

**ARMS PROCUREMENT COMMISSION**

*Transparency, Accountability and the Rule of Law*

**PUBLIC HEARINGS**

**PHASE 2**

**DATE : 21 JULY 2014**

**(PAGE 7591 - 7613)**

21 JULY 2014

PHASE 2

HEARING ON 21 JULY 2014

CHAIRPERSON: Good morning, everybody. Advocate Skinner?

ADV SKINNER: Good morning Chair and Commissioner Musi. It was anticipated that the first witness at the commencement of phase 2 of the hearing, would be Dr Richard Young. Unfortunately, Dr Young is not present today. It is perhaps necessary for me to give some background to that statement. At a recent consultation with Dr Young, I specifically asked him, whether he was willing to give evidence and his response was that he was indeed willing to give evidence, provided he was properly prepared and able to do so. Now, originally it had been planned by all the evidence leaders that he would be the last witness in phase 2 of the hearings. Approximately a month ago, in mid-June of this year, the Commission came to the view that it would be better for various reasons that he should be the first witness in phase 2. This necessitated urgent consultations being held, because the last consultation that, we as evidence leaders, had held with Dr Young had been over a year ago, prior to the start of phase 1 of the hearings. Unfortunately, this need for urgent consultations coincided with personal circumstances of Dr Young, in the sense that he had to undergo an operation to one of his eyes. In that regard, attorneys representing him have submitted two letters to the Commission. Chair, I am not sure that it is necessary to read the entire letters, unless the Chair wishes me to do so.

CHAIRPERSON: Advocate Skinner, read the entire contents of those letters into the record.

21 JULY 2014

PHASE 2

ADV SKINNER: Certainly, Mr Chair. The first letter is dated 17 July 2014, from attorneys Bernadt Vukic Potash and Getz in Cape Town and it commences:

“We act on behalf of Dr Richard Young and C Squared I  
5 Squared (PTY) LTD. We address this correspondence to you, on  
behalf of Dr Richard Young, our client. Our client has instructed us  
that he has been provided with a summons, in terms of Section 3 (1)  
of the Commissions Act of 8 of 1947, in which he was called upon to  
attend the Arms Procurement Commission of Inquiry on 21 July 2014.  
10 This summons was served on your client’s secretary at the C Squared  
I Squared offices in Kenilworth. The purpose of this letter is to  
explain why our client will not be attending the Commission on 21  
July 2014. Our client has instructed us that the Commission has  
previously accepted written submissions, without the presence of  
15 parties, or legal representatives being present. We request that the  
Commission accepts this letter as our client’s submissions. Our  
client has not instructed any legal representative to attend the  
Commission for that reason, as he does not wish to do so at  
considerable expense to him. Our client underwent a corneal  
20 transplant operation three weeks ago, which resulted in him being off  
work for a period of two weeks, as his vision was adversely affected.  
He subsequently suffered a fungal infection, which caused the  
healing of his eye to be delayed and his vision has been very limited,  
as a result. This has caused our client difficulties in preparation, as  
25 he cannot read documents, be they hard copies or electronic copies,  
displayed on a computer screen easily and once he commences  
working, he can only do so for a relatively short period of time. Our

21 JULY 2014

PHASE 2

*client again, consulted with his ophthalmic surgeon, Dr Michael Attenborough on 16 July 2014, who stated at that consultation that he would produce a doctor's note in which he will report on our client's condition. This will be provided to the Commission, as soon as it*

5 *becomes available from Dr Attenborough. As a result, it will not be possible for our client to appear before the Commission to testify on 21 July 2014. It would, in any event, be an exercise in futility, for our client to appear under those circumstances. At best, our client would testify for an hour or two, before being unable to continue until*

10 *the next day. Our client's vision is likely to improve, or at least stabilize over time. However, he will require more time to prepare and give evidence, due to this difficulty. On 11 July 2014, our client sent an email to the evidence leaders, appointed by the Commission, in which he requested details of the arrangements for him, to travel*

15 *from his place of residence to the offices of the Commission on 21 July 2014. He has yet to be provided with any details of travel arrangements. Our client cannot be expected to attend the Commissions, when no arrangements have been made for him, to travel to Pretoria. For these reasons alone, our client cannot testify*

20 *on 21 July 2014. There are, however, a number of other reasons why it is not possible for our client to testify on 21 July 2014. Our client has instructed us that:*

1. *The schedule for the witnesses to be called after 21 July 2014, is entirely unrealistic and it would be impossible for the*

25 *programme to be completed. Our client has repeatedly stated that his evidence will take between one and two weeks, without cross-examination. It would thus be impossible for our client's*

21 JULY 2014

PHASE 2

*evidence to have been completed, within the three days allocated. We understand that Ms De Lille will testify on 24 July 2014, which date has been set in stone and cannot be moved.*

- 5        2. *The evidence leaders of the Commission started preparing his evidence two weeks ago, due to the change of the order of witnesses. The evidence leaders only requested our client's discovered documents two weeks ago from our client in electronic format. As a result, our client's evidence has not*
- 10        *been adequately prepared, in the circumstances, due to no fault of the evidence leaders.*
- 15        3. *The affidavit, on which our client's evidence is to be based, is over three years old. The draft witness statement, produced by our client, which is to be the basis for a part of our client's evidence, is also hopelessly out of date, as it is based on this affidavit. This will lead to confusion, regarding his evidence. Our client has repeatedly stated that he was prepared to update his witness statement. No draft has yet been produced for or settled by our client. This should be done before his*
- 20        *evidence commences.*
- 25        4. *There are 1 061 documents, which our client has discovered and our client believes that some 200 documents, approximately 5 000 pages, would be relevant to his evidence. No bundle of documents has been produced or made available for our client to prepare his evidence. As a result, his evidence would be impossible to lead sensibly. It would result*

21 JULY 2014

PHASE 2

*in long delays, in which our client would have to search through masses of documents to locate a document, or part of a document.*

5           5. *Much of our client's evidence is to deal with the evidence of Nortje and Kamerman, whom our client was granted leave to cross-examine, but could not, as their witness statements were only made available to our client, after their evidence was concluded. Our client thus, would like to cross-examine Nortje and Kamerman, before he commences his evidence in chief.*

10           6. *Our client has been requesting specific documents, in terms of the Commission's rules, from Armscor and the Department of Defence, which our client believes, are relevant to the Commission and which were referred to, in other discovered documents. Our client's request for one particular document, 15 which has been sought by our client, since 2001 from the Department of Defence and 2013 from the Commission, has been ignored by the Commission. Our client requires this document, as well as others, in order to testify.*

20 *Our client has repeatedly emailed the Commission and the evidence leaders to state that:*

1. *The date of 21 July 2014 was not suitable for medical reasons and due to the fact that his farm workers were taking leave.*
2. *It was impossible for his evidence to be ready, for the reasons set out above.*
- 25           3. *The time allocated for our client's evidence was insufficient.*

21 JULY 2014

PHASE 2

4. *His evidence requires weeks, in order to prepare.*

*Our client understands that a memorandum has been produced by the evidence leaders, dealing with our client's unavailability to testify on 21 July 2014. The Commission has thus, been aware of these*

5 *difficulties for some time. Despite this, the Commission has refused to be accommodating to our client, although it has been accommodating, in respect of other witnesses due to their circumstances. Furthermore, our client was required to produce a*

10 *witness statement and to bring an application, in order to cross-examine a witness, before the evidence of a witness was led. Our client is not aware that any such application has been made, regarding other parties cross-examining him. In order to properly lead his evidence, our client requires these matters to be resolved and dealt with, in the same manner, in which his applications were*

15 *dealt with. It will be grossly prejudicial to the conduct of the Commission and our client, should he be required to give evidence before the Commission in these circumstances. We point out that our client would like to testify at the Commission and he believes that it is important that he does so. He would like to testify, at a time when*

20 *it would be possible for him to do so and once he has had sufficient time for his evidence to be prepared. Our client would be happy to engage with the Commission, in order to arrange a suitable time and would be co-operative in this regard."*

Mr Chairman, that was then followed by a letter from Dr Young's

25 attorneys on the 18<sup>th</sup> of July 2014, which reads as follows:

21 JULY 2014

PHASE 2

“We refer to the email, dated 18 July 2014, sent to us, by Advocate Mdumbe at 13h44 Central African time. In that email, Advocate Mdumbe confirmed receipt of our email of 17 July 2014 and indicated that the issues raised in that email, would be dealt with on 5 21 July 2014, presumably at the commencement of proceedings, before the Commission. Advocate Mdumbe also requested that we furnish the Commission with a copy of our client’s identity document, in order to finalise his travel arrangements to Pretoria. This email is puzzling, as it appears to ignore the reasons given, on behalf our 10 client, explaining why he would not attend the hearing of the Commission on 21 July 2014. It is also strange that the Commission waited, until Friday afternoon, to make travel arrangements, when it was indicated that it should do so, by our client a week earlier. This is clearly unacceptable. What is more disturbing is that the Chairman 15 of the Commission is reported to have stated, at approximately 14h26 Central African time, on 18 July 2014, after the conclusion of former President Mbeki’s evidence that our client has been served with a subpoena and that he expects our client to attend on Monday, whatever our client’s issues. This, of course, contradicts the email 20 from Advocate Mdumbe, sent to us at 13h44 Central African time today, in which he stated that the issues, raised in our letter, would be dealt with on 21 July 2014. From this statement by the Chairman, it appears that:

1. The Chairman of the Commission had knowledge of our letter, 25 dated 17 July 2014.

21 JULY 2014

PHASE 2

2. *The Chairman has reached a decision, regarding our client's submissions, as contained in the letter.*

3. *Notwithstanding those submissions, the Chairman of the Commission expects our client to attend the Commission.*

5 *This is significant, in that we have indicated that our client would make available, a note from his ophthalmic surgeon, Dr Attenborough, dealing with his medical condition. The Chairman made a decision, without calling for this document, which indicates that he did not apply his mind to the contents of our letter, before making the*  
10 *decision or he regarded it as irrelevant in reaching his decision. In either event the decision is, with respect, not rational or procedurally fair. It would now be pointless for our client to cause a legal representative to appear and make submissions on his behalf on 21 July 2014, as a decision has been made. Our client has advised us*  
15 *that Dr Attenborough has been in surgery and consultations yesterday and today and for that reason, has been unable to provide our client with a note, referred to in our previous letter. This note may only become over the weekend, or on Monday morning. It will be provided to the Commission, as soon as possible. Our client will not be*  
20 *attending the Commission on 21 July 2014. Our client respects the Commission and the purpose for which it has been established. He repeats that he would like to testify, at a time when it would be possible for him to do so properly."*

Chairman, that was then followed by a note from Dr Attenborough  
25 forwarded to the Commission, by Dr Young's attorneys, shortly before

21 JULY 2014

PHASE 2

the commencement this morning. It is dated today's date of 21 July 2014 and reads as follows:

*"Dr Young had a corneal transplant in his right eye on the 26<sup>th</sup> of June 2014. He had a severe fungal infection in the eye, prior to his surgery, which has resulted in slow visual recovery on that side. This has caused him to have unbalanced vision, which makes reading tasks difficult and gives him headaches. He requires, at least, six weeks after surgery for this to settle. But, will only be able to read for short period of time, for the next two to three months. If you require further information, please do not hesitate to contact me."*

Chairman, the result is that, unfortunately, we are in the situation that Dr Young, for the reasons advanced is not present and we, as evidence leaders, are not able to say to the Commission, that even if he was present, he would be able to lead his evidence. As was mentioned in the first letter from his attorneys, we had canvassed with him, the possibility of leading his evidence, based on the commission he had deposed to, to the Constitutional Court and the draft statement that he had submitted to the Commission, at an earlier stage. Dr Young's response was that circumstances had changed considerably from the time that he had deposed to that affidavit some years ago, in the sense that he has had access to and located other documents and has obtained more information, which is not dealt with, in his affidavit. Secondly, the draft statement was prepared by him for purposes of cross-examining the witness, Mr Frits Nortje and that it was not complete, by any means. He made it very clear that he felt it would be extremely unfair to him, in the light

21 JULY 2014

PHASE 2

of the fact that he anticipated he would be subjected to intense cross-examination. If he is compelled to give evidence, at a time when he is not ready to do so, because of the problems, inter alia, with his eye sight, as evidence leaders, we have to agree that he is not ready to give his evidence, at the moment. One illustration of that is that, we simply cannot prepare bundles of documents for him, until we have an exhaustive list of all the documents that he intends to refer to, in his evidence. In these circumstances, we reluctantly, have to suggest to the Commission that his evidence should be held over, until a further date for his evidence, can be arranged. As indicated, in his attorney's letter and read with the note from his surgeon, the anticipation is that the earliest that would be, would be around about the first week of October.

CHAIRPERSON: Thank you, Advocate Skinner. Am I right to say, according to the letters that we have received from Dr Richard Young's attorneys, there is a lot of, 1 000 or 2 000 he said that he needs read, go through, before his evidence can be taken any further, his statement can be taken any further?

ADV SKINNER: Yes. Mr Chairman, the position is, as we understand it, that there was a meeting held in March of this year, attended by representatives of the Commission, as well as, the legal representatives of Armscor and the Department of Defence. At that meeting, Dr Young made available, a disc containing in electronic format, the 1 061 documents that he refers to, which he has informed us, amount to some 20 000 pages. As referred to, in his attorney's letter, he believes that of those documents, approximately 200, being

21 JULY 2014

PHASE 2

some 5 000 would be relevant to his evidence. Now that, would be necessary for us, as evidence leaders, to take him through, to establish, are they indeed, necessary, before we are able to say, they should be furnished in the form of bundles to the Commission.

5 CHAIRPERSON: Thank you. Although, I have got my own views about that, we have gone through so many documents, in order to prepare Dr Young's evidence. Now, to go through another 21 000 documents, which we are not even sure, whether they are all relevant to, to this inquiry, I think it is an issue that we need to deal with, at  
10 a later stage. Okay, gentlemen, maybe just before, I ask you to comment on behalf of the Commission, let me find out if Advocate Cane wants to say something, before we [indistinct] about this issue.

ADVOCATE CANE: Thank you, Chairperson. There are a couple of aspects that directly impact on the Department of Defence and do  
15 have results thereto. The first pertains to Dr Young's allegation in paragraph 8.6 of his letter of 17 July 2014 that he has been requesting some specific documents, in terms of the Commission's rule, from Armscor and the Department of Defence. You may recall, Commissioners, during March 2014, you determined applications  
20 brought by Dr Young, in relation to the discovery of documents. You heard the applications and they were dismissed. The Department of Defence has not been made aware of any further requests for specific documents from Dr Young, since then. The state of the matter, in relation to those papers is that Dr Young had requested the Naval  
25 Ordinance from the Department of Defence and it had become common cause that they had been provided. The [indistinct] that at

21 JULY 2014

PHASE 2

the end of that discovery procedure, the Department of Defence was not aware of any further requests for specific documents from Dr Young. As far as we are aware, none further have been made. In so far as Dr Young does still require specific documents from the Department of Defence therefore, he is requested to please specify what is outstanding, so that that may be dealt with. There is certainly no intention on the Department of Defence side to withhold documents from him, or to cause delay, because they have not been provided. So, we would like to actually attend to that issue. The other matter is, he, Dr Young in paragraph 8.5 of the said letter has now alleged, that he would like to cross-examine Nortje and Kamerman, before he commences his evidence in chief. There are two aspects there that are confusing to us and require clarification. The first is that, on the record, he has withdrawn his application to cross-examine Mr Nortje. As far as we are aware, there is no further application to cross-examine Mr Nortje. There is an application to cross-examine Mr Kamerman and that one we are well aware of and have tendered, and Admiral Kamerman has tendered to return for those purposes. The concern is whether that, necessarily should be, before Dr Young commences his evidence in chief. As you know, Commissioners, the directives, in particular paragraph 3 of the directives provide that:

*“The conduct of and the procedure of this inquiry shall be under the control and discretion of the Chairperson.”*

Now, unlike in adversarial litigation, where the party commencing has to discharge an onus and so, leads evidence and is cross-examined

21 JULY 2014

PHASE 2

on that evidence and closes their case, prior to the defendant, being even called to lead evidence in chief. This is an inquiry, where is no reasoning policy, why you should not direct, which order the evidence progresses in and I can think of no reasoning policy why it should  
5 necessarily be so that Dr Young should make a pre-condition that he be given the opportunity to cross-examine Admiral Kamerman, before he commences his evidence in chief. That is a matter, entirely within your discretion. The Department of Defence has no particular preferences to which procedure comes first, only stresses that this  
10 should not be used by Dr Young, as a manner to control this Commission, or dictate its terms. We will co-operate with whatever the Commission determines and as being convenient for the leading of evidence. Thank you.

CHAIRPERSON: Advocate Mdumbe, some few things that you need  
15 to comment to about what Dr Young has added here, with your correspondence?

ADV MDUMBE: Yes, Chairperson and Commissioner Musi. We deem it imperative, as the Commission to respond to some of the, to the following averments, which are contained in the letter of the 17<sup>th</sup> of  
20 July 2014 from Dr Young's attorneys. They state that:

A. On 11 July 2014, Dr Young sent an email to the evidence leaders, in which he requested details of the arrangements, made for him to travel to Pretoria, to attend the Commission sitting of the 21<sup>st</sup> of July 2014. To this request, he says he received no response.

21 JULY 2014

PHASE 2

B. That the schedule, for the witnesses to be called is entirely unrealistic and it will be impossible for the programme to be completed.

C. The evidence leader started preparing his evidence two weeks  
5 ago, due to the chain of the order of witnesses.

D. That Dr Young has produced 1 061 documents, 200 of which he believes, would be relevant to his evidence.

E. That Dr Young intends cross-examining Mr Frits Nortje and Admiral Kamerman, before he commences his evidence in chief.

10 F. That his requests for documents from Armscor and the Department of Defence have gone unheeded.

Chairperson, to these assertions, we do intend to respond and I do so now. Dr Young alleges that he enquired from both Advocate Skinner and Sibiyi about his travel arrangements and received no response.

15 This enquiry was never brought to the attention of the Commission. On Friday, 11 July 2014 the Commission sent an email to Dr Young, advising him, that his evidence, set down for hearing on the 21<sup>st</sup> of July 2014 had not been different and requesting him to indicate preferred date and time of travel to Pretoria, to attend the  
20 Commission sitting of 21<sup>st</sup> July 2014. To this request, Dr Young responded by saying and I quote:

*“It is the responsibility of the Arms Procurement Commission, as a consequence of issuing summons to make all provisions and arrangements in respect of travel from residence to destination and*

21 JULY 2014

PHASE 2

*return, as well as subsistence, during the relevant period. There is nothing that I have to do in this regard.”*

The Commission, neither directed, nor received further queries in this regard, from Dr Young. On 17 July 2014, it requested Dr Young’s  
5 identity number for the purpose of finalising his travel arrangements, which he graciously provided. The Commission finalised his bookings and forwarded his e-ticket, hotel and travel vouchers to Dr Young, on Friday evening at around seven pm. Dr Young says that the schedule is unrealistic and insufficient time has been allocated to his evidence  
10 in chief. The dates allocated by the Commission to witnesses, either for their evidence in chief and all cross-examination of witnesses is not cast in stone. If the Commission consulted each and every witness and legal representatives, before it finalises its witness schedule, its work would grind to a halt. The ultimate decision in  
15 connection with these issues rests with the Chairperson of the Commission. This is implied in paragraph 3 of the directives, issued by the Chairperson, which were published in the Government Gazette, number 35325 of 9 May 2012, which states:

*“The conduct of and the procedure of this inquiry shall be  
20 under the control and discretion of the Chairperson.”*

Dr Young states that evidence that I started recently to prepare his evidence. It will be recalled, Chairperson and Commissioner Musi, that Dr Young was among the critic witnesses, who were earmarked to give evidence in March 2013. Even before a subpoena, which  
25 required him to appear before the Commission on the 25<sup>th</sup> of March 2013 was served on him, the Commission’s evidence leader, namely,

21 JULY 2014

PHASE 2

Advocate Skinner SC, Advocate Lebala SC, Advocate Sibiya and Advocate Ngobese consulted with Dr Young in his offices, in Cape Town on the 20<sup>th</sup> and 21<sup>st</sup> of February 2013. Furthermore, in the absence of a formal submission to the Commission by Dr Young and

5 to ensure that the evidence leaders were affray with the issues pertaining to Dr Young and his company C Square I Square, the Commission collated documents including Dr Young's affidavit and annexures, which is submitted to the Constitutional Court, in support of his take of advice application in case CCT113/10, his settlement

10 agreement C Square I Square best and final offer for the NAF distribution subsystem and the information management subsystem for the combat suite, formal complaint to the police, by Dr Young, dated October 2009, the record of the Western High Court in the matter between Dr Young and Eunice Shaik, the record of the High

15 Court in the matter between C Square I Square and the Minister of Defence, Armscor and the African Defence system, case 217/02, the record of the High Court matter between Dr Young and Selby Phako case 2161/2003 and other miscellaneous documents. The Commission's evidence leaders commenced sifting through these

20 documents, which were contained in 10 arc lever files between March and June 2013. Consultations with Dr Young never stopped. Advocate Skinner and Advocate Sibiya met again, with Dr Young in Cape Town on the 4<sup>th</sup> and 5<sup>th</sup> of June 2013. At this time they also commenced working on Dr Young's draft statement. It is important to

25 mention this, because when these consultations took place with Dr Young, they happened at the time, when the Commission had decided that it would call officials and members of the Inter Ministerial

21 JULY 2014

PHASE 2

Committee, to come and give evidence before it and not the critic witnesses. Advocate Skinner and Sibiya consulted with Dr Young again, recently on the 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> of July 2014 and again, on the 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> of July 2014. As far as I am aware, Chairperson  
5 and Commissioner Musi, no other witness has been consulted with, as extensively as the team has done with Dr Young. Maybe I should add, at a huge cost to this Commission. Dr Young says that he would need to cross-examine Mr Nortje and Admiral Kamerman and he requests documents. Dr Young submitted the application to cross-  
10 examine Mr Nortje on the 17<sup>th</sup> of October 2013. On the 25<sup>th</sup> of October the Commission informed Dr Young that his application to cross-examine Mr Nortje has been granted and drew his attention to the fact that he would commence giving evidence on the 4<sup>th</sup> of November 2013. To prepare, he requested to be provided, in  
15 advance, with copies of Mr Nortje's bundle. This request was complied with. On the 29<sup>th</sup> of October 2013, Mr Nortje's bundle was delivered at Dr Young's offices in Cape Town. On the 3<sup>rd</sup> of November 2013, Dr Young withdrew his application and replaced it with a new substantive application. He attached appendix a, to this  
20 application, setting out the documents, he required. Among them, the supply contract for the Aerospatial Exocet MM40 surface to surface missile, concluded between Armscor and EAD as in 2000, the umbrella agreement for the patrol Corvette, Corvette combat suite and the transcripts of Section 28 interviews. Chairperson, I think it  
25 is important that we mention that the Commission only received authorisation, or approval from the National Director of Public Prosecutions in June to distribute the Section 28 interviews. We

21 JULY 2014

PHASE 2

have received recently, the regarded versions of the umbrella agreements and all the attachments thereto. In an email, dated 19 November 2013, Dr Young submitted further requests for documents. Among the documents required were the following, transcripts of

5 Section 28 interview of Mr Shaik, the report of the taxes and DR settle database and the report of the IMS and the taxes DR settle database from Frits Nortje to Siphon Twala. On the heels of this request came another request on the 22<sup>nd</sup> of November 2013, in which Dr Young requested all documents in the JT interviews of certain

10 individuals whose names he specified. On the 19<sup>th</sup> of January 2014 on the cover of an email, he requested all reports, memoranda, documentation, patrol Corvette JT correspondence, Armscor correspondence, DOD correspondence, Siemens correspondence, concerning South African Cable Manufacturing Company, Data Kabel

15 Werke dated between 1997 and 2004. On 10 January 2014, Dr Young submitted a formal application to be furnished with the copies of the witness bundles of Captain Jurie Jordaan, Dawid Griessel, Harold Smith and Frits Nortje. In the aforesaid application he mentioned that he stated that he advised the Commission on 8<sup>th</sup> January 2014

20 that he wished to cross-examine Admiral Jonathan Kamerman. He further requested a list of all other documents held by the Commission that are relevant to the Corvette Company of the SDPP. On the 24<sup>th</sup> and 25<sup>th</sup> of February 2014, Dr Young submitted applications, in terms of Rule 35 of the Uniform Rules of the High

25 Court, to be furnished with the relevant documents. On the 27<sup>th</sup> of February 2014, Dr Young withdrew his application to cross-examine Frits Nortje. This has had an impact on the Commission processes.

21 JULY 2014

PHASE 2

On 6 November 2013, the Commission stood down the evidence of Mr Nortje, to give Advocate Lebala SC, who had been assigned to lead the evidence of Mr Nortje, the opportunity to consult with Mr Nortje, to deal with the documents, which Dr Young indicated to this  
5 Commission that they be relevant to the evidence of Mr Nortje. The Chairperson further issued a directive that those, who intend cross-examining the witness, must be ready to proceed immediately after the witness has given evidence. On the 5<sup>th</sup> of February 2014, the legal representatives of Armscor informed the Commission that they  
10 were willing to allow Mr Nortje to take the stand, before he had seen the documents in the possession of Dr Young. Now, going through the documents Dr Young wished to rely on, to rely upon. The in, in ultimately long time that passed, without Mr Nortje having given his testimony was captured by the Chairperson in the following terms, Mr  
15 Nortje, I quote Chairperson and Commissioner Musi:

*“Mr Nortje was supposed to have testified in November 2013. We are now four months down the line and I do not think I am going to allow a situation where, we are going to delay the testimony of Mr Nortje.”*

20 On the 3<sup>rd</sup> of March 2014, the Commission's evidence leaders requested the Commission to grant the leave to meet with Dr Young to discuss issues pertaining to the evidence of Mr Nortje. To this request the Chairperson responded:

25 *“We should have dealt with the evidence of Mr Nortje, last year November, which we did not, because you wanted to accommodate Dr Young. It is now almost four months down the line. We are still*

21 JULY 2014

PHASE 2

*having the same problem. The lifespan of this Commission it is left with is only nine months. We are left with nine months. For how long are we going to try to accommodate Dr Young, before we can call Mr Nortje? If we are going to spend another four or five months, talking to Dr Young, before we can call Mr Nortje, we will never finish our work. That is my difficulty.”*

The Commission suspended the order, compelling Dr Young to discover documents, by 3 March 2014 and his two applications, wherein he intended compelling the Commission, Armscor and the Department of Defence to discover documents, until the 17<sup>th</sup> of March 2013. Commissioner Musi commented, during the proceedings:

*“I think what we are doing, we are trying to bend over backwards, in order to accommodate Dr Young. He has proposed that he can withdraw his application to cross-examine the witness and we do not think it will be wise that he should be allowed to do that. I agree with the sentiments of the legal representatives that we should try and keep him on board.”*

On the 24<sup>th</sup> of March 2014, it was pointed out that Dr Young withdrew his application to cross-examine Mr Nortje. That if he wished to cross-examine, he would be required to bring a new application to recall Mr Nortje, which application would have its own requirements and only then would the applications for discovery become relevant. The Commission ruled as follows:

“We have now looked at the applications and listened to arguments, presented before us, by council and are of the view that Mr Young

21 JULY 2014

PHASE 2

has not made a case for any of the orders he is seeking before this Commission. Three, the Commission cannot grant such a broadly wide request for access to documents, because if we do that, then we will create serious difficulties for both the Commission and the DOD.

5 Therefore, the applications by Dr Young against the APC, DOD and other parties are therefore, rejected.”

Dr Young withdrew his application to cross-examine Mr Nortje. He is yet to support an application to cross-examine Admiral Kamerman. His applications for orders, compelling Armscor and the Department

10 of Defence to produce documents were dismissed by the Commission. Chairperson, in the light of everything that has been happening between us and Dr Young, I would like to conclude, by saying, perhaps stating the obvious. Dr Young has participated as a witness

15 at the JIT and he is not a total stranger, who is still, who still has to ask information regarding specific allegations. He has all the matters pertaining to the arms procurement. Chairperson, it is a simple principal of law that he, or he who alleges must prove. However, Dr Young persistently seeks information from the Commission as if he has not previously made allegations. In court,

20 papers, in the print and electronic media, all that is needed from him by this Commission is to repeat such allegations formally, here in public. I thank you, Chairperson, Commissioner Musi.

CHAIRPERSON: Thank you. However, it is unfortunate that Dr Young was unable to be here today. We had all thought that he

25 would be in a position to testify about issues that are within his knowledge, particularly dealing with the alleged corruption that took

21 JULY 2014

PHASE 2

place in the sale, in this procurement. Unfortunately, he is not here and two, I think I am going to be fair in our position, as far as Dr Young is concerned. We have tried to bend backwards to accommodate Dr Young and up to now, we have not, let us see it, to  
5 get him to give us a statement that he is use, in his condition, if ever, he will ever testify. For that reason, I am not going to make any order whatsoever about his next appearance. I am going to sit back, look at other evidence. Review our position and from there, we make a decision on whether we still require Dr Young to testify on it.  
10 So, we are going to adjourn and we will only be back on the 24<sup>th</sup>. The question on Dr Young, I think, we will deal with it at a later stage. At this moment, I am not going to make any order. I think, if I am correct, our next sitting is on the 24<sup>th</sup> and Advocate Lebala is the one who is suppose to lead evidence given. Advocate Lebala, is  
15 my information correct?

ADV LEBALA: Chair, I, I think of one better qualified to assist, at this stage than Advocate Mdumbe. Certainly we, at this stage, view the evidence of Ms De Lille on the 24<sup>th</sup>, on Thursday with some difficulties and realities. I would like to give over to Advocate  
20 Mdumbe not [indistinct] exposure from a legal view.

CHAIRPERSON: Ja. Advocate Lebala, what I was interested in is that Ms De Lille has been subpoenaed. She is supposed to come on the 24<sup>th</sup>. You have consulted with, with her, is she ready to lead her evidence on the 24<sup>th</sup>?

25 ADV LEBALA: Chair, I think I give over to Advocate Mdumbe further.

21 JULY 2014

PHASE 2

CHAIRPERSON: Okay.

ADV MDUMBE: Chairperson and Commissioner Musi. Yes, Ms De Lille will be here on the 24<sup>th</sup> and ...[intervene]

CHAIRPERSON: Thank you. That is all I needed to know.

5 ADV MDUMBE: Yes, Sir.

CHAIRPERSON: She will be here to testify on the 24<sup>th</sup>. Thank you. We are going to adjourn until the 24<sup>th</sup> and I will start the Commission on time, which is 10 am. Thank you. We will now adjourn.

**COMMISSION ADJOURNS**

10

15