

ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

PUBLIC HEARINGS

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HEARING ON 2 FEBRUARY 2015

CHAIRPERSON: Thank you. Good morning. Advocate Sibeko?

ADV SIBEKO: Good morning, Chair and Commissioner Musi. In terms of the schedule that was published, for the proceedings of the Commission commencing today, Dr Richard Young was scheduled to appear before the Commission, pursuant to the subpoena that was served on him.

I believe Chair, Commissioner Musi, you are aware of an email that was sent to the head of the research of the Commission, in the person of Advocate Mdumbe at 8:35 pm, from Dr Young. The date is the 1st of February 2015. The transmission is recorded to have taken place at 8:34 minutes pm.

Now, in this email, Dr Young has prepared a submission, in terms of which, he motivates for a, a postponement of the hearing of his evidence and requests that the Commission condone his non-appearance today, for the reasons that are set out in the submission. It is an eight page submission, with various annexures.

The [indistinct] of the reasons, set out herein to motivate the postponement is that he is in the process of preparing his statement. Now, he mentions that previously, he was assigned evidence leaders, who had undertaken to prepare this statement for him.

He mentions in the submission that the draft statement that was produced, by the evidence leaders, who were previously assigned to him did not set out the facts that he wanted to bring before the Commission, in the manner that he intended to and that the draft

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appears to have been prepared, from various pleadings, in which he was a party, against a number of entities.

He laments the manner, in which this draft had been prepared and that it did not accord with what he wanted to present. Then, after the
5 resignation of the two evidence leaders, new evidence leaders, those are Advocate Sello and I, were then assigned to him.

He mentions that he met with us, for the first time, during November 2014. At which stage, we were furnished with the draft and we had discussions, on the basis of which we thought his evidence would be
10 best prepared.

Chair, you will find that he refers to the, firstly, of a correspondence he had with Advocate Mdumbe on 5 November 2014. This appears at paragraph 5 of the submission, which is at page 2 thereof. Subsequent to the exchange of emails, he was informed that we would meet with
15 him on the 19th of November to the 21st of November 2014.

This you will see appears at paragraph 11 of the submission. That we met again with him, during the course of, the week before last, to review the progress of his statement, after we had advised him that he had to prepare his statement himself, as he had personal knowledge of
20 the facts, which he intended to bring before the Commission.

You will see, Chair, that as from paragraph 12, he actually sets out what has transpired in the interim. He records further, in this submission, the discussions that he had with him, for purposes of preparing the statement and the readiness thereof, or lack thereof and
25 that, as a result thereof, he would not be in a position to give evidence

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on the date appointed, which is today.

He records, at paragraph 14 of the submission, what he believes is a common cause, or commonality between the Commission and himself, regarding the rightness of the hearing and the extent of his statement
5 and that during the course of our meeting with him, we undertook to bring this matter before the Commissioners.

As the submission goes, he points out at, for, he makes reference to various conversations he has held with Advocate Sello and Advocate Mdumbe, regarding the issue of his appearance today. Where he
10 makes certain references to the fact that certain undertakings were made with him, to which, I have no knowledge of, regarding a mutually agreeable date, for the hearing of his evidence and that the date for today's hearing was arranged, without any consultation with him.

He then goes on to make reference to the fact that, that the time, or it,
15 it would stand, it would entail a loss of a number of man hours for him, to appear before the Commission today, only to appear briefly. When it is quite apparent that his statement has not been finalised and that it would also be too costly, for him, to come to Johannesburg from Cape Town, only to go back again, today.

20 He mentions, at paragraph 27 that the assistance, that both Advocate Sello and Advocate Mdumbe, for him to appear before the Commission today, pursuant to the summons, left him very little, if any time, to arrange for legal representation to appear before the Commission, on his behalf this morning, in order to make arrangements for his evidence
25 to be heard on a subsequent date.

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At paragraph 29 of the submission, Chair, he offers the following and I beg leave to read this into record:

“Accordingly, I tender this explanation that is all that was said in the submission. I tender this explanation for not appearing in person, before the Commission, on the morning of Monday 2 February 2015 and request the Commission’s condonation thereof.

30. *All things in equal, I also tender my undertaking to appear, to give evidence to the Commission at an appropriate date that is mutually convenient.*

10 31. *In this respect, it is my considered view that the following are reasonable conditions therefore.*

31.1 *That I will complete, to the best of my ability and within the available time, an acceptable witness statement, to support my oral evidence and furnish it to the Commission.*

15 31.2 *That I will furnish copies to the Commission, of all documents, of which I am aware and that I have in my possession, which I use, to support my oral evidence.*

31.3 *That my allocated evidence leaders fully assist me in providing timely relevant feedback on the drafts of my witness statement that I will provide to them, from time to time, in the interim.*

31.4 *That the preparation of the compiling of evidence bundles, bundles remains the responsibility of the Commission.*

31.5 *The Commission provides me with copies of the evidence documents that I have requested of it. Or provides reasonable explanations as to why this is impossible, in certain circumstances.*

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31.6 That the Commission ensures that there are visual aids, such as large screens and projectors present in the venue, for my evidence.

31.7 That my evidence is given, commencing on the Monday of a five day hearing week.”

5 Now, you would have seen that, during the course of the submission, he has proffered the first week of March, as being a reasonable time, within which his statement would have been completed and he would have been in a position to give evidence. It is on that basis, Chair, that we make the submission and beg for the adjournment of Mr Young’s
10 evidence, on the basis of the undertaking that is recorded in his letter, which I had read into the record.

CHAIRPERSON: Thank you, Advocate Sibeko. Let, let me start, by dealing with the, paragraph 17 of his submissions. I am not sure what he means, when he says that there was an acceptance, by the
15 Commission that he would not be here today.

I am not sure what he is referring to, unless, if you are aware of what Dr Richard Young is referring to, because we expected him here today. He was served with the subpoena and this subpoena, for the record, it was served on him last year.

20 So, from last year, he has been aware of the fact that he is supposed to appear before the Commission. Are you aware, what is he referring to, when he says the Commission accepted that he would not be here today?

ADV SIBEKO: Chair, I am personally not aware of what understanding
25 that he would be referring to, to the effect that he would not appear,

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before the Commission today. My understanding is that, what was going to be brought before the Commission's attention, even before today, was the state of the readiness of his statement.

It, it had nothing to do with him not appearing today. In fact, it, it appears also, that Advocate Sello had a telephonic conversation with him, during the course of last week, in which these matters were discussed. At this point, I would beg leave for Advocate Sello to address the Commission, with regard to that conversation that he had.

ADV SELLO: Chair, Commissioner Musi and we thank you, Advocate Sibeko. As, as Dr Young states, in his submissions, there have been one or two telephonic conversations between, between him and I, regarding his appearance today.

By the time these conversations were heard, it was understood that a postponement would be necessary. So, he would not be appearing here today, for purposes of giving evidence. What we were in disagreement about is whether his presence is required in the Commission, in order to obtain a postponement, seeing is, as he is under, having a subpoena.

Unfortunately, he and I could not see eye to eye on that. My view was, he had to be here in person, not so much to argue for a postponement, because Advocate Sibeko had an undertaking to do that on his behalf.

As his evidence leaders, we are quite appreciative of the status of his statement and, and the work is still required, to bring it up to scratch. So, we do appreciate that it would not have been possible for him to

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give the evidence.

However, it would have been necessary, in my view, for him to have attended today and go on record, to have attended today, in compliance with the subpoena and have the subpoena extended, in his presence, giving an undertaking to appear on the date, to be re-scheduled, by the Commission.

It is only last night, I made, through these submissions that I failed to persuade him in, in that regard. He set out the inconvenience that would be certain, if he were to follow my view. Consequently, Commissioners, I am not in a position to shed any light on the purported acceptance, by the Commission of this position.

I can report for the record, that any such acceptance of the position as espoused by him, was not with me. So, I would like to believe, by saying the Commission accepts this position, he probably is referring more to conversations he had with Advocate Mdumbe and not with me, because he and I failed to reach any agreement, with this aspect.

CHAIRPERSON: Thank you. I will suppose we will never, you know, arrangements or discuss, regarding, that he might claiming to have had with Advocate Mdumbe [indistinct] and that, because, if at all, there are any people, who would excuse him from attending, if the conditions and what the conditions are.

I do not want to get into those details, but I, at least [indistinct] Dr Young was subpoenaed to come here. He did not come. That is an issue that we will have to deal with, at a later stage. I wonder what sense I get from that.

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Will we ever succeed to bring Dr Young to the Commission? Will he ever testify, because, you know, his evidence that will be hanging, or we have been waiting for it, for the past three years? We were told that he is the only man, who can testify about corruption.

5 This is according to the alleged prosecution letter, of one of our evidence leaders, which was posted on one of the websites of one of the newspapers. It is alleged that the only person, who can tell about corruption is Dr Young. Will we ever see to it that, to get Dr Young to come to the Commission?

10 ADV SIBEKO: Chair, if the experiences Advocate Sello and I have had, with Dr Young, on the past occasions that we have met with him, are anything to go by. As well as the conversations we have had, regarding how important, we believe he is, or important a role he has to play in the proceedings of the Commission and, and the, the co-
15 operation we have had with him, up to so far.

It is our considered view that he will eventually, give evidence, at the time that he has undertaken to give evidence in his submissions. I, I believe, these submissions, having been placed on record. I believe that Dr Young would live up to his undertaking, as it were.

20 We, we are scheduled to meet with him, during the course of this week. At which time, we will seek to impress upon him, how important it is that he gives evidence and, and how important it is that we finalise his statement, so that, at the time appointed, he should be ready to give evidence.

25 My, I make that submission, perhaps my, maybe being optimistic.

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However, I am optimistic that he will live up to his undertaking.

COMMISSIONER MUSI: Ja. My, my only difficulty is this. He is not here today. You see, if he was here and this underlines the importance, of him having been present, here, today. Because we would then have
5 fixed the date, in his presence and tomorrow, he will not come around and say that date does not suit him. Now, he is not here. How do we fix a date that is mutually accepted, to use his own expression?

ADV SIBEKO: Chair and Commissioner Musi, I understand the difficulty that has been expressed. However, I, I do believe that, where,
10 where he has indicated that he, he is prepared to give evidence, hopefully, during the first week of March.

That he should be held to that commitment. This is an undertaking that appears to be based on what would be mutually convenient, between him and the Commission. It is, it is a matter that he is offering
15 and I believe that he should [indistinct]. This is apparent from paragraph 19 of this submission, where, where he states the following:

*“As the via media, we agreed that the first working Monday of March, should be viable and mutually acceptable, albeit that we would have less time to properly prepare my witness statement and evidence
20 bundles.”*

So, in, in the light of that submission, I, I submit that there, there appears to be an olive branch or some kind of an undertaking made by him that seeks to fix the time, to which is evidence may be postponed.

COMMISSIONER MUSI: Does it mean that, if we postpone the
25 proceedings to the first week of March that would be mutually

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acceptable?

ADV SIBEKO: According to what appears at paragraph 19 of his submission that seems to be the case, I would submit.

CHAIRPERSON: Although, if you look at that paragraph 19, there is
5 also a bit of a mystique there. He wants to say that even that will not be enough time, for him, to prepare the statement. So, we might just be back to the same problem, come that first week of March.

ADV SIBEKO: Chair, I, what, what we spoke, it, it does seem to be that, although there is that limitation of time, which he has accepted, he
10 undertakes to appear before the Commission and give evidence, around the first week of March.

CHAIRPERSON: Advocate Sibeko, I will tell you what we have done. We, unfortunately, we will have to rearrange all the programmes, because Dr Young did not turn up today. If he was here, we would have
15 stuck to the original time table that we produced, at the beginning of this year.

In the light of the fact that Dr Young is not here today, we are going to rearrange it. Fortunately, we do have a draft now. In terms of this draft, the evidence of Dr Young will be deferred to the 4th of March. We hope
20 that he will be in a position to testify on that date.

If he does not come on that day, I do not think that we will be prepared to accommodate him again, because that will mean that we will have to change our programme again. We do not have time or maybe [indistinct] at the end of April.

25 Dr Young will testify on that week of the 4th of, of March. If he does

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not turn up, then maybe, we might have to do without his evidence. [Indistinct] we are going to make public today, the dates on which other witnesses are going to, to testify and the problem is that we are going to have full programme up to, towards the end of April.

5 I doubt if we will be willing to change that programme, in order to accommodate any other person, unless, at all, special circumstances do, do crop up. Otherwise, I think, we are going to try, as best as we can, to stick to the, to the new programme, which will be announced, some time today.

10 It is ready. We just going to confirm with everyone, with two of the staff members and from there, we will release it today. Dr Young, if he is not here, on the 4th of March, we will disperse with his evidence. Unfortunately, we will be forced to do that.

I think, you know, I would urgently try and bring this to his attention
15 that our view is that, if he is not here, on the 4th of March, the probabilities are that we will not be in a position to accommodate him, again.

ADV SIBEKO: We will do so, when we [indistinct], Chair.

CHAIRPERSON: Thank you. Any interested parties, who wants to
20 make a comment, before we adjourn? I know that, you know, you all came here, at great expense and inconvenience. But, unfortunately, we also did not know, you know, Dr Richard Young will not, he will not turn up. Thank you. Then, we will adjourn until the 4th of, the 4th of March. Thank you.