

PROCEEDINGS IN TERMS OF SECTION 29



ON 27 NOVEMBER 1996

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PROCEEDINGS RESUMED ON 1996/11/27RECORDING MACHINE OPERATORS DULY SWORN IN

MR BOOYENS: Mr Chairman, just before the witness is sworn in, there are certain matters in limine that we would just like to raise. In the first place there seems to be members of the public present here. Can we just have an indication who they are and what the reason for their presence are?

CHAIRMAN: Thank you, Mr Booyens. The Act, as you know, states that no persons other than the person subpoenaed, his legal representative and staff of the Commission may be present. Every person here is a full-time member of staff of the Commission.

MR BOOYENS: Okay, thank you. Mr Chairman, then the second aspect that we wish to raise, before Mr Taylor is sworn in, is we've received a notice to appear before - this is the investigative unit, I presume of the - to appear before you and to tell you what we know, if anything, about inter alia the death of Mr Rick Turner, the death of Mr Griffiths Mxenge, Mr Goodwell Sikakane, Mr Charles Ndaba and Mr Mbusa Tshabalala. We've got a difficulty in this regard. As you full well know Mr Rick Turner, on the research we have been able to do, passed away on the 8th of January 1978. That's 18 years ago. The death of Mr Mxenge is 1981, that's another 16 years ago - 15 years ago.

CHAIRMAN: Sorry, could I just interrupt.

UNIDENTIFIED: Sorry.

CHAIRMAN: Could we just - once we've started I don't think it's appropriate to have people walking in and out.

/UNIDENTIFIED:

UNIDENTIFIED: We were under the impression that we were starting at half past nine.

CHAIRMAN: Sorry, there was - ja. No, you're right, there was a notice to say that we'd start at half past nine. I'm sorry for the confusion.

UNIDENTIFIED: (Inaudible) ... on the door.

CHAIRMAN: Could you just put a notice to say no one to come in while these - people not to walk in and out during the course of the proceedings. Sorry.

MR BOOYENS: Thank you, Sir. Now, Mr Chairman, we're sitting in a very unfortunate position that our client is in a position where he can be asked questions of incidents that, say at least two of them, that occurred a very long time ago. Now, memory, like women, they say, are fallible and I know that may be an unpopular statement. But in terms of section 23 of the Constitution of the Republic South Africa any person is entitled to information that any organ of State, which this Commission is, any information they might have about him and we will most certainly be severely prejudiced unless we are told, "Look, this is," for example, Mr Rick Turner, "this is what we want to know about you." We will have to go - I'm involved in his trial in the Griffiths Mxenge matter and I can assure you it's a mammoth task to trace people about something that happened so many years ago and there at least we've got the advantage that we've got all the information that the prosecution intend relying upon. And I would respectfully submit that before we are placed in possession of such information that the Commission wants us to answer on, we are

certainly severely prejudiced

/and we

and we simply feel that our constitutional right is being abused in this regard. So in the circumstances I would move that this hearing be adjourned and that Mr Govender and I get together or Mr Govender and my attorney get together and he can supply us with the information and then we will be able to properly consult with Mr Taylor in this regard because, quite frankly, at the moment you're talking about something that happened - things that happened years ago and we are clearly, if you're entitled to that information for a Supreme Court hearing or a hearing in any other court, you're entitled to the full police docket, clearly we're entitled to that information. I would submit that section 23 of the Constitution is binding on this Commission as well.

CHAIRMAN: Mr Booyens, the Cape Bench, Full Bench of the Supreme Court has dealt exhaustively with this matter in the - I don't have the judgment with me off-hand. I can make it available to you this morning. It was in a matter in which a former security branch policeman - I think his name was Wagenaar - brought proceedings against the Commission to obtain documentation prior to a hearing. The Full Bench said very clearly, on an interpretation of the Act, that until such time as the Commission contemplated making a finding against the person against whom the allegations had been made - until such time as they contemplated making a finding against him that the person was not entitled to any documentation in which the allegations appeared,

whether they were in victims' statements. Now, I can make that judgment available to you and I think that's the situation that we're in. We have

/information information about Mr Taylor which has - information which has been forthcoming from the public hearings that we've been holding. People have made certain allegations about him which would tend to show that he was involved in human rights violations within the ambit of the Commission's work. We certainly do not intend making any finding against Mr Taylor at this stage. This is an investigative inquiry. We are obliged and we're bound at the point where we contemplate making a finding against him to then make available full documentation to him so that he can make himself familiar with that and he can properly respond to that. At this stage this is an investigative inquiry where we will be putting questions to him and that's the basis on which we will be putting questions to him. "Do you know anything about this matter? Can you enlighten us on it?" And he can say, "Yes" or he can say, "No". So, with respect, that situation has been exhaustively traversed. I don't want to go through it again here.

MR BOOYENS: No, no, no. I accept that. That matter has obviously not been reported because ... (intervention)

CHAIRMAN: It hasn't been reported. I'll certainly make available a copy of the judgment to you. It's a judgment of the ... (intervention)

MR BOOYENS: No, no, no. Mr Chairman, I'm happy to accept your word that there was such a decision

because I went through the law reports and I didn't find anything.

CHAIRMAN: Right. It's Mr Justice Friedman.

MR BOOYENS: No, if the Commission assures me that

/there

there is such a situation, Mr Chairman, then the second aspect that we would like to deal with and that relates only to two matters and that is the matter of - matters No 1 and 2 on the notice, Sikakane and Mxenge. Now, the Commission is no doubt aware of the fact that my client is due to appear in the Supreme Court on Monday although the matter will be adjourned, I understand, or there will be an application for an adjournment - we cannot say yet that the Court will grant such an application in that matter where Mr Taylor is charged with Mr Mxenge's murder. And secondly, as far as ~~the matter of Goodwell Sikakane~~ is concerned, although not charged yet, Mr Taylor has been warned by the police that the matter is being investigated against him. Now, it may -there may be some room for debate whether he's obliged to answer - in this forum - he's obliged to answer incriminating questions or not. But leaving that aside for the moment, as far as those two matters are concerned, in any case, certainly as far as matters are concerned where he's at risk, at real risk, of appearing in court in the not so distant future, we feel that Mr Taylor, in the Mxenge matter - I know that what is said here is inadmissible and it cannot be used, on the other hand it can be published and it's not for this forum to decide whether it will be published, it's for the full Commission to decide whether it will

be published. Now, in the event of something like that being published prior to a court hearing, we run the risk - and I'm not saying that the risk is that a Court might be biased, but once it's published, witnesses see it, police that investigate the matter see it, any

/variety

variety of people see it and they're in the situation that they know beforehand what the accused's defence may be in the cases and they can certainly trim their sails according to the wind. It's a risk that exists in this case. What we are saying is, as far as those two matters are concerned, we will, if necessary, if the Commission so directs, we are quite happy to talk about matters 3, 4 and 5. They are matters that cause us no concern. But as far as the others are concerned there is a potential of prejudice and one cannot get away from that and in the circumstances we would move that as far as those two matters are concerned that they be postponed until such time as either the Attorney-General has - well, in Griffiths Mxenge's matter, we know what the Attorney-General's decided to do. He's decided to prosecute Mr Taylor. In the Goodwell Sikakane matter we don't know yet what he's decided but we do know the police - that there's a risk that he will be prosecuted. We are - at least according to some interpretations - in a situation where we are under a legal obligation to answer incriminating questions. If that interpretation be the correct one, I would just like to refer you to the matter of Sea Point Computer Bureau v McLachlan and Others 1996(6) Butterworths Constitutional Reports

1071. What happened there is the Judge really dealt with the principles as to when a matter will be stayed if there's a criminal matter pending and the principle that seems to crystallise from that is the following.

That if you are, for example, in a civil matter where you are not obliged to testify then you cannot say, "Stay the civil matter because I've got a criminal matter pending

/against

against me." But the moment you are under a - such as in certain interrogatories in terms of the Insolvency Act - the moment you are in that situation the Court can in its discretion stay the matter on the ground that there may be prejudice. To be charged for murder is probably the most serious offence that you can be charged with in this country. Mr Taylor is charged in one instance with murder and may most certainly be charged, on the information we've got at the moment, in murder as far as Mr Sikakane is concerned. In the circumstances we say that because of the potential prejudice you, in your capacity as Chairman, should exercise the discretion and order that the hearing of these two matters be postponed in the case of Mr Mxenge until the conclusion of the trial and in the case of Mr Sikakane either until the Attorney-General has decided not to prosecute or, if he should decide to prosecute, until that matter has been dealt with by the courts as well.

CHAIRMAN: In terms of our obligations under the Act we are obliged in a case where a person's subpoenaed to appear at this forum has been charged with an offence, we are obliged to consult with the Attorney-

General of the region. We have done so and he has not in any way suggested that we shouldn't go ahead with this hearing today.

MR BOOYENS: Mr Chairman, I find that statement rather strange because I've spoken to Mr McNally yesterday and he told me that as far as Mr Taylor is concerned there was no consultation with him.

CHAIRMAN: It wasn't with Mr McNally himself. It was /with with one of the deputies, Mr de Klerk.

MR BOOYENS: Well, you see, my problem with that is the Act said that there must be consultation with the Attorney-General. Of course that doesn't mean that you, with respect, I think the interpretation should be, Mr Chairman, that you can go on with the hearing but he's under no obligation to answer incriminating questions in that regard. Mr de Klerk I spoke to last week and I must confess I've only spoken to the Attorney-General himself. De Klerk didn't know anything about having been consulted last week.

CHAIRMAN: He was consulted this week.

MR BOOYENS: I see. And as far as it's - with respect, it seems to me - I don't know whether "Attorney-General" is defined in the Act but it's the Attorney-General of the province who's got jurisdiction in terms of section 31(2).

CHAIRMAN: All right, well, look, let's let those two matters stand over for the time being.

MR BOOYENS: I would appreciate that, Mr Chairman, then we're happy to deal with the three matters that I mentioned.

CHAIRMAN: There are other matters which we will be

seeking Mr Taylor's - that we will be putting questions to him on which don't appear on the subpoena that you have before you.

MR BOOYENS: Well, may I reserve my rights in that regard, Mr Chairman. We're obviously - we're taken completely by surprise as far as that is concerned and ... (intervention)

CHAIRMAN: They relate to generally his activities, the /activities activities of the branch in which he worked and people that he worked with, where they worked from, things like that which are all contextual and background material.

MR BOOYENS: I appreciate what you say, Mr Chairman. May I reserve my rights then in that regard, please. Mr Chairman, as far as the three matters that we are concerned, I don't know what procedure you normally adopt. We have prepared affidavits as far as Mr Rick Turner is concerned and Mr Ndaba and Tshabalala are concerned. We have prepared affidavits in that regard. Yes, I seem to have the originals with me. Perhaps I should surrender these because it may substantially shorten proceedings. Have you got a copy of Mr Govender?

CHAIRMAN: We can make copies if you like.

UNIDENTIFIED: (No microphone - barely audible) What have you got there?

MR BOOYENS: That's Mr Rick Turner, dealing with Mr Rick Turner and numbers 4 and 5.

UNIDENTIFIED: (Inaudible) ... two statements, hey?

MR BOOYENS: Ja. Ja, there's only two statements. The one is a combined statement and this that Rick

Turner. May I perhaps hand this to my colleague, Mr Chairman?

MR GOVENDER: Mr Chairman, may I suggest a five minute recess for us to consider these affidavits before we proceed?

CHAIRMAN: I think so. We don't - I don't have copies at all. So I think we'll adjourn for a few minutes, make copies and just discuss our ... (incomplete). Thank you.

HEARING ADJOURNED

/ON RESUMPTION:

ON RESUMPTION:

CHAIRMAN: After that opportunity to consult, we have decided the following. That with regard to the matters of Griffiths Mxenge and Neville Sikakane we will consult with Mr McNally and following our consultation with him, we then reserve our rights to cross-examine Mr Taylor on the issues arising out of those two incidents. We undertake to supply Mr Taylor, through you, with a list of the matters on which we seek a response from him and we further reserve our right to cross-examine him on those issues at a further section 29 inquiry. You will undertake on behalf of Mr Taylor to let us have a written response to the issues which we will supply you with.

MR BOOYENS: Most certainly, Mr Chairman. In fact, if my colleague can supply me with the details today, it may be a good idea for us to have a look at that and if there's any unclarity about it, let us look at it today and then we can approach my learned colleague today and I can actually ask him, if we want any clarification if there's such lacking of detail that

my client doesn't remember and it's necessary for us and able to make our replies at least understandable to you that - but we give the undertaking that we will, as soon as possible, as soon as we can find the time to consult and I will be in touch with my learned colleague and as soon as possible we will let you have written responses to all those matters.

CHAIRMAN: Thank you, and then we would obviously reserve our rights to cross-examine Mr Taylor.

MR BOOYENS: That's clearly the understanding,

/Mr Chairman,

Mr Chairman, yes.

CHAIRMAN: Okay. Right, well, we won't swear the witness in at this stage. We will merely adjourn the inquiry pending our supplying you with a list of the matters on which we seek his response, you supplying us with a written response and we will then decide whether - at what stage to reconvene this inquiry in order to put questions to Mr Taylor.

MR BOOYENS: I can obviously liaise with my learned colleague in that regard as to when will be a suitable date to us or whenever. Thank you, Mr Chairman.

CHAIRMAN: Perhaps just in order to prevent us having to subpoena Mr Taylor again, I could just warn him that this matter is adjourned and that he is obliged to appear again at a reconvened inquiry at a mutually convenient date.

MR BOOYENS: Yes, and perhaps you could add the rider that notification to my instructing attorney ... (intervention)

CHAIRMAN: Would be deemed ... (incomplete)

MR BOOYENS: ... would be deemed adequate notice.

CHAIRMAN: Adequate notice.

MR BOOYENS: Yes, we'll be happy with that.

CHAIRMAN: Good, thank you very much.

MR BOOYENS: Thanks.

PROCEEDINGS ADJOURNED TO A DATE TO BE ARRANGED

/PROCEEDINGS

