

**TRUTH AND RECONCILIATION COMMISSION****SECTION 29 HEARING****"IN CAMERA"****DATE: 15-07-1998****NAME: PIET HALL****HELD AT: CAPE TOWN****DAY 1**

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**CHAIRPERSON:** We are getting ready to start. This is a Section 29 inquiry. A witness, one Mr Piet Hall, a Colonel who apparently is retired from the South African Defence Force, had been invited under subpoena to come and answer questions in terms of Section 29 of Act 34 of 1995.

As I understand it his subpoena indicated that he should be in attendance at these proceedings on Wednesday, the 15th of July at nine o'clock, or so soon thereafter as the matter could be heard. The time now is ten o'clock and his name has been called in terms of the legal requirements, to establish whether he is present and it appears that he is not (indistinct)

I must indicate, however, that this should not be unexpected because I have a copy of a letter that purports to be coming from one P.G. Prinsloo, an Attorney from Port Elizabeth, addressed to the Archbishop, the Chairperson of this Commission and to Mr Magadhla, the Head of the Special Investigation Unit,

for the attention of Mr Z. Khoisan. The correspondence suggests that certain documentation had been requested from the Investigative Unit by these lawyers after they had received the subpoena or the invitation.

In one letter, dated the 2nd of July 1998, addressed to the Archbishop, the said lawyers raised a number of issues. One of which was that the invitation did not comply with the provisions of Section 21(c), 29(1)(c) of the Act in that it does not clearly indicate the subject matter of the hearing in respect whereof our client is required to give evidence and answer questions.

Further the lawyers raised the query that the invitation militates against the principle of fairness and natural justice and (indistinct), and reference was made to DU PREEZ & ANOTHER v TRC (A) 1997 (3) SALR 204. There was an argument that matters which the Commission intended to deal with at the hearing commencing today, were clearly of a very serious nature and that the principles of fairness should therefore be strictly adhered to.

There was a further complaint that the invitation does not indicate how the witness acquired the information which he allegedly possessed. There was an argument that if the information we have is to the effect that the witness possesses information, because he allegedly partook, witnessed or

knowingly allowed the alleged incidents to take place, the hearing would have serious consequences for the client.

There was a long list of questions that were asked by way of a request of particulars. I would not burden this record, except only to say that the questions were quite comprehensive and I would like to hear whether there had been compliance with the request for further particulars.

I say so because in a letter dated the 13th of July 1998, which was faxed to this office, Mr Prinsloo or his firm of Attorneys, indicated that a telephone conversation had been had with him on the 13th, at about half past one and he wished to advise that the documents which had been sent to them by courier service, were not in their view comprehensive as requested and that they could not in all fairness prepare for this hearing with the incomplete information provided to them.

He also repeated his objection to the mode of service on Section 29 subpoena. He had therefore concluded by saying unless there was full compliance with the request as formulated in his fax of the 8th of July, by which I understood that he meant unless all the questions which he had put, had been answered, and or unless there was proper compliance with the service of the subpoena by whatever he means by that, he would not advise his client to attend the proposed hearing.

It may well be that that is the reason that Mr Piet Hall or Colonel Piet Hall is not before us today, but I will ask Mr Khoisan to place on record, his own perspective on the events and in particular whether he furnished the requests or the particulars that had been requested, and if he did, in what form he so did.

And if he did not, why he did not do so. Mr Khoisan?

MR KHOISAN: Thank you Mr Chairman. Mr Chairman, the matter before us is of course the matter of the ongoing investigation into abuses allegedly committed against persons who are members of the !Xu and Khwe communities. Specifically matters relating to allegations of certain killings and severe beatings and the coercion of members of this group to participate in certain SADF campaigns.

On the 30th of June, 30th of June 1998, the Attorney of Colonel Piet Hall, was furnished via fax in consultation with them, with an invitation addressed to Colonel Piet Hall via his Attorneys.

The invitation stated that Colonel Piet Hall was to attend a hearing, an in camera hearing at the Truth and Reconciliation Commission at our offices at 106 Adderley Street, on the 10th floor, at 9am on the 15th of July 1998, to address the following issues: The killings of Paulino Dahla, Augustino Cambinda, C. Campisos and Cativa Kamaya in 1979 in and around the vicinity

of what was then known as Jackson (indistinct) in the Caprivi Strip in 1979.

Several alleged cases of severe beatings and other abuses committed against former members of 31 Battalion and three, alleged cohesion of members of the !Xu and Khwe communities to participate in SADF operations in Angola, Caprivi and Zambia.

The reason why this particular invitation in terms of Section 29 of Act 34 of 1995 was sent through to the offices of Attorney P.G. Prinsloo, located at 76 Dias Road, Parsons Hill, Port Elizabeth at fax (041) 345840, is because the Investigative Unit had engaged and traced the whereabouts of Colonel Hall and had actually engaged in a telephone conversation with him prior to communicating directly with his Attorneys.

The gist and nature of the conversation with Colonel Piet Hall was that he did not want to have direct contact with the TRC and advised us to address all correspondence and all matters, to which we wanted to draw his attention, or engage with him, to his Attorney who he indicated was Attorney P.G. Prinsloo at telephone number (041) 334988.

We then proceeded to contact his Attorneys. The reason we contacted Colonel Piet Hall personally is that we wanted to arrange a mutually acceptable time when he could be personally served with this invitation. His refusal to have contact with us,

left us no other option but to go through his Attorneys, who agreed to accept a fax of an invitation on his behalf.

Further, the correspondence with Attorney P.G. Prinsloo that you referred to, is also preceded by the letter dated 2 July 1998 and as you have already read that into the record, I will say the following: On point one, the letter was addressed to Colonel Piet Hall and was sent timeously that is given the necessary 14 days notification to his Attorneys, to whom he had directed us.

On point two, the aforesaid invitation does not comply with the provisions of Section 29(1)(c) of the Promotion of National Unity and Reconciliation Act, 34 of 1995, the Act in that it does not clearly indicate the subject matter of the hearing in respect whereof our client is required to give evidence and answer questions. It is our view Mr Chairman, that those matters are stipulated on page 1 and 2 of the invitation that was sent to the client, to the Attorneys of Colonel Piet Hall.

In terms of the point three, the principles of fairness and natural justice that he says the whole process in which we have involved him and his client, militates against - it must be stated that we had gone and engaged in an investigation over a long period of time, into these allegations that had been brought to us by the !Xu and Khwe communities and specifically people, persons who had put before and brought to the attention of this Commission, affidavits to that respect.

In this regard, in fairness, in pursuance of the principles of fairness, we had issued an invitation to Colonel Piet Hall specifically for the purpose of obtaining his side of the story and allowing him a forum wherein he could express his appreciation of these allegations and also provide his general overview of what he perceived to be the situation as it had occurred.

Also on point three, it must be remembered that at the time that these allegations, at the time of these abuses are alleged to have occurred, Colonel Piet Hall was at that time the Officer commanding 31 Battalion in which most of the members of the !Xu and Khwe communities had been connected to.

On point four, in terms of paragraph 2, page 2 of the invitation it is stated that it is indicated that our client possesses information and such, that is pretty much standard, it is a way of allowing his client, if he has any further particulars or information or documents or things which he believes could be of assistance to the Commission in terms of arriving at a finding, or being able to pursue the matter further, this would actually have protected his client and opened the way for them to put their documentation things or anything that bears relevance to this investigation, on the record.

In terms of point 5, it is consequently our client's opinion that fairness and principles of natural justice dictate that he should be timeously furnished with all information pertaining to

the matters referred to in the invitation which would reasonably be required by him and his legal representatives to prepare for this hearing.

To that effect Mr Chairman, the Attorneys of Colonel Piet Hall were furnished specifically with affidavits of one Paulo Chimbenda, a Corporal, a soldier by the name of Private Lawrence Justino, a woman who is the wife of a soldier who was killed and to wit we are pursuing the allegations of murder in respect of her husband, that is Lakina Kamaya. Also we have the affidavit of another woman who claims that her husband was a soldier and that he was murdered, that is Jokina Dahla and then we have the affidavit of Staff Sergeant Mario Mohongo, which specifically mentions in paragraph 3 of his affidavit, the name of Commander Piet Hall.

In addition to this, Colonel Piet Hall through his Attorneys were furnished with a range of media reports relevant to the subject under discussion. On point six of this particular thing he says, in order to enable our client and ourselves to prepare for his appearance before your Commission, the information set hereunder is required.

Now, I don't think that this is the time or the place to argue back and forth about his legal opinion about how we went about it, but I would state Mr Chairman, that there is no difference



between Colonel Piet Hall and any of the other people who have appeared before us in these Section 29 enquiries.

The Section 29 enquiries are by their very nature, inquisitorial. They are part and parcel of the duties that have been conferred upon the Investigative Unit which is to engage in an investigation of events, situations and allegations that have been brought to the attention of this Commission. By calling Colonel Piet Hall to this hearing, it was our intention to provide him with a safe and comfortable forum wherein he could present his side of the story and also discuss with us situations, as he perceived them to be at the time when these abuses was said to have occurred.

It is also our view that the mere fact that Colonel Piet Hall was at the time as he well knows, the Commander of 31 Battalion and as the Commander of troops under his command who are making, bringing serious allegations, we felt that in fairness to him, and because people in this country are innocent until proven guilty, we should provide him with a forum wherein which he could come and present his side of the story of what occurred in Battalion 31 at the time when these abuses are said to have occurred.

So, in fairness Mr Chairman, I would just say that the fact that Colonel Piet Hall is not with us today, is a tragedy in that he has robbed this Commission and himself, of an opportunity to

present as broad as possible a picture of the violations that are said to have occurred and the context in which these violations are set to have occurred and he has robbed himself of the opportunity to challenge the serious and damaging allegations that have not been brought by people who are outside, running around and have absconded from the military, but who are in fact serving members of the South African National Defence Force, who are in fact highly decorated soldiers.

That is our response Mr Chairman.

CHAIRPERSON: Mr Khoisan, I have heard your submissions. It seems to me that you are arguing that there has been substantial compliance with the provisions of the Act in so far as proper invitation was sent out to Colonel Piet Hall. It does appear however, that he is acting on the advice of his Attorneys.

What are you asking for Mr Khoisan, in view of your argument, that there has been substantial compliance? The fact of the matter is that Piet Hall is not before us, he was subpoenaed to attend and if you argue that there was substantial compliance or full compliance with the provisions of the Act for the serving of the invitation and or a subpoena, it seems to me that there is a contravention thereof in the light of your argument. What are you asking for?

MR KHOISAN: Well, firstly let me just add Mr Chairman, just to indicate the steps that had been taken by the Commission.

There is still the matter of an air ticket that was booked to Port Elizabeth, within the time frame which would have allowed us to serve the subpoena within 14 days upon Colonel Piet Hall. I just wanted to add that as an addition, because that can actually be photocopied and placed into the record, to show the good faith that the Unit had in respect of this matter.

I do believe that we cannot have a situation where people willy nilly ignore invitations and subpoenas to appear before this body and particularly the Investigation Unit, particularly in respect of the fact that there are constraints of time and that there are serious allegations to be pursued, so I advise Mr Chairman, that the necessary legal steps be taken which would maybe result in compelling Colonel Piet Hall and his legal representative, to appear before us to present their position on this matter.

I feel that it is, we cannot be in a situation where people are allowed to come and go as they please. I will also state on the record that two of the people who have brought these allegations, were also subpoenaed to appear, timeously, to appear before this Commission. Staff Sergeant Mario Mohongo and Corporal Paulo Chimbenda. In fairness to this Commission and the investigation that we are pursuing, they complied with that subpoena and yesterday the 14th of July, gave evidence before this Commission, so I believe that there cannot be allowed a

situation of inequality to obtain where people are subpoenaed to appear and appear and other people, just are allowed to make light of a very serious situation and not appear before this Commission.

I suggest that we take legal steps and approach the relevant authorities, including the Attorneys General with the view of compelling Colonel Piet Hall to come and give evidence before us Mr Chairman.

CHAIRPERSON: In the circumstances, my view is that you are arguing for the invocation of the provisions of Section 39 of the Act, which ...

MR KHOISAN: It is correct Mr Chairman.

CHAIRPERSON: It seems to me therefore there has been a contravention of that Section and I find subject to argument which can be produced, at the appropriate time and at the appropriate forum, that there has been a substantial or a clear contravention of the provisions of Section 39 of the Act.

I therefore rule that a copy of the transcript in this proceedings, be made available to the office of the Attorney General for purposes of him (indistinct) charges against Colonel Piet Hall, for failing to attend having been invited by law, to attend at these proceedings.

That is how far we can take the proceedings at this stage and the matter will be adjourned on the basis therefore, that the

necessary steps will be taken in terms of Section 39 for Colonel Piet Hall to be charged for contravening Section 39 of the Act.

These proceedings are adjourned.

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