

COMMISSION OF INQUIRY INTO ALLEGATIONS OF POLICE INEFFICIENCY IN
KHAYELITSHA AND A BREAKDOWN IN RELATIONS BETWEEN THE COMMUNITY
AND POLICE IN KHAYELITSHA PHASE ONE

Thembani Gqeku

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COMMISSIONER: Right, Ms Mayosi, your next witness, do you want to go straight on?

MS MAYOSI: Yes, he is present. Yes, thank you. I understand that Mr Gqeku is going to testify in isiXhosa?

MS MAYOSI: isiXhosa, yes.

COMMISSIONER: Good, I'm going to ask my colleague to put you under oath.

INTERPRETER: The witness is going to testify in Xhosa and Adv Pikoli is going to swear him in. The advocate is just ensuring that the witness is aware that these are public hearings and that his name can be published in the media. The witness has no problem with that.

THEMBANI GQEKU: (Sworn states) (Through interpreter)

EXAMINATION BY CAPT MS MAYOSI: Mr Gqeku, do you live Enkanini in Khayelitsha?

MR ZITWANA: That is correct.

MS MAYOSI: Can you tell this Commission what kind of area you live in?

MR GQEKU: Firstly I'm going to tell this Commission who I am. My name is Thembani Gqeku, I'm an ex-professional boxer, I live in Enkanini in an informal settlement. Informal settlements are places where there is no electricity. There were no toilets in the past that were enough for everybody but now we have enough toilets.

MS MAYOSI: Are there street lights in your area?

MR GQEKU: There are no street lights in our area. The lights that are in our area are very far from where we are but those lights are called search lights, but they do bring a little light into our area.

MS MAYOSI: Do you use communal toilets?

MR GQEKU: Yes, we do have but at that time we didn't have enough of those toilets.

MS MAYOSI: There is an incident you mention in your statement that happened in July 2009. Would you be able to tell this Commission what took place that day?

MR GQEKU: Yes, I do want to explain to this Commission and I want to explain very well. It was the 18 July 2009. I was in a house that sells alcohol. Police were coming to this place but before they came they were driving down Baden Powell. I heard my phone ringing and I tried to answer. I saw it was my wife. My wife was asking me to get out of the shebeen because the police were closing shebeens in the area. There were three shebeens in that area, it's the one I was

in, there was one near the road and there was one behind where I was. After that call I – when the call was ringing I had to go outside to speak to my wife on this phone. When I was still outside on the call I could see the blue lights of the police vans. I stood there waiting to see which direction the police were going. My plan was that when they were coming to the shebeen where I was I was then going to leave that shebeen so that when they get there I wouldn't be there because already my wife had warned me to leave that shebeen. Eventually the police came to one of the shebeens, I don't know what they did there but what I heard is them speaking through a loudspeaker telling the owner of the shebeen to close. There was music that was playing in that particular shebeen. Then I went back to the shebeen where I was to warn the people that were inside that they must also leave the shebeen and go to their house. I even told them that the alcohol I was drinking I was going to leave it there. Some of them heard me and I heard them saying that they were also leaving, so they also left their liquor there and then I left, I went home. I think I must have left the shebeen around past nine. Around one or something to two I heard a loud noise. When I got home I just went home and I slept. I had to wake up because my wife was waking me up. In the house it was myself, my wife and my four children. On hearing this noise I also woke up. I noticed that the noise was close by. I could hear that people were throwing stones into my house and people were calling my name. Some of them were swearing at me. People were calling me to come out of my house and called the police that I had called earlier. So I told my wife she must let me get out so that I can sort out these people. My wife wouldn't let me get out of the house. At this time the children are still sleeping. The noise continued outside and they were still throwing stones at the house. I then decided that the plan was to open the door because I didn't know who these people were. So I opened the door and then I just stepped a little backwards but now when you open this door you can't really tell whether the door is open or if it's not open because the door is brown. These people continued throwing the stones and making this noise.

MS MAYOSI: Did you see who these people were?

MR GQEKU: Yes, I saw who these people were. When I saw who they were I noticed that there was a young child that came into my house or my yard. When I noticed I saw that it was one of the one boys in the area called Khanise, he was taking the stones that had been thrown into my yard and giving them to his uncle and to his father. So he was taking the stones that were in my yard already giving them back to the uncle and the father so that they could throw the stones again. So I noticed that I knew these people.

Then Khanise's uncle said that, "This house and this dog must be burnt down with his children. He must be burnt down because he is the one that called the police, the shebeen they wanted to close down, we've opened it again." Behind them the noise was continuing. While this was still going on I noticed that the second person, there was something that he was hiding. So this person said, "No, let's not burn him, let me shoot him." But this one was saying, "No, don't shoot him, let us burn him down."

MS MAYOSI: We would like you not to mention the names of the people, we know that you wrote them down on your statement, but don't mention their names.

MR GQEKU: While I was still standing near my cupboard watching the door I was still trying to figure out who these people were but I could only identify these three people because they were from one family.

MS MAYOSI: Do you know these three people?

MR GQEKU: Yes, I do know them, they are a family, they live in the area. They live in the third house from my house. There's very little space between the houses. This continue until about six o'clock and the number was getting fewer and fewer, a lot of the other people were leaving.

So I said to my wife, if you don't want me to get out of this house to solve this matter, they way these people want me to do because I know that I would be able to solve this problem, but now you are telling me not to fight, I must let them do what they want to do.

So my suggestion was that let me involve the law so that I can see what the end will be.

MS MAYOSI: What time did this incident start?

MR GQEKU: This started between one and two o'clock.

MS MAYOSI: Were the police called?

MR GQEKU: While these people were making this noise I was trying to call the police. The one was not being picked up and sometimes they were picking up and telling me that they were coming. Until six o'clock no one came so I decided to go to the police.

I then went to the police station. The person that helped me at the police station, the police officer asked me if I had met with the people in my community so that we could sit down and talk. I told them that we had not done this yet.

MS MAYOSI: Was he talking about the street committees?

MR GQEKU: Yes, he was talking about the street committees but I told him that the first place I went to was the police, I have not gone to the street committees.

So this officer told me that he suggested that I first go to my street committee and let them discuss this matter and see what the solution will be. So at that time I was not able to open a case, I had to go back to my house. Then I went and took it to my street committee – this was now on the 19th.

The street committee then sat down and called us as these families to meet and talk. We discussed this matter at the street committee. The street committee said that if this other family does not come to apologise to me and then we have a solution then I must go back to the street committee. But if that does not happen, the street committee themselves will go to this family.

So the decision the street committee was taking was that they were going to give this family up until the Friday. (inaudible – recording faulty). At the end of that meeting I assured the street committee that if this family comes and talks to me I will agree with whatever they are saying.

But the street committee's decision was that if this family does not come to talk to me or apologise until Friday, I must go back and report this same matter to the street committee but the committee said that if this issue involves a gun they will not be able to solve this problem entirely, as a street committee they will have to refer the matter to the police. So the street committee did refer to the matter to the police. They had asked me to come back to them at seven o'clock to go and

get a letter, a letter to the police.

This letter was addressed to the station commander. If I remember the station commander at the time was Nel. This was for Harare police station.

So the street committee gave me this letter to take it to the police station and I took it there. And then when I took this letter I was then able to open a case and make a statement.

After a case was opened I was told to go to the station commander, he was at the back of the police station. The station commander told me that he wanted to work on this case urgently but he was going to assign it to one of the members who were there at that time because he had to go somewhere.

So one of the police officers asked me what was the problem and I told her. So this officer called me and said, "Come to me, I'm going to look at your case." This lady officer was Ms Peter. She took my statement again and took the letter which I got from the station commander.

The station commander did not come back to me at that time so this lady continued to take all my details. She gave me a case number and then after I had left the police station she told me that I can go home, she will send me a case number.

MS MAYOSI: Did the police go to the community to that family you mentioned, did they do any investigation, according to your knowledge?

MR GQEKU: The police did go, they told me that they were going to go the next day but now at this stage I was concerned because this incident had already taken place a week ago, so I wanted to go back to the police. I called them again. I called them to go and search again or do whatever they can do or they're permitted to do according to the law.

I then went with the police and I went to show them where the house was. They went inside. If I remember correctly, when they got there it was the mother of the house that was there. The three accused were not there. The police searched and they could not find anything and then they came out.

Thereafter it was quiet. I then went back to the police station. When I had gone to the police station, now it was towards the end of the week again, on Friday. On that Friday one of the accused was picked up by the police. It was a Friday and then it was Saturday and Sunday and then on the Monday it looked like – I heard that he was going to appear in court but the police did not come back to me and tell me what I should do after this person had been arrested.

I went back to the police and they informed me that they found of them. I asked the police what I should do, they didn't give me any direction. I asked them again what I should do and they told me that I should go to court and check of one of their names will be on the court roll.

I went to the court and checked their names on all the court rolls, I did not see or find their names. I went back to the police station. At the police station they sent me again to the court because they told me that this matter was in court. So I went back to the court and at court I was told that this guy is not there and this was still the same day.

I went back to the police station and at the police station I was told I must go back to the court because this person was not in the police station, he was

supposed to appear in court.

So I went back to court and again at court they told me the very same thing. I then asked the manager in the court if they can go with me to the police station.

MS MAYOSI: Is that the prosecutor?

MR GQEKU: No, no, no, this one was the court manager. This manager told me I must go back to the police station and I informed him that this is what was happening when I go to the police station.

At this time I had gone back and forth to the police station three or four times but I told myself I'm going to do this.

MS MAYOSI: What made you follow up on this matter the way you were doing?

MR GQEKU: It was because nothing like this had happened in my life and also, I was not used to living with neighbours who I was not getting along with. Even where I come from I'm a person who likes peace and to live in peace.

MS MAYOSI: What eventually happened that day?

MR GQEKU: The manager in court suggested that I meet with one of the supervisors, a police officer, besides the station commander. I must look whoever the person that manages the detectives, I must talk to that person.

I was informed that supervisor or manager of the detectives was not available and then I was told to look for somebody else but I forgot the person's name now so was asked that this person must find the name of the accused and also to find out which court he was going to appear in.

If I remember correctly, this person was supposed to appear in court 1. At this time I had gone back to court, so this manager in court said I must go back to the manager of the detectives and I think this was the fifth time I was going back to the police station.

So when I got back to the police station this person told me that he doesn't know what to do now, what I should do, I must go back to Ms Peter to ask and find out what is going on with my case. This was a detective that was sending me to Peter now.

So I decided to give up on it on that day. So another day I woke up again and I started and again on this day I met with Ms Peter. At that time she told me she was busy. I asked if she could please assist me. She asked me how she could assist me. I told her I needed help with my case. She asked me what the case was. I told her that my case was 720/7/2009. She asked me what was wrong with my case or what was happening. I told her that I was not getting any feedback on the case and I was not happy with that.

She asked me why I was not getting any help, I said I didn't know, she should know as the police.

MS MAYOSI: The lady you are talking about, is she a police officer in Harare?

MR GQEKU: Yes, she is. She told me that she didn't know who to help me, if I wanted to know anything about my court case, I must go to court, I mustn't ask her. I told her I needed advice from her on how to do this now because I wanted to know if I should also appear in court or was it only the accused that were going to appear in court. She told me she didn't know anything, that I must just go to court and check there. I told her that I'd been to court and she wanted to know what they had said. I told her that they were telling me to come back to her. She asked

what were they say I must do by her? I saw that she was not entirely right because now she was getting agitated so I left and then I came back another day.

When I went back on this day she told me she was going to give me a name of the person who handles the dockets that go to court. So I went to court and tried to find this person. When I got to court this person looked for me and told me that this particular case did not even come to the court and she told me that there was something suspicious about this case and told me that she was warning me or helping me with this information.

She told me that these people did not come to court and it appeared that these people had been released from the police station but it was a case that should have come to the court.

So she told me that I must go back to the police station. Now this was another day and I went back to the police station and told them the same thing. And this lady told me if I don't want trouble or for her to arrest me, she told me I must get out of the police station if I don't want trouble.

I pleaded with her and said I did not want trouble, all I wanted were these people to be arrested, if the law agrees or if that's the way the law sees it because if someone threatens another person and the case is open that person should be – the law should take its course.

So she asked should she be the one that arrests them? She told me if the law did not arrest them then she was not going to arrest them. She told me to get out and then I left and that was the end of it. That was the end of it with Ms Peter.

MS MAYOSI: Where were the accused at that time, were they still in custody or where were they?

MR GQEKU: At this time the accused – the one that was arrested was already out on that Monday because when I went back to my area I saw him, this is that Monday when I was going back and forth in court.

When I went back home I could see that he was out, this is the one that was arrested on the Friday. It appeared that he had been released on that Monday because I remember seeing his sister at the court because she was also looking for him.

MS MAYOSI: What happened to this case after that?

MR GQEKU: After that I did not hear anything from the police about this matter. It was just I that kept on going to the police station wanting to get feedback but I was not getting any feedback at this stage. What was happening is that the accused continued to threaten me and doing funny things. But what I decided is that I was going to continue with this case.

MS MAYOSI: What do you mean when you say they keep doing their things?

MR GQEKU: They kept threatening me and telling people stories about me. If you remember, we're not far from each other, we're in the same area because even if I go down to the shop I go past their house.

MS MAYOSI: So how is that situation now?

MR GQEKU: This is a very bad situation, some other people would not be able to endure what I'm enduring but I was able to just live with it. But one thing I've noticed is that my life is in danger but what I don't know is that if the law cannot do anything about this matter then I must try and do something. My family has been

wanting to solve this matter in their own way but I've telling them to wait.

I'm not sure now what kind of life I should be living because there were a (indistinct) that these people want me to die, that family wants me to die. They continue making threats and they're making traps but they can't get hold of me. I'm not getting any help from the police.

MS MAYOSI: What would you like to see happen, how can this matter be solved?

MR GQEKU: What I would like from this Commission that would help me before something happens to me to make feel better is that that family should be arrested because my life – they've made my life hell, even my children's lives. For me to be happy is for those people to be arrested because if they did not mean what they did they could have come to me after that. So they did not come to me. So instead of coming back to me they keep on doing things and it was not the first time they were doing things.

What I'm saying, it was not the first time. There was a case similar to this one, at that time I've been accused of rape by the same family but that case did not go anywhere. So this was the second incident with the same family. Even that matter, when I went to the police station to follow up on it I was told that I must wait, so I decided I will wait on that one and finish the one, the last case that they did.

MS MAYOSI: Does that mean you still have not gotten any feedback about the case we are talking about here?

MR GQEKU: I have still had nothing, there's been no solution even from the police. I have no relations with the police. I am living a very hard life in the area. One of my kids goes to a school in Khayelitsha, she is not happy, she is traumatised. I have been called once at the school, I went to the school, I was told that they're going to find another school for this child because of what she had told the teachers because she had told the teachers of what was happening at home.

She informed the teachers that her family was under threat in the area where they lived, so this was affecting her school, she could not learn. What she wanted is that if we could move as a family from that area.

When they told me this matter, when they were telling me that how about if we move, I told them that I could not say to my family we must move because I also wanted to prove myself to the community what kind of person I was. They asked me why I wanted to do that. I told them that they know what kind of person I was, even where I was coming from, so they agreed.

So what I decided, was to form a boxing club in my area. I did that while this case was going on. This is now the third year that this club is going on. I started this club in January 2012.

The area I live in even in the newspapers there's always happening in that area, people being murdered but what I'm trying to do in that area, I'm trying to show people that not all the children are involved in crime. To fight this crime, I want to take the children to do sports so that through sports we can fight or alleviate crime and violence.

I want to change people's perspective of Khayelitsha, that Khayelitsha is always involved in these things. Let us send our kids to some sports so that these children can be known for good things.

One of my kids in the boxing club started with me when they were seven years. I think he is nine now, if I remember correctly. He has had 35 fights and he has won all these fights. He is now going for trials and he is going to Pretoria and this is one of the children from my area.

MS MAYOSI: Are you saying such initiatives are things that will help alleviate the situation?

INTERPRETER: Yes, he thinks so.

MR GQEKU: When I was doing these sports I wanted to show even these people that I had nothing against them, I took their children – one of their children and he is part of my club, I taught him what is the boxing and he now knows how to play boxing, I do see that he is enjoying it but there is an area where he is still not sure of but now his problem is that we get along but I don't get along with his parents. But now he also wants this matter to be resolved but he doesn't know where to start. So that is where his problem was and they took him out of the club now. So he is no longer with the club.

I just want to say one more thing, the last thing I would like to say, anything that has happened to me that I've mentioned to this Commission of anything that will happen to me anywhere in Khayelitsha, I want this Commission to know that it will be that family, there will be nobody else. It will be that family – if anything happens to me, the Commission must know that it will be that family because they are doing many things and they bring them to me.

NO FURTHER QUESTIONS BY MS MAYOSI

COMMISSIONER: Mr Masuku, you didn't apply to put any questions to this witness.

MR MASUKU: Yes and I will not be – even if I was granted that opportunity all I could say is probably that I have sent that statement to the police and I will follow it up and may let my learned friend Ms Mayosi know what the situation is.

The other thing is, I would really like that the ruling on disclosure of names of people be upheld quite seriously because obviously the name of Ms Peters is now public knowledge and to the extent that there are people writing about it, this is a very painful story which shouldn't without me hearing Ms Peters be disclosed. The name of Ms Peters shouldn't be disclosed. I didn't object but I think it's important that that ruling where we said names of people, even the police officers themselves, would not be disclosed.

COMMISSIONER: Yes.

MR MASUKU: And that there's a reason for it that we shouldn't disclose those names.

COMMISSIONER: No, that's right, generally we haven't used names, I'm not quite sure which police officer you're referring to, are you talking – I mean, I perhaps we could take this off line and you could just let the evidence leaders know so that we know what you're talking about, I'm not quite sure what ...(intervention)

MR MASUKU: It was mentioned by the witness, the witness spoke many times about the police officer that he interacted with.

COMMISSIONER: Oh, I see. Oh, I beg your pardon, are you talking about this – I thought you were talking about somebody else. No, that's fine, but we do make it clear that in fact the names of police officers shouldn't be used particularly where

they're charged with criminal offences.

MR MASUKU: Yes.

COMMISSIONER: My understanding – I suppose one could say here that some of the allegations that have made against her do constitute a criminal offence, so if the journalists would please make note of that, the Commission's purpose is – because it is not determining guilt or otherwise generally is not publishing names of people. Thank you, you're quite right about that and that perhaps should have been picked up before we proceeded but I would prefer that it be made clear at the outset, so Mr Masuku if you could just keep an eye on it and warn me if you think there's something in a statement.

I would also be grateful if you would please communicate the results of your research in this matter to the Commission as well please. We do have the case number, it's in the statement, so if you could perhaps have a look at the docket and see where the matter has proceeded to.

MR MASUKU: I will do that and I'll let the Commission know.

COMMISSIONER: Thank you. Mr Sidaki, any questions?

MR SIDAKI: I have no questions, Madame Chair.

COMMISSIONER: Many thanks for coming to the Commission to give evidence to the Commission. As we've said to many witnesses, we are not in a position to take steps in particular cases although what we will do is call for the docket in your case and it will be looked at and it will be communicated to Ms Mayosi and to the Legal Resources Centre so you'll at least learn what's happened in the case and the Commission can't undertake any promises other than that but we're very grateful for you to have come forward and told your story. Thank you. You may now stand down.

WITNESS EXCUSED