

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

1 JULY 2019

DAY 124

20

PROCEEDINGS ON 1 JULY 2019

CHAIRPERSON: Good morning Ms Buthelezi, good morning everybody.

ADV ZINHLE BUTHELEZI: Good morning Chair.

CHAIRPERSON: Are you ready?

ADV ZINHLE BUTHELEZI: Yes we are. Chair our witness for today is Ms Mthulwane Mpshe she – may I ask that the witness be sworn in?

CHAIRPERSON: Yes. Thank you.

REGISTRAR: Please state your full names for record?

MS MATHULWANE EMILY MPSHE: Mathulwane Mpshe.

10 **REGISTRAR**: Do you have any objections in taking the prescribed oath?

MS MATHULWANE EMILY MPSHE: No.

REGISTRAR: Do you consider the oath to be binding on your conscience?

MS MATHULWANE EMILY MPSHE: Yes.

REGISTRAR: Do you swear that the evidence you will give will be the truth; the whole truth and nothing but the truth?

MS MATHULWANE EMILY MPSHE: Yes.

20 **REGISTRAR**: If so please raise your right hand and say, so help me God.

MS MATHULWANE EMILY MPSHE: So help me God.

REGISTRAR: Thank you.

ADV ZINHLE BUTHELEZI: Thank you Chair. Chair may I...

CHAIRPERSON: Thank you.

ADV ZINHLE BUTHELEZI: May I propose that the two files that we will

be using today to lead Ms Mpshe's evidence be marked as Exhibit DD15A and B. A is the exhibit that we will have, the statement of Ms Mpshe and B has the balance of the exhibits or the annexures.

CHAIRPERSON: Is the 15 in order there after DD?

ADV ZINHLE BUTHELEZI: Yes it is in order.

CHAIRPERSON: It is in order?

ADV ZINHLE BUTHELEZI: It is in order Chair.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: Ms – Initially Ms Mpshe was supposed to
10 come before Doctor Dahwa but due to some changes she had to come
after Doctober Dahwa.

CHAIRPERSON: The lever arch file containing the affidavit or
statement of Ms Mahulwane Emily Mpshe will be marked Exhibit
DD15[a] and the one with the rest of annexures to her statement will be
marked Exhibit DD15[b].

MS MATHULWANE EMILY MPSHE: Thank you Chair.

CHAIRPERSON: Yes.

ADV ZINHLE BUTHELEZI: Ms Mpshe there are two files in front of
you. One with your statement and some of the annexures and the other
20 one contains the balance of your annexures. If you look at Exhibit
DD15[a] from page 1 to 35 do you confirm that that...

CHAIRPERSON: I think you must wait for her to – to see which file is
which one. Have you got both files in front of you?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Okay, alright. And you understand which one is

Exhibit DD15[a] and which one is Exhibit DD15[b]?

MS MATHULWANE EMILY MPSHE: Yes Chair.

CHAIRPERSON: Okay, alright. Thank you.

ADV ZINHLE BUTHELEZI: Thank you Ms Mpshe. Do you confirm that the document that is in DD[a] from page 1 to page 35 is the statement – is your affidavit that you prepared for the commission?

MS MATHULWANE EMILY MPSHE: I confirm it is correct.

ADV ZINHLE BUTHELEZI: And the signature that ...

CHAIRPERSON: I am sorry – I am sorry. Please switch on your
10 microphone and then Ms Buthelezi will have to...

ADV ZINHLE BUTHELEZI: Oh let me start afresh?

CHAIRPERSON: Ask that question afresh so that her answer can go into the record.

ADV ZINHLE BUTHELEZI: Thank you Chair. Do you confirm that the document that appears on page 1 to page 36 on Exhibit DD[a] is your affidavit that you made for the commission?

MS MATHULWANE EMILY MPSHE: I do confirm.

ADV ZINHLE BUTHELEZI: And the signature that appears on page 35 of that document do you confirm that is your signature?

20 **MS MATHULWANE EMILY MPSHE:** I confirm it is my signature.

ADV ZINHLE BUTHELEZI: Thank you Ms Mpshe. Ms Mpshe would you please place your qualifications and the position that you have held at SAA to record?

MS MATHULWANE EMILY MPSHE: My qualifications are as follows: I have a Post Graduate Diploma in Business Management from University

of Warwick in the UK. I have a B.Com from University of South Africa. I have an Associate Banking Diploma from the Institute of Bankers in South Africa. I have a Licentiate International Banking Diploma from Institute of Bankers in South Africa and I also have various other programmes that I have attended in line with my career.

ADV ZINHLE BUTHELEZI: Yes. And for – when did you join SAA?

MS MATHULWANE EMILY MPSHE: I joined SAA on the 1 September 2010.

ADV ZINHLE BUTHELEZI: And what position did you hold at the time?

10 **MS MATHULWANE EMILY MPSHE:** I was General Manager Human Resources.

ADV ZINHLE BUTHELEZI: And when did you leave SAA?

MS MATHULWANE EMILY MPSHE: I left SAA official on the 30 March 2018.

ADV ZINHLE BUTHELEZI: And what position do you currently hold and for which company?

MS MATHULWANE EMILY MPSHE: I am the Acting General Manager Human Capital at South African Express Airways.

20 **ADV ZINHLE BUTHELEZI:** Yes. On paragraph – on page 3 of your statement at paragraph 10 you deal with your appointment as an Acting CEO at SAA in mid-2015. Could you please briefly tell us the circumstances that led to your appointment as an Acting CEO?

MS MATHULWANE EMILY MPSHE: It was – I think it was the end of July in 2015 we were called as the Executive Committee into what we called a small boardroom by one of the board members Mr Tony Dixon

for an urgent meeting. At that urgent meeting Mr Tony Dixon informed us that the Chairperson of the board has asked him to relay the message to us that Mr Nico Bezuidenhout is return to Mango Airlines. Mr Bezuidenhout was the Acting CEO at SAA at that time. He wants to return to Mango Airlines where his role as CEO of Mango. And immediately he then informed us that the Chair had also instructed that I be appointed as the Acting CEO.

ADV ZINHLE BUTHELEZI: Yes. And for how long did you remain in this position as a CEO?

10 **MS MATHULWANE EMILY MPSHE:** From July to November.

ADV ZINHLE BUTHELEZI: Yes. If I look at paragraph 13 of your statement you saying at first you refused to accept this position but upon persuasion by your colleagues and discussions with family you accepted. My question is, why were you refusing at the first place?

MS MATHULWANE EMILY MPSHE: I refused because it came as a shock that for me it was unceremonious that we just be informed that Mr Nico Bezuidenhout had to go back to Mango the Acting CEO at that time he was responsible for the 90 day turnaround strategy. And it was just too sudden.

20 **ADV ZINHLE BUTHELEZI:** And how long was Mr Bezuidenhout in that position prior to your appointment?

MS MATHULWANE EMILY MPSHE: It must have been April 2014 when the previous CEO Mr Kalawe left and prior to that he was also Acting CEO.

ADV ZINHLE BUTHELEZI: So it was for about two months at that

time?

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: Yes. And who succeeded him?

CHAIRPERSON: Well Ms Buthelezi. Mr Mpshe although she is asking you the questions the person you are telling the story is me.

MS MATHULWANE EMILY MPSHE: Okay Chair.

CHAIRPERSON: Okay. So I need to see and observe as you give evidence so you are telling the story to me.

MS MATHULWANE EMILY MPSHE: Okay Chair.

10 **CHAIRPERSON:** Okay. Alright.

ADV ZINHLE BUTHELEZI: I am sorry about that Chair. Please look – when you answer please do answer to the Chair. Mr Mpshe who succeeded you in this position when you left?

MS MATHULWANE EMILY MPSHE: I was succeeded by ...

CHAIRPERSON: Well maybe before we get there you have indicated that initially you refused the acting appointment as CEO and you said that was because the whole decision was too sudden. Now had there been any discussion at all with you to indicate that there was an inclination to appoint you as Acting CEO on the part of the board or the
20 Chairperson of the board or were you hearing this for the first time like everybody?

MS MATHULWANE EMILY MPSHE: Chair there was no indication whatsoever. The first time I heard about it was when we were in a meeting with all the executive committee members. And it was also one of my reasons where I felt that I was not even afforded the curtesy to

be informed up front. And just in a meeting the news was just thrown at me like that.

CHAIRPERSON: And you had not been asked whether you would be willing to accept the appointment if you were – is such a decision was taken?

MS MATHULWANE EMILY MPSHE: Chair I was not asked.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: The message was the Chair says you will be the Acting CEO.

10 **CHAIRPERSON**: Okay thank you.

ADV ZINHLE BUTHELEZI: Thank you. And you said you remained in this position until November 2015.

MS MATHULWANE EMILY MPSHE: That is correct.

ADV ZINHLE BUTHELEZI: Who then came after you?

MS MATHULWANE EMILY MPSHE: Mr Musa Zwane.

ADV ZINHLE BUTHELEZI: Thank you. On the next topic on your affidavit it appears on page 4 of your affidavit you deal with Chairpersons interference with daily operations. Further down on the next page you have given some examples of instances that you would
20 described as interference by Chair on day – daily operations at SAA. First of all who is the Chair that you are referring to?

MS MATHULWANE EMILY MPSHE: The Chair I am referring to is Ms Dudu Myeni.

ADV ZINHLE BUTHELEZI: Thank you. You give us some examples of the interference by the Chair. The first ...

CHAIRPERSON: Well maybe before that Ms Mpshe I have heard evidence to the effect that there was a time when the board of SAA consisted of only three directors and non-executive directors. It think it was Ms Dudu Myeni, Ms Kwinana and I think Doctor Tabi...

MS MATHULWANE EMILY MPSHE: Doctor Tambi.

CHAIRPERSON: Yes Tambi.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: During the time when you were Acting CEO was that the time when there were only three members of the board who were
10 non-executive or that was not the time?

MS MATHULWANE EMILY MPSHE: There were four at the time.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And the fourth one was Mr Tony Dixon.

CHAIRPERSON: Yes. So...

MS MATHULWANE EMILY MPSHE: He subsequently resigned.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: By the time I ended my tenure as Acting CEO he had already resigned.

20 **CHAIRPERSON:** So when you started as Acting CEO there four members – non-executive members of the board?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: And it was the three that I have just mentioned.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: And the one that you have mentioned.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: But before your acting period ended one had resigned namely Mr Dixon?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: Okay thank you.

ADV ZINHLE BUTHELEZI: Ms Mpshe do you remember when he resigned?

MS MATHULWANE EMILY MPSHE: He resigned I think could have been July – end of July or August, yes.

10 **ADV ZINHLE BUTHELEZI:** Thank you. Then let us go back to the – what you describe as interference by the Chair to the daily operations. The first topic that you deal with was an instruction to appoint Captain Mpho Mamashela into a position of an Operations Officer. This interference that you refer to how did it happen in this instance?

MS MATHULWANE EMILY MPSHE: This what I term an interference happened around March 2015 before I was appointed into the position of Acting CEO. At the time I was the General Manager Human Resources. We had started the Section 189 process of retrenchments.

CHAIRPERSON: I am sorry Ms Mpshe. Maybe before you start with
20 specific ones. In paragraph 15 of your affidavit you do make general observations about interference do you – just talk about that first in general and then go to the specific that Ms Buthelezi has asked you about

MS MATHULWANE EMILY MPSHE: Okay.

CHAIRPERSON: Ja.

MS MATHULWANE EMILY MPSHE: Thank you Chair.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: In my personal experience the Chair had – will give instructions to appoint persons in certain positions and asked for disciplinary actions to be taken against employees and this instructions would not be that for example when you say appoint a person ordinarily the company has got a recruitment policy and the recruitment is linked to a vacancy in the company or linked to a new position in the company. There will be a process that will have to
10 follow to appoint someone. But she will just come and say appoint this person in this position. Or discipline this person for this. So the role of the board is an oversight in the company. The role of the executive is that of an operational where executive will understand and know that there is a vacancy or there is a vacancy that needs to be created and it will be initiated through the respective executive. It was unusual that you will get a non-executive director giving instructions that you have to appoint an individual because the individual will be in the structure will have to report into an executive or into a department and through an executive.

20 **ADV ZINHLE BUTHELEZI:** And Ms Mpshe if I may ask on – under what circumstances will you expect the involvement of the non-executive board members in the appointment of certain employees? Is it in respect of all employees or a particular class of employees?

MS MATHULWANE EMILY MPSHE: The non-executive directors with the Chair will be responsible for the appointment of the CEO with

consultation with the shareholder minister and also the CFO. The rest will be the responsibility of the CEO for the first line executives and then cascading to the company like that.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Thank you.

ADV ZINHLE BUTHELEZI: In this instance of the – your instruction to appoint Captain Mpho Mamashela in the position of Chief Operations Officer this was not – this position did not fall within the class where an interference from the non-executive board members will be expected, is
10 that correct?

MS MATHULWANE EMILY MPSHE: That is correct Chair. This position of Chief Operations Officer was not even in the structure – organisational structure of SAA at that time and the other important aspect of it is that when we embark on retrenchments through the Labour Relations Act 189166A is that you have to define the new organisation, the new roles and in consultation with labour look at the structures and then once the consultations have been done and the structures are approved that will be the structure of the company going forward. So we had just embarked on this process of retrenchments.
20 The structures had been approved and approved by a sub-committee of the board and approved by the board subsequently. So this was quite a surprise to say the position of Chief Operations Officer must then be included and an individual must be appointed.

ADV ZINHLE BUTHELEZI: Yes so...

CHAIRPERSON: I am sorry Ms Buthelzi and Ms Mpshe I am going to

take you back a little bit to finalise on the general statements you made and then we will resume on this specific one. The instruction that you told me about that the chairperson Ms Myeni would issue an instruction that certain persons be appointed or certain persons be disciplined. Now – and you talked about there being a recruitment process that is required to be followed you know in the appointment of persons to positions. Did you take these instructions to mean that you must not follow any procedures that are applicable in the company or if I will put it differently what if she were to come here and say I did not mean that

10 you should appoint those people in breach of policies and procedures of the company. You were supposed to follow those procedures and if you did not follow them that was your own decision?

MS MATHULWANE EMILY MPSHE: Chair on this particular one it is my evidence that I even raised this matter at a board sub-committee called RAMCO, Remunerations Committee where I have indicated at the RAMCO and at the time in the RAMCO committee Chair was also a member of the RAMCO and Doctor Tambi was the chair – was the RAMCO member, Doctor Tambi was the Chair of RAMCO and Mr Tony Dixon was a member of the RAMCO. It is recorded at I think it was two

20 RAMCO meetings where I highlighted that. It is irregular for us to want to appoint people outside of the process and also people who are not in the positions that are not in the structure is the approved structure. My other concern at that time was we are going to be – we are already in the process of retrenchments where the employees in the company will be retrenched and I made it a point that it will be irresponsible also to

add a position that is not approved at a higher level in the organisation and I had felt that – and I indicated and I put it on record that it will be very irresponsible for us to agree to do that. And Chair later on the – it will also be evident that I – when it actually became close I then said to the Chair then you then give an instruction in writing, you then change the structures and then you can then – we will be able to do it but failing to do that would not be able to it.

CHAIRPERSON: So is your answer that – or what is your answer as to whether these instructions that you talk about at a general level were
10 instructions that required the management to do something in breach of the law, in breach of the policies, in breach of procedures of SAA? What do you say? Do you say they were instructions to do things that were against the policies, against the procedures and against the law?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: And you say that there are specific instances where you raised those issues that there needed to be processes that would be followed?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: Okay thank you.

20 **ADV ZINHLE BUTHELEZI**: Yes. Thank you Chair. Ms Mpshe you have already told us that you raised an issue with this instruction at to RAMCO meetings where Chair was also part of the RAMCO. What I want to know from you, did you carry out this instruction, how – what – how did you deal with this particular instruction going forward?

MS MATHULWANE EMILY MPSHE: Chair this instruction I did not carry

it out and Captain Mamashela was not appointed.

ADV ZINHLE BUTHELEZI: Thank you. And on page 6 you deal with another instruction...

CHAIRPERSON: Well let us talk about Captain Mamashela. What was the Chairperson's response or reaction to the non-appointment of Captain Mamashela or your failure to carry out her instruction?

MS MATHULWANE EMILY MPSHE: Chair obviously it was a tussle at that time and I was already perceived as somebody who does not take instructions from the board and who is obstructive. But further to that

10 he also – she also indicated to me that Mr Nico Bezuidenhout who was the Acting CEO at that time met with Captain Mamashela in Mauritius at some airline conference and Nico recommended to the Chair that Captain Mamashela is the appropriate individual to hold the position. When this matter was being raised with the Chair now insisting I then went to Mr Nico Bezuidenhout and I asked him. Mr Bezuidenhout laughed it off and said, we met over beer after hours at the conference, it was just a talk and there was no commitment whatsoever and in any case he says, I understand what the procedure should – will be if we have to do that. So he then refuted the claim by the Chair that Mr

20 Bezuidenhout – Mr Bezuidenhout refuted the claim that the Chair said indeed he said Mr Mamashela must be appointed.

CHAIRPERSON: And – and then as far as the Chairperson is concerned did you go back to her and say, no I am not able to carry this out and Mr Bezuidenhout does not agree also that he said Mr or Captain Mamashela should be appointed?

MS MATHULWANE EMILY MPSHE: Yes. In the RAMCO meeting I then highlighted to say that this is irregular and it can only be done if the Chair of the board changes the structures and – and then give an instruction after changing the structures because my concern was that this position was not even in the organisational structure.

CHAIRPERSON: Yes so it was a non-existent position?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: That is correct Chair.

10 **CHAIRPERSON:** Yes. Yes. And RAMCO is a – is what committee, do you want to just explain?

MS MATHULWANE EMILY MPSHE: It is remuneration committee of sub-committee of the board.

CHAIRPERSON: Oh and the Chairperson served on that committee?

MS MATHULWANE EMILY MPSHE: She did serve indeed.

CHAIRPERSON: And she was present on the day when you made your position clear?

MS MATHULWANE EMILY MPSHE: Yes she was present.

20 **CHAIRPERSON:** And what was her reaction to what you said to you suggestion that the only in which this could happen is if she changed this – if the board change the structure and so on?

MS MATHULWANE EMILY MPSHE: Chair she was unhappy about that she had to give an instruction to change the organisational structure and then changing the organisational structure meant also that we had to go back to labour in line with the consultation process of this

retrenchment process. She was quite unhappy and it ended there.

CHAIRPERSON: Okay thank you.

ADV ZINHLE BUTHELEZI: Thank you Chair. Ms Mpshe on page 6 of your affidavit you deal with another instruction that you received to appoint Captain Eric Manentsa into your position of Heads of Light Operation. From whom did you receive this instruction?

MS MATHULWANE EMILY MPSHE: This instruction was raised by Ms Yakhe Kwinana at a RAMCO meeting. Ms Kwinana was also a member of the RAMCO board sub-committee. And in that board sub-committee
10 Ms Kwinana raised the fact that she was on a flight in her personal capacity to East London and then she was sitting next to Captain Mamashela – Captain Eric Mamentsa who was not on duty he was also on a personal flight to East London. And she then states that...

ADV ZINHLE BUTHELEZI: Sorry, sorry Ms Mpshe if I may dis – I may disturb you there. Did you say was it raised on a RAMCO meeting or because in your affidavit it says it was an Audit and Risk Committee meeting?

MS MATHULWANE EMILY MPSHE: No it was raised I said it by – by a board member a Chair of Audit and Risk committee.

20 **ADV ZINHLE BUTHELEZI:** Oh okay. Yes.

MS MATHULWANE EMILY MPSHE: But she also a RAMCO – because by that time there were only 3 now.

ADV ZINHLE BUTHELEZI: So all of them served at RAMCO?

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: Okay thank you.

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: Proceed.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Once again Ms Buthelezi I do not know whether you might wish to raise your voice a little bit for everybody to hear you at the back.

ADV ZINHLE BUTHELEZI: I will – I will bring the microphone forward.

CHAIRPERSON: Yes okay alright.

ADV ZINHLE BUTHELEZI: Thank you.

10 **CHAIRPERSON:** Yes you may continue.

ADV ZINHLE BUTHELEZI: Yes. Yes. And maybe if you could tell us what – what did Audit and Risk Committee do?

MS MATHULWANE EMILY MPSHE: Audit and Risk and Compliance Committee is the board's sub-committee that has oversight of audit and risk, compliance and governance in the company.

ADV ZINHLE BUTHELEZI: Okay.

MS MATHULWANE EMILY MPSHE: It is I think in my view one of the most important board sub-committees.

ADV ZINHLE BUTHELEZI: Yes.

20 **MS MATHULWANE EMILY MPSHE:** That ensures that there is compliance managing of the risk and guiding in terms of mitigation of the risk and in the company and also oversight on audit.

ADV ZINHLE BUTHELEZI: Yes and this appointment of Eric Manentsa is – as a – in a position of – Head of Flight Operation is raised by Ms Kwinana at this meeting and then what happened?

MS MATHULWANE EMILY MPSHE: Yes Ms Kwinana raised this point and the reason why I have added there is that she is a member of RAMCO but over and above that she is a board member and she was Chair of the Audit Risk and Compliance Committee.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: She raised the issue that Captain Eric Manantsa says that his role is ceremonial and then he wants the role to be changed to become Chief Captain and Head of Flight Ops.

ADV ZINHLE BUTHELEZI: Sorry what role was he holding at the time?

10 **MS MATHULWANE EMILY MPSHE:** He was holding the role of Chief Pilot at the time.

ADV ZINHLE BUTHELEZI: Thank you.

CHAIRPERSON: What is the function of a Chief Pilot – just the main one?

MS MATHULWANE EMILY MPSHE: The main – main role of the Chief Pilot is he is overall responsible for all the pilots in the organisation and the running of – of the operations ...

CHAIRPERSON: Yes.

20 **MS MATHULWANE EMILY MPSHE:** And he will be looking – you know - making sure that everybody's (intervenes).

CHAIRPERSON: He - he must ...

MS MATHULWANE EMILY MPSHE: Is compliance ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: In terms of all the Bodies that ...

CHAIRPERSON: Ja.

MS MATHULWANE EMILY MPSHE: Regulatory Bodies that ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: SAA forms part of. So it was actually a very big job.

CHAIRPERSON: Yes. In effect is it a job that requires him – required him to basically – basically manage pilots?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Yes. It would be his job to know if a certain pilot was not coming to work or something. So that arrangements could be made
10 for a replacement. Things like that?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Not only that. To make sure that all pilots are recurrent in their licencing ...

CHAIRPERSON: Yes, yes, yes.

MS MATHULWANE EMILY MPSHE: And compliance ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: To all the Regulatory Bodies.

CHAIRPERSON: *Ja, ja.*

20 **MS MATHULWANE EMILY MPSHE:** Yes.

CHAIRPERSON: *Ja, okay thank you.*

ADV ZINHLE BUTHELEZI: And – and the role of the – of the Head of Flight Operations what did it entail?

MS MATHULWANE EMILY MPSHE: The – the Head of the Flight Operations will mean that the Chief Pilot will also report into the Head

of Flight Operations. So the Head of Flight Operations was overall responsible for all the flight operations. There are all other operational issues related to flight operations.

ADV ZINHLE BUTHELEZI: Okay. Was – was there no person who was holding this role at the time when he wanted to – to take this role?

MS MATHULWANE EMILY MPSHE: There was a person already in – in the role who was appointed and was appointed through due process.

ADV ZINHLE BUTHELEZI: Yes and then what then – what did you do to this – to this instruction? How did you handle this one?

- 10 **MS MATHULWANE EMILY MPSHE:** On this instruction I raised my concerns on record at the RAMCO Meeting to say that I find it highly irregular that a Member of the Board will raise an issue which was a side issue in a – in a flight in that manner at the RAMCO and I felt that there are processes in the organisation where if an employee is unhappy that they will report to the Line Manager and raise issues with the Line Manager.

- In this particular case the Chief Pilot also no longer reported into the Head of Flight Operations. They had a General Manager of Operations. So if there was a problem with the way he viewed his role
- 20 it should have been reported either to the Head of Flight Operations or to the General Manager of Operations.

So I felt that it was highly irregular and I said it will create a – a very wrong precedent that employees can know that I can meet with a Board Member on the – on the side somewhere on a social and then my matters will be raised in the formal forum like a Board Sub-

Committee.

ADV ZINHLE BUTHELEZI: And in ...

CHAIRPERSON: So your ...

ADV ZINHLE BUTHELEZI: Sorry.

CHAIRPERSON: Your – your concern was that this was a disregard of normal processes and procedures that employees were supposed to follow if they had any concerns?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: Yes and – and the – and part of the concern was that
10 a Member of the Board was involved in this disregard?

MS MATHULWANE EMILY MPSHE: In perpetuating.

CHAIRPERSON: In perpetuating this?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: And what was her response when you raised these objections to say but we cannot have a situation where we encourage employees to disregard company processes and procedures?

MS MATHULWANE EMILY MPSHE: It was simply said that listen this is what it is. We raising it here and we are raising it and we want action out of it.

20 **CHAIRPERSON:** That was her speaking?

MS MATHULWANE EMILY MPSHE: Yes and the – the Chair which is Ms Dudu Myeni who was not the Chair of RAMCO further on and said that it is a – she finds it very strange that when it comes to appointing a Black person gave racial connotations to it to say that prior to that there was a White male in that position – a combined position – and

now that it is a Black person who is in that – the role has been split because there is a Black person who is now in the role. So it just degenerated into racial connotations.

CHAIRPERSON: But I mean you – as I understand your point was there are processes and procedures that employees must follow and all of us must stick to that position.

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: Were they not responding to that to say – do they say it is the right thing for employees to disregard normal processes and
10 procedures?

MS MATHULWANE EMILY MPSHE: Chair it – it was my experience that once a Board Member has said something as an executive you have to comply. Hence later on in my evidence it says that I was not carrying out Board instructions but of course the Board instructions that I will carry and will be – have to be legal, have to be lawful, have to be within the policies and the procedures in the company.

So – and my role as – as General Manager Human Resources at the time was to guide the Board in terms of what are the processes that we need to take as a company to make sure that there is – there is
20 an – and the outcome is – is legitimate, is legal and is compliant.

CHAIRPERSON: No thank you.

ADV ZINHLE BUTHELEZI: Thank you Chair. Ms Mpshe what was the outcome of this particular instruction? Was Captain Manentsa appointed in this – in this position?

MS MATHULWANE EMILY MPSHE: Yes Chair but before I can get to

that – if you allow me.

CHAIRPERSON: Yes.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: I just want to give you the background.

CHAIRPERSON: Yes ...

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: But also before I also wanted to establish how the meeting ended where this issue was raised. Did it end on the basis
10 that we have given an instruction, we expect you to comply and that is how the topic was – the discussion on the topic was ended or was there a further argument about it?

MS MATHULWANE EMILY MPSHE: Yes Chair there was which I will get to now.

CHAIRPERSON: Yes.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: Historically the role of – prior to Captain Manentsa holding the role of Chief Pilot there was a time in the
20 life of SAA where the Chief Pilot was seconded to Civil Aviation Authority and we then required another individual who was senior to become the Head – sorry – it was the Head of Flight Operations was seconded to Civil Aviation Authority.

CHAIRPERSON: That is the position that ...

MS MATHULWANE EMILY MPSHE: He had originally ...

CHAIRPERSON: That ...

MS MATHULWANE EMILY MPSHE: I am coming to why it ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: It ended up being split.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: Whereas the – the inference was that it was a White male who had it combined. Now you have a Black person now you split it. Captain Colin Jordaan was seconded to Civil Aviation Authority from SAA and he was the Head of Flight Operations
10 at the time and then Captain Johnny Woods was the Chief Pilot.

When Captain Colin Jordaan was seconded to Civil Aviation Authority the company SAA gave an undertaking that once the secondment ends he will revert back to his role and on his level of seniority. He would not lose any benefits and his seniority and as a result of that and a situation of convenience was done that Captain Johnny Woods was much senior at the time who was Chief Pilot to have the role as Head of Flight Operations as well and that was the first time that the roles were – were combined but the contest was it was a caretaking role because of that situation.

20 **ADV ZINHLE BUTHELEZI:** Yes.

CHAIRPERSON: Actually the – the positions were not combined but they were held by one person?

MS MATHULWANE EMILY MPSHE: Yes. There was a caretaking ...

CHAIRPERSON: They remained separate but there was one person holding them?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: At the same time?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Ja.

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: You may proceed.

MS MATHULWANE EMILY MPSHE: And so when – in the end when Captain Johnny Woods retired the decision was made that we need to revert back to separating the roles because that situation did not – was
10 – did not apply anymore. Hence the position was separated and the position of Chief Pilot was advertised and the position of Head of Flight Operations was advertised.

Captain Manentsa applied for the Chief Pilot through due process. He – he was made the Chief Pilot and Captain Sandy Bayne applied for the Head of Flight Operations and through due process he was made the Head of Flight Operations. So that is where the situation was. At the end of that meeting – so I then – the second meeting it was - the instruction was given that we must appoint him.

So the second meeting I did a paper – the second meeting of
20 RAMCO – I did a paper and that paper also did a research on comparison on some airlines around the world and how they are structured – have their structure as far as that flight operations was. So I presented that to the next RAMCO meeting and - and indicated and gave the background as well on paper and it is in the evidence.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: At the end of that meeting an instruction was issued by the Chair. She says I do not care whether it is best practice or Civil Aviation Authority compliance I do not care. You will appoint Captain Manentsa as Chief Pilot and Head of Flight Operations and on receiving that instruction because that position also it is – it is part of the regulation I had to write to the Civil Aviation Authority ...

CHAIRPERSON: I am sorry. It is just important that one understands these things correctly. Am I correct to understand this instruction now
10 to be – I am not interested in any processes and procedures. Do not tell me about those. The instruction is you must appoint this person to this position?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: Okay and that instruction was from?

MS MATHULWANE EMILY MPSHE: It was a resolution of RAMCO.

CHAIRPERSON: It was a resolution of RAMCO?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Which was chaired by Ms Kwinana?

MS MATHULWANE EMILY MPSHE: Which was chaired by Dr Tambi.

20 **CHAIRPERSON:** Dr Tambo?

MS MATHULWANE EMILY MPSHE: Tambi.

CHAIRPERSON: Tambi – I am sorry; but the – Ms Dudu Myeni and Ms Kwinana served on the – on that – on that committee or not really?

MS MATHULWANE EMILY MPSHE: That is correct. They served on the committee.

CHAIRPERSON: *Ja*, okay and they were present – they were part of the second meeting you talk about as well?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: Hm ...

CHAIRPERSON: Thank you.

MS MATHULWANE EMILY MPSHE: Upon that instruction ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: I had to write to Department of
10 Transport as part of our regulation and I had to write to the Civil
Aviation Authority to inform them that there is an instruction from the
Board that we combine both roles and then I even had a meeting with a
– a gentleman I think he was a Commissioner at the Civil Aviation
Authority following with my – my letter to them had a meeting where he
wanted to understand more as to what had happened because that will
also mean that the flight operations manual had to be amended to
accommodate that change and they will have to give the authority as
the regulatory body and so I did that.

We wrote to them and then revert back to – to the company
20 once I had written to them and they said they will – they will come back
to us on that. So it was formal application to them to inform them.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: Back at the company we had now
upon this instruction because there were – there were two incumbents.
There was Eric Manentsa who is Chief Pilot and there was Sandy Bayne

who was Head of Flight Operations. We had then – had to - even that was also raised. The labour relations aspect to it that it was going to be an unfair labour practice on the person who is holding the role of Head of Flight Operations who has got the role legitimately in terms of the due process.

We then had to embark on an employee relations process where we had to consult with the Head of Flight Operations that the Board has issued an instruction. He has to step down from his role and then his role needs to be given to now Eric Manentsa as a combined
10 role.

CHAIRPERSON: So the – this instruction came at a time where both positions were occupied by people who had obtained them after due process?

MS MATHULWANE EMILY MPSHE: Yes. Yes that is correct Chair.

CHAIRPERSON: It is just that the one position that of Chief Pilot was occupied by somebody who wanted the other position ...

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: As well?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

20 **CHAIRPERSON:** And – and your instruction was combine the two positions?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: So that they are held by one person and that person was going to be the one who was at that time holding the position of Chief Pilot?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: Okay, thank you.

ADV ZINHLE BUTHELEZI: And the position of the Head of Flight Operations was senior to that of the Chief Pilot. Is that correct?

MS MATHULWANE EMILY MPSHE: Yes. In the organisational structure that is correct Chair.

ADV ZINHLE BUTHELEZI: Yes and ...

CHAIRPERSON: If you are going to be Chief – is it Chief Operations Officer – what – the other position?

10 **MS MATHULWANE EMILY MPSHE:** Chief Pilot.

CHAIRPERSON: Chief Pilot Operations – the other one?

MS MATHULWANE EMILY MPSHE: Head of Flight Operations.

CHAIRPERSON: Head of Flight Operations?

MS MATHULWANE EMILY MPSHE: That is correct.

CHAIRPERSON: Would somebody who gets appointed to that position be the kind of person who would also qualify to be a Chief Pilot in terms of knowledge experience and qualifications?

MS MATHULWANE EMILY MPSHE: That is correct?

CHAIRPERSON: *Ja.*

20 **MS MATHULWANE EMILY MPSHE:** And the incumbent at that time was a very, very senior Captain.

CHAIRPERSON: So – so that one would expect that if that person was to compete for that same position having been there and assuming performance had been good one would expect that that person would deserve the position more than a Chief Pilot.

MS MATHULWANE EMILY MPSHE: That is correct.

CHAIRPERSON: Generally speaking?

MS MATHULWANE EMILY MPSHE: That is correct.

CHAIRPERSON: Yes. Okay. So the instruction was in effect find a way to combine these two positions and what you do with the person who was at that time holding the position of Head of Flight Operations you must see as management how you deal with that but combine the two positions and Captain Manentsa should be Head of Flight Operations and Chief Pilot?

10 **MS MATHULWANE EMILY MPSHE:** That is correct Chair.

CHAIRPERSON: Okay. Yes, continue.

ADV ZINHLE BUTHELEZI: Thank you Chair. Tell me then what happened Captain Bayne the one who was holding this position now?

MS MATHULWANE EMILY MPSHE: We consulted with Captain Sandy Bayne and made him understand that an instruction has been issued and as really a loyal employee of the company because he will have had a right to take us to court – either the CCMA or Labour Court on an unfair labour practice. He obliged. He said I oblige.

I do not drama in my life and he obliged and – and then we
20 had – then had to appoint Captain Manentsa in an acting capacity pending approval of the Civil Aviation Authority. He was appointed as Acting Chief Pilot and had – he was Chief Pilot and Acting Head of Flight Operations pending the approval of the Civil Aviation Authority.

ADV ZINHLE BUTHELEZI: Do you know if that approval was obtained?

MS MATHULWANE EMILY MPSHE: The approval was not obtained

subsequently. It was not obtained.

ADV ZINHLE BUTHELEZI: What – what happened then to Captain Manentsa?

MS MATHULWANE EMILY MPSHE: He – after a while in the position I was informed that Captain Manentsa was not copying with the role of Chief Pilot and Head of Flight Operations and at some stage went to the authorities in Operations and said in the first place he never said he actually wanted both positions combined.

10 **ADV ZINHLE BUTHELEZI:** So he reverted back to his original position?

MS MATHULWANE EMILY MPSHE: He reverted back to his original position of Chief Pilot.

CHAIRPERSON: The authorities being? You said he went back to the authorities ...

MS MATHULWANE EMILY MPSHE: The General Manager of Operations.

CHAIRPERSON: Yes, okay.

MS MATHULWANE EMILY MPSHE: Yes.

20 **CHAIRPERSON:** So then by his own choosing he went back to being Chief Pilot?

MS MATHULWANE EMILY MPSHE: Exactly. That is correct Chair.

ADV ZINHLE BUTHELEZI: And how ...?

CHAIRPERSON: Did that go via the – the Members of the Board who had wanted him to combine both – to have both positions?

MS MATHULWANE EMILY MPSHE: At the time it did not go through the

Board because as I said there were – allegedly he was not copying.

CHAIRPERSON: But what I mean is – is there a time when a report back was given to the Board Members to say well we sought to carry out your instructions but Captain Manentsa has complained that he cannot cope and he says he actually never wanted both positions and he has gone back to being Chief Pilot?

MS MATHULWANE EMILY MPSHE: Officially we did not go back to the Board.

CHAIRPERSON: But they got to know the information?

10 **MS MATHULWANE EMILY MPSHE:** Of course they did.

CHAIRPERSON: Do you know what the reaction was?

MS MATHULWANE EMILY MPSHE: It was quite – I think – eat – them eating humble pie but of course it was not openly acknowledged.

CHAIRPERSON: Yes; but tell me at the time that the two Board Members - and as I understand it – it was Ms Myeni and Ms Kwinana who were pushing who were giving the instruction that Captain Manentsa should be given both positions. Did they ever say why him and what it is about him that made them to say he must be given both positions as opposed to saying we think the position should
20 be occupied by one person but there should be a process to be followed?

Those who want to apply should apply and whoever is shown will be shown. Did they ever say why they were specific that he should be the one?

MS MATHULWANE EMILY MPSHE: Chair the point was the fact that

now he is a Chief Pilot and he is Black and he is entitled to become the Chief Pilot and Head of Flight Operations. In short that is what was said.

CHAIRPERSON: And in terms of salary I – I take it that the two positions were not on the same level in terms of salary because they were also not on the same level?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: Yes. Would he then once the positions were – were combined so to speak would he then be paid the higher of the two
10 salaries?

MS MATHULWANE EMILY MPSHE: He – he received a Manager - a management ...

CHAIRPERSON: I am sure it was – I am sure it was not like he was going to be paid both salaries?

MS MATHULWANE EMILY MPSHE: That is correct Chair. He was not paid both salaries.

CHAIRPERSON: *Ja, ja.*

MS MATHULWANE EMILY MPSHE: And as Acting Head of Flight Operations there is an allowance in the company in terms of people
20 who are acting in roles ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Until they are confirmed.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: So he will have been paid an allowance ...

CHAIRPERSON: Ja.

MS MATHULWANE EMILY MPSHE: In terms of acting ...

CHAIRPERSON: Okay, alright.

MS MATHULWANE EMILY MPSHE: And he was being paid as Chief Pilot and as a Manager because he was a Manager in terms of being a Chief Pilot.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: So he was still flying and he was a Manager.

10 **CHAIRPERSON:** Okay.

MS MATHULWANE EMILY MPSHE: So then he was paid an additional allowance as the Head of Flight Operations.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Acting in that role.

CHAIRPERSON: Yes; but it is quite interesting from what you say. It is like something that Captain Manentsa mentioned just in passing socially on a flight to East London with Ms Kwinana ended up really causing – it seems – quite some drama at SAA.

MS MATHULWANE EMILY MPSHE: That is correct Chair.

20 **CHAIRPERSON:** Yes. Please continue.

ADV ZINHLE BUTHELEZI: Ms Mpshe out of curiosity was this the first instance where you had such instances where people will discuss stuff on social gatherings and such social end up being implemented by the Board?

MS MATHULWANE EMILY MPSHE: Wanting to be implemented?

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: The other one that I mentioned earlier on was Captain Mamashela one. It was social. It was discussed and Captain Mamashela – I think – discussed with the Chair and then it needed to then become a Board Resolution.

ADV ZINHLE BUTHELEZI: Thank you and you then give another example of such interference in the appointment of Mr Kendy Phohleli. What role did he play at SAA? What was he – what was his position at SAA at the time?

- 10 **MS MATHULWANE EMILY MPSHE:** Mr Kendy Phohleli was Interim GM Commercial and just as a stand in whilst we were busy recruiting for a – a General Manager Commercial and there was an understanding that he did not make the requirements of the job but he had some Commercial experience.

ADV ZINHLE BUTHELEZI: Yes.

- MS MATHULWANE EMILY MPSHE:** So he was then appointed on an interim basis and at the time the CEO Mr Monwabisi Kalawe. So he was interim and then when finally the General Manager Commercial was permanent - General Manager Commercial was appointed
- 20 Mr Kendy Phohleli's contract ended. However his contract was then extended to say that he must be involved in a project in Commercial on the expansion into Africa - expansion of South African Airways into – into Africa. He then worked in that role on a project basis ...

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: And his fixed term contract ended

and it was rolled – rolled over six times. On the sixth time when it was rolled over I had a meeting with the General Manager Commercial. I had a meeting with the – at the time I was Acting CEO ...

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: With the General Manager – Acting General Manager Human Resources to say that we are now at a risk of being perceived in terms of a Labour Relations Act that we have created expectation of employment. So if we do not terminate it now we have that risk that we will be forced in terms of the Labour
10 Relations Act to employ him on a permanent basis and at the time also he had no role. The organisational structure had been approved.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: He did not have a role even in Commercial and the – the contract of the Africa Strategy had ended and because now there was part of the strategy in Commercial and it was going to be integrated in the roles of the people in Commercial.

ADV ZINHLE BUTHELEZI: In terms of years how long did he remain in this acting position at SAA?

MS MATHULWANE EMILY MPSHE: I think it was from 2014 to at the
20 time was 20 – that time was September 2015.

ADV ZINHLE BUTHELEZI: So it is almost two years?

MS MATHULWANE EMILY MPSHE: Almost two years.

CHAIRPERSON: Originally how long was he supposed to be in that position?

MS MATHULWANE EMILY MPSHE: Six months.

CHAIRPERSON: Six months?

MS MATHULWANE EMILY MPSHE: Ja.

CHAIRPERSON: And each time it was extended was it extended for – by six months?

MS MATHULWANE EMILY MPSHE: By six months.

CHAIRPERSON: Yes, okay.

ADV ZINHLE BUTHELEZI: Yes and then what was the outcome of that meeting that you had with the – the Acting HR Manager and the Manager Commercial Division?

10 **MS MATHULWANE EMILY MPSHE:** We all agreed and a letter was written to Mr Phohleli and it was given to him to say that this is the end of his contract and it will never be renewed in any capacity within SAA.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: And however we – he was allowed that he can apply for positions with SAA – you know – through normal processes and if he is successful he will be appointed.

ADV ZINHLE BUTHELEZI: Did he apply for any position at the time?

MS MATHULWANE EMILY MPSHE: There is one position that I remember that he applied for and he was not successful.

20 **ADV ZINHLE BUTHELEZI:** Yes and how did the Chair interfere with his employment after his – his contract was terminated?

MS MATHULWANE EMILY MPSHE: After his ...

CHAIRPERSON: Well she has not said that the Chair interfered.

ADV ZINHLE BUTHELEZI: Maybe I should – I should ...

CHAIRPERSON: Maybe you want to ask her more neutrally.

ADV ZINHLE BUTHELEZI: I should try and rephrase. He was terminated and then what happened to Mr Phohleli after he was terminated?

MS MATHULWANE EMILY MPSHE: At the end of his contract when we had this meeting and he was also informed that his contract is terminated and will never be renewed and I received a call from the Chair – Ms Myeni – saying that we need to find a place for Mr Kendy Phohleli in the company.

CHAIRPERSON: That is now after her contract has come to – had
10 come to an end but before ...

MS MATHULWANE EMILY MPSHE: It was ...

CHAIRPERSON: She – he could apply for any other position or was it – was it even before the ending of the contract that he had?

MS MATHULWANE EMILY MPSHE: That is correct Chair. It was before the ending of the contract because we had written a letter before to notify him ...

CHAIRPERSON: Yes, yes.

MS MATHULWANE EMILY MPSHE: At the beginning of – of the month of September ...

20 **CHAIRPERSON:** *Ja, ja.*

MS MATHULWANE EMILY MPSHE: We wrote a letter to notify him ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: That his contract will not be renewed ...

CHAIRPERSON: Yes.

MS MATHUWANE EMILY MPSHE: And during that time the Chair then said that he is a skilled person that he needs to be appointed anyway in the company in particular in Commercial. The meeting that I had with the General Manage Commercial said they do not have that position in the structure anymore and it is as I mentioned earlier it is integrated already in the roles of the people within the Commercial Department.

So I – I then informed the Chair that the position does not exist anymore. Should there be any other positions ion the company he
10 will be free to apply and shortly thereafter there was a meeting that was called by the Chair and it was termed the Board Exco Meeting.

CHAIRPERSON: But before you get to that one in your conversation when the Chairperson called you did that conversation end on the basis that you – you said he is free to apply for any other position that he might wish to apply for?

MS MATHULWANE EMILY MPSHE: Chair it did not end on that note.

CHAIRPERSON: How did end?

MS MATHULWANE EMILY MPSHE: It ended on a note that says that, how can I as a black person now not want to appoint another black
20 person who is skilled and it ended up with the connotations that I'm anti-transformation and then she also mentioned that she even extended contracts of other white people that had worked in the company before. So what is wrong with me? And I indicated that I was not aware of the circumstances where she extended those contracts. Now I am aware of the circumstances. I have highlighted the risk to the

company. I have highlighted the risk to him as I was discussing with him and I have also not only that, went back to discuss with the general manager commercial and general manager commercial said, that position is not in his structure in commercial. The project had ended and so it ended up in.

CHAIRPERSON: In a kind of stalemate or.

MS MATHULWANE EMILY MPSHE: In a kind of a, ja, stalemate.

CHAIRPERSON: She wasn't happy and you were standing your ground?

10 **MS MATHULWANE EMILY MPSHE**: Yes.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: That is correct chair.

CHAIRPERSON: Yes, continue. There was another meeting?

MS MATHULWANE EMILY MPSHE: Yes, there was a meeting that's called for board and exco and the board at that time were three members and it was on the 28th and 29th of September in 2015 and it was an intercontinental; just across at the airport from Airways Park from our offices. At that meeting, Doctor Thembi was not present at the meeting. So it was Ms Kwinana and Ms Myeni who were at the meeting.

20 At that meeting amongst other things the chair asked the company secretary to write a board resolution to a point Kendy Phohleli in the vacancy that existed in the office of the chairperson. It became a board resolution.

CHAIRPERSON: Was there a position such as that in the structure of the organization?

MS MATHULWANE EMILY MPSHE: Yes, chair there was a vacant position.

CHAIRPERSON: There was, yes.

MS MATHULWANE EMILY MPSHE: Of a manager in the office of the chairperson.

CHAIRPERSON: Yes, but in the past, how was that position field? Was there a process that would be followed in the filling of that position in the past or is that something you are not sure about?

MS MATHULWANE EMILY MPSHE: No, chair I am very sure about it
10 because I was responsible for human resources.

CHAIRPERSON: For human resources, yes.

MS MATHULWANE EMILY MPSHE: When a position was vacant it will have been advertised.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And they will have a specific criteria.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Of the incumbent.

CHAIRPERSON: Yes.

20 **MS MATHULWANE EMILY MPSHE:** Of that role.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Which is linked to the responsibilities.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: In that role.

CHAIRPERSON: So it was subject to – the filling of that position was subject to normal SAA recruitment processes?

MS MATHULWANE EMILY MPSHE: That is correct, chair.

CHAIRPERSON: Yes, but in this case your part of your point is that process wasn't followed and one and two the appointment was by way of board resolution?

MS MATHULWANE EMILY MPSHE: Yes, that is correct, chair.

CHAIRPERSON: Yes. And this phenomenon of board resolution appointing an employee, was that something that had happened before
10 as far as you know?

MS MATHULWANE EMILY MPSHE: It has never happened before, chair.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And it was really a first.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Ja.

CHAIRPERSON: Okay. Please continue and tell me more about that meeting.

MS MATHULWANE EMILY MPSHE: Then it was said it was a board
20 resolution to appoint Mr Kendy Phohleli in the office of the chair which is a position that was vacant. However, there was specific requirements for the role and the role was going to report to the company secretary and the role is very important one. In that it was going to be a link between the shareholder representative and the board and into the organization. So there were specific requirements and I remember just

on top of my head one of the requirements was either a person who will have had or some kind of a company secretariat or some kind of a paralegal understanding; the requirements. And the company secretary was in the meeting when this was said and they did the resolution.

CHAIRPERSON: And was the company secretary at this time?

MS MATHULWANE EMILY MPSHE: The company secretary was Ms Ruth Kibuka.

CHAIRPERSON: And she was the company secretary throughout the period that you will cover as an acting CEO?

10 **MS MATHULWANE EMILY MPSHE**: To date, yes.

CHAIRPERSON: Ja, okay. Even to date?

MS MATHULWANE EMILY MPSHE: To date.

CHAIRPERSON: Okay, alright. Yes, hm?

MS MATHULWANE EMILY MPSHE: So when they, at the end of that meeting we go back to the office and I then go to her as the line manager when who has also done this board resolution. I said, so where to now? She says no ways, no way. This person doesn't meet the requirements and there is no way that I can appoint this person in that position.

20 **CHAIRPERSON**: Well, does she need to appoint? Wasn't the person appointed already by way of a board resolution?

MS MATHULWANE EMILY MPSHE: There was a board resolution to that effect.

CHAIRPERSON: Yes, continue your conversation with the company... (indistinct).

MS MATHULWANE EMILY MPSHE: Yes, so I then said to her nonetheless. I'll leave it between you and the human resources manager to see the recruitment through because I cannot interfere as there is a broad resolution to that effect. Finally, Mr Phohleli was invited to come to the interview and he didn't go to the interview

CHAIRPERSON: He was invited to come to the interview?

MS MATHULWANE EMILY MPSHE: Yes, he was going to be interviewed. He was not going to be appointed.

CHAIRPERSON: Well, hang on. I thought you said the board resolution
10 was saying he was being appointed.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: But the company secretary wanted to subject him to an interview first?

MS MATHULWANE EMILY MPSHE: Yes, yes. That is correct, chair.

CHAIRPERSON: Which meant that the company secretary was not prepared to have him there unless some kind of process had been followed?

MS MATHULWANE EMILY MPSHE: That is correct, chair.

CHAIRPERSON: I guess even if it wasn't the full process because
20 there was no advertisement of the position. So she asked him to come for an interview and he did not come to the interview?

MS MATHULWANE EMILY MPSHE: And he didn't go to the interview.

CHAIRPERSON: Do you know why he didn't go or did he say I have been appointed? The interview is for what now?

MS MATHULWANE EMILY MPSHE: For the manager in the office of

the chair.

CHAIRPERSON: Yes, no, no. I am saying do you know what, why he didn't attend the interview or did he take the attitude that I have been appointed today. What is the interview for now? Do you know what?

MS MATHULWANE EMILY MPSHE: The feedback I received as now it was between the line manager who was the company secretary and the HR manager at that point. The feedback that I had received from them was that he said he's not interested.

CHAIRPERSON: In the position?

10 **MS MATHULWANE EMILY MPSHE**: In the position.

CHAIRPERSON: Oh. Okay, yes. So he never started in that position?

MS MATHULWANE EMILY MPSHE: He never started in the position.

CHAIRPERSON: So that was the end of the implementation of that resolution?

MS MATHULWANE EMILY MPSHE: Yes, that was the end of the, ja, of the board resolution.

CHAIRPERSON: Ja, okay. Thank you.

MS ZINHLE BUTHELEZI: And Ms Mpshe, on this board resolution of the 28th and the 29th of September, further down your affidavit on
20 paragraph 32 it looks like it was challenged. What was the basis for challenging this board resolution?

MS MATHULWANE EMILY MPSHE: The board reso – it was not the only board resolution and all the board resolutions that were done at that meeting, the colleagues challenged them; some of the exco members and said it was not a formally constituted board meeting.

MS ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: There was no correlation and so as a result of that those resolutions are null and void. They are not legal and are not binding because they were as a result of a not formally constituted board meeting.

MS ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: So that one of the resolutions that was queried.

CHAIRPERSON: Challenge, ja.

10 **MS MATHULWANE EMILY MPSHE:** Challenged, yes.

MS ZINHLE BUTHELEZI: And do you know who attended this particular meeting?

MS MATHULWANE EMILY MPSHE: Who attended this particular meeting I mentioned earlier was Ms Kwinana and Ms Myeni and then the rest of the exco members. Myself at that time I was acting CEO.

MS ZINHLE BUTHELEZI: Yes.

20 **MS MATHULWANE EMILY MPSHE:** And Mr Meyer was a CFO. Mr Nico Bezuidenhout who was the as a subsidiary CEO of Mango. He was in the meeting. Mr Sylvain Bosch, the GM commercial, Mr Musa Zwane who was the CEO of subsidiary of SAA Technical, Ms Nivi Moodley who was acting in my role as a GM HR, the company secretary Ms Kibuka and the deputy company secretary Ms Mabana Makhakhe. I could have left one or two people but it was generally the exco.

CHAIRPERSON: Was the fact that they were only three nonexecutive directors of the board in the board; was that in line with the prescripts

relating to what the minimum number is that the board should have, if you know?

MS MATHULWANE EMILY MPSHE: Yes, chair it was not in line. However, I think through the company secretary I think the chair did write to Department of Public Enterprises or National Treasury at the time; wrote to National Treasury at the time. And National Treasury then confirmed that if they appoint me as the acting CEO is a nonexecutive director they can have five; it will have five board members which at that time they felt that was sufficient while pending
10 the appointment of the rest of the board members. Previously we had 12 board members. I think the next number that I am aware of was nine. Never was it three.

CHAIRPERSON: But you were when you were acting CEO, you didn't become a nonexecutive you know director of the board. You remained executive director or acting director?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Whatever the position is. What I'm concerned about is whether the prescripts allowed the number of nonexecutive directors to be so low namely three. Is that something you know or is that
20 something you don't know?

MS MATHULWANE EMILY MPSHE: I wouldn't know, chair but I had heard that legally and in terms of the Companies Act it was not the correct number for board members.

CHAIRPERSON: Because if you have just mentioned that at some stage there were 12. Now I don't know whether that is just 12 including

executive directors?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Including executive directors?

MS MATHULWANE EMILY MPSHE: Including executive directors.

CHAIRPERSON: When it was 12 including executive directors, do you know how many nonexecutive directors there were?

MS MATHULWANE EMILY MPSHE: There were about 10 if for my recollection.

CHAIRPERSON: Ja, so then you moved from there to only three
10 nonexecutive directors? It's an undesirable situation but anyway, yes continue.

MS ZINHLE BUTHELEZI: Thank you Chair. Ms Mpshe, to wrap up on this issue of Mr Phohleli. On paragraph 33, you talk about his other appointment.

CHAIRPERSON: Please raise your voice again Ms Buthelezi.

MS ZINHLE BUTHELEZI: On paragraph 33 of your affidavit you talk about his other appointment in October 2015.

MS MATHULWANE EMILY MPSHE: That's correct.

MS ZINHLE BUTHELEZI: Yes.

20 **CHAIRPERSON**: Oh I'm sorry Ms Buthelezi. You didn't keep your eye on the watch.

MS ZINHLE BUTHELEZI: Is it tea time?

CHAIRPERSON: I think we must take the short adjournment tea break. It is a quarter past. We will resume at 11h30. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let's proceed.

ADV ZINHLE BUTHELEZI: Thank you Chair. Ms Mpshe we were on the last aspect regarding Mr (Indistinct) I wanted to find out what happened to him then in October 2015, you deal with that in paragraph 33 of your statement.

MS MATHULWANE EMILY MPSHE: Yes Chair, Mr (indistinct) then – the Chair formed a committee and the committee that was going to be responsible for the Africa strategy and Mr Phohleli is now invited to
10 become a member of this committee, there were other members in that committee and being captain Mamashela, being captain Manentsa and some other staff members. What was odd about it was that (indistinct) Phohleli is appointed into that position, into that committee whereas he is not an employee of the company anymore.

ADV ZINHLE BUTHELEZI: Yes so the other members...(intervention).

CHAIRPERSON: This was now in October 2015?

MS MATHULWANE EMILY MPSHE: Yes his contract ended in September 2015.

CHAIRPERSON: Now this committee that you say the Chairperson
20 formed, was it a Board Committee, what was the status of this committee?

MS MATHULWANE EMILY MPSHE: It was like an advisory committee, it was just a committee, it has never been formed before.

CHAIRPERSON: Yes and it was not part of the Board Structure or management structure.

MS MATHULWANE EMILY MPSHE: It was not part of the governance structure - yes.

CHAIRPERSON: So it was for intents and purposes and informal committee?

MS MATHULWANE EMILY MPSHE: It was an informal committee.

CHAIRPERSON: Yes, okay, alright.

ADV ZINHLE BUTHELEZI: Thank you was this committee part of your turnaround strategy or meant to be?

MS MATHULWANE EMILY MPSHE: No it wasn't.

10 **ADV ZINHLE BUTHELEZI:** Okay and the other members of this committee, were they employees of SAA?

MS MATHULWANE EMILY MPSHE: They were employees of SAA and as I mentioned, captain Mamashela was supposed to be appointed as Chief Operations Officer and captain Manentsa who was then Chief Pilot and head of flight ops acting there was another gentleman Mr (indistinct), they were all permanent employees with the exception of Mr Phohleli.

CHAIRPERSON: But it looks like three of them – or members of this committee were persons that the Chairperson or Ms Kwinana at
20 different stages had instructed you to appoint.

MS MATHULWANE EMILY MPSHE: That's correct Chair.

CHAIRPERSON: And in regard to one of the you had refused in regard to captain Manentsa, you tried to comply but he ended up saying he never asked for both positions and he was not coping and that was the end of the plans to have him appointed to the position of head of flight

operations.

MS MATHULWANE EMILY MPSHE: That's correct Chair.

CHAIRPERSON: And then the third one was Mr Phohleli so all three there had been attempts by either Ms Myeni or Ms Kwinana or both to get them appointed in one or other positions.

MS MATHULWANE EMILY MPSHE: That's correct Chair.

CHAIRPERSON: And who else was in this committee apart from the three then?

MS MATHULWANE EMILY MPSHE: It was Mr Tsebogo Mtsimani? and I
10 can't remember the other member on top of my head.

CHAIRPERSON: Okay, thank you.

ADV ZINHLE BUTHELEZI: Ms Mpshe was Mr Phohleli now part of SAA employees, was he remunerated for this position what was the case?

MS MATHULWANE EMILY MPSHE: He wasn't an employee he was not remunerated, Dr Tambi who was the Chair of this special committee was the one who would sign him in, into SAA for the meetings but he wasn't a permanent employee, he was not remunerated.

ADV ZINHLE BUTHELEZI: So what was...(intervention).

CHAIRPERSON: Dr Tambi was an executive director of the Board?

20 **MS MATHULWANE EMILY MPSHE:** He was a non-executive director.

CHAIRPERSON: He was a non-executive – oh he was the third member of the Board of the three.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Okay now I remember yes.

ADV ZINHLE BUTHELEZI: Thank you, so what was his status at SAA

at that stage?

MS MATHULWANE EMILY MPSHE: He was not an employee.

ADV ZINHLE BUTHELEZI: Okay thank you, then let's move on to another example of a contract or an instance where there was an interference, it was the cancellation of LSG Sky Chef contract. We have heard evidence from Dr Dahwa on Friday regarding this particular transaction. Before we go into details with regards to this contract, I want to understand the status of this company, LSG in South Africa, was it a South African company, what did you know about this company?

MS MATHULWANE EMILY MPSHE: Chair what I knew about LSG Sky Chefs was, it was a subsidiary of Lufthansa Airlines but it was a South African registered company and it was employing South Africans, it was based in South Africa, that's the legal status that I understand of LSG Sky Chefs.

CHAIRPERSON: Yes okay, just one second, thank you.

ADV ZINHLE BUTHELEZI: Thank you, other than it being a subsidiary of this company Lufthansa Airlines is it based in Germany, is that correct?

20 **MS MATHULWANE EMILY MPSHE:** That's correct.

ADV ZINHLE BUTHELEZI: Yes other than being a subsidiary of Lufthansa Airlines company was it – what was its status in terms of BEE compliance in South Africa?

MS MATHULWANE EMILY MPSHE: Chair it had the required credentials for BEE, it was a South African company.

CHAIRPERSON: Yes okay.

ADV ZINHLE BUTHELEZI: Yes, we heard from Dr Dahwa that processes were followed before it's appointment, I want you to give us a history as to where these contracts emanated from?

MS MATHULWANE EMILY MPSHE: There was a time when our customers were really complaining at the lounges – airport lounges about the service and the provision of meals and just the look...(intervention).

CHAIRPERSON: Okay I'm sorry I think Ms Buthelezi is started much
10 earlier. Before the events that you are going to talk about in terms of your statement relating to it, had this company had any relationship with SAA at all before these events?

MS MATHULWANE EMILY MPSHE: They had no relationship and no relationship with SAA.

CHAIRPERSON: It had not done any business with SAA?

MS MATHULWANE EMILY MPSHE: Not at all.

CHAIRPERSON: Okay and then it was appointed to provide catering is that so, at a certain stage, catering services?

MS MATHULWANE EMILY MPSHE: Ja the tender was to provide
20 catering at the airports and also the – it was part of a partnership with Investec who then renovated our lounge at OR Tambo International, the premier lounge and domestic.

CHAIRPERSON: Yes, now were you involved at all in the awarding of the contract to this company?

MS MATHULWANE EMILY MPSHE: No Chair, I was not involved and

ordinarily a CEO – acting CEO would not be involved with tenders.

CHAIRPERSON: Yes there would be a certain level where a CEO would get involved in terms of the amounts involved, in terms of the ...(intervention).

MS MATHULWANE EMILY MPSHE: Yes if the amount...(intervention).

CHAIRPERSON: And this did not fall under that?

MS MATHULWANE EMILY MPSHE: That's correct Chair.

CHAIRPERSON: Yes, okay so you wouldn't know about the processes that were followed in regard to them, all you know if you expected that
10 processes would have been followed and you know that it was appointed?

MS MATHULWANE EMILY MPSHE: Chair I know that processes will have been followed to come to a point when then it was awarded the tender.

CHAIRPERSON: Yes, yes, okay thank you, continue.

ADV ZINHLE BUTHELEZI: Thank you I wanted you to give us a history on how this contract emanated then we'll then go onto your involvement in as far as this contract is concerned.

MS MATHULWANE EMILY MPSHE: Okay, Chair the contract emanated
20 as a result of our lounge, we were not being competitive anymore, there were other banks that were supporting, like slow lounge was becoming the most popular and at the domestic terminal. So Investec came into a partnership with SAA to revamp our lounge and sponsor our lounge and because we needed a catering offering that would go with the new look that we actually wanted our premier customers to enjoy we then –

that's how the tender came in to play. Investec sponsored the renovation of the lounge and then the next offering would have been the meals and the ambience which was done – would have been done by a catering company – an airline catering company.

ADV ZINHLE BUTHELEZI: Ms Mpshe before this who was servicing your lounges?

MS MATHULWANE EMILY MPSHE: Our lounges were serviced by Air Chefs, which is a subsidiary of South African Airways.

ADV ZINHLE BUTHELEZI: Yes, do you know if – when the tender
10 process opened up Air Chefs was also invited to bid for this particular contract?

MS MATHULWANE EMILY MPSHE: I am - was also invited to tender.

ADV ZINHLE BUTHELEZI: Yes we now know that LSG Sky Chefs became a bidder of choice by those who were responsible for selecting the company to service those lounges.

MS MATHULWANE EMILY MPSHE: That's correct Chair.

ADV ZINHLE BUTHELEZI: The – what was the value of this contract?

MS MATHULWANE EMILY MPSHE: It was 85million over a period of three years.

20 **ADV ZINHLE BUTHELEZI:** And the 85million was it per year or was it a once-off amount...(intervention).

CHAIRPERSON: She said over a period of three years.

MS MATHULWANE EMILY MPSHE: Over three years.

ADV ZINHLE BUTHELEZI: Thank you, in your affidavit you mentioned that you wrote a submission that you attach under tab 10, whereby you

inform the Board of this particular contract. Tab 10 appears – it appears from page 91 of the documents under Annexure DD15 A.

MS MATHULWANE EMILY MPSHE: That's correct.

ADV ZINHLE BUTHELEZI: Yes, it that, that submission that you made?

MS MATHULWANE EMILY MPSHE: Yes I – as an acting CEO Chair it was within the delegation, even of the Chief Procurement Officer at the time, and I just felt that it would be courtesy to inform the Board that there will be a new service provider for us at the airports when we open the new lounge that was being renovated. There was no procedure
10 that was forcing me to, I just felt that it was important that they are aware of what's happening within the company.

CHAIRPERSON: Yes, yes.

ADV ZINHLE BUTHELEZI: So there was no approval that you expected from the Board at that stage?

MS MATHULWANE EMILY MPSHE: It was a notification.

ADV ZINHLE BUTHELEZI: Yes and this notification is dated the 20th of August 2015, we have heard from Dr Dahwa that on the 21st of August the award was made to LSG Sky Chefs.

MS MATHULWANE EMILY MPSHE: Correct.

20 **ADV ZINHLE BUTHELEZI:** Just tell us what then happens on the 1st of September or shortly thereafter, you deal with that in paragraph 36 of your statement...(intervention).

CHAIRPERSON: Well before that, let us say, you sent this notification to the Board and was there a response or reaction to it?

MS MATHULWANE EMILY MPSHE: Chair I didn't receive a response

on the same day of the 30th of August and subsequently I found an email which was dated the 1st of September but on the 1st of September I had gone to Parliament with Board members and some of my colleagues, to present to the Portfolio and Public Enterprises.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And in that meeting in Parliament, somehow the matter of LSG Sky Chefs was raised to say how can a German company be awarded this tender and the Chair was not in a position to respond and Dr Dahwa, who was there, responded it also
 10 caught us by surprise because it's not something that we had prepared for. We had prepared to table the strategy and progress on the strategy of the company. So it became, really something that was discussed for a prolonged period of time wanting to know the details and it was positioned as if it was a German company which was awarded this tender, whereas it was a South African registered company that was awarded the tender. At the end of the meeting, once we were outside...(intervention).

CHAIRPERSON: I'm sorry my – do you recall who raised the issue, was it a member of the Portfolio Committee or was it somebody else in
 20 the meeting in Parliament?

MS MATHULWANE EMILY MPSHE: I remember the Chair mentioned, when she was asking a question relating to the strategy and then out of nowhere she said, you know, we are a non-executive directors we go to SAA four times a year, and then now we hear that they've awarded this German company a tender and then other Portfolio Committee

members – I remember a member from EFF and other members started asking questions emanating out of that.

CHAIRPERSON: Okay you may continue.

ADV ZINHLE BUTHELEZI: So it was - sorry it was a Chair, your Chair Ms Dudu Myeni that raised the issue that there has been a German company that was awarded a tender?

MS MATHULWANE EMILY MPSHE: That's correct Chair.

ADV ZINHLE BUTHELEZI: Yes and what happened from there?

MS MATHULWANE EMILY MPSHE: At the end of the meeting, we were
10 waiting outside for transport to take us to the airport and she was highly irate and she said to me, "you mean black people can't cook".

CHAIRPERSON: Who is she now?

MS MATHULWANE EMILY MPSHE: Ms Myeni.

CHAIRPERSON: Yes okay.

MS MATHULWANE EMILY MPSHE: And she says to me, "you mean black people can't cook".

ADV ZINHLE BUTHELEZI: What did she mean by that?

MS MATHULWANE EMILY MPSHE: Because the company now is perceived to be a German company and this award – tender award has
20 been given to the German company, she then says that, it means it's German people – the connotation is, German people will cook, so do I mean that black people can't cook.

ADV ZINHLE BUTHELEZI: Ms Mpshe do you know what – because your lounges were being serviced by Air Chefs...(intervention).

CHAIRPERSON: Hang on Mr Buthelezi she hasn't finished telling us

about her conversation with the Chairperson, she's just told us the Chairperson asked her, do you mean black people can't cook. Let's hear the story, how did you respond?

MS MATHULWANE EMILY MPSHE: I responded by saying I think maybe we should discuss this at the office because my correspondence to her on the 30th outlines exactly the process that was taken and I moved away from her to stand, you know just with other colleagues.

CHAIRPERSON: You were very unhappy?

MS MATHULWANE EMILY MPSHE: She was irritated and all my
10 colleagues were there in front of my colleagues, you know, berating me in front of the colleagues.

CHAIRPERSON: Yes you may continue – was that the end of the conversation at that stage then with her...(intervention).

MS MATHULWANE EMILY MPSHE: In Cape Town, that was the end of the conversation in Cape Town.

CHAIRPERSON: In Cape Town, oh okay.

ADV ZINHLE BUTHELEZI: Yes I wanted to find out from you the Air Chefs employees that were employed by the company that was servicing your lounges before the appointment of LSG Sky Chefs, what
20 happened to those people?

MS MATHULWANE EMILY MPSHE: In the negotiations with LSG Sky Chefs, we negotiated in terms of Labour Relations Act what you call Section 197 going concern, meaning that we wanted to limit loss of jobs from Air Chefs. So we were in partnership with LSG Sky Chefs discussing with Air Chefs that they will take over the employees that

were employed by Air Chefs who were going to be working at the airport in the lounges. So that process had already started, in fact the people were already transferred, the people already were trained – were busy being trained in preparation for the opening of the lounge. So it was not perceived that there was going to be a loss because of the nature of the transaction that it was going to be a going concern, so the employees were transferred into the company now that would be handling the services at the airport.

ADV ZINHLE BUTHELEZI: Yes and then you came back from Cape

10 Town, how was this issue then discussed further at the office?

MS MATHULWANE EMILY MPSHE: On the 2nd of September, I then received an email which was sent on the 1st from the Chair and saying that I must hold back the offer of the tender, not issue it to LSG Sky Chefs. I then responded to the Chair to say that the offer has been given, already to LSG Sky Chefs, my email or memo to her and the Board was just a notification and I then went further to say that LSG Sky Chefs were the legitimate – awarded legitimately the tender because they were the best in terms of the people who tendered. She then asked about Air Chefs, I then went back to the Chief Procurement

20 Officer Dr Dahwa and said, tell me what happened in that process and then I was informed that Air Chefs was eliminated out of the process because they didn't even submit the full documentation that was required in terms of the tender, that's why they were not in the tender process. They had applied but they didn't complete the full documentation and I explained all that information to the Chair.

CHAIRPERSON: This was now on another occasion when you had done this homework to – you went back to her to explain ...(intervention).

MS MATHULWANE EMILY MPSHE: On the 2nd when we came back from Parliament.

CHAIRPERSON: Oh the first conversation you had with her after Parliament, after Cape Town, that's when you explained all of this to her?

MS MATHULWANE EMILY MPSHE: Yes.

10 **CHAIRPERSON:** Oh okay alright. You had, in the meantime found out more information of what had happened to the company that had been there before?

MS MATHULWANE EMILY MPSHE: Yes Chair.

CHAIRPERSON: Oh okay alright, and what did she say when you explained all of this?

MS MATHULWANE EMILY MPSHE: She then said no it's okay, I hear you but we'll come back to you.

CHAIRPERSON: Okay.

20 **MS MATHULWANE EMILY MPSHE:** And then after that, she then wrote an email indicating that, as the Board, they ordinarily don't want to intervene with the daily operations of the company and – but however, they want me to cancel the award of the tender to LSG Sky Chefs. On receipt of that instruction I called the Chief Procurement Officer, Dr Dahwa...(intervention).

CHAIRPERSON: Before you called Dr Dahwa what reasons were

given in this email to you for the instruction that you must cancel the award?

MS MATHULWANE EMILY MPSHE: The reasons were – she had a responsibility to support the subsidiary of the airline which is Air Chefs so it will be really irresponsible for us to award this tender to an external company to the airline and already in the first email I had explained that the reasons and the background why Air Chefs , we needed to revive and revamp the lounge was because – part of this was the offering was very poor, the food and people – customers were
10 complaining so she then says, no they have an obligation to Air Chefs and we must cancel the LSG Sky Chefs tender and award it to – and give it to Air Chefs.

ADV ZINHLE BUTHELEZI: Yes that email...(intervention).

CHAIRPERSON: I'm sorry Ms Buthelezi, this is still in the email or there was a discussion following her email with you?

MS MATHULWANE EMILY MPSHE: There was a – I responded on email and then she wrote back on email...(intervention).

CHAIRPERSON: Oh this is the exchange of emails?

MS MATHULWANE EMILY MPSHE: This is an exchange of emails.

20 **CHAIRPERSON:** Okay so – but you say that the only reason really, advanced in the email correspondence, why the tender should be cancelled was that, she or the Board had a responsibility to the company that was a subsidiary of SAA?

MS MATHULWANE EMILY MPSHE: That's correct Chair and she was the Chairperson.

CHAIRPERSON: No other reason...(intervention).

MS MATHULWANE EMILY MPSHE: And she was the Chairperson of the Air Chefs Board at the time.

CHAIRPERSON: She was the Chairperson of the SAA Board and Chairperson of the Air Chefs Board?

MS MATHULWANE EMILY MPSHE: That's correct Chair, there were three Board members.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: So she was the Chairperson of Air
10 Chefs and Mrs Kwinana was the Chairperson of SA Technical a subsidiary.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And Dr Tambi was sitting in at the Mango Board, though Mango had an independent Board – Chair of the Board.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: So there were only three of them, so you will have to have a Chair coming from the bigger Board.

CHAIRPERSON: Yes.

20 **MS MATHULWANE EMILY MPSHE:** So she was the Chairperson of the South African Airways Board, the Group and she was Chairperson of SA Technical.

CHAIRPERSON: Was that in order, well you were the acting CEO was it in order to have that situation, in terms of Board members, I mean how do you – when you are Chair of the Board of a company that has

made a tender to a company whose Board you are chairing, how does that work now?

MS MATHULWANE EMILY MPSHE: Chair simply it will have been a conflict of interest under normal circumstances.

CHAIRPERSON: But it didn't ceased to it, it couldn't have ceased to be a conflict of interest. Maybe somebody might say there was just no other way of doing things because there were only three members of the Board but I guess there's not much you can say about it.

MS MATHULWANE EMILY MPSHE: That's correct Chair.

- 10 **CHAIRPERSON:** Yes so – but is my understanding of your evidence correct that the only reason really that she gave in the email correspondence, at least, leave out the remark whether you met that blacks can't cook, in terms of the emails, the only reason given why the award should be – to LSG should be cancelled was that she felt that she or her Board needed to be responsible and being responsible meant that she had to give instruction that the award to LSG be cancelled and the tender be given to the other company whose Board she was also chairing?

MS MATHULWANE EMILY MPSHE: That's correct Chair.

- 20 **CHAIRPERSON:** Yes okay continue.

ADV ZINHLE BUTHELEZI: Chair if I may be of assistance, Ms Mpshe the email correspondence from the Chair where she was giving her reasons appears on page 111 of Exhibit DD 15 A, would you please read the second paragraph, in fact the third paragraph of that email where – the one that starts with, "The Board doesn't want to interfere

with due process” and the next paragraph that follows.

MS MATHULWANE EMILY MPSHE: The second paragraph it says, this is from Ms Dudu Myeni to myself and copied to herself and Ms Kwinana and Tony Dixon and John Dumby and Ruth Gibuga it says,

10 “The Board does not want to interfere with due process which belongs and is better managed by the executive. The Board is, however, particularly more interested in the principles applied in this contract and award. Having said that, where the Board feels that the implementation does not take proper consideration of pertinent principle then it will bring this to your attention as the acting CEO. At he meeting the Board did precisely that, it raised the concern that the awarding of this contract might have unintended consequences that affect certain strategic considerations. Examples could mean supporting South African businesses, enhancing local employment, considering the impact on your own subsidiaries here being Air Chefs to the discussion pertaining this contract. Hence the Board asked that to the extent possible, we would like the executive to suspend further consideration on this process until we were provided with information on these concerns.

20

This was on 26 August at the Board meeting, no-one was on site. If as you inform us, that a contract has been awarded, then the Board does not wish to interfere with the legal process, we did not have that impression at the Board

meeting. Regardless, however, of the state of this tender, the Board requires answers to its concerns, some of these you have provided to below, there are other questions outstanding and your answers have raised others. This must be provided urgently the board requires a comprehensive review of the awarding of this tender. I am now particularly interested on what grounds Air Chefs failed to meet the initial threshold and was eliminated from the evaluation further. Regardless of the outcome of this tender that must surely be a major concern of the board. I also believe that we need to be quite clear on another issue raised by you in your email. The board delegates authority to the executive to implement certain activity. The delegation policy is a board policy. The board remains legally per the PFMA accountable for the implementation of decisions under that policy. Having delegated this authority does not limit the board in addressing issues arising from the execution of these and it does not mean the board may not review the delegation limits if necessary. The fact that this matter was within your delegation of authority does not prevent the board in questioning the matter. In conclusion if the company has lawfully committed itself to the successful bidder then we do not wish to interfere with that process. However the board urgently requires a comprehensive review of the awarding of this contract and to better understand the application of the

decision making process. Would you please arrange for that to be provided before the end of day on 15 September 2015? If you require any clarification of what is required please do not hesitate to contact me. Air Chefs did raise many objections questioning the motive of this but were defeated. We have to get the answers as to why and by whom was this being done. Regard Ms Dudu Myeni.”

ADV ZINHLE BUTHELEZI: Yes. We have heard your evidence that among other issues the issue of job losses was catered for but I am
10 interested how did you respond to this email?

MS MATHULWANE EMILY MPSHE: The response...

CHAIRPERSON: Before that I see that in this email it seems at least in certain parts of it that she is saying if you have already awarded this tender we do not want to interfere as the board but we would like to be fully informed as to how that came about and how the principles were applied. Is your – is that your understanding as well?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: Yes okay thank you. Yes continue.

ADV ZINHLE BUTHELEZI: Yes. And – but how did you respond to this
20 email? You were saying before that what happened?

MS MATHULWANE EMILY MPSHE: In the – in the response I then requested Doctor Dahwa to give a full background in line with the request.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: From the Chair and then I then

forwarded the responses to the Chair copying the board members.

ADV ZINHLE BUTHELEZI: Yes. When did the final instruction to have this contract cancelled come?

CHAIRPERSON: Well no before that let us identify the response that you sent to her.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: If it is in the bundle?

ADV ZINHLE BUTHELEZI: It is the next annexure Chair thank you.

CHAIRPERSON: Yes.

10 **ADV ZINHLE BUTHELEZI**: Annexure under Tab 14. On page 114, is that your response the Chair?

MS MATHULWANE EMILY MPSHE: Yes the – my response is the second part of the email.

ADV ZINHLE BUTHELEZI: Yes would you please then read your response for the record starting from point number 1?

MS MATHULWANE EMILY MPSHE: Okay.

CHAIRPERSON: Well she might not need to read the whole of it.

ADV ZINHLE BUTHELEZI: Yes.

20 **CHAIRPERSON**: Unless it is considered that the whole of it is important otherwise she can just highlight the important features of her response.

ADV ZINHLE BUTHELEZI: Please do highlight those features Ms Mpshe.

CHAIRPERSON: But if you...

ADV ZINHLE BUTHELEZI: The important features.

CHAIRPERSON: If you take the view that the whole needs to be read you can tell me but it seems to me that just highlighting the main features might be enough.

MS MATHULWANE EMILY MPSHE: Okay. On – now I suppose I will say on – from point 7.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Now linking to the point.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Of my lead.

10 **CHAIRPERSON:** Yes.

MS MATHULWANE EMILY MPSHE:

20 “That there are no job losses emanating from the award of services to LSG Sky Chefs as any impacted Air Chefs employees will be transferred to the successful bidder as per conditions set out in the tender document and in accordance with Section 189 – 197 of The Labour Relations Act. Notwithstanding that LSG Group is a collection of companies under the German Registered LSG Lufthansa Service Holding and the lounge catering services have been awarded to Sky Chefs South Africa. A South African Registered entity which locally sources and produces products procured by SAA. Accordingly and in imposing office obligations to the board management wish to highlight the legal implications inherent to

the board decision to cancel the award of the services. Having regard in particular the legal requirement for the board to be fully apprised of all relevant details in reaching a decision of this nature. Please kindly refer to the attached legal memorandum and annexures thereto.”

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Well I think – I think paragraph 6 of your response at page 115 is important. Do you want to read that?

10 **MS MATHULWANE EMILY MPSHE:** Chair which point was that?

CHAIRPERSON: Paragraph 6.

ADV ZINHLE BUTHELEZI: Point – point 6.

MS MATHULWANE EMILY MPSHE: Paragraph 6?

CHAIRPERSON: Ja.

MS MATHULWANE EMILY MPSHE:

20 “As per the board notification of August 2015 responses to the RFP were received from Air Chfs, LSG Sky Chfs and Dnata/Newrest. A lawful and duly constituted procurement process was followed in respect of which all received responses were properly evaluated. In this regard it must be noted that Air Chfs failed to meet the initial minimum threshold for evaluation in the tender and was lawfully precluded from proceeding to further stages of evaluation.”

ADV ZINHLE BUTHELEZI: Yes. And how were these news received?

CHAIRPERSON: Yes I am sorry Ms Buthelezi. I think paragraph also is important. Maybe you can read that?

MS MATHULWANE EMILY MPSHE: Sorry Chair.

CHAIRPERSON: Paragraph 4 of

MS MATHULWANE EMILY MPSHE: Paragraph 4?

CHAIRPERSON: I think is also important ja.

MS MATHULWANE EMILY MPSHE: Okay.

10 “As the board notification of August 2015 in electing
to go out on tender the business carefully considered
the strategic implications of Air Chfs possibly not
being selected as a successful bidder visa vie the
business imperative of the retention of premium
customers in a highly competitive market. In
addition due consideration was given to any adverse
market perceptions created through electing to
tender for lounge services thus having 4.265 of
services rendered by Air Chfs in relation to their
total SAA account.”

20 This paragraph states that they – if they are not receiving the lounge
tender it will only be 4.26% of the whole offering at SAA because they
will continue to – or render the services at the – with the aircraft.

CHAIRPERSON: So it was a very small percentage?

MS MATHULWANE EMILY MPSHE: Yes it was a very small percentage.

CHAIRPERSON: Yes thank you.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: You may continue Ms Buthelezi.

ADV ZINHLE BUTHELEZI: How – how were these news received by Chair?

MS MATHULWANE EMILY MPSHE: The news were not well received.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: In particular I remember a response from Ms Kwinana I think in her response she said that this is treason. This decision to award LSG Sky Chefs.

10 **CHAIRPERSON:** Yes.

MS MATHULWANE EMILY MPSHE: Is treason.

CHAIRPERSON: That is Ms Kwinana?

MS MATHULWANE EMILY MPSHE: That is Ms Kwinana.

CHAIRPERSON: Yes. Prior or after this email or you cannot remember that part?

MS MATHULWANE EMILY MPSHE: It was after.

20 **ADV ZINHLE BUTHELEZI:** I think it must have been prior. Ms Mpshe if I may refer you to the two emails that you received on the 3 September. The first one it is from the Chair. It starts from the same paragraph 115 where you were at the bottom of paragraph 15.

MS MATHULWANE EMILY MPSHE: The 3 September it is Tab – which page? On the same one?

ADV ZINHLE BUTHELEZI: Yes on the same page. Page 115.

MS MATHULWANE EMILY MPSHE: Okay

ADV ZINHLE BUTHELEZI: The – at the bottom of that page there is

an email.

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: From Duduzeli Myeni to Yahke.

MS MATHULWANE EMILY MPSHE: Yes the email...

ADV ZINHLE BUTHELEZI: Yourself and other members of the – of the board.

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: You want me to read it?

10 **ADV ZINHLE BUTHELEZI:** What was said on that email yes?

MS MATHULWANE EMILY MPSHE: Yes. This is now from Ms Myeni on the 3 September and it says:

“As previous Acting CEO knows well – so the previous Acting CEO knows well what we wanted as a shareholder and this process which was started in May is contrary to our decision. The board in February and March discussed outsourcing Air Chefs to an outside company. The reason why we did not advertise the CEO position was based on this.

20 Secondly before the commencement of the LSG at the board meeting no-one made any submissions or raised these things to us at the board meeting. A thorough investigation is fully supported as per the Audit and Risk Compliance Chairperson. The contract without the shareholder noting the

submission should be nullified. As a shareholder we have responsibilities to ensure that our subsidiaries are assisted and our decisions must be to the best interest of SAA and South Africa.”

ADV ZINHLE BUTHELEZI: Yes and before that they – or below that email there is an email that...

CHAIRPERSON: Ms Buthelezi. I think there is a – some jumping that has happened. You see when you were asking her about the email her response to the Chairperson.

10 **ADV ZINHLE BUTHELEZI:** Yes.

CHAIRPERSON: Starting at page 114 which goes up to 115 I realised from the content there of that the email seems to be talking on the basis that the board was saying or the Chairperson was saying the award should be cancelled.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: But – and I was still going to ask her about that where she took that from but I realise now that it looks like there was an email earlier the one she has just finished reading which was earlier.

20 **ADV ZINHLE BUTHELEZI:** Yes even the one that is from Ms Kwinana it is before.

CHAIRPERSON: Ja – ja let us try and follow.

ADV ZINHLE BUTHELEZI: I will do so Chair.

CHAIRPERSON: Let everything go in accordance with the sequence because otherwise you get confused to say

ADV ZINHLE BUTHELEZI: I accept.

CHAIRPERSON: Why is she talking about the award being cancelled because in the previous email that she had read from the Chair there was no indication of her saying cancel?

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Instead she was saying if the award has already been made we as the board do not want to interfere. So when she was reading this response – when I looked at this response it did not seem to ...

ADV ZINHLE BUTHELEZI: And it is dated earlier on the 3 September.

10 **CHAIRPERSON:** To respond to that email so let us make sure that we get the sequence right.

ADV ZINHLE BUTHELEZI: Thank you Chair. And the email that you referred to that came from Ms Kwinana comes on the – further down that page, page 116. Would you please just highlight the important points on that email?

MS MATHULWANE EMILY MPSHE: The important points I will go to at paragraph 3.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE:

20 “I recommend that the award be cancelled and if they claim for damages the letter was written on the 20th and that is what it is that they will have prepared between 20th and the 3rd unless they knew that the tender is theirs. I must take this opportunity to say that I am very disturbed by this decision.”

CHAIRPERSON: I am sorry what page are we now on Ms Buthelezi?

ADV ZINHLE BUTHELEZI: We are on page 116 Chair.

CHAIRPERSON: Sorry?

ADV ZINHLE BUTHELEZI: 116, 116.

CHAIRPERSON: Before we deal with that. Was Ms Kwinana the only one at that stage who had written or talked about cancellation of the award Ms Mpshe?

MS MATHULWANE EMILY MPSHE: The Chair also in her letter – the Chairperson Ms Dudu Myeni.

10 **CHAIRPERSON**: Yes which...

MS MATHULWANE EMILY MPSHE: Had also referred the cancellation of the tender.

CHAIRPERSON: Oh which letter? Let us look at that I just want ...

MS MATHULWANE EMILY MPSHE: The email.

CHAIRPERSON: Do not want us to skip the sequence ja. Ms Buthelezi where is that letter or from which ...

MS MATHULWANE EMILY MPSHE: On page 116

ADV ZINHLE BUTHELEZI: It is on page 116.

CHAIRPERSON: Is that one?

20 **ADV ZINHLE BUTHELEZI**: Yes.

CHAIRPERSON: Oh okay.

MS MATHULWANE EMILY MPSHE: On the top paragraph 1,2,3,4

“The contract without the shareholder noting the submission should be nullified.”

That is referenced from Ms Myeni.

CHAIRPERSON: Oh okay just – is that – and her one is – is it dated the 3rd?

ADV ZINHLE BUTHELEZI: Yes it was also dated on [indistinct].

CHAIRPERSON: Did Ms Kwinana also send you an email on the same date?

MS MATHULWANE EMILY MPSHE: The following was the same.

CHAIRPERSON: Ja same – they both wrote on the same date.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Saying nullify or something along those lines?

10 **MS MATHULWANE EMILY MPSHE**: Yes Chair.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Okay continue.

MS MATHULWANE EMILY MPSHE: I started with paragraph 3.

20 “I recommend that the award be cancelled and if they claim for damages the letter was written on the 20th and what is it that they would have prepared between 20th and today the 3rd unless they knew that the tender is theirs. I must take this opportunity to say that I am very disturbed by this decision which is killing South African Airways subsidiary. As the Chairperson of SAA Technical is making me very nervous where one day I will wake up and find out that SAA Fleet is serviced and maintained by a foreign company that competed with SAA Technical. My simple rhetoric question is if South African

Airways and its subsidiaries were owned by you would you give business to your competitor if you do exactly the same business? Chairperson this looks like treason and I request this to be investigated by the SIU Special Investigating Unit.”

ADV ZINHLE BUTHELEZI: Yes so this is where it all started for this issue of cancellation of this contract?

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: Is that correct?

10 **MS MATHULWANE EMILY MPSHE:** That is where it started, correct.

ADV ZINHLE BUTHELEZI: Yes. Yes what was your – you then responded to them in the email that – in the manner that you referred to earlier. I wanted to know did you at any stage consult your legal department to seek – to get an opinion on whether cancelling – on the – what will happen should you cancel this contract?

MS MATHULWANE EMILY MPSHE: That is correct Chair I did – I requested the Chief Procurement Officer Doctor Dahwa to list out the whole procedure as it was requested in the Chair’s correspondence and I also went to the legal department and I asked the legal department to
20 give us a legal opinion as to what will the impact be on the company if we go ahead and then cancel this LSG Sky Chef tender.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: And then – and that email I then alluded to the legal opinion.

ADV ZINHLE BUTHELEZI: Yes. And what were the conclusions of the

legal department?

CHAIRPERSON: I am sorry, I am sorry Ms Buthelezi. Are we now on – are you referring to an email other than the one that you referred to earlier on from you to the Chairperson?

MS MATHULWANE EMILY MPSHE: On the email of the 8th?

CHAIRPERSON: Is that the one we dealt with earlier?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: From you to the Chairperson?

MS MATHULWANE EMILY MPSHE: Yes.

10 **CHAIRPERSON**: Okay alright.

MS MATHULWANE EMILY MPSHE: We – I responded there.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And by that time in that response I had already gone to the Chief Procurement Officer to outline the process followed and also gone to the legal department to give us a legal opinion as to what the legal consequences will be should we cancel as per the instruction.

CHAIRPERSON: And the reason why you were talking about the cancellation of the contract was because you were aware of the emails
20 that both Ms Kwinana and Ms Myeni had sent to you.

MS MATHULWANE EMILY MPSHE: That is correct.

CHAIRPERSON: Which suggested that they wanted cancellation?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: Yes okay thank you.

ADV ZINHLE BUTHELEZI: And what was the view of your legal

department with regards to the cancellation of this contract?

MS MATHULWANE EMILY MPSHE: The view of the legal department was that we will really suffer consequences to the extent of the value of the duration of the contract which is about 85 million and further other reputational damage and I think those – I remember those two on just on...

ADV ZINHLE BUTHELEZI: Yes, yes if I may assist you. If you can look at paragraph 134 and read the conclusions there that were reached by your legal department.

10 **MS MATHULWANE EMILY MPSHE:** Paragraph 134?

CHAIRPERSON: Is that 134 of her affidavit?

ADV ZINHLE BUTHELEZI: Page 134 – page 134.

MS MATHULWANE EMILY MPSHE: Page 134.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: In conclusion?

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: What is at page 134 first before we hear about your conclusion?

ADV ZINHLE BUTHELEZI: Maybe we should – we should – Ms Mpshe.

20 **MS MATHULWANE EMILY MPSHE:** It is a legal opinion.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Ja.

ADV ZINHLE BUTHELEZI: Would you please look at...

CHAIRPERSON: Let us hear that – what it is?

ADV ZINHLE BUTHELEZI: At paragraph 127.

CHAIRPERSON: Okay I am sorry Ms Buthelezi hang on, hang on. Let the witness tell us what is at page 134 and then she can tell us – read to us the relevant part.

ADV ZINHLE BUTHELEZI: Thank you Chair.

MS MATHULWANE EMILY MPSHE: Chair there is a legal opinion.

CHAIRPERSON: Does it start at page 127?

MS MATHULWANE EMILY MPSHE: It starts on page 127.

CHAIRPERSON: Is that a legal opinion from your – from SAA's legal department at the time?

10 **MS MATHULWANE EMILY MPSHE**: That is correct Chair.

CHAIRPERSON: How did this legal opinion come about?

MS MATHULWANE EMILY MPSHE: I had then requested on being notified where the Chair used the word 'nullified' the contract needs to be nullified I then contacted the legal department and asked them to give us a proper legal opinion.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: As to what the impact and the consequences for the company will be.

CHAIRPERSON: Yes.

20 **MS MATHULWANE EMILY MPSHE**: Should this contract be cancelled – the award be cancelled.

CHAIRPERSON: Yes. And this was the legal opinion that they gave you.

MS MATHULWANE EMILY MPSHE: This was the legal opinion.

CHAIRPERSON: Okay. What was the conclusion that they gave you?

I think that is the paragraph Ms Buthelezi wanted you to...

ADV ZINHLE BUTHELEZI: Yes that is the paragraph -

CHAIRPERSON: To read.

ADV ZINHLE BUTHELEZI: The paragraph at page 134. At the bottom of page 134.

MS MATHULWANE EMILY MPSHE: Yes and conclusion.

10 “The tender for catering services at SAA lounges was procedurally and lawfully awarded to LSG. This award was in line with the PFMA and the PPPFA regulations as well as the South African Airways Procurement Policies and Procedures. As highlighted above the cancellation and or putting on hold of the award may result in possible legal action and financial exposure against South African Airways.”

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE:

20 “Any decision to suspend or cancel the award of the tender by SAA will amount to administrative action which action will need to be objectively fair, equitable, transparent, competitive and cost effective. No duly constituted meeting of the board was held regarding the subject matter whereof and as such any decision taken in this regard will be considered invalid and stands to be set aside. We

recommend that the acting CEO engages with the board and to provide the board with the background information in this memorandum with annexures to assist the board in making an informed decision based on all the available information on the matter.”

And it was compiled by Ephraim Lusenga

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Or legal advisor.

CHAIRPERSON: Ja, no, no that is fine.

- 10 **ADV ZINHLE BUTHELEZI**: Thank you. Did you make the board to be aware of these – of these findings of this view of your legal department?

MS MATHULWANE EMILY MPSHE: I – correctly Chair I did make the board aware and also in correspondence the legal opinion was...

CHAIRPERSON: You attached it?

MS MATHULWANE EMILY MPSHE: Attached. Yes.

CHAIRPERSON: Yes and you sent it to the Chairperson?

MS MATHULWANE EMILY MPSHE: And the board.

CHAIRPERSON: And the whole board?

- 20 **MS MATHULWANE EMILY MPSHE**: Yes.

CHAIRPERSON: And that was still 3, 3 members?

MS MATHULWANE EMILY MPSHE: Yes that was the three.

CHAIRPERSON: Non-executive?

MS MATHULWANE EMILY MPSHE: Yes that is correct.

CHAIRPERSON: Okay, Alright

ADV ZINHLE BUTHELEZI: Yes and then what happened then after this was sent to the board?

MS MATHULWANE EMILY MPSHE: Followed – after that we had that meeting at the Intercontinental the 28th and 29th September.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: And one of the – earlier on I mentioned the board resolution to appoint Kendy Phohleli.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: And the other resolution on that
10 meeting one of the others was the cancellation of the LSG Tender Award.

CHAIRPERSON: This legal opinion from your legal department I see it was signed by various people on the 8th September 2015. So the board members would have received it quite in time for the meeting at the end of September?

MS MATHULWANE EMILY MPSHE: Correct they would have long received it by then.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: That is correct Chair.

20 **CHAIRPERSON:** But the resolution that the award be cancelled nevertheless would have been preceded by I would imagine some discussion and deliberations in the light of the legal opinion from SAA's own legal department?

MS MATHULWANE EMILY MPSHE: Chair I think the point that was made in the – in the conclusion.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: That no – on point 5.2

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Where the legal opinion states that:

10 “Any decision to suspend or cancel the award of the
tender will amount to administrative action which
action will need to be objectively fair, equitable,
transparent, competitive and cost effective. It
further says no duly constituted meeting of the board
was held regarding the subject matter whereof as
such any decision taken in this regard will be
considered invalid and stands to be set aside.”

I think as part of responding to that then it was then – that meeting was
used as a duly constituted meeting of the board.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: To then justify the decision.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: To cancel.

20 **CHAIRPERSON:** Yes but – but the – the legal opinion made it clear
that the award to LSG had been lawfully and properly been given to
LSG and they – I have not read the whole memorandum but it looks like
it is – there is an extensive discussion of the process. Was there not a
discussion in the board of all the points being made or the main points
being made by the legal opinion?

MS MATHULWANE EMILY MPSHE: Chair if you asking that there was a

follow up board meeting in respect of this to discuss...

CHAIRPERSON: No, no I am saying by the time of the board meeting of 28 – is it 28 and 29 September?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Yes by that time the board members had received the legal opinion?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: And one assumes they had read it and digested it?

MS MATHULWANE EMILY MPSHE: That is a correct assumption Chair.

10 **CHAIRPERSON**: One would then think that at least there would be quite some deliberation of the issue before the resolution was decided upon and my question is whether there was such deliberation and consideration of all issues relevant to this issue or was it – was just the decision taken this is what we want to do and a resolution was given?

MS MATHULWANE EMILY MPSHE: Chair I am not aware of any deliberations.

CHAIRPERSON: And you were part of the meeting?

MS MATHULWANE EMILY MPSHE: I am just aware at the meeting

CHAIRPERSON: Yes.

20 **MS MATHULWANE EMILY MPSHE**: That then it was said that a resolution must be taken.

CHAIRPERSON: Ja.

MS MATHULWANE EMILY MPSHE: That tender must be nullified.

CHAIRPERSON: And you were attending the meeting – you attended the meeting?

MS MATHULWANE EMILY MPSHE: I was at the meeting Chair.

CHAIRPERSON: So, so you are in a position to say there was no
cillious deliberation of points relating to the matter?

MS MATHULWANE EMILY MPSHE: The points were about how the
executive did things out of their control.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: And without taking into account the
subsidiaries and – and and and.

CHAIRPERSON: Hm.

10 **MS MATHULWANE EMILY MPSHE:** So that was just a concern around
Air Chefs that they have an obligation to Air Chefs and that was that.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: As far as I remember.

CHAIRPERSON: Yes, yes.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Yes. Okay thank you.

ADV ZINHLE BUTHELEZI: Thank you Chair. Ms Mpshe – my
microphone was off I am sorry Chair. Ms Mpshe if I may refer you to
page 138 of the same file. DD15[a].

20 **CHAIRPERSON:** !00 and?

ADV ZINHLE BUTHELEZI: 138.

CHAIRPERSON: Hm.

ADV ZINHLE BUTHELEZI: There is an email on that page at the –
middle – in the middle of that page there is an email that is sent to Ms
K. is that Ms K is that Ms Kubuka?

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: The company secretary?

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: Yes from Mbana Mekake that has an extract of the board resolution of the 28th would you please just read what that email says was resolved by the board of directors on the 28th September 2015?

MS MATHULWANE EMILY MPSHE:

10 “It was resolved that the SAA domestic loungers
render award be retracted and the catering contract
be awarded to Air Chefs without going through the
bidding process.”

ADV ZINHLE BUTHELEZI: Yes. And then after this resolution then what happened to the contract? Was it cancelled?

MS MATHULWANE EMILY MPSHE: The contract was then cancelled.

CHAIRPERSON: Tell me Ms Mpshe what was your view to all this that was unfolding before you as Acting CEO at SAA?

MS MATHULWANE EMILY MPSHE: It was a nightmare Chair.

20 **CHAIRPERSON:** What view did you take of this whole thing that was evolving before you?

MS MATHULWANE EMILY MPSHE: It was a nightmare and my understanding of the role was for the CEO to ensure the implementation of the company's strategy. And the focus was not on the implementation of the strategy. And the board is supposed to have an oversight and then also manage a measure or guide the CEO in terms

of the implementation of the strategy.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: And that was not the focus.

CHAIRPERSON: Hm. What was the feeling of you – of other Members of the Executive Management about these things happening? You – you have – you have been sharing with the Commission a number of instances where the – the Board or the Chairperson or Ms Kwinana were given instructions that so and so must be appointed to that position.

10 So and so must be disciplined. So and so must be given that contract and not so and so. What was the effect on the management leadership of all of these things happening?

MS MATHULWANE EMILY MPSHE: Chair it was a very difficult time and – you know – the Exco Members were really concerned about what was happening – were also concerned for me because as the Acting CEO instruction will come to me ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: And it was like so what needs to happen and the morale was very low at the time ...

20 **CHAIRPERSON:** Hm.

MS MATHULWANE EMILY MPSHE: When there were all these instructions happening and it was quite negative ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: Because it was really not what we should be doing as ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: Executive Committee Members.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: As I said we need to be implementing ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: The strategy of the company.

CHAIRPERSON: Hu-uh.

MS MATHULWANE EMILY MPSHE: Not to be hiding and push back and
10 ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: Refusing unlawful instructions.
The Board is supposed to have an oversight on the implementation of
the strategy of the organisation through the Executive and being the
Executive being the Acting CEO who will then have the Committee
reporting. So each one of us had a responsibility.

Each one of us had a part to play in the implementation of the
strategy and that is really what needed to be done but half the time we
were focused on the – the pushback and responding to things which
20 really not had direct link to the implementation of the – of the strategy
and at the time SAA was in a very difficult position.

Hence there was the turnaround strategy – the
implementation of the turnaround strategy and when
Mr Nico Bezuidenhout left he had started implementing what at that
time was termed the 90 day turnaround. So he left before completing

the 90 day and I was charge together with the Executive Committee to conclude that 90 day but half the staff was not linked – aligned to – to that.

CHAIRPERSON: Thank you.

ADV ZINHLE BUTHELEZI: Ms Mpshe how prevalent was this practice of having Board Members interfering with the – the contracts or the people to be appointed? How common was it at the time in general?

MS MATHULWANE EMILY MPSHE: Prior to – to me becoming Acting CEO I – I was not aware of – of that happening with other CEOs. I was
10 never – I was not privy. I was not at that level. I was not aware but linking to Ms Mzimela's testimony when she was outlining the role of the Board and – and the role of the Executives as I concur with the role of the Board been having oversight and then the role of the Executives being implementing and the strategy in the organisation and that was my expectation.

ADV ZINHLE BUTHELEZI: Yes and on paragraph 41 you with what happened to the delegation of authority for some members or Exco Members at SAA. What brought about this – this change to delegation of authority?

20 **MS MATHULWANE EMILY MPSHE:** In ...

CHAIRPERSON: I am sorry. Did you say paragraph 41?

ADV ZINHLE BUTHELEZI: Yes. Paragraph 41 Chair.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: It is at the bottom of page 12.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: In paragraph 41 when I had informed the Chair and she was coming back and saying that one of the reasons I stated was this was just common courtesy and it was within my delegation of authority and in – in her anger over that she then at the meeting of the 28th and 29 September came out with another – a Board Resolution to say that the delegation of authority for the CEO will be reduced by 50 percent – by half – and that of the Executives also will be reduced by – by half.

ADV ZINHLE BUTHELEZI: What were the implications of this?

- 10 **MS MATHULWANE EMILY MPSHE:** The implications will them mean that as the delegation of authority of the Acting DEO was 100 million at the time or the CEO was 100 million?

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: Will mean that anything above 50 – 50 million will then have to confer to the Board ...

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: And it will imply now that the Board will have to be involved in the day to day operations and the nature of transactions of an airline either it is a lease or it will be along those.

- 20 Hence ...

ADV ZINHLE BUTHELEZI: Hm.

MS MATHULWANE EMILY MPSHE: The quantum of the CEO's delegation was at that time 100 million to enable the CEO to run the business.

ADV ZINHLE BUTHELEZI: Thank you. On the next issue or the next

topic that you deal with in your – in your affidavit appears on page 13 of your statement. There *ad hoc* forensic investigation appointment for what you deem was for ulterior purposes. Could you please just give us a general view on why do you have this opinion?

CHAIRPERSON: Well maybe before that let us conclude the issue of the award that was cancelled. So LSG was told the award that you were given is hereby cancelled or withdrawn and then you awarded it to the SAA subsidiary and was that the end of that matter?

MS MATHULWANE EMILY MPSHE: Chair yes we had to once the – the
10 resolution was – was issued I then informed the Chief Procurement Officer who ordinarily will be liaising with the company to then inform them that there is a resolution of the Board to – to then nullify or cancel the – the contract that had been awarded and – and that was also done as indicated by Dr Dahwa in his testimony on Friday.

However Chair I have now since being informed that L S G Sky Chefs is suing SAA currently - the case is on currently. Meaning that the risk I had highlighted has now materialised so many years later.

ADV ZINHLE BUTHELEZI: For the same contract?

MS MATHULWANE EMILY MPSHE: For the same contract.

20 **CHAIRPERSON:** Hm.

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: Yes; and in the meantime – I mean – you said that prior to the contract – catering contract being given to L S G the SAA subsidiary had it but there were complaints of poor service and so on. Is that right?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Or did I misunderstand?

MS MATHULWANE EMILY MPSHE: That is correct Chair. They did not – they did not go on a tender ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: As a subsidiary ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And providing catering.

CHAIRPERSON: Whilst providing the service, yes.

10 **MS MATHULWANE EMILY MPSHE:** They were also providing the service.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: But the – the service provided by the SAA subsidiary seemed not to be satisfying the customers. There were complaints?

MS MATHULWANE EMILY MPSHE: It was substandard Chair.

CHAIRPERSON: Ja, it was substandard?

MS MATHULWANE EMILY MPSHE: Ja.

20 **CHAIRPERSON:** Do know whether after they were then now asked to continue after the cancellation of the award to L S G do you know how their service was like? Was there an improvement from what had been the case before?

MS MATHULWANE EMILY MPSHE: Chair, we – we did receive compliments from our premium clients to say that the – the lounge really looks beautiful and the ambience and décor is looking good but

the food is still the same.

CHAIRPERSON: Well their – theirs was on the catering part. Is it not?

MS MATHULWANE EMILY MPSHE: Yes on the catering.

CHAIRPERSON: Whatever other compliments they belonged to somebody else. Is it not?

MS MATHULWANE EMILY MPSHE: It belonged to Investec who ...

CHAIRPERSON: Investec *ja*.

MS MATHULWANE EMILY MPSHE: Who we partnered with ...

CHAIRPERSON: Their ...

10 **MS MATHULWANE EMILY MPSHE:** For the renovation.

CHAIRPERSON: Their part was providing food?

MS MATHULWANE EMILY MPSHE: Their part was catering, yes.

CHAIRPERSON: *Ja* and in regard to that there were still complaints?

MS MATHULWANE EMILY MPSHE: There were still.

CHAIRPERSON: Yes. Okay, thank you.

ADV ZINHLE BUTHELEZI: Thank you Chair.

CHAIRPERSON: Did – I am sorry – did the Chairperson and Ms Kwinana in their determination that the SAA subsidiary should be the one to provide the service did they ever address the question of
20 poor service? Did they say what needed to be done to make sure that the service was better than before or was that never raised by them because you had said that there had been problems about their service and clients or passengers had complained?

MS MATHULWANE EMILY MPSHE: Chair as far as I remember there was no focus on how can Air Chieftans do better. The focus was we have to

rescue Air Chefs. We have a responsibility and an obligation to a subsidiary of SAA. I do not remember that it was ever discussed on the improvement of their offering.

CHAIRPERSON: Yes. Okay, thank you.

ADV ZINHLE BUTHELEZI: Thank you. Then we – let move onto the next topic on your affidavit – the topic of *ad hoc* investigations for ulterior purposes. Could you please give us a general view on why do you have this view or this opinion that these forensic investigators were used for ulterior purposes?

- 10 **MS MATHULWANE EMILY MPSHE:** Yes Chair. We just then became aware of forensic investigations and these investigations were directed to some employees within the company mostly at Executive level and they would be asked to – a service provider who was on the panel of SAA for some other facilities was then requested to conduct forensic investigations. So it became more and more a norm at that point in time.

CHAIRPERSON: Who was asked by who?

MS MATHULWANE EMILY MPSHE: Was asked by the Chair of the Board – Ms Myeni ...

- 20 **CHAIRPERSON:** Huh-uh.

MS MATHULWANE EMILY MPSHE: To do forensic investigations on certain employees

CHAIRPERSON: Yes. Was that because there were Board Resolutions that those service providers be or that service provider should do that?

MS MATHULWANE EMILY MPSHE: A lot of it was that the SAA had a

whistle blower service and – and the whistle blower service was done by Deloitte at the time but they will send the information to this portal of the whistle blower and the person who was responsible there was the Chief Audit Executive who then will report to the Chair of Audit Risk and Compliance.

So Ms Kwinana was the Chair of Audit Risk and Compliance. So all this whistleblowing things coming will come there through to – from Deloitte to – to that Chief Executive – Chief Audit Executive into Ms Kwinana and they will make a determination whether there is merit
10 into the whistle blower being investigated or not. So that is how the whistleblowing came ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And the forensic investigation came as a result of this ...

CHAIRPERSON: Information?

MS MATHULWANE EMILY MPSHE: Information.

CHAIRPERSON: From the whistle blowers?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Okay.

20 **ADV ZINHLE BUTHELEZI:** Yes. Did you have specific firms that formed a panel of – of these forensic investigators? How did they get appointed?

MS MATHULWANE EMILY MPSHE: Yes Chair. They – because SAA is such a big organisation we have panels. We will have a legal panel. We will have legal – a panel of forensic investigation. We will have

Commercial – legal for Commercial – a legal panel for Commercial. We will have a legal – a panel for Employee Relations or ER or Labour matters.

So we had different kinds of panels. So whenever the matter was specific if it was a labour matter we will then have to go to the legal – the ER panel.

ADV ZINHLE BUTHELEZI: Yes. So for any forensic investigation one would expect that the firms that were on your panel for forensic investigation would be appointed for such?

10 **MS MATHULWANE EMILY MPSHE:** Yes that is correct.

ADV ZINHLE BUTHELEZI: Yes. You deal with the investigation that was conducted by ENS. Is it Edward Nathan Sonnenbergs Attorneys?

MS MATHULWANE EMILY MPSHE: That is correct.

ADV ZINHLE BUTHELEZI: Were ENS part of your forensic investigators? Were they on - on your panel for that?

MS MATHULWANE EMILY MPSHE: As far as I know ENS was on the panel for the legal for the legal aspects not on the forensic investigation.

ADV ZINHLE BUTHELEZI: Yes. Do you know how they got to be
20 appointed to do this particular investigation that you made an example of in this (intervenes)?

MS MATHULWANE EMILY MPSHE: Yes. As far as I remember was that ENS was appointed in the investigation of the previous CEO on his matters - relating to his matters ...

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: And - and subsequent to that they were just then appointed and the scope extended without following due process. That is my understanding of ENS.

ADV ZINHLE BUTHELEZI: Yes and the investigations that they have conducted who were they directed to or who were they investigating?

MS MATHULWANE EMILY MPSHE: The – the first one was investigating Mr Nico Bezuidenhout who is the – my predecessor and who was CEO of Mango and it was also to look at – there were allegations that he was favouring Mango with contracts that they have
10 had with SAA.

ADV ZINHLE BUTHELEZI: Hm.

MS MATHULWANE EMILY MPSHE: And then the other one was Mr Wolf Meyer and he was investigated. There were two investigations. One, on any financial improprieties that could have happened and also on the fact that he allegedly carried a – a recording device in the form of a pen to a meeting with the Chair and Mr Sylvain Bosc was also asked to be investigated. Also his – his matter came through the whistle blower.

ADV ZINHLE BUTHELEZI: Yes and who was responsible for extending
20 the scope of these forensic – of these forensic investigations?

MS MATHULWANE EMILY MPSHE: It was Ms – Ms Myeni and Ms Kwinana. They were the two who were responsible mostly.

ADV ZINHLE BUTHELEZI: Yes and on paragraph 46 you deal with the investigation that was conducted for Mr Bosc and the disciplinary process that was followed. Could you please briefly tell us what

happened in as far as that investigation is concerned?

MS MATHULWANE EMILY MPSHE: And investigation on Mr Sylvain Bosc?

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: There was a whistle blower report that came. Now the peculiarity of this particular whistle blower was it emanated from an email from Ms Kwinana who then outlined what the whistle blower is to the Chief Audit Executive. So Ms Kwinana who is the Chair of Audit Risk and Compliance writes an email to the Chief
10 Audit Executive to say I have this whistle blower and this is what it is all about in relation to Mr Sylvain Bosc.

ADV ZINHLE BUTHELEZI: So it did not come via – sorry - the portal – the ...?

MS MATHULWANE EMILY MPSHE: It did not go through the portal. It was an email from Ms Kwinana to the Chief Audit Executive.

ADV ZINHLE BUTHELEZI: Yes and then what happened – what were the findings ...?

CHAIRPERSON: I am – I am sorry. Was Ms Kwinana for purposes of this complaint the whistle blower?

20 **MS MATHULWANE EMILY MPSHE:** Chair she is the one who wrote the contents of the whistleblowing in an email to the Chief Audit Executive.

CHAIRPERSON: Are you saying she got this information from where?

MS MATHULWANE EMILY MPSHE: From a whistle blower.

CHAIRPERSON: From a whistle blower?

MS MATHULWANE EMILY MPSHE: Ja.

CHAIRPERSON: Oh. So whistle blower would have spoken to her and not used the normal whistleblowing ...

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: Processes?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: And she did not direct this blower to use the whistleblowing process?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: Yes, okay.

- 10 **ADV ZINHLE BUTHELEZI:** Thank you. Ms Mpshe the Non-Executive Board Members like Ms Kwinana, Ms Myeni did they have offices at – were they stationed at – at SAA? Were they there full time like yourself and other employees?

MS MATHULWANE EMILY MPSHE: Ordinarily Non-Executive Board Members are not supposed to be full time at the company.

ADV ZINHLE BUTHELEZI: Hm.

MS MATHULWANE EMILY MPSHE: The Chair had the office as the Chair – office of the Chair.

ADV ZINHLE BUTHELEZI: Yes.

- 20 **MS MATHULWANE EMILY MPSHE:** It was purely when she had meetings on preparation for Board Meetings but they were not supposed to be at the company all the time but during this time they were there very regularly.

ADV ZINHLE BUTHELEZI: Yes and how accessible is SAA in terms of – how would they be – how accessible were they when they were in

those offices? Is it possible for someone to just walk in and make a report to – to a person like Ms Kwinana as it happened in this instance? How is that possible?

MS MATHULWANE EMILY MPSHE: It is practically impossible Chair to get into SAA. Anyone who has tried to go into – into SAA you have to go to the gate. There is security outside and you have to be checked and you have to had parking or arrangements done or meeting someone. You would not just go into SAA and rock up at the reception.

10 It would have been – you will have been – it had to be arranged for anyone to – to come through and – and stated the person who they are seeing and when they arrive at the main reception and then they will then say the visitor or Ms Mpshe your visitor Ms Buthelezi has arrived and then you will have to escort the person into the building.

So it was not that – you cannot just walk in into – into SAA. So the point is for somebody to walk in and – and meet with the Chair of Audit Risk and Compliance and then relate in SAA it is - it is impossible.

ADV ZINHLE BUTHELEZI: Thank you. With regards to this particular
20 investigation of Mr Bosc what were the findings and how those findings received by the Board?

CHAIRPERSON: Before the findings you told us Ms Kwinana sent this email to the Chair – to the ...

MS MATHULWANE EMILY MPSHE: Audit Chief Executive.

CHAIRPERSON: Ja. Audit Chief Executive and – and then what

happened after that?

MS MATHULWANE EMILY MPSHE: What then happened after that was that I was already back in my role as General Manager Human Resources and an instruction was issued to Mr Musa Zwane to suspend Mr Sylvain Bosc on the basis of the whistle blower.

CHAIRPERSON: Oh you had ceased to act as CEO?

MS MATHULWANE EMILY MPSHE: By the time ...

CHAIRPERSON: By the time this complaint – if you want to call it that – was being – was to be acted upon?

10 **MS MATHULWANE EMILY MPSHE:** Yes.

CHAIRPERSON: And your successor as Acting CEO was Mr Musa Zwane?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: Yes but I think before we get there. There is something that is relevant to your ceasing to act that you need to tell us. You remember that Ms Buthelezi from the affidavit?

ADV ZINHLE BUTHELEZI: Yes, yes.

CHAIRPERSON: Yes.

ADV ZINHLE BUTHELEZI: We will get there

20 **CHAIRPERSON:** *Ja*.

ADV ZINHLE BUTHELEZI: Later Chair.

CHAIRPERSON: *Ja*.

ADV ZINHLE BUTHELEZI: But let us finish this

CHAIRPERSON: Hm.

ADV ZINHLE BUTHELEZI: This issue of Mr Bosc.

CHAIRPERSON: Yes.

ADV ZINHLE BUTHELEZI: What were the findings of this particular investigation and how was that news received by the Board?

MS MATHULWANE EMILY MPSHE: You know there was a lot of investigation – (indistinct.) investigation. There was a disciplinary hearing held for – for Mr Bosc and it was conducted by external people. I think there were about three advocates who were running the investigation.

ADV ZINHLE BUTHELEZI: Yes.

- 10 **MS MATHULWANE EMILY MPSHE:** With ENS as well. There was an external advocate being the Presiding Officer. ENS was the disciplinary officer and there was another advocate. I cannot remember the name.

CHAIRPERSON: I am sorry. Looks like there is some – there is some ...

ADV ZINHLE BUTHELEZI: Noise.

CHAIRPERSON: Some sounds that (intervenes).

ADV ZINHLE BUTHELEZI: Yes. The officer is checking on it Chair.

- CHAIRPERSON:** Ja, let them check. Okay. Please continue. There –
20 there was an external advocate who was chairing the disciplinary inquiry?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: And ENS were so to speak the prosecutors?

MS MATHULWANE EMILY MPSHE: Yes because they did the investigation.

CHAIRPERSON: Because they had done the investigation?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Okay, yes.

MS MATHULWANE EMILY MPSHE: And final – and Ms Kwinana was a witness.

CHAIRPERSON: Yes and what was the allegation against Ms – Mr Bosc?

MS MATHULWANE EMILY MPSHE: The allegations for Mr Bosc was that he misrepresented the profitability and the viability of the
10 Johannesburg/Etihad Route with Etihad Airways. I think that was the main – there were a lot of other allegations on – on the original ...

CHAIRPERSON: Yes complaint.

MS MATHULWANE EMILY MPSHE: Allegation but the main one ...

CHAIRPERSON: Yes but this was the main one.

ADV ZINHLE BUTHELEZI: Hm.

MS MATHULWANE EMILY MPSHE: Yes the main one was the misrepresenting the commercial viability of the Etihad Route ...

CHAIRPERSON: Yes.

ADV ZINHLE BUTHELEZI:

20 **MS MATHULWANE EMILY MPSHE:** Which was a Code Share with South African Airways ...

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: And the – the outcome is that he was cleared on – on all charges.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And he ordinarily then he would be – once you are cleared of the charges then he was on suspension. The suspension would be uplifted and he will continue to work. The other peculiarity about this was that he ...

CHAIRPERSON: You – you said earlier Ms Kwinana was a witness.

MS MATHULWANE EMILY MPSHE: He was – she was a witness.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Do you know whether her – her evidence was limited
10 to saying a whistle blower had given her information and she had written an email to the Chair – the Executive who was supposed to deal with it or did it go beyond that (intervenes)?

MS MATHULWANE EMILY MPSHE: The focus was only on the misrepresentation ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: Of Mr Bosc on the Commercial availability of the Etihad ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Route ...

20 **CHAIRPERSON:** Yes.

MS MATHULWANE EMILY MPSHE: And when she went and now this was related to me by Mr Bosc that Ms Kwinana went there wearing a scarf of - of the South African flag and – and indicated that Ms – Mr Bosc is – should be found guilty on the charge and the Presiding Officer did ask – apparently asked to say that if he is not found guilty

what will the response of the company be and then she said we will find something else to get rid of him and the (intervenes).

CHAIRPERSON: This – this was related to you by Mr Bosc (intervenes)?

MS MATHULWANE EMILY MPSHE: This was related to me by Mr Bosc ...

CHAIRPERSON: Yes.

ADV ZINHLE BUTHELEZI: Hm.

MS MATHULWANE EMILY MPSHE: After the disciplinary – well we
10 were in touch on a daily basis ...

CHAIRPERSON: Yes, yes.

MS MATHULWANE EMILY MPSHE: As to daily what was happening.

CHAIRPERSON: Yes, okay.

ADV ZINHLE BUTHELEZI: Chair I may – may – may I place on record that Mr Bosc is still going to be called as one of our witnesses later.

CHAIRPERSON: Yes. No that is fine. That is ...

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: That is fine.

ADV ZINHLE BUTHELEZI: Thank you.

20 **CHAIRPERSON:** Yes.

ADV ZINHLE BUTHELEZI: You may proceed.

CHAIRPERSON: Yes. What – what she is saying is that I should not be concerned if you are ...

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Telling me what Mr Bosc said because it will be

confirmed.

ADV ZINHLE BUTHELEZI: Oh, yes.

CHAIRPERSON: It is not to say do not say it.

ADV ZINHLE BUTHELEZI: Okay.

CHAIRPERSON: It is to say it will be confirmed.

ADV ZINHLE BUTHELEZI: Okay, thank you.

MS MATHULWANE EMILY MPSHE: So Mr Bosc was cleared of all the disciplinary charges and the company refused to accept the finding and they refused ...

10 **CHAIRPERSON:** The company or the Board?

MS MATHULWANE EMILY MPSHE: The – Mr Musa Zwane said ...

CHAIRPERSON: Oh.

MS MATHULWANE EMILY MPSHE: The Chairperson of the Board ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Said – gave an instruction that the – the suspension should not be uplifted and he should not come back to work.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: So he stayed at home and I think
20 about 16 months he was at home.

CHAIRPERSON: 60?

MS MATHULWANE EMILY MPSHE: 16 – 1-.

CHAIRPERSON: 1-6?

MS MATHULWANE EMILY MPSHE: Yes he was at home.

CHAIRPERSON: That is over – just under ...

MS MATHULWANE EMILY MPSHE: 1-6.

CHAIRPERSON: One and a half years?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: But that is including before the hearing?

MS MATHULWANE EMILY MPSHE: That was including, yes.

CHAIRPERSON: Yes. Do you know how much of that fell outside after the – after he had been cleared?

MS MATHULWANE EMILY MPSHE: I think it was longer than six or seven months ...

10 **CHAIRPERSON:** Yes.

MS MATHULWANE EMILY MPSHE: After the hearing.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: I still remember it.

CHAIRPERSON: So I take it he was being paid while at home?

MS MATHULWANE EMILY MPSHE: Yes Chair.

CHAIRPERSON: And somebody else was acting in his position or ...?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: Ja, okay and then what happened?

20 **MS MATHULWANE EMILY MPSHE:** I am not sure whether we should get into Mr Bosc ...

CHAIRPERSON: Well I just want the - ultimately how the – the matter relating to Mr Bosc was finalised. He ...

ADV ZINHLE BUTHELEZI: Hm.

CHAIRPERSON: Mr Zwane said the Chairperson ...

MS MATHULWANE EMILY MPSHE: Yes the Chair – yes the Chair said

he should not be reinstated. They do not want him back at the company and then in the final analysis out of desperation he just said they did not want to do a mutual separation with him. Mr Bosc is a French National and during the course of this hearing he had to go home to get money for his legal fees from his coffers that he had at home in France – in Paris. So the final analysis the then literally begging them to say look if you can just pay my legal fees I will walk away because they refused to – to do a mutual separation with him and then that is how he finally left SAA. Even then they refused to
 10 terminate as pay his legal fees. They then termed the exact cost of the legal fees as a mutual separation figure and that is how he left.

CHAIRPERSON: And do you know if they signed what they may have called a settlement agreement?

MS MATHULWANE EMILY MPSHE: They – they had – they would have.

CHAIRPERSON: Hm; but one he had been cleared in a disciplinary inquiry chaired by an external Chairperson?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: But from what Mr Zwane told you the Chairperson of the Board had instructed him - that is Mr Zwane - is that he should not
 20 lift the suspension – Mr Bosc's suspension and said that the company did not want Mr Bosc back?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: And then ultimately – and Mr Bosc stayed at home for a number of months thereafter before he then reached some agreement with them?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: Yes, thank you.

ADV ZINHLE BUTHELEZI: Thank you Chair. Chair before I move to the next topic I see it is now 1 o' clock.

CHAIRPERSON: Or maybe before we – before we get that. Did you ever get to understand what it is that Mr Bosc may have done that made the company or the Board not want him back other than what he was cleared for?

MS MATHULWANE EMILY MPSHE: Chair it – it is – it is just one of
10 those that Mr Bosc would not just accept an unlawful instruction and he would – you know – put the policies of the – of the company and look at the interest of the company. One of the things that I am aware that he was asked to do that is to revert back to the Durban/Cape Town Route that SAA must fly – SAA must fly between Durban and Cape Town and Ms Myeni said that the – the Members of Parliament from Durban complained they do not want to fly Mango because a decision was taken long – long before Mr Bosc came that it was not profitable.

So Mango as a low cost airline was the one that was running Durban/Cape Town and then Ms Myeni says that the Parliamentarians
20 are complaining that they do not like Mango as a low cost company. It does not fit with their image. As a result of that they were flying BA.

CHAIRPERSON: Well I just want to say on a lighter note I am from Durban.

MS MATHULWANE EMILY MPSHE: Chair a Commercial ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Commercial ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Commercial decision was done ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Long before Mr Bosc started at SAA.

CHAIRPERSON: Yes, yes.

MS MATHULWANE EMILY MPSHE: So it was then said that Chair was saying even herself she is flying BA between Durban and Cape Town because it has not got business class. Mango is a low cost airline with no business class. So she gave an instruction to Mr Bosc that I am aware of that we should - we should returned to that route and move Mango out of the route and Mr Bosc went and did a business case again.

Well referred to the original discussion – did a business case and came back and informed Chair that that route it is still ...

CHAIRPERSON: It is not viable?

MS MATHULWANE EMILY MPSHE: It is not viable.

CHAIRPERSON: Hm.

20 **MS MATHULWANE EMILY MPSHE:** That is one of the matters that I am aware of. The other matter was insisting that we should apply to fly to South Sudan and – and saying that it is – it came from the President that we needed to fly to South Sudan.

CHAIRPERSON: Now this was an instruction from ...

MS MATHULWANE EMILY MPSHE: The Chair.

CHAIRPERSON: The Chairperson ...

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Again ...

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: To Mr Bosc?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Did you say there should be a new route?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Okay.

10 **MS MATHULWANE EMILY MPSHE:** Yes.

CHAIRPERSON: Huh-uh.

MS MATHULWANE EMILY MPSHE: So Mr ...

CHAIRPERSON: Again this is something that Mr Bosch told you or it is something ...

MS MATHULWANE EMILY MPSHE: No it is something that was said.

CHAIRPERSON: That you became aware of as well?

MS MATHULWANE EMILY MPSHE: Yes. It was discussed publically even discussed in an Exco Meeting.

CHAIRPERSON: Okay, alright.

20 **MS MATHULWANE EMILY MPSHE:** So he also – I am sharing with you what I am aware that was asked of him that ...

CHAIRPERSON: Yes. No it is very important. It is important.

MS MATHULWANE EMILY MPSHE: He did not do.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: He then did the whole thing like in

Commercial. In an airline in Commercial you have to do the viability and you have to do all things and do your business case and also the – before even that you have to do the – before you even apply to in terms of the PFMA Section 54 to apply to the shareholder a representative. So they did the work and in doing the work one of the things that they had to do was to assess risk as – as South Sudan was at war and assess the risk with security and with legal. Look at all the other stakeholders that – and give input into a business case that will then support whether the route can be embarked on or not embarked on and

10 I remember the outcome of that investigation of the business case came out to say that it is in terms of security dangerous to fly into South Sudan as part of a war zone. The airspace is closed for commercial airlines into – into South Sudan and also the legal opinion that also came was that if we – we were to insist to fly there our aircraft would not be insured because it is part of ...

CHAIRPERSON: A war zone?

MS MATHULWANE EMILY MPSHE: A war zone.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: So in the end I remember when he
20 presented to Exco we then ...

CHAIRPERSON: That is Mr Bosc?

MS MATHULWANE EMILY MPSHE: Ms Bosc ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Presented to Exco. After the legal opinion and all other things the risk assessments were done the risk

people and the security people also gave their input that it will be dangerous to fly there and then it was discussed and say that it – it is not viable and then the Chair was still insisting - I think Mr Bosc must elaborate – on insisting to say that the Government will – will subsidise ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: But then what was the – out – out of it was that we cannot use our aircraft because then we would not be insured.

10 **CHAIRPERSON:** Yes, yes. No thank you.

ADV ZINHLE BUTHELEZI: (Indistinct).

MS MATHULWANE EMILY MPSHE:

CHAIRPERSON: It is five past.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE:

CHAIRPERSON: Okay. We will take the lunch adjournment now. It is five past one. We will resume at five past two. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 **CHAIRPERSON:** Let's proceed.

ADV ZINHLE BUTHELEZI: Thank you Chair. Ms Mpshe, can we move to the next topic on your affidavit. We are now on page 15. You deal with the appointment of Boqwana Burns. This Boqwana Burns, was one of your service providers? Were they in any of your panel?

MS MATHULWANE EMILY MPSHE: Chair, Boqwana Burns was not in,

was not one of our service providers; was not in any of the panels that we will have had either for legal forensic or labour or commercial.

ADV ZINHLE BUTHELEZI: And... (intervention).

CHAIRPERSON: I'm sorry before that. Did you cover the part that relates to Mr Meyer being investigated regarding a recording device? I see it's on page 14 of the statement. Can you see it?

ADV ZINHLE BUTHELEZI: Yes, Chair.

CHAIRPERSON: Paragraph 45.2, did I miss it?

ADV ZINHLE BUTHELEZI: Yes, Chair I believe the witness.

10 **CHAIRPERSON**: Did you cover it Ms Mpshe that part?

MS MATHULWANE EMILY MPSHE: No, Chair but I think we are covering the discipline of other executives later on.

CHAIRPERSON: Yes, but you are on page 15 which deals with Boqwana Burns.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: This one is on 14.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: It doesn't look like you have much to say. Maybe you can just.

20 **MS MATHULWANE EMILY MPSHE**: Yes.

CHAIRPERSON: Say something about it Mr Hofmeyer being investigated.

MS MATHULWANE EMILY MPSHE: Oh Mr Meyer?

CHAIRPERSON: Mr Meyer, yes.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Do you know anything about that one?

MS MATHULWANE EMILY MPSHE: Yes, Chair, about the investigation on Mr Meyer.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: That he had a recording device in a meeting with the Chair.

CHAIRPERSON: Yes

MS MATHULWANE EMILY MPSHE: Yes. Later on when we cover the disciplinary of other executive members.

10 **CHAIRPERSON**: Yes.

MS MATHULWANE EMILY MPSHE: The matter is covered.

CHAIRPERSON: Oh okay. So you might have come into a wrong place here?

ADV ZINHLE BUTHELEZI: Yes, it's still going to come later on.

CHAIRPERSON: Okay, alright.

ADV ZINHLE BUTHELEZI: Yes, thank you, Chair.

CHAIRPERSON: Thank you.

MS MATHULWANE EMILY MPSHE: Thank you, Chair.

20 **ADV ZINHLE BUTHELEZI**: We know at page 15. We are dealing with Boqwana Burns. You have said they were not in any of your panels and how – when did you get to hear about Boqwana Burns for the first time?

MS MATHULWANE EMILY MPSHE: I got to hear about Boqwana Burns for the first time when I received an email with an attachment of an award; award of a tender to, that I needed to sign to, for Boqwana Burns. The email came from Ms Kwinana and saying, please find this

letter of award for your signature. So... (intervention).

ADV ZINHLE BUTHELEZI: Is that the email that is on page – if I can refer you to tab 21, Chair on page.

CHAIRPERSON: Yes, but let her finish.

ADV ZINHLE BUTHELEZI: Thank you. Page 21 from page 166.

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: But proceed.

CHAIRPERSON: Ja.

MS MATHULWANE EMILY MPSHE: Yes, I received then an email with
10 instructions that I needed to sign the attachment and when I opened the
attachment I read through the attachment and I realized that this is an
award of a tender. And then because it details about what is going to
do, what the payments are and also there was a prepayment to that
effect. So on receipt of this, then I then went to the head of legal, Ms
Fikile Thabethe at the time and I said to her, do you know this company
Boqwana Burns? Are they in your panel of any sort? She then said no,
they are not in our panel. And then.

CHAIRPERSON: Were they a law firm?

MS MATHULWANE EMILY MPSHE: It is a law firm.

20 **CHAIRPERSON**: Okay.

MS MATHULWANE EMILY MPSHE: It is still an existing law firm I
think. And then I then ask the chief audit executive and said to him, is
Boqwana Burns in the panel of forensic investigators. He then says
he's never heard of them. He's not in the panel. And then I went to the
chief procurement officer, Doctor Dahwa and I said, was there a tender

in respect of which now this Boqwana Burns has been awarded which I now being asked to sign? And then Doctor Dahwa said, no there has not been any tender in that respect and Boqwana Burns is not even a list of our service providers. And I then had to respond.

CHAIRPERSON: Did that mean you had exhausted all your possible panels?

MS MATHULWANE EMILY MPSHE: I had.

CHAIRPERSON: Ja.

MS MATHULWANE EMILY MPSHE: All the internal process owners.

10 **CHAIRPERSON**: Yes.

MS MATHULWANE EMILY MPSHE: In the organization.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: Legal audit and CPO procurement. I then exhausted that and on that information I then wrote a letter back to Ms Kwinana to say that I am not in a position to sign that award as I have went through in the company to check through different areas as to whether they are aware of this and none of the people that I have contacted are aware of this Boqwana Burns. So it is that the Boqwana Burns is irregular. There is no procurement process followed, they are
20 not in our panel, they are not in the forensic, they are not in the legal, they are not in any other panel. And Ms Kwinana said to me, just follow the same process of engaging them like it was followed with ENS. And I indicated to her that I already even initially checked how ENS was engaged and the extent of the scope that's been; the scope that's been extended for ENS is also irregular because they were not appointed for

that. ENS was appoi – is on our legal panel but not on the forensic panel. So I then informed her that this is also illegal even the ENS that she's making reference to is also illegal. She then came back to me and said, well we have to check because ENS has done six other transactions as far as she was concerned. So we have to find out how we regularize it if I'm saying it's illegal. So then there was a discussion with legal. Legal said it is provided for in the supply chain policy that in case of emergency the board has got an opportunity to then use that.

CHAIRPERSON: Discretion?

10 **MS MATHULWANE EMILY MPSHE:** The discretion.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: In that. And then she then advised that in the case of all the other incidences for ENS that were referred to, the six that were referred to said done then we have to follow a process called condonation on those transactions. Meaning that there was an acknowledgment from Ms Kwinana that they have used ENS without following due process. So then that was the outcome that it will be but then I then indicated to Ms Kwinana that I'm not in the position to sign that award knowing that it's irregular. It didn't follow due
20 process.

ADV ZINHLE BUTHELEZI: Yes, Chair, for your reference, the said letter of engagement that is referred to by Ms.

CHAIRPERSON: Yes, you can direct her to it now that she has, she has.

ADV ZINHLE BUTHELEZI: The email that you referred to appears on

page 166.

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: Do confirm that that is the email you received from Ms Kwinana?

MS MATHULWANE EMILY MPSHE: That is correct. That is the email.

ADV ZINHLE BUTHELEZI: Yes, and the document that is attached of hearing from page... (intervention).

CHAIRPERSON: I'm sorry. You are leaving me behind.

ADV ZINHLE BUTHELEZI: Let me wait for you, Chair. I'm sorry.

10 **CHAIRPERSON**: Did you say 166?

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: The email is at page 166. Towards the middle of that page there is an email from Yakhe Kwinana directed to Ms Mpshe saying, please find the attached. I hope you find it is in order. Do you see that Ms Mpshe?

MS MATHULWANE EMILY MPSHE: Yes, I have seen it. That's correct.

ADV ZINHLE BUTHELEZI: Yes. And the document that is on page 169 of three pages.

20 **MS MATHULWANE EMILY MPSHE**: Yes, after... (indistinct).

ADV ZINHLE BUTHELEZI: Yes, what is this document??

MS MATHULWANE EMILY MPSHE: This is the letter that was attached on the email which is letter of engagement investigation of current SAA CFO and former SAA acting CEO.

ADV ZINHLE BUTHELEZI: Is that the contract that you are referring

to?

MS MATHULWANE EMILY MPSHE: That's the award that I was referring to.

ADV ZINHLE BUTHELEZI: Yes. And if you look towards the end of the document at page 172.

CHAIRPERSON: Well, before we get there, let's talk about what Boqwana was going to do if you have signed the award. What were the required to do?

MS MATHULWANE EMILY MPSHE: Chair, it's on page 173 under
10 scope.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: And the scope is to investigate the conduct and allegations made against the current CFO and former acting CEO of South African Airways which include but not limited to a) loan facility procured or about to be procured by SAA without appropriate approvals being obtained. b) opinion on the conduct of the CFO in relation to the procurement of the loan funding referred to above and the alleged unlawful recording of meetings by the CFO. c) allegations made by an anonymous whistle-blower with regards to a
20 possible conflict of interest existing in respect of the... (indistinct) acting CEO of the South African Airways which may have caused financial losses to South African Airways. Possible anticompetitive behaviour and/or possible corruption in relation to various decisions arrangements and agreements between South African Airways and Mango Airlines. d) is review the agreement between South African

Airways and Mango pursuant to the allegations made against the former acting CEO of South African Airways and to provide necessary advice generally in all matters relating thereto.

CHAIRPERSON: Yes, no thank you. Yes, continue.

ADV ZINHLE BUTHELEZI: Who was the CFO at the time?

MS MATHULWANE EMILY MPSHE: Mr Hofmeyer.

ADV ZINHLE BUTHELEZI: The CEO that, the acting CEO that is referred to in this document?

MS MATHULWANE EMILY MPSHE: Mr Nico Bezuidenhout.

- 10 **ADV ZINHLE BUTHELEZI**: Yes. If you look at these investigations that ought to have been conducted by Boqwana Burns, is there no duplication between this and what was already being done by ENS previously?

MS MATHULWANE EMILY MPSHE: Chair, it is a clear duplication on this scope of Boqwana Burns to the scope of ENS and to the scope of EYNS.

ADV ZINHLE BUTHELEZI: Yes, and where do we see that duplication? What was investigated by ENS that is now, should be investigated by Boqwana Burns?

- 20 **MS MATHULWANE EMILY MPSHE**: It is the alleged transactions or Mr Bezuidenhout favouring Mango Airlines at the expense of SAA.

ADV ZINHLE BUTHELEZI: Yes, and I was – I wanted to refer you to page 172 that if you look at the bottom of that page there is a space where you were supposed to sign as an acting CEO.

MS MATHULWANE EMILY MPSHE: That is correct.

ADV ZINHLE BUTHELEZI: Is this how you received this document?

MS MATHULWANE EMILY MPSHE: That is exactly how I received the document.

ADV ZINHLE BUTHELEZI: Yes, and then what then did you then do?

MS MATHULWANE EMILY MPSHE: I then did not sign this letter of engagement or award. And if I may add further, Chair, is that the payments in advance. Generally, when you have people on your panel we don't do advance payments generally.

ADV ZINHLE BUTHELEZI: Yes.

10 **MS MATHULWANE EMILY MPSHE**: They offer service, they are in a panel and then the invoice on the work done. So what was actually peculiar about this one was that it required a 50,000 advance payment.

ADV ZINHLE BUTHELEZI: And you... (intervention).

CHAIRPERSON: Well, I see says as a security deposit. Wasn't your financial situation as SAA too precarious?

MS MATHULWANE EMILY MPSHE: I would have thought so, Chair.

CHAIRPERSON: Yes.

ADV ZINHLE BUTHELEZI: You then inquired from procurement, legal and forensic investigation and you find that they were not on the board.

20 What did you do then about this transaction? Did you sign it?

MS MATHULWANE EMILY MPSHE: I didn't sign it and I then informed Ms Kwinana that I am not signing it and I will not sign it.

CHAIRPERSON: Well, I wanted to say to you Ms Mpshe relating to that R50,000. That a number of law firms do ask for what is called a deposit before they start to work for you.

MS MATHULWANE EMILY MPSHE: Okay.

CHAIRPERSON: But obviously those who were on your panel may have been made to understand that being on the panel means the terms and conditions of our relationship are along these lines and that might have included that.

MS MATHULWANE EMILY MPSHE: That is correct, Chair, and with all my experience I've never had to pay in advance on anyone who was on the panel.

CHAIRPERSON: Yes, yes, yes. No, I was just mentioning because.

10 **MS MATHULWANE EMILY MPSHE**: Okay.

CHAIRPERSON: You did say it was strange and.

MS MATHULWANE EMILY MPSHE: Yes,

CHAIRPERSON: I also laughed but to be honest, a number of firms do ask for some prepayment especially they have never had any, done any work for you before but I don't know when it comes to parastatals and government departments where maybe your payment is almost guaranteed. Yes, okay thank you.

ADV ZINHLE BUTHELEZI: Yes. Then what happened to this particular contract? After you received the information from all other stakeholders
20 that they were not part of the panel of SAA panels what then happened to this contract?

MS MATHULWANE EMILY MPSHE: Yes, I didn't sign it and I communicated accordingly to Ms Kwinana.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: And subsequent to that.

CHAIRPERSON: What was her reaction when she received your position that you were not going to sign?

MS MATHULWANE EMILY MPSHE: She said to me never mind, you know in that manner.

CHAIRPERSON: Oh okay.

MS MATHULWANE EMILY MPSHE: Never mind, they already started working. So it doesn't matter whether you sign or not.

CHAIRPERSON: Oh, that must have come as strange to you?

MS MATHULWANE EMILY MPSHE: Of course, Chair, it was.

10 **CHAIRPERSON**: Yes, and how did that conversation end?

MS MATHULWANE EMILY MPSHE: I just left it and I just said at least I have informed you that I will not sign.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: So if they have already started working it's okay.

CHAIRPERSON: Ja.

MS MATHULWANE EMILY MPSHE: I didn't authorize it.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Yes.

20 **CHAIRPERSON**: Okay, okay.

ADV ZINHLE BUTHELEZI: Yes. Ms Mpshe, you later made some discoveries that this letter of engagement was indeed signed. Just take us through that.

MS MATHULWANE EMILY MPSHE: Yes. I was later informed that that letter of engagement or award that I didn't sign was subsequently

signed by Ms Kwinana in her capacity as acting Chair of the audit risk and compliance.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Did that position give for the power to sign such awards?

MS MATHULWANE EMILY MPSHE: Chair.

CHAIRPERSON: As far as you knew?

MS MATHULWANE EMILY MPSHE: As an executive, none executive director, any none executive director is not supposed to get involved in
10 the operations of the company and not supposed to get involved with services by service providers or service potential service providers. They are not supposed to get involved with that.

CHAIRPERSON: But you found that she had signed it?

MS MATHULWANE EMILY MPSHE: I found that she had signed it, Chair.

CHAIRPERSON: How did you find out? How did you find that? How did it come about that you got to know that?

MS MATHULWANE EMILY MPSHE: How I got to find out was Mr Meyer came to me.

20 **CHAIRPERSON**: The acting CEO?

MS MATHULWANE EMILY MPSHE: CFO.

CHAIRPERSON: Oh acting CF, oh the CFO.

MS MATHULWANE EMILY MPSHE: CFO.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Said to me that this service

provider, Boqwana Burns has been engaged and they are requesting information from him. And then he then asked that how were they engaged and also where is the nondisclosure agreement that we normally have with an external service provider and both were not existent. So I just did and explained to him that I have not approved the engagement letter. So I'm not sure how they will have been engaged and I'm, of course it's also irregular that they will engage without signing a nondisclosure. And later on I was then shown by the investigating officer on this Commission the nondisclosure signed by

10 Ms Kwinana together with the letter of engagement or the award in her capacity as Chair of the audit risk and compliance.

ADV ZINHLE BUTHELEZI: Yes, if I may take you to; if only take you back and refer you to page 193 under tab 26, Chair. Is that, what is that document that is on that page?

MS MATHULWANE EMILY MPSHE: It is the same one that was an attachment on my email that I was, I required to sign.

ADV ZINHLE BUTHELEZI: Yes, and now it has some initials at the bottom of each page.

MS MATHULWANE EMILY MPSHE: Yes.

20 **ADV ZINHLE BUTHELEZI:** Yes, and if you go up to page 196 there is a signature there. Is that the signature of Ms Kwinana that you are referring to?

MS MATHULWANE EMILY MPSHE: Yes, it says here Yakhe Kwinana, 4th of September 2015. On top there where it says acting CEO of South African Airways, it's written by hand Chairperson of audit and risk.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: My name at the bottom is scratched; is written Ms Yakhe Kwinana.

ADV ZINHLE BUTHELEZI: Okay. And if you go to page 198. What is that document on page 198?

MS MATHULWANE EMILY MPSHE: 198 is a confidentiality and nondisclosure agreement.

ADV ZINHLE BUTHELEZI: Is that the document that you say you were shown by investigators of this Commission?

10 **MS MATHULWANE EMILY MPSHE:** Yes, that is correct.

ADV ZINHLE BUTHELEZI: Yes, and if you look at his page there are initials.

MS MATHULWANE EMILY MPSHE: That is correct.

ADV ZINHLE BUTHELEZI: Yes, and on the last page, there is a signature, there are signatures that are appearing on that last page.

MS MATHULWANE EMILY MPSHE: That is correct.

ADV ZINHLE BUTHELEZI: Who signed on behalf of South African Airways?

20 **MS MATHULWANE EMILY MPSHE:** Yakhe Kwinana, Chairperson of audit and risk committee.

ADV ZINHLE BUTHELEZI: And was Ms Kwinana empowered to sign this document on behalf of SAA?

MS MATHULWANE EMILY MPSHE: It is outside of the delegation of a nonexecutive director to sign a nondisclosure agreement because this agreement will have meant that the company is engaging on some kind

of a relationship with the service provider where we are saying they will not disclose the information which relates to the company. So it is also irregular that she would have signed that nondisclosure agreement.

CHAIRPERSON: Ms Mpshe, you have been involved in senior management positions in different companies for a long time.

MS MATHULWANE EMILY MPSHE: That is correct, Chair.

CHAIRPERSON: How many years more or less?

MS MATHULWANE EMILY MPSHE: Yoh, ja, it's quite a long time. More than 20 years.

10 **CHAIRPERSON**: Yes, now you're seeing a nonexecutive member of a company board signing an agreement such as this, was the something that you had ever come across in your experience?

MS MATHULWANE EMILY MPSHE: Chair, I have never come across and it was a blatant disregard of governance and it was shocking.

CHAIRPERSON: So you as the acting CEO when the senior executives at SAA were not aware that there was such an elaborate agreement being discussed between a member of the board, and nonexecutive member of the board and a service provider, the next thing you just saw it was concluded? It was signed?

20 **MS MATHULWANE EMILY MPSHE**: That is correct, Chair. I think one necessitate the signing of that nondisclosure is when Mr Meyer who is supposed to have been investigated raised it with representative from Boqwana Burns. To say, you cannot ask me of confidential information when you don't even have a nondisclosure agreement. I think it was signed after that.

CHAIRPERSON: Well, I was about to ask in terms of dates. It looks like the letter that Ms Kwinana wanted you to sign, it looks like she signed it, was it early in September or early in October?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: And then the actual nondisclosure agreement was signed late in October?

MS MATHULWANE EMILY MPSHE: 19 October.

CHAIRPERSON: So when they would long have been working because when you... (intervention).

10 **MS MATHULWANE EMILY MPSHE**: Yes, already.

CHAIRPERSON: When you told her that you were not going to sign she said they had already started?

MS MATHULWANE EMILY MPSHE: Yes, Chair.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: She signed on the 4th of September.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: The engagement.

CHAIRPERSON: The engagement, yes.

20 **MS MATHULWANE EMILY MPSHE**: And in this nondisclosure was signed on the 19th of October.

CHAIRPERSON: Yes, yes. More than a month later.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: About six weeks later.

MS MATHULWANE EMILY MPSHE: Yes, Chair.

CHAIRPERSON: Okay, thank you.

ADV ZINHLE BUTHELEZI: Ms Mpshe, you also make reference to a board resolution that was taken in relation to this matter. Can you take us through to that board resolution? What did it approve?

MS MATHULWANE EMILY MPSHE: On which part of the?

ADV ZINHLE BUTHELEZI: From on paragraph 62. It starts at the bottom of paragraph 62, the last line. I have perused the board resolution. Then you talk about the resolution.

MS MATHULWANE EMILY MPSHE: Oh yes.

10 **ADV ZINHLE BUTHELEZI:** From a 17 going to page 18.

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: I have also perused the board resolution and have seen that it was apparently resolved on the 26th of August to appoint Luvo Makhasi of Boqwana Burns. This resolution stated it was authorized for the investigation of the Mango Airline CEO emanating from the whistle-blower report and allegations in the CFO. I send an email query on 12 October from Nick Lee Neil was the advisor to the Chair.

20 **ADV ZINHLE BUTHELEZI:** Yes.

MS MATHULWANE EMILY MPSHE: Requesting a copy of the resolution appointing Luvo assuming this is Mr Makhasi from Boqwana Burns. I see the resolution was sent to him presuming it be the same resolution discussed above. Dated 13 October 2015.

ADV ZINHLE BUTHELEZI: Who was Mr Lee Neil, Nick Lee Neil?

MS MATHULWANE EMILY MPSHE: I let Mr Nick Lee Neil as an advisor to the Chairperson, Ms Myeni.

ADV ZINHLE BUTHELEZI: Was it the SAA's advisor or a private advisor?

MS MATHULWANE EMILY MPSHE: A private advisor to the Chair. It was not an official advisor as in representing South African Airways.

CHAIRPERSON: SAA was not involved in paying for that advisor?

MS MATHULWANE EMILY MPSHE: Initially Chair.

CHAIRPERSON: Initially not?

10 **MS MATHULWANE EMILY MPSHE:** Yes.

CHAIRPERSON: And then later?

MS MATHULWANE EMILY MPSHE: I heard that the did pay.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Yes.

ADV ZINHLE BUTHELEZI: Were you still at SAA when he was being paid?

MS MATHULWANE EMILY MPSHE: I wasn't at SAA when he was being paid.

20 **ADV ZINHLE BUTHELEZI:** Oh okay. So you heard that there was this resolution appointing Luvo. You said Luvo was someone from Boqwana Burns?

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: And Ms Mpshe, what do you make of this resolution? Do you have any of you on this resolution?

MS MATHULWANE EMILY MPSHE: This resolution is the one on page – it's TM29?

ADV ZINHLE BUTHELEZI: Yes, it's.

MS MATHULWANE EMILY MPSHE: TM29.

ADV ZINHLE BUTHELEZI: It's under tab 29 starting on page 217.

MS MATHULWANE EMILY MPSHE: 217. There is reference here.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: It flows from.

ADV ZINHLE BUTHELEZI: From 219 going backwards.

10 **MS MATHULWANE EMILY MPSHE:** Yes, from 219 going backwards.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: It is from.

CHAIRPERSON: And I don't see it resolution here.

ADV ZINHLE BUTHELEZI: The resolution itself is not attached but there is a trail of emails discussing the so-called resolution. Do you see that Ms Mpshe?

MS MATHULWANE EMILY MPSHE: I see that and the trail is from the 12th of October.

ADV ZINHLE BUTHELEZI: Yes.

20 **MS MATHULWANE EMILY MPSHE:** From Ms Kibuka. It says, dear Yakhe. Please find the board resolution on the whistle-blower report as requested. So Ms Kibuka, the company secretary is sending an email, an extract of the board resolution and on that was the 12th. And then following on it from Yakhe to Rasheed Whaley.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: I think Nick Lee Neil, the projects office to say please find the resolution. So I suppose as soon as Ruth Kibuka sent the resolution, it was then sent to Rasheed Whaley copied Nick Lee Neil. And then following on from that one is Nicola Neil is asking, hi Yakhe, do we have a resolution appointing Luvo? Now it's Mr Nick Lee Neil, Mr. Nick Lee Neil.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: And then moving on it says, Ms Kwinana goes to Ruth and say... (intervention).

10 **CHAIRPERSON:** Sorry, sorry Ms Mpshe. Ms Buthelezi, do we need to spend time on those if the resolution is not there itself?

ADV ZINHLE BUTHELEZI: Maybe we need to move forward, Chair.

CHAIRPERSON: Yes, if the resolution is not there.

ADV ZINHLE BUTHELEZI: Thank you, Ms Mpshe. And then you talk about the email that was sent on the 7th of November by Mr Meyer?

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: Yes. What was on the email?

MS MATHULWANE EMILY MPSHE: And he, do you want me to go to the email?

20 **ADV ZINHLE BUTHELEZI:** If you could summarise what he said.

MS MATHULWANE EMILY MPSHE: Ja I'll just summarise, that Mr Wolfmeyer was concerned that there was no non-disclosure agreement, so he went to the SA Chief Audit Executive and Dr Dahwa, and the company secretary and then he said that he's been approached and that he must give information but he had no – no proper procurement

process was followed. So he was very concerned that – so Dr Dahwa was in terms of procurement and the Chief Audit Executive was in terms of forensic investigations as it was in his realm. So he went to them and said, here's someone who's approached me there's no non-disclosure this is what is being asked and this was now the email that was sent on the 7th of November.

ADV ZINHLE BUTHELEZI: Yes and after the 7th of November did you hear anything about Boqwana Burns and this contract?

MS MATHULWANE EMILY MPSHE: I didn't hear anything about
10 Boqwana Burns and this contract after that.

CHAIRPERSON: Was that because you had since gone back to your position?

MS MATHULWANE EMILY MPSHE: It could be yes but subsequently with the investigator I hear that Boqwana Burns indeed engaged and Boqwana Burns was paid by SAA under ENS and Sonnenberg – Nathan & Sonnenberg.

CHAIRPERSON: They were paid under ENS?

MS MATHULWANE EMILY MPSHE: They were sub-contracted.

CHAIRPERSON: Oh okay.

20 **MS MATHULWANE EMILY MPSHE:** I suppose as a way of finding to legalise using Boqwana Burns they were sub-contracted by ENS, so the payment through as a sub-contractor to ENS but they were paid.

CHAIRPERSON: But the letter of – in terms of which they were appointed didn't talk about them being sub-contracted, isn't it?

MS MATHULWANE EMILY MPSHE: That's correct Chair.

CHAIRPERSON: So maybe that one was withdrawn so that they could go under ENS as a sub-contractor.

MS MATHULWANE EMILY MPSHE: But it was signed as a legitimate document followed by that non-disclosure agreement so that I suppose on the face of it, that yes, they have been awarded, yes they have a non-disclosure agreement, they can get on with the work.

CHAIRPERSON: If a supplier goes as a sub-contractor would they have a direct contract with you as SAA, wouldn't they just have a contract with the service provider who has a contract with
10 SAA...(intervention).

MS MATHULWANE EMILY MPSHE: The main contractor would have been the service provider that will contract with SAA not the sub-contractor.

CHAIRPERSON: Yes that's the point I'm raising with you to say, would it not be strange to have a situation where there was a letter in terms of which they were appointed as a service provider themselves in their own right and not as a sub-contractor but then the actual payment goes to ENS I assume on the basis that ENS must pay the as a contractor, it seems to be a very strange arrangement.

20 **MS MATHULWANE EMILY MPSHE:** Indeed it is strange.

CHAIRPERSON: Because if you're appointed as a service provider the payment should go to you directly and if you've got that letter why do you get paid through somebody else as a sub-contractor?

MS MATHULWANE EMILY MPSHE: It is strange Chair.

CHAIRPERSON: Thank you.

ADV ZINHLE BUTHELEZI: Thank you but do you have any personal knowledge if Boqwana Burns was paid directly by SAA at some point?

MS MATHULWANE EMILY MPSHE: No I have no personal knowledge.

ADV ZINHLE BUTHELEZI: Thank you. Ma'am let's then move to the next firm of forensic investigators Ernest & Young, do you know what they were contracted to investigate?

MS MATHULWANE EMILY MPSHE: Yes Ernest & Young was contracted to investigate Mr Bezuidenhout and also, I think it was, - I can't remember but it was definitely Mr Bezuidenhout and there was a
10 financial investigation which would have included Mr Meyer.

ADV ZINHLE BUTHELEZI: It would have included the same investigation that is already covered by ENS and Boqwana Burns?

MS MATHULWANE EMILY MPSHE: That's exactly the same.

ADV ZINHLE BUTHELEZI: Yes do you know if they were part of your panel?

MS MATHULWANE EMILY MPSHE: I don't remember with EY being part of the forensic, I'm not aware, I can't remember.

ADV ZINHLE BUTHELEZI: Are you familiar with the process that was followed, appointing them to do this investigation?

20 **MS MATHULWANE EMILY MPSHE:** No I'm not familiar.

ADV ZINHLE BUTHELEZI: Yes, then did you get to see the reports that was produced from this investigation?

MS MATHULWANE EMILY MPSHE: The report that was received from the investigation, Ms Kwinana came to a meeting with the Exco, with Ms Myeni being in the meeting and she then said that she's got the EY

report and she had the report on her and said ...(intervention).

CHAIRPERSON: That's the Ernest & Young report, EY?

MS MATHULWANE EMILY MPSHE: Ernest & Young, EY and in that report she says, as far as SAA was concerned the report highlighted some issues of control – the controls within the company and that needed to be remediated and then as far as SA Technical is concerned, they didn't find anything wrong and then at the end of the meeting, then I requested Ms Kwinana to give me the report so that I can circulate to the affected executives so that they can start working on remediating, especially where it was a issue of the controls and that report was never forthcoming, I left SAA without having signed off that report.

CHAIRPERSON: And you left how long after you had asked for that report, more or less?

MS MATHULWANE EMILY MPSHE: This was still in 2015.

CHAIRPERSON: Yes so there was ample time for it to reach you?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: And it didn't reach you?

MS MATHULWANE EMILY MPSHE: No it didn't reach me.

CHAIRPERSON: Okay.

20 **ADV ZINHLE BUTHELEZI:** Thank you, then the next topic that you deal with is the issue of (indistinct) reports. You talk about a call that you received from a certain journalist in 2016 while you were on suspension, could you please take us through to what transpired there Ms Mpshe?

MS MATHULWANE EMILY MPSHE: It was not a journalist, it was a

member of the organisation called OUTA, Organisation Undoing Tax.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: That's the call I received from them and in that call I was then informed that Ms Kwinana had gone to OUTA to in a way request OUTA not to - it looks like at the time OUTA was saying that they want to pursue legal action of a delinquent director for Ms Myeni and Ms Kwinana so she went there to say they mustn't pursue her like she will cooperate with them and give them the information and they mustn't pursue her and – so in her engagement
10 with them, she then, I'm told now by this person who called me, that she then indicated that they – she will accompany Ms Myeni to an internet café to go and formulate these whistle-blowers and those whistle-blowers reports were used to victimise some of the staff members at SAA to suspend some of the members at SAA and also some of them to dismiss some of the members at SAA. So they asked me if I was aware, I said, well I was not aware, I know that there were whistle-blower reports and the one I referred to was the one that I said, Ms Kwinana wrote an email to the Chief Audit Executive saying that I have received this whistle-blower that came from her having formulated
20 the email...(intervention).

ADV ZINHLE BUTHELEZI: Sorry is that the one that relates to Mr Bosc.

MS MATHULWANE EMILY MPSHE: The one that relates to Mr Bosc yes. So then for me, first of all it was a shock that somebody – people at that status in the organisation and one being the Chair and one

being the Chair of Audit and Risk and being Board members could actually go out and do such things, what was more concerning to me Chair was that Ms Kwinana was the Chair of Audit Risk and Compliance and she's supposed to see the whole governance in terms of the Audit and the Risk and Compliance , not only that she was the custodian of all this whistle-blowing so – and the whistle-blowing were brought to the organisation as legitimate whistle-blowers, people were disciplined on that and it comes out later that they had formulated these things, so for me it was...(intervention).

10 **CHAIRPERSON:** Effectively was what you were told, effectively that Ms Kwinana said that she would accompany Ms Myeni to – is it a café?

MS MATHULWANE EMILY MPSHE: Internet café.

CHAIRPERSON: Internet café where they fabricated effectively reports which were presented as whistle-blower reports, is that what you were told in effect?

MS MATHULWANE EMILY MPSHE: That's correct, in effect that was that.

CHAIRPERSON: Yes and you were being told by somebody at OUTA?

MS MATHULWANE EMILY MPSHE: I was told by Mr Wayne Duvenage
20 from OUTA yes.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And I was shocked because then I started to reflect back that for example Sylvain Bosc was suspended on the basis of a whistle-blower and Mr Bezuidenhout's matter was a whistle-blower matter and there was also a whistle-blower in respect of

me that also had come through, even though she didn't see it through but at some stage she would just throw it in and say by the way there's a whistle-blower on you and at some stage I remember I said to the Chair, so if you believe that disciplinary action needs to be taken, I am reporting you to the Board, why don't you action the disciplinary based on the whistle-blower but it was never actioned on me but I was really shocked that, in my view that people can steep so low, mean to use my expression, that people can stoop so low, people being given such positions of responsibility to that extent.

10 **CHAIRPERSON:** Well I saw something here in the file that suggests that Ms Kwinana may have been, I don't now, if she was an accountant, an auditor or something or was I mistaken what was here day job?

MS MATHULWANE EMILY MPSHE: Ms Kwinana was a chartered accountant by profession and Ms Kwinana had business that was an audit firm that was auditing companies including auditing SOC's, so for me the responsibility of her being Chair of Audit Risk Compliance was befitting in line with her experience and qualifications.

CHAIRPERSON: Yes well continue.

ADV ZINHLE BUTHELEZI: Thank you, and – do you confirm that you
20 were shown some transcript of some recordings that interview between OUTA and Ms Kwinana by our investigators?

MS MATHULWANE EMILY MPSHE: That's correct.

ADV ZINHLE BUTHELEZI: Did it tally with what you were told?

MS MATHULWANE EMILY MPSHE: It tallied with what I was told Chair, in terms of what she had said there on the transcripts.

CHAIRPERSON: Did Mr Duvenage, as I understand is the name of the person from OUTA who spoke to you, did he tell you whether OUTA had in it's possession any statement – written statement by Ms Kwinana along the lines that he told you in terms of what she had told them?

MS MATHULWANE EMILY MPSHE: Chair what Mr Duvenage shared with me was that – to use his words, he said, Ms Kwinana was very shifty and in the end she didn't put anything in writing, they had taped and that's in the transcripts but she was - initially he told me that she gave an impression that she was going to tell all so that OUTA can then
10 relieve her of not being because she said if she is found to be delinquent director she can't practice, the firm will have to close, the audit firm will have to close, she can't practice as a CA so he thought that she was going to divulge, honestly.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And he said that he didn't find her to be a reliable person and she refused to answer a lot of questions and she didn't put anything in writing.

CHAIRPERSON: But did he say they recorded the conversation with her or what?

20 **MS MATHULWANE EMILY MPSHE:** The conversation was recorded, they had two meetings, this transcript here is as a result of the recordings.

CHAIRPERSON: Okay thank you.

ADV ZINHLE BUTHELEZI: Thank you Chair, we are intending to lead the evidence of the person that was involved in this interview with Ms

Kwinana so I will not take Ms Mpshe to that...(intervention).

CHAIRPERSON: That's fine.

ADV ZINHLE BUTHELEZI: I will then move to the next topic, you deal with the State Security matters from paragraph 70 going forward. I want to understand from you Ms Mpshe what necessitated this process?

MS MATHULWANE EMILY MPSHE: When Mr Bosc took over and part of the long-term turnaround strategy was to review the – in the commercial space the profitability of the routes that SAA were flying to and one of the routes that SAA was flying to and was not profitable was
10 Dakar. SAA used to fly through to New York via Dakar and Senegal and originally the history was that the Senegalese government had made an arrangement that there was going to be feeder airline from within Senegal into Dakar to connect the traffic from Dakar to New York. So SAA will come from Johannesburg, go to Dakar and some people will get off into Dakar and then some people will get in to the flight to fill up the flight en route to New York and this didn't materialise, that airline went (indistinct) that was supposed to feed and however SAA continued to have a stop-over in Dakar. So when he – Mr Bosc joined it was one of the things that he reviewed and he discovered that we're not making
20 a progress, I don't know if any one of you have been on that flight, when you go to New York, you stop in Dakar, another 40 minutes or so they change the – you get stand, you change around and you get out or you stay in the aeroplane for about 40 minutes or so and (indistinct) nobody actually comes through and maybe one or two people will get out. So it was on that basis that it was found that it didn't serve the

purpose and it was not profitable. So that was the investigation that Mr Bosc had done in his capacity as General Manager Commercial. So he went there, he did the investigation he came up with a report to say that, that doesn't serve us as what it was initially intended to, so he made – started making recommendations that we needed to close that and find another stop-over within Africa which ended up being Accra, so that's how that came about.

ADV ZINHLE BUTHELEZI: Yes and which employees were targeted by this – by these matters?

10 **MS MATHULWANE EMILY MPSHE:** It was the – the country manager in Senegal and also it was also Kalawa, Monwabisi Kalawa who was the predecessor before Nico on that and Mr Sylvain Bosc of course.

ADV ZINHLE BUTHELEZI: Yes Ms Nhantsi gave evidence before this Commission some time last week if I'm not mistaken or a week before that to the effect that all SAA employees, even those that were not in senior positions were at this stage expected to undergo some security clearance, do you know how that came about?

MS MATHULWANE EMILY MPSHE: No Ms Nhantsi came later, what actually happened with the State Security matter was, as part of these
20 investigations that were coming whistle-blower, forensic investigations and this...(intervention).

CHAIRPERSON: Coming from the Board?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: The investigations that were initiated by the Board?

MS MATHULWANE EMILY MPSHE: Yes, that were initiated by the

Board, including this one, on Mr Sylvain Bosc, then I received a call one day from – somebody from State Security Agency saying that they need information from me, a report about the closure of the Dakar route and they needed information, personal particulars of the country manager and Mr Bosc and I said to this person, I mean out of the blue he just calls me, I said, no put it in writing, put that request in writing. He then put it in writing, the request in writing and then I asked Mr Leon Actin who was one of the legal advisors in the legal department to sit with me and I shared my concerns about that particular request, to

10 say that they're requesting a report of investigation which was commissioned internally by the internal security department at SAA and confidential information relating to the two employees. And then I said to Mr Actin, who advised me legally then he says no, we will put it in writing to them that we are not able to give them the information because that information, the report is – it's the report that belongs to the company not belongs to them and we are not able to divulge the personal information of the two employees and then we also raised the issue of the protocol to say we also find it strange that it doesn't come through the normal protocol of government department to government

20 department, it came from him directly to myself. So we then sent the letter to him, and then after that, we then received a letter from a DG, I think of State Security at that time Ms Dlodlo – I think its Ayanda Dlodlo who then said we need to provide them with that information and I think there was complaint to...(intervention).

CHAIRPERSON: Are you sure that she was the – at that time?

ADV ZINHLE BUTHELEZI: Yes because...(intervention).

CHAIRPERSON: She was in that position?

MS MATHULWANE EMILY MPSHE: The letter is here that she signed.

CHAIRPERSON: Oh okay.

ADV ZINHLE BUTHELEZI: Can I refer you to paragraph 75 of your affidavit it's on page 21, the initials of that Dlodlo that signed are on that paragraph and ...

MS MATHULWANE EMILY MPSHE: Yes it's a letter that came from a MV Dlodlo who was the DG.

10 **CHAIRPERSON:** It's not – I think you said Ayanda.

MS MATHULWANE EMILY MPSHE: Sorry it's not Ayanda it's MV.

CHAIRPERSON: That's why I was asking.

MS MATHULWANE EMILY MPSHE: My apologies Chair, it's MV Dlodlo.

CHAIRPERSON: Yes continue.

MS MATHULWANE EMILY MPSHE: And then subsequent to that there was a letter also that came from the Minister of State Security, Minister Mahlobo, yes it came from Minister Mahlobo. So as part of what was happening at that time, now we're all on the alert, we see what's going on, forensic investigations, people are being investigated, people are
20 being suspended and all those things and then we received – I received a letter from the Chair, the letter coming from National Treasury that now we have to be vetted – the senior managers have to be vetted meaning that the Exco members and the second level need to go through the State security vetting and that's how now that came about at that time and then I forwarded the letter t the colleagues, the Exco

and also to say that the second line should be put across, should be vetted and subsequent to that the State Security representative came to the company to start setting up for this vetting and they did a workshop for employees to explain it to employees why the vetting had to happen. A lot of employees were very suspicious and unhappy and having seen what was happening, some of them were not willing to cooperate and they were raising issues of, that they've been there a long time, and it was never a condition of employment, they were never asked to so on what basis is this now enforced on them Chair.

10 **ADV ZINHLE BUTHELEZI:** Did you personally comply with this request?

MS MATHULWANE EMILY MPSHE: I personally did not comply, I was very suspicious and when I looked at that form to say what was required I felt that it was quite, quite intrusive into my personal life and I shared with my family and then my husband says we are going through a lot of challenges with SAA, I'm not prepared to be party to be complicate to what he viewed as abusive – abuse to me so I didn't comply and I raised that matter in an Exco meeting when Musa was now the acting CEO, I then shared openly with my colleagues and the
20 CEO that I will not...(intervention).

CHAIRPERSON: That is Mr Musa Zwane?

MS MATHULWANE EMILY MPSHE: Mr Musa Zwane yes, I said I wouldn't be participating in that based on those reasons and I didn't until I left.

ADV ZINHLE BUTHELEZI: Yes on paragraph 74 you refer to an email

that was forwarded to an employee of SAA, Mr Mnguni SSA by one of your colleagues or one of the employees of SAA Mr Matumi Ramogobedi(?)

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: Can you tell us what happened there?

MS MATHULWANE EMILY MPSHE: Mr Mnguni is the gentleman who called me from the State Agency requesting this information and then this email was forwarded to Mr Mnguni, the same Mr Mnguni who was asking for information from me by a colleague Matumi Ramogobedi and

10 Matumi Ramogobedi was one of the entry level managers within the commercial department and there was correspondence that he forwarded to Mr Mnguni which include information from – and correspondence between Mr Bosc who was the General Manager Commercial and Mr Barry Parsons who was head of strategy and PMO, Project Management Office and this was quite odd and against the rules of the company for a lower level manager to be sending confidential information to a State organ or an individual to a State organ in the organisation. Generally as I alluded earlier on, if there's information required from one department to another it would have

20 either come from the Minister to the Chair of the Board and the Chair giving instruction to me or from the DG – Director General of that department to the CEO and then the information will be cascaded through to the organisation. So Mr Matumi Ramogobedi sending information directly to Mr Mnguni was highly irregular.

ADV ZINHLE BUTHELEZI: Thank you and then on paragraph 84 – 84

you talk about what happens on the 19th of January 2016, can you take us to that.

MS MATHULWANE EMILY MPSHE: 84?

ADV ZINHLE BUTHELEZI: Yes that reading fro 84 to 85 and summarise what was happening there.

MS MATHULWANE EMILY MPSHE: Yes, on the 19th of January it was my first day back from annual leave and I was informed that the State Security Agency were doing presentations to give an understanding to staff members as to what's the purpose of the State vetting, why it
10 needs to happen, what's the process that's going to be followed and then I went and attended that on my first day from leave on the 19th of January.

ADV ZINHLE BUTHELEZI: 2016 now?

MS MATHULWANE EMILY MPSHE: Sorry, 2016 yes, that's 19 January 2016 and at that – on that day, after I attended the meeting and at that meeting, as part of when we were asking questions I then shared with them this experience with Mr Mnguni from the State Agency Security to say that I received this and this is what had happened, you know, in the end we reverted them to follow protocol, so I was asking them, was
20 that the correct way of doing it and how come Mr Mnguni didn't follow that process and then they confirmed that no, it was the correct way of doing it and asking them to put it in writing but the whole protocol was correct that either it's Minister to Minister or DG it will come at that higher level. We shouldn't be taking instructions just from anybody phoning and then forwarding information to them.

ADV ZINHLE BUTHELEZI: Thank you, and then the next topic that you deal with is the disciplinary matters of certain executive members at SAA, you start dealing with that from paragraph 86 of your affidavit, would you please take us through what was happening there?

MS MATHULWANE EMILY MPSHE: Okay on there, Chair, - the Chair is, how do I put it, very charming person Ms Myeni and very motherly and she would shower people with praises all the time but as I got to know to work with her, as soon as she showered me or anybody with a praise, I knew danger was coming.

10 **CHAIRPERSON:** Did you feel like saying, what are you going to ask for?

MS MATHULWANE EMILY MPSHE: So Chair as soon as I was showered with praised, I said to myself, what is coming my way now and what was coming my way and without fail was that I was then asked to discipline Mr Meyer who was the CFO...(intervention).

CHAIRPERSON: Mr Meyer?

MS MATHULWANE EMILY MPSHE: Mr Wolf Meyer who was the CFO and the basis of the discipline was that Mr Meyer had carried a recording device to a meeting and so there was a legal opinion and an
20 investigation report to that effect. So what I needed to do as now Ms Meyer's line manager was to discipline Mr Meyer.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: I then said I will discipline Mr Meyer and I needed to get the legal opinion and the investigation report so that I should be able to formulate the charges on what will be the

transgressions for Mr Meyer.

ADV ZINHLE BUTHELEZI: And so who had conducted this report were you told?

MS MATHULWANE EMILY MPSHE: ENS.

ADV ZINHLE BUTHELEZI: Okay.

MS MATHULWANE EMILY MPSHE: I was told that ENS had conducted an investigation on Mr Meyer.

CHAIRPERSON: Would that be the investigation that you told me about earlier in your evidence where ENS was asked to investigate I think two
10 or so people?

MS MATHULWANE EMILY MPSHE: The other one was on the – on the finances.

CHAIRPERSON: Oh.

MS MATHULWANE EMILY MPSHE: As to whether there were any financial transactions.

CHAIRPERSON: Oh this was a different one.

MS MATHULWANE EMILY MPSHE: This one is the issue of the...

CHAIRPERSON: The device.

MS MATHULWANE EMILY MPSHE: The device the recording device.

20 **CHAIRPERSON:** Okay.

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: So I had said to Chair yes I will do it and then the Chair sent an email to that effect and said I must sign an email to confirm that I will discipline Mr Meyer. I signed the email

and then I you know scanned it back to her and I said Chair I am willing to discipline I have confirmed here however I need copy of the legal opinion and of the investigation report so that I can then formulate the charges. And it was not forthcoming, it never ever came. And then immediately I think maybe the following day or so.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: After I have responded in writing to the Chair that I will do it I received a call from Mr Nick Linnell who was the Chair's advisor and I had to take the call in Ms Kibuuka's office,
 10 the company secretary because at that point Ms Kibuuka was the only person that the Chair trusted. So I went to receive a call we dialled Mr Nick Linnell on the company's secretary's landline. Mr Nick Linnell spoke to me. And Mr Nick Linnell when he spoke to me he was very, very condescending he was speaking down on me and just telling me how useless am I, how I do not understand my role as a CEO. My role is to take board instructions not to second guess the board and that when the board asked me to do something I must just do it. And he went on and on and on or way over twenty minutes that he was just you know attacking me on the phone. And at the end of it all I just then
 20 said you know I have heard him, I confirm that I will do it but I am still waiting for the sets – this whatever information and then I left him in – him on the phone with Ms Kibuuka. I went back to the office and then when I went back to the office I penned an email to the Chair to say I am committed to discipline Mr Meyer but I am still awaiting the legal opinion and investigating report. Later on towards the end of the day I

went past the company's secretary's office and I asked her, I said oh how did he go on with Mr {indistinct} for so long. She just laughed. She said you know what Mr Nick Linnell said. She says you know what SAA needs more people like Thuli Mpshe but tough luck I work for Dudu Myene. That is what verbatim.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: That is what he said.

ADV ZINHLE BUTHELEZI: Did you ever have sight of this report and the legal opinion that was reflecting...

10 **MS MATHULWANE EMILY MPSHE:** Never had sight of the report and never had sight of the legal opinion that I was supposed to use to discipline.

ADV ZINHLE BUTHELEZI: So you never carried out this instruction to discipline?

MS MATHULWANE EMILY MPSHE: I did not have any proof or any motivation to discipline.

ADV ZINHLE BUTHELEZI: Thank you. Then Ms Mpshe the next topic that you deal with in your affidavit is that of 30% ...

CHAIRPERSON: I am sorry, did you have – did you ever subsequently
20 have an occasion to discuss with Ms Myene this instruction that was never carried out?

MS MATHULWANE EMILY MPSHE: Chair I – on the phone and in writing I said to Ms Myene at least this might - I mean I am now – I was now being labelled as incompetent and I said at least on this HR matters you know I am competent. That is my area of expertise. So

work with me.

CHAIRPERSON: You were saying to her?

MS MATHULWANE EMILY MPSHE: I said to her.

CHAIRPERSON: Ja.

MS MATHULWANE EMILY MPSHE: And that – work with me. That I need to have the basis and I need to know - you cannot just charge because I need to know what the legal opinion says, what the investigating report says because that will form the basis of the charges. You cannot just charge.

10 **CHAIRPERSON**: Hm.

MS MATHULWANE EMILY MPSHE: Someone from anywhere.

CHAIRPERSON: Hm. And what was her response then?

MS MATHULWANE EMILY MPSHE: No it was going to come and it never came.

CHAIRPERSON: So was that – was that soon after she had told you about this – asked you to investigate – to discipline Ms Meyer or was it quite some time after? Because I am looking at in the end did the two of you never talk about hey that instruction just fell away or anything like that?

20 **MS MATHULWANE EMILY MPSHE**: No we did – we spoke Chair. There was an urgency. There was even an urgency for me to commit in writing.

CHAIRPERSON: No, no I understand that at the beginning.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Soon after you had been told to discipline.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Him. I mean when you had not received the report after some time it must have been clear to her nothing was going to happen because you – she was not providing you with the report and with the legal opinion and I am wondering whether the two of you ever discussed much later and she indicated acceptance that no I understand your inability to act or anything like that?

MS MATHULWANE EMILY MPSHE: My follow up emails to her were left unanswered.

10 **CHAIRPERSON:** Okay.

MS MATHULWANE EMILY MPSHE: To say I am still waiting, I am still waiting.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: I am still waiting.

CHAIRPERSON: Okay. But that is how it died its natural death that whole issue?

MS MATHULWANE EMILY MPSHE: Not quite because...

CHAIRPERSON: Not quite?

MS MATHULWANE EMILY MPSHE: Later on it was...

20 **CHAIRPERSON:** Oh you will come to it.

MS MATHULWANE EMILY MPSHE: It was one of the allegations of misconduct.

CHAIRPERSON: Oh okay.

MS MATHULWANE EMILY MPSHE: Later on.

CHAIRPERSON: Okay alright.

ADV ZINHLE BUTHELEZI: So this was one of the issues that has – were said to have been – your failure to take instruction from the board?

MS MATHULWANE EMILY MPSHE: Yes that was one of the allegations later.

CHAIRPERSON: Hm.

ADV ZINHLE BUTHELEZI: Thank you.

CHAIRPERSON: Hm.

ADV ZINHLE BUTHELEZI: And then you – on – the next topic that you
10 deal with is that of BBBEE set aside.

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: Doctor Dahwa touched on this topic on Friday and ...

CHAIRPERSON: I am sorry. Let us try and recap Ms Mpshe.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: There have been now during your acting stint as CEO of SAA a number of instructions given to you for some disciplinary action to be taken against somebody, some or other person. One of them was Mr Bosch and you said he was cleared. But ultimately – but
20 after he was cleared the board or Ms Myene or Ms Kwinana said his suspension should not be lifted and he had to stay at home for a long time before reaching some agreement to leave. And then you had been asked to appoint Mr Phohleli in circumstances where there was no vacancy and you did not comply and ultimately that was left like that. Is that right?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: You were asked to appoint ...

ADV ZINHLE BUTHELEZI: Captain Manentsa.

CHAIRPERSON: Before him there was another one.

MS MATHULWANE EMILY MPSHE: Mamashela.

ADV ZINHLE BUTHELEZI: Mamashela.

MS MATHULWANE EMILY MPSHE: Mamashela.

CHAIRPERSON: Yes, yes you refused and ultimately nothing happened about that, is that right?

10 **MS MATHULWANE EMILY MPSHE:** That is correct Chair.

CHAIRPERSON: And then you were instructed on the basis of a board resolution to appoint Captain Manentsa.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: Yes that is correct Chair.

CHAIRPERSON: Into the position of Head of Flight Operations so that he would hold both positions of Chief Pilot and Head of Flight Operations. You sought to comply with that one but the whole thing fell apart because he could not cope and he said he had not asked for both positions anyway. Is that right?

20 **MS MATHULWANE EMILY MPSHE:** That is correct Chair.

CHAIRPERSON: And am I missing out any other one?

MS MATHULWANE EMILY MPSHE: Well Mr Meyer now.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: You were asked to discipline him

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: You were instructed to discipline him. You said but I want the basis. I am willing to carry out the instruction but I need to have the basis and legal opinion and the investigation report.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: And it did not come. Then – and that fell by the wayside.

MS MATHULWANE EMILY MPSHE: That is correct Chair.

ADV ZINHLE BUTHELEZI: Yes as well as the failure to sign the Boqwana Bends letter of engagement.

10 **CHAIRPERSON**: And there was the – ja you were instructed to sign the Boqwana Bends agreement and you refused and then Ms Kwinana signed it herself

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: One gets the impression that all of – all of these were matters where either Ms Myene or Ms Kwinana were giving you instructions but without a proper basis to force you to act in accordance with the instructions.

MS MATHULWANE EMILY MPSHE: That is correct Chair.

20 **CHAIRPERSON**: Is that a fair understanding of your evidence or what evidence says?

MS MATHULWANE EMILY MPSHE: That is correct Chair. That the instructions were given but without

CHAIRPERSON: A proper basis.

MS MATHULWANE EMILY MPSHE: Proper basis

CHAIRPERSON: Because if there was a proper basis ..

MS MATHULWANE EMILY MPSHE: I would have implemented it.

CHAIRPERSON: They could then take action against you if you were not carrying out instructions.

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: Okay thank you.

ADV ZINHLE BUTHELEZI: Thank you Chair. We then move to the issue of 30% BBBEE set aside. Tell me what was your understanding of this process when it started? How did it start and what was your understanding thereof?

- 10 **MS MATHULWANE EMILY MPSHE:** In the State of the Nation Address of February 2014 the then President Zuma mentioned the issue of black industrialist and saying that we need to empower black businesses, black industrialists and mentioned the issue of a 30% set aside indicating that black businesses should be offered you know at 30% set aside within a corporate South Africa.

ADV ZINHLE BUTHELEZI: Yes.

- MS MATHULWANE EMILY MPSHE:** I suppose including government. So that was the basis. And then the Chair then indicted that we will have to implement that 30% set aside on BEE on all the transactions
20 within the company.

ADV ZINHLE BUTHELEZI: Yes. Sorry were there any guidelines that were not set at SAA that you had to follow in implementing this process? How was it done?

MS MATHULWANE EMILY MPSHE: There were no guidelines per se that - because the BEE is a law which is – it is the custodian is a

department of trade and industry and they then do the law, they amend the law accordingly. So at that time it had not been made into law and we had not changed our policy because it had not been made into law. So the practical implication and application at that point in time the Chair was spearheading what she used to call meetings with service providers or potential service providers to share about the opportunities of the 30% BEE set aside and also...

ADV ZINHLE BUTHELEZI: Yes so do you know how will these service providers be appointed, how were they identified?

10 **MS MATHULWANE EMILY MPSHE:** The Chair will decide with Ms Kwinana.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: Who needs to be invited. They went on road shows and they will then give a list to either community manager reporting into procurement or into the Chief Procurement Officer Doctor Dahwa at the time to say that, we are going to Durban invite these people. We are going to PE we invite these people. We are going to Mpumalanga you invite these people. So they were initiating the road shows and then in – inviting people to the road

20 shows.

ADV ZINHLE BUTHELEZI: Yes and you entered a memorandum of understanding with DTI, tell us about that memorandum of understanding, what did it entail?

MS MATHULWANE EMILY MPSHE: As part of this industrialisation black industrialist program the Chair then signs a memorandum of

understanding with a Deputy Minister, Mr Mzwandile Masina from DTI who was Deputy Minister at the time.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: What was the name?

MS MATHULWANE EMILY MPSHE: Mr Mzwandile Masina.

ADV ZINHLE BUTHELEZI: Yes that is Mzwandile Masina.

CHAIRPERSON: Oh okay.

MS MATHULWANE EMILY MPSHE: He was Deputy Minister.

CHAIRPERSON: Yes.

10 **ADV ZINHLE BUTHELEZI**: Yes.

MS MATHULWANE EMILY MPSHE: At the Department of Trade and Industry.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: Yes. Do you want us to go into the MOU Chair?

ADV ZINHLE BUTHELEZI: Yes is it that document that appears under Tab 42 page 343 it is on Annexure DD15[b] Chair. File B.

CHAIRPERSON: What is the page number 3?

ADV ZINHLE BUTHELEZI: 343.

20 **CHAIRPERSON**: Okay. Ms Myene is that the MOU that you signed with the DTI?

MS MATHULWANE EMILY MPSHE: Ms Mpshe.

ADV ZINHLE BUTHELEZI: Oh sorry I do not know how I called you but Ms Mpshe is that the MOU you referred to?

MS MATHULWANE EMILY MPSHE: That is correct.

ADV ZINHLE BUTHELEZI: I apologise.

CHAIRPERSON: I missed that.

ADV ZINHLE BUTHELEZI: I used the wrong name.

CHAIRPERSON: Oh you following Ms Hofmeyr as well.

ADV ZINHLE BUTHELEZI: And I called her Ms Myene I do not know how I reached at that point. I apologise.

CHAIRPERSON: Well ja okay.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: This is the MOU.

10 **ADV ZINHLE BUTHELEZI:** Yes.

MS MATHULWANE EMILY MPSHE: That was signed by Ms Myene and the Deputy Minister at the time.

ADV ZINHLE BUTHELEZI: Yes and on the front of that page – of that MOU on the first page 343 the name appears as Mzwandile Masina.

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: For the Department of Trade and Industry.

MS MATHULWANE EMILY MPSHE: That is correct.

ADV ZINHLE BUTHELEZI: Could you please summarise for us what this MOU entailed?

20 **MS MATHULWANE EMILY MPSHE:** The MOU entailed that SAA had an – about 10 billion annually on procurement on goods and services and that that needed to be made accessible to a broader economic participation and also it was about small and medium size businesses, black women, disabled women and MK veterans.

ADV ZINHLE BUTHELEZI: And what would have been the role DTI in

the process?

MS MATHULWANE EMILY MPSHE: The role of DTI in this process will be to provide training.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: Assist in the provision of funding to those businesses, historically disadvantaged and that and then also facilitate discussion with airports company ACSA and in turn licencing of new participants. And then also to assist in the efforts to form partnerships with other government department and state entities in
10 relation to the implementation of the transformation initiatives.

ADV ZINHLE BUTHELEZI: Yes and while you were acting as a CEO in 2015 you were asked to prepare a presentation to MK veterans. Could you tell – please tell us what transpired during that engagement?

MS MATHULWANE EMILY MPSHE: Yes whilst there was – the Chair was and Ms Kwinana mostly were doing this roadshows she then came one day and said to me I needed to prepare a presentation.

CHAIRPERSON: Is that Ms Kwinana or Ms Myene?

MS MATHULWANE EMILY MPSHE: Mr Myene.

CHAIRPERSON: Yes.

20 **MS MATHULWANE EMILY MPSHE:** As the Chair had requested me to prepare a presentation that she wanted me to present at a meeting later in the week. I think it was to be on a Friday then the people who were coming was MK veterans. So she wanted us to prepare a presentation. So I then approached Mr Thapelo Lehasa who was the Transformation Manager.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: And Doctor Dahwa who was the Procurement Manager, Procurement Officer – Chief Procurement Officer. I then asked them what presentations have they been doing at these roadshows. They then said that no there was – it was talking off the cuff mostly and mostly it was the Chair or Ms Kwinana or both of them talking at the presentations. So – because I did not want to – I wanted to align.

CHAIRPERSON: Yes.

10 **MS MATHULWANE EMILY MPSHE:** The presentation to that.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: And then he then told me that no there is – there was nothing formal that had been prepared. I said okay then, then I am going to give them a guideline and overview of a framework of how I want this presentation to be done. And the framework was to be what is SAA? What are the opportunities of procurement? Upstream, downstream all the opportunities, all the services that have been offered where there are opportunities. Because with SAA being the nature of the business a lot of the things
20 like aeroplanes and its procured overseas so it is – it cannot be localised per se.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: So we then outlined that and the following on that I then asked them the second part of the presentation should be about what are the requirements to be a service provider for

– at SAA? And then the third part was how will SAA assist them to get into the service provider list so that they will also have access to – once you are on the service provider list all the tenders that are in line with your area of speciality you will be informed about them. So the presentation was done. Friday morning we met very early in the morning with Mr Dahwa and Mr Lehasa we refined the presentation and then I then asked that Mr Lehasa and Mr Dahwa do the presentation, And then Doctor Dahwa then said he asked to be recused because he is just going through an issue that he received an email from Ms Kwinana

10 the previous evening.

ADV ZINHLE BUTHELEZI: Hm.

MS MATHULWANE EMILY MPSHE: So he re – he said he asked me to recuse him. So I then said that is fine he can be recused. So Mr Thapelo Lehasa will be the one that will do the presentation. And then the Chair arrived and said C are you ready and I said yes I am ready Chair. She says are you presenting? I said Chair no I am not presenting. There is a transformation manager and the procurement manager who have prepared the presentation under my supervision and the Transformation Manager will present. He says why? I says no

20 because they are the subject matter experts. As a CEO I need to provide guidance and I need to provide oversight but I do not have to be physically doing the presentation. And I said to her, look I think you will be proud of this presentation because then it will form a basis of the roadshows going forward. So then we get ready, we waited they were running late but finally the meeting started about an hour or two

later and arrives Mr Kebby Maphatsoe who was the Deputy Minister of Military Veterans and Defence and accompanied him was Ms Des Van Rooyen and there was another gentleman and another lady. They were all coming from the MK Veterans. And then – and then...

ADV ZINHLE BUTHELEZI: Sorry and where was this meeting? Was it at SAA/

MS MATHULWANE EMILY MPSHE: It was at SAA in the boardroom on the 6th Floor.

ADV ZINHLE BUTHELEZI: Yes proceed.

10 **MS MATHULWANE EMILY MPSHE:** In the executive floor.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: The meeting was there so they had – the Chair had arranged for them to be given access to come into the building to come to the meeting. So they came to the meeting and then most executive committee members who were present at the time came to the meeting.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: And in the meeting I then you know Chair introduced me and then we introduced the colleagues and the
20 visitors that had come and the reason why I did not forget Mr Des Van Rooyen was because his name did not align to how he looked so I – you know I paid particular attention when he said that – his name.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: And then we all introduced ourselves and then I then introduced that Mr Thapelo Lehasa will do the

presentation. And Mr Thapelo Lehasa did the presentation indeed. At the end of the presentation the Chair stood up and said, just look at you these people died for us to get our freedom and then all you want to do is to tell us about policies and procedures and all that. They are not interested in policies and procedures. Why do you not tell them what is the budget of the jet fuel per annum for SAA? I said Chair, I do not think it is appropriate to be talking about budgets with potential service providers. So it is an internal matter and I did not mention it. And then she went on and on and said, you know people died and have

10 suffered and then also mentioned that – pointing at me in her role is that she is also General Manager Human Resources and maybe we should make a 30% set aside of all the vacancies for the children of MK veterans. So – so that is what she said and then went to the end of the meeting. At the end of the meeting I then said that I will make arrangements for Mr Thapelo Lehasa the Transformation Manager and Doctor Dahwa to meet with the MK Veterans in particular Mr Des Van Rooyen to assist them in helping them to register themselves and also indicating what is their area of expertise that they will be able to participate in so that we can them on the data base.

20 **ADV ZINHLE BUTHELEZI:** I am sorry Ms Mpshe how did you respond to these events when Chair was saying all these to you that you should set aside 30% of the jobs for the children of the MK Veterans. Giving them the value of the budget that you were holding at SAA at the time. How was your response to all this?

MS MATHULWANE EMILY MPSHE: No my response was a short one to

say that it was not appropriate to be telling prospective service providers about the budget and I did not comment to the rest of all the other information. I did not comment.

ADV ZINHLE BUTHELEZI: Okay thank you. Then on paragraph 93 you deal with the issue of Bid Air, what happened there.

CHAIRPERSON: Well let us hear – has that meeting ended? How did that meeting end? How did it end, that meeting?

MS MATHULWANE EMILY MPSHE: The meeting ended with me leaving the Chair and the visitors with the point of saying that I will get the
10 Transformation Manager and the Chief Procurement Officer to meet with Mr Van Rooyen and to assist them to register on the data base.

CHAIRPERSON: Oh afterwards, later?

MS MATHULWANE EMILY MPSHE: Afterwards yes.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: So that they can be on the data base.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: And part of that was to say what is their area of expertise. So that when they register they register to say
20 this is our area of expertise so that when the tenders come out specific to that area they will be informed so that they can participate. That was ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: How the meeting ended.

CHAIRPERSON: Yes. Okay.

ADV ZINHLE BUTHELEZI: Yes and then you were informed by your colleague Mr Wolf Meyer about the meeting that they had with Bid Air. What did you – what do you know about this meeting?

MS MATHULWANE EMILY MPSHE: Mr Meyers came back to – from a meeting and said to he oh he is so – he has never been so embarrassed. But he was asked to attend this meeting with Ms Kwinana. And this meeting was with Bid Air the company called Bid Air which was operating in the Aviation Space hence the word air to – and when they went to – they met with the executive of Bid Air and Ms

10 Kwinana then instructed Bid Air, told them about the 30% set aside and how they are going to implement it and then instructed Bid Air to put 30% of their share on the tender that they have with SAA set is aside to a black company or a black partner or partner. So when he came back he said that – so the people at Bid Air were listening and then they were also trying to understand how is this going to pan out. They also highlight the fact that they were a number 1 – they were accredited a Level 1 BEE which is the highest level in terms of BEE accreditation. So they just were confused with this new information and how is the information going to actually be practically implemented. And following

20 on that meeting Mr Meyer came and showed me a letter that came from Bid Air confirming the meeting and confirming the discussions and they were asking certain questions. The two questions that I remember off hand was what is now going to happen to their BEE status as they are now Level 1 BEE? And can SAA please provide who the partnership will – who the partner will be or should they come up with a partner and

how is the practical implementation of that is going to be? So he shared the letter with me but he took the letter with him. He just showed me and said, this is really what I was afraid and I do not know how we are going to get out of this because now Bid Air has put it in writing and they do not seem to be keen on this but legally this does not put us in a very strong position.

ADV ZINHLE BUTHELEZI: So...

CHAIRPERSON: This letter what exactly was it confirming was said to them to Bid Air?

- 10 **MS MATHULWANE EMILY MPSHE:** What was said to Bid Air that SAA is going to be implementing the 30% set aside to all the service providers who have contracts with SAA.

CHAIRPERSON: Oh okay. And Bid Air had – was one of them?

MS MATHULWANE EMILY MPSHE: Yes BidAir was subcontracted to Swissport for ground handling.

CHAIRPERSON: Yes, yes okay, okay.

ADV ZINHLE BUTHELEZI: Chair if I may refer Ms Mpshe to the said letter. Ms Mpshe would you please ...

- CHAIRPERSON:** Yes, yes. No, no Ms Buthelezi. I wanted her to finish
20 tell me about it without looking at the documents.

ADV ZINHLE BUTHELEZI: Oh, okay.

CHAIRPERSON: Then afterwards she can look at the documents.

ADV ZINHLE BUTHELEZI: Thank you.

CHAIRPERSON: It can be important to know this is her recollection ...

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Independent of documents.

ADV ZINHLE BUTHELEZI: I understand.

CHAIRPERSON: Yes.

ADV ZINHLE BUTHELEZI: Ja.

CHAIRPERSON: Okay. Then we can go to documents afterwards.

MS MATHULWANE EMILY MPSHE: Okay. The purpose – the purpose of the meeting ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: Was that SAA is now going to
10 implement a 30 percent set-aside as set by the President at the State
of the Nation Address in February 2015. So then now as the Board
Members are going to the – all the service providers who have
contracts with SAA to now inform them that they will have to do this 30
percent set-aside with the contracts that they already have running with
SAA.

CHAIRPERSON: So that was the context I think Mr Dahwa – Mr Dahwa
and maybe another witness ...

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: May have talked about this 30 percent set-aside
20 certainly Mr Dahwa – Dr Dahwa.

ADV ZINHLE BUTHELEZI: It was Mr Dahwa.

CHAIRPERSON: Dr Dahwa and – but now this was the context. It was
not ...

MS MATHULWANE EMILY MPSHE: That was the context.

CHAIRPERSON: It was not just one or two service providers. They

were going to all of them who had – who already had contracts with SAA?

MS MATHULWANE EMILY MPSHE: That is correct.

CHAIRPERSON: And saying that following upon the former President's speech they would have to be 30 percent set-aside on existing – even on existing contracts for BEE?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: Okay and – and BidAir had put this in writing to confirm what they were told?

10 **MS MATHULWANE EMILY MPSHE:** That is correct Chair.

CHAIRPERSON: And Mr Meyer was uncomfortable in saying how are we going to get out of this?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: Yes, okay. Thank you.

ADV ZINHLE BUTHELEZI: Yes and do you confirm that the letter that appears on EXHIBIT DD15B on page 3-4-9. It is under Tab ...

MS MATHULWANE EMILY MPSHE: That is correct yes. That is the one.

ADV ZINHLE BUTHELEZI: 43.

20 **MS MATHULWANE EMILY MPSHE:** Yes.

ADV ZINHLE BUTHELEZI: Is that the letter that you ...

MS MATHULWANE EMILY MPSHE: That is the letter.

ADV ZINHLE BUTHELEZI: Received from BidAir?

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: What is the page number?

ADV ZINHLE BUTHELEZI: 3-4-9 – 3-4-9.

CHAIRPERSON: Okay. Let me get there.

ADV ZINHLE BUTHELEZI: Ms Mpshe would please read the important points that were raised by BidAir on this document into the record?

MS MATHULWANE EMILY MPSHE: The first part is that they confirm the meeting held on 23 June 2015 with the Management Team.

10 “SAA’s requests for the transfer of 30 percent of
 BidAir Service’s SAA grooming, toilet and water
 contract to a SAA nominated Black owned small
 business is noted. As indicated in your meeting
 with Mr Kobus, Blake and Bushy BidAir Services is
 100 percent own subsidiary of Bidvest Ltd. A
 decision that has a change of ownership and
 shareholding implication can therefore only be
 made by Bidvest Ltd. We request that the proposed
 changes required by SAA be formalised and
 communicated in writing for due consideration. We
 further request your advice and guidance on how
20 the following requirements will be addressed in
 order to facilitate the proposed changes. Number
 one, SAA Transformation Requirement: BidAir
 Services is currently 63.42 percent Black owned
 (economic interest) and 24.85 percent Black women
 owned. This request for the transfer of 30 percent

of the contract to a Black owned small business would result in the grooming, toilet and water contract being run a company with an effective 74.39 Black shareholding. Does this imply that SAA's supplier Black ownership requirement is now closer to 75 percent? Is the transfer of 30 percent of the contract to a SAA nominated Black owned small business a pre-requisite for the upcoming tender?"

10 **CHAIRPERSON:** Yes.

MS MATHULWANE EMILY MPSHE: The next one was the structure.

CHAIRPERSON: Huh-uh.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: "The Structure was:

BidAir Services provides grooming, toilet and water services to other carriers outside of SAA, therefore, in order to implement with the proposed request, a new company (NewCo) would have to be formed to tender for the contract. Kindly advise who SAA intends on nominating for the 30 percent shareholding."

20

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: "Licence Requirements: NewCo ..."

This supposed new company.

“...would be the main bidder for the tender, however, NewCo does not have a licence. Whilst the one shareholder (BidAir Services) would be a licence holder, this licence is not transferable to the new bidder, NewCo. How would this licence requirement for NewCo be resolved?”

The next one was:

10 “The Capex Requirements: The current SAA licence requirements state that new equipment must be utilised by the company’s awarded contracts for the first time. This implies that BidAir Service’s current equipment cannot be transferred to the NewCo. We anticipate the capex costs for the new contract to be approximately R20 million. Kindly advice whether the nominated small business will be in a position to fund this capital requirement.”

CHAIRPERSON: Basically BidAir raised various problems as far as they are concerned with this proposal or demand made to them ...

MS MATHULWANE EMILY MPSHE: That is correct.

20 **CHAIRPERSON:** By SAA through the Chair or Ms Kwinana?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: Yes, okay.

ADV ZINHLE BUTHELEZI: Yes and then what happened as a result of this meeting with Ms Kwinana. You deal with that on paragraph 94 of your affidavit on page 26.

MS MATHULWANE EMILY MPSHE: On paragraph 94 as a result of this and I supposed somebody will have informed someone Dr Anton Alberts a Member of Parliament allegedly wrote a letter to the BBBEE Commissioner to register their concern and on 8 September the – the Commissioner of the BEE Ms Zodwa Ntuli arranged a meeting with me with regards to SAA and this matter.

ADV ZINHLE BUTHELEZI: Hm.

CHAIRPERSON: Before we get there we need to hear what SAA's response was to BidAir's letter. Was there a response?

10 **MS MATHULWANE EMILY MPSHE:** There was no formal response.

CHAIRPERSON: Yes but Ms Kwinana did get the letter?

MS MATHULWANE EMILY MPSHE: Did receive the letter and the Board.

CHAIRPERSON: Yes and - and the matter was discussed or not discussed at the Board as to how to respond?

MS MATHULWANE EMILY MPSHE: Chair to my recollection there was no formal Board Meeting where the matter was discussed ...

CHAIRPERSON: Yes.

20 **MS MATHULWANE EMILY MPSHE:** Because at that time I was also a Member of the Board.

CHAIRPERSON: Yes, yes. So it was just left like that?

MS MATHULWANE EMILY MPSHE: It was not discussed as far as I know.

CHAIRPERSON: Ja and as far as you know BidAir just also left it like that when there was no response. They did not follow up as far as you

know?

MS MATHULWANE EMILY MPSHE: As far as I know Chair.

CHAIRPERSON: Yes, okay; but tell me you have told me that Ms Kwinana was a Chartered Accountant. I would have thought that as a Chartered Accountant she would be – she would have quite some appreciation of the need for things in the running of a business such as SAA to be done in accordance with established and approved processes and procedures and that you cannot just hear a politician say something in a speech and then go to the company and say now we
10 must just implement that.

There needs to be processes and procedures that must be put in place first before – before anything like that could be done and that they should – they should - these things should be discussed properly. There should be formal processes. I would have thought that somebody like her would have that appreciation. Is that – is that an expectation that you would have had as well of her as a Chartered Accountant?

MS MATHULWANE EMILY MPSHE: That is correct Chair. The – that was part of my disappointment and earlier on I said in my testament
20 that Ms Kwinana has qualifications and experience and her business which was an audit business. For me put her in – and she was the right person for the job to be the Chair ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: Of Audit Risk and Compliance ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: Based on her background and experience and the company that she was running.

CHAIRPERSON: Hm. Did you ever get an impression or understanding that she did not appreciate these processes that needed to be followed and these procedures in the company or was your understanding that she knew these processes and procedures quite well and she appreciated their importance but for some other reason decided or rather would some – would for other reasons that you might not know not want to – to have them followed?

- 10 **MS MATHULWANE EMILY MPSHE:** Chair I would not understand and know why she would not have followed the processes. For me it is – she – she had the understanding and I think she had an appreciation. As a person who is running an audit firm they audit these things. That is what they audit in companies. So for me I cannot say that she did not appreciate – have an appreciation because that was her job.

That is what she did on a daily basis. So I had no understanding as to why she carried on without insisting on due process being followed. I cannot answer that.

- CHAIRPERSON:** As Chairperson of the Audit and Risk Committee and I
20 think you mentioned compliance as well there in the committee would not her committee be the committee that would be required or expected to give guidance to the whole Board including its Chairperson on some of these issues?

MS MATHULWANE EMILY MPSHE: That is correct Chair. Not only to the Board to the company.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: As – as the people having an oversight ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: When matters are presented to them

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: On a quarterly basis or as and when things happen ...

10 **CHAIRPERSON:** Hm.

MS MATHULWANE EMILY MPSHE: They are supposed to provide guidance ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: To the company ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: And then Board relied on that sub-committee ...

CHAIRPERSON: Huh-uh.

20 **MS MATHULWANE EMILY MPSHE:** For the issues of – of risk and compliance.

CHAIRPERSON: Hm. Earlier on we counted a number of instances where instructions were given to you as Acting CEO to do things irregularly and not to follow processes and procedures and policies of the company. Some of those may have been – some of those instructions may have come from Ms Myeni but others did come from

Ms Kwinana ...

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: And maybe others on others they were – they were together on them. I am not sure. Which ones are you able to isolate and say these were from – were definitely from Ms Kwinana?

MS MATHULWANE EMILY MPSHE: The Boqwana Burns definitely from Ms Kwinana.

CHAIRPERSON: Mr Bosc?

MS MATHULWANE EMILY MPSHE: Mr Sylvain Bosc.

10 **CHAIRPERSON:** Huh-uh.

MS MATHULWANE EMILY MPSHE: The issue of Eric – Captain Eric Manentsa ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: It was raised by her in a formal RAMCO Meeting ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: That – you know – the role needs to be combined. The ENS – that ENS scope was extended without due process ...

20 **CHAIRPERSON:** Hm.

MS MATHULWANE EMILY MPSHE: And then when it was discovered she just said let us find a way or regularising it ...

CHAIRPERSON: Huh-uh.

MS MATHULWANE EMILY MPSHE: And its condonement.

CHAIRPERSON: Hm; and of course in regard to I think the same thing

or the – the Boqwana Burns one.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: When you refused to sign she said anyway that started working.

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: And that would have meant as far as you were concerned at least as far as you knew if they had already started working they had already started working without a letter of appointment.

10 **MS MATHULWANE EMILY MPSHE:** That is correct Chair.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And the fact that she signed the engagement letter ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: To Boqwana Burns ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And she signed an undisclosed agreement ...

CHAIRPERSON: Yes.

20 **MS MATHULWANE EMILY MPSHE:** To Boqwana Burns.

CHAIRPERSON: Yes. As far as you are – you are concerned she would have known that all of these things were not supposed to be done like this. There were supposed to be processes and procedures?

MS MATHULWANE EMILY MPSHE: Chair it is my contention that she should have known.

CHAIRPERSON: She would – she would have known?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: You just do not know why she would nevertheless have wanted to – these things to be done without following those procedures?

MS MATHULWANE EMILY MPSHE: I would not know why ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: But she would have known.

CHAIRPERSON: Hm. Thank you.

10 **ADV ZINHLE BUTHELEZI:** Thank you Chair. Ms Mpshe I wanted to follow up on what then happened following this – this – these demands by Ms Kwinana. You have told us that there was a meeting that was called or that was - you attended with the BBBEE Commissioner. Yes take us from there.

MS MATHULWANE EMILY MPSHE: Okay Chair. Ms Zodwa Ntuli was the Acting Commissioner – BEE Commissioner at that point in time – requested a meeting with me as the Acting CEO and they came to SAA. We had a meeting a SAA. In the meeting she came with other three – three people from her office and then I invited Dr Dahwa as the
20 procurement and I invited Mr Thapelo Lehasa – I think she was not available.

I invited Ms (indistinct) who was shareholder/stakeholder representative and then we went to the meeting. At the meeting she then – you know – outlined the purpose of the meeting and said it is as a result of this complaint that has been brought to the attention of – of

the Commission – the BEE Commission – that SAA is going about implementing the 30 percent set-aside and making demands on the current service providers who have current contracts with the company.

She then advised us to say one, this is not law. So what you are doing is illegal. So we must stop. We must cease immediately. If however you want to influence your situation at SAA the BEE Codes have been revised at that point in time and the aviation code was not finalised. The BEE Aviation Codes were not finalised.

10 She then said that you can then have your influence as far as the aviation is concerned in that space when these – the codes were – were being reviewed so we can send in our recommendations. If that is what we feel and maybe it will help other airlines – small airlines as well as we are the bigger airline domestically and – and said and then also we cannot change our supply chain policy to align with this 30 percent because this is not law yet.

It has not been brought to them that it is law. We can only change our policy to align with it once it has become law – this 30 percent set-aside has become law. So she really was - you know – guiding us through what it is that we need to do and how we can do it.

20 **CHAIRPERSON:** And you said who attended that meeting ...

MS MATHULWANE EMILY MPSHE: Dr ...

CHAIRPERSON: From SAA's side?

MS MATHULWANE EMILY MPSHE: Myself.

CHAIRPERSON: Hm.

ADV ZINHLE BUTHELEZI:

MS MATHULWANE EMILY MPSHE: Dr Dahwa, Ms (indistinct) and Mr Thapelo Lehasa was not available but he was supposed to – the Transformation Manager.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: He was also invited to attend.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: And – and this – the content of this meeting was at any stage communicated to the Board?

MS MATHULWANE EMILY MPSHE: Yes Chair. The contents of the
10 meeting were communicated to the Board. She followed up with the letter – Ms Ntuli.

CHAIRPERSON: Ms Ntuli, yes.

ADV ZINHLE BUTHELEZI: (Intervenes).

MS MATHULWANE EMILY MPSHE: Ms Ntuli followed up with a letter ...

CHAIRPERSON: Huh-uh.

MS MATHULWANE EMILY MPSHE: To me to say pursuant to our discussions we confirm the following there ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: The following blah, blah, blah and
20 also that please stop, it is illegal.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: Stop the 30 percent set-aside.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: And then I then forwarded it ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: That to the Chair and when Ms Ntuli was coming I also out of courtesy informed the Chair that I would be having a meeting with Ms Ntuli.

CHAIRPERSON: Hm.

ADV ZINHLE BUTHELEZI: Hm.

MS MATHULWANE EMILY MPSHE: So I did give her – the Chair feedback and also I forwarded the letter from Ms Ntuli.

CHAIRPERSON: Yes.

ADV ZINHLE BUTHELEZI: And what was the Chair's response on that?

10 **MS MATHULWANE EMILY MPSHE:** The Chair's response said I do not want – I am quoting now.

“I do not want to hear anything from that woman.”

Meaning Ms Ntuli.

CHAIRPERSON: Was that now in a meeting setup between you and the Chair or over the phone?

MS MATHULWANE EMILY MPSHE: I was sharing with the Chair what – that there is a letter coming. She must be ready for it.

CHAIRPERSON: Oh, yes.

MS MATHULWANE EMILY MPSHE: She must be aware for her inbox.

20 **CHAIRPERSON:** Yes.

MS MATHULWANE EMILY MPSHE: It is a follow up of the meeting and this is the letter. It is in her inbox and I have copied the Board Members ...

CHAIRPERSON: Yes, okay.

MS MATHULWANE EMILY MPSHE: And then she – she then said to

me:

“I do not want to her anything about that woman. I
actually have dealings with the Deputy Minister.”

CHAIRPERSON: Yes. When she said that had you told her what the letter was that was – that you had sent to her was saying? Did she know what the letter was saying?

MS MATHULWANE EMILY MPSHE: Yes Chair. She – she knew.

CHAIRPERSON: She knew?

MS MATHULWANE EMILY MPSHE: She knew what the letter was
10 saying.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: To say that we have to stop the 30 percent set-aside.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: It is illegal ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And how we can influence ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: Our codes – our BEE Codes ...

20 **CHAIRPERSON:** Yes.

MS MATHULWANE EMILY MPSHE: In the Aviation Sector ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: As a way of including what we want to do ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: But at that point in time the 30 percent was not law. So it was illegal.

CHAIRPERSON: Hm, okay.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Thank you.

ADV ZINHLE BUTHELEZI: Chair I do not wish Ms Mpshe to read through the letter because (intervenes).

CHAIRPERSON: No she does not have to but she can ...

ADV ZINHLE BUTHELEZI: Dr Dahwa did ...

10 **CHAIRPERSON:** She can identify it.

ADV ZINHLE BUTHELEZI: Yes, yes. Dr Dahwa did read this letter into the record last week.

CHAIRPERSON: Ja but let her identify it without reading it.

ADV ZINHLE BUTHELEZI: Yes. Ms Mpshe may I refer you to Tab 44 page 352 of Annexure B?

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: Yes. Is that the letter that you received?

MS MATHULWANE EMILY MPSHE: This is the letter I have received from Ms Ntuli.

20 **ADV ZINHLE BUTHELEZI:** Yes.

CHAIRPERSON: And that is the same letter you forwarded to the Chair and to Members of the Board?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: Thank you.

ADV ZINHLE BUTHELEZI: Thank you. Then you also make reference

to another letter that you received from the National Treasury. Could you please take us through that letter?

MS MATHULWANE EMILY MPSHE: Shortly after this letter from Ms Ntuli – the meeting in the letter from Ms Ntuli I had a letter from the Department of National Treasury from the Chief Procurement Officer – Mr Kenneth Brown at that time and the letter was also highlighting that there has been complaints that have been sent to DTI and DTI has notified them as our shareholder ministry that we are now exercising this 30 percent set-aside and the letter was telling us in very certain
10 word – certain words that we should stop demanding or practicing or applying the 30 percent set-aside. It is illegal.

ADV ZINHLE BUTHELEZI: Yes and do – this letter do you know if the Board received this correspondence?

MS MATHULWANE EMILY MPSHE: I forwarded the letter to the Chair and copied the Board.

ADV ZINHLE BUTHELEZI: Yes. On paragraph 96 you deal with the response to the BBBEE Commissioner?

MS MATHULWANE EMILY MPSHE: Yes that is correct. The Chair delegated a response to Ms Ntuli's letter - the BEE Commission – to
20 Ms Kwinana to draft a letter in response to Ms Ntuli's letter ...

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: And when I received the letter from Ms Kwinana I felt that the tone of the letter was not appropriate.

CHAIRPERSON: One second. I am looking for the letter under TM48 Ms Buthelezi.

ADV ZINHLE BUTHELEZI: Oh. Sorry Chair. Ms Mpshe may I refer you – you to Tab 48 ...

CHAIRPERSON: *Ja*, I am there but I cannot find it.

ADV ZINHLE BUTHELEZI: The letter on page 370. No I am sorry Chair it is actually 369. It is the letter from Mr Kenneth Brown to the witness – Ms Mpshe.

CHAIRPERSON: No I am looking for the one from Ms Kwinana. The one that Ms Mpshe redrafted or at least Ms Mpshe's response.

ADV ZINHLE BUTHELEZI: Oh, we are getting there Chair.

10 **CHAIRPERSON:** Am I ahead of you this time?

ADV ZINHLE BUTHELEZI: Yes. You are ahead of us this time.

CHAIRPERSON: Oh, okay.

ADV ZINHLE BUTHELEZI: I am sorry Chair. Yes and the letter that ...

CHAIRPERSON: I will wait for you.

ADV ZINHLE BUTHELEZI: That was written by Mr Kenneth Brown was also read into record by Dr Dahwa last week. I am not going to ask this witness to read it.

CHAIRPERSON: *Ja*, no, no. That is – she can just identify that – that is the letter she is talking about.

20 **ADV ZINHLE BUTHELEZI:** Yes.

CHAIRPERSON: That is all.

ADV ZINHLE BUTHELEZI: Ms Mpshe the letter on page 3-6-9 is that the letter you received from the Parliament?

MS MATHULWANE EMILY MPSHE: It is the letter that I received from National Treasury from Mr Kenneth Brown.

ADV ZINHLE BUTHELEZI: From National Treasury. I am so sorry.

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: That is 369 and on 370 it is my response to Mr Kenneth Brown.

CHAIRPERSON: Did you say 270?

MS MATHULWANE EMILY MPSHE: 370.

ADV ZINHLE BUTHELEZI: 370.

CHAIRPERSON: 370?

- 10 **ADV ZINHLE BUTHELEZI:** Yes. Yes, now we are on the response that was prepared to the BBBEE Commissioner. Would you please take us through that – that response? What transpired there?

MS MATHULWANE EMILY MPSHE: Which page is this?

CHAIRPERSON: Well she can just mention the important points.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: On – on the letter ...

CHAIRPERSON: You do not have to read it.

MS MATHULWANE EMILY MPSHE: That was penned by Ms Kwinana that I needed to just append my signature to ...

- 20 **CHAIRPERSON:** Yes.

MS MATHULWANE EMILY MPSHE: I – I did indicate that the letter was not appropriately worded and the tone ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Was not correct.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: So I just simply wrote a letter ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: To Ms Ntuli ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: To say that we will comply.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: We – we acknowledge that we should not be doing and I had indicated earlier on that it was actually the Board that was spearheading ...

10 **CHAIRPERSON:** Hm.

MS MATHULWANE EMILY MPSHE: This 30 percent set-aside.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: It was not spear - spearheaded by management.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: So I then responded back ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: And I copied the Board ...

CHAIRPERSON: Hm.

20 **MS MATHULWANE EMILY MPSHE:** On that – on my response to Ms Ntuli ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: And then the Chair then asked me where the letter is that Ms Kwinana has written.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: I then said to the Chair I did not feel it was an appropriate response and for me to append my signature I should be able to own that letter ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And I did not own it.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: Hence I wrote my response ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: And I also indicated to the Chair
10 that if there Chair feels that it is so important that that message coming from Ms Kwinana should be communicated they can do it directly with her.

CHAIRPERSON: Yes, yes. Well it may be important that you tell me some of the features of the letter that had been prepared by Ms Kwinana for you to sign and send to Ms Ntuli in terms of comparing it to the attitude you took namely you will comply. Whether it was also along the same lines that there would be compliance or whether it was defiant or it was – what was the Board's attitude – what was the Board's message that Ms Kwinana had wanted to be put through?

20 **MS MATHULWANE EMILY MPSHE:** Chair it was quite confrontational.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And almost saying that – you know – you cannot tell us what to do ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: We have a responsibility.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Transformation is a key ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: You know – on the national agenda.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: We will do it – continuing doing it.

There is nothing legal about what we are doing.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: To that – something to that effect.

10 Very confrontational.

CHAIRPERSON: Okay, okay.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: But from what you are saying it seems that what you wrote and what they – the stance you took in the letter was not the same as the stance they wanted. They were saying they were going to push ahead with the 30 percent set-aside and they were saying there was nothing illegal about it.

MS MATHULWANE EMILY MPSHE: That is correct Chair.

CHAIRPERSON: And you were saying you – you will comply?

20 **MS MATHULWANE EMILY MPSHE:** I will say that ...

CHAIRPERSON: *Ja.*

MS MATHULWANE EMILY MPSHE: That South African Airways as – as a company and ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And as an SOC ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: We will comply with the laws of the country.

CHAIRPERSON: Yes, yes.

MS MATHULWANE EMILY MPSHE: We have not amended the policy to the affect ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And should the time come for us to amend the policy ...

10 **CHAIRPERSON:** *Ja*.

MS MATHULWANE EMILY MPSHE: We will amend the policy ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: But that time – at that point in time

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: We will comply.

CHAIRPERSON: *Ja*, and I guess as you say you had to make sure that a letter that would bear your signature said the right things about SAA and also in terms of SAA complying with the law?

MS MATHULWANE EMILY MPSHE: That is correct Chair.

20 **CHAIRPERSON:** Yes. You could not write and say we will not comply with the law?

MS MATHULWANE EMILY MPSHE: No sir.

CHAIRPERSON: *Ja*. Okay, alright.

ADV ZINHLE BUTHELEZI: Thank you and on paragraph 98 you deal with the events of Friday 2 October.

CHAIRPERSON: Ms Buthelezi we are – we have gone past 4 o’ clock.

ADV ZINHLE BUTHELEZI: Yes. Chair I am – I am ...

CHAIRPERSON: Ms Mpshe we want to try and finish with your evidence. For that reason we may have to proceed. Is that fine with you but from what I see it looks like we are not too far away from finishing?

ADV ZINHLE BUTHELEZI: Yes. We are about seven pages if I may.

CHAIRPERSON: Yes. Is that fine with you?

ADV ZINHLE BUTHELEZI: That is fine with me Chair.

10 **CHAIRPERSON:** Okay, alright but I would like us to take a short break now. We – it is about four minutes past four. We will resume at quarter past. That should be enough for us to finish before five. We will adjourn and resume at quarter past. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay. Let’s proceed.

ADV ZINHLE BUTHELEZI: Thank you Chair. Ms Mpshe, I want to take you one step back. In that you received the letter from the triple BEE
20 Commissioner. You have told us about how you responded to the letter.

MS MATHULWANE EMILY MPSHE: That is correct.

ADV ZINHLE BUTHELEZI: The letter that you received from the National Treasury, did you respond to that letter?

MS MATHULWANE EMILY MPSHE: I have responded.

ADV ZINHLE BUTHELEZI: And is the letter that is on page 370?

MS MATHULWANE EMILY MPSHE: That is correct. That's the letter.

ADV ZINHLE BUTHELEZI: And could you briefly summarize what you said in your response?

MS MATHULWANE EMILY MPSHE: My summary was that at the time we had a draft transformation policy but it was not signed off yet or implemented. And then the basis of the proposed 30% set aside in order to expedite transformation and contribute to BEE growth is a decision in which the Board resolved as 30% of key procurements transactions. And then I say as a State owned company, SAA is mindful
10 and seeks to ensure full compliance where applicable with applicable laws and within the regulatory framework. And I end up by saying as SAA also seeks to contribute towards opening up areas of the South African economy where there is limited participation by black South Africans.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: That was my response.

ADV ZINHLE BUTHELEZI: Yes, you told us that the Board also received this letter?

MS MATHULWANE EMILY MPSHE: I copied the Board.

20 **ADV ZINHLE BUTHELEZI:** You copied the Board?

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: Yes. Do you know if the Board responded to National Treasury?

MS MATHULWANE EMILY MPSHE: Yes, I do. I'm aware that the Board did respond.

ADV ZINHLE BUTHELEZI: And there is a letter that appears from page.

MS MATHULWANE EMILY MPSHE: 390?

ADV ZINHLE BUTHELEZI: 390, yes of the record. Is that the letter, is that the response from the Board?

MS MATHULWANE EMILY MPSHE: That's correct, Chair. This response was appended by Ms Kwinana and Mr Kenneth Brown who was the chief procurement officer at National Treasury.

ADV ZINHLE BUTHELEZI: Yes. Are you, will you summarize what was
10 the tone and the contents of that letter; the one that was written by Ms Kwinana to Kenneth Brown? Or highlight what you think will be important?

MS MATHULWANE EMILY MPSHE: I think she, Ms Kwinana responded. I think maybe the important one, well just on page 5, page 394.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: The SAA Board respond.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: From point 14.

ADV ZINHLE BUTHELEZI: Yes.

20 **MS MATHULWANE EMILY MPSHE:** It says that without the intent of being confrontational, we consider it important to respond to statements outlined under paragraph 12 above. However, the formulation of a full response to these issues has been made difficult by the lack of the following information from your office. Explanation of details of precisely how the Board has operated outside of the

procurement legal framework in implementing a government information policy, transformation policy of setting aside 30% of procurement to unlock the potential of SMMEs, cooperatives as well as township and rural enterprises. What is the current form of 30% aside that has or has been implemented by the Board is not supported by the any procurement legal framework? It's a question. Conversely, if not further what will be the complaint form of setting aside the 30% described hereto? Which procurement decisions of the Board have brought the name of SAA and National Treasury into disrepute?

- 10 And it goes to say that it is respectfully our view and that what is premature and unreasonable at the stage to direct the Board through the acting CEO to stop with immediate effect the implementation of its resolution to set aside 30% of SAA procurement for SMME, cooperatives as well as township and rural enterprises. We submit with respect that such a directive ought to be made after your office has fully engaged with the Board and understood the foundation of the resolution taken. Your concluding sentence in your last letter wherein you seek an update on the development around the 30% set aside of key procurement transactions support our submissions in suggesting in
- 20 this regard. Particularly if support our submission that the directive was made prematurely and without the full background information of the Board resolution. Accordingly, we request that you consider in good faith that an intergovernmental relations level our submissions suggest it in request made hereinabove. Where appropriate provide guidance on the implementation of this government transformation policy of setting

aside 30% of procurement of goods and services to SMMEs, cooperatives, township and rural enterprises. We look forward to hearing from you.

ADV ZINHLE BUTHELEZI: Yes, the letter that you toned down that was directed to the triple BEE Commissioner, did it have same, similar tone to this, the letter that was sent to Treasury?

MS MATHULWANE EMILY MPSHE: It had and had about almost like these five pages or six pages whereas my response was a one page almost.

10 **ADV ZINHLE BUTHELEZI**: Thank you. Then... (intervention).

CHAIRPERSON: Well, Ms Mpshe you know I asked you earlier on whether you thought Ms Kwinana didn't have an appreciation of the importance of following internal processes and procedures in a company and you said, you thought she did have that appreciation. But it's difficult to read this part of the letter that you have just read without that thought coming back whether it's somebody who had that appreciation who was waiting here.

MS MATHULWANE EMILY MPSHE: Yes, Chair.

20 **CHAIRPERSON**: She will come here I'm sure and I will put my concerns to her. Maybe she will explain and I will understand but it doesn't come across as somebody who had an appreciation of the importance of internal processes and procedures and that would need to be followed before something like this could be implemented in a company. But you know she will come here. She will give evidence. Maybe she will indicate and maybe I will understand.

MS MATHULWANE EMILY MPSHE: I trust and I hope that.

CHAIRPERSON: Hm, thank you.

MS MATHULWANE EMILY MPSHE: Get to that.

ADV ZINHLE BUTHELEZI: Ms Mpshe, Mary and I refer you to paragraph 98. Would you please take us to the events of the Friday, 2 October? Doctor Dahwa did testify about these events when he testified last Friday but would you take us through to what you witnessed on that particular day?

MS MATHULWANE EMILY MPSHE: Yes, Chair. On the 2nd of October
10 2015, my personal assistant came to me and said you have to see Doctor Dahwa and it looks quite urgent. So I then agreed to see Doctor Dahwa. And Doctor Dahwa walks into my office and then he said, he was, he looked visibly shaken and a bit emotional and I said what's the matter? You know, sit down. I tried to calm him down. What is the matter? He put down the two documents; two separate documents in front of me and said I can't, I can't. He called me boss. I can't my boss. My conscience doesn't allow me, I can't. So I said to Doctor Dahwa, just calm down and I hear you.

CHAIRPERSON: At this stage when he was saying I can't, I can't you
20 didn't understand what he was talking about?

MS MATHULWANE EMILY MPSHE: No, no I didn't understand what he was talking about, Chair.

CHAIRPERSON: Yes, ja, hm.

MS MATHULWANE EMILY MPSHE: So I then said okay, let's start from scratch. I hear the issue about your conscience but let's talk about the

facts of this that you brought in front of me. What is this that you brought in front of me? And then he gave me the documents and then I read the first document and then I read the second document. And then I then said, so tell me reasons why you're not signing this. He then began to outline the reasons why. The first one was the Swissport letter of award which was to be 30% set aside was to be given to the company called Jamicron (Pty) Ltd and the second one was the Engen to be awarded to be a yet to be known Consortium and a period of 10 years. And then let me start with the first one to Jamicron. The

10 Jamicron was the ground handling contract, Swissport which Swissport had subcontracted to Bide. To say that that contract had already started couple of years before. So it was in the middle of the contract. Now this award states that Swissport will be 30% of their share of the tender to this company called Jamicron (Pty) Ltd and not only that. Further on it says that the 30% of the payments that SAA is supposed to make to Swissport in return for the services, the invoicing, 30% of that cash should go to Jamicron.

CHAIRPERSON: Is that in respect of work that had already been done before the letter?

20 **MS MATHULWANE EMILY MPSHE:** Swissport is already offering that service.

CHAIRPERSON: Yes, yes.

MS MATHULWANE EMILY MPSHE: He is a service provider that this tender was done couple of years ago and they are on-stream online. Now Jamicron is a company. Then I ask him, who is Jamicron? He says,

no I don't know who Jamicron is; is a name of the company that was given to me by Ms Kwinana. So we then put in there Jamicron (Pty) Ltd and I said but have you, are they on your database? No, they are not on our database. Have you met them, no, I have never met them. So it was the first time that he was told that he heard of the word Jamicron that he was told by Ms Kwinana to award the Swissport tender to a company called Jamicron (Pty) Ltd.

CHAIRPERSON: What I was asking about was whether the 30%, was it 30% off what would be paid to or to Swissport, did that relate to future
10 work to be done for the balance of the contract or did that include that they should share with BEE company any payments already made for work done before this letter being signed as you understood it?

MS MATHULWANE EMILY MPSHE: My understanding was as at of them receiving that award it was done.

CHAIRPERSON: Yes, from then onwards.

MS MATHULWANE EMILY MPSHE: From then onwards.

CHAIRPERSON: Okay, okay.

MS MATHULWANE EMILY MPSHE: Any work that they had done.

CHAIRPERSON: Yes.

20 **MS MATHULWANE EMILY MPSHE**: The 30% payment coming from SAA, they get 70, this company will get 30%.

CHAIRPERSON: Yes, okay.

MS MATHULWANE EMILY MPSHE: That was my understanding.

CHAIRPERSON: Okay, going forward?

MS MATHULWANE EMILY MPSHE: Going forward.

CHAIRPERSON: Okay, okay.

MS MATHULWANE EMILY MPSHE: Yes, Chair.

ADV ZINHLE BUTHELEZI: Yes, and then the second letter, what was it for?

MS MATHULWANE EMILY MPSHE: The second one was Jet Fuel from Engen who was the service provider. Same circumstances. Engen had already been running two years into the contract.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: Which was awarded to tender and
10 legally and now it was saying that the 30% should go to a yet to be
named consortium and this contract should be for a duration of 10
years. So I said obviously this is not rocket science. You cannot award
to somebody you don't know so yet to be named meaning that he
doesn't exist or maybe it is still in formation and also I then said to
Doctor Dahwa, further on National Treasury regulations don't allow for
any contracts about five years. Any contract which is above five years
needs to be approved by National Treasury regulations. Meaning that
entities, state owned entities can do contracts up to the maximum of
five years. This one says 10 years. I said, you omitted to inform them
20 about that but anyway now that we are discussing it this is fact. So
after discussing this with Doctor Dahwa I said, Doctor Dahwa I agree
with you. You shouldn't be signing this, so and he already changed the
award. Instead of putting there as chief procurement officer where he
needs to sign recommending to me as the acting CEO, he only changed
and put my name there.

CHAIRPERSON: So he was saying, you are the boss; you decide.

MS MATHULWANE EMILY MPSHE: Yes, he said maybe you are in a position.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: To be able to do this. So I said, Doctor Dahwa, no you have my support. This is incorrect and I support that you don't have to sign it and but please as a chief procurement officer now you can't now perpetuate a wrong thing. You can't put my name there. So go back and fix this document and write your name as

10 the recommender and then write, my name will stay at the approver. And then where is the signature? Where is your signature supposed to be? State the reasons why you are not signing and approving this award and then I said you can bring it back to me. The same with the other one, the other two awards. And I said to him because I could see he was quite shaken. He then shared with me that I've never been humiliated like this in my whole life and then he was almost in tears. He says I've been told that I'm a Zimbabwean citizen and I'm holding a senior position here that I'll never even hold in my own country and I'm standing in the way of transformation. And he then said that, oh I then

20 said to him look I'm so sorry, I apologize. This is not our value as a company and I was involved in the appointment of Doctor Dahwa and his contract was clear. It was his skill transfer contract and he was doing so well since you know he started. So I said I apologize for that. That's not the value of our company. Please go back to your office and rectify this award. So he then left and went to his office. Soon as he

left, went to his office the Chair, Ms Myeni came to my office and then said we needed to call... (intervention).

CHAIRPERSON: I'm sorry, I'm sorry. I'm sorry to interrupt you. You have made quite clear that Doctor Dahwa was quite shaken and emotional when he came to see you and said that he had never been humiliated like this. Did he say who had humiliated him and who had talked him being holding a position in South Africa that he wouldn't even hold in his own country?

MS MATHULWANE EMILY MPSHE: He said it was the Chair and Ms
10 Kwinana.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Earlier he had interactions with them earlier.

CHAIRPERSON: He had a meeting with them, yes.

MS MATHULWANE EMILY MPSHE: In the day.

CHAIRPERSON: Okay, alright. Continue.

MS MATHULWANE EMILY MPSHE: So he went to his office to rectify as we had discussed. And then he, well Chair came into my office and then called Ms Nivi Moodley was acting in my role as acting GM human
20 resources and then said she wanted to have a meeting with us. And then Nivi came to the meeting in my office and then she then said she wants letter of appointment for Kendy Phohleli is a follow-up of the Board resolution of the 28/29 September. So we were busy discussing this matter and office and taking the Chair through.

CHAIRPERSON: Taking the, discussing which matter now? The one

that.

MS MATHULWANE EMILY MPSHE: The Kendy Phohleli matter.

CHAIRPERSON: Oh yes. With the Chair?

MS MATHULWANE EMILY MPSHE: With the Chair.

CHAIRPERSON: Yes, okay.

MS MATHULWANE EMILY MPSHE: And because now the Chair said he wants the letter of appointment to appoint Mr Phohleli.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Yes.

10 **CHAIRPERSON**: That is now to the position in her office?

MS MATHULWANE EMILY MPSHE: That's correct, Chair.

CHAIRPERSON: Okay, alright. Continue.

MS MATHULWANE EMILY MPSHE: Yes. So we then, the discussion around it with the Chair was, Chair the challenge that we have is that the structure hasn't got, no it was not the issue of the structure. No, no before that was the that Mr Phohleli didn't meet their requirements; something to that effect. And then it was also about having to get, I'm trying to remember. There was two. There was the one which was, it was not in the structure, the commercial one. I'm thinking about now.

20 There was a commercial one and the one in the office of the Chair. And then we then discussed with the Chair around the issues that the structures needed to be changed and Chair needed to change that and needed to have new profile. Like to say, what is this person going to do so that then we have to follow due process in making sure that the approval and the recruitment takes place. And the Chair wouldn't hear

anything out of that and the Chair says you will do the letter of appointment for Mr Phohleli today.

CHAIRPERSON: Saying to you?

MS MATHULWANE EMILY MPSHE: Say to me and Ms.

CHAIRPERSON: Basically giving a firm instruction now?

MS MATHULWANE EMILY MPSHE: Giving a firm instruction.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And then she said I am not leaving today without getting the letter of appointment.

10 **CHAIRPERSON**: You had just explained to her that there was a problem with appointing?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Mr, this person.

MS MATHULWANE EMILY MPSHE: As per the Board resolution.

CHAIRPERSON: Yes, yes.

MS MATHULWANE EMILY MPSHE: We explained that.

CHAIRPERSON: And she was, she was not persuaded?

MS MATHULWANE EMILY MPSHE: No.

CHAIRPERSON: Yes.

20 **MS MATHULWANE EMILY MPSHE**: She was not persuaded. She says, I don't understand. Which part of this don't you understand and I'm not leaving here until I get the letter of appointment for Mr Kendy Phohleli today and I am not in a rush. That is what she said.

CHAIRPERSON: Around what time of the day was it if you are able to remember?

MS MATHULWANE EMILY MPSHE: It was getting into afternoon now by that time.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: Whilst it was still the three of us.

CHAIRPERSON: Who was the third?

MS MATHULWANE EMILY MPSHE: Pardon?

CHAIRPERSON: Who was the third person?

MS MATHULWANE EMILY MPSHE: Ms Moodley.

CHAIRPERSON: Oh

10 **MS MATHULWANE EMILY MPSHE:** Who was acting in the role of HR.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: Myself and Ms Myeni.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Whilst we were still deliberating on this matter, Ms Kwinana walked into my office were the three of us are sitting.

CHAIRPERSON: Before Ms Kwinana walks in, was Ms Moodley expressing her support for the position you are taking or it was just a discussion between you and Ms?

20 **MS MATHULWANE EMILY MPSHE:** No, I was supporting her because she was expressing.

CHAIRPERSON: Oh okay.

MS MATHULWANE EMILY MPSHE: Is the person now who was in the HR role.

CHAIRPERSON: Yes, okay.

MS MATHULWANE EMILY MPSHE: She was expressing the reasons why it cannot be done.

CHAIRPERSON: Yes, okay.

MS MATHULWANE EMILY MPSHE: And I was there to provide support for her.

CHAIRPERSON: Yes, yes.

MS MATHULWANE EMILY MPSHE: To support and say we are not able to do it.

CHAIRPERSON: Hm

10 **MS MATHULWANE EMILY MPSHE:** We are constrained for the reasons that had been given to the Chair.

CHAIRPERSON: Yes, yes.

MS MATHULWANE EMILY MPSHE: Whilst we were still deliberating on the matter, Ms Kwinana walks into the office, my office and finds the three of us and whilst we are still busy she stands there she says to Chair, you won't believe what Doctor Dahwa has just told me. So the Chair... (intervention).

CHAIRPERSON: Is that even before greeting you or anything?

MS MATHULWANE EMILY MPSHE: No greeting, no.

20 **CHAIRPERSON:** Yes.

MS MATHULWANE EMILY MPSHE: No greeting.

CHAIRPERSON: Ja.

MS MATHULWANE EMILY MPSHE: Straight into the office.

CHAIRPERSON: Ja, she's talking to the Chair?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Ja.

MS MATHULWANE EMILY MPSHE: She says, you won't believe what Doctor Dahwa has just told me. I asked him to prepare, this morning I asked him to prepare the awards and he went back and he was going to be better and now he comes back to tell me that he has met with Thuli and Thuli says... (intervention).

CHAIRPERSON: Meaning yourself?

MS MATHULWANE EMILY MPSHE: Meaning me.

CHAIRPERSON: Ja.

10 **MS MATHULWANE EMILY MPSHE:** They are referring to me. My call name is Thuli, Chair, and says that and Dahwa says Thuli said he mustn't sign.

CHAIRPERSON: He must?

MS MATHULWANE EMILY MPSHE: He mustn't sign.

CHAIRPERSON: He must not sign? Yes.

MS MATHULWANE EMILY MPSHE: He mustn't sign the award.

CHAIRPERSON: The awards, yes.

MS MATHULWANE EMILY MPSHE: Yes. So Ms Moodley is sitting there and she is, you know her eyes are just popping out like this and she is
20 shocked and it's really not a comfortable situation.

CHAIRPERSON: But what Ms Kwinana is saying is you related now is directed at the Chair or at yourself or at Ms Moodley?

MS MATHULWANE EMILY MPSHE: At the Chair.

CHAIRPERSON: At the Chair?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Okay, alright yes.

MS MATHULWANE EMILY MPSHE: Is directed at the Chair.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And I'm sitting there with the Chair and Ms Moodley and myself.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: So I then intervened and said, Ms Moodley must excuse herself so that I can have a discussion with Ms Kwinana and the Chair. So she then excused herself. So and then I
10 invited Ms Kwinana to sit down because she was standing and she was and then she did sit down. And then she then says to the Chair, she repeats that Dahwa says acting CEO says he mustn't sign the documents, the awards and we are waiting. Legal is waiting to sign the contracts but it can't sign contracts if they don't get the signed awards. So we are waiting for that and then I said to Ms Kwinana, can you please call Doctor Dahwa so that we don't speak in a third person and I also appreciate if you direct to me. Don't speak to me on the third person as if I'm not present in the meeting. So please call Doctor Dahwa so that the four of us can sit and I can tell you first-hand what
20 exactly happened and he can tell you what happened. So we wait there, Doctor Dahwa is being called. It's a bit tense while still waiting. Then Doctor Dahwa arrives and he joins the meeting. When he joins the meeting I then said, can I share with you what happened earlier. And then I said to Doctor Dahwa you can then take it from there and then I said Ms Kwinana once I have said Doctor Dahwa has said, you can then

at the matter; add to the matter forward. So I then said, explained to them that Doctor Dahwa came to my office, this was the story. This is what we have discussed and Doctor Dahwa had already put my name there in place of him as a CPO to sign and I had then, I said no and we discussed the reasons. And I said, I had requested Doctor Dahwa to explain to me as the chief procurement officer and as a professional who has got a PhD in supply-chain to explain to me why he's not signing the documents. And Doctor Dahwa explained to me why he's not signing the document. I then looked at the documents myself and I

10 agree with the decision that he mustn't sign. I then advised Doctor Dahwa to go and change the documents and put his name and put my name and he must write in place of a signature why he's not approving and signing this award and then I will do the same. I even said to him I will support him but I'll only support him if he does the right thing. And I said to them, if at your level with a PhD in supply-chain, you want to sign this document under the premises that you are being forced to sign, I said to him you are on your own. I said to him if this matter goes to Court, the Magistrate or the Judge presiding will look at your qualifications and will have no sympathy to you. So I said you do the

20 right thing and if you do the right thing you have my support. And I then further on explained, I said this one of Engen you have written here 10 years and 10 years is against the regulations of National Treasury. Any contracts above five years has to be referred blah blah blah. And then Chairperson says to me, you are failing to show leadership. Again you are failing to show leadership. So why don't you tell us, what is the

term that National Treasury will accept so that we can amend this award? I said is not up to me, Chair to decide the term. The terms are in the tender document. I can't now in the middle of this tender decided to change the terms of the tender. So you will be informed about what's in the tender but the point at this time is that there is no tender for Jamicron. There is no tender for this yet to be named Consortium. This didn't fall the due process at all. So we have no business to be sitting here right now talking about signing off awards of tenders. So Ms Kwinana then said, okay we'll write there, okay we'll make it three
 10 years, something like that. She wrote on piece of paper, took it from Doctor Dahwa and says will make it three years, something like also what else. What else should we do to regularize this?

CHAIRPERSON: Just like that?

MS MATHULWANE EMILY MPSHE: Just like that. And I said, I wish to repeat myself that what I have just said now is, there is no basis of awarding of any tender under the circumstances. So you can write and ask him to change. It'll still be irregular and I looked at Doctor Dahwa. I said, Doctor Dahwa, you have to do the right thing and you will get my support. If you don't do the right thing this will come back and bite you.
 20 So it's not a very long, long afternoon, Chair and Doctor Dahwa is... (intervention).

CHAIRPERSON: In the meantime, the letter of appointment for Mr Phohleli.

MS MATHULWANE EMILY MPSHE: She's waiting to now to be also called in.

CHAIRPERSON: Okay, alright yes.

MS MATHULWANE EMILY MPSHE: So she went to her office so that when we finish with this and then she can be called in. So Doctor Dahwa then is supposed to go back to his office to also change this one that says 10 years.

CHAIRPERSON: But you have made it clear that there is no basis to award any tender for whatever time. What is the answer that either Ms Kwinana or Ms Myeni or both give to you for that? What is their argument against your point?

10 **MS MATHULWANE EMILY MPSHE:** The argument says it's a Board resolution, it has to be done and it had to be done on that Friday. They also mentioned that they are not going home without those two awards signed.

CHAIRPERSON: Was there already a Board Resolution about these two awards or you were hearing that for the first time

MS MATHULWANE EMILY MPSHE: No I was hearing for the first time.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: As a way of enforcing an instruction it was then said that it's a Board Resolution and when you
20 ask for a Board Resolution it will done, tomorrow it will be organised, it will be done.

ADV ZINHLE BUTHELEZI: Oh it's not there yet?

MS MATHULWANE EMILY MPSHE: No it's not there yet.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: So now Dr Dahwa goes to his

office ...(intervention)

CHAIRPERSON: And the meeting about the two awards ends at that stage or they remain in your office, the two board members.

MS MATHULWANE EMILY MPSHE: No, no the two board members are still in my office and now ...(intervention)

CHAIRPERSON: Yes but Dr Dahwa goes to his office.

MS MATHULWANE EMILY MPSHE: Yes, Dr Dahwa now goes to the office to change this ten years to be five years now.

CHAIRPERSON: But he is clear about your message to him.

10 **MS MATHULWANE EMILY MPSHE:** Yes my message was very clear.

CHAIRPERSON: That he must do the right thing and if he doesn't do the right thing he is on his own.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Yes okay.

MS MATHULWANE EMILY MPSHE: So he went to his office for a while and then he comes back, in the meantime while he's gone I was asked to call Ms Moodley for the letter of appointment and before Ms Moodley arrives Dr Dahwa arrives and he then says that there is no one in my office, they all left, so I don't have support to work on these
20 documents, and now the argument starts again that it needs to be done, it needs to be done today and all that, and all that.

And then I then stood up, I said I have put in my input, I have made my comments, my comments are there's no basis for any awards to be issued and I don't think I have anything further to say, as far as that is concerned. I said to Dr Dahwa, Dr Dahwa I say it again for the

last time, if you signed and claimed that you were forced to sign you're on your own, and then I left, I packed, because it was my office, I went and packed my laptop, I packed my bag and I left, because I had nothing further to say.

CHAIRPERSON: Leaving them in your office?

MS MATHULWANE EMILY MPSHE: Leaving them in my office.

CHAIRPERSON: Were you quite fed-up?

MS MATHULWANE EMILY MPSHE: It is an understatement.

CHAIRPERSON: Now Ms Mpshe I am looking at the conduct of Ms
10 Kunana and Ms Myeni as you described it. They will come here and they
will give their evidence, maybe they will deny what you are saying,
maybe they will dispute and at the end of the day I will make a finding
as to what the truth is but assuming that what you are telling is what
happened I just have this problem of how – maybe let me talk about Ms
Kunana, a Chartered Accountant, who should know how business runs,
how she would not have appreciated that having awarded a tender to
somebody you can't just unilaterally change the terms and say you are
going to do so much work and we are going to pay so much, suddenly
we reduce that to 70% and 30% would go to somebody else, and in the
20 case of the one entity we do not even know yet who that person will be
or that entity will be, and without coming back to the company and say
okay we may be having this laudable cause, this good cause of
transformation that we want to do but before we do it we need to put in
place processes, change policies to be aligned with what we now want
to do and put procedures so that from now from a certain time onwards

everybody will know these are the processes, these are the procedures, this is the new policy. I just struggle to understand how she could insist on things being done this way knowing all of these things, and yet it is difficult to say she did not know these things and it is difficult to say being a Chartered Accountant she would not have an appreciation of these things.

MS MATHULWANE EMILY MPSHE: Chair it was also, well today it is still mindboggling as to why, but also in respect of this whole thing, of these awards, this correspondence, I think here in the pack in my
 10 evidence that indicates that indicates that Dr – Ms Kunana writes to Dr Dahwa and says that I want to buy a shelf company, and to register, this supposedly new company, and then Mr Peter Tshisevhe, who is lawyer and in the panel at SAA, who is currently a Board member at SAA, will register the company, and then there is correspondence to that effect that he writes and says Dr Dahwa don't worry I will buy a shelf company, Mr Peter Tshisevhe will register for us. Mr Tshisevhe responds to say that yes I will register and don't worry about that, I will make sure that that is covered, and Mr Tshisevhe also is a lawyer, he was in the panel of SAA, he is board member currently at SAA so how
 20 do you combine and reconcile all that.

CHAIRPERSON: But hang on, are you saying to me in regard to the entity that Ms Kunana and Ms Myeni were saying would be a BBEE partner to one of the two companies which already had contracts, are you saying she was the one who would buy a shelf company.

MS MATHULWANE EMILY MPSHE: Ms Kunana said she will buy a

shelf company.

CHAIRPERSON: A shelf company that would ultimately be the BEE partner of, was it Engen?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Engen?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Is that what she was saying?

MS MATHULWANE EMILY MPSHE: That's correct Chair.

CHAIRPERSON: And that's in writing?

10 **MS MATHULWANE EMILY MPSHE:** That is in writing, it is an email, it is here in the evidence.

CHAIRPERSON: In other words she was going to benefit from this 30%?

MS MATHULWANE EMILY MPSHE: I'm not sure what it meant by saying I will buy the shelf company.

CHAIRPERSON: But why would you buy if you are not going to be part of the whole thing?

MS MATHULWANE EMILY MPSHE: Ja, that's what she indicated, I'm not sure Chair if she was going to directly benefit, and following on that
20 Ms Myeni give a list of the people that she writes on an email that needs to be part of that company, there is also an email to that effect.

CHAIRPERSON: Okay thank you, I'm sure we will go to the email in due course.

ADV ZINHLE BUTHELEZI: Thank you. And tell me these events of the 2nd of October they happen after you have been – after you have had a

meeting with BEE Commissioner in September and after you have gotten a letter from the National Treasury, informing you that you should stop with this 30% set aside?

MS MATHULWANE EMILY MPSHE: That's correct Chair.

ADV ZINHLE BUTHELEZI: Chair I am just ...(intervention)

CHAIRPERSON: You are waiting for assistance on identifying where the letter is.

ADV ZINHLE BUTHELEZI: Yes on identifying the exact thing.

CHAIRPERSON: Okay alright, let's continue in the meantime with
10 other points or other matters.

MS MATHULWANE EMILY MPSHE: Yes I will come back to this issue.

CHAIRPERSON: We will come back.

ADV ZINHLE BUTHELEZI: Let's go now to the events that led to your removal as the Acting CEO. We are now aware that you were removed on the 13th of October 2015, just tell us ...(intervention)

CHAIRPERSON: I'm sorry Ms Buthelezi, Ms Mpshe we know that you left Ms Kunana and Ms Myeni in your office and you decided to go home.

MS MATHULWANE EMILY MPSHE: That's correct Chair.

20 **CHAIRPERSON:** Did you leave Ms Moodley with them?

MS MATHULWANE EMILY MPSHE: Ms Moodley was then being called.

CHAIRPERSON: Oh she was in the process of being called?

MS MATHULWANE EMILY MPSHE: Yes she was coming.

CHAIRPERSON: She was coming but she didn't find you there.

MS MATHULWANE EMILY MPSHE: No on my way I met with her at the lifts when she was coming.

CHAIRPERSON: Yes okay. But weren't you the one who was supposed to sign the letter of appointment?

MS MATHULWANE EMILY MPSHE: She was supposed to prepare the letter and sign it for recommendation from the CEO, for the letter of appointment.

CHAIRPERSON: Oh, but you were not going to have to sign that day if you were going to sign it?

10 **MS MATHULWANE EMILY MPSHE:** Chair I had had it for the day.

CHAIRPERSON: Ja. (Laughing) yes.

MS MATHULWANE EMILY MPSHE: So I met with her on the lifts and ... (intervention)

CHAIRPERSON: Yes, but before you met her did you talk about the letter to Ms Myeni before you left to say ... (intervention)

MS MATHULWANE EMILY MPSHE: We didn't have a chance because then Dr Dahwa was, yes Dr Dahwa came.

CHAIRPERSON: Oh, okay, alright, yes okay.

20 **MS MATHULWANE EMILY MPSHE:** And I met Ms Moodley at the lifts coming to see the Chair about the letter and when I meet her on the lift I just said to her I am off and you do the right thing, if you do the right thing you have my support.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And I emphasized to her I said I don't want a story that you were forced, you do the right thing.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And be strong.

CHAIRPERSON: Mmm, mmm.

MS MATHULWANE EMILY MPSHE: That's what I said to Ms Moodley then she got out of the lift, I got into the lift and I left.

CHAIRPERSON: Mmm, mmm, okay.

ADV ZINHLE BUTHELEZI: Chair I have just gotten a confirmation that the particular email does not form part of this bundle but a supplementary affidavit will be prepared and those emails be attached.

10 **CHAIRPERSON:** That's a very important letter that you do not have.

ADV ZINHLE BUTHELEZI: Yes it does not form part of this bundle but we will prepare a supplementary affidavit to that session.

CHAIRPERSON: Ms Mpshe will you check if there are other important documents that might not have been included here which are important for us to – for me to understand exactly the extent of what was going at SAA?

MS MATHULWANE EMILY MPSHE: Yes Chair those emails I have and the investigator has them as well.

CHAIRPERSON: Yes, okay.

20 **ADV ZINHLE BUTHELEZI:** We will go through the emails with Ms Mpshe and the investigator.

CHAIRPERSON: Ja, and then a supplementary affidavit can be done and if there more more, check if there are more documents, minutes of memo's ...(intervention)

MS MATHULWANE EMILY MPSHE: That may have been left out.

CHAIRPERSON: ...that are not here but which are important I want to
– I want them to be placed before me.

ADV ZINHLE BUTHELEZI: Thank you Chair.

CHAIRPERSON: Okay, alright.

ADV ZINHLE BUTHELEZI: Yes, let's move onto the next topic.

CHAIRPERSON: But just to round off because I was hoping we would see the letter, as far as you recall it was a letter or email from Ms Kunana addressed to whom, that was saying she was going to buy a shelf company.

10 **MS MATHULWANE EMILY MPSHE:** It was a letter addressed to Mr Dahwa and the Chair was copied.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: On the letter.

CHAIRPERSON: Yes, yes.

MS MATHULWANE EMILY MPSHE: And Mr Peter Tshisevhe was also copied and the way Ms Kunana indicated that she will buy a shelf company and the company will then be registered by Mr Peter Tshisevhe who will then do the registration and who is in the panel of SAA, it is mentioned in the email.

20 **CHAIRPERSON:** For what purpose, what was going to be the purpose of her buying the shelf company?

MS MATHULWANE EMILY MPSHE: It's to form this new consortium.

CHAIRPERSON: That would benefit from the 30%.

MS MATHULWANE EMILY MPSHE: Yes they had to be named Consortium.

CHAIRPERSON: It had to be named Consortium.

MS MATHULWANE EMILY MPSHE: Yes on the engine yes.

CHAIRPERSON: Yes, so the letter of award that was going to that Ms Kunana and Ms Myeni wanted Dr Dahwa to write to Engen, while saying that 30% of this tender will have to go to a yet to be named in effect, a yet to be named consortium.

MS MATHULWANE EMILY MPSHE: That's correct Chair.

CHAIRPERSON: And you are saying that there is a letter or email that Ms Kunana wrote to Dr Dahwa in in effect saying that the consortium,
10 that she would buy a shelf company that would be part of the consortium that should get that 30% of the tender to Engen?

MS MATHULWANE EMILY MPHSHE: that's correct Chair, in addition Ms Myeni also in an email wrote a list of the people that's supposed to be part of that tender.

CHAIRPERSON: Yes. And you've got all of those?

MS MATHULWANE EMILY MPSHE: I have.

CHAIRPERSON: Yes, you also don't have that one?

ADV ZINHLE BUTHELEZI: Yes we will find those documents and
20 prepare a supplementary affidavit.

CHAIRPERSON: Yes please let's get all of them but just examine more if there are more important documents that give, that will give me as follows a picture of what was happening as possible

ADV ZINHLE BUTHELEZI: Will do Chair.

CHAIRPERSON: Okay, thank you.

ADV ZINHLE BUTHELEZI: Yes, Chair let's go the events that led and followed your removal as an Acting CEO now. You were removed as an acting CEO on the 13th of October of 2015, sorry it's November. Chair that October should be November.

CHAIRPERSON: Ms Mpshe feel free to say if your affidavit says something that's not accurate.

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: So we need to make a correction there, is it November?

- 10 **MS MATHULWANE EMILY MPSHE:** No, this is not a correction, it is events leading to so this is correct, statement 102, paragraph 102 is correct, that I am beginning to highlight ...(intervention)

CHAIRPERSON: It's in the wrong heading you mean?

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: It's not in the wrong heading, it is in the correct heading, it's events leading to my removal on the 13th of November, so I am saying in paragraph 102 that it is one of the events started on the 13th of October, it is correct, there's no need for correction.

- 20 **ADV ZINHLE BUTHELEZI:** Yes, oh okay, so tell us about that event.

CHAIRPERSON: Oh, okay I'm sorry, I think I may be confusing both of you. I thought you looked at her as if she said something wrong, that's why I said if there is something in the affidavit that is not accurate feel free to say this is not accurate, did I misunderstand your facial expression?

MS MATHULWANE EMILY MPSHE: You did understand my facial expression Chair.

CHAIRPERSON: Correctly.

MS MATHULWANE EMILY MPSHE: Correctly.

CHAIRPERSON: Oh, what is it she had said wrong?

ADV ZINHLE BUTHELEZI: I think I had said October, she was removed as the Acting CEO on the 13th of October.

CHAIRPERSON: Okay ,no that's fine.

ADV ZINHLE BUTHELEZI: But the correct date is actually 13
10 November 2015.

MS MATHULWANE EMILY MPSHE: Yes, that's correct yes.

CHAIRPERSON: It's been a long day.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Okay, alright. Ms Mpshe continue.

ADV ZINHLE BUTHELEZI: But let's yes, tell us about this board Exco meeting that happened on the 13th of October.

MS MATHULWANE EMILY MPSHE: The Chair called for a Board Exco meeting on that evening of the 13th of October.

CHAIRPERSON: And that's a meeting between the Board and the
20 Executive Committee of management.

MS MATHULWANE EMILY MPSHE: Yes, yes.

CHAIRPERSON: Ja, okay.

MS MATHULWANE EMILY MPSHE: That's a meeting between the Board and the Executive Committee and in that meeting it was Ms Kunana and Myeni the Board members, Dr Thambe didn't attend that

meeting. Excuse me Chair.

So the meeting start quite – I think it started at about six in the evening.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: At the meeting the Chair opened the meeting and it was all about the concern that they have about my performance and about me as the Acting CEO. So they are coming discuss with the Executive Committee, which is my PS and my colleagues about a way forward and they also need advice from my
10 colleagues about what to do with an individual like myself who doesn't follow board instructions, doesn't implement board resolutions, doesn't take instructions from the Board, that really was the gist, the main concern of that meeting, so in that meeting the Chair went on and on and and second-guessing the Board, which is something that – I had a meeting with Ms Kunana and Dr Thambe earlier on where they were called to come and tell me that they are concerned about my behaviour, that I don't implement and I share instructions with the Board with the Exco members, and second-guessing them, so they were you know trying to put me in line, so at this meeting she reiterated the same
20 thing that were held in another meeting with Ms Kunana and Dr Thambe to say that I am not toeing the line, I am not listening, I am not following instructions and you know bordering on insubordination.

CHAIRPERSON: And how soon after – how soon after the meeting that was held in your office was this more or less?

MS MATHULWANE EMILY MPSHE: The meeting was the 2nd of

October, this is the 13th of October.

CHAIRPERSON: Oh about two weeks later.

MS MATHULWANE EMILY MPSHE: Yes Chair.

CHAIRPERSON: Ja, okay, alright.

MS MATHULWANE EMILY MPSHE: And so Ms Kunana I don't remember her ever saying anything and then the Chair went to each and every individual around the table to ask them what they think, what advice can they give her about me, so I remember Moosa Zwane is the that was really vocal and said that he doesn't understand why an
10 executive or CEO wouldn't take Board resolutions, wouldn't implement, wouldn't take instructions from the Board, he doesn't understand it, at SA Technical the Board member is Ms Kunana and he works very well with Kunana, he takes instructions, he implements the Board resolutions.

CHAIRPERSON: What was Mr Zwane at S A Technical, CEO?

MS MATHULWANE EMILY MPSHE: He was the CEO.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: At S A Technical, so supporting the Chair that you know he doesn't understand why is myself, why am I
20 not now implementing board decisions and resolutions and second-guessing the Board and sharing with the Board, with the Exco issues from the Board, and, and, and, so he went on and on and felt that no he just doesn't understand you know why am I not doing that.

ADV ZINHLE BUTHELEZI: Yes, so was Mr Zwane the only member that was supporting the Chair on that particular day?

MS MATHULWANE EMILY MPSHE: That was then yes, the other members had no comments, the other members said that they don't have a problem with my leadership, in fact some of them were very complimentary to my leadership and felt that they feel they belong to the Exco Committee where I consult a lot on the matters and matters relating to the specific areas of responsibilities I allow them to ...(intervention)

CHAIRPERSON: Make decisions.

MS MATHULWANE EMILY MPSHE: To make decisions, or to advise
10 accordingly, so they felt that they were quite comfortable with my leadership and they felt that at that point even the company had stabilised, beginning to stabilise at that point in time, and so on and so on, they all made comments.

At the end of everybody making the comments then I raised my hands and I said to the Chair I feel I have to do - or the Chair then said well they will have to go and deliberate as the Board and I said no Chair can I have a right of reply, and she didn't really want to give me an opportunity then I just ...(intervention)

CHAIRPERSON: Just started speaking.

20 **MS MATHULWANE EMILY MPSHE:** I just started speaking and I said that I wanted to clarify and I wanted to give my commitment to the Board that I will work with the Board, and I will comply for as long as the instructions are legal, are lawful to comply with the policies and procedures to comply with the governance framework, I will make sure that they are, and then are appointed and I said that the Board as an

oversight body, sometimes wouldn't be aware of the policies of the company and it is my responsibility as the CEO or Acting CEO to make the Board aware of the policies of operations or any other matters to that matter, including issues that might be coming from the shareholder, issues of governance, so I said I am committed to do it for as long as it is legal, it is reasonable, it is lawful, it is compliant with the policies, and I then mentioned that the issue of sharing the matters, instructions from the Board, it's because my colleagues are subject matter experts, and then when it comes to procurement I can't make a

10 procurement decision because I'm not a procurement expert. When it comes to commercial matters I will get the advice of a commercial manager, same with operations, and then same with legal, I am not a legal expert, hence I used the in-house legal team to do legal opinions, because that's one of the reasons why they are employed in the company, so I then explained that that's the reason and before we have board meetings I look at the matters arising and I will call the Board members to say be aware, the Exco members, be aware these are the matters arising, this affects this and this in the company so that they are aware, even if it is not an area that affects them as Exco members

20 they are also prescribed officers and by law they are held liable and to be responsible for the running of the organisation so I was taking it from that premise.

So it was not about second-guessing and I believe in openness and transparency and I did say that I believe in integrity as well as long the way. I believe that I have to do my work with integrity so that I

don't have to have any comebacks, so after that sort of putting me down she then says no the Board will apply its mind to this matter, and then that was the end of that meeting of 13th October.

ADV ZINHLE BUTHELEZI: Of the 13th, yes.

CHAIRPERSON: So the whole subject was – was the whole subject your – how you were performing as Acting CEO and what should be done about your performance?

MS MATHULWANE EMILY MPSHE: Yes Chair.

CHAIRPERSON: Yes, and prior to this meeting neither the Chair nor
10 any member of the Board had spoken to you about any of these concerns about the alleged poor performance or whatever it was.

MS MATHULWANE EMILY MPSHE: I had a meeting with Miss Kunana and Dr Thambe.

CHAIRPERSON: That same day earlier?

MS MATHULWANE EMILY MPSHE: No, no, no earlier some time where after I didn't sign the Boqwana Burns.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Yes, and they had a meeting with me and the meeting was to tell me that the Chair is not happy with the
20 way I am carrying on and also not you know taking instructions from the Board and implementing Board Resolutions, so there was that meeting with Dr Thambe and Ms Kunana to talk about that.

CHAIRPERSON: But I take it that at that meeting you did tell them that all the instructions that you had received from the Board or from the Chairperson that were as far as you were concerned lawful, you had

carried out and the ones you had not carried out were those you thought were not lawful, I take it that that's what you said?

MS MATHULWANE EMILY MPSHE: That's what I've explained Chair to them, to Ms Kunana and Dr Thambe.

CHAIRPERSON: Did they take a different view that there were certain specific instructions that were lawful and you didn't comply with or do they not put up any argument as to why those were lawful?

MS MATHULWANE EMILY MPSHE: No Chair there was just talk in general.

10 **CHAIRPERSON:** Okay.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: So I then said the same to the Chair at this meeting of the 13th October, I conveyed the same message that anything which is lawful, is compliant I will and if I believe that the Board is not aware or transgressing a policy I will bring it to their attention and anywhere I would take an instruction as long as it's lawful, and complies with the policies of the company and a memorandum of understanding with the shareholder, legal framework I
20 will comply.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Yes.

ADV ZINHLE BUTHELEZI: Thank you, so that's how that meeting ended then on the 13th of October.

MS MATHULWANE EMILY MPSHE: That's how the meeting ended

Chair.

ADV ZINHLE BUTHELEZI: Yes, then you then make a reference to a meeting that you had in Durban, who attended this meeting?

MS MATHULWANE EMILY MPSHE: Yes, the Chair called me to a meeting in Durban and it was just the Chair and myself. She had called me early Friday evening to come to Durban the next day on a Saturday. Unfortunately, we had a family commitment and I couldn't make it and then I make it first thing on Monday morning and then I went to Durban. And when I arrived there, it was at the Beverly Hills Hotel and it was
10 only the Chair and myself at the meeting.

ADV ZINHLE BUTHELEZI: Yes. So what was discussed in this meeting between yourself and the Chair?

MS MATHULWANE EMILY MPSHE: At the meeting, the Chair was saying first of all, here are concerns from unions about the retrenchment process. In fact, it started first by showing me with praises about what a good job I'm doing and then... (intervention).

CHAIRPERSON: You said he always thought there was danger coming when you were showered with praises by her?

MS MATHULWANE EMILY MPSHE: Yes, Chair.

20 **CHAIRPERSON:** Hm.

ADV ZINHLE BUTHELEZI: And so, and this comes after number of concerns raised?

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: About your performance earlier?

MS MATHULWANE EMILY MPSHE: Ja, this is now 27 October.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: And then she was saying...
(intervention).

CHAIRPERSON: Were the praises, did the praises relate to your performance or something else?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Your performance?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Oh.

10 **MS MATHULWANE EMILY MPSHE:** It was how well I'm performing, how my colleagues are complimentary on my performance.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: And she also noticed that I didn't apply; the job of the CEO had been advertised. She then informed me that she noticed that I didn't apply for the position of the CEO. Why didn't I apply? And I said to her, Chair as you know I did indicate to you that I'm not interested in the position of a CEO of SAA and in any case the position had closed. So that really rules me out. And then she says to me no, no, no if you're interested just forward me your CV.

20 Remember I'm in charge of this process and I'll do the rest. I said, no thank you Chair.

CHAIRPERSON: You mean the – the closing, do you mean the closing date for the submission?

MS MATHULWANE EMILY MPSHE: Applications, yes.

CHAIRPERSON: Of applications had come and gone?

MS MATHULWANE EMILY MPSHE: Yes, had come and gone.

CHAIRPERSON: But she said, if you give her CV.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: She will consider it?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: And after these compliments from my colleagues. And this is now following that meeting of the 13th. So now it says my colleagues give me compliments and then she says to
10 me, oh I'm just wondering also you know if you can see the people who have applied. I said, Chair I'm conflicted and I don't want to know and I'm not part of the process and I think it's not professional. Please don't tell me who applied.

CHAIRPERSON: And this was now before she or the Board could come back to you or exco to say what the outcome was of the application of their mind to the issue they put before exco?

MS MATHULWANE EMILY MPSHE: Yes, Chair.

CHAIRPERSON: Oh.

MS MATHULWANE EMILY MPSHE: They had not communicated
20 formally.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: The outcome.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: So I then she wanted to know what my plan in my life and she says she wants to retire. I said, Chair I'm

going to retire. Even if I formally retire at work, I'm going to continue to work because I have plans you know and plans that I have even beyond retirement don't include me sitting not doing any work. And she wanted to know the plans, I said no plans are personal. Let's rather not talk about that.

CHAIRPERSON: Well, it may mean that she kept an open mind during that meeting. You said some of your colleagues complimented you and so on. Now subsequently she gives praises on your performance and she acknowledges that your colleagues said they were comfortable, 10 they were happy with your performance. Maybe shows she had kept an open mind. What do you say to that?

MS MATHULWANE EMILY MPSHE: It could be.

CHAIRPERSON: It could be, yes.

MS MATHULWANE EMILY MPSHE: Okay, Chair.

CHAIRPERSON: Yes, continue.

MS MATHULWANE EMILY MPSHE: So after that then we close the matter that I'm not interested, I will not apply. So just the issue that you know get it out of the way. So after that she then said to me, there is complaints from the unions that about the retrenchment process that 20 happened which was coming to the finalization at that point if not completed at that time. So I said no I'm quite surprised because even some of the unions have personally come to me to complement the head of employee relations who was facilitating this process and we facilitated this process under the auspices of the CCMA. So there are individual, actually gave the names of individuals that personally came

to me to complement how the manage, Mr Lawrence Erasmus had done this work so well. In fact, in one of the meetings, I think closing meetings to Commissioners who were facilitating the process gave us a compliment as a company and said the process that we've done can actually be used as a template to do Section 189s in companies because most of the time it just becomes problematic. So I then share with her... (indistinct) that news that it was not done properly and and and so I'm not sure what... (indistinct) is referring to. And then from there I then said I had some things that I wanted to discuss with

10 the Chair and I felt that we needed to streamline our communication in our meetings that I'm a structured person. So I said, I made reference to this meeting that she called me on Friday to fly on Saturday to go to a meeting in Durban. I said look, I had family commitments genuinely I had a family commitment. The Saturday we were unveiling the tombstone of my mother-in-law. So there was no way that I could have gone there. So I said let me know and I said to her I prefer that we shouldn't be working over weekends. You know I work long hours already. So I want to dedicate you know the weekends to my family. Even if I'm working but I want to be at home. So and I then said, that I

20 set up times to you know structure when we are going to have meetings and then if there is any issues that you can write to me, put on an agenda and then when we meet we can then discuss. I even offered. I said I don't even mind coming to Durban to meet with you to have a meeting with you if it is not easy for you to come to Johannesburg because it will be a business meeting. It will be our official meeting but

I want you to put structure in our relationship and then the meeting ended and I was driven back to the airport and flew back.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: So there were two things that you discussed, the two of you discussed. One was the question of you and not applying for the position of CEO and her indicating to you that she would be prepared to consider your application even if it was after?

MS MATHULWANE EMILY MPSHE: Yes, Chair. That's correct.

CHAIRPERSON: And that doesn't come across as somebody who
10 speaks like that is not somebody that want things, didn't want you to be CEO. She sadly said, why didn't you apply and if you apply now even if the closing date is gone, I'll consider it. I'm in charge of this process.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: So, I'm saying to you, so is like she wanted you to be CEO?

MS MATHULWANE EMILY MPSHE: It could be interpreted that way, Chair.

CHAIRPERSON: It could be. You say it's a possible interpretation. Then the next thing is she wanted to raise with you a concern that she
20 said labour had expressed about the Section 189 process.

MS MATHULWANE EMILY MPSHE: That's correct.

CHAIRPERSON: It was those two things.

MS MATHULWANE EMILY MPSHE: That's correct, Chair.

CHAIRPERSON: Okay. Thank you.

ADV ZINHLE BUTHELEZI: Thank you. Thereafter you were taken to

the airport. Is that correct?

MS MATHULWANE EMILY MPSHE: Yes, and then I went back.

ADV ZINHLE BUTHELEZI: Yes. And then now tell us about the contact that was made to you by the company secretary on the 13th of November 2015.

MS MATHULWANE EMILY MPSHE: On the 13th of November, I was contacted by the company secretary informing that the Chair has scheduled a meeting with labour in the afternoon and the Chair was coming from North West and then will be in the office in the afternoon.

10 So I then queried to say, the Chair having a meeting with labour when we have a bargaining forum where all labour, bargaining structure. Bargaining forum is a structure with labour where all the issues with labour are being discussed. So... (intervention).

ADV ZINHLE BUTHELEZI: When you say labour, what inference?

MS MATHULWANE EMILY MPSHE: I mean unions. When I'm saying labour I mean trade unions.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: Because this one specifically says, the Chair has a meeting with the unions.

20 **ADV ZINHLE BUTHELEZI**: Yes.

MS MATHULWANE EMILY MPSHE: So my query was, how come the unions request a meeting with the Chair when internally there are processes and fora that can be followed to address matters. So I think the company secretary had communicated such to the Chair. To say that I say that, first of all the union has got no right to summon the

Chair of the Board to meeting. We have internal processes that should be followed if ever there are concerns that coming from the trade union. And then the company secretary then I think communicated the message and then she then come back to me and said that, the Chair that the meeting is going on and you will be at the meeting. So I got a message.

ADV ZINHLE BUTHELEZI: Did you attend that meeting?

MS MATHULWANE EMILY MPSHE: I did attend the meeting.

ADV ZINHLE BUTHELEZI: Yes, then what transpired in this meeting?

10 **MS MATHULWANE EMILY MPSHE:** At the meeting it was Ms Myeni and MS Kwinana, Doctor Thembi wasn't there.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: And it was members of one trade union not all trade unions as it was told that unions. So it was one trade union, South African Cabin Crew Association with the I think the shop stewards and the, yes the leaders in the company in the union. So when I saw that, immediately my inclination was, oh so maybe it is going to be issues relating to cabin crew because this is a cabin crew union; trade union. So I then called Mr Sean Pillay, who is the manager
20 of cabin area and I called Ms Yvonne Kefa who was the ER specialist supporting cabin crew area to come to the meeting and then came to the meeting. And when they came to the meeting, I then introduced them to the Chair and Ms Kwinana. To say that I have called them because I realized that we might discussing issues in the cabin crew area. So I felt that it would be appropriate to have the managers and

the ER that work in this area specifically. And then the Chair opened the meeting. When the Chair opened the meeting, I then in response to her opening, I then I said I wish to put it on record that I'm concerned and I'm very uncomfortable at this meeting that has been arranged in this manner repeating what I said to the company secretary. My belief is that we have different forums within the company where the unions can meet with management and issues can be resolved. And the Chair told me that this is her meeting. I must just shut up and listen and toe the line and I did exactly that.

10 **ADV ZINHLE BUTHELEZI**: Then what was discussed in this particular meeting?

MS MATHULWANE EMILY MPSHE: At this particular meeting what was discussed was the cabin crew complaining about being rostered, about being rostered over public holidays and Christmas and New Year.

CHAIRPERSON: Very operational matters.

MS MATHULWANE EMILY MPSHE: Very operational matters. About uniform, about in the cabin that's cold on the international where they are serving, the galley which is very cold on the international destinations. Sometimes they get flu and all operational matters. So
20 after that meeting that took a while because everybody had to put their piece. The meeting ended and I then left.

CHAIRPERSON: How did it end? The Chairperson had all these complaints and how did the meeting end? What was the basis on which it ended?

MS MATHULWANE EMILY MPSHE: I, when the meeting ended I just

said that there is people who were in that meeting have their managers there. Those are some of the issues that are being resolved. In fact, one of the managers said that they are actually dealing with some of the issues and some of the issues are quite operational issues and that every cabin crew when they apply they know that we are 24/7 operation. At some stage you will work on a Christmas Day. At some stage you will work whatever. For them to raise in that forum they also believe that it was not appropriate but however, I then recommended that Sean Pillay and Yvonne Kefa take the matters and then address
 10 the issues and have a follow-up meeting with the leaders of the union in how they are going to address the matters. That's how the meeting ended.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: And on paragraph 107, the last 2/3 lines there, you express an opinion on what you thought this meeting was meant for.

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: Would you like to place that... (intervenes).

CHAIRPERSON: Hasn't she covered that? Said that meeting was her
 20 meeting?

ADV ZINHLE BUTHELEZI: The last two lines, Chair.

CHAIRPERSON: Oh okay.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Yes, on that will have given an

opinion there. To say that I'm of the opinion that this meeting that was the meeting we've just spoken about was in order to validate reasons to find fault with me and therefore relieve me of the position of acting CEO. It was my opinion.

ADV ZINHLE BUTHELEZI: And what you say that?

MS MATHULWANE EMILY MPSHE: Because there was no, for me it was operational matters. There was no substantive matter that actually required my attention as the acting CEO on that particular meeting and for me it followed up on the meeting in Durban where she then said this
10 particular union was not happy about the 189 process. But at this meeting it was not the 189 process. It was just general complaints.

CHAIRPERSON: But this meeting, did not take place after your Durban meeting with?

MS MATHULWANE EMILY MPSHE: It did take place after that.

CHAIRPERSON: It was after?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Yes, okay.

MS MATHULWANE EMILY MPSHE: Now I'm joining the dots in my mind.

20 **CHAIRPERSON:** Yes.

MS MATHULWANE EMILY MPSHE: And hence I've expressed that opinion.

CHAIRPERSON: But it could be that it may have been the Chairperson maybe not giving effect to the line between operational matters and non-operational matters, policy matters and so on and maybe the union

just complaints to her and said we would like the Chairperson to hear us and she agreed to have a meeting with them and heard them. And that maybe might have had nothing to do with trying to find fault with you. After all she had just praised your performance. So what do you say to that?

MS MATHULWANE EMILY MPSHE: What I'm saying to that is... (intervention).

CHAIRPERSON: That your opinion might not be supported by the facts. She had just praised you in a meeting and it appears that she
10 was even prepared to consider you for the position of CEO on a permanent basis. So why would she be wanting to find reason to get rid of you suddenly only a week after she had praised you?

MS MATHULWANE EMILY MPSHE: Chair, I'm saying can ask you to hold on that thought.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Okay. You will answer me later?

MS MATHULWANE EMILY MPSHE: Yes, Chair.

CHAIRPERSON: Alright, okay. Let's continue.

ADV ZINHLE BUTHELEZI: Let's proceed. Ms Mpshe, tell us about the
20 events of later that very same day of this meeting.

MS MATHULWANE EMILY MPSHE: Later that very same day after I left the meeting, I had actually had a meeting that I had to reschedule for later that I was going to attend. Then I had rescheduled so that I can meet with the Chair. So I then left to go to that meeting that I had and after that meeting, on my way home I received a call from the Chair, Ms

Myeni.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: Saying that there is a Board meeting later that evening.

CHAIRPERSON: Later that evening?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Same day that where you had this meeting with the, this union?

MS MATHULWANE EMILY MPSHE: That's correct, Chair.

10 **CHAIRPERSON**: And at that stage, you had not been informed about any meeting of the Board that would take place later in the day?

MS MATHULWANE EMILY MPSHE: As when I left the office I had not been informed, Chair.

CHAIRPERSON: You had not been informed?

MS MATHULWANE EMILY MPSHE: Yes, Chair.

CHAIRPERSON: Okay. So you get a call on your way home?

MS MATHULWANE EMILY MPSHE: On my way home.

CHAIRPERSON: To say there's going to be a Board meeting later that day or that evening. That evening?

20 **MS MATHULWANE EMILY MPSHE**: Later that evening.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: And Ms Mpshe, how late was this?

CHAIRPERSON: When you got the call?

MS MATHULWANE EMILY MPSHE: It was about five o'clock; about after five when I received.

CHAIRPERSON: Ja, okay

ADV ZINHLE BUTHELEZI: Okay.

MS MATHULWANE EMILY MPSHE: The call; it was a call.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: To say that there's going to be a Board meeting.

CHAIRPERSON: At what time?

MS MATHULWANE EMILY MPSHE: She said half past five.

CHAIRPERSON: Oh.

- 10 **MS MATHULWANE EMILY MPSHE**: And the Board meeting is going to be at the Protea Hotel in Midrand. So I was going to, I was going home. I was going to come back before she actually told me that it was Midrand, I just said to the Chair, I've got an engagement. There is a call a gala dinner for the Thembisa child welfare. I support Thembisa child welfare. There is a gala evening and it's right there at the, at Sunny International right outside of SAA. So I'm just thinking that maybe I should go, get ready and come back and will maybe after I'm ready. I was just thinking. She says, this is an instruction for you to attend the Board meeting. I said okay Chair. She said, the Board
- 20 meeting is at the Protea Hotel in Midrand. It's at half past five and I looked at the time. I said, yoh I'm in Midrand and the traffic in Midrand the other side where I was to get to the Protea but I said no that's fine. I will oblige. I will go to the meeting.

CHAIRPERSON: And about a week or two earlier in your meeting in Durban, you talked about the two of you trying to structure meetings?

MS MATHULWANE EMILY MPSHE: That is correct, Chair.

CHAIRPERSON: Yes, hm. Yes, and what happened? You went to the meeting?

MS MATHULWANE EMILY MPSHE: I go to the meeting.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: At the Protea Hotel.

CHAIRPERSON: You send an apology to the gala dinner where you were going or not?

MS MATHULWANE EMILY MPSHE: No, no I was going; no I didn't send
10 an apology.

CHAIRPERSON: Ja.

MS MATHULWANE EMILY MPSHE: I was going to go to the gala dinner later.

CHAIRPERSON: Ja, you would arrive later?

MS MATHULWANE EMILY MPSHE: Even if it was later.

CHAIRPERSON: Ja.

MS MATHULWANE EMILY MPSHE: Yes. So I then go to the meeting at the Protea Hotel. So as I thought into the reception I was looking. There's a small like office space there. So I went in there and I found
20 Doctor Thembi and Ms Kwinana in that small Boardroom and Ms Myeni was not there; the Chair was not at the meeting. And I suddenly felt some awkwardness about the two of them because Ms Kwinana greeted and Ms Kwinana said, greeted and then said Doctor Thembi must start the meeting. And Doctor Thembi says, no you start the meeting.

ADV ZINHLE BUTHELEZI: Sorry, was it only the two of them? There

were no other executives that attended this meeting?

MS MATHULWANE EMILY MPSHE: There were no other executives; there was no Chair of the Board.

ADV ZINHLE BUTHELEZI: Okay.

MS MATHULWANE EMILY MPSHE: So finally, Ms Kwinana then started the meeting and said the meeting that they have been asked by the Chair to tell me that I'm being relieved on my position as acting CEO. And then I asked, okay when is this effective? They said effective that day. I said it was important that in terms of our framework and that we
10 are regulated, you cannot have a day in an airline where you don't have a CEO in case of unforeseen. You have to have a CEO; it's a legal requirement. So I said then to them that just be aware that this is what's required otherwise, I then asked who now is going to be now the acting CEO and I was informed. Oh, before that she then said that, no the Board has taken a view to rotate executives so that other executives also should get an opportunity in the role of the acting CEO. I said, well that's fair enough. So who is the next person who's going to be the acting CEO. And then I was informed that is Mr Musa Zwane and then I said okay and I said is there anything else. There was nothing
20 else and I left.

CHAIRPERSON: And by the time you left, the Chairperson had not arrived?

MS MATHULWANE EMILY MPSHE: The Chairperson had not arrived.

CHAIRPERSON: Okay, okay.

MS MATHULWANE EMILY MPSHE: As soon as I left, I got into the car I

then called Chairperson.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: And I said, Chair I have just had a meeting with Doctor Thembi and Ms Kwinana. They have communicated the message that you said I must be relieved of the position of acting CEO and I just want to say thank you. She says, yes Thuli but – I said, no you don't have to explain yourself to me. You didn't explain yourself when you instructed me to be acting CEO. I don't think that it's necessary for you to explain yourself. All I'm saying is thank you for the
10 opportunity and for the experience. It is something that I'll always carry with me and I put the phone down.

ADV ZINHLE BUTHELEZI: Yes. So in your experience or according to your knowledge from that time when Mr Musa Zwane started acting on the 13th of November 2015 up to the time when the new CEO was appointed in 2017 if I'm not mistaken, yes, were there other executive that were given a chance to act as an acting CEO as you were told that that was the policy?

MS MATHULWANE EMILY MPSHE: The rotation?

ADV ZINHLE BUTHELEZI: Yes, the rotation system

20 **MS MATHULWANE EMILY MPSHE**: Chair... (intervention).

CHAIRPERSON: Well, let's start first. So did you cease to be acting CEO immediately as you understand the position?

MS MATHULWANE EMILY MPSHE: That's correct, Chair.

CHAIRPERSON: And to your knowledge, the new acting CEO was appointed with immediate effect after you ceased or did he get

appointed with effect from the following day or is that something you never got to understand; to know?

MS MATHULWANE EMILY MPSHE: From what I had seen was that he was appointed and announced I think the following Tuesday.

CHAIRPERSON: Was that the following day or a few days after?

MS MATHULWANE EMILY MPSHE: No, that was a Friday. Then we had the weekend

CHAIRPERSON: Oh.

MS MATHULWANE EMILY MPSHE: And then it was Monday and the, as
10 far as I remember.

CHAIRPERSON: Oh.

MS MATHULWANE EMILY MPSHE: I stand to be corrected.

CHAIRPERSON: But that was the announcement?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: And you don't know whether.

MS MATHULWANE EMILY MPSHE: And the appointment, yes.

CHAIRPERSON: Whether he terms of the letter of appointment, whether it be to effect immediately after you ceased to be.

MS MATHULWANE EMILY MPSHE: Yes, I was not aware.

20 **CHAIRPERSON**: You wouldn't know that?

MS MATHULWANE EMILY MPSHE: No, I wouldn't know that.

CHAIRPERSON: Okay, alright.

ADV ZINHLE BUTHELEZI: Thank you. My question was whether are you, do you have any knowledge of any other executives that acted extensively with Musa Zwane during the period of 2015 November and

2017 when the new CEO was appointed?

MS MATHULWANE EMILY MPSHE: Chair, there was no rotation.

CHAIRPERSON: Mr Zwane acted from the time that he was appointed up to when?

MS MATHULWANE EMILY MPSHE: Up to the 30th of October 2017 when the new CEO at SAA started on the 1st of November 2017.

CHAIRPERSON: And after you ceased to be acting CEO, did you then revert your position, your permanent position?

MS MATHULWANE EMILY MPSHE: That's correct, Chair. I reverted to
10 my permanent position and then I reported into Mr Musa Zwane.

CHAIRPERSON: Yes, so for the rest of the period of his acting you were part of SAA?

MS MATHULWANE EMILY MPSHE: Part of his acting, yes.

CHAIRPERSON: Yes, for part of his acting?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Okay, alright. Continue Ms Buthelezi.

ADV ZINHLE BUTHELEZI: Thank you. And then the next topic that you deal with is now you were now back at your position as general manager HR. The appointment of Ms Phumeza Hansi; what was your
20 involvement in this process?

MS MATHULWANE EMILY MPSHE: My involvement was I'm now back in my position of general manager human resources and position of chief financial officer had been advertised. And at the time as Ms Hansi, it was also seconded as interim CFO and she was seconded from Sizwe Ntsaluba Gobodo and she was working there as an auditor.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: So when we met with Stanton Chase which was the executive search firm that was assigned to recruit the CFO for SAA, we had a meeting where we were shortlisting the candidate who met the requirements in that order of the highest meeting of the requirements to the minimum requirements of the position.

CHAIRPERSON: This is when you were no longer acting CEO?

MS MATHULWANE EMILY MPSHE: That is correct, Chair.

10 **CHAIRPERSON:** Ja, okay.

MS MATHULWANE EMILY MPSHE: So Mr Musa Zwane was with me as a CEO and then there was Stanton Chase and the representatives in there for the shortlisting. And Ms Hansi's CV was given to Stanton Chase and we look at it, we considered CV. Then Ms Hansi didn't make the shortlist and because she didn't meet the requirements.

CHAIRPERSON: What were the requirements that she did not meet if you are able to remember?

MS MATHULWANE EMILY MPSHE: There requirements that she needed to meet was to have extensive experience between five and
20 eight years as chief financial officer of a big organization.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: Preferably an airline.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: And Ms Hansi according to her CV, she is a CA but she has never had a role in finance not even a financial

manager role; finance manager role.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: So she didn't have that experience.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: So she was not shortlisted on that basis. At the end of the shortlisting when we were finalizing the names.

CHAIRPERSON: Was Mr Zwane part of the decision not to shortlist Ms Hansi or did he not take part at that level?

MS MATHULWANE EMILY MPSHE: No, he was but he didn't take part.

10 He didn't say anything.

CHAIRPERSON: Oh.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: But he didn't object to the, to her not been shortlisted?

MS MATHULWANE EMILY MPSHE: At the end of the meeting when we had already had the list of the people who were shortlisted, he then said, Mr Zwane says, the Chair has instructed that Ms Hansi must be shortlisted. So they looked at us, Stanton Chase and looked at us. I said, well I said the CEO said she must be shortlisted because the

20 Chair has instructed. So then they put her CV was the list of the people that were shortlisted.

ADV ZINHLE BUTHELEZI: So is that how she ended up being shortlisted for this position?

MS MATHULWANE EMILY MPSHE: That's how she ended up being shortlisted.

ADV ZINHLE BUTHELEZI: Yes, and from there... (intervention).

CHAIRPERSON: How many others were in the shortlist?

MS MATHULWANE EMILY MPSHE: I think there must have been three or four others.

CHAIRPERSON: Ok, hm. And at that time, she was already acting CFO?

MS MATHULWANE EMILY MPSHE: Ja, she was interim.

CHAIRPERSON: Oh, interim CFO.

MS MATHULWANE EMILY MPSHE: She was seconded.

10 **CHAIRPERSON**: She was seconded.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: To be interim CFO?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Ja.

MS MATHULWANE EMILY MPSHE: But the secondment she was singled out by Ms Kwinana.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: From SNG.

CHAIRPERSON: Yes.

20 **MS MATHULWANE EMILY MPSHE**: To come into SAA.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: There was no process to say, look we are looking for somebody to become an interim.

CHAIRPERSON: Ja.

MS MATHULWANE EMILY MPSHE: Who else can we look at.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: So it was just single out by Ms Kwinana to say, she will come, she will be seconded as an interim CFO.

CHAIRPERSON: Okay

ADV ZINHLE BUTHELEZI: Yes, in fact you do say on top of page 32 that she was irregularly appointed. What process was supposed to be followed for her to be seconded to this position or why do you say it was irregular?

MS MATHULWANE EMILY MPSHE: I was saying it was irregular in that
10 it was an auditor being put in an operational financial officer. Normally auditors they audit the operations including CFO and how they do their work.

CHAIRPERSON: They do oversight kind of work.

MS MATHULWANE EMILY MPSHE: An oversight, yes Chair.

CHAIRPERSON: Ja, hm.

MS MATHULWANE EMILY MPSHE: So for me from that point of view, I felt that it was a conflict of interest and I felt that it was also irregular. And one of the main reasons why it was irregular it was not saying that look we are looking for interim CFO. Was the process that we can
20 engage to find an interim CFO? And it's been done before were we're looking for an interim person and then we agree on the spec of what is it that we're looking for and other people can be recommended and then maybe two or three people are shortlisted, people are interviewed and then we appoint the person. So it was also irregular in that there was no process followed. It was just handpicked.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Thank you.

ADV ZINHLE BUTHELEZI: And then we now know that she was eventually appointed as a CFO in 2016. Were you involved in any of the processes that followed this shortlisting?

MS MATHULWANE EMILY MPSHE: By the time she was appointed I was already on precautionary suspension.

CHAIRPERSON: Yes. I assume there was an interview of the shortlisted candidates for this position of CFO. Do you take part of the
10 interviews?

MS MATHULWANE EMILY MPSHE: No. Subsequent to that the process that followed, chair.

CHAIRPERSON: Ja. Happened when you were no longer there?

MS MATHULWANE EMILY MPSHE: I was not party to that.

CHAIRPERSON: Okay. Yes, thank you.

ADV ZINHLE BUTHELEZI: Thank you, chair. We then move to your suspension. I know that this is maybe an emotional issue for you Ms Mpshe but I would like us to take us through the process as to how it happened starting from the events of January 2016 up to the time when
20 you were suspended in May 2016.

MS MATHULWANE EMILY MPSHE: Chair, I went on leave. I was relieved that was mid-November of my position and I went back to the human resources position. And in the middle of December I then went on leave and I took about almost a month's leave. I just need timeout after that. So I returned to work on the 19th of January. When I returned

to work on the 19th of January, first I was informed that there was a presentation of the State security agency for the rest of the employees who were not able to attend the previous presentations. I attended the presentation and then after the presentation in the afternoon I get called by Ms Ruth Kibuka, who is the company secretary. And she calls me to her office, she has got two brown envelopes and that she says I was told to give you these envelopes. So I said what is it, she says well I don't know what's in the envelopes. So I opened the first envelope and I read the envelope and I read it aloud to her and as I was reading, 10 she said, oh she is so sorry, she apologizes. She was not aware of the content of the.

CHAIRPERSON: The envelope; the actual letter.

MS MATHULWANE EMILY MPSHE: The actual letter.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: And the letter was stating that there's allegations of misconduct against me which were about eight or 10. I cannot remember. It was a long list of allegations of misconduct.

CHAIRPERSON: And the letter was signed by who?

MS MATHULWANE EMILY MPSHE: The letter was signed by Mr Musa 20 Zwane.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: So I can ask Ms Kibuka that I was aware that Mr Musa Zwane was out of the country and he left on a Saturday. So where did he get the letter? Who handed her the letter? She then said the letter was handed to her on that day Monday morning

by Mr Lester Peter. Mr Lester Peter at the time was a contract manager in procurement at the time. So I then said to Ms Kibuka, she was very uncomfortable. I said no it's okay, you are out of it. Don't worry about it. I took both envelopes to her, I said you are out of it. I'll handle this matter. And then I went to my office and then I wrote an email to Mr Zwane and said that and I copied Ms Kibuka. I said I have received these two letters. Oh, going back, she also said that I was given these letters and I was told that you need to go on leave. So I said to Ms Kibuka, I have just come back from leave. So I'm not going on leave.

10 I'm not sure if Mr Zwane is aware that I have just been on leave. So I'm not going on leave and I'll take leave... (intervention).

CHAIRPERSON: That was before you read the letter?

MS MATHULWANE EMILY MPSHE: Yes, that I must take leave. So I read the letter. So and then I took the letters, I go to my office and in my office I wrote an email to Mr Zwane to say I have received two letters. They are in my possession. I took them from Ms Kibuka. I'm raising, I raised a number of things. One I'm raising the fact that he gave this letter of this nature to Ms Kibuka who is in terms of the hierarchy in the organization lower in the hierarchy and I felt that you
20 could have given to my peer or anybody at that level of my same level in the organizational hierarchy. And secondly, I don't understand why it seemed that there was a sense of urgency around it. When I read the allegations I didn't pick up any sense of urgency because some of those allegations were matters that happened in 2012 and we were.

CHAIRPERSON: 2012?

MS MATHULWANE EMILY MPSHE: 2012 and we were in 2016 January.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: So I said for me it doesn't look like there's any sense of urgency on this matter. So the letter indicated that there needed to be, I needed to respond by the Friday. So I then said on the email.

CHAIRPERSON: What were you supposed to respond to? Was it saying?

MS MATHULWANE EMILY MPSHE: To these allegations.

10 **CHAIRPERSON:** Oh to the allegations?

MS MATHULWANE EMILY MPSHE: To the allegations, yes.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: Yes. So I said now that you're not here I need to meet with you for you to give me context and the background as to where did these allegations come from. So because I haven't met with you and you are out of the country, the Friday deadline can't apply because then we need to sit and you need to explain to me and then after that we can then decide on a new deadline to the response. And then I then sent the email to him and he didn't
20 respond. And in the afternoon when I went home, in the afternoon just as I left the office I received a call from a journalist called Craig McCooney from... (indistinct). He identified himself as such and then he says I am phoning you in connection with your suspension if not pending suspension. I said to him I don't know what you're talking about. He says, no I hear it from a reliable source. I have reliable

sources within SAA that you are going to be suspended if not suspended already today. I said I'm sorry I don't know what you're talking about and please don't call me and then I put the phone down. And then he followed up with a text message to say that I really like to speak to you. I can speak to you off the record but I like to know what's happening. So I didn't respond to his text message. I mean ended up the call with him, I said please don't call me. The following day at work I got a call from another number that I don't know. So I didn't respond to the number and then I then got a text message from this number that

10 says that my name is Carol Payton from the Business Day and I'm calling in connection with your suspension. I like to speak to you. I didn't respond and she followed up with a text message to say please I like to speak to you. I'm aware that you had a challenging time with the chair, Ms Myeni and I like to know and other people are saying that you, you know you didn't comply to what Ms Myeni was asking you to do. So this could be an issue of getting back at you so I really like to speak to you. I can even speak to you off the record. I didn't respond. And then I got another call, the same, the following day. That is the Tuesday now, Tuesday the 20th. Another call from this, I can't

20 remember Elizabeth something that also called and same matter of my suspension. So... (intervention).

CHAIRPERSON: Yet to know you were not suspended as far as you knew?

MS MATHULWANE EMILY MPSHE: No, I was not suspended.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: I was given a letter with allegations of misconduct.

CHAIRPERSON: Yes, to which you were supposed by.

MS MATHULWANE EMILY MPSHE: Which I was supposed to respond to. And then later on, on that day I received a call from one of the officials at National Treasury asking me to say they have received calls from journalists about my suspension. So what is going on? So I said to her look I'm in the office right now, I'm not suspended. I have also had those queries which I have not responded to but what I can tell you is
10 now an official from National Treasury is that I now have these allegations of misconduct but it is not a suspension. Musa is not here. He's overseas and I haven't responded and I have written to him that I will start responding once I hear from him what is the background and the context to these allegations. So we left it at that and then in that evening I then, you know I copied those text messages into an email and then I sent them to Mr Zwane on an email and I said to Mr Zwane, yesterday when I left I got this. I explained that this and then I posted the text messages on email to say that I'm very surprised that I thought that you had given the letter to Ruth who then indicated to me that the
20 letter was given by Lester Peter. So as far as I am concerned, it's Ruth and myself and you who know about this matter. So where is this information coming from which now seemed to be leaked to the media that I'm suspended. And then he responded to say that he doesn't know anything about where the media get the information from. So I just left it at that. And he did come... (intervention).

CHAIRPERSON: As a matter of interest, who was acting Mr Zwane's position while he was overseas during that time?

MS MATHULWANE EMILY MPSHE: There was no one acting.

CHAIRPERSON: Hm. Okay.

MS MATHULWANE EMILY MPSHE: There was no officially acting.

CHAIRPERSON: Yes, okay.

MS MATHULWANE EMILY MPSHE: Okay. What then happened, chair, was Mr Zwane did come back from these overseas trip and we were not able to meet. He kept on trying to get time in his diary and we were not
10 able to meet and I think we managed finally to meet in about early in February; first week of February or so. And when we finally met, he came to my office and we sat across at a roundtable in the office; sat across on the table. I sat with him and he didn't establish eye contact. And he walked in as if, you know he was tired and sat down and I then said to him.

CHAIRPERSON: Was he like dragging himself?

MS MATHULWANE EMILY MPSHE: Yes, yes. So I then said to him I really wanted to know what happened. He was my boss for just about two weeks and then I went on leave. On the first day I come back from
20 leave I get all these allegations of misconduct signed by him. So where do they come from. So he's really never been my boss. He's been my colleague as a member of exco. So I said we've been colleagues. We've had a good relationship with colleagues. I have conducted myself in a way that I was exemplary as a leader in the organization and I've never found with misconduct or anything in my whole career.

And now it what I consider to be the peak of my career I'm now given this which is tainting my reputation and my record. I said I don't understand it. Please explain to me. And I said these things came back as far as 2012. What have you got to do now we are on 2016? What is going on? He then said to me. His head was down. He never really established eye contact with me. He said it is not me, it's the board. I said who in the board. He said it's the chair. I said oh okay. So you are carrying out an instruction from the chair and he didn't respond. And I said okay that's fine let's just agree on the reasonable date for me to
 10 respond back because to respond I will respond back to you on these allegations. And then we just changed the date on those two documents, signed, he took the one document, I took the one document and he left. And following on that I contacted an attorney.

CHAIRPERSON: In terms of the allegations that were in the letter, those things that happened when he was not your boss so to speak?

MS MATHULWANE EMILY MPSHE: All of them.

CHAIRPERSON: All of them? So for all intents and purposes he knew nothing about them or he may have known something but he was not.

MS MATHULWANE EMILY MPSHE: Party to.

20 **CHAIRPERSON:** He was not party to them and he was not in charge of you?

MS MATHULWANE EMILY MPSHE: No, he wasn't, chair.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: One was that refusal to discipline Mr Wolf Meyer. Another one was.

CHAIRPERSON: That's the one where you have said you were prepared to discipline him but the board, the chair must give you the legal opinion and the investigation report which you never got?

MS MATHULWANE EMILY MPSHE: That is correct. Which I didn't get.

CHAIRPERSON: That was one of them?

MS MATHULWANE EMILY MPSHE: That was one of them.

CHAIRPERSON: Another one?

MS MATHULWANE EMILY MPSHE: Another one was putting SAA and National Treasury into disrepute by refusing to cooperate with State
10 security agency. That letter.

CHAIRPERSON: Yes, yes.

MS MATHULWANE EMILY MPSHE: I have referred to.

CHAIRPERSON: Yes, yes.

MS MATHULWANE EMILY MPSHE: And the other one was without due course and justice adjusting the salary of Doctor Dahwa.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Another one was.

ADV ZINHLE BUTHELEZI: Sorry, when did that allegedly happened?

MS MATHULWANE EMILY MPSHE: Pardon?

20 **ADV ZINHLE BUTHELEZI**: The adjusting of the salary.

MS MATHULWANE EMILY MPSHE: Mr Dahwa when he, it was a year or two before that.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: It is also things that had.

CHAIRPERSON: Happened much earlier.

MS MATHULWANE EMILY MPSHE: Before, yes.

CHAIRPERSON: Okay no, that's fine.

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: Proceed.

MS MATHULWANE EMILY MPSHE: And then one was signing the Airbus contract without delegation of authority.

CHAIRPERSON: Yes. What was, when had the most recent of them happened?

MS MATHULWANE EMILY MPSHE: The most recent of them was the
10 matter of Mr Wolf Meyer, of the discipline of Mr Meyer.

CHAIRPERSON: Which was about how long previously?

MS MATHULWANE EMILY MPSHE: I think the correspondence with Mr Meyer was sometime in October.

CHAIRPERSON: Oh that same year?

MS MATHULWANE EMILY MPSHE: The previous year 2015 when I was acting CEO.

CHAIRPERSON: Oh yes, the previous year ja.

MS MATHULWANE EMILY MPSHE: Yes. This was now January 2016.

CHAIRPERSON: Okay yes.

20 **MS MATHULWANE EMILY MPSHE:** Yes.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: So those were the things that the most recent one was Mr Meyer.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Discipline of Mr Meyer.

CHAIRPERSON: Yes, okay.

MS MATHULWANE EMILY MPSHE: Yes, so there were a lot of others, appointment of other people in other places and and and.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: So I then said it's okay. I will respond. And then I consulted a lawyer and the reason why I consulted a lawyer, because I knew that this process once it started and I have seen it and I've experienced it, how if it can be bulldozed and you can just be dismissed without due process. So I felt that I was going to get
10 an attorney to make sure that I have somebody who can defend me and protect me along the process. That's what I engaged my attorney and then we responded to the allegations of misconduct. My attorney was contacted by SAA to say, you know then it was response from attorney to attorney and then it was quiet.

ADV ZINHLE BUTHELEZI: Tell me this period were you still working or did they insist that you go on leave or you were still working?

MS MATHULWANE EMILY MPSHE: No, no, no I was still working.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: And I then said that I'm not taking
20 leave, I'm not duress the company. These matters are matters that happened long time ago and I continued to work and I was continuing to work.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: Yes.

ADV ZINHLE BUTHELEZI: And you are saying your attorney responded

to SAA attorneys. Who were SAA attorneys?

MS MATHULWANE EMILY MPSHE: SAA attorneys were ENS.

ADV ZINHLE BUTHELEZI: Okay.

MS MATHULWANE EMILY MPSHE: So my attorney responded to ENS. They got their response and it was very quiet. It was February. I think sometime mid-March my attorney followed up with an attorney from the SAA attorney.

CHAIRPERSON: That is not you had responded to the allegations?

MS MATHULWANE EMILY MPSHE: Yes.

10 **CHAIRPERSON**: By then?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Ja, okay.

MS MATHULWANE EMILY MPSHE: We haven't got any response.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: And then my attorney followed up with... (intervention).

CHAIRPERSON: And you responded substantively to all these allegations?

MS MATHULWANE EMILY MPSHE: With a bundle.

20 **CHAIRPERSON**: Ja.

MS MATHULWANE EMILY MPSHE: With a bundle, chair.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: So then my attorney followed up in March with ENS to say what's happening.

CHAIRPERSON: What's the way forward? What's happening?

MS MATHULWANE EMILY MPSHE: Yes, we have responded.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: And then ENS responded to the fact that no we haven't heard; we have no brief. We did for the response but we don't have a brief. So that's March. So I continue to work until sometime in mid-April. In mid-April my attorney calls to say that he has got a call from another SAA attorney who is now handling my matter that they are now taking the matter forward. And he then called ENS and asked them that how come they haven't informed him that SAA has
10 now transferred the matter to this new attorney, BMK. So the SAA attorney, ENS says no we still got the file. We have not been informed that we are not handling the case. So we have not even done the handover to BMK. So and then, then ENS was waiting for BMK to contact them and it never happened. There was no file transfer and now we then have; my lawyer has to now deal with this BMK new attorneys. And then the attorneys forward them the responses that their allegations of misconduct. Here our responses, we haven't heard from the company but before that when my attorney consults ENS to say there's a new attorney taking that like this, ENS was surprised and said
20 between attorney and attorney said I'm surprised because we explained that based on the responses there was no basis for a disciplinary matter. So maybe they didn't like our response. Now my attorney relates to me.

CHAIRPERSON: Tells that, tells you that, ja.

MS MATHULWANE EMILY MPSHE: Yes, yes. So then, then it's now

BMK. Then my attorney says let me put you up to speed. Here are the allegations, here's our response, give it to them and this is the middle of April sometime. On the 5th of May I was the office. We were getting to the end of the financial year doing performance reviews. So I was busy with performance reviews with my direct reports. I got a call from the PA of the CEO Mr Musa Zwane to say he wants a one-on-one meeting with me in the afternoon. So I said, okay but you must tell me what time because I have people lined up to do performance reviews and I need to know so that I can manage my dairy accordingly. Then

10 she said 4 o'clock. I said no that's fine and can you please forward the agenda so that I prepare for the meeting. And then she came back and said no, he says there is no agenda. Okay. I completed what I needed to do and then carried on with my emails; catching up with emails. At about 16h20, Mr Zwane comes to my office and he walks in with Ms Kwinana and then I welcome them to the table in my office and then we sit.

CHAIRPERSON: So the meeting is in your office?

MS MATHULWANE EMILY MPSHE: It's in my office.

CHAIRPERSON: Ja.

20 **MS MATHULWANE EMILY MPSHE**: Yes so I thought it was a one-on-one with Mr Zwane but he comes with Ms Kwinana. So we sat there and they, then Musa says I hear you wanted an agenda. I said you know yes, you know I am always so formal and I don't like attending meetings when I'm not prepared. He says no there's nothing for you to prepare. We've got this letter for you. There's two letters for you. So the letter

on the desk; they put the letter on the desk. So I don't touch the letter. I look at the letter. I read the letter and I said to them I am not acknowledging receipt of this letter and my matter is handled by my attorney. So can you... (intervention).

CHAIRPERSON: What was the letter saying?

MS MATHULWANE EMILY MPSHE: The letter was my suspension with immediate effect.

CHAIRPERSON: Suspension, okay. Hm.

MS MATHULWANE EMILY MPSHE: So I said to them, you need to refer
10 this to my attorney because my matter is handed over to my attorney. I'm not dealing with this directly with the company. So Ms Kwinana said, do you always have to be so difficult. Is it just your own thing of being difficult or is it law? I said, Ms Kwinana I'm not sure how much experience you've had with attorneys. Once you have handed your matter to your attorney you are not going to be having dealings with other people on the same matter. It is on the principle. It's not being difficult. So on that note I gave them the letter back and I didn't sign the letter so they left the office. And immediately after they left the office, I packed my bag and I left and I called my lawyer when I was in
20 the car and he said, yes to make sure you are being suspended. We'll talk about it tomorrow but you did right by leaving. So I left. That was the 5th and then we had an appointment with my attorney on the 6th. On the morning of the 6th, I received a call from a colleague.

CHAIRPERSON: This is in May now?

MS MATHULWANE EMILY MPSHE: This is in May. Ja. The previous

day I was suspended and on the morning of the 6th I received a call from a former colleague that asked me where am I. I said I'm at home and he says, oh thank God you are at home because I have been given an instruction to march you out of the premises. So if you are stay home don't come. I said no I have no intention of coming. I'm actually going to see my attorney later this morning.

ADV ZINHLE BUTHELEZI: Sorry, who was this colleague and what position was this colleague?

MS MATHULWANE EMILY MPSHE: He was in security.

10 **ADV ZINHLE BUTHELEZI**: Oh okay

MS MATHULWANE EMILY MPSHE: He was in security at SAA; internal security at SAA. That day it was also, they were busy with security because that's the date that the former president visited SAA. The former president visited SAA on the 6th of May.

CHAIRPERSON: Former president, Mr Zuma?

MS MATHULWANE EMILY MPSHE: Mr Zuma, yes.

CHAIRPERSON: Yes, okay.

MS MATHULWANE EMILY MPSHE: Visited SAA on the 6th of May. And he says we are busy now preparing and sweeping because you know
20 the president is coming to SAA. So that really was the suspension on the 5th of May and consulted with my attorney and within had to wait for the charges because we had responded to the allegations. And I didn't receive; we didn't receive any correspondence from SAA or SAA attorneys until about the 6th of August.

CHAIRPERSON: That was a long time.

MS MATHULWANE EMILY MPSHE: It was a long time, chair.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: Where I was asked to come and collect the charges and the charges were the 6th of May.

CHAIRPERSON: Maybe before we talk about the charges.

MS MATHULWANE EMILY MPSHE: Sorry 6th of August.

CHAIRPERSON: Before we talk about the charges, Ms Buthelezi are her representations or is her response to the allegations in the bundle?

ADV ZINHLE BUTHELEZI: Yes, they are in the bundle.

10 **CHAIRPERSON:** Ja, letter identify that. I knew you were allowing her evidence to flow

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Ja, but just let her identify that and.

ADV ZINHLE BUTHELEZI: Ms Mpshe, would you please look at under tab 58 in bundle. I think it's the last Annexure, bundle 15 DD15B.

MS MATHULWANE EMILY MPSHE: Yes, this is not my responses to allegations. This is a representation.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: That I was asked to do.

20 **CHAIRPERSON:** After suspension?

MS MATHULWANE EMILY MPSHE: After, ja in 2017.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Much later.

CHAIRPERSON: Oh okay. No, I'm talking about the response of the allegations before she was suspended.

ADV ZINHLE BUTHELEZI: No, that I don't have.

CHAIRPERSON: They are not here?

ADV ZINHLE BUTHELEZI: Yes, I don't that in the bundle.

CHAIRPERSON: They should be here.

ADV ZINHLE BUTHELEZI: We will consult Ms Mpshe and make sure that we get that.

CHAIRPERSON: And the letter that she was given which set out the allegations, where is it? Is it here?

MS MATHULWANE EMILY MPSHE: It's part of that.

10 **CHAIRPERSON**: It's not here?

ADV ZINHLE BUTHELEZI: It's not here.

MS MATHULWANE EMILY MPSHE: No, it's not here.

CHAIRPERSON: Okay, no those things are important.

ADV ZINHLE BUTHELEZI: We will add it.

CHAIRPERSON: That letter is important.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Her response to those allegations is important.

ADV ZINHLE BUTHELEZI: Yes.

20 **CHAIRPERSON**: The letter of suspension is important. What came after that, all of those things are important.

ADV ZINHLE BUTHELEZI: I'll do so, chair.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: Thank you.

CHAIRPERSON: Please make all of those things available. I had already said whatever other documents may be important but all of

those are important in the context of whether there was a proper case for against you because part of what one is looking at is whether you are just complaining in circumstances where the management or the acting CEO or the board had a proper reason to put allegations against you. Had a proper reason to suspend you and or whether these processes were being abused for other agendas. So therefore it's important to see what was, what were the allegations, what was your response because when those who took those decisions come here they will need to deal with those as well. If your response was a good response, what did they have in response to that. How did they proceed with disciplinary action in the light of those responses? So it will be important for the Commission to look at those documents.

MS MATHULWANE EMILY MPSHE: Okay, chair.

CHAIRPERSON: Ja. Okay.

ADV ZINHLE BUTHELEZI: Thank you. Then proceed then from what happened.

MS MATHULWANE EMILY MPSHE: Yes. On the 6th then I was given the charges now.

ADV ZINHLE BUTHELEZI: Yes.

20 **MS MATHULWANE EMILY MPSHE:** What I have been charged on.

ADV ZINHLE BUTHELEZI: The 6th of August?

MS MATHULWANE EMILY MPSHE: 6th of August.

ADV ZINHLE BUTHELEZI: Yes.

MS MATHULWANE EMILY MPSHE: In 2016. So... (intervention).

CHAIRPERSON: Was it some of the allegations that you had

responded to or was still exactly the same more or less allegations?

MS MATHULWANE EMILY MPSHE: It was a completely new thing.

CHAIRPERSON: It was a completely new thing?

MS MATHULWANE EMILY MPSHE: It was not related to the other.

CHAIRPERSON: Oh okay.

MS MATHULWANE EMILY MPSHE: Completely new.

CHAIRPERSON: Okay. Hm.

MS MATHULWANE EMILY MPSHE: Yes, chair.

CHAIRPERSON: A new case altogether more or less?

10 **MS MATHULWANE EMILY MPSHE:** No, I think two or one of those charges.

CHAIRPERSON: Remained?

MS MATHULWANE EMILY MPSHE: Two of those charges yes flowed from the.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: The previous allegations, yes.

CHAIRPERSON: Okay, okay.

MS MATHULWANE EMILY MPSHE: And then the others were completely new matters. And I went to collect the charges on the 6th of
20 August and the hearing was supposed to happen in the following week of which I had already applied for leave and Mr Zwane had approved the leave and we were going overseas.

CHAIRPERSON: Before suspension? You had applied for it for leave before suspension?

MS MATHULWANE EMILY MPSHE: No, whilst I was on suspension.

CHAIRPERSON: Oh while you were on suspension?

MS MATHULWANE EMILY MPSHE: Yes. While I was on suspension, I on a daily basis I had to report to the CEO to say I am reporting for duty.

CHAIRPERSON: How do you report for duty when you are suspended from duty?

MS MATHULWANE EMILY MPSHE: On an SMS.

CHAIRPERSON: Yes, but still you are suspended from duty. That means don't report for duty but you were asked to report?

10 **MS MATHULWANE EMILY MPSHE**: Yes, I was asked to report.

CHAIRPERSON: And you reported?

MS MATHULWANE EMILY MPSHE: And I reported.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: And what I also said that the date that they had set for was when already my leave was approved and I wouldn't be in the country during that time. So I didn't understand how come this was not aligning to what he had approved. So I then said we will, my attorney said we will look at the dates of the hearing when I return from the. And when you return we set up the new dates and as
20 we were setting up the new dates, I changed attorneys.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: So I then moved attorneys.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: So I asked for a postponement once because we then changed attorneys.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: The other times it was not a postponement. It was because I was already had leave that was approved.

CHAIRPERSON: Yes, yes.

MS MATHULWANE EMILY MPSHE: And I was traveling.

CHAIRPERSON: It was wrong of them to have fixed a date when they knew you were going to be on leave.

MS MATHULWANE EMILY MPSHE: Yes.

10 **CHAIRPERSON**: Ja.

MS MATHULWANE EMILY MPSHE: Yes, yes. So I then changed attorneys and then we... (intervention).

CHAIRPERSON: Before you proceed. Let me just go back a little bit. If you look at the letter of suspension and you look at the new allegations, what was the position was there correlation between the two or was the letter of suspension based on the previous allegations or was there a connection with the new charges?

MS MATHULWANE EMILY MPSHE: No, the suspension was saying that they are not going to be investigating because they believe there is a
20 basis.

CHAIRPERSON: Oh.

MS MATHULWANE EMILY MPSHE: On the matters that were raised.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Despite my response.

CHAIRPERSON: Oh.

MS MATHULWANE EMILY MPSHE: They are not going to be investigating.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And then they believe that it's in the best interest of the company that I be not be in the company,

CHAIRPERSON: Yes, okay.

MS MATHULWANE EMILY MPSHE: I must be suspended.

CHAIRPERSON: Okay.

10 **MS MATHULWANE EMILY MPSHE:** Despite that all along I had been working.

CHAIRPERSON: Yes, okay.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Okay. So you arranged, you changed you got a new attorney?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: And the date was arranged?

MS MATHULWANE EMILY MPSHE: Yes. And the date was arranged and then we met.

CHAIRPERSON: Was this now September or still August?

20 **MS MATHULWANE EMILY MPSHE:** I think now we meeting in September.

CHAIRPERSON: Yes, hm.

MS MATHULWANE EMILY MPSHE: We are meeting in September to then receive the, to set up the new dates with the new attorneys. So we set up the new dates and then we agreed that we need to exchange

information, exchange bundles and then come up with a date and the date didn't happen. I was not given. I got a response that is saying they don't access to the information that I was requiring because now that I have charges I had to prepare for my disciplinary case. So we said information. I needed to get access to my laptop and some of the information so that we can be able to prepare for the charges that have been put forward. And that took a while and we didn't receive the information. Once we were still on there and then it was September 2016, yes. Then it was a mid-term budget in 2016. Minister Pravin was
 10 a Minister of Finance and in his address of the mid-term budget, Mr Pravin mentions that.

CHAIRPERSON: Mr Gordon.

MS MATHULWANE EMILY MPSHE: Mr Gordon, Minister Gordon.

CHAIRPERSON: Pravin is the name

MS MATHULWANE EMILY MPSHE: Thank you, chair. Minister Gordon mentioned that about SOCs in particular SAA and they have appointed a new board and one of the first responsibilities or key responsibilities of the board is to review the suspensions and dismissals of some executives. By that time, I was on suspension, Doctor Dahwa was
 20 dismissed, Ms Cynthia Stimple I think was on suspension. Mr Sylvain Bosc was on suspension by that time.

CHAIRPERSON: What's the last one you mentioned?

MS MATHULWANE EMILY MPSHE: Mr Bosc.

CHAIRPERSON: Oh yes.

MS MATHULWANE EMILY MPSHE: Yes, he was also on suspension by

the time. So Minister of Finance said one of the things is that they will look into the suspension to see if you know, process was followed and the just course was done. That was in September. End of September my attorneys wrote to the Minister and then copied Mr Kholisi of BMK Attorneys, copied the chair of the board Ms Dudu Myeni but wrote directly to the Minister to raise my plight and also to say to the Minister in your state of the, SONA, not SONA. In your budget speech you mentioned this. It was now the end of September. So my attorney was saying please be aware we are representing Ms Mpshe and Ms Mpshe
 10 we believe there is no ulterior motives why she's been suspended, why she has been charged and we responded on this and this is the plight and the letter is somewhere in the bundle that the attorney wrote to the Minister.

ADV ZINHLE BUTHELEZI: This letter is Annexure TM55. It's under tab 55.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: It is in the bundle.

CHAIRPERSON: Oh, it might not be necessary to go into it, ja.

MS MATHULWANE EMILY MPSHE: Ja it might not be necessary.

20 **CHAIRPERSON:** Yes.

MS MATHULWANE EMILY MPSHE: So that was the gist of the letter and they even sent a clip that was cut from the speech, a video clip that was cut from the speech where he mentioned. So it was sent to the office of the Minister and that the end. I think 28th of September. There was no response. I think the next follow-up response to the office of the

Minister was in November sometime.

ADV ZINHLE BUTHELEZI: It's December 2016. It is also in the bundle.

MS MATHULWANE EMILY MPSHE: It was 2nd of December, was it?

ADV ZINHLE BUTHELEZI: 6th of December.

MS MATHULWANE EMILY MPSHE: 6th of December, was a follow-up from the Minister from the letter of September. We didn't receive any response to that.

CHAIRPERSON: In the meantime, no date has been agreed for the hearing?

- 10 **MS MATHULWANE EMILY MPSHE**: In the meantime the date was not agreed but what we then had a formal meeting with the Presiding Officer which was an external Advocate and with Kholisi who was also representing SAA as the disciplinary officer and with my attorney. In there we decided on the way forward and then we agreed that before we actually come up to the date what we needed to do was to get access to SAA's witnesses and also try and get the information that I need to get to allow and arrange for me to get the information. So that was the arrangement that was done and that was agreed and it was recorded and it was formal that we had that meeting. So the Presiding
- 20 officer was then going to come back once we had given him a date after we have had this administrative issues out of the way of interviewing the witnesses and then me getting information; that's the outstanding information. And then we then arranged to have a meeting with the witnesses at SAA and we interviewed the witnesses and the witnesses were collaborating my story and along the line Mr Kholisi of BMK got

upset and said that he has got hostile witnesses.

CHAIRPERSON: Oh the interviewing of SAA witnesses occurred in the presence of SAA's external attorney?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Mr Kholisi.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: So it was your attorney, yourself?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Mr Kholisi

10 **MS MATHULWANE EMILY MPSHE**: Yes.

CHAIRPERSON: And you were interviewing these witnesses?

MS MATHULWANE EMILY MPSHE: The witnesses, yes.

CHAIRPERSON: And these witnesses what they were saying was supporting your defence, your story?

MS MATHULWANE EMILY MPSHE: That's correct, chair.

CHAIRPERSON: And then Mr Kholisi they were hostile witnesses.

MS MATHULWANE EMILY MPSHE: Yes, he said they were hostile witnesses and he said they actually struggled to find witnesses because people didn't want to testify against me. So in addition we ask

20 him to give us a bundle and then in the bundle he had statements from the witnesses and the statements from the witnesses were not signed. So when we were interviewing the witnesses and we asked about the statements that were not signed the witnesses that those statements are not what we gave; that is not the information.

CHAIRPERSON: That the told the attorney?

MS MATHULWANE EMILY MPSHE: That they told the attorney.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: So they have their own statements that they have signed that they have given us; that they will give us and they gave us which statements were different.

CHAIRPERSON: And he saw both the ones that were given to you and those that were in Mr Kholisi's possession?

MS MATHULWANE EMILY MPSHE: Yes, chair.

CHAIRPERSON: And they were different?

10 **MS MATHULWANE EMILY MPSHE**: They were different.

CHAIRPERSON: Did the ones that were in Mr Kholisi's possession implicate you?

MS MATHULWANE EMILY MPSHE: They were implicating me, chair.

CHAIRPERSON: And the ones that were given to you that the witnesses said were their statements were supportive of you?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Of your story?

MS MATHULWANE EMILY MPSHE: Of my story.

CHAIRPERSON: Yes, and those were signed?

20 **MS MATHULWANE EMILY MPSHE**: Those were signed.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And over and above that one of the statements, one of the witnesses had already given me an affidavit in April already. So the statement that was there and what was in the affidavit completely different. So they were also saying that they, he is

not trusted, he is not honest in that he is putting things that were not said; putting things that implicating me or making of a case which is not what they said. So the day after we had interviewed the witnesses, the one witness called me and called me and said she was called to a meeting with the then acting GM HR who was taking my place and to say that she's a hostile witness and why did she respond and behave the way that she behaved. And then she said well, I have told the truth and I can even show you my statement. So... (intervention).

ADV ZINHLE BUTHELEZI: Sorry Ms Mpshe, if I may disturb you. Do
10 you still have the statements? The ones that you were given by these witnesses and the ones that you got from Mr Kholisi?

MS MATHULWANE EMILY MPSHE: Unfortunately, I lost my statement when I handed over my files to the Commissions investigators.

CHAIRPERSON: I'm sure the investigators have got it if you gave.

MS MATHULWANE EMILY MPSHE: Chair, I tried because those were the only. When I gave them I said look I'm giving you with the trust that I'll get them back.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And what I got back half the stuff
20 was missing, half the stuff was; I lost that kind of evidence. I can find it but yes.

CHAIRPERSON: Well, will you please give Ms Buthelezi the names of the investigators to whom you handed over that information, those statements.

MS MATHULWANE EMILY MPSHE: They were; they know who it is.

CHAIRPERSON: Oh she has got; she knows the names?

MS MATHULWANE EMILY MPSHE: No, Ms Buthelezi doesn't know. Mr Kirtland knows.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: I'll follow-up.

CHAIRPERSON: Ja, she will follow up but I would like a report later on because those statements are important.

ADV ZINHLE BUTHELEZI: Yes, Chair.

CHAIRPERSON: Ja. Yes, thank you.

10 **MS MATHULWANE EMILY MPSHE**: And then one of the witnesses who was the head of security and one of the allegations that I was, was in the allegation and now is a charge is that I abused... (intervention).

CHAIRPERSON: Maybe Ms Mpshe, before we leave this part. I would like you to send something in writing may be to the Sector of the Commission, acting secretary or hand it over to Ms Buthelezi that says exactly what it is that you had handed over. List them and what it is that you got back so that one knows exactly what you didn't get back and who you handed it over to and who gave you back what. Okay?

MS MATHULWANE EMILY MPSHE: I will, chair.

20 **CHAIRPERSON**: Thank you.

MS MATHULWANE EMILY MPSHE: Okay.

CHAIRPERSON: Yes?

MS MATHULWANE EMILY MPSHE: And one of the allegations of misconduct previously and now a charge which is now being transferred to a charge was that I abused my position of power. In that I didn't

follow due process and appointed a security for myself without falling due process. So the head of security had also given the affidavit and the statement and refused to sign the statement from Mr Kholisi. A day after we interviewed him as a witness he was also called into Mr Musa's office.

CHAIRPERSON: Mr Zwane's office.

MS MATHULWANE EMILY MPSHE: Mr Zwane's office.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: He was called to Mr Zwane's and
10 with Mr Kholisi there; the attorney now representing SAA. And he was asked why is he not cooperating and why did he refused to sign the statement that was prepared for him. So he also informed me. He called me and informed me as to that what was asked of him. So, chair, then after we had because this was on record and it was also, it was taped.

CHAIRPERSON: It was recorded, yes.

MS MATHULWANE EMILY MPSHE: It was recorded.

CHAIRPERSON: On tape, ja.

MS MATHULWANE EMILY MPSHE: Ja and it was also part of the proceedings that we agreed with the Presiding officer that we start the
20 process already by.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: Interviewing witnesses.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And our strategy was with the attorney was with the, in interview... (intervention).

CHAIRPERSON: Revelations.

MS MATHULWANE EMILY MPSHE: With the outcome of the interview we will then went to stop and say to SAA after these interviews and what has been corroborated do you still want to continue? So after we have done that we then said to Mr Kholisi, we want to know. He said well based on this information that is given and some of the information was new that he was not aware of the information. We then asked him he still wants to proceed. He says well based on the information I wouldn't want to proceed. However, I have to get a mandate from my
10 principles. So I'll come back to you with a mandate from my principles. So we then agreed that it was towards the end of November. We agree that you must please get a response to the mandate from his clients before we go on the break, December where people are going to go in December on leave. And because we said if they say they want to continue we want to already before we break every date of the disciplinary hearing and if you are not continuing then we went to talk about the way forward. We agreed that you were supposed to come back to us on the, I think it was the 9th of December and he didn't come back to us on the 9th of December. We followed up with them. He said
20 he hasn't got any brief from the client on this matter. We followed up on just before the 15th break and he said he hasn't got a brief on the matter. And then we did break for the holidays for the December holidays. And at the end of January which is now January.

CHAIRPERSON: 2017?

MS MATHULWANE EMILY MPSHE: 2017.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: We then asked for a date from Mr Kholisi. He then said he has no brief on the matter. We just left the matter and.

CHAIRPERSON: SAA was continuing to pay you your salary in the... (indistinct) you were on suspension?

MS MATHULWANE EMILY MPSHE: Correct, chair, I was on suspension with pay.

CHAIRPERSON: Hm, okay.

10 **MS MATHULWANE EMILY MPSHE:** Correct, chair.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And then on the, that was January 2017. And then I received, it must have been August/September. In the meantime, it was quiet and Mr Kholisi was nowhere. In 2017 I think August or September which relates to this 57, this TM57.

ADV ZINHLE BUTHELEZI: 58, yes.

MS MATHULWANE EMILY MPSHE: Ja, 58; 57/58. I then received a correspondence from SAA saying that the board. Now this is September 2017 which is a year later after the Minister of Finance.

20 **CHAIRPERSON:** So it's September 2017?

MS MATHULWANE EMILY MPSHE: September 2017.

CHAIRPERSON: You have received the allegations against you.

MS MATHULWANE EMILY MPSHE: And the charge.

CHAIRPERSON: Sometime in.

MS MATHULWANE EMILY MPSHE: The charge in August.

CHAIRPERSON: 2016 August.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Not the charge but the actual letter of allegations was much earlier. Isn't it?

MS MATHULWANE EMILY MPSHE: The actual letter was in January.

CHAIRPERSON: Was in January 2016?

MS MATHULWANE EMILY MPSHE: Yes, chair.

CHAIRPERSON: So this whole thing was now taking about two years?

10 **MS MATHULWANE EMILY MPSHE**: I was on suspension for 22 months, chair.

CHAIRPERSON: That's just from suspension but from the time you were given this letter with allegations.

MS MATHULWANE EMILY MPSHE: Yes, it's more.

CHAIRPERSON: It was now.

MS MATHULWANE EMILY MPSHE: Yes, because I received the letter in January. I was suspended in May.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: January and May is five months.

CHAIRPERSON: Yes.

20 **MS MATHULWANE EMILY MPSHE**: Yes, and five months to the 22 months is 27 months.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: On this whole saga.

CHAIRPERSON: So September 2017 you get this correspondence?

MS MATHULWANE EMILY MPSHE: I get a correspondence from SAA

directly to me say that the board wants me to do representations as to why I believe that my suspension must be uplifted and the disciplinary charges must also be dropped. I then prepared a representation which is what on 58 now; the representation.

ADV ZINHLE BUTHELEZI: It's Annexure TM58. It appears from page 432.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: My representation in short.

CHAIRPERSON: Yes.

10 **MS MATHULWANE EMILY MPSHE:** Chair, I just, I won't go through line by line.

CHAIRPERSON: Ja, yes just the important points.

MS MATHULWANE EMILY MPSHE: Yes, the important points was that, in the representation.

CHAIRPERSON: First before that, did you get an understanding what prompted this correspondence after close to two years from SAA to say you must make representations from the letter, from the correspondence? Is there anything that gave you an idea what I' had given rise to them asking you to make representations?

20 **MS MATHULWANE EMILY MPSHE:** Besides writing to the Minister.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: Of finance, I did write to the deputy chair of the board and the chair of Remco.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: Same message that I had given to

them to the Minister of Finance and that was also in November.

CHAIRPERSON: Oh but also, also the Minister had sent there would be a need for the suspensions to be reviewed.

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: So maybe in part that was in response to that?

MS MATHULWANE EMILY MPSHE: Yes, chair.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: So then... (intervention).

ADV ZINHLE BUTHELEZI: Sorry Ms Mpshe, was there a new board in
10 place at the time?

MS MATHULWANE EMILY MPSHE: It was a new board in place at the time but Ms Myeni was still the chair of the board.

CHAIRPERSON: The new board had come into existence from when if you remember? Early in 2017, mid 17?

MS MATHULWANE EMILY MPSHE: It had just been announced when the Minister of Finance did the budget which is September 2017.

CHAIRPERSON: Okay.

MS MATHULWANE EMILY MPSHE: He made reference to the new board.

20 **CHAIRPERSON**: Yes, okay, ja.

MS MATHULWANE EMILY MPSHE: So it could have been in August.

CHAIRPERSON: Yes, okay, yes.

MS MATHULWANE EMILY MPSHE: 2017.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: So you made representations?

MS MATHULWANE EMILY MPSHE: 2016 yes. I made representations and ...

CHAIRPERSON: *Ja* now to the new Board?

MS MATHULWANE EMILY MPSHE: *Ja* and then ...

CHAIRPERSON: As to why the suspension ...

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Should be lifted?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Yes.

- 10 **MS MATHULWANE EMILY MPSHE:** And this is facilitated through what they said was an independent labour core specialist. So I responded in writing and then I did a bundle also that I sent to SAA two – two arch lever files like this and then I was called for an interview and I had a four hour interview with this person who was then ...

CHAIRPERSON: With the independent labour specialist?

MS MATHULWANE EMILY MPSHE: With the independent, yes.

CHAIRPERSON: *Ja*.

- MS MATHULWANE EMILY MPSHE:** Yes. So after I had responded I then asked the independent – well at – at the end – well my interview I
20 asked him how long is this process going to take from then and then he said to – to me he had a couple of witnesses. Maybe by the end of September he will have completed his report.

Then I should receive the outcome and – and now I did not receive any outcome by September and in October I - I wrote to SAA to find out what – what is the outcome and that is in October 2017 and in

November – 1 November 2017 Mr Jarana became the CEO and I think the Board was also changed in that process.

So I then – it was another Board but some of the Board Members were still in that Board but Ms Myeni was no longer the Chair of the Board in 2017 when Mr Jarana started – November 2017. Now I was still awaiting.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: November, December, January late February I got a call from the office of Mr Jarana. This is mid ...

10 **CHAIRPERSON:** But that is 2018 now?

MS MATHULWANE EMILY MPSHE: 2018 now.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: I got a call from the office of Mr Jarana wanting to meet with me.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: We arranged a meeting with Mr Jarana I think towards the end of February 2018 ...

CHAIRPERSON: Hm.

20 **MS MATHULWANE EMILY MPSHE:** And in the meeting Mr Jarana said to me that – he introduced himself as the CEO and – you know – he has – he has been charged – he will turn around the airline and this matter is – is being carried by the Board and he emphasised that it has got nothing to do with him. He is new. It has got nothing to do - to do with him and he says that the Chair of RAMCO actually is the one that is running with this process and then they believe that I have something

to answer to.

I said okay. What aspects of the whole thing do I have to answer to? Well he did not know. I then said to Mr Jarana did you see the report. He says no he has not seen the report. I then said to Mr Jarana I – I really because I contributed to that report I will really like to get a copy of that report and also I will like you to in writing communicate to me what of those charges I need to answer to because in my view I have adequately responded to the charges.

He then said yes I hear you but I am not quite interested in
10 this whole matter of discipline. I had a view that we should do – you know – a mutual separation and then I said to him what are the terms. He said well he would think about it. So he came to the meeting to tell me that I have something to answer to. He did not know what I needed to answer to. He had not read the report and he came ...

CHAIRPERSON: He said he did not want to have – this thing had nothing to do with him?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: And then he then wants to have a
20 mutual separation and I asked about the terms. He does not have the terms. So we end a meeting by saying can I please have in writing from you a copy of the report, what allegations do I still have to answer to and your terms of the mutual separation and it was the end of February.

Another two weeks passes. It is March now 2018. I receive

correspondence from Mr Jarana and in the correspondence Mr Jarana says Ms Mpshe I am glad that we had a meeting of the minds at the meeting. We agreed on mutual separation. So we need to start negotiating on mutual separation.

I then responded. I said Mr Jarana that is not the true version of that meeting. This is the version of the meeting.

CHAIRPERSON: You – you recorded what had transpired?

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Hm.

- 10 **MS MATHULWANE EMILY MPSHE:** And then he followed up with the copy of the report and then with – with the terms on the mutual separation. So I – we looked at the copy report and mutual separation with the – with my attorney and we felt that look still what it claims to be something that I need to answer to. We believe that.

- We – we have answered and we believe that even if we take the matter forward we will win the case but my attorney says to me. You know this is now 22 months on suspension. You know – the whole starting of this saga as we calculate it now is about 20 – 27 months of this matter and companies do not use their own money and SOEs use
20 the taxpayers money. They can drag it again.

They have nothing to use. If you want to take the matter forward and take it and I am confident that we will – we will win the case and I was also confident that we will win the case. So – but with all that has been said – done and my legal bills were close to half a million at that time and said look it is up to you. I said no let me sleep

over it.

I went home, discussed with my husband and of course my husband had all – long time ago said I must just walk away from this. We then said okay let us rather then negotiate the mutual agreement – mutual separation agreement. Then we started with my attorney to correspond back and to – with the SAA on the terms of the mutual separation and one of the things which was quite important for me was to at least SAA to refund my legal fees and in the final analysis ...

CHAIRPERSON: That is now more or less the same as Mr Bosch?

10 **MS MATHULWANE EMILY MPSHE:** *Ja.* His was slightly more.

CHAIRPERSON: No. I mean in terms of the principle.

MS MATHULWANE EMILY MPSHE: Yes in terms of the ...

CHAIRPERSON: Because he was also saying ...

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: If they can just pay his legal ...

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Bills.

MS MATHULWANE EMILY MPSHE: Yes, yes.

CHAIRPERSON: So you were at the same – on the same position now?

20 **MS MATHULWANE EMILY MPSHE:** Yes; and then my – my attorney says you know in terms of the settlement if – if I am – if the case has to go to the CCMA and I have to be reinstated. The CCMA will give maximum 12 months settlement. We said let us be realistic. In the settlement we will put 12 months. We will put the legal fees. Those were the two big ones and then the toing and froing and Mr Jarana in

the correspondence has said he actually wanted this separation to be effective at the end of March.

So we then – you know – sent to say the information whatever and then he - it was quiet for a while and on evening of the 29th or the 30th he then responded back with this saying the agreement is effective the 30th. Which is either the following morning – the following day. It is effective the following day and he – the company would not pay for my legal fees.

They will agree for a 12 month separation and other minor
10 things and at that point I - I just felt that it was not negotiation in good faith. It is coming on the last minute when the last day is the following day and I just said I have also – I rest my case. I have had it. I just confirm that I am signing irrespective and I then signed the mutual separation and that is how the official and date of my employment is 30 March 2018.

CHAIRPERSON: So you were paid 12 months ...

MS MATHULWANE EMILY MPSHE: Yes.

CHAIRPERSON: Pay remuneration?

MS MATHULWANE EMILY MPSHE: Yes.

20 **CHAIRPERSON:** Hm.

ADV ZINHLE BUTHELEZI: And your legal fees were not paid?

MS MATHULWANE EMILY MPSHE: Legal fees were not paid.

CHAIRPERSON: Hm. Of course the – the people who were involved all of this will come and give evidence or they may – they may come at least they will be given an opportunity and then at the end the

Commission will look at – at the various versions and make a decision but assuming that what you have told me about how you were dealt with and assuming that Dr Dahwa - his story about how he was dealt with and assuming that I will hear whole evidence in relation to Mr Bosc and that it would in line with that you have told me and I think a number of other people it would appear that well if that – those are the facts that a number of senior management people may have been dealt with a manner that to say the least is questionable and a number of them ended up having to accept some settlement, mutual separation
10 agreement and walk away in circumstances where there might not have been a proper case for them to be disciplined.

Other than that they were resisting attempts to have wrong things done, to disregard procedures and so on and if that is what the Commission ultimately finds it will be something of great concern and in the process some of these people incurred lots of legal bills and they were put in difficult situations.

Do you have anything to say about maybe some of the recommendations that the Commission should consider making in regard to how some of those Senior Managers and Executives were
20 dealt with if what you have told me and what they have been telling me is found to be the truth?

MS MATHULWANE EMILY MPSHE: Chair I would not ...

CHAIRPERSON: Or is there something that you were not ready for to – to deal with?

MS MATHULWANE EMILY MPSHE: No. I was not ready for that Chair.

CHAIRPERSON: Okay. No, no that is fine. If later on you – you and some of the people who feel that they were dealt with unfairly because they were standing up for what is right and they were resisting attempts to disregard procedures, disregard the law. If they feel that they have an input to make then they can always send inputs to the Commission through the secretary as to what the Commission could consider.

It does not necessarily mean that the Commission will agree with them ...

MS MATHULWANE EMILY MPSHE: Yes.

- 10 **CHAIRPERSON:** But it is to say when the Commission gets to consider making recommendations that could be one of – their submissions could be - some of the submissions that would be taken into account.

MS MATHULWANE EMILY MPSHE: Okay Chair.

CHAIRPERSON: Okay, thank you.

ADV ZINHLE BUTHELEZI: Thank you Chair that will be all from all our side.

CHAIRPERSON: Yes.

ADV ZINHLE BUTHELEZI: Yes. Chair there are two on aviation streams that we could not call last week due to a number of reasons.

- 20 Those two witnesses have now been put on the schedule for next week – Thursday and Friday – the 11th and 12 July. Ms Mpshe is a last witness for this stream this week. I believe tomorrow a new work stream will be leading its evidence.

CHAIRPERSON: Hm.

ADV ZINHLE BUTHELEZI: So I just wanted to notify you that there will

be two other witnesses that we intend calling next week on Thursday and Friday (intervenes).

CHAIRPERSON: *Ja*, okay. Ms Mpshe thank you very much for ...

MS MATHULWANE EMILY MPSHE: Chair I would like to say something.

CHAIRPERSON: Yes please say

MS MATHULWANE EMILY MPSHE: I would like to say Chair that the pain and the hardship that I had to endure and my family had to endure is immeasurable and earlier on you said it – it – I was suspended with pay. Yes but it cannot even measure to the pain and the hardship that I
10 had to endure and my family and also my reputation is damaged. If you google my name right now you will find a statement from SAA saying that Thuli Mpshe was suspended on allegations of serious misconduct and it is still there. So people look or potential employers look and they look at that and that is still there in – in – and out there in the public. That there is this whole thing of my reputation continuously up to date up to right now as we speak being - continually being damaged and Chair I would also like to highlight that ...

CHAIRPERSON: Does the statement omit to say that they never pursued any disciplinary hearing against you and that ...

20 **MS MATHULWANE EMILY MPSHE:** Subsequent to that there was no formal statement to the media.

CHAIRPERSON: And ...

MS MATHULWANE EMILY MPSHE: The statement to the media is the one that as you google my name that will come up.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: So subsequent there was – there was ...

CHAIRPERSON: But the true – a true – the true picture must be put – put in place to say the least and yes you – you were suspended but your departure as by mutual agreement and no disciplinary hearing was actually convened.

MS MATHULWANE EMILY MPSHE: Yes. That is - that is correct Chair.

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: So I wish to highlight that and to
10 say that it is something that was very difficult ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And sometimes it is still very – very difficult ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: To talk about as a family ...

CHAIRPERSON: Yes.

MS MATHULWANE EMILY MPSHE: And when we look at those times - those periods ...

CHAIRPERSON: Yes.

20 **MS MATHULWANE EMILY MPSHE:** We look back and we say how did we actually survive that.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: My kids suffered humiliation ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MSHE: And you know when it is all in the

front pages that I am suspended ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: And it is all on social media ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: And there is always a perception that – you know – there are these civil servants who are looting the Government.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: So that negative perception ...

10 **CHAIRPERSON:** Hm.

MS MATHULWANE EMILY MPSHE: Of - of me being suspended ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: Also stay no longer with me.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: So this – this whole thing no one did it – it was meant to punish me but did not punish me only. It punished me and my family and my extended family ...

CHAIRPERSON: Yes.

20 **MS MATHULWANE EMILY MPSHE:** And you know the – the pain that it actually put on my husband is – the one evening he arrived home. I will not forget the look of pain in his eyes.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: When he said to me why do you not just walk away?

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: It is enough now for us ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: Because we would not even go to a social you know people would be talking, people will be asking.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: Even going to the church.

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: People will still be asking.

CHAIRPERSON: Hm.

10 **MS MATHULWANE EMILY MPSHE:** So what happened? Are you still on suspension? What actually did you do?

CHAIRPERSON: Huh-uh.

MS MATHULWANE EMILY MPSHE: You know and ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: So it was just that thing that we carrying ...

CHAIRPERSON: Hm.

MS MATHULWANE EMILY MPSHE: As – as a family.

CHAIRPERSON: Hm.

20 **MS MATHULWANE EMILY MPSHE:** My mom was sick during the time. So when I was suspended we took a decision not to tell her about my suspension. So fortunately for me as a blessing during that time I was able to be with her and take her to the doctor or visit her or come to me and – and she kept on asking. You are always so busy at work. So how come now you come here regularly.

You are available and I said no I took leave. She says normally when you take leave you go away on holiday. So what is happening? So we did not tell her and then she passed away in March 2017 without knowing that I was suspended. Without knowing what I went through and I would like to thank the Commission that this matters are now coming to the fore.

That the Republic of South Africa is now being made aware of the things that had happened and of some of the people who were whistle blowing standing against the corruption and – and just the
10 flagrant disregard for – for the rule of law which ended up losing their jobs, ended up suffering.

To – to – you know you wake up one morning suddenly you – you do not have to go to work anymore and at a premature end of a career it is one of the – for me – the most terrible punishment that can ever be meted to anyone but I really thank the Commission and the good work that the Commission is doing and I trust that the Commission will see through some of the outcomes. Thank you Chair.

CHAIRPERSON: No thank you Ms Mpshe. It is – I am quite happy that quite a number of people from SAA, SA Express have come forwards
20 who – senior people and those who were suspended, dismissed, put on special leave, subjected to certain types of mutual settlement agreements who believe that they were being victimised for standing for what is right. As I say that is their story.

There may be others who will come and say no this whole story of people standing for what is right is not right. This is another

version. I will listen to all versions and I will make a finding at the end but I – I am – I am happy that a number of people were senior as SAA and SA Express have come forward to share with the – with the Commission and with the nation to say this is what we went through and this is what from our version.

This is why we were subjected to this and I hope that others who may up to now not have felt free or courageous enough to come forward from throughout would come forward because it may well be that to the extent that this Commission finds at the end of its work that
10 there was state capture in South Africa and did take place.

It may be that the Commission will be able to say some of the people who contributed to the country not reaching a certain point of state capture were certain men and women who were courageous in various Government departments, in various parastatals who stood for what is right under very difficult circumstances and the country should be grateful to them.

Those who will come there may be some of them the Commission will be able to say these are some of the men and women who stood for what was right under difficult circumstances and the
20 country should be grateful to them. I am very grateful that more and more of you are coming forward. As I say I will listen to all versions and I will make findings in the end but I am happy that you have come forward.

I am happy that others from SAA/SA Express have come forward and others who might be in the private sector who were

involved must come forward and tell the nation the truth to exactly what they found themselves involved in and under what circumstances and why so that the country can know the truth and so that we can – the Commission can come up with recommendations on what it is – what measures should be put in place so that people never go through this kind of thing and also so that the country never gets state capture again. So thank you very much ...

MS MATHULWANE EMILY MPSHE: Thank you Chair.

CHAIRPERSON: For coming forward.

10 **MS MATHULWANE EMILY MPSHE:** Thank you.

CHAIRPERSON: Thank you. We will stop then for today. This time we took much, much longer than I thought we would but I have no regret that we took long. It was important that we should hear exactly what happened. We will adjourn and we will start at 10 o' clock tomorrow morning. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 2 JULY 2019