

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

16 JUNE 2021

DAY 410



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 16 JUNE 2021

CHAIRPERSON: To work as possible within a short space of time. It is a public holiday and a very important public holiday so I really appreciate that everybody has given us cooperation.

ADV HULLEY SC: Thank you Mr Chair. I believe we all think it was unavoidable in the end.

CHAIRPERSON: Yes. Yes. Okay all right. Registrar just call the matter – the first matter.

10 **REGISTRAR:** Advocate Mosing in respect of the evidence of Mr McBride, Colonel Du Plooy, Mr White, Mr Khuba, Mr Sesoko, Mr Booyesen and Mr Mlotshwa – SEQ47 of 2020.

UNKNOWN COUNSEL: Morning Chair.

CHAIRPERSON: Good morning, good morning.

ADV MATHEBEDE: Mathebede together with Advocate Vilakazi Ramymele and Mahlangu appear on behalf of the applicants.

CHAIRPERSON: Yes thank you. Thank you.

20 **UNKNOWN COUNSEL:** Chairperson I think the first matter to be discussed is that of Advocate Pretorius.

CHAIRPERSON: Yes

UNKNOWN COUNSEL: He has been granted permission to cross-examine Mr McBride and General Booyesen.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: Which is set down for the 25th and

the 28th of this month.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: But our submission is the legal team together with Advocate Pretorius is that the matter of issues raised by both – by McBride are intertwined with that of the Mr Sesoko and Mr Khuba.

Now to simply or only cross-examine McBride without cross-examining Mr Khuba and Sesoko we respectfully submit that it is not going to achieve the object
10 for which this commission is said and not only that that will be prejudicial to – to Advocate Pretorius.

Similarly with Mr – General Booyens' evidence is intertwined with that of Cator Manor and it links up with the – the evidence of Advocate Maema [?], Advocate Chauke and Advocate Mathenjwa.

Now to cross-examine General Booyens solely based on the Advocate of – evidence of Advocate Pretorius will not serve any purpose. And – and Chairperson you have heard evidence and South Africa was told about how
20 the applicants were – were captured for political and corrupt reasons.

Now that being so we are mindful of the fact that you know there are time constraints in as far as the lifespan of this commission but however it is very important and it is in the interest of our – our clients that you know at least this

commission and South Africa should know what the version of the applicants is because a clear perusal and analysing of the affidavits clearly demonstrate that their accusers peddled lies and the accusers themselves one way or the other they were implicated or they were prosecutors – sorry they were prosecuted in a number of matters.

So that being the case they were deflecting away the attention from their criminal conduct.

Now our request is that the legal team should be
10 given an opportunity to summarise the critical versions of our clients and that the 25th and the 28th be utilised at least that their version should be read in this commission because those lies were peddled in this commission so that at least this commission and the country at large should know what the version of the – the applicants are and we also request that that should also appear in the – in the report at the end of the day.

That will at least to a certain extent you know make up for – for you know the – the indignity for the – the blow
20 to the character that our clients suffered as a result of the malicious and unfounded allegations.

You will note that if you can have a regard to the affidavits of our client that that – those allegations are merely conjecture and speculation.

There is no you know truth; there is no value in

whatever was said Chairperson.

CHAIRPERSON: Do I understand correctly that your position as representing your respective clients is that in the context of the remarks I made yesterday you would have no difficulty with not pursuing cross-examination but you would ask that at least your clients legal representative or representatives be allowed in due course to summarise their version at the commission hearing publicly so that the public knows their version. Is my understanding correct?

10 **UNKNOWN COUNSEL:** That – that is correct Chairperson.

CHAIRPERSON: Yes. Okay. I do not have a problem with that. I think that would be fine. With regard to Mr Pretorius I think I am in agreement with your submission with regard to Mr Pretorius the witness rather than the commission's Mr Pretorius – I am in agreement with your submission the reason why I think his matter was set down it was simply that maybe unlike some of your client – other clients he had already been granted leave to cross-examine but it was hoped that there would be this discussion and that we would
20 end up with what you have actually – what we are ending up with.

So – so there is – so at least – is it set down for one day?

UNKNOWN COUNSEL: It is set down for two days – for the 25th and the 28th.

CHAIRPERSON: Yes. Maybe it might not be necessary – it certainly should not be necessary to use both days for – for purposes of this – of summarising the – their versions. So maybe it would be part of the first day – I do not know depending how many clients there are and maybe it might be the whole day on one of the days but that can be done. So that would be acceptable.

So in regard to this – the position you have articulated that covers Mr Mosing and others and if so who
10 are the others?

UNKNOWN COUNSEL: We have got – we have got Advocate Mosing, Advocate Maema, Advocate Mashuga, Advocate Chauke, Mokgatle, Advocate Mathenjwa and Chauke and Baloyi.

CHAIRPERSON: And of course Mr Pretorius?

UNKNOWN COUNSEL: That is correct Chairperson.

CHAIRPERSON: Hm. Let me see if I have got the list correctly.

UNKNOWN COUNSEL: There should be eight in all
20 Chairperson.

CHAIRPERSON: 3,4, 6 I think two are missing but let me mention who I have got and then we can add the ones that I have not got. Advocate Mosing, Advocate Maema, Advocate Mashuga, Advocate Chauke, Advocate Mathenjwa, Advocate Pretorius.

UNKNOWN COUNSEL: We have got Advocate Baloyi.

CHAIRPERSON: Yeess.

UNKNOWN COUNSEL: We have got Mokgatle.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: And Pretorius.

CHAIRPERSON: Okay I have got Pretorius. Okay I now have got all eight. Advocate Mosing, Advocate Maema, Advocate Mashuga, Advocate Chauke, Advocate Mathenjwa, Advocate Pretorius, Advocate Baloyi and Advocate
10 Mokgatle. Okay.

In terms of formalities do you – do you withdraw the applications?

UNKNOWN COUNSEL: Chairperson we leave that in the hands of the Chairperson.

CHAIRPERSON: Yes okay no that is fine. Okay so I think I will ask the Registrar for the sake of the transcript to read – recall all the other ones so that I can then just deal with all of them.

REGISTRAR: Advocate Mosing in respect of the evidence
20 of Mr McBride, Colonel Du Plooy, Mr White, Mr Khuba, Mr Sesoko, Mr Booyesen and Mr Mlotshwa SEQ47 of 2020. Advocate Baloyi in respect of the evidence of Mr McBride, Mr Khuba, Mr Sesoko SEQ33 of 2020. Advocate Mashuga in respect of Mr McBride SEQ35 of 2020.

Advocate Mokgatle in respect of Mr Booyesen SEQ34 of 2020.

Advocate Pretorius in respect of Mr Sesoko and Mr Khuba SEQ29 of 2020.

Advocate Chauke in respect of Mr Booyesen and Mr Mlotshwa SEQ09 of 2020.

Advocate Maema in respect of Booyesen, Mr McBride, Mr Van Jaarsveld, Mr Van Rensburg, Mr Mlotshwa, Mr Sesoko, Mr Nxasana, Mr Khuba, SEQ29 of 2021.

10 Advocate Mathenjwa in respect of Mr Booyesen, Mr McBride, Mr Sesoko, Mr Nxasana SEQ30 of 2021.

CHAIRPERSON: Okay all right. Thank you. In respect of the matter of Advocate Pretorius JP Pretorius – I have got to think because there is PJ and JP Pretorius. I think it is JP Pretorius SC who had already been granted leave to cross-examine. It is recorded that through his counsel he has indicated that in the light of the remarks made by the Chairperson yesterday at the hearing he will not pursue cross-examination but an opportunity will be granted in
20 accordance with the Chairperson's directive for his counsel to summarise or give a summary in public at the hearing of the commission of his version in relation to the allegations made against him.

In respect of Advocate Mosing – in respect of the applications brought by Advocate Mosing, Advocate Maema,

Advocate Mashuga, Advocate Chauke, Advocate Mathenjwa, Advocate Baloyi and Advocate Mokgatle those applications are dismissed in the light of the position communicated to the Chairperson of the commission by their counsel in the light of the remarks made by the Chairperson yesterday at the hearing but they will be granted an opportunity in due course for their counsel to give a summary of their versions against the allegations made against them by different witnesses in due course.

10 Are you covered?

UNKNOWN COUNSEL: Thanks. Chairperson in view of...

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: The volume of the work that we need to undertake I am going to ask that we keep the 28 open but if we finish on the 27th...

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: On the 26th then it will be necessary to come back on the 28th.

CHAIRPERSON: Yes. Yes. No that is fine. What we may
20 need to do ahead of – of the 28th maybe to talk about how much time we should be looking at allocating for each one so that there is understanding.

Let me mention that as you might be aware we have been using even evenings for hearings to try and complete as much work as possible.

So I just mention that you might be needing to reflect on how much time – a summary of each one will take but if necessary I can be approached maybe on Friday. I will be having a hearing here so that there can be a discussion. There would be a member of the commission's legal team and you and your team could come to say this is what you propose and then I can look at it so that even as you prepare you have an understanding of how much time we are looking at but also we have an understanding of how
10 much time you might be taking.

UNKNOWN COUNSEL: Chairperson I must say it up front we are amenable to – to sit in the evening.

CHAIRPERSON: Yes okay.

UNKNOWN COUNSEL: If the need arises.

CHAIRPERSON: Yes okay. No that is fine – that is fine. So let us leave it at that and then we will take it – we will see how it goes.

UNKNOWN COUNSEL: As it pleases the Chairperson.

CHAIRPERSON: Yes. Thank you very much. Were those
20 the only matters? Okay well I understand that all the matters were your matters. But – so we – we are done.

I did not ask you Mr Hulley for anything because I cannot – I cannot expect that you have anything to say. Yes. Yes. Ja. Ja. Okay. Thank you very much I take this opportunity to thank these applicants for their spirit of

cooperation and their understanding which has made it possible for us to also finish so early. Thank you very much to everybody for coming this morning.

For the benefit of the public I mention that tomorrow there will be a sitting of the commission. In the morning it will hear the evidence of Mr Anoj Singh and in the afternoon it will hear the evidence of Mr Malusi Gigaba. We adjourn.