application is made by the attorney of record Mr Maringa and in the course of our address to you we will also set out the reasons why it had to be him and not Colonel Mhlongo in his own capacity.

Now Chairperson I have just now been presented with the application for postponement in a bundle similar to the one that you have there.

**CHAIRPERSON:** Hm.

10 **ADV MANALA:** And I am going to try acquaint myself of the numbering but I am assuming safely that the last two digits are the page numbers and as I refer to each page I should use those numbers as they appear.

Now Chairperson I want to start off with what we characterise as the commencement of what then crystallises into a course of action on a Thursday afternoon.

I am going to refer you Chairperson to page 5, 6 and 7. Now from page 5 at the bottom there paragraph 13  
20 you will note Chairperson that it is indicated that on Friday the 5<sup>th</sup> February the commission served to the attorney of record of Colonel Mhlongo a summons directing that he should appear before the commission today.

So what you have there is a 7 day notice period. He is told on the 5<sup>th</sup> to say you have to appear before the

commission on the following Friday being 12 February.

Now as you turn the page Chairperson you will see bullet points. There are dark bullet points and there are fainter bullet points. Now that – those bullet points Chairperson illustrate what was said in those summons.

He was invited to come and address all of these matters which are bulleted here including these sub-bullets which you see in a faint colour and ultimately all matters incidental to the aforesaid. That is you find at page 7 of  
10 the application.

Now upon receiving this summons over the weekend telephone correspondence ensues between the attorney as well as the legal team arranging a pre-hearing meeting for Monday with the aim of securing a – an easy pathway for Friday to deal with provisional matters related to the hearing.

Now at that pre-hearing conference which was then arranged and convened I believe on Friday – I mean on Monday afternoon at around half past two. During that  
20 meeting we and by we I mean the legal team of Mhlongo then raised three queries in the form of objections to these bullet points to say we have three difficulties with what you say he must come deal with before the commission.

The first one which I believe it is not controversial between us on the aspect of his health to say then he

should be permitted to appear before the commission remotely. I will tell you in a moment what happened of that discussion but it is important that you note for purposes of an explanation as to why we had to come this late with the application.

We were then directed to mount a formal application for his appearance remotely but I will come to that aspect in a very short while.

So essentially then you left with two. Of those two  
10 we raise an issue about the evidence of Mr Joubert then you find that Chair at page 7 of the application under paragraph 14. We – 14.1 and 14.2.

At 14.1 this is where we raise an objection us against the evidence of Joubert – Mr Joubert – Terence Joubert apologies.

Now there what is indicated is that his evidence to the extent that they say implicates Colonel Mhlongo ought to be preceded by a notice in terms of Rule 3.

Now when we having that discussion it immediately  
20 emerges that no a notice in terms of Rule 3 has been transmitted but transmitted to Mhlongo's email. It was not availed to the attorney but it was availed to Mhlongo himself who you would see in the affidavit that he did not receive it but we make no issue of that.

So upon having addressed this issue the parties

then agree that as soon as we conclude that notice together with the accompanying annexures will be availed to the legal team of Mhlongo on that very day. That is Monday and it was subsequently availed at around eight o'clock. That was the first aspect.

Now the second aspect was to – was with reference to the sub – that is the faint bullet points where you see the recordings starting from page 6 – those faint bullet points.

10 We then objected to the use of these recordings that is the recording between Chairperson would see that at page 6 the last faint – I mean dark bullets thereunder you would see there are faint sub-bullets. It refers to all matters relating to or emanating from the telephonic conversations between Mr Toshan Panday and an unknown male/s on this date.

And the next one is that of the same person...

**CHAIRPERSON:** Well let us just focus on the important things. What are the reasons for why Mr Mhlongo seeks a  
20 postponement?

**ADV MANALA:** Yes Chairperson I – just to round up on these two points and then we should be there in a minute and I will clarify the very reasons why we seek it.

**CHAIRPERSON:** The reasons for the postponements are the ones that I am most interested in.



**ADV MANALA:** Yes.

**CHAIRPERSON:** Ja.

**ADV MANALA:** So – so Chairperson once we then raised those two objections including the legality objection. This is working against the background of the whole sub.

Now a minute later on during that day we received a Rule 3.3 Notice which then affords fourteen days within which to react to the evidence of Terence Joubert and we take that to say it may run either from the Friday when it  
10 was transmitted or it may run ...

**CHAIRPERSON:** If you are comfortable to take off the mask that might help.

**ADV MANALA:** Okay.

**CHAIRPERSON:** But if you are not comfortable I will listen. I hear you but I would hear you much more clearer.

**ADV MANALA:** Okay let me – let me make sure.

**CHAIRPERSON:** Yes because I think there is enough distance – social distancing.

**ADV MANALA:** Yes let me make sure that we communicate  
20 his case clear.

So Chairperson we at a point where the two objections were raised. The first one we availed that notice in terms of Rule 3. The second one we raised an issue of legality and when we get the Rule 3.3 Notice which then affords fourteen days we do so on Monday in

the evening.

**CHAIRPERSON:** Well the 3.3 – Rule 3.3 Notice I see in the papers and that what is – what the legal team has commentated to you ultimately is that the evidence that will be led today to which Colonel Mhlongo would – about which he would be questioned relates to Mr Joubert's evidence about I think their conversation.

**ADV MANALA:** Yes.

**CHAIRPERSON:** And not a lot of other things. Now as far  
10 as that is concerned I am under the impression that Mr Mhlongo would have received a 3.3 Notice sometime last year.

**ADV MANALA:** Yes that is correct. So...

**CHAIRPERSON:** So – so there should be no issue about a 3.3 Notice in respect of Mr Joubert's evidence.

**ADV MANALA:** Related to that part of the evidence.

**CHAIRPERSON:** Related to that part ja.

**ADV MANALA:** Yes but Chairperson would recall the 3.3 Notice was not given from Terence – Mr Terence Joubert; it  
20 was given from the evidence of General Booysen and that of Nxasana.

Those witnesses were mentioning this conversation as part of the reasons why they come to the conclusion they came to. They relied also on his affidavits which were attached as annexures.

So when Colonel Mhlongo responded to them he merely took the view of course firstly guided by your previous rulings that he cannot apply to cross-examine them because cannot come and say well I dispute that which was said you are no longer – Chairperson recalls that line of rulings.

**CHAIRPERSON:** Hm.

**ADV MANALA:** So what he then did he put up an affidavit where Terence Joubert moves to say the earlier affidavit  
10 which was relied upon is not an affidavit of his.

So he then asserts that position and leaves the matter there. So to the extent that he has to deal with all of those aspects at least relating to that he then relies on the second affidavit which he then 00:23:11.

But what you then have Chairperson subsequently is that around the 24<sup>th</sup> of July 2020 Mr Joubert deposes to another affidavit. In that affidavit he resuscitates the earlier affidavit which was then – which he had distanced himself from.

20 Now we and this is where I should take you Chairperson to page 13 – this is page 13 as well as page 12.

**CHAIRPERSON:** Gone through the whole affidavit in the meantime.

**ADV HULLEY SC:** Yes thank you Chairperson.

**CHAIRPERSON:** Ja. But you – ja you can make the points.

**ADV MANALA:** Yes. So there Chairperson you would find a letter that is written on 28 August last year. This is after we had left here on the 13<sup>th</sup>. In this letter at paragraph 4.5 on page 13 Colonel Mhlongo requests an affidavit of Terence Joubert because he saw him at the commission through his attorney of course and in our notes he is available as a witness.

10           Then he makes a request. This request is made on the 28<sup>th</sup> of August last year to say avail his evidence to me so that I can confront him directly.

**CHAIRPERSON:** That is the third affidavit of – that is Joubert?

**ADV MANALA:** That is the third affidavit.

**CHAIRPERSON:** Ja.

**ADV MANALA:** Now if you then turn two more pages or rather – yes at page 16 you will find a follow up letter; a follow up letter requesting a response to that letter which  
20 requests that information.

**CHAIRPERSON:** Hm.

**ADV MANALA:** Now here we do not have it and we requested for it in August as well as in September to – we – to a point when we are given that on Friday and you will see the history as to how the days evolved. In fact...

**CHAIRPERSON:** So you – you only get the – Mr Joubert's third affidavit last Friday?

**ADV MANALA:** No. We say Chairperson we got it on Monday after a pre-meeting conference and whilst...

**CHAIRPERSON:** Monday this week?

**ADV MANALA:** Yes.

**CHAIRPERSON:** Okay.

**ADV MANALA:** Why we say that it is because the summons was served on the attorneys. So we know then  
10 that the commission knows to communicate with Mhlongo they communicate with the attorney to say that the email was sent to him that there is no proof of receipt from his  
00:25:33 and all of those.

Then it makes the Friday difficult but whichever one that the Chairperson accepts the Friday or Monday they will set out how they – how the clock then ticked going forward from Monday, Tuesday, Wednesday and Thursday leading to today.

So after we mount this application because we want  
20 to listen to Mr Joubert's evidence decide how to deal with it between the scheme of the Rule 3.3.

We are then told that no in fact the affidavit – the third affidavit was availed to you on the 27<sup>th</sup> of July 2020. We are then given an email which Chairperson would have found I believe just before the affidavit...

**CHAIRPERSON:** Well I did not look at the annexures.

**ADV MANALA:** Yes let me refer you to that...

**CHAIRPERSON:** Ja what page?

**ADV MANALA:** Yes the email you find at page 25.

**CHAIRPERSON:** Okay, yes.

**ADV MANALA:** Now that page 25 Chairperson is addressed by William Nicholson on Monday 27 July at 20 minutes after 2 o'clock in the morning. You would see there just on the last part.

10 **CHAIRPERSON:** There are three emails on that page which is the right one that you are looking at?

**ADV MANALA:** Yes now the – we are looking at the first email; the top email.

**CHAIRPERSON:** The top one ja.

**ADV MANALA:** Yes. So there Chairperson would see that it is addressed to the first addressee thereto it is the attorney of record of Mr – I mean of Colonel Mhlongo.

**CHAIRPERSON:** Yes.

20 **ADV MANALA:** Now it is addressed there on the 27<sup>th</sup> of July 2020 at 20 minutes after 2 early in the morning.

**CHAIRPERSON:** Was that before your appearance or after?

**ADV MANALA:** Yes. That is before the appearance.

**CHAIRPERSON:** Yes.

**ADV MANALA:** Of 30 July.

**CHAIRPERSON:** Yes.

**ADV MANALA:** But here is the difficulty and these...

**CHAIRPERSON:** And I – I also – I was – I seem to have thought that by the time when I granted a postponement all the affidavits that were – that all the three affidavits would have been in your team's possession. That was the impression so...

**ADV MANALA:** That was not the position because as you would see also from the affidavit it is dated that we came  
10 to know of the availability of Mr Terence Joubert on the date of the 30<sup>th</sup> we came to know then that he was available as a witness and that is why we took a different approach in relation to the approach of his evidence.

But Chairperson I want us to deal slightly with a dispute that then arises on this point.

**CHAIRPERSON:** Yes but I want you to say to me the reasons for a postponement are abcd.

**ADV MANALA:** Yes.

**CHAIRPERSON:** Then you can elaborate if you need to  
20 elaborate under each one of them.

**ADV MANALA:** It is because we did not receive the affidavit.

**CHAIRPERSON:** The third affidavit?

**ADV MANALA:** The third affidavit.

**CHAIRPERSON:** Until Monday?

**ADV MANALA:** Until Monday.

**CHAIRPERSON:** Okay how many pages is the affidavit?

**ADV MANALA:** Chairperson that is the other aspect. Now reading the affidavit and we have set that out and I will tell you just in a moment where you would find that.

**CHAIRPERSON:** Ja.

**ADV MANALA:** Ja in the affidavit. Yes you would find that from page 9 going through to 10.

**CHAIRPERSON:** Ja.

10 **ADV MANALA:** The difficulty that we have and you would have seen the medical evidence around his state of health is that you cannot consult in between Monday and Thursday because he is unable to travel outside KZN.

The only model that you have available is the telephonic model. You must telephone whether by those other apps and all of that we then gained contact with ...[indistinct]. He is uncomfortable with consulting because based on what you have there is clear evidence that his calls are intercepted and are monitored.

20 So what we heard and this is in terms of a solution to what we have ...[indistinct]. What we have resolved was that we should make time in the course of next week in the first three days. The legal team should travel down to KZN to be with him and deal with the affidavit and to finalise what has to be done in relation to that, and that would -



and I know Chairperson, I should not be saying it this way but eventually it is what it is. That would still then be within the 14-days which in terms of the regulations is a standard fair period of that procedure.

So what we propose. It is not an indefinite. The aspect of the postponement. It is just that we need to be – at least within those two days.

And out of the reasons supporting that, is that absent - a specific indication at least from the legal team  
10 to say the 14-days allowed period should be truncated.

We submit that those 14-days should be allowed and that we should be able to be back...

**CHAIRPERSON:** Well, what did you say about the fact that the email at page 25 appears on the face of it who have sent you the affidavit to the attorney?

**ADV MANALA:** Yes. With that we say the following. One, it was around early morning hours. Now a lot of things would happen with emails at that stage but we are not stating that as a fact.

20 What we rely upon is this. If you look at the letter of the 28<sup>th</sup>, that letter was re-emphasised again on the 15<sup>th</sup> of September. We are demonstrating that we do not have.

Now for somebody that knows that he had already sent that affidavit, one would have expected one, to say:

No, I have sent you that... Then I have done so on this thing. But for what it is worth, have it again. Then the matter would have been put to rest there.

Now what you also see is that the subsequent notice which we say either Friday or Monday, comes with this annexure and he knows for one to say but if it is was sent all along, why send it again and why send it now because you would have easily said here is the notice, you all have all of those documents.

10 So we say even if indeed these document it does appear that it was sent as at least here. We say our subsequent of estimate ought to have enabled one to come to a conclusion that maybe had something had happened to that email. Emails at this hour of night easily ...[intervenes]

**CHAIRPERSON:** And you say that the situation could have been avoided by – if the Legal Team had responded to not one letter but two letters that were sent.

**ADV MANALA:** Yes, yes.

20 **CHAIRPERSON:** Of course, one can – if I can hear what they have to say about that. Then when they did not respond, also from your side, then there was silence over quite a number of months, right?

**ADV MANALA:** Yes.

**CHAIRPERSON:** Ja.

**ADV MANALA:** So Chairperson that aspect is not sufficiently canvassed ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV MANALA:** ...as to what further steps ...[intervenes]

**CHAIRPERSON:** From your side, why if there was no response did you just leave it like that for so long?

**ADV MANALA:** Yes.

**CHAIRPERSON:** Ja.

**ADV MANALA:** The best ...[intervenes]

10 **CHAIRPERSON:** From the Legal Team, if indeed the position that they did not respond, they should have responded.

**ADV MANALA:** Yes.

**CHAIRPERSON:** Ja.

**ADV MANALA:** That is the indeed so, yes. And Chair, one would think – just in closing – one would think that the Legal Team decides which witnesses to bring and so on. Based on the developments, we also have had when they said it has now not become necessary for – I believe  
20 Captain Zuma not to testify because his evidence was overtaken by that.

So you would also apply logic from what you say. If the Commission is not responding on that, he may be entitled to assume that he is no longer needed as witness at that point. He would then have no reason to take other

proceeding steps beyond the two letters.

**CHAIRPERSON:** Of course, if I give you a postponement then we would continue with the evidence of Mr Joubert. And then have your – have Mr Mhlongo's evidence but soon.

**ADV MANALA:** Yes.

**CHAIRPERSON:** We could be looking at an evening session. Maybe if you were to file Ms Mhlongo's response to the merits, as it were, because I think you make the  
10 point that previously he was contempt to simply rely on Mr Joubert's second affidavit.

Now after being aware of the third affidavit of Mr Joubert, he appreciates that he needs to deal with the merits of the alleged conversation. So that is the affidavit that you are looking at filing?

**ADV MANALA:** Yes, Chairperson.

**CHAIRPERSON:** Yes.

**ADV MANALA:** That is the affidavit we are looking at filing.

20 **CHAIRPERSON:** Yes.

**ADV MANALA:** And ...[intervenes]

**CHAIRPERSON:** I do not want you to break Covid regulations. [laughs] Not about – it must.

**ADV MANALA:** Oh, yes.

**CHAIRPERSON:** I did not hear you correctly but when you

were talk about 14-days in consultation, I was not sure whether you were talking about consulting within 14-days or but the isolation is 10-days now, is it not?

**ADV MANALA:** Yes.

**CHAIRPERSON:** In the isolation. Is he not on isolation.

**ADV MANALA:** Chairperson, what seems to be the position from the medical ...[intervenes]

**CHAIRPERSON:** Oh, you are talking about the Rule 3.3. Notice?

10 **ADV MANALA:** Yes.

**CHAIRPERSON:** Ja.

**ADV MANALA:** So we say if you compute from, say the Monday, which we are contending to be a further date, would still be within the 14-days if we everything by the end of next week and file those affidavits.

**CHAIRPERSON:** Well, you see. You will only be entitled to 14-days if you show that you did not receive the affidavit in July last year.

**ADV MANALA:** Yes.

20 **CHAIRPERSON:** And as I understand your argument. You are not asserting that it was not received. What you are asserting is, it may or may not have been received but your instructing attorney was unaware of it having been sent to him or his email and that is why he wrote the letters that he wrote.

**ADV MANALA:** Yes.

**CHAIRPERSON:** Now, if I approach the matter on the basis, not necessarily that it was not sent in July. Then if I do not approach it on the basis that it was not sent, we cannot use the 14-days. The 14-days would have to be used if I find as a fact that it was not sent in July. You see?

**ADV MANALA:** Yes.

**CHAIRPERSON:** So my understanding of your argument  
10 is that you are not going to that far to say it was not sent. You are saying, at least you were – he was not aware otherwise he would not have asked.

**ADV MANALA:** Yes.

**CHAIRPERSON:** You know. So if we then proceed on that basis then the 14-days does not apply.

**ADV MANALA:** Yes. So I made an illustration of 14-days Chairperson to say. Even if you accept that it may have been sent as it appears from 25.

There is a standing rule that you will find in the  
20 regulation that says third procedure would entitle a person affected to a number of 14-days.

Now what we are dealing with, it is not a mechanical application or that, but an objective assessment of that facts.

**CHAIRPERSON:** You are not relying on the rules. You

are simply saying we know what the basis on which you are asking to make a decision.

**ADV MANALA:** Yes.

**CHAIRPERSON:** We are not saying find as a fact that the affidavit was not sent in July last year but we are saying this is what has happened. For whatever reason, we did not become aware of it or maybe we have not checked whether or not technologically it was received.

**ADV MANALA:** Yes.

10 **CHAIRPERSON:** But the fact that we wrote these letters indicate that we were not aware that I had been sent.

**ADV MANALA:** Yes.

**CHAIRPERSON:** And the fact that Legal Team did not respond to the letters – if they had responded, it was sent, then we would not have been in this situation.

**ADV MANALA:** That is the position.

**CHAIRPERSON:** But all you have to say in that regard is. You are asking to be given a fair opportunity to respond.

**ADV MANALA:** Yes.

20 **CHAIRPERSON:** Without the 14-days. [laughs]

**ADV MANALA:** Yes. No, we are not even insisting on the 14-days because if one looks at it, as you indicate.

**CHAIRPERSON:** Ja, h'm.

**ADV MANALA:** We could have dealt with it even from the Monday. That was it.

**CHAIRPERSON:** H'm.

**ADV MANALA:** But for reasons that we set out today.

**CHAIRPERSON:** Ja.

**ADV MANALA:** We are also still even unable to deal with aside. So as part of the solution, we are suggesting that we should make ourselves available to travel in the first two, three days of the following week.

**CHAIRPERSON:** If I grant the postponement, would you and your team and Mr Mhlongo move mountains to make  
10 sure we can proceed before the end of next week with his evidence?

**ADV MANALA:** [No audible reply]

**CHAIRPERSON:** In other words, would you be able to file his response to the affidavit at some stage in the course of next week and could we look at an evening session when he can give evidence?

**ADV MANALA:** Yes. Filing the affidavit, we can manage to do it in the next week. And the hearing, I know we have just one day, the Thursday which is which is also out of  
20 our... *[Speaker's voice drops at end of sentence – unclear.]*

If it is something that is around Friday late or Saturday afternoon or thereabout], then we can able to send our stuff(?).

*[Speaker's voice drops at end of sentence – unclear.]*



**CHAIRPERSON:** Yes, let us see. Okay let me hear what Mr Hulley has to say.

**ADV MANALA:** Thank you Chair.

**CHAIRPERSON:** Okay.

**ADV MANALA:** That will be our side.

**CHAIRPERSON:** Thank you. He will sanitise first.

**ADV HULLEY SC:** Thank you Mr Chairman. Mr Chairman, can I commence by saying firstly in relation to the affidavit of Mr Joubert and that it will refer to the first, second and  
10 third affidavit.

The third affidavit is the one which is the bone of contention in these proceedings and particularly whether they perceived that affidavit.

Well, my learned friend has referred you to one email which he says may or may not have come to their attention, from what I understand from the debate that has taken place here but with respect it is not confined to that.

In fact, we have sent it to them on two occasions, not just one. So if I can refer you to the ...[intervenes]

20 **CHAIRPERSON:** Okay I am sorry. The affidavit of Mr Joubert that starts at page 26, is that the third affidavit? Is that what I referred to as the third affidavit? That is the one that was sent ...[intervenes]

**ADV HULLEY SC:** Correct, this is the one that starts on page 26.

**CHAIRPERSON:** Yes. Okay?

**ADV HULLEY SC:** And this particular affidavit that is been referred to over here is the one which is attached to the email that has been prepared by Mr Nicholson, one of the...

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** One of the evidence leaders.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** Later on – if I can take you further  
10 down along the same bundle which is page 44 of the same bundle. And you will see there that this is from **Boyd Eloy E Batshikana Attorneys(?) [00:14:06]** And it is addressed, once again, to Mr Maringa who is the attorney for Colonel Mhlongo.

**CHAIRPERSON:** H'm.

**ADV HULLEY SC:** And it says:

“Please find the attached letter for your attention and kindly acknowledge receipt.”

The letter that he is referring to is that which is on  
20 page 45.

**CHAIRPERSON:** The letter is the one at 45?

**ADV HULLEY SC:** Correct.

**CHAIRPERSON:** Ja?

**ADV HULLEY SC:** Now, and there were additional attachments to this particular email and I will

...[intervenes]

**CHAIRPERSON:** This is three days before the hearing?

**ADV HULLEY SC:** It is three days before the hearing.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** And it says at page 45 at paragraph...

Sorry, it is dated the 27<sup>th</sup> of July of 2020 and at paragraph

2 it says:

10 “As you are aware, Advocate Mxolisi Sandile  
Oliver Nxasana testified on the 12<sup>th</sup> of June of  
2019 and upon further representation of his  
evidence before the Commission on the  
19<sup>th</sup> of August, an audio recording of the  
conversation between your client and  
Mr Terrence Joubert which had been dealt with  
by Nxasana during the previous testimony was  
played.

We enclose a copy of this recording.”

So we have given them the recording itself.

20 “...together with the transcript already sent to  
your client together with his Rule 3.3. Notice  
in respect of the evidence for your client’s  
consideration.”

Then 3:

“The transcript of Advocate Nxasana’s  
evidence – testimony on the 12<sup>th</sup> of June 2019

and 19 August 2019 with regard to the recordings available on the Commission's website.

Your client should expect questions from the evidence leaders concerning this audio.”

On the following page, at paragraph – page 46, paragraph 4 ...[intervenes]

**CHAIRPERSON:** I am sorry. What is the point – what is your point about the letters at page 45?

10 **ADV HULLEY SC:** So what has transpired, as far as this is concerned, is that we have given them a copy of the actual recording itself. That is the recording which the subject matter of this dispute. That is the – so that recording is given to them.

Then the attached to the email is also – and unfortunately you cannot see over it here on the actual email itself, but I will refer you to an earlier email where we deal with this.

Attached to this email is also the affidavit of  
20 Mr Joubert. It is attached to this email.

**CHAIRPERSON:** The third affidavit?

**ADV HULLEY SC:** The third affidavit. So it has not been sent to them only once, it actually has been sent ...[intervenes]

**CHAIRPERSON:** But the letter does not say anything

about that, hey?

**ADV HULLEY SC:** So ...[intervenes]

**CHAIRPERSON:** The letter/email at page 46 and – pages 45 and 46 does not say anything about Mr Joubert's third affidavit being attached, is it not? Because that is what I was looking for when I was reading.

**ADV HULLEY SC:** Yes. So what we do is then – because like I say you cannot see it over here on the email itself because it is obviously an embedded document.

10 **CHAIRPERSON:** H'm.

**ADV HULLEY SC:** It is not referred to in the letter but it is an embedded document which is attached to this email.

**CHAIRPERSON:** Yes?

**ADV HULLEY SC:** So it forms part of the email. The email, unfortunately, only refers to the actual letter.

**CHAIRPERSON:** But somebody needs to say that.  
[laughs]

**ADV HULLEY SC:** But what I am – what – which is what I am going to take you to now.

20 **CHAIRPERSON:** Ja.

**ADV HULLEY SC:** If I can take you page 30. Sorry, 20.  
Pardon me Mr Chair.

**CHAIRPERSON:** Page?

**ADV HULLEY SC:** Page 20.

**CHAIRPERSON:** 20.

**ADV HULLEY SC:** This is a letter that was written today which was been sent off by the Commission’s Secretariat.

**CHAIRPERSON:** H’m?

**ADV HULLEY SC:** And if I can just refer you to... If you will bear with me. To page – on page 21. At the foot of that page, paragraph 9.

**CHAIRPERSON:** H’m?

**ADV HULLEY SC:** Paragraph 9:

10 “On the 27<sup>th</sup> of July 2020, two days before the previous hearing, the following was sent to you:

a) Mr Joubert’s affidavit of 24 July 2020 and we attached, marked A, a copy of Advocate Nicholson’s email and confirmation.”

I have taken you, Mr Chair, to that email already.

**CHAIRPERSON:** H’m.

**ADV HULLEY SC:** And:

20 “In the letter dated the 27<sup>th</sup> of July 2020 on the then Secretary, Ms Shabala and be attached a copy of that letter marked B.

In the letter, Ms Shabala confirms that we enclosed of the copy of the recording together with the transcript.”

That I have already read to you. And then C:

“A copy of the recording of the conversation

between Mr Joubert and Mr Mhlongo and a copy of the transcript of the aforesaid recording.”

So what is being attached... Oh, sorry and if I can just correct myself. I can say that there was the affidavit which was attached as the embedded document.

It seems from reading of this here that is in fact incorrect. I must just correct that. In fact, what has been attached was the recording and a copy of the transcript. A  
10 copy of the affidavit of Mr Joubert was actually attached only to Mr Nicholson’s email. I should just correct that. My apologies.

So the point is. That neither of these documents were necessarily been challenged per se. On the face of it, the documents have gone through – the email appears to have gone through, on the face of it. There is no challenge to that.

What subsequently happens, which is what my learned friend places, is the fact that on the 28<sup>th</sup> of August  
20 what is written is a letter from Mr Maringa in which at page 13 he says the following at paragraph 4.5.

**CHAIRPERSON:** What page is the letter?

**ADV HULLEY SC:** Page... It starts off at page 12.

**CHAIRPERSON:** H’m?

**ADV HULLEY SC:** But the relevant passage appears from

page 13.

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** He says:

“To this end, Colonel Mhlongo proposes that the Commission should avail to him the evidence of Terrence Joubert.”

**CHAIRPERSON:** I am sorry where are you reading from page 13?

**ADV HULLEY SC:** Pardon me. Page 13 at paragraph 4.5.

10 **CHAIRPERSON:** Okay?

**ADV HULLEY SC:** It says:

“To this end, Colonel Mhlongo proposes that the Commission should avail to him the evidence of Joubert and that he will respond thereto within the scheme of the rules of the Commission.”

But it is not entirely clear what is being referred to over here but it seems when he talks about the evidence of Mr Joubert and ...[intervenes]

20 **CHAIRPERSON:** The transcript.

**ADV HULLEY SC:** He may be referring to the actual transcript of the ...[intervenes]

**CHAIRPERSON:** Of the recording.

**ADV HULLEY SC:** ...of the recording, which has in no ways been given to him. He may be referring to the



affidavit. He may also be referring to the possibility of Mr Joubert's evidence that what had been given on the very – that had been given on the day of the 30<sup>th</sup> of July.

It is not entirely clear and it is true that there is no responses specifically to that paragraph but what there is a response to is the balance of the letter.

But let me just be clear about what is contained in this. This letter is concerned, if I may point out, it is concerned with the evidence of Mr Terrence Joubert and  
10 we have already dealt with that. That appears under paragraphs 4.1 to 4.5.

It also deals with the evidence of Colonel Padayachee and that is dealt with at paragraphs 4.7 and 4.9.

So it is not correct when my learned friend says, as he does, but that Annexure B is a second oar for what is contained in that letter because that letter is globular letter. So there is a response to an issue relating to Colonel Padayachee.

20 And in fact, there is an offer too. The issue that had arisen was whether Colonel Mhlongo would listen to the evidence or rather listen to the recording of – that Colonel Padayachee had created in KwaZulu-Natal or whether he could listen to it in Gauteng.

Colonel Padayachee had adopted the stance that

he would only provide it to him if he listened to over here. He was not prepared to make – and in fact, we transmitted that to you on the last occasion as well.

Colonel Padayachee was not prepared to make it available over the recording and he said that they had to come over here. He would provide all the instrumentation to make it available.

So the issue that was the bone of contention at that stage was in relation to Colonel Padayachee's recordings. That, and what was being asked for on the 10 4<sup>th</sup> of September, as we understood it, was the question of whether he could have the hearing of those recordings take place in Johannesburg or whether it could be done in KwaZulu-Natal.

On Colonel Mhlongo's version or on Colonel Mhlongo's request, he wanted it to be played in KwaZulu-Natal. Colonel Padayachee was insisting that it be played here in Johannesburg. Ultimately, Colonel Padayachee to exceed to the request and a convenient place was made 20 available in KwaZulu-Natal for them to listen to the recordings.

After that, which took place in October of last year, after that this issue went silent. We were in those circumstances. There was no further correspondence of it.

**CHAIRPERSON:** Well, if he says – his counsel says you

did not – the Legal Team respond to two letters they sent.

**ADV HULLEY SC:** But that is my point M’Lord, is that we did respond.

**CHAIRPERSON:** H’m?

**ADV HULLEY SC:** A response was by exceeding to the request. So the ...[intervenes]

**CHAIRPERSON:** Okay sorry, let us get that right. Where do you say the response is?

**ADV HULLEY SC:** What – if we could look – turn – if you  
10 could turn with me?

**CHAIRPERSON:** Is it the letter at page 45?

**ADV HULLEY SC:** Page... Sorry ...[intervenes]

**CHAIRPERSON:** That was July last year. Where is the response?

**ADV HULLEY SC:** The – what I am saying is this. There was a response. There was no letter that was written but we responded to the request. The request was whether we could have this being dealt with in KwaZulu-Natal or here. I am not saying there that there was a ...[intervenes]

20 **CHAIRPERSON:** No, the correspondence that counsel for Mr Mhlongo referred to is correspondence that was saying: Please let us have Mr Joubert’s third affidavit.

**ADV HULLEY SC:** Pardon me. Pardon me.

**CHAIRPERSON:** Counsel for Mr Mhlongo, Mr Manala, his point was subsequent to the date that was meant for

hearing last year, subsequent to those days. That means in the second half of last year.

He said Mr Mhlongo's attorney wrote two letters to the Commission saying: Please let us have Mr Joubert's affidavit. And he says the Legal Team did not respond to both of those letters.

**ADV HULLEY SC:** So what he is saying this, if I understand. He is saying that there was no letter that responded to him. Now that is not entirely true because  
10 there was a letter that responded to certain aspects, an email. In fact, an email from myself which is attached to the papers.

**CHAIRPERSON:** Was the letter talking about the affidavit or something else? Because he – the point he is making ...[intervenes]

**ADV HULLEY SC:** It dealt with something else.

**CHAIRPERSON:** Ja, that is the thing. The point he is making is. Two times we wrote to the Legal Team of the Commission and said: Please, let us have Mr Joubert's  
20 affidavit.

**ADV HULLEY SC:** Yes.

**CHAIRPERSON:** And he says: We never received a response to that, to those two letters. Obviously, if you write to them about other matters, that is not a response to those letters which says: Let us have Mr Joubert's

affidavit.

**ADV HULLEY SC:** So the point I am making is that insofar as the request or insofar as he speaks about paragraph 4.5.

**CHAIRPERSON:** No, at this stage I just want to talk about his contention that:

10                   Although we cannot dispute that Mr Joubert's affidavit was sent to Colonel Mhlongo's attorney in July. We were not aware that it was sent. Assuming that it was sent. And that is why we sent not one letter but two letters to the Legal Team. And there was no response to those letters. And in those letters will say please let us have Mr Joubert's affidavit.

**ADV HULLEY SC:** My response to that. I am agreeing that there is no letter to the response. I am not agreeing that there was no response. So what I am saying is that there is a response but those responses were dealt with telephonic and SMS exchanges. So it was not dealt with  
20 by way of a formal letter or a formal email responding to that but it was ...[intervenes]

**CHAIRPERSON:** Was there a response by way of an SMS or Whatsapp message that said – that responded to the issue of the affidavit of those letters?

**ADV HULLEY SC:** No, there was not a response that

dealt with ...[intervenes]

**CHAIRPERSON:** Ja, that is what I am looking for at the moment.

**ADV HULLEY SC:** But this subject to this if I can just say. Insofar as they asked for as we – insofar as we speak about the affidavit. I just want to be cautious and say that the letter does not ask for the affidavit. It asks for the evidence.

**CHAIRPERSON:** Let us just go to the letters. Let me see  
10 the two letters he was talking about because I did not read the letters.

**ADV HULLEY SC:** So the first one is at page 13 Mr Chair.

**CHAIRPERSON:** One, three?

**ADV HULLEY SC:** That is correct.

**CHAIRPERSON:** Yes?

**ADV HULLEY SC:** And we in this, Colonel Mhlongo repulses that the Commission should avail to him the evidence of Mr Joubert.

**CHAIRPERSON:** H'm.

20 **ADV HULLEY SC:** What – so – and then he goes on to say and that he will proceed – he will respond thereto within the scheme of the rules of the Commission. What I am saying is ...[intervenes]

**CHAIRPERSON:** Is that the first of the two letters?

**ADV HULLEY SC:** That is the first of the two letters.

**CHAIRPERSON:** That is 28 August.

**ADV HULLEY SC:** The second letter is ...[intervenes]

**CHAIRPERSON:** So it is – it is not specific that he is talking about the affidavit.

**ADV HULLEY SC:** An affidavit. That is my point.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** And I am not making anything more than that.

**CHAIRPERSON:** It could mean the recording of the  
10 conversation.

**ADV HULLEY SC:** Correct.

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** So that is the only point I will make as far as that is concerned.

**CHAIRPERSON:** Yes. Okay.

**ADV HULLEY SC:** And for present purposes. Obviously, we will get into the debate at a later stage of what is the implications of that and whether they can be relied upon, the fact that we had in fact sent it to them at an earlier  
20 stage.

But for present purposes, I am only making the point that he talks about the evidence, he does not talk about an affidavit.

**CHAIRPERSON:** H'm.

**ADV HULLEY SC:** So in the ...[intervenes]

**CHAIRPERSON:** And the second letter?

**ADV HULLEY SC:** Is at page 16 of the same bundle.

**CHAIRPERSON:** Yes?

**ADV HULLEY SC:** And he says:

10 “We refer to our letter dated the 28 August 2020 in  
response to your correspondence of the 26 August  
of 2020 regarding the above matter. Your  
undertaking to the effect that a formal response will  
be furnished to us in due course is much  
appreciated. We request herewith to be updated  
with developments in response to our letter referred  
to in paragraph 1 above.”

In other words, to their letter of the 28 August. Now - so  
neither one ...[intervenes]

**CHAIRPERSON:** So part of the point you are making is  
that those letters do not make it clear that ...[intervenes]

**ADV HULLEY SC:** And I am not talking ...[intervenes]

**CHAIRPERSON:** ...they are talking about the affidavit.

20 **ADV HULLEY SC:** Sorry. And I am not putting it any  
higher.

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** I am just making the point that they do  
not speak specifically.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** So in the context of that I am making



now a third point in relation to the earlier letters so that you can understand how it is that – or when I say that we have responded, you can understand then, Mr Chair, how it is that I say we have responded.

So what I am saying is that if you consider the earlier letter of the 28 August, the earlier letter is not confined to considerations relating to Mr Joubert alone, it also – it concerns considerations relating to Mayatu(?)

10 So the issue that was – then became the focal point of the interaction between the party, Mr Moringa and the Commission and in relation to Colonel Mhlongo was specifically the issue of whether Colonel Mhlongo could listen to the recording either in Johannesburg or in Durban.

So there was ongoing interaction between the parties in relation to that issue. So – and where do I get that from, the papers which are before us. If I can take you to – and I have referred you already, Mr Chair, to page 20, which is the letter that was sent off today by the secretariat.

20 **CHAIRPERSON:** You said you want me to go what page?

**ADV HULLEY SC:** Pardon me, it is page 20, Chair.

**CHAIRPERSON:** Okay, yes.

**ADV HULLEY SC:** I just want to take you to the passages in this where we referred to the letter to what transpired subsequent to September.

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** If you would just bear with me, Mr Chair, [indistinct – dropping voice]. Unfortunately this was just made available to me before the hearing.

**CHAIRPERSON:** I want to wrap this up, we have reached ...[intervenes]

**ADV HULLEY SC:** Pardon me, Mr Chair.

**CHAIRPERSON:** ...An hour mark dealing with the postponement application.

10 **ADV HULLEY SC:** If I could take you to the bottom, the foot of page 23.

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** We stress that the letter relied upon by you dated the 4 September had nothing whatsoever to do with Mr Joubert's evidence.

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:**

20 "This related to your request that Colonel Padayachee's recording get played back to him in Kwazulu-Natal as opposed to in Gauteng."

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:**

"These recordings were subsequently played to your client in your presence in October of 2020 and the transcripts thereof were provided very shortly

thereafter.”

Now what we are saying is insofar as that is concerned, is that the issue that appeared to remain in contention related to whether we could play it in Kwazulu-Natal or in Gauteng. Ultimately it was played in Kwazulu-Natal. The transcripts were made available to him.

So in the context of that, the true issue that – or this issue relating to the evidence, whether it includes the actual affidavit or something less, that issue never arose  
10 again after that. It only arose then for the first time when we had the hearing [indistinct – dropping voice]. What we are saying is that on the evidence as it stands...

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** Or on the documentation as it stands it seems that there are – there is at least one email that was then to sent on obtaining that affidavit, there is other correspondence which referred not to the affidavit but attached as copies of actual recording and the transcript.

We would submit that, with respect, the parties  
20 ...[intervenes]

**CHAIRPERSON:** Ja. No, that is fine. Let me hear what Mr Manala has in reply.

**ADV HULLEY SC:** Thank you.

**CHAIRPERSON:** The one thing which seemed to count in his favour was the idea that they asked for – they asked

the legal team to furnish them with affidavit by way of two letters to which the legal team to respond but you make the point that when you look at those letters it is not clear that that is what they are talking about. So let me hear Mr Manala, I want to finalise this, I do not want us to waste a lot of time that we do not have.

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

**CHAIRPERSON:** So Mr Manala, as you come forward, that is the one issue which was counting in your favour but I  
10 think the vagueness of the letter or letters is not helping you and as we speak I am more inclined subject to what you will now say in reply, I am more inclined to dismiss the application and give you a chance to consult with your clients and while we go on with Mr Joubert. But you are still going to reply, I am just giving you the benefit of what I am thinking.

**MR MANALA:** Yes.

**CHAIRPERSON:** Yes.

**MR MANALA:** Chairperson and I will limit my submissions  
20 just for that issue. Now there is an assertion that 4.5 is there, the first ...[intervenes]

**CHAIRPERSON:** Do you want to remove your mask again?

**MR MANALA:** Oh, yes.

**CHAIRPERSON:** So I can hear your points clearly.

**MR MANALA**: Yes. Pardon me, Chairperson. Well, Chairperson, the first assertion that you get from my learned friends, the legal team of the Commission, is that 4.5 is there and that we did not find(?) exactly to the aspect of affidavit. Our submission there is that you do not even read 4.5 the way it should be read. That is, you read it to accept – I mean, to get out of it its actual meaning. What is being said there is that:

“I propose to this end ...[intervenes]

10 **CHAIRPERSON**: Is it again that letter?

**MR MANALA**: We are at page 13.

**CHAIRPERSON**: Oh, 13?

**MR MANALA**: 13.

**CHAIRPERSON**: Ja, okay. Ja?

**MR MANALA**: It says there:

“To this end...”

This is in summation of what is there above and this is after the date you will see.

20 “Colonel Mhlongo proposes that the Commission should avail to him the evidence of Joubert and that he would respond thereto within the scheme of the rules of the Commission.”

Now how does the Commission avail evidence of a person? We have seen throughout that it does so by way of an affidavit and it gives annexures to that affidavit to the

extent that they are fact. How do you respond thereto in the scheme of the rules, depose to an affidavit and you deal with that evidence.

So we submit, Chairperson, that before this Commission it cannot be contended that when evidence here comes in one or other form, we have seen throughout, evidence from here comes in the form of an affidavit.

**CHAIRPERSON:** But what you were talking about, as I understood the position, was you were saying somebody, such as your client, Mr Mhlongo, would be entitled to a 3.3  
10 notice whenever there is affidavit of a witness who implicates him. Now you – I understood you to be saying this was not – initially this was not done but I think after I have given you a chance to continue you clarify it, if I understood correctly, but you are not saying it was not served in July but you are saying we asked for it two times and there was no response.

Now with regard to a 3.3 notice most of the time you would simply say give me the statement of affidavit as  
20 opposed to, you know, the evidence which would be a transcript, which could, of course, also include an affidavit or which would include the recording and so on.

So if your – if the letter had made it quite clear you are talking about the affidavit, my inclination would be to try and accommodate you. So I think I would accept the

point that says when you say evidence you include an affidavit, okay? That I would accept. But I am simply saying your client's position, your instructing attorney's position, as I understand it, was we have not been served with a Rule 3.3. notice in regard to that affidavit, that is what we were asked for, please give us the bad affidavit but the letter seems to be quite wide and not so specific.

**MR MANALA**: Chair, let me deal with one or two things just arriving from that.

10 **CHAIRPERSON**: Ja.

**MR MANALA**: The first is this, your context. Remember all along Colonel Mhlongo takes the position, to the extent that people are relying on that affidavit I am merely going to put up this affidavit with which he says that affidavit, the first affidavit is a fabrication, it was not deposed to by me and that is the end of it.

Now come the 30<sup>th</sup>, that is post to the 30<sup>th</sup>, we now know there is a change in tune to say in fact that affidavit was correct. Now what you are going to ask for after that  
20 day, you are going to ask for the change to – because you have the old affidavit and that is the context within which we submit you would look at 4.5.

But the second aspect to that is this, if we exchange extensively for an hour, thereabout, in order to try decipher what this 4.5 actually meant or actually

excluded, it means there is some reasonableness in the misreading, one, from their side and secondly, from my side. We should have perhaps written a better letter on straightforward terms. But that as it may be, one way or the other, we submit that Colonel should be given the benefit of the confusion that is here, that he should be afforded space to prepare an adequate to come before the Commission. And those would be our submissions.

**CHAIRPERSON:** Well, you see, that point would have  
10 some merits if it was a letter written by the legal team, which is vague.

**MR MANALA:** Yes.

**CHAIRPERSON:** But since you were the author, not talking about you, you were the author of the vague letter, you cannot benefit from your own vagueness.

**MR MANALA:** Well, that doctrine I seem to recall says something about construction against the [indistinct] 13.32. Now if we take it to its bare essentials, it appears to have been written by attorney.

20 **CHAIRPERSON:** Yes.

**MR MANALA:** And therefore we are speaking on a case of Colonel Mhlongo, so ...[intervenes]

**CHAIRPERSON:** You are not adding without the benefit of counsel.



**MR MANALA:** But, Chairperson, if we accept that [indistinct] 13.55 Mhlongo it becomes an issue.

**CHAIRPERSON:** Ja.

**MR MANALA:** That there is some – and as we have indicated earlier on, we are committed to make quick turnaround.

**CHAIRPERSON:** Yes, yes.

**MR MANALA:** And we would ask that you favourably consider his application.

10 **CHAIRPERSON:** Yes.

**MR MANALA:** Thank you, Chairperson.

**CHAIRPERSON:** No, no, that is fine. I am going to dismiss the application, I am not going to give reasons. If you people insist on reasons you can write and ask for them but you will get a chance to consult with him while Mr Joubert gives evidence.

If Mr Joubert takes longer than I expect him to take you might just be lucky that we have to adjourn before Colonel Mhlongo has to be called in which case then we  
20 can arrange another date. But for now, the application is dismissed.

**MR MANALA:** As you please, Chairperson.

**CHAIRPERSON:** Okay, alright. Thank you.

**MR MANALA:** Thank you.

**ADV HULLEY SC:** Thank you, Mr Chair. Mr Chair, I would ask to call Mr Terence Joubert.

**CHAIRPERSON:** Yes, okay. Mr Joubert, can you hear us?

**MR JOUBERT:** Yes, Chair.

**CHAIRPERSON:** Good afternoon.

**MR JOUBERT:** Good afternoon, sir.

**CHAIRPERSON:** Okay, we are waiting for you to appear. Yes.

**MR JOUBERT:** Yes, Mr Chair.

10 **CHAIRPERSON:** Yes, I am just waiting for your picture to be stable. Yes, okay, you can see both the evidence leader and me?

**MR JOUBERT:** No, I cannot see you, Chair.

**CHAIRPERSON:** You cannot see me?

**MR JOUBERT:** Oh. Ja, now it switches between yourself and the evidence leader. Now I can see you.

**CHAIRPERSON:** It should not do that, you should be able to see both of us. Or you should see – I do not know if you – I thought you should see us at the same time but maybe  
20 you should see us as we speak. So if I speak you see me, if the evidence leader speaks, you see him. So if you can see me now maybe that is fine, when the evidence leader speaks then you will see him. Alright?

**MR JOUBERT:** Okay, Chair.

**CHAIRPERSON:** Thank you for availing yourself to come and assist the Commission, Mr Joubert. The registrar will administer the oath or affirmation to you.

**MR JOUBERT:** Okay.

**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.

10 **REGISTRAR:** Do you consider the oath binding on your conscience?

**MR JOUBERT:** Yes.

**REGISTRAR:** Do you solemnly swear that the evidence you will give 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.

**TERENCE JOHN JOUBERT:** So help me God.

**ADV HULLEY SC:** Thank you, Mr Joubert.

20 **CHAIRPERSON:** Thank you, then you can continue, Mr Hulley.

**ADV HULLEY SC:** Thank you, Mr Chair.

**CHAIRPERSON:** My recollection is that his evidence apart from the fact that you will have to be asked about the second affidavit otherwise his evidence, questions is reasonably short.

**ADV HULLEY SC:** I believe it will be fairly circumscribed,  
Mr Chair.

**CHAIRPERSON:** Yes. Okay, alright.

**ADV HULLEY SC:** Mr Joubert, just formally if you could  
open up a bundle which ought to be in front of you which is  
marked EXHIBIT Y11.

**MR JOUBERT:** Yes.

**CHAIRPERSON:** Just to recap, Mr Hulley, we are using  
bundle LEAN, nè?

10 **ADV HULLEY SC:** Pardon me, Mr Chair, that is correct.

**CHAIRPERSON:** Ja, okay.

**ADV HULLEY SC:** Now if you could turn with me, Mr  
Joubert, to page – and in future I will refer you to a  
pagination system and it will be in the top left hand corner  
of the bundle of documents that has been placed before  
you. So if you turn with me to page LEAN-211. It is in the  
top left hand corner and it is in black font.

**MR JOUBERT:** Yes.

20 **ADV HULLEY SC:** You will see that in the top right hand  
corner there is a numbering system which is in red. I want  
you to ignore that, the portion that is read. Do you  
understand?

**MR JOUBERT:** Okay.

**ADV HULLEY SC:** Now if you can look at the document  
which is at page 211 and if you could go all the way to

page 228.

**MR JOUBERT:** That is correct.

**ADV HULLEY SC:** Could you identify what this document is?

**MR JOUBERT:** Yes, I do.

**ADV HULLEY SC:** And is this an affidavit that has been deposed to by you on the – it looks like the 24 July of 2020.

**MR JOUBERT:** That is correct, Chair.

10 **ADV HULLEY SC:** And if you turn to page 227 is that your signature?

**MR JOUBERT:** That is correct, Chair.

**ADV HULLEY SC:** Right. If you would turn with me to page 1 of that bundle of documents – sorry, page 211, pardon me.

**MR JOUBERT:** Yes.

**CHAIRPERSON:** What is the page number?

**ADV HULLEY SC:** Page 211.

**CHAIRPERSON:** 211?

20 **ADV HULLEY SC:** That is correct, Mr Chair, it is LEAN10-211 in the top left hand corner. Now that is the commencement of the affidavit that has been deposed to for the benefit of your testimony before this Commission, is that correct?

**MR JOUBERT:** That is correct.

**ADV HULLEY SC:** Now, just by – if I can refer you to another document then at page LEAN-230. Do you have that document?

**MR JOUBERT:** Just repeat that please?

**ADV HULLEY SC:** It is page 230 of the same bundle, top left hand corner 230.

**MR JOUBERT:** 230. That is correct, I have got it.

**ADV HULLEY SC:** And then if you go to page 232.

**MR JOUBERT:** That is correct.

10 **ADV HULLEY SC:** Is a signature on that page, at the foot of the page, and it is dated the 25 November 2013. Whose signature is that?

**MR JOUBERT:** It is my signature.

**ADV HULLEY SC:** And if you would turn with me to page LEA 306 in the same bundle.

**CHAIRPERSON:** Did you say 206?

**ADV HULLEY SC:** 306, Mr Chair.

**CHAIRPERSON:** 306.

**ADV HULLEY SC:** Pardon me.

20 **MR JOUBERT:** Yes.

**ADV HULLEY SC:** And if you turn with me to the following, to page 308, there is a signature over there, roughly in the middle of the page and it seems to be an affidavit dated ...[intervenes]

**MR JOUBERT:** 308 you said?

**ADV HULLEY SC:** That is correct.

**MR JOUBERT:** Yes.

**ADV HULLEY SC:** And that purports to be an affidavit dated 1 February 2016. Whose signature appears on that page above the words or the name Terence J Joubert. Whose signature is that?

**MR JOUBERT:** Ja, I presume that is my signature.

**ADV HULLEY SC:** I asked whose signature is it?

**MR JOUBERT:** My signature, Chair.

10 **ADV HULLEY SC:** Now would it be fair to say that these are three separate affidavits that have all been deposed to by you? The three documents that I put to you?

**MR JOUBERT:** That is correct, Chair.

**ADV HULLEY SC:** Now I want us to deal ...[intervenes]

**MR JOUBERT:** That is correct.

**ADV HULLEY SC:** Before I take you through to the content of the affidavit, or any of the affidavits, I want you to first deal with the circumstances. All three affidavits seem to deal, and you will correct me, of course, if I am  
20 wrong but they deal with ...[intervenes]

**CHAIRPERSON:** Mr Hulley, do you not want to request me to admit each one of them?

**ADV HULLEY SC:** My sincere apologies, Chair.

**CHAIRPERSON:** Okay, yes, confirmed.

**ADV HULLEY SC:** Since apologies, if you would admit the

affidavit together with all the annexures of Mr Joubert, Chair, as EXHIBIT Y10. Sorry, Y11.

**CHAIRPERSON:** Well, take affidavit at a time and make the request and then tell me what exhibit number it should be and then I will do that, then we do each one of them separately.

**ADV HULLEY SC:** Thank you, Mr Chair. So this is EXHIBIT Y11, the main affidavit which is at page 211.

**CHAIRPERSON:** Is this the first affidavit?

10 **ADV HULLEY SC:** That is the first affidavit, it runs to page 228.

**CHAIRPERSON:** It should be exhibit...?

**ADV HULLEY SC:** Y11.

**CHAIRPERSON:** Y11. The affidavit of Mr Terence John Joubert starting at page 211 is admitted together with its annexures and ...[intervenes]

**ADV HULLEY SC:** And it has ...[intervenes]

**CHAIRPERSON:** Hang on.

**ADV HULLEY SC:** Pardon me.

20 **CHAIRPERSON:** And it is to be marked as EXHIBIT Y11.

**TERENCE JOHN JOUBERT'S AFFIDAVIT PLUS ANNEXURES PAGES 211 TO 228 HANDED IN AS EXHIBIT Y11**

**ADV HULLEY SC:** Thank you, Chair. That affidavit has attached to it the annexures to which – amongst which I



have just referred to, so they are all annexures to the EXHIBIT Y.

**CHAIRPERSON:** As long as they are annexures I would have said ...[intervenes]

**ADV HULLEY SC:** It is one exhibit.

**CHAIRPERSON:** Together with all the annexures.

**ADV HULLEY SC:** Correct.

**CHAIRPERSON:** Ja, so they are annexures to the affidavit.

10 **ADV HULLEY SC:** They are all annexures to that affidavit.

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** Thank you, Mr Chair. So just to confirm before we get into the actual content, Mr Joubert ...[intervenes]3

**CHAIRPERSON:** I am sorry, are you not going to the second affidavit and the third affidavit or each one of them to be admitted as an exhibit on its own or are they annexures to the main affidavit?

20 **ADV HULLEY SC:** The other two affidavits that I have referred to the one which is dated 25 November 2013.

**CHAIRPERSON:** The second and the third?

**ADV HULLEY SC:** And the third affidavit. Those are annexures ...[intervenes]

**CHAIRPERSON:** To the main affidavit?

**ADV HULLEY SC:** Sorry, the first and the second affidavit – okay, pardon me, the first affidavit that I have referred to now is the one which is dated July of 2020 and attached to that are two other affidavits as part of the various annexures which are attached. So they are actually annexures to the main affidavit.

**CHAIRPERSON:** Oh, okay, they are not standalone.

**ADV HULLEY SC:** They are not standalone affidavits.

**CHAIRPERSON:** Okay, so – alright then, go ahead.

10 **ADV HULLEY SC:** Thank you, Mr Chair. Now the – if you would turn with me to page 235.

**MR JOUBERT:** 200 and...?

**ADV HULLEY SC:** 35. 235.

**MR JOUBERT:** 35?

**ADV HULLEY SC:** Correct.

**MR JOUBERT:** Yes.

**ADV HULLEY SC:** Now this purports to be ...[intervenes]

**MR JOUBERT:** Okay.

20 **ADV HULLEY SC:** It purports to be an email that is from you which appears to be dated the 25 November 2013 and it is addressed Mxolisin@TelkomSA.net.

**CHAIRPERSON:** That is Nxasana.

**ADV HULLEY SC:** Thank you, Mr Chair, Mr Nxasana. Well, firstly let me ask you this ...[intervenes]

**MR JOUBERT:** That is correct.

**ADV HULLEY SC:** Who is that email addressed to?

**MR JOUBERT:** That email is addressed to Mr Nxasana as well as cc'd to Mr Duma.

**CHAIRPERSON:** What page is the email?

**ADV HULLEY SC:** Page LEA10-235, Mr Chair.

**CHAIRPERSON:** 235?

**ADV HULLEY SC:** That is correct.

**CHAIRPERSON:** Okay, alright.

**ADV HULLEY SC:** It is annexure TJJ2 to the main  
10 affidavit.

**CHAIRPERSON:** Okay. What does the email say?

**ADV HULLEY SC:** Could you just read the email into the record for us please Mr Joubert.

**CHAIRPERSON:** Well he might not need to read it if it is long, I have not reached it, maybe just say what ...[intervenes]

**ADV HULLEY SC:** But then it says Dear ...[intervenes]

**CHAIRPERSON:** ...it was saying.

**ADV HULLEY SC:** Thank you Mr Chair, it says:  
20 "Dear NBPP,  
Attached please find a copy of my affidavit.  
Regards,  
Terence"

Is that correct Mr Joubert?

**MR JOUBERT:** That is correct Chair.

**ADV HULLEY SC:** And the affidavit that you were - that is purportedly attached to that document. Is that which appears at page 230 of the same bundle to 233, is that correct?

**MR JOUBERT:** That is correct, Chair.

**CHAIRPERSON:** And the Terence referred to in the email at page 235. Is that you?

**MR JOUBERT:** Yes, Chair that is me.

**CHAIRPERSON:** Okay, alright and the NDPP that you  
10 sent the email to was Mr Nxasana, is that right?

**MR JOUBERT:** That is correct, Mr Chair.

**CHAIRPERSON:** Okay, alright, continue Mr Hulley.

**ADV HULLEY SC:** Thank you, Mr Chair. Can you just very briefly give us a background to the circumstances in which you prepared this email and sent it to Mr Nxasana?

**CHAIRPERSON:** Okay, shall I assume that you will let him start with, when you say circumstances, let him start with the conversation and then...[intervene]

**ADV HULLEY SC:** Yes.

20 **CHAIRPERSON:** Ja, okay alright.

**ADV HULLEY SC:** Thank you, Chair. So if you can go back to the circumstances in which you - why is it that you compiled this affidavit, what did the affidavit deal with?

**MR JOUBERT:** Okay, I am on the...[intervene]

**CHAIRPERSON:** Well maybe

**MR JOUBERT:** ...the 18<sup>th</sup>...[intervene]

**CHAIRPERSON:** I am sorry Mr Joubert, I may have missed this Mr Hulley. Did we cover the question of who he works for or he worked for at the time, what position he held?

**ADV HULLEY SC:** Okay let me just understand where are you currently employed and where were you employed in 2013?

**MR JOUBERT:** Currently, I am employed with the National  
10 Prosecuting Authorities working at the asset forfeiture unit  
and in 2013 I was the acting regional manager at - for risk  
management also for the NPA.

**CHAIRPERSON:** What is your current position?

**MR JOUBERT:** My current position I am a senior financial  
investigator.

**CHAIRPERSON:** Okay, alright, at the NPA?

**MR JOUBERT:** At the NPA, that is correct Chair.

**CHAIRPERSON:** Yes, based in Durban?

**MR JOUBERT:** That is correct based in Durban.

20 **CHAIRPERSON:** And in 2013, were you also based in  
Durban?

**MR JOUBERT:** That is correct Chair, I was based in  
Durban.

**CHAIRPERSON:** Okay, alright continue Mr Hulley.

**ADV HULLEY SC:** Thank you Mr Chair. Now in 2013 were

you familiar with Colonel Mhlongo?

**MR JOUBERT:** That is correct, Chair. I knew Colonel Mhlongo we were sharing the same office space on the same floor where I was sitting.

**ADV HULLEY SC:** Now, is it correct that in 2013, you had a conversation with Colonel Mhlongo which led to a recording that you did?

**MR JOUBERT:** Ja, I would like to start off by saying the reason why I had Colonel Mhlongo in my office to start off  
10 with. I got a call from Advocate Mollele about - a request that was made by this Colonel Mhlongo to him via telephone, where he requested Advocate Mollele to assist in either getting rid or assist Bobby Motahul[?] for some stadiums that he was involved in and this did not sit well with Advocate Mollele. He reported the matter to me as the person in charge of risk I – this Colonel Mhlongo at the time was seconded to the Exhumation Unit, I forgot what they were called at the time. So they were housed at the NPA building and so I - after listening to the complaint by  
20 Advocate Mollele I then called...[intervene]

**CHAIRPERSON:** Hang on one second Mr Joubert. Who was Colonel Mhlongo employed by at the time, was he also...[intervene]

**MR JOUBERT:** He was employed but...[intervene]

**CHAIRPERSON:** Sorry?

**MR JOUBERT:** No, by the Police, he was suspended. He was employed by the Police but he was seconded to this task team this Examination Group, ja.

**CHAIRPERSON:** Oh, okay. So he was...[intervene]

**MR JOUBERT:** Ja, I think were called ERP[?].

**CHAIRPERSON:** Okay, so you were working for the NPA. He was working for the Hawks but seconded to the NPA or what, is that right?

**MR JOUBERT:** Yes, he was working for the Police. I do  
10 not know which unit he was from but working for the Police and he was seconded to the NPA.

**CHAIRPERSON:** Okay, the...[intervene]

**MR JOUBERT:** So after listening...[intervene]

**CHAIRPERSON:** Hang on, Advocate Mollele that you talking about you say he gave you a call, he phoned, is that right?

**MR JOUBERT:** Yes, yes sir he called me, yes.

**CHAIRPERSON:** And he had a complaint to convey to you, what was the complaints about or what was he  
20 complaining about? Or is that - you do not need to go into what the complaint related to certain people. Certain people that he had, he had a certain complaint but that complaint is not of importance to the particular matter we are dealing with, is that right?

**MR JOUBERT:** That is correct.

**CHAIRPERSON:** As a result of that complaint you called Colonel Mhlongo?

**MR JOUBERT:** Yes, I called Colonel Mhlongo.

**CHAIRPERSON:** Okay, alright continue from there.

**MR JOUBERT:** To speak to him about it. I then called the Colonel Mhlongo, we then spoke about the complaint and I told him that obviously this is not allowed here and it could get you into trouble or actually to be removed from the NPA. Fine, he apologised and that – while we were  
10 together he got a phone call.

**CHAIRPERSON:** Yes.

**MR JOUBERT:** I do not know what the first phone call, I do not know what he was saying to that person but the second phone call was when I realised that I need to record this guy. We just spoke and I reprimanded him, not reprimanded per say but I spoke to him as a friend because we were friends rather than enemies. So I spoke to him while still in my office you now talk about dealing with Nxasana etcetera, etcetera murder investigation. So that  
20 is when I started recording this guy.

**ADV HULLEY SC:** Just pause if I may Chair.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** Just give us a context because you say he starts talking about Nxasana, about murder and so forth. Let us just break it up. What happens in the



conversation and what exactly is he referring to, when you say he talks about Nxasana? Now we know that Nxasana is the National Director of Public Prosecutions but just to place that in context, when was Mr Nxasana appointed as far as you recall, as the National Director of Public Prosecutions?

**MR JOUBERT:** To be honest with you, it is actually during that time that Nxasana was appointed. I cannot tell you for the life of me, the exact date that he was appointed but it  
10 was during that time that he was going around to be introduced to the rest of the NPA that this thing happened.

**CHAIRPERSON:** Oh so when you had this discussion with Colonel Mhlongo it had not been a long time after Mr Nxasana had started his duty as the NDPP.

**MR JOUBERT:** That is correct, Chair that is correct.

**CHAIRPERSON:** He was still busy visiting various NPA offices to introduce himself.

**MR JOUBERT:** That is correct.

**CHAIRPERSON:** Okay, alright Mr Hulley.

20 **ADV HULLEY SC:** Thank you, Chair. Now, you say that he started speaking about Mr Nxasana, just tell us about the content of what he was saying in relation to Mr Nxasana?

**MR JOUBERT:** I remembered that he mentioned that there was supposed to be a murder investigation in Umlazi

somewhere that has to do with where Nxasana was the suspect and he was referring to this individual that he was talking to about that. He also mentioned the fact that Nxasana's wife was working for RAF and how they can try and get enough information from RAF.

This is him still on the phone not talking to me as yet and it so happened that during that time he mentioned that they can deal with Nxasana as they dealt with Gumede. I do not know who Gumede is I have never - but I  
10 just that was in a nutshell what he was conversing with on his phone, in my office.

Now based on that, oh ja, ja the statement he made is that he said, Jiba is the best person for the job, this guy with all these criminal things that he has, he should not have been appointed. That is when I started recording the conversation. The conversation is still there it is obviously on record and I think we – ja, it was made available to all I do not know whether you want me to go into that.

**CHAIRPERSON:** Mr Hulley will lead you.

20 **MR JOUBERT:** Okay.

**ADV HULLEY SC:** Well we will get there in a moment. So if I can ask you turn to page 242 of the same bundle.

**MR JOUBERT:** Two, four, two, yes.

**ADV HULLEY SC:** And that goes up to page 250.

**MR JOUBERT:** That is correct, Chair.

**ADV HULLEY SC:** Could you identify this document?

**CHAIRPERSON:** Just one sec Mr Hulley.

**ADV HULLEY SC:** Thank you, Mr Chair.

**CHAIRPERSON:** Mr Joubert.

**MR JOUBERT:** Yes, Chair.

**CHAIRPERSON:** When you were telling me what you heard in terms of the conversation between Colonel Mhlongo in the second call with whoever he was speaking to and your evidence was a little disjointed. I would like  
10 you to try and just give me in point form to say, what I picked up from that conversation was the following one, two, three. Are you able to do that?

**MR JOUBERT:** Yes, Chair I could. Yes, what I picked up from his conversation on the second telephone call he had was that one, they were busy with an investigation against Nxasana. Two, they were trying to find something on Nxasana at RAF. Three, the fact that Jiba was not appointed was a problem, that is the problem. That is what I picked up, personally.

20 **CHAIRPERSON:** You said something about Gumede earlier on?

**MR JOUBERT:** Yes. He mentioned that they could do the same as Gumede. Now as I said earlier on I do not know who Gumede is, I do not know how he fits into this picture but he mentioned Gumede during that conversation of his.

Those are the four things that I picked up.

**CHAIRPERSON:** Well, did you not say earlier on there was mention of murder and there was mention of, ja murder?

**MR JOUBERT:** Ja, I did say that and I did count it in, murder investigation RAF. The appointment of Jiba and those Gumede thing, Gumede that I do not know.

**CHAIRPERSON:** Yes, okay alright continue Mr Hulley.

**ADV HULLEY SC:** Thank you Chair. Now, at what stage  
10 did you commence recording the conversation?

**MR JOUBERT:** As soon as I heard all these, I obviously had to wait until an opportune time where he was turned away from me in order for me to take out my recorder from the drawer that I have it in and stick it under the newspaper that was on my desk and record. So obviously, I could not record immediately, I had to wait for an opportune time to do so.

**ADV HULLEY SC:** In other words, you have to wait until he was distracted in order for you to start recording.

20 **MR JOUBERT:** Yes.

**CHAIRPERSON:** Well, I am not sure whether he had to wait until he was distracted. It may mean that he simply had to wait until he could put the device without Colonel Mhlongo seeing him there, is that correct?

**MR JOUBERT:** No.

**CHAIRPERSON:** Ja, okay.

**ADV HULLEY SC:** Thank you, Mr Joubert. Now, the document that I have just referred to you at page 242 of the bundle, you have seen that document before have you?

**MR JOUBERT:** That is correct Chair.

**ADV HULLEY SC:** And can you identify what that document is?

**MR JOUBERT:** These are the transcripts of the recording.

**ADV HULLEY SC:** Now, and we will get into the  
10 transcripts in a moment. In relation to the discussion that you had with Colonel Mhlongo, what did he convey to you insofar as these issues are concerned i.e. the murder issue, the RAF, the Gumede and so forth. Did he convey anything to you directly as opposed to a person on the other end of that telephone conversation?

**MR JOUBERT:** Ja, after he dropped the call he then turned to me and what he asked me was to arrange, if I knew anybody at RAF that I could link him up with and then he elaborated that he needed somebody there that could  
20 get records of what Nxasana got from RAF, meaning work that that was given to him. He also then mentioned that Nxasana's wife works for RAF.

**ADV HULLEY SC:** I will ask you to turn to page 35 of the bundle. Sorry, page 245 pardon me Mr Chair.

**MR JOUBERT:** Yes.

**ADV HULLEY SC:** And if you would just read for the benefit of the Chairperson and of course for the record, if you could read from line 11 onwards sorry line 16 onwards pardon me.

**CHAIRPERSON:** Hang on one second, sorry, Mr Joubert I may have missed this.

**MR JOUBERT:** Okay.

**CHAIRPERSON:** Is the document starting at page two four two the transcript of a conversation that happened  
10 between you and Colonel Mhlongo after he had finished on his telephone conversation that you are talking about?

**MR JOUBERT:** Yes.

**CHAIRPERSON:** What is it, that noise I hear it for the second time.

**MR JOUBERT:** Yes, Chair.

**CHAIRPERSON:** Hang on one second, Mr Joubert do not forget your answer. What is that?

**ADV HULLEY SC:** I have no idea. I am not sure if it is in the room as opposed to their room, I am not sure if it is  
20 coming from here.

**CHAIRPERSON:** Where is Reverend Stimella? Maybe the technicians will know whether it is connected with.

**ADV HULLEY SC:** There certainly was a sound.

**CHAIRPERSON:** Yes, it is the second time it is happening. Okay, let us continue hopefully somebody will

tell is what is happening.

**ADV HULLEY SC:** Okay.

**CHAIRPERSON:** Okay, so my question was whether the document that starts at page 242 is a transcript of a conversation that you and Colonel Mhlongo had after he had finished on his second call?

**MR JOUBERT:** That is correct Chair.

**CHAIRPERSON:** Okay, alright proceed.

**ADV HULLEY SC:** Thanks Mr Chair and have you had an  
10 opportunity to read through this transcript and to verify whether it is in accord with your recollection or with your recording?

**MR JOUBERT:** Yes, Chair I have.

**ADV HULLEY SC:** And does it in fact accord with your recording or is there anything that you think ought to be changed?

**MR JOUBERT:** Yes, it definitely highlights the recording, most of the recording I would say there was a there was merely a few errors that was made by the person that  
20 transcribed this but it is very minimal.

**ADV HULLEY SC:** Okay, so if we can start and I would like to get to a specific passage but before we do so, if we can start at page 243 that is where the recording commences. Have you got that?

**MR JOUBERT:** Yes.

**CHAIRPERSON:** Ja, that noise happens again, is it -  
where is it?

**ADV HULLEY SC:** I think it is somewhere in the room that  
is occupied by Mr Joubert.

**CHAIRPERSON:** Is the noise coming from the room where  
you are Mr Joubert?

**MR JOUBERT:** Yes.

**CHAIRPERSON:** Oh is it supposed to happen or it is not  
supposed to happen in terms of the setup?

10 **MR JOUBERT:** Yes, it is from this room. We are in a  
boardroom here at the NPA offices.

**CHAIRPERSON:** Oh is it somebody working, it is like  
somebody is working...[intervene]

**MR JOUBERT:** I should I think so.

**ADV HULLEY SC:** Is it something that you can prevent.

**MR JOUBERT:** I should think so.

**CHAIRPERSON:** Or is it something that can be avoided or  
you do not know you would need to check that?

**MR JOUBERT:** The walls are very thin here sir.

20 **CHAIRPERSON:** Okay, no that is fine. Let us continue if  
it happens again, then maybe we could take a short  
adjournment and you can see if you can talk to somebody.

**ADV HULLEY SC:** Thank you Mr Chair.

**MR JOUBERT:** Okay, Chair.

**CHAIRPERSON:** Okay, alright.



**ADV HULLEY SC:** Now the first part of the recording or the transcript of the transcription commences with Colonel Welcome Mhlongo right at the top of the page, you see that?

**MR JOUBERT:** Yes, Chair.

**ADV HULLEY SC:** Now, at that stage is he conversing with you or is he still conversing with the person on the other end of the phone?

**MR JOUBERT:** No, at that time Chair he was still  
10 conversing with somebody on the telephone and not with me.

**ADV HULLEY SC:** Now...[intervene]

**CHAIRPERSON:** So what portions of this document reflects or what portion of this document reflects the conversation Colonel Mhlongo was having with the person on the phone or from where does it start to reflect the conversation between you and Colonel Mhlongo?

**MR JOUBERT:** It is only the first section up until line  
20 number nine that he is not conversing with me. The first portion of it, the rest of it his having a conversation with me. **CHAIRPERSON:** Okay, alright.

**ADV HULLEY SC:** Mr Joubert I have been asked to request that when you answer that you try to remain as still as possible that you not move from side to side otherwise your picture is not captured, that you could just remain still

while you respond. That is if that is in order with you.

**MR JOUBERT:** It is in order noted.

**ADV HULLEY SC:** So from page 243, from line 10 on that page onwards that is a conversation that is taking place between you and Colonel Mhlongo, is that correct?

**MR JOUBERT:** That is correct Chair.

**CHAIRPERSON:** Did Colonel Mhlongo report to you at that time as somebody who - for the duration of his secondment to the NPA at that time?

10 **MR JOUBERT:** No, Chair he was reporting to - no he was merely just using an office space that I had on the floor that I was occupying but he was reporting to the Deborah's of this world downstairs.

**CHAIRPERSON:** Okay.

**ADV HULLEY SC:** Thank you Mr Chair. I would like you to move onto LEA10-245.

**CHAIRPERSON:** Why do you change Mr Hulley? Why do you change from using the last three digits to mention the page?

20 **ADV HULLEY SC:** I just forget from time to time, Mr Chair.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** But it should be 245.

**CHAIRPERSON:** Especially because I take it this is the only bundle you are using.

**ADV HULLEY SC:** This is the only bundle.

**CHAIRPERSON:** Ja, okay alright.

**ADV HULLEY SC:** Pardon me Mr Chair. If you could - from line 15 onwards just take us through what is being said over there, first read into the record and if there is any portions of that that you believe ought to be changed.

**MR JOUBERT:** Okay.

**ADV HULLEY SC:** You can remain...[intervene]

**MR JOUBERT:** No, I mean...[intervene]

10 **ADV HULLEY SC:** Sorry Mr Joubert once again you are out of picture again. Is it – I am not sure how you being recorded, is it on a laptop that you are being recorded?

**MR JOUBERT:** Yes.

**CHAIRPERSON:** Okay, maybe let us do it this way from paragraph 15 on page 243 Mr Joubert.

**MR JOUBERT:** Yes, Chair.

**CHAIRPERSON:** It reflects that Colonel Mhlongo said this:

20 “There are indistinct to do justice. So now they are complaining that us we do things here we do their things and we said to them and our job is to investigate and exhume and transport remains this function things.”

**ADV HULLEY SC:** Sorry Mr Chair, if I may interrupt you, I am sorry I was actually referring to page 245.

**CHAIRPERSON:** Oh is that so.

**ADV HULLEY SC:** My apologies.

**CHAIRPERSON:** Okay, I am sorry. Okay, maybe it is going to be faster if you read it for him.

**ADV HULLEY SC:** Yes, thank you Mr Chair.

**CHAIRPERSON:** And maybe ask him to say what that particular part is about.

**ADV HULLEY SC:** According to the transcription, it says that from line 15 on it says:

10            “No, I mean the whole our whole point here is one collection. No, no I would think here what the boss, these guys from RAF tomorrow morning, all I am going to do I will link you up with them so that you can get all the documentation. The thing that I do not want is not - I am just bringing A to B.”

And then Colonel Welcome Mhlongo says:

“Yes.”

And then you say at line 20:

20            “These people of yours I do not think I do not want to know them. I do not want to know them, you see. I go to you, I say to you WS go and see so and so that is because if it comes back and this woman, okay, she gets the post back.”

Then it is indistinct and then it continues:

“Through these guys.”

Now just that portions, what is being discussed over there and is there any portion of that which you wish to change? In other words, where the transcription is inaccurate.

**MR JOUBERT:** Yes, Chair. What is happening here is our discussion. Hello.

**ADV HULLEY SC:** Continue.

**MR JOUBERT:** Ja, what is happening here is remember earlier on I made mention of the fact that there was a discussion between - about RAF, him wanting assistance,  
10 guys that would be able to get information for him at RAF and this is my response to him in stating that yes, I can - can you guys hear me?

**ADV HULLEY SC:** We can hear you.

**MR JOUBERT:** What I did here is basically just confirming with him that I would source the guys from RAF, I do not know anybody at RAF by the way. Just to let you know that, I made him believe that I would bring A to B, him and his team of investigators that are investigating this RAF matter or want information on the RAF matter to the  
20 guys that I am supposedly supposed to arrange. That was the first section. The second section of my answer is I made mentioned that I do not want to see his guys. He had two guys, two cops I do not know them, they were in plainclothes. They were apparently from Umlazi that were working with him on this.

So what I mentioned in the second stint is I do not want to meet his guys. I just want him – A to B and then they do not even have to know that I gave, I hooked them up with the guys from RAF. So that is - the lady, what I want to add in here we are specifically referring to Jiba in this instance. My conversation with Mhlongo here which is indistinct it made mention of Jiba.

I do not know the person that did this, that transcribed this might have missed that part and it is  
10 actually on there, after listening to the to the recording it is actually there.

**ADV HULLEY SC:** Let me just understand you saying that you actually listened to the recording in addition to reading this transcript, you have actually listened to the recording?

**MR JOUBERT:** That is correct Chair, that is correct.

**ADV HULLEY SC:** And you say that is a portion of the recording that is not captured in the transcript, is that correct?

**MR JOUBERT:** That is correct Chair.

20 **ADV HULLEY SC:** And where should that portion go in on the transcript as it stands, could you tell us where?

**MR JOUBERT:** There just before indistinct, that indistinct gap that is where it should go.

**ADV HULLEY SC:** Very well.

**CHAIRPERSON:** Is that at 245?

**ADV HULLEY SC:** At page 245 at line 23 Mr Chair.

**CHAIRPERSON:** 225?

**ADV HULLEY SC:** That is correct sorry 245 pardon me Mr Chair.

**CHAIRPERSON:** Oh.

**ADV HULLEY SC:** Two, four, five my apologies.

**CHAIRPERSON:** 245 ja, that is where I was the only indistinct I can see here is at line six. From indistinct wanted to do that.

10 **ADV HULLEY SC:** It is at line 23 that the witness is referring to Mr Chair.

**CHAIRPERSON:** Oh, 23 okay so Mr Joubert from line 20 at page 245 you are reflected as having said to Colonel Mhlongo:

“These people of yours I do not want to know them; I do not want to know them you see. I got say to you WS go and see so and so that is it because if it comes back and this woman is okay. She gets the post back, indistinct through these guys.”

20 That is what it says. So you are saying where it says indistinct, what has been left out includes Ms Jiba’s name.

**MR JOUBERT:** That is correct Chair.

**CHAIRPERSON:** Okay what was the point about Ms Jiba that was being made by yourself here?

**MR JOUBERT:** The point of if she gets her post back?

**CHAIRPERSON:** Yes.

**MR JOUBERT:** I am referring to Jiba.

**CHAIRPERSON:** Oh.

**MR JOUBERT:** It is part and parcel of that recording.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** And just to place that in context.

When you speak about Advocate Jiba getting her post back, you are referring to the fact that you had prior to the appointment of Mr Nxasana.

10 **MR JOUBERT:** You will have to excuse me there was just a noise here that I could not hear. Please repeat that question, sir?

**CHAIRPERSON:** Ja, no we are going to adjourn for a few minutes to enable you, to give you a chance to talk to somebody maybe they can...[intervene]

**ADV HULLEY SC:** Assist.

**CHAIRPERSON:** Do whatever later or some other time when we are done. So just make the request, is that alright?

20 **MR JOUBERT:** Okay, I will do it Chair.

**CHAIRPERSON:** Ja, I guess it will be five minutes.

**MR JOUBERT:** Yes, Chair.

**CHAIRPERSON:** Ja, we adjourn for five minutes.

**MR JOUBERT:** Okay.

**INQUIRY ADJOURNS**



**INQUIRY RESUMES**

**CHAIRPERSON:** Okay let us continue.

**ADV HULLEY SC:** Thank you Mr Chair. Mr Joubert if we could just before the brief adjournment just to sum up the – you were talking about page 245 of the bundle at lines 15 to 20. Were you com – were you finished with your explanation about what you were discussing over there?

**MR JOUBERT:** That is correct.

**ADV HULLEY SC:** Thank you. Now there is a reference  
10 here if I just ask you about two things. If you go back to line  
16 it says:

“Our thing here with the boss.”

Who is the re – who is the boss that is being referred to?

**MR JOUBERT:** The boss that is being referred to here is actually Nxasana.

**ADV HULLEY SC:** And then further down at line 20, 21, 22  
you say:

“That is because if it comes back and this woman 00:01:21  
she gets the post back something in inverted – sorry  
20 indistinct which you say includes Jiba through these guys.”

Who is the reference to this woman?

**MR JOUBERT:** The woman that I am referring to here is Jiba.

**ADV HULLEY SC:** And just to place in context you just before the adjournment I was asking you about the

circumstances in which Jiba – because you talked about getting her post back. Now this is 2013 specifically in November of 2013. At the time Mr – you testified earlier on that Mr Nxasana had only just taken over as the National Director of Public Prosecutions and he was still going around to introduce himself to people.

Who was the National Director of Public Prosecutions or the acting National Director of Public Prosecutions prior to that?

10 **MR JOUBERT:** Ms Jiba was acting Director of Public Prosecutions before Nxasana was appointed.

**ADV HULLEY SC:** And when you talk about getting her job back precisely or more or less what are you – what is it that you – the two of you are referring to? Obviously I understand that the job that was....

**MR JOUBERT:** Getting the NDPP –

**ADV HULLEY SC:** Sorry I understand that the job that you are referring to that she will get back is that of a National Director of Public Prosecutions but what I am asking you is  
20 why are you – what are you – what point are the two of you making that she will get her job back? Why would she get her job back?

**CHAIRPERSON:** In other words what was the context ...

**MR JOUBERT:** Remember she –

**CHAIRPERSON:** In other words what was the context of this

statement about her getting her post back?

**MR JOUBERT:** The context under which this thing was said is as follows. She would get her job back if these guys can get all these things that we spoke about RAF, the murder docket etcetera, etcetera against Nxasana in order for him to be lift out of his – out of his chair she would then be given back. That is the context that we are discussing here.

**CHAIRPERSON:** In order for him to what – to do what?

**MR JOUBERT:** In order for – for Jiba to get her job back  
10 this guy William – I mean Welcome Mhlongo and his team ought to go and gather as much as he can in order for them to – to make a case against Nxasana in order for him to be taken off that NDPP post that he was – that he was

**ADV HULLEY SC:** Occupying?

**MR JOUBERT:** Yes.

**CHAIRPERSON:** Okay let us try and get this clear. You talk about – do you talk about here bringing A to B who – what were you talking about when you referred to you were just bringing A to B what were you talking about?

20 **MR JOUBERT:** What I was referring to there Chair is A was Mhlongo and his team; B was the gentlemen from – from RAF that would supposedly assist them in getting the information they are looking for. That is what I meant there.

**CHAIRPERSON:** Who was going to ensure that A and B get – got together?

**MR JOUBERT:** Me – I was going to get Mhlongo to these RAF guys to get the information that he is looking for.

**CHAIRPERSON:** Yes. Had he asked you to assist him to get information from RAF for him and his team?

**MR JOUBERT:** That is correct Chair.

**CHAIRPERSON:** What information did he say he was looking for that he wanted you to get for him?

**MR JOUBERT:** The information he was looking for was what work did Nxasana get from RAF because of the fact that his  
10 wife was working there or is working there he was under the impression that Nxasana got a lot of work from RAF.

**CHAIRPERSON:** And did he want to see how good Nxasana was as a lawyer in RAF work? Why – why – what was the significance of this information?

**MR JOUBERT:** I – I think he wanted to know whether Nxasana did not embezzle some funds – some funds from RAF. That is – that was my understanding.

**CHAIRPERSON:** What did he say he wanted this information to use it for?

20 **MR JOUBERT:** He said to me that let me paraphrase. He asked me do you know anybody at RAF that could assist us with information. We want to see whether Nxasana got work from RAF because his wife works there and see whether he did not embezzle RAF monies. That was it in a nutshell.

**CHAIRPERSON:** So he was looking for information that

could reveal that Mr Nxasana may have been involved in some wrongdoing?

**MR JOUBERT**: That is correct Chair that is correct.

**CHAIRPERSON**: Yes. So – and did you then offer to assist him that is Colonel Mhlongo to meet with people that you knew at RAF?

**MR JOUBERT**: Yes I offered that – I offered him that.

**CHAIRPERSON**: Yes.

**MR JOUBERT**: But I do not know anybody at RAF.

10 **CHAIRPERSON**: Oh why did you ...

**MR JOUBERT**: I made him believe that I – I made him believe that I will assist him.

**CHAIRPERSON**: Yes and why did you make him believe that you could assist him when you did not know anybody there? What was the – what did you want to achieve for yourself?

**MR JOUBERT**: I needed to understand what was this guy up to that was – that was it.

**CHAIRPERSON**: Yes.

**MR JOUBERT**: It was not to assist him per se.

20 **CHAIRPERSON**: Yes. So – so you did not mean to – to carry out to honour this promise?

**MR JOUBERT**: That is correct Chair.

**CHAIRPERSON**: Yes. Okay alright. So after you had made this promise to him what happened then in your conversation? Mr Hulley you can take it from there?

**ADV HULLEY SC:** Thank you Mr Chair. If we can just move forward to the following page that is at page 246 Mr Joubert.

**CHAIRPERSON:** Well maybe before you do that. Did your conversation continue – you and Colonel Mhlongo after you had undertaken to facilitate a meeting between him and his team on the one hand and some people from RAF on the other?

**MR JOUBERT:** Yes Chair. Our conversation continued.

**CHAIRPERSON:** Okay. Mr Hulley take it from there.

10 **ADV HULLEY SC:** Thank you Mr Chair. Now if you look at page 246 at approximately line 10 this is you speaking again – you say:

“Another thing we had...”

**MR JOUBERT:** Yes.

**ADV HULLEY SC:**

20 “Like this murder case of yours now the uncle and all that. Guys we must not sleep on top of information we must get whatever we can get our hands on. Rather we must hurry up because tomorrow as you say this woman is in a hurry even us we want to know where are we going because we do not want to stay here then it is indistinct followed by and then – and then there is an invention and he says Colonel Mhlongo says I am

struggling to eat from the drug addicts and  
backwards it says Amapara.”

Now this portion over here another thing we have like this  
murder case of your now. What are you referring to?

**MR JOUBERT:** I am referring to the information that he  
gave me that they are investigating him and his team are  
investigating a murder case in the Umlazi area against  
Nxasana. And this is just me telling him that he must no  
sleep on the information he must hurry up but I basically  
10 wanted to get this part of the murder case that he is  
investigating into our conversation.

**ADV HULLEY SC:** Now that part of the conversation  
because this is you raising it. That part of the conversation  
when you say you wanted to get it into the conversation  
where did it- where did the idea or the understanding of that  
murder case come from – where did you get it from?

**MR JOUBERT:** I got it from him but it came way before the  
recordings started there was a conversation that we had that  
is how I got to know of the murder case that he is  
20 investigating. Remember I mentioned the four things that –  
that he made mention the murder case, the RAF, Jiba and  
this Gumede guy. That is where it came up.

**ADV HULLEY SC:** Now when you say over here – when you  
said earlier on that you were trying to get this info the  
conversation just explain what you mean by that?

**MR JOUBERT:** Remember there were – there are things that he said before I started recording and because of that as you would see that like for argument sake Gumede is nowhere to be mentioned in – in this recording but I know about Gumede because of the conversation we had prior.

So the murder – so too the murder case I did not know that Nxasana had a murder case against him I heard it from him. So in – I knew what I was doing now recording this guy and I wanted him to mention this murder case in the  
10 recording now.

**ADV HULLEY SC:** Very well. In other words what you say is that you – you wanted the recording to capture the conversation that had taken place prior to you commencing or prior to you to switching on the recording device?

**MR JOUBERT:** That is correct Sir.

**ADV HULLEY SC:** And you wanted that captured on the actual recording itself?

**MR JOUBERT:** That is correct Chair.

**ADV HULLEY SC:** Now you say over here this murder case  
20 of yours why do you refer to it as a murder case of yours of him?

**MR JOUBERT:** I merely wanted to say the murder case that you mentioned that should have been the correct line you know against Nxasana. So that is why I said the murder case of his. But that is what I meant with it.



**ADV HULLEY SC:** Right. And there you go two lines down.

**CHAIRPERSON:** I am sorry Mr Hulley.

**ADV HULLEY SC:** Pardon me Mr Chair.

**CHAIRPERSON:** Where is that part that you are on with Mr Joubert? I was at 246 and moved to 247.

**ADV HULLEY SC:** It is line 11 Mr Chair.

**CHAIRPERSON:** Of which page?

**ADV HULLEY SC:** Of 246.

**CHAIRPERSON:** 246?

10 **ADV HULLEY SC:** We still on page 246.

**CHAIRPERSON:** Oh okay. Okay you may continue.

**ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** We – I think if – we will continue for about five minutes and adjourn. Ja.

**ADV HULLEY SC:** Thank you. You go onto to say:

“Brother we must...”

**CHAIRPERSON:** So I suspect Mr Manala and his team are happy.

20 **ADV HULLEY SC:** They are saying silent prayers now Mr Chair.

**CHAIRPERSON:** Okay alright.

**ADV HULLEY SC:** Thank you Mr Chair. You go on to say:

“Brother we must hurry up because tomorrow as you say this woman is in a hurry.”

Who is the reference to this woman is in a hurry?

**MR JOUBERT:** This woman I am referring to Jiba when I refer to this woman in this context.

**ADV HULLEY SC:** Okay. And when you say that she is in a hurry where did you get that from the fact that she is in a hurry and what is it that she is in a hurry for?

**MR JOUBERT:** Ja. I got that from Colonel Mhlongo that this woman is in a hurry for the information for us to get or for them to get the information.

**ADV HULLEY SC:** And then he goes on to say at line 15 he  
10 says:

“I am struggling to eat from the drug addicts  
(Amapara).”

Do you know what he is referring to?

**MR JOUBERT:** I have got no idea Chair. I have got absolutely no idea what he meant by that.

**CHAIRPERSON:** Well I think in certain parts of the country they will know what you are talking about if you talk about an Amapara. You know that Mr Joubert or not?

**MR JOUBERT:** I know – I know what he was referring to I  
20 am talking about the context in which he made the statement  
I do not know.

**CHAIRPERSON:** Oh okay. Now I see (talking over one another).

**MR JOUBERT:** You know but I know what a para is?

**CHAIRPERSON:** Ja okay. Alright.

**MR JOUBERT:** Amapara I know.

**CHAIRPERSON:** Okay.

**ADV HULLEY SC:** Thank you Mr Chair. Then if we could continue on page 247.

**CHAIRPERSON:** I am sorry Mr Hulley I may have missed this. Mr Joubert we –

**MR JOUBERT:** Yes – yes Chair.

**CHAIRPERSON:** We are into the conversation between you and Mr Mhlongo now but at a certain stage prior to maybe  
10 not prior to the - you recording maybe when he had finished his call and started talking to you did he explain to you how he came to be involved in this “assignment” in quotes? Maybe you have explained it and I missed it. Did he explain to you how he came to be involved in this investigation to find something – some information about Mr Nxasana?

**MR JOUBERT:** Chair the only thing he mentioned was the fact that he told me he is investigating a murder case against Nxasana. He also told me that Nxasana was not the correct person for the job and he is trying to assist Jiba in  
20 getting her seat back. So could I...

**CHAIRPERSON:** In getting?

**MR JOUBERT:** Could I assist him – getting her seat back.

**CHAIRPERSON:** Oh the position?

**MR JOUBERT:** So can I – yes.

**CHAIRPERSON:** The position of Chief – she was acting

NDPP before Mr Nxasana was appointed. When Mr Nxasana was appointed...

**MR JOUBERT**: That is correct.

**CHAIRPERSON**: As NDPP she ceased to be acting NDPP and you are saying that Colonel Mhlongo said he was assisting her to get that position back. Is that what you are saying?

**MR JOUBERT**: That is what I am saying Chair.

**CHAIRPERSON**: Okay, okay alright.

10 **ADV HULLEY SC**: Well to take that one step further. Was there any indication of who had given him this assignment, this instruction, this – ask him to conduct this investigation?

**MR JOUBERT**: To be honest with you I do not know. I am in no position to say who gave him the instruction. The only thing that I am saying is what I heard from him. Whether he got it from Jiba I would not be in a position to say yay whether it actually happened or not. But that was what I got from him.

20 **ADV HULLEY SC**: But the question I am asking you is irrespective of where as a fact he got the instruction or the mandate from I am asking you did he tell you where he got the instruction or the mandate from?

**MR JOUBERT**: Yes.

**ADV HULLEY SC**: And?

**MR JOUBERT**: He got it from Jiba.

**ADV HULLEY SC:** Now if you...

**CHAIRPERSON:** So – so was the point you are making a minute ago that you – you have no personal knowledge as to where he got the instructions from but the point you are making now is that he told you that he got the instructions from Ms Jiba, is that what you are saying? I just want to understand exactly what you are saying.

**MR JOUBERT:** That – that is exactly what I am saying Chair.

10 **CHAIRPERSON:** Yes. Okay.

**ADV HULLEY SC:** Thank you.

**CHAIRPERSON:** And did he tell you what exactly Ms Jiba said he should do or he and his team should do for her?

**MR JOUBERT:** As I said earlier on there were four things that he wanted me to do that I mentioned already in my – here previously and he said it was to collect whatever I can of whatever he can for the investigation against Nxasana.

**CHAIRPERSON:** Hm okay alright. I think we need to stop here.

20 **ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** Yes. Mr Joubert we are going to adjourn today we unfortunately did not make as much progress as one had hoped but I think that is because of Mr Manala's plans – postponement application but it needed to be dealt with before we could proceed. We are going to have to

adjourn.

Mr Hulley I am having in mind that attempts should be made for us to continue with Mr Joubert's evidence sometime next week.

**ADV HULLEY SC:** I am in your hands Mr Chair. I will make myself available.

**CHAIRPERSON:** Yes. I am thinking of Thursday if we make it an evening session and the advantage of an evening session Mr Manala and your team is that in case during the  
10 day you were in court in the evening you would not be in court ordinarily and you might be available – it might be easy to be available in the evening and to the extent that you would like to be there when to be here when Mr Joubert continues with his evidence.

I – that is what I am having in mind. That is maybe starting at four – but we could start at five if that would make a difference in your availability.

But also I would like that when he does finish with his evidence Mr Mhlongo be ready and I am quite happy to allow  
20 that Mr Mhlongo gives his evidence via video link as he was going to do today and Mr Joubert may also do so. And if you as Colonel Mhlongo's counsel wish to appear virtually also on that occasion I grant you that leave.

How does that sound to you?

**ADV MANALA:** Chairperson based on the permission for

us as well to appear through a virtual link it removes the obstacles that may have thought those that would have been there so we should be able to attend.

**CHAIRPERSON:** Yes okay alright.

**ADV MANALA:** Thank you.

**CHAIRPERSON:** Thank you. Mr Joubert would you be available on Thursday next week maybe about four or five o'clock to continue with your evidence remotely?

**MR JOUBERT:** Yes – yes Chair I will avail myself.

10 **CHAIRPERSON:** Yes. Okay alright. Mr Manala do you think it is fine if we say four o'clock or would you prefer five o'clock?

**ADV MANALA:** Chair as I had earlier indicated we are going to be in Mafikeng.

**CHAIRPERSON:** Ja.

**ADV MANALA:** And we are assuming we might finish early but I ...[indistinct] find a way but if the latest is five that is available we will try work our best around – we are two counsel as I come along he might still be there.

20 **CHAIRPERSON:** Okay I am not sure if I think because of the mask I am not hearing everything.

**ADV MANALA:** Pardon me Chair.

**CHAIRPERSON:** Yes.

**ADV MANALA:** We appearing as two counsel.

**CHAIRPERSON:** Ja.

**ADV MANALA:** For Mr Mhlongo so in the event that I join and that I join later.

**CHAIRPERSON:** Oh the other counsel would be available from four.

**ADV MANALA:** Would be available yes.

**CHAIRPERSON:** Okay no that is fine. That is fine.

**ADV MANALA:** Thank you.

**CHAIRPERSON:** Okay alright we – we are going to adjourn for the day and we will adjourn Mr Joubert's  
10 evidence to Thursday next week at four o'clock. And as I have said he will continue to give his evidence remotely and counsel for Mr Mhlongo if it suits them to appear virtually they may do so as well. Okay.

**ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** We adjourn.

**REGISTRAR:** All rise.

**MR JOUBERT:** Thank you Chair.

**INQUIRY ADJOURNS TO 15 FEBRUARY 2021**