



JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

VUYANI NGALWANA

Requester

In re: Request for Evidence

FORMAL REQUEST IN TERMS OF RULE 9.1

A. INTRODUCTION

1. My name is Vuyani Ngalwana. I am an adult legal practitioner of sound mind, practising as a member of the Bar, the Pan African Bar Association of South Africa, with chambers at 1st Floor, 82 Maude Street, Sandton. I have occasionally acted as a Judge of the High Court of South Africa since 2009, and continue to avail myself from time to time when requested by the Judge-President. I have Chaired the General Council of the Bar of South Africa and have been a member of the inaugural Legal Practice Council from which I voluntarily resigned in order to pursue what I consider to be more pressing challenges in this country.

B. PURPOSE OF THE REQUEST

2. This is a request in terms of Rule 9.1 of the RULES GOVERNING PROCEEDINGS OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE (“the State of Capture Commission” or “the Commission”).
3. The Rule reads as follows:

*“If **any person** considers that a particular witness should be called to give oral evidence, a written request to this effect should be made to the Commission and shall include the reasons for the request and the likely value of the evidence of such witness. Such witness may be called at the discretion of the Chairperson.”*

(emphasis supplied)

4. My request is that **three persons** should be invited by the Chairperson of the State of Capture Commission to give oral evidence before the Commission and be questioned on their evidence in terms of Rule 3.2 in order to ascertain the truthfulness of their evidence. Rule 3.2 says:

“A member of the Commission’s Legal Team may put questions to a witness whose evidence is presented to the Commission by the Commission’s Legal Team including questions aimed at assisting the Commission in assessing the truthfulness of the evidence of a witness. Subject to the directions of the Chairperson, the Commission’s Legal Team may ask leading questions.”

5. The three persons that I request should be invited to give evidence are the following:

- 5.1 Mr Fikile Mbalula, South Africa's Minister of Transport
- 5.2 Mr Johan Rupert, a businessman
- 5.3 Mr Pravin Gordhan, South Africa's Minister of Public Enterprises

6. I make this request as an officer of the court and in the promotion of participatory democracy.

C. REASONS FOR THE REQUEST AND VALUE OF THE EVIDENCE

(i) In Respect of Messrs Mbalula and Rupert

7. In his evidence before the State of Capture Commission on 15 July 2019, former President Zuma said, under oath:

"I have lived with people who do not know I know about them because that was not what I was trained for to use intelligence wrongly or carelessly but these comrades have provoked me and other people. Not only them. Some other people had said things for example one day Comrade Mbalula attend - attended an activity in the farm or home of Mr Rupert and then Rupert saw him he said Minister Mbalula -when that happened he was the Minister of Sports.

If Zuma takes out – removes Pravin Gordhan it will shut down the economy of this country. You must go and tell him and indeed Mbalula came to tell me. I said but what has he to do with us. I – I did not know that he is a member of the ANC to decide how the ANC must deal with its matters. What is his problem? I said that he – go back to him to say that is his problem but he said we will shut down.

We will make the Rand flat on the ground. Well fine indeed they did interfere with the land – with the Rand. I think there is one person who confessed not long – this year that they did so and I knew even at that time it was a deliberate move part of the agenda."

8. These are serious allegations in relation to a serving Member of Cabinet and implicating a leading businessman in something that could be described as treason. But that is a matter for the National Prosecuting Authority which the Chairperson can, in terms of paragraph 7 of the Commission's Terms of Reference, refer for prosecution.

9. For purposes of this request, the allegation made by President Zuma describes an issue that falls within this Commission's Terms of Reference, namely,

*"to inquire into, make findings, report on and make recommendations concerning ... whether, and to what extent and by whom attempts were made **through any form of inducement** or for any gain of whatsoever nature **to influence members of the National Executive** (including Deputy Ministers), office bearers and/or functionaries employed by or office bearers of any state institution or organ of state or directors of the boards of SOE's. In particular ... whether the appointment of any member of the National Executive, functionary and/or office bearer was disclosed to the Gupta family **or any other unauthorised person before such appointments were formally made and/or announced**, and if so, whether the President **or any member of the National Executive** is responsible for such conduct."¹*

(emphasis supplied)

10. It thus falls within the Commission's Terms of Reference to inquire into, make findings, report on and make recommendations concerning:

¹ Paras 1.1 & 1.3 of the Commission's Terms of Reference

- 10.1 Whether or not the alleged threat was indeed made by Mr Johan Rupert to **“shut down the economy of this country ... [and to] make the Rand flat on the ground”** if President Zuma dared remove Mr Pravin Gordhan as Finance Minister.
 - 10.2 Whether the alleged threat was indeed conveyed by Mr Mbalula to President Zuma, where, when, and who else was present and can corroborate President Zuma’s evidence to this effect.
 - 10.3 Whether **“indeed they did interfere with the land – with the Rand”** after Mr Gordhan’s removal as Finance Minister, as alleged by President Zuma, and who **“they”** are.
 - 10.4 Whether the alleged threat – true or not – constitutes **“any form of inducement ... to influence members of the National Executive”** (to wit, Mr Mbalula and President Zuma) by **“any other unauthorised person”** (to wit, Mr Johan Rupert) before removal of Mr Gordhan as Finance Minister was formally made.
 - 10.5 Whether President Zuma or **“any member of the National Executive”** is responsible for the leak of the removal of Mr Gordhan as Finance Minister before the decision was formally made.
 - 10.6 What the identity is of the person who, according to President Zuma, **“confessed not long – this year that they did [interfere with the Rand]”**.
11. These are some of the questions that remain unanswered after President Zuma’s evidence on 15 July 2019. It has now been exactly an entire year since that evidence was given under oath and the public has not heard a word from the Commission about whether or not the allegations made are true.
 12. It is my respectful submission that only Mr Mbalula and Mr Johan Rupert can put these allegations to bed by giving oral evidence under oath or solemn affirmation before the Commission. It falls on the Chairperson to invite them both in terms of Rule 9.1 to do so, so that there is no lingering uncertainty about the possible role played by businesspeople in the appointment of cabinet ministers in South Africa.
 13. As this (the alleged involvement of businesspeople in the appointment of cabinet ministers) is precisely the mischief that this Commission is investigating, the evidence of Mr Mbalula and Mr Johan Rupert is crucial. So, too, their being probed on the veracity of whatever evidence they may give on the subject.

(ii) In Respect of Mr Pravin Gordhan

14. Two issues arise in respect of Mr Pravin Gordhan.
 - 14.1 The first is whether or not he is the member of the National Executive responsible for the leak of information to Mr Johan Rupert (**“an unauthorised person”** within the meaning of paragraph 1.3 of the Commission’s Terms of Reference) that he would be removed as Finance Minister before that decision was formally made.

- 14.2 The second is whether – as demonstrated by his statement to a Parliamentary Committee earlier this year – he does believe indeed that some corruption cases are not necessarily criminal cases.
15. I do not know why Mr Johan Rupert – if the allegation is true that he threatened to “**shut down the economy of this country**” if Mr Gordhan were removed as Finance Minister – would take up the cudgels for Mr Gordhan. Perhaps this is something the Commission should investigate. What seems clear – again, assuming that he did indeed make the threat – is that he must have had knowledge of the President’s intention to remove Mr Gordhan before the decision was formally made by the President. The question is who told him.
16. Paragraph 1.3 of the Commission’s Terms of Reference enjoins the Commission to inquire into, make findings, report on and make recommendations concerning
- “whether the appointment of any member of the National Executive, functionary and/or office bearer was disclosed to the Gupta family **or any other unauthorised person before such appointments were formally made and/or announced**, and if so, whether the President **or any member of the National Executive** is responsible for such conduct.”*
17. I thus request that the Commission invite Mr Gordhan in terms of Rule 9.1 to answer the question, under oath or solemn affirmation, whether he is the member of the national executive who, before the decision was formally made and/or announced, conveyed it to Mr Johan Rupert, and that he (Mr Gordhan) be questioned on it in terms of Rule 3.2.
18. The second issue is this. Earlier this year, the Minister of Public Enterprises, Mr Pravin Gordhan, told a Parliamentary Committee that
- “Not every corruption case is necessarily a criminal case”*
19. This observation comes hot on the heels of revelations earlier this month that Eskom made “**overpayments**” of at least R4 billion to at least four companies doing business with it. Allegations of corruption have since been swirling around this “**overpayment**” claim on social media, many asking what the Minister means exactly.
20. I have seen a 53 seconds video clip on You-Tube in which the Minister says this. I have not been able to find a full video. Perhaps the Commission’s investigators will be more successful.
21. Yours is a “JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, **CORRUPTION** AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE”. In terms of its Terms of Reference, the Commission is appointed
- “to investigate matters of public and national interest concerning allegations of state capture, **corruption**, and fraud”*
22. It ought to be a matter of serious concern to the Commission – and a matter it must wish to probe as part of its terms of reference – for a Minister in government to express the view that the Minister of Public Enterprises seems to hold.
23. On 5 June 2020, I lodged a complaint with the Public Protector inviting the Office to investigate the alleged “**overpayment**” by Eskom and other related issues which may

involve corrupt conduct. It is thus of concern to me as a citizen, as an officer of the court, and one of many who bears the brunt of Eskom's "loadshedding" and increasing cost of electricity while a cabinet minister in whose portfolio Eskom falls believes that not every corrupt conduct is criminal conduct.

24. For this reason, I request that Minister Pravin Gordhan be invited in terms of Rule 9.1 to explain to the Commission what he means by his statement that not every corruption case constitutes a criminal case, and whether he can provide examples of such cases so that the public is aware when, according to the Minister, they are committing criminal corruption and when their corruption is not a criminal act.
25. And I am NOT being facetious.

D. CONCLUSION

26. In my respectful submission the issues I have now placed before the Commission require its most serious, and relatively urgent, attention. Without clarity on these issues South Africans with the good of the country at heart cannot move forward with a clear conscience that corruption is a thing of the past, and that cabinet appointments are free from external pressures by businesspeople, or that the serving President is free from such influences.

V NGALWANA SC
Chambers, Sandton
16 July 2020