

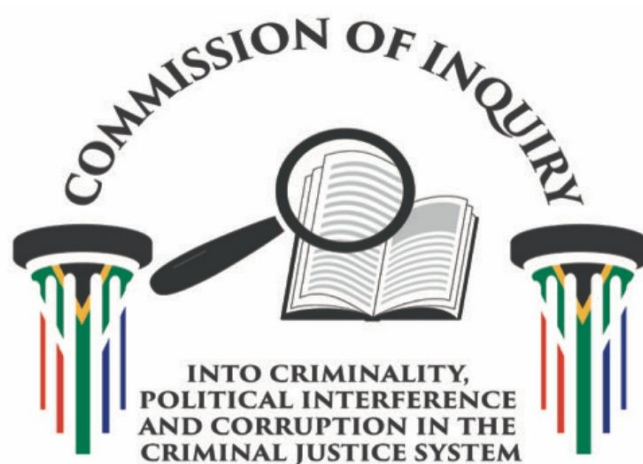
**JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM**

HELD AT

BRIGITTE MABANDLA JUSTICE COLLEGE

21 OCTOBER 2025

DAY 16 – SABC Live Link 05:30 – 05:45



PROCEEDINGS ON 21 OCTOBER 2025 05:30 to 05:45

ADV LEE SEGEELS-NCUBE: That was insofar as what you say in your statement is reflected in the transcript, or what you say is reflected in the transcript at 109.

WITNESS A: Yes.

ADV LEE SEGEELS-NCUBE: And that is what we just ...[intervenes].

WITNESS A: Yes, Commissioners.

ADV LEE SEGEELS-NCUBE: And then at 110 of your
10 statement, page 36, can we go back there?

WITNESS A: Yes, I am on my statement, 110 of page 36.

ADV LEE SEGEELS-NCUBE: Yes.

WITNESS A: And then it reads as follows:

20 “When Mr Mashile submitted to the Judge that Molefe's previous conduct of traveling with false documents was relevant because it showed that he was capable of such conduct, especially now that he is facing a serious charge, the Judge said that Molefe cannot create false documents alone and asked Mr Mashile whether he was saying that the Department of Formal Affairs is not competent.”

ADV LEE SEGEELS-NCUBE: Thank you, Witness A.

ADV KHUMALO SC: Thank you. Witness A, I want to take you back to paragraph 109 of your statement in line 4. So starting from ...[intervenes].

WITNESS A: Yes, Commissioner.

ADV KHUMALO SC: Line 2, you say:

10 “From the outset of his argument, Mr Mashile made it clear that Molefe had to prove that there are exceptional circumstances that justify his release in the interest of justice.”

And then the next sentence that follows is:

“The Judge simply did not deal with this requirement.”

Are you saying there that the Judge in his judgment did not deal with the requirement of exceptional circumstances, or did not say what the exceptional circumstances were?

WITNESS A: Yes.

20 **ADV KHUMALO SC:** What is the point you are making there?

WITNESS A: I am saying that the Judge did not really exhibit the circumstances, the exceptional circumstances that need to be exhibited by the applicant to say he has given the exceptional circumstances to the satisfaction of the Court and these are the circumstances that the Court is

considering that will qualify him to be a candidate of bail in this regard.

ADV KHUMALO SC: Now, I need you to go to the judgment itself on page 363 of the annexures bundle.

WITNESS A: 363?

ADV KHUMALO SC: Yes.

WITNESS A: Yes.

ADV KHUMALO SC: Are you on page 363?

WITNESS A: I am getting to it, Commissioners. Yes, I am
10 on page 363, Commissioners.

ADV KHUMALO SC: Yes, so in line 20, if you start from line 19, do you want to comment on that paragraph in its entirety? And then go to the next page, starting from line 8 to line 11, just comment on those two paragraphs in their entirety in light of the statement you make in paragraph 109.

WITNESS A: Yes, this paragraph will start at:

20 “In my view, there are exceptional circumstances viewed in conjunction with his personal profile on the basis of which the Court should find that the applicant should be released on bail pending his trial in order to avoid excessive prejudice to the applicant. The learned Magistrate, in my view,

misdirected himself in determining whether exceptional circumstances exist or not, in that he disregarded that the applicant has assets and can therefore not afford to pay bail.”

ADV KHUMALO SC: Yes, continue up to line 11.

WITNESS A: Yes, Commissioner, I did not get that?

ADV KHUMALO SC: Sorry, I am saying you can continue reading until line 11 on that page.

10 **WITNESS A:** Oh, yes.

“I am further of the view that to find that because the applicant has previous convictions of about 20 years ago and that the applicant used a fraudulent passport, he should therefore be regarded as a flight risk, that, in my view, is a material misdirection. I find that there are exceptional circumstances justifying that the applicant should be released on bail, as ...[indistinct] will be in the interest of justice for reason that I have said above. Because of that, I make the following order.”

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ADV KHUMALO SC: Sorry, Witness A, I think you can

pause there because the Judge then deals with the orders that are made.

WITNESS A: Yes.

ADV KHUMALO SC: But going back to your statement, I just wanted to understand your criticism of the Judge. Are you saying the Judge did not mention exceptional circumstances, or is your point that the Judge did not say what those exceptional circumstances are?

WITNESS A: I am saying he did not really exhibit what
10 those exceptional circumstances are in his addressing of the Court.

ADV KHUMALO SC: Yes, thank you.

WITNESS A: Thank you, Commissioners.

ADV LEE SEGEELS-NCUBE: Thank you, Commissioner Khumalo. So, Witness A, are you saying that the Judge mentioned exceptional circumstances, but you do not know what those exceptional circumstances are when you read his judgment?

WITNESS A: Yes, I am saying, as far as I understood, he
20 did mention that there are exceptional circumstances, but he did not mention them expressly to say one, two, three, four, to whatever number these are circumstances, the exceptional circumstances exhibited by the applicant that will ...[intervenes].

ADV LEE SEGEELS-NCUBE: Sorry, Witness A, we are

losing you again. Witness A ...[intervenes].

WITNESS A: [Indistinct]... [connectivity problems] by him to be the candidate, the candidate for bail.

ADV LEE SEGEELS-NCUBE: Witness A, we are losing you again. Can you hear us?

WITNESS A: Yes, Commissioners, am I ...[intervenes].

CHAIRPERSON: Please repeat everything you just said, Witness A.

WITNESS A: Yes, thank you, Commissioners. I was
10 saying that the Judge does mention that there are exceptional circumstances that will now qualify the applicant to be released on bail, but he it did not mention them to the Court for all parties to hear what they are.

CHAIRPERSON: But is it not so, let us look, Witness A, let me just count the lines. One, two, three, four, five, I think around line 15, the indented paragraph starting, “I think, do you see that?”

ADV LEE SEGEELS-NCUBE: Can you see the screen, Witness A?

20 **WITNESS A:** I do see the screen.

CHAIRPERSON: So there the Judge says:

“I think the applicant has succeeded in demonstrating that factors listed in Section 60(4)(a) to (e) of the Criminal Procedure Act are not present,

combined with the fact that he would suffer substantial prejudice should he be incarcerated pending his trial. In my view, there are exceptional circumstances viewed in conjunction with his personal profile on the basis of which the Court should find that the applicant should be released on bail pending his trial in order to avoid excessive prejudice to the applicant.”

Am I mistaken if I say in context, this is a conclusion based on what the Judge has said before?

WITNESS A: I think if I understand this, as I would also like to declare to the Commission that I am not a legal expert, but when I am reading that, layman as I am, the Judge is making a ruling there. He does not expressly tell the Court to say the applicant has exhibited these exceptional circumstances and here they are. But he just says he did ...[indistinct] [connectivity problems] but what are they? To this day, I do not know what they are or what they were at that time.

ADV LEE SEGEELS-NCUBE: Thank you, Chair. Witness A, you then were dealing with, at page 36 of your statement, paragraph 110, you had read into the record about the reference to Home Affairs not being competent.

Do you recall that, at 110?

WITNESS A: I do recall that, yes.

ADV LEE SEGEELS-NCUBE: What is the point that you had wanted ...[intervenes].

WITNESS A: 110, yes.

ADV LEE SEGEELS-NCUBE: What is the point that you had wanted to make?

WITNESS A: I wanted to make a point that at that time I understood that to say the applicant is not going to be able
10 to do, he is not going to be able to have or to make means of having a false passport again on his own, unless if Mr Mashile was telling the Court that he does not trust the competency of other institutions of State, like in this instance, the Department of Home Affairs. And then I understood that to be something that I really could not understand properly to say, as much as we understand Home Affairs, and maybe like trust and believe in them, but we were sitting with a person who has done this before, and then when he did that, Home Affairs was already there, and
20 it was trusted that it is why would it be in a sense of Mr Mashile to say, I do not trust that department. I am thinking maybe it will collude ...[indistinct] the applicant to do this. I think that was a misdirection or it was, the Judge was misdirected there.

We were dealing with the capabilities of the

applicant, not other institutions. And then he had exhibited before that he can do that. He had done it and the proof is before the Court that here is a person who goes around crossing boundaries of countries using false document and using false identities, even though these departments were there, and then they were said to be competed, as we believe they are.

ADV LEE SEGEELS-NCUBE: Thank you, Witness A. Commissioner Baloyi, do you want us to go to that
10 reference in the ...[intervenes].

ADV BALOYI SC: Yes ...[indistinct] [microphone off].

ADV LEE SEGEELS-NCUBE: Okay.

ADV BALOYI SC: I think for completeness we should.

ADV LEE SEGEELS-NCUBE: It is at page, starts on page
329 of the bail bundle.

WITNESS A: Yes, Commissioners.

ADV LEE SEGEELS-NCUBE: Do you have it?

WITNESS A: Yes, I am on page 29.

ADV LEE SEGEELS-NCUBE: 329.

20 **WITNESS A**: 329. My apologies.

ADV LEE SEGEELS-NCUBE: 329 of the bail bundle.

WITNESS A: Yes.

ADV LEE SEGEELS-NCUBE: Where the Court says, you
can start from Mr Mashile next to line 10.

WITNESS A: Yes, Mr Mashile then said:

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“No, M’Lord, but it is information that was at the disposal of the investigating team and which information they took serious and acted upon. Furthermore, Your Lordship, on this aspect of the flight risk, my colleagues emphasizes that the applicant played open cards by making his passport available. Yes, we do agree that is the position, but this aspect Your Lordship must also be taken in conjunction with the past conduct.”