

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

16 SEPTEMBER 2019

DAY 164

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PROCEEDINGS COMMENCE ON 16 SEPTEMBER 2019

CHAIRPERSON: Good morning Ms Gcabashe, good morning everybody. Good morning Mr Thabethe.

MS LEAH GCABASHE SC: Good morning

MR MBANA PETER THABETHE: Good morning Chair.

MS LEAH GCABASHE SC: Morning Chair. My apologies Chair I was just having a short consultation.

CHAIRPERSON: Yes.

MS LEAH GCABASHE SC: With Mr Thabethe.

10 **CHAIRPERSON:** Yes.

MS LEAH GCABASHE SC: Chair Mr Thabethe has indicated that he would like to - to address you.

CHAIRPERSON: Hm.

MS LEAH GCABASHE SC: This morning on one or two matters.

CHAIRPERSON: Yes.

MS LEAH GCABASHE SC: I do not know if you want to start there before we do anything else?

CHAIRPERSON: Yes let – let us start with him. Mr Thabethe do you want to say something?

20 **MR MBANA PETER THABETHE:** Thank you very much Chair. Good morning.

CHAIRPERSON: Yes good morning.

MR MBANA PETER THABETHE: Chair my humble request to you and the commission is that I would request a postponement if it is possible since I do not have legal support at the current moment. I would

therefore request that I be afforded an opportunity to do so; so that as I proceed and then I am being assisted with that kind of support. Thank you Chair.

CHAIRPERSON: I understand the legal representative that you had before have withdrawn, is that correct? Is that why you do not have legal support as you put it?

MR MBANA PETER THABETHE: That is correct Chair. I am actually informed by the commission that they have withdrawn.

CHAIRPERSON: Yes. You – you have not received any communication
10 from them to that effect?

MR MBANA PETER THABETHE: Not – not so Chair.

CHAIRPERSON: When were you last in touch with them?

MR MBANA PETER THABETHE: Chair on Friday when I received a call from the commission that I am due to appear today and then I then did speak to them and then we have agreed that we will – I will speak to them after the sitting today so that we – whether there is a possibility to sort any difference that are there which – which might be very difficult Chair.

CHAIRPERSON: Yes.

20 **MR MBANA PETER THABETHE:** If not then I will then request assistance from other lawyers.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Also Chair maybe also address you specifically in making a request. I am aware that the rule of the commission stipulates that you may bring your own legal assistance. I

do not know if there are any special arrangements in this regard for the commission to assist. That is my request Chair.

CHAIRPERSON: Well there are not any arrangements in terms of which the commission provides anybody with legal representation or any assistance as such. So – so we do not have that. So each person makes their own arrangement. I know that some who are in government are represented by the State Attorney but I do not know what arrangements get made and I do not know whether there are any people who might be represented by the legal aid board lawyers I do not know.

10 But certainly the commission does not have any arrangements that it provides in terms of which it provides legal representation or makes legal representation available to anybody. The regulation that talks about legal assistance for witnesses is understood to simply say you may bring your lawyer you know. We will not – the commission will not say no, no, no a lawyer is not allowed here. That it is understood to nothing more than that and then you can bring your lawyer. Of course we – one would like a situation where if somebody would like to be legally represented the commission would like that that be achieved but at the same time the commission has a limited life span and it is has
20 got to do the best it can to use the time that it has fruitfully and of course as I understand it this stage was arranged some – quite some time back and one would have expected that you and your lawyers would have been in touch well in advance to make sure that the commission was not disrupted in its plans. You understand that?

MR MBANA PETER THABETHE: I do understand Chair.

CHAIRPERSON: Yes so – so it is inconvenient when we set aside a day for something and then we do not use that day because I think today was just for your evidence only and there were no other witness – was planned. So at this stage you – you say you are not sure what the problem is with your lawyers or you do have an idea what the problem is? You just need to talk to them.

MR MBANA PETER THABETHE: Yes Chair I am aware what is the problem.

CHAIRPERSON: Yes.

10 **MR MBANA PETER THABETHE:** Yes Chair.

CHAIRPERSON: Hm. Ms Gcabashe do you want to say some – anything?

MS LEAH GCABASHE SC: Yes Chairman. Chairman there is an email that Mr Thabethe's lawyers had written to the commission on the 13 September in which they indicate that they are no longer able to represent Mr Thabethe. I would simply like to hand this up without reading it into the record by your leave Chairman hand this up for your records? We have a record as well.

CHAIRPERSON: Yes okay.

20 **MS LEAH GCABASHE SC:** I have also in the short consultation I had with Mr Thabethe – thank you – thank you very much – encouraged him if the worst comes to the worst to possibly approach the Johannesburg Bar Counsel or the Pretoria Bar Counsel or the Wits Legal Clinic or Pretoria Legal Clinic just ones that are in the close vicinity of this commission's venues and possibly speak to them as well about giving

him pro-deal assistance. Because as we agreed that best we will run for two more days in relation to his evidence. So it is for a limited span of time and I think he is amenable to doing that depending of course on – on his discussions with his legal team. So those are the ideas we were sharing Chairman and I think that given that every now and again there is a bit of tension between us I think it is – we have agreed that he will be more comfortable if he is guided by another set of lawyers much as he does not think that we are partial or biased or prejudiced in the manner in which we are conducting our work.

10 **CHAIRPERSON:** Hm.

MS LEAH GCABASHE SC: Thank you Chairman.

CHAIRPERSON: No that is fine. Obviously as long as there is appreciation that whatever you do for one you will be expected to do for others.

MS LEAH GCABASHE SC: Please explain that Chairman so that I am very clear. I have done nothing but just simply indicate that there is assistance available.

CHAIRPERSON: Yes, no what I am saying is if you will do more than just refer him to those then others will expect you to do whatever you
20 do for it. But if it is just a referral then it is easy and then even if it is done for everybody it should not be problem.

MS LEAH GCABASHE SC: In fact Chairman it was just an indication because I find many people do not know that these particular institutions...

CHAIRPERSON: Yes, yes.

MS LEAH GCABASHE SC: Do provide.

CHAIRPERSON: Ja.

MS LEAH GCABASHE SC: Not as of right but you will request then you either get a [indistinct] of a no.

CHAIRPERSON: Yes, yes.

MS LEAH GCABASHE SC: I also mentioned the legal resources centre to him.

CHAIRPERSON: Yes.

MS LEAH GCABASHE SC: And Legal Aid South Africa.

10 **CHAIRPERSON:** Yes.

MS LEAH GCABASHE SC: But again all of those institutions have got their rules.

CHAIRPERSON: Yes.

MS LEAH GCABASHE SC: And it is just a matter of saying to him there are other institutions.

CHAIRPERSON: Yes.

MS LEAH GCABASHE SC: That may – may be able to assist.

CHAIRPERSON: No that is fine.

20 **MS LEAH GCABASHE SC:** The other option Chairman that we discussed was the possibility of getting the departmental legal representative who assisted Doctor Thabethe. I beg your pardon – Doctor Masiteng to assist him because the matters he is dealing with really emanate from his time at the Department of Agriculture and Rural Development. I believe that it is another option he may wish to pursue simply because that is how Doctor Masiteng was assisted.

CHAIRPERSON: Was represented.

MS LEAH GCABASHE SC: By the – ja by the Department. So we really just tried to discuss the various options without discounting his current set of attorneys if he is able to resolve the difficulties there.

CHAIRPERSON: Hm. Well it would be important as far as possible to ensure that Mr Thabethe is given an opportunity to get legal representation because he played quite a significant role in the whole project that we are talking about and so that if at all possible there can be no concerns that because there – he did not have legal
10 representation there may have been unfairness. But I think if at all possible it would be better to adjourn the – his further evidence to a specific date so that if he is looking for a lawyer he looks for a lawyer who is available on that date. He does not look for lawyer who will accept to help him but then come here and apply for a postponement and say he is not available. You know. So I do not know if you have got some dates. There is a week where we were trying to put in some implicated persons in the program. I cannot remember what week it is.

MS LEAH GCABASHE SC: Chairman may I – with your leave interrupt you and ask that we take a very short adjournment.

20 **CHAIRPERSON:** Yes.

MS LEAH GCABASHE SC: Pull up the schedule that you have signed off on.

CHAIRPERSON: Yes.

MS LEAH GCABASHE SC: Find particular dates.

CHAIRPERSON: Yes.

MS LEAH GCABASHE SC: And then reconvene as soon as we have looked at the schedule with you Chairman.

CHAIRPERSON: Yes.

MS LEAH GCABASHE SC: And then set this matter down for those two days.

CHAIRPERSON: Ja. No that is fine. Also what you can do is speak to Ms Sello.

MS LEAH GCABASHE SC: Yes.

CHAIRPERSON: Because she was part of the meeting that I had with
10 Mr Pretorius last week when we were looking at that week that for
which we needed to find witnesses. So it could be that we could look
at a date or two days during that particular week. So maybe let me
adjourn for a short period and then you get the program and then speak
to Ms Sello if possible because she would know what the latest is and
then – and then you let me know then we will resume and then I will fix
a date.

MS LEAH GCABASHE SC: As you please Chairman.

CHAIRPERSON: Okay. You understand that Mr Thabethe?

MR MBANA PETER THABETHE: I do Chair.

20 **CHAIRPERSON:** Yes. We adjourn.

REGISTRAR: All rise.

MEETING ADJOURNS

HEARING RESUMES

CHAIRPERSON: Yes Ms Gcabashe.

MS LEAH GCABASHE SC: Thank you DCJ

CHAIRPERSON: Hm.

MS LEAH GCABASHE SC: DCJ we have consulted as you requested us to. The 3rd and 4th of October this year.

CHAIRPERSON: Yes.

MS LEAH GCABASHE SC: Are the dates that both Mr Thabethe and the commission.

CHAIRPERSON: Yes.

MS LEAH GCABASHE SC: Are agreeable to.

CHAIRPERSON: Yes.

10 **MS LEAH GCABASHE SC:** If you think that those are dates that you would like to hear Mr – the rest of Mr Thabethe's evidence on?

CHAIRPERSON: Yes okay. Do you confirm that you will be available for those dates Mr Thabethe?

MR MBANA PETER THABETHE: I confirm Chair.

CHAIRPERSON: Okay. So as you look for a lawyer then do remember that you must get one who would be available on those dates so that you do not get one who will come and apply for a postponement because they say they are not available on those dates.

MR MBANA PETER THABETHE: I understand Chair I will do so.

20 **CHAIRPERSON:** Yes. So I will therefore postpone the hearing of your further evidence to the 3rd of – 3rd and 4th of October this year. So you must please come back and – so that we can finish with your evidence.

MR MBANA PETER THABETHE: It is appreciated Chair.

CHAIRPERSON: Okay thank you. I am going to adjourn the proceedings for the day because we are not in a position to continue

with Mr Thabethe's evidence. Tomorrow and for I think the rest of the week we will hear a witness or witnesses relating to crime intelligence. I am not announcing the name of the witness for tomorrow because I am – I have not been able to double check that announcing it would not be problematic but that is what we will be dealing with in the next few days. We adjourn.

MS LEAH GCABASHE SC: Chairman if I might make a small ...

CHAIRPERSON: Yes.

MS LEAH GCABASHE SC: Correction.

10 **CHAIRPERSON:** Yes.

MS LEAH GCABASHE SC: We are back with you on Friday and Saturday possibly.

CHAIRPERSON: Oh okay.

MS LEAH GCABASHE SC: So I think...

CHAIRPERSON: So it will be three days?

MS LEAH GCABASHE SC: It is three days.

CHAIRPERSON: Yes on Friday it will be Estina.

MS LEAH GCABASHE SC: And then you are back with Estina.

CHAIRPERSON: Estina. And Saturday.

20 **MS LEAH GCABASHE SC:** And Saturday.

CHAIRPERSON: And Saturday.

MS LEAH GCABASHE SC: And Saturday Chairman.

CHAIRPERSON: Yes so I think the crime intelligence will be Tuesday, Wednesday, and Thursday.

MS LEAH GCABASHE SC: Correct Chairman.

CHAIRPERSON: And then Friday it will be Estina again and Saturday.

We will sit on Saturday this time as well.

MS LEAH GCABASHE SC: If we do not finish we will Chairman.

CHAIRPERSON: Ja. Okay. We adjourn for the day. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 17 SEPTEMBER 2019

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