

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

27 AUGUST 2019

DAY 150

20

PROCEEDINGS ON 27 AUGUST 2019

CHAIRPERSON: Good morning Mr Mokoena, good morning everybody.

ADV PHILLIP MOKOENA SC: Good morning Chair.

CHAIRPERSON: Yes are you ready?

ADV PHILLIP MOKOENA SC: Chair we are ready to proceed. Chair you will recall that earlier this year Mr Dukwana appeared before this commission; he adduced evidence; supplied this commission with documents and he also promised Mr Chair that he will be returning to this commission to submit further statement and to adduce further
10 evidence before this commission. Mr Dukwana as promised Mr Chair he has now returned before this commission. However Chair before leading his evidence permit us to deal with a number of preliminary issues in order to place this proceedings in their context. Firstly let us do that by dealing with the documents which must be before you. We have placed a file before you Chair. You would recall that during the first appearance of Mr Dukwana reference was made to Exhibit X so we have prepared a file – you will see Mr Chair that the first folder contains Exhibit X which is Mr Dukwana’s previous statement and during the very same proceedings Mr Chair if you may turn to folder
20 number 2 you will then find the supplementary affidavit which was also handed in by Mr Dukwana during his previous appearance before this commission and it was through the leave of the Chair that it was marked Exhibit X1. And Mr Chair there were also two further documents which we relied upon and referred during those proceedings and you will find them at Folder number 3 which is Exhibit X2 and the

other document that follows immediately thereafter it is Exhibit X3 at Folder number 4 Mr Chair. Those are the documents which served before this commission previously. We thought that for completeness and to the extent that it may be necessary we should include them in this bundle so that if there is a need to refer to same at least we do have those documents handy before this commission. Now Mr Chair you would also recall that we did make mention even though we did not – we did not submit that document formally before you we did make mention of an affidavit which was deposed to by Mr Iqbal Sharma but it
10 was not in terms of any rules of this commission. It was not a 3.4 Application and therefore it – we did not place it formally before you. However Mr Dukwana in his current statement deemed it necessary and prudent to deal with the averments that appears in that affidavit and for good order Mr Chair we thought that we should put it before you and you will see that if you turn to Folder number 5 and with your leave Mr Chair we propose that it should be referred to as Exhibit X4.

CHAIRPERSON: It shall be so marked and so referred to.

ADV PHILLIP MOKOENA SC: Yes. And Mr Chair the last document which is relevant for today's proceedings you will find it in Folder
20 number 6. It is a further statement which was handed to the commission by Mr Dukwana in order to deal with the further evidence and the further aspects arising from the different topics which he canvasses in the statement and with your leave Mr Chair we therefore propose that it should be marked as Exhibit X5.

CHAIRPERSON: It shall be marked Exhibit X5 and shall be referred as

such.

ADV PHILLIP MOKOENA SC: Yes. Mr Chair I am told that there will be – there is a five page supplementary which is still being paginated properly by the – some of the members of the legal team. When – when we have it at our disposal and then at an appropriate time we will then make it available to the Chair. That is a supplementary simply annexing one or two annexures and correcting some of the things in the initial affidavit. But for now we simply making the Chair aware of same. We are not going to deal with it for now Mr Chair. Now evident Mr

10 Chair that after having received this – the further supplementary statement – the further statement of Dukwana in order to comply with the commission’s rules the 3.3 Notices were dispatched to various parties. I must mention Mr Chair that in this statement not less than 30 3.3 Notices were dispatched and for completeness Mr Chair we prepared a schedule that we will in due course hand it to the Chair indicating that on the 1 August which is 26 days before this hearing the Rule 3.3 Notices were dispatched successfully to the following people. Mr Elias Ace Magashule, Ms Sarah Matawane Mlamleli, Rev Daniel Motobela Kota, Mr Thabo Ntumetzi Moketsi [?] and Ms Qabathe. And

20 then the other 3.3 Notices Mr Chairman were dispatched on the 31st July the one of Mr. Lydia – Ms Lydia Motsemme which it was dispatched 27 days before this hearing. And we have the one – the other ones that follows were dispatched on the 1st August giving the respective parties more than or approximately 26 days before this hearing and those were Morake,[?] Ipeleng, Octavia, Cholate [?], Ms Cholate, Ms Refiloe

Mokoene, Mr Blake , Mr Kopung Frans Ralikontsane, Mr Iqbal Sharma, Mr Edwin Soddi,[?] Mr Mosebenzi Zwane, Mr Shadrack Ramate, Mr – Ms Hantsi Bhetilda Matseke Mayeza [?] and Mr Titus Mudowu Netchivozame [?] Mr Chair. All those had the notices 26 days before this hearing and the remaining ones is where Mr – where – were dispatched on the 5th August that is the one of Ms Shirley Mazibuko and on the 21st August it was the one of – sorry – on the 5th August Mr Chair is the one of Shirley Mazibuko Mot – Rev Motobi, Ms Nangu, Ms Togis Alice Malembe and Mr Sithuma Solomon Ntzele and the ones that

10 were dispatched on the 12th August still providing 14 days to the parties was the one of Mr Silo Joseph Radebe, Ms Melanie Liz Mitchell. So all of the parties Mr Chair on our count it is almost thirty of the implicate – of the parties which were served with the Notices. What has transpired Mr Chair in order to avoid any unfair criticisms there has always been a debate whether a party is being implicated or whether his name is merely mentioned. In order to avoid that and to err on the side of caution every individual or person mentioned in the statement of Mr Dukwana was therefore favoured with a Rule 3.3 Notice for that party to make an informed decision whether or not to invoke any of the

20 Rules of the commission so that we are not being criticised that names of parties are mentioned for the first time during the oral evidence and parties claiming that they have not received the 3.3 Notices because sometimes we take that stand to say that by mere reading that statement the parties got implicated but somebody might say that well I was supposed to have been favoured with a 3.3 and to exercise that

right. But for this proceedings we have made sure that everybody mentioned must be favoured with that copy Mr Chair. To the best of our knowledge and as far as we can ascertain Mr Chair we have not received a 3.4 Application in a [indistinct] of what is required in the rule of the commission. However Mr Chair there has been serious reaction by different parties. Others might have chosen to respond by mere letters. Others simply put an affidavit and say that it is an affidavit in response of the allegations and we thought Mr Chair that for completeness we should nonetheless place that correspondence before
10 the Chair so that we are not criticised for having left out any of what might be material evidence or criticised for suppressing any of the documents which came at your disposal. Allow us Mr Chair to do so with reference to a file that we have prepared and we have called it a Correspondence – a Rule 3.3 Correspondence Bundle and I think that is quite important that we should at least place some of the activities pursuant to the statement of Mr Dukwana and the 3.3 Notices having dispatched. We have separated that Mr Chair with different folders. We will only refer you in order for the Chair to get the gist to the relevant pages and to – to the reaction to the letters received and the
20 reaction thereto to those letters. The first folder Mr Chair pertains to Mr Ace Magashule but it only relates to his initial statement. If we may refer the Chair to page 16 it will give the Chair a better understanding as to where we are heading with this correspondence.

CHAIRPERSON: Well...

ADV PHILLIP MOKOENA SC: At page – at page 16 – 16.

CHAIRPERSON: Well before – I am sorry. I have got page 16 but before you get into what the correspondence says should we not have all legal representatives who are representing.

ADV PHILLIP MOKOENA SC: Yes Chair.

CHAIRPERSON: Various.

ADV PHILLIP MOKOENA SC: We can do...

CHAIRPERSON: Persons to place themselves on record.

ADV PHILLIP MOKOENA SC: We can do it now Chair but I thought that maybe I would afford them an opportunity.

10 **CHAIRPERSON**: Yes.

ADV PHILLIP MOKOENA SC: After I have placed this but we can do that now.

CHAIRPERSON: Yes let us...

ADV PHILLIP MOKOENA SC: Chair there are a number of parties.

CHAIRPERSON: Of them.

ADV PHILLIP MOKOENA SC: That are being represented.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Including Mr Dukwana.

CHAIRPERSON: Yes.

20 **ADV PHILLIP MOKOENA SC**: They can place themselves on record. They can also decide;

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: As to how they wish to react.

CHAIRPERSON: Yes at this stage.

ADV PHILLIP MOKOENA SC: To the proceedings.

CHAIRPERSON: Yes at this stage let us just have them place themselves on record and then we will take it from there. Then we revert to Mr Mokoena.

ADV PHILLIP MOKOENA SC: Yes.

ADV SMANGA SETHENE: Good morning DCJ.

CHAIRPERSON: Good morning.

ADV SMANGA SETHENE: Smanga Sethene I am instructed by Mr Mashala, Stanley Mashala who is here. I am job shadowed by Ms Jamiela Myapa who is a law student. I am for the witness Mr Mxolisi
10 Dukwana.

CHAIRPERSON: Thank you very much.

ADV SMANGA SETHENE: Thank you.

ADV MIKE HELLENS: Mr Chairman duly instructed by Maharaj Attorneys of Durban and appearing with me Mr Shane Diel SC of Durban.

CHAIRPERSON: Yes.

ADV MIKE HELLENS: I appear on behalf of a witness whose name I will not disclose but whose name is being disclosed in chambers.

CHAIRPERSON: Yes.

20 **ADV MIKE HELLENS:** The reason for my not disclosing his name will be evident when I am given an opportunity to address the commission.

CHAIRPERSON: Thank you Mr Hellens.

ADV SIMMY LEBALA: Esteemed Chair

CHAIRPERSON: Yes.

ADV SIMMY LEBALA: Lebala is my name. I appear for the Director

General in the Premier's office Mr Kopung Ralikontsane with my colleagues Ms Mayeti and Mr Manyi instructed by the State Attorney Mangaung.

CHAIRPERSON: Yes.

ADV SIMMY LEBALA: Permit me to mention to you that we lament one aspect that we have heard that there is no party that has provided the Rule 3.4 statement in the literal sense. We want the record to reflect that we did in line with the rules of the commission.

CHAIRPERSON: Yes okay thank you.

- 10 **ADV JEROME LEVITTS**: Chair my name is Jerome Levitts I am from the firm Flaxmans and I represent Edward – Edwin Sodi.

CHAIRPERSON: Thank you very much. Thank you.

ADV PRINEL JAGEN: Morning Mr Chair.

CHAIRPERSON: Morning.

ADV PRINEL JAGEN: I am Prinel Jagenbay from Prinel Jagen Attorneys. I have been instructed by Mr Titus Madow Glen Netchiwodzwa.

CHAIRPERSON: Thank you.

ADV PRINEL JAGEN: Thank you Mr Chair.

- 20 **CHAIRPERSON**: Okay.

ADV TLELI: Morning Chair.

CHAIRPERSON: Good morning.

ADV TLELI: I am Kleliyi on behalf of Ms Mlamleli. Thank you Chair from Morroko Attorneys.

CHAIRPERSON: On behalf of?

ADV TLELI: Ms Mlamleli. Olie Mlamleli.

CHAIRPERSON: Thank you.

ADV TLELI: Thank you Chair.

CHAIRPERSON: Okay.

ADV MANYI: Good morning Chair.

CHAIRPERSON: Good morning.

ADV MANYI: I am Manyi from Bloemfontein I am here representing Mr Siwe instructed by Molotsi Attorneys.

CHAIRPERSON: Thank you.

10 **ADV MANYI:** Thank you Chair.

CHAIRPERSON: Thank you.

Morning Chair.

CHAIRPERSON: Good morning.

ADV MJOKWENI: I am Mr Njokweni instructed by Sethumontsela. Thank you.

CHAIRPERSON: Thank you. Yes Mr Mokoena. You had asked me to go to page 16, 16.

ADV PHILLIP MOKOENA SC: Yes Chair. I must commend that parties are well represented Mr Chair.

20 **CHAIRPERSON:** Yes.

ADV PHILLIP MOKOENA SC: Mr Chair if we take it from page 16. You will see that from the date it is dated the 11th April 2019. It was – and if you turn to page 17 this is the letter which is signed by Mr Elias Magashule.

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: And in his letter if you may place it on record Mr Chair he says:

“I refer to the above matter as well as my letter transmitted to you via email on the 2nd April 2019. I have noted that during Dukwana’s evidence ...”

CHAIRPERSON: Hang on one – Mr Mokoena. Is everybody able to hear? At the back – is everybody able to hear? Well nobody says no so it must mean they are all able to hear you.

ADV PHILLIP MOKOENA SC: Yes Chair.

10 **CHAIRPERSON:** Okay. Thank you.

ADV PHILLIP MOKOENA SC: Nonetheless I will try to raise the voice for the Chair’s sake.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC:

20 “I have noted that during Dukwana’s evidence that reference was made to a supplementary affidavit and he apparently submitted to the commission on the 5th April 2019. Contrary to the two – contrary to previous two occasions I was neither notified nor provided with a copy of that affidavit. I would appreciate it if I could please be furnished with that supplementary affidavit which appears to have been marked Annexure X1 during Dukwana’s testimony in the commission. This would assist me when I made my election as sought in the notice of – notice in

terms of Rule 3.3 that was served on me. I have also noted that Dukwana seems not to be done with his evidence. If I am correct kindly advise me as to when the commission's legal team is expected to finalise his testimony. I am of the considered view that I am unable to make an informed election until Dukwana has finalised his testimony and I have been placed in possession of his supplementary affidavit. In the interim I elect to reserve my right."

10 Now Mr Chair.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: If the Chair may turn to page 3. You will find comfort in knowing Mr Chair that Mr Magashule was therefore placed in possession of Annexure X1 but there was a letter also reacting to it from the commission dated the 10th May 2019 where it reads as follows:

20 "We refer to your letter – your letter of 11th April 2019 and the evidence adduced by Mr Mxolisi Dukwana before the commission. As you are aware Rule 3.3 of the Rules of the Commission provides that:"

Then it is set out in details Mr Chair. I would not read it in order to save time and if you turn to page 4.

"You are furnished with a Rule 3.3 Notice and the statement of said Dukwana to the extent that it

implicated you. As you are aware there are time periods prescribed within the Rules of the Commission.”

Then reference is made to Rule 3.4 Mr Chair. Then paragraph 5 proceeds to state as follows:

10 “To date we have not as yet received any application from you as contemplated in Rule 3.4 pertaining to the Rules – pertaining to the Rule 3.3 Notice which was dispatched to you containing the portions of the evidence of Mr Dukwana to the extent that his evidence – to the extent that his evidence – that his witness statement implicated you.”

6 Mr Chair.

20 “Please find the supplementary affidavit with annexures to Mr Dukwana on the commission’s website. Indeed Mr Dukwana has not finalised adducing evidence before the commission and we are still awaiting his further statement. At this stage as the commission we are not in a position to indicate when – whether or not his further statement and or testimony will or may implicate you. We can only make that call once we are in possession of his further witness statement.”

And 8 indicates the address Mr Chair. As I have indicated that a Rule 3.3 was also sent pertaining to this new statement of Mr Dukwana

affording Mr Magashule 26 days upon which to react. There has never been any correspondence in that regard.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Mr Chair if we can move to Folder number 2. Folder number 2 it is correspondence from a law firm Shahied Dollie Incorporation. You will see that the first letter it is dated the 3rd April 2019 and they are representing Mr Iqbal Sharma. What they have now – what they have done Mr Chair they have submitted this correspondence and subsequently they then simply
10 forwarded an affidavit. The one which I have referred to as – as Exhibit X4.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: And thereafter.

CHAIRPERSON: Is that Mr Sharma's affidavit?

ADV PHILLIP MOKOENA SC: Yes Mr Sharma's affidavit.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: So what was then done Mr Chair if you can turn to page 26? Then the commission also dispatched a letter to Mr Sharma's legal team whereby it highlighted quite a number of
20 issues. At paragraph 1 it said:

“We refer to the evidence of Mr Dukwana which was adduced before the commission including the Rule 3.3 Notices which was accordingly dispatched to you. As you are aware two days prior to Mr Dukwana's adducing his evidence before the commission you

dispatched a document and or affidavit styled –
“statement in response to the allegations in the
statement of Mxolisi Dukwana.” Your affidavit was
not an application as envisaged in Rule 3.4 of the
Rules of the Commission and it was not apparent as
to how it should be dealt with as it did not comply
nor conform with any of the Rules of the
Commission.”

Then 3 – Rule 3.3 it is rehashed there Mr Chair and if you turn to page
10 27 at paragraph 5 it says:

“It is apparent from the affidavit that you had filed
that it does not comply nor conform with Rule 3.3
and it does not state whether or not you wish to
exercise any of the rights provided for in the
aforesaid rule as provided for in Rules 3.3.6.1 to
3.3.6.3 which of course includes you testifying before
the commission and to be cross-examined.”

And Rule 3.4 Mr Chair it is indicated on paragraph 6 and if you turn to
page 28 with me Mr Chair we will see that:

20 “Your affidavit does not appear to be an application
as envisaged in Rule 3.4. Could you please clarify
why you had filed your affidavit and how it should be
dealt with in the light of the Rules of the
Commission? This affidavit was formally – was not
formally placed before the Chairperson as it was not

put to Mr Dukwana in order to react to same as it is not conform nor comply with any Rules of the Commission and as such it was kept in abeyance in order for you to decide whether or not you wished to invoke any of the Rules of the Commission for it to be properly admitted in terms of the Rules of the Commission we await your response in this regard.”

From that date Mr Chair up until now there was no further correspondence from Mr Iqbal Sharma pertaining to the evidence of Mr
10 Dukwana as well as the 3.3 Notices and the correspondence that was dispatched to him subsequently. If you then – if we can then move Mr Chair to Folder number 3 importantly it is page 33 which is correspondence from M S Ramata CA [SA]. Also they acknowledge they say that if you will read paragraph number 1 it says:

“I hereby acknowledge receipt of the commission’s correspondence dated the 2nd August 2019 regarding Mr Mxolisi’s – Mxolisi Dukwana’s affidavit and intended appearance at the commission. On the 3rd August I requested additional information to allow me
20 to make an informed decision on how to react to Mr Mxolisi Dukwana’s claim as per paragraphs 107 and 108 of his affidavit. Because of the limited information at my disposal I am unable to decide on the best course of action. I however deny that I was involved in any wrongdoing as alleged or inferred by

Mr Mxolisi Dukwana. I further specifically deny the following:

That I have ever been appointed as an individual by Mr Magashule to sanitise any report that I have any personal knowledge to any entity called Ramate/FireVas being appointed by Mr Magashule to sanitise any report that I have ever sanitised any report or been party to sanitisation – to sanitising any report.

10 That I have any knowledge of Mr FireVas [?] sanitising or being party to the sanitisation to sanitising any of the report.

That I have even had sight of any sanitised report or reports which Mr Mxolisi Dukwana may be referring to.

That I have ever had any fallout with Mr FireVas.

That I have any knowledge of FireVas ever forming any entity called – sorry an entity called Open Waters.”

20 The last paragraph says that:

“For the record I was at one stage a non-executive director of an entity called Ramate FireVas Forensic Investing – Investigation Accounting Services PTY LTD to which Mr Mxolisi Dukwana may be referring to in paragraphs 107 and 108 of his affidavit.”

Mr Chair. So this is the reaction but he was only referred to the paragraphs which implicates in the statement. He thought that he was entitled to the entire statement and annexures but that was clarified to the Ramata CA. Subsequent to that Mr Chair there was no – any correspondence that was received and we know that he was also favoured with a 3.3 Notice.

CHAIRPERSON: Well do we know whether there might not be another Mr Ramatha that is – that was meant?

ADV PHILLIP MOKOENA SC: No Mr Chair because if you look at the...

10 **CHAIRPERSON**: He is not.

ADV PHILLIP MOKOENA SC: If you look at the last paragraph it is quite revealing in a way to say that [intervention].

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: He admits that ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: There was that entity.

CHAIRPERSON: Yes.

MR MXOLISI DUKWAN: He might only contest ...

CHAIRPERSON: *Ja*.

20 **ADV PHILLIP MOKOENA SC**: The name ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: In which it was placed in the statement ...

MR MXOLISI DUKWANA:

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: But at the end of the statement ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: You find that he says that by the way ...

CHAIRPERSON: *Ja.*

ADV PHILLIP MOKOENA SC: There is this one which I think that Mr Dukwana might be referring to.

CHAIRPERSON: Yes. Okay.

ADV PHILLIP MOKOENA SC: Those will be dealt with accordingly ...

CHAIRPERSON: Hm.

10 **ADV PHILLIP MOKOENA SC:** With Mr Dukwana.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: Mr Chair then if you go to folder number four it is with reference to a party referred to as Mosidi Motsemme who also reacted and he was (intervenes).

CHAIRPERSON: I am sorry. You said (intervenes).

ADV PHILLIP MOKOENA SC: Folder number four.

CHAIRPERSON: Oh is 36 a duplication of the earlier one or is it the one that we were looking at?

20 **ADV PHILLIP MOKOENA SC:** No. We - we were looking at folder number three which is relevant to Ramate CA.

CHAIRPERSON: Yes but I see 36 is also Ramate CA.

ADV PHILLIP MOKOENA SC: Yes Chair.

CHAIRPERSON: Is it (intervenes)?

ADV PHILLIP MOKOENA SC: Yes it is - it is duplicated. It is the same thing.

CHAIRPERSON: Oh it is duplicated?

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Okay, alright.

ADV PHILLIP MOKOENA SC: It is the duplicate Mr Chair. If you turn to folder number four ...

CHAIRPERSON: Huh-uh.

ADV PHILLIP MOKOENA SC: And that is page 43. It is correspondence dated 5 August 2019 which was received from the Attorneys - Victor Nkhwashu Attorneys who are acting on behalf of
10 Ms Mosidi Lydia Motsemme and they record Mr Chair that:

“We refer to the above matter and advice that we act on behalf of Ms Mosidi Lydia Motsemme. Our client has handed to us a notice in terms of 3.3 wherein she was advised that Mr Dukwana will be presenting evidence which might implicate her. We wish to place it on record that in order for our client to fully exercise her rights and to make a choice on what action to take she requires the full evidence of Mr Dukwana in order to give context.”

20 Clearly Mr Chair they also wanted a full statement and annexures. So paragraph 4 it says that:

“The statement our client has been furnished with contains at best an incomplete statement just by way of an example. Paragraph 95 of the statement ends with an incomplete statement which starts with

the words “I am not sure if Motsemme ...”

And then paragraph 5:

“Our client is therefore unable to exercise her rights without the full statement of Mr Dukwana. Kindly furnish us with the full statement of evidence as a matter of urgency so that we can consult with our client and provide her with sufficient legal advice on this matter. We trust that you will find the above in order.”

10 That was reacted to by the Commission Mr Chair on page 46. We will not read the contents. It is simply we clarified the question that they are not entitled to the full statement but they were nonetheless given the full paragraphs of - the - the full paragraphs 92 to 95 of Mr Dukwana which was annexed to the letter.

Subsequent to that correspondence Mr Chair there was never any other correspondence from the same attorney and we can only say this to the best of our knowledge.

CHAIRPERSON: So there were two pages that were considered to implicate her?

20 **ADV PHILLIP MOKOENA SC:** Yes.

CHAIRPERSON: And those were provided?

ADV PHILLIP MOKOENA SC: They were provided Mr Chair.

CHAIRPERSON: On 13 August?

ADV PHILLIP MOKOENA SC: Definitely and subsequent to that and they were given to the attorneys ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: In advance - long in advance so that they can react ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Or choose what caused the wish to adopt. Mr Chair then you have folder number five and what is relevant Mr Chair is what appears from page 55 when the party wished to place a - an affidavit and it is Hantsi Bhetilda Matseke and in that statement Mr Chair she repeats the notice which was dispatched to her.

10 She also on page 56 repeats the documents supplied to her by the Commission and on paragraph 3 she then repeats the paragraph which is said to implicating her or may implicate her and she gives a history on page 57 about the VDC Chairmanship and related matters. Mr Chair I am doing this because I have read it.

It is not relevant for - for what ought to be conversed but on page 58 she gives the construction of the company and the alleged conflict of interest in the Vrede 1000 Project and what appears to be paramount Mr Chair is on page 60 in relation to paragraph 7 where says that:

20 "I have perused the NHBRC form in relation to the entity known as Unitile (?) Holdings (Pty) Ltd in particular pages 213 to 216 of - of the annexures of Mr Dukwana's statement which the Commission referred me to and I do not have any response as these documents have nothing to do with me or any

of my entities. I am also not related to persons mentioned in this document.”

The next paragraph she says:

“I have also perused the CIPC documents in relation to the entity known as Unitile Holdings (Pty) Ltd in particular pages 217 to 219 of - of the annexures of Mr Dukwana’s statement which the Commission referred me to and I do not have any response as these documents have nothing to do with me or any of my entities. I am also not related to persons mentioned in this document.”

Next paragraph:

“Since Mr Dukwana’s allegations against me are limited only to paragraph 75 of his statement I have therefore limited my response only to paragraph 75 of Mr Dukwana’s statement. Should Mr Dukwana give evidence which is not part of his statement under reply at the Commission and which evidence implicates me or has the potential to implicate me I reserve my right to proceed of course with leave from the Chairperson of the Commission in terms of paragraph 5 of Rule 3.3 Notice read with Rule 3 of the Commission’s Rules. Against the above background at this stage however I do not intend to proceed in terms of paragraph 5 of the Rule 3.3

Notice.”

Mr Chair that is the essence of what was conveyed to the Commission by that affidavit Mr Chair. The next correspondence we find it on folder number six. It appears from - it is - it was dispatched by Melanie David Incorporation and it is a simple statement that is being made on para - on page 78 Mr Chair.

They are representing the Director of MasterTrade 232 (Pty) Ltd. That is Mr Melanie David. They say that:

10 “I have received the notice but please note I am not the Director of MasterTrade 232 (Pty) Ltd. This was a shelf company that was formed by a company I worked for 20 years ago and I resigned when the company was sold to a client. I have attached a current CIPC printout of the company (indistinct) dated - date as 26 October 1999. I have no knowledge at all of this company. Kindly acknowledge receipt.”

20 That is all that was conveyed and with reference to folder number seven Mr Chair it is a letter by Mr George Fivaz. That letter Mr Chair it is - it starts from page 84. It is dated 19 August 2019. We are not going to read that letter into the record. It is a long letter but the reason also is that it implicates a number of individuals who were never favoured with any notice nor being made aware of the contents of this letter but the long and short of it Mr Chair is that Mr Fivaz alleges that he was aware at some point that his company was used in the Free

State in order to fabricate some of the reports but he goes - he says so with reference to particular names of individuals who were unfortunately not favoured with 3.3 Notices but he has also extended an invitation to the Commission that he is prepared if you look at page 89 Mr Chair. He says that:

“I am prepared to provide a sworn affidavit and verbal evidence under oath to the Commission to confirm the above stated facts.”

That will also in due course be dealt with and properly be placed before you and a statement be - being obtained from him in that regard. So we simply do not wish to read that letter in order to avoid implicate - people that are implicated whom he raise serious objections to that and in all fairness within that it is a prudent way to deal with it.

The correspondence Mr Chair is the one on folder number eight. The dates are quite important Mr Chair. It is the correspondence from Maharaj Attorneys who are representing as per the letter dated 20 August 2019 the implicated party Mr T W Zulu.

CHAIRPERSON: The letter starting at page what?

ADV PHILLIP MOKOENA SC: At page 106 Mr Chair.

20 **CHAIRPERSON:** 106?

ADV PHILLIP MOKOENA SC: 106.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: It is the letter from Maharaj Attorneys dated 20 August 2019 which was dispatched to the Commission and for the attention of the Commission which we must bring to your attention

Mr Chair. It says re implicated person ...

CHAIRPERSON: Is that ...?

ADV PHILLIP MOKOENA SC: T W ...

CHAIRPERSON: Is that the one where preferably the name should not be mentioned at this stage - of the person?

ADV PHILLIP MOKOENA SC: That is what Mr ...

CHAIRPERSON: I think Mr ...

ADV PHILLIP MOKOENA SC: Mr Hellens refers.

CHAIRPERSON: For - maybe for now let us do that and then when I
10 have heard everything we can take it from there.

ADV PHILLIP MOKOENA SC: Well Mr Chair without mentioning the name ...

CHAIRPERSON: *Ja.*

ADV PHILLIP MOKOENA SC: The client of Mr Hellens ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: And you will see that the first correspondence that was dispatched on 20 August 2019. I am sure that I can mention the name of the attorneys - Maharaj Attorneys.

CHAIRPERSON: Yes.

20 **ADV PHILLIP MOKOENA SC:** Paragraph 1 says:

“Mr Chair I refer to the above matter and record that I have been consulted by ...”

I will not mention the name.

“...an implicated person arising from the contents of the affidavit filed before the Commission by

Mxolisi Dukwana. I am awaiting receipt of further instructions from the client regarding his election under Rule 3.3.6 of the rules and we will - will revert in this regard imminently together with an application for condonation.”

So this letter Mr Chair was sent as it is on 20 August 2019 ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: And on 23 August 2019 page 108

Mr Chair - I do not want to lose you - and it says that paragraph 1. It is
10 from the same attorneys - Maharaj Attorneys dispatch to the
Commission.

“We enclose herewith the response by our client ...”

And the name is mentioned.

“...to the Rule 3.3 Notice. Although the notice was served by email on the personal assistant of the client on 5 August 2019 the client was at the time on sick leave. He only returned to work on 12 August 2019. Although in disposed to illness he made efforts to obtain regard representation. The
20 firm advised me that allegations were so serious that he should take advice from senior counsel.”

Four:

“The firm accordingly engaged the services of Mr Michael Hellens SC and Mr Shane Dayal SC to advice client. Obtaining legal representation also

required Mr Zulu who is but - obtaining legal representation ...”

It is going to be difficult Mr Chair.

“...also required client who is but an individual to raise sufficient funds to finance the legal representation necessary. All of course client not to be able to respond within 14 days provided for a response which 14 days presuming would run from 5 August 2019. We hope that you will note that notwithstanding being ill he commenced efforts to obtain legal representation and final date obtain legal representation having scrapped together the finances thereof. This response which is in once sense late but in real sense a responsible response was made as soon as the circumstances allowed it. We trust that this late response will not be seen as a reason why the evidence proposed to be led and foreshadowed in the Rule 3.3 Notice will never - nevertheless be led notwithstanding the very clear evidence of the client contained in the affidavit annexed hereto. Senior counsel is able to engage the Commission on an urgent basis and in any event will attend to the - at the Commission on Tuesday and to make public comments of client to ensure that his reputation is not unnecessarily

tarnished and is not defamed. We trust that the Commission will take the contents of the client's affidavit annexed hereto very seriously indeed the statement of our client. For you to exercise the discretion that you have under the rules to postpone the proposed leading of his evidence pending a more responsible investigation by the Commission of the contents of the affidavit of the client."

10 And it was signed by Mr Maharaj Mr Chair and annexed to it is the affidavit of the client. Mr Chair starting from page 111 and the essence Mr Chair of the affidavit and I am sure that Mr Hellens will in much more able ways place it before you but the essence of it Mr Chair is that the name that is appearing in this spreadsheet annexed to Mr Dukwana's statement with those initials do not refer to this client and therefore that this client did not take part or participate at all in the asbestos saga and he never even received any amounts in that regard.

I am simply summarising and paraphrasing which I think is the highlight of the statement. There might be other statements which
20 depending as to how Mr Hellens deals with them which we may which to respond to in due course but for now we will leave them and simply deal with these proceedings with the integrity that it deserves Mr Chair.

The next point Mr Chair is folder number nine. It was not properly you know put in a folder because this correspondence kept on coming in even today in the morning Mr Chair but we tried to do our

best to collate all the documents and to make sure that we place whatever necessary information and those correspondence before the Chair.

CHAIRPERSON: Is that the divider marked N rather than nine?

ADV PHILLIP MOKOENA SC: Chair.

CHAIRPERSON: Mine is marked N not nine. The next one after eight.

ADV PHILLIP MOKOENA SC: I know Chair and it is because it was simply dealt with within this hall ...

CHAIRPERSON: Hm.

10 **ADV PHILLIP MOKOENA SC**: And its correspondence was coming and we also (intervenes).

CHAIRPERSON: That is the one - is that the one immediately after page 123.

ADV PHILLIP MOKOENA SC: If you go to page 124. Fortunately they are paginated Chair.

CHAIRPERSON: It is starts at page 124?

ADV PHILLIP MOKOENA SC: 124 ...

CHAIRPERSON: Okay.

20 **ADV PHILLIP MOKOENA SC**: And if one traces this is the correspondence in relation to I do not want to say it is Ms or Mrs and I am wrong Mr Chairman but the surname I can see that is Mr I think Kopung Frans Ralikontsane and as you can see from the dates Mr Chair appearing at the bottom ...

CHAIRPERSON: I cannot see the name that you are mentioning.

ADV PHILLIP MOKOENA SC: I - I - if you go to page 124 Mr Chair.

CHAIRPERSON: I am at 124.

ADV PHILLIP MOKOENA SC: And then you look at the second sentence.

“This is an application for leave ...”

CHAIRPERSON: Oh yes.

ADV PHILLIP MOKOENA SC: “...to give evidence brought by ...”

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: So that is where ...

10 **CHAIRPERSON:** Yes.

ADV PHILLIP MOKOENA SC: I thought that one should derive the name.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Mr Chair to the best of what one can ascertain despite the submission that we made that it was clearly a Rule 3.4 application and which was furnished in terms of the rules simply glancing at the date you will see Mr Chair that it was dispatched to the Commission if I am correct from what I am reading - is it on the 23rd?

20 **UNKNOWN PERSON:** On the 20th - on 23rd yes.

ADV PHILLIP MOKOENA SC: On the 23rd Mr Chair. We may be corrected but that is what we have before us and if you go to page 124 it simply between the - the lines. It says that:

“The statement in support of 3.3 for leave to give evidence disputing certain portions of the evidence

of the witness Mr Mxolisi Dukwana to testify on the
27th and 28 August 2019.”

I do not wish to be technical to the extent that we are called upon to
read this as a 3.4 Notice. So Mr Chairman we will put before you as
that (intervenes).

CHAIRPERSON: It is just that the document does not even have the
date when it was signed.

ADV PHILLIP MOKOENA SC: Yes. It - it does not have what - what
prayers one would seek you know lining them with the 3.3 or 3.4 but we
10 do not want to be technical. If you go ...

CHAIRPERSON: Well we ...

ADV PHILLIP MOKOENA SC: To page 150 Mr Chair ...

CHAIRPERSON: Well he does say he seeks leave to - is it a he or a
she?

ADV PHILLIP MOKOENA SC: He. He seeks leave ...

CHAIRPERSON: He does say he seeks leave. It is an application in
terms of Rule 3.3 ...

ADV PHILLIP MOKOENA SC: To give evidence disputing certain ...

CHAIRPERSON: For leave to give evidence.

20 **ADV PHILLIP MOKOENA SC:** Yes.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: But it signed. It appears that if you go
to page 150 Mr Chair. I think it was signed. It says that that is signed
at Bloemfontein 23 August 2019.

MR MXOLISI DUKWANA:

CHAIRPERSON: That is at what page?

ADV PHILLIP MOKOENA SC: At page 150. It appears to be signed on that day. At least there is a date Mr Chair.

CHAIRPERSON: Is that the end of the affidavit?

ADV PHILLIP MOKOENA SC: It is 150.

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: Because at 151 you then find the signature of Mr Ralikontsane.

CHAIRPERSON: Oh yes. The affidavit.

10 **ADV PHILLIP MOKOENA SC:** Yes. So it is signed.

CHAIRPERSON: Well is it an affidavit or just a statement? Looks like just a statement.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Was signed on 23 August.

ADV PHILLIP MOKOENA SC: It is a statement. That is why we are saying that we are not - we are not sure that it is an application ...

CHAIRPERSON: Yes.

20 **ADV PHILLIP MOKOENA SC:** As provided for in the Rules and we know what Rule 3.4 of the Commission requires the party to do Mr Chair...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: And that is the reason that we simply say that it was a statement in reacting ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: To the contents of the statement of

Mr Dukwana rather than it being a Rule 3.4 ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Application. That is - we can leave it at there. Mr Chair ...

CHAIRPERSON: Yes, *ja*.

ADV PHILLIP MOKOENA SC: We can also mention that a number of these documents and correspondence that we have actually put before the Commission we have not had time to even put them before Mr Dukwana and his legal team for them to according react but we just
10 thought that in fairness to the parties that might have actually endeavoured to place them before the Chair. Let us do that.

As to how we are going to deal with them in these proceedings that will be something to be directed by the Chair in due course having had submissions from different parties. The last one Mr Chair that I also saw for the first ...

CHAIRPERSON: Yes that - well that - that one ending at the affidavit of or the statement of Mr Ralikontsane they should find it quite easy to convert it into an affidavit.

ADV PHILLIP MOKOENA SC: Yes Chair.

20 **CHAIRPERSON:** Yes, okay.

ADV PHILLIP MOKOENA SC: Yes. The last one Mr Chair if I am correct to say that is the last one because documents kept on coming and there was a late reaction to the statement of Mr Dukwana. It is to be found in the last folder. I am even not confident enough to tell you whether it is folder number 10 or what folder it is because they were all

prepared today ...

CHAIRPERSON: Well ...

ADV PHILLIP MOKOENA SC: But at least page 183 ...

CHAIRPERSON: I have ...

ADV PHILLIP MOKOENA SC: Might give us guidance.

CHAIRPERSON: A - a divider which his preceded by page 183.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: It is not marked 10. What it is marked is either zero or O one of the two. If you put one it will be 10.

10 **ADV PHILLIP MOKOENA SC:** Mr Chair it is page - if I may refer the Chair to page 183 I hope that ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: It will accord with pagination that I am having.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: This is the correspondence which we received. It contains the statement that is on page 187 Mr Chair. That statement or it is an affidavit. Let me just - it is a statement Mr Chair by Blackie Siwe (?) ...

20 **CHAIRPERSON:** Yes.

ADV PHILLIP MOKOENA SC: And it simply a reaction to Mr Dukwana's statement pursuant to the party having been furnished with a Rule 3.3 Notice and he simply furnishes his own version in that affidavit and attempts to also deal with the paragraphs that relate to him in the manner that he did from pages 191.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: We have also not had the opportunity to properly apply our mind to these documents to ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Place them properly before Mr Dukwana and his legal team for them to react.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: As you know Mr Chair that we have no version as the Commission but the evidence that we lead is the one
10 that is from the witnesses and those witnesses all of them are the witnesses of the Commission.

CHAIRPERSON: *Ja.*

ADV PHILLIP MOKOENA SC: Mr Chair those are the correspondence that we have received in reaction to Mr Dukwana.

CHAIRPERSON: Huh-uh.

ADV PHILLIP MOKOENA SC: We are ready to proceed giving that evidence but I am sure that before we do that there might be the parties as we have indicated and as you might have heard in chambers that who may wish to make certain submissions before we proceed.

20 **CHAIRPERSON:** Yes. I - from what transpired in chambers I understood Mr Hellens to be the one who may wish to raise some point and depending on what he has to say there maybe - there may be a need for responses. If there is someone else who has another point that does not relate to the point that Mr Hellens wishes to raise. Then I will - I will get to know after Mr Hellens and after we have dealt with

the point that Mr Hellens wishes to raise. Yes Mr Hellens.

ADV MIKE HELLENS SC: Thank you Chair. Chair you are aware of the client that I represent and the simple proposition that we place before you is this, we do not know whether you have had sight of the evidence that this witness intend to give and we do not officially know whether you have had sight of the response that our client has given.

CHAIRPERSON: Well I have had sight of the evidence that this evidence will give, I did not have sight of the statement from your client as yet until it was pointed out now.

10 **ADV MIKE HELLENS SC:** Let me break that up into two points which are foundation for the address that I want to make, or perhaps three. Firstly it is incumbent upon this Commission given the sacred duty that it has to investigate responsibly, to present evidence which need not be cast iron in nature but must not be wantonly speculative.

As I stand here, you and I are on National TV and the allegations about my client will be nationally publicised all over. You as the guardian of the reasonable conduct of this Commission, solely responsible therefore have to ensure, in our submission, that wildly speculative evidence is not placed before this Commission even if my
20 client were to be given the right of cross-examination and demonstrates it to be untrue, the harm is done by leading speculative and unmeritorious evidence *prima facie* so.

Now what we say the allegations with regard to our client – and let me make this point it is specifically the allegations made about our client not the general topic. We had no objection to anything said

by this witness on the general topic but when his statement focuses in at one moment – at one point on an allegation identifying our client as responsible it is blatantly speculative, it is unsupported by any documents and the document as a whole, by the way, but we are not concerned with the documents as a whole, is like a running scandal sheet of a person three times removed from the facts. And whether you want to hear that evidence with regard to other people is up to you...[intervenes].

CHAIRPERSON: Hang on Mr Hellens, I think it would be better that I
10 read your client's statement first.

ADV MIKE HELLENS SC: I was just going to get to that.

CHAIRPERSON: Because I think you might or might not need to persuade me much, depending on what I take of the matter but I will follow your argument much better if I've had a look at it.

ADV MIKE HELLENS SC: Let me just say what I expect that you will find, you will find that in concrete form my client denies any involvement, he tenders – he says,

20 “no-one has asked me for a version before, no investigators have interrogated me, I tender my bank statements, I tender a complete investigation by the Commission with myself personally in attendance and all I ask is that before you ruin my reputation and my career you postpone this evidence, not as a whole necessarily but with regard to me and investigate this case properly”.

CHAIRPERSON: The identification?

ADV MIKE HELLENS SC: Yes and we go on to say that it is recklessly gathered with regard to our client and I say this with the deepest humility with the utmost strength. There are consequences to this Commission acting unlawfully and recklessly and we will – let me stop there.

CHAIRPERSON: Well as I say I have not read his statement but if it's going to be of any help in how we handle – deal with the matter, I would be inclined, and I haven't read the statement, I would be inclined to say to the Commission's legal team and to Mr Dukwana's legal team
10 how much have we done to try and make sure that the identification is reasonable, maybe that's not the correct word but that's the word that comes to my mind immediately...[intervenes].

ADV MIKE HELLENS SC: The product of a reasonable...[intervenes].

CHAIRPERSON: It's not – it might not be certain but that it's reasonable and if the answer is, it might be better to get more time to do further efforts, my inclination would be to say, why don't we allow those efforts to be made first and at the end of those efforts then we can hear whether the identification that was intended to be made will still be made and if it will still be made it may be that it should be
20 allowed at that stage but in case the further efforts confirming the identification reveal that it's not correct, it might not be made.

That would be my inclination but I say so – I say I make that inclination known without having read your client's statement and without having compared it with what Mr Dukwana says. I do – I did see your client's name somewhere and I did see how it was – what was

said about it. So that's my thinking maybe I should hear what Mr Mokoena has to say and what counsel for Mr Dukwana have to say and depending on what they have to say, I might – we might have to adjourn and let me read and then we come back.

ADV MIKE HELLENS SC: You have the essence of my submissions in the cup of your hand Chair.

CHAIRPERSON: Yes thank you. Who should come first, Mr Mokoena?

ADV PHILLIP MOKOENA SC: Mr Chair there's protocol at the bar.

CHAIRPERSON: Mr Dukwana's counsel will get a chance to stand
10 [indistinct] in my response.

ADV PHILLIP MOKOENA SC: Mr Chair we are inclined to follow the Chair's approach and advice but let's do so in a far much more responsible manner. We are not doing this because of fear of any threats that might be levelled against this Commission or maybe being intimidated that when we lead evidence there may be consequences. We are simply doing that in [indistinct] the furtherance of the mandate of this Commission not because of any fear.

We are called upon to deal with the evidence that's received from any witness without fear, favour or prejudice and not to treat any
20 of the evidences in any special manner but we are mindful that the Chair might have not yet read the affidavit of the client of Mr Hellens and to that extent maybe it's the responsible thing to afford you that opportunity to do so Mr Chair. That's all that I want to say for now.

CHAIRPERSON: So is your position that you would prefer that I read the statement/affidavit first before...[intervenes].

ADV PHILLIP MOKOENA SC: Yes you may do that Mr Chair but that should not delay the leading of the evidence of this witness. What we can do, while you're still going to read, we can lead Mr Dukwana's evidence and to the extent that we might become near that portion, maybe then the Chair might direct, so that we don't waste any time unnecessarily.

CHAIRPERSON: Yes, when do you expect Mr Dukwana might come to that, so I mean, based on what you're saying one possibility is that you would not – if he comes to the relevant part of his evidence we will skip
10 that part which is a very limited part as I understand.

ADV PHILLIP MOKOENA SC: Very limited Mr Chair.

CHAIRPERSON: We would skip that part and if he skips that part it might – if it comes up today and he skips it, it might mean that tomorrow...[intervenes].

ADV PHILLIP MOKOENA SC: Tomorrow we might have to deal with it depending on how you deal – yes Chair.

CHAIRPERSON: Then of course I would have read it by then, the only difficulty with that might mean that Mr Hellens client might have to bring back Mr Hellens and the legal team tomorrow when maybe we
20 might have finalised everything today.

ADV PHILLIP MOKOENA SC: Yes Mr Chair, but I mean that we are doing in order to cater for his client's interest and so we are doing so because we were prepared to lead evidence on all the issues and the topics but having listened to Mr Hellens and having listened to the Chair's approach in this regard, it might be a sensible thing to do and

I'm not...[intervenes].

CHAIRPERSON: I got the impression, when I had a look at the - at Mr Hellens client's affidavit as you were speaking earlier it looked like it might be something like seven pages, is that more or less...

ADV PHILLIP MOKOENA SC: It's a very short affidavit.

CHAIRPERSON: So it may be that if I were to take an extended tea break I might be able to...[intervenes].

ADV PHILLIP MOKOENA SC: Yes you might be able to read it then I might also have to lead Mr Dukwana without any interruptions but I'm
10 sure that my learned colleague Mr Smanga might want to say something on this.

CHAIRPERSON: Yes let me hear.

ADV SMANGA SETHENE: Chair, we also want to place it on record that Mr Dukwana is here to advance the constitutional mandate of this Commission. He's here without fear or favour and under no circumstances should this Commission treat anybody with kid gloves. We are in [indistinct] with Mr Mokoena that the Chair shall be afforded an opportunity to go through the statement, after which the Chair will be in a position to listen to the submissions that will be advanced by Mr
20 Hellens SC with Mr Dyle SC and then certainly we stand ready to give - to make our submissions.

CHAIRPERSON: Yes.

ADV SMANGA SETHENE: And we do not want a situation where this Commission would hear the evidence of Mr Dukwana interrupted, we want the coherence in his statement to be what is captured in the

statement and in that regard, an extended tea we are in consent with that but before that it appears that Mr Lebala SC wants to address you Chair.

CHAIRPERSON: Okay, I'm sorry is Mr Lebala coming on the same issue.

ADV MIKE HELLENS SC: Mr Chair may I just say that I agree that you should look at our statement, make a decision about that, and just to make a point, I may have already made, we're not trying to stop the leading of this witness in total, it's just if it's considered that more
10 research with regard to our alleged involvement is necessary he can be led without that portion.

CHAIRPERSON: Yes thank you, Mr Lebala.

ADV SIMMY LEBALA SC: Esteemed Chair there's an incremental issue coming out of what you've heard particularly from our learned friend Mr Mokoena. We don't want to deal with the [indistinct] of the rules Chair but the dire straits created by our statement which is standing before the Commission...[intervenes].

CHAIRPERSON: Yes but you're talking about your statement we are still talking about Mr Hellens client's statement.

20 **ADV SIMMY LEBALA SC:** Well accompanying that is the fact that the Commission would be assisted if our statement is also given to the witness because our statement sheds light about the version of our client Chair and all inclusively I...[intervenes].

CHAIRPERSON: Yes but what has that got to do with the identification of Mr Hellens client, because that's what I'm dealing with.

ADV SIMMY LEBALA SC: It's a separate issue Mr ...[intervenes].

CHAIRPERSON: Ja but I said let me finish the issue relating to Mr Hellens client.

ADV SIMMY LEBALA SC: Thanks.

CHAIRPERSON: Okay alright, I think I will take an adjournment it is quarter past eleven, Mr Mokoena is there anything you want to say before we take the adjournment?

ADV PHILLIP MOKOENA SC: No, no Mr Chair.

CHAIRPERSON: Nothing, I'll take the adjournment it will be longer
10 than usual so that I can get the chance to read, I'm going to resume at twenty to twelve, instead of half past eleven but if I haven't finished I might resume a little – a few minutes later than that, we adjourn.

ADV SMANGA SETHENE: Sorry Chair, may I suggest that in the meantime perhaps it will be prudent that the Chair is favoured with our supplementary statement because that statement is going to give the context in...[intervenes].

CHAIRPERSON: On the identification.

ADV SMANGA SETHENE: Yes in Mr Hellens statement.

CHAIRPERSON: Oh okay I think you mentioned that there was still
20 some supplementary statement. Does Mr Hellens have that because it might put a different picture to...[intervenes].

ADV PHILLIP MOKOENA SC: Mr Chair we'll make sure that you receive it within the next five minutes, maybe if we could resume at 12 o' clock to allow that opportunity.

CHAIRPERSON: Yes maybe because Mr Hellens is – if he hadn't

received it he might want to have a look at it as well but, shall we make it – how long is this supplementary?

ADV SMANGA SETHENE: Chairperson it is only four to five pages, it accompanies the very same email correspondences that are in issue which are the basis of the contention of Mr Hellens client.

CHAIRPERSON: Okay, alright, I think let me – Mr Hellens I see you want to say something.

ADV MIKE HELLENS SC: Mr Chairman we were given a Rule 3.3 notice, we responded to it, we were told at the last minute that there's
10 supplementary evidence, we understand now it would be in response to what we responded. This is the first moment we hear of it, it's untenable, it's unacceptable, we cannot just be bulldozed into rolling over now with a surprise statement produced.

What's supposed to happen with a responsible investigating body is you interrogate people, maybe under summons, maybe under voluntary submission which we would have done.

You develop a sober attitude towards one set of evidence as against another, you investigate it properly but you don't on the day, allow a witness to do a supplementary statement in answer to a
20 considered statement by us and then ask for a ruling on the day, we need an opportunity to respond.

CHAIRPERSON: Yes, no you will need to have a look but I think let the adjournment go up to twelve and then at twelve I'll resume and then we'll then see what we can do or how far we go.

ADV MIKE HELLENS SC: As it pleases the Chair.

CHAIRPERSON: Okay we'll adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: I have had the opportunity of reading Mr Hellens client's affidavit as well as Mr Dukwana's supplementary affidavit. I was unable to find anything in Mr Dukwana's supplementary affidavit that relates to the identification of Mr Hellens client and as I sit here my inclination is to say we continue to seek to strike a balance between
10 ensuring fairness to implicated persons but also ensuring that as far as possible we are not unduly hampered in the work that the commission has to do. My inclination is that where we are dealing with a person who says before you mention my name publicly in regard to something like this I am here, I am cooperating, you have not spoken to me, come and speak to me and I will cooperate. My inclination is to say if the commission has not done that as yet it should rather do that and if at the end of that exercise the position is still that the position does not change then one can take it from there. But you might well find that the position changes in which case it could make a difference. It does
20 not appear to me that there would be much prejudice to the commission if we were to go that route. So I do not know if you want to say – that is – that is not a ruling yet that is an inclination.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: I do not know if you want to say anything Mr Mokoena?

ADV PHILLIP MOKOENA SC: Mr Chair only if that invitation was made much more earlier.

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: You have seen that – just made on Friday we – we are aware that paramount to this commission's proceedings it is you know the concept of fairness and one would want to ensure that all the parties are afforded sufficient time to react to whatever statements that might be made you know against them or evidence that might be led which might implicate other people. So we
10 are much more inclined to adopt that approach subject obviously to what Mr Smanga Sethene might want to say and or subject to what Mr Hellens might want to convey to the Chair. We are – if the evidence was to be led it will be led if the – you have to apply cautious – to be cautious to it we will do that exactly.

CHAIRPERSON: Yes. Council for Mr Dukwana.

ADV SMANGA SETHENE: Thank you Chair.

CHAIRPERSON: Yes.

ADV SMANGA SETHENE: We – we believe the Chair has read the supplementary.

20 **CHAIRPERSON:** Yes I have yes.

ADV SMANGA SETHENE: In the preparation with Mr – with client together with the legal team of the commission this issue of abbreviations of names was articulated by Mr Dukwana giving context to his contention in his statement saying why SS is Smanga Sethene and PM is Phillip Mokoena. Besides Chair anyone who comes before

this commission that SS shall not be stated and challenges the fact that SS means Smanga Sethene and the Chairperson finds that there are publications like this book where the very same or a similar contentions are advanced by the offer. What Mr Dukwana is bringing to the commission is simply evidence. To say there was this email correspondence between directors of companies who benefitted from asbestos heist as Mr Dukwana terms it. And it is those emails that will put PM at the scene. And what Mr Dukwana does not say in his statement he does not say definitively that PM certainly means Phillip

10 Mokoena. He says PM it is believed to be Phillip Mokoena who at the time of this project was at the helm. Now if Chair if I were to take Chair to this book right which was published if I am not mistaken last November and then PM is stated there and a reasonable reader comes to a conclusion that because PM was at the helm of a certain department at the time a reasonable person will come to a conclusion that indeed PM could be believed to be Phillip Mokoena. That is the contention. Now I do not see how this commission's work is going to be hampered even if we were to go by the abbreviated version to say it is PM.

20 **CHAIRPERSON**: I – I [intervention].

ADV SMANGA SETHENE: I [intervention].

CHAIRPERSON: I am sorry. I – I did not understand Mr Hellens to object to the mentioning of certain initials. My understanding of his objection was anything to say those initials refer to his client. I think that is my understanding.

ADV SMANGA SETHENE: Correct Chair.

CHAIRPERSON: It is not my understanding that your client should not say well this document refers to that but he – his concern is anything to suggest that those initials refer to his client.

ADV SMANGA SETHENE: That is why Chair I am saying there is nothing wrong with this commission continuing with its work. When it comes to Mr X it would say – it – let us call him Mr X throughout and then say why – Mr Dukwana will say why he believes indeed Mr X is at the scene of the asbestos heist as he puts it. There is no – there is
10 nothing wrong. In various cases in high court and elsewhere where persons' name it is contended that he shall not be mentioned have been referred to as Mr X. So that – that [intervention].

CHAIRPERSON: I [intervention].

ADV SMANGA SETHENE: So that is the contention.

CHAIRPERSON: Yes.

ADV SMANGA SETHENE: But – but the Chair would understand – would note that the – the affidavit of Mr X – let us call him Mr X does admit that he was at some point at the helm of a specific national department. It does not say whether Mr X is known to the late director
20 of that – a certain company and to another implicated person. Further Mr X does not say in his statement whether whilst he was at the helm at no stage when he was chairing a meeting – let us call it a technical [indistinct] there was never a presentation relating to this – of this magnitude relating to asbestos in the Free State. There is a context why Mr X according to Mr Dukwana is placed there and Mr Dukwana is

going to elaborate that and Mr Mokoena would also attest to the fact that it was an issue even at the preparation of the statement to say why are saying this is Mr X and why are you saying this is Mr Z or Y and all of those names as articulated in the statement of Mr Dukwana are explained.

CHAIRPERSON: Well the – it may be that some people who may be mentioned have not made the same offer that Mr Hellens client has made and I – and committed to cooperation and so on. But it seems to me that further engagement with him including an interview of Mr
10 Hellens' client might well reveal – he might be asked were you at that meeting? You have just mentioned a certain meeting. He might say yes I was at that meeting. That may or may not fortify the belief that Mr Dukwana may be having that the person referred to by certain initials in the correspondence is Mr Hellens' client. So my inclination is there is no harm and there may be benefit in that further engagement and at a certain stage Mr Dukwana can come back and say well the further engagement and the further investigations have actually fortified me in my view and come back and say I can really support why I say this is Mr Hellens' client. Or he might say having been shown
20 what has been unearthed in the further investigation or engagement I do not persist in saying those initials refer to so and so. So in other words if that part of identification is to be dealt with later the commission does not lose anything because it will still be dealt with. And it may be that the further engagement will confirm or confirm that he was right in his – he is right in his belief or it might show that maybe

there are no proper grounds to give that identification. That is my – that is my inclination.

ADV SMANGA SETHENE: Chair if that is [intervention].

CHAIRPERSON: Yes.

ADV SMANGA SETHENE: If that is the Chairperson's inclination.

CHAIRPERSON: Ja.

ADV SMANGA SETHENE: Then I would propose that let it be extended to all persons who appear in the statement of Mr Dukwana in the abbreviated version. Because some of them are here and they are not making any song about the abbreviated version. All what they have – they place themselves on the record to say we are for certain persons. So if that is the Chairperson's inclination I will propose that it be extended to all person even if it means that those paragraphs where those abbreviated names appear are blacked out or for the – for the sake of fairness they are retracted so that they are to be placed at a later stage when Mr Dukwana comes – comes back. I do not know if Mr Mokoena disagree or agrees.

CHAIRPERSON: Mr Mokoena you said Mr Dukwana you meant Mr Mokoena I think.

20 **ADV SMANGA SETHENE:** No, no, no I know Mr [intervention].

CHAIRPERSON: You looked at Mr Mokoena and said Dukwana.

ADV SMANGA SETHENE: It is a voice from behind in fact I am happy that Mr Hellens is very happy with my proposals and he is going to come and agree with everything that I have said. Thank you Chairperson.

CHAIRPERSON: No before you sit no the – the position is that as – at least at this stage I have only been informed of Mr Hellens client’s objection. No one else has expressed any objection. Different people take different approaches to issues. Another person might say look as long as I am going to end up getting a chance to cross-examine Mr Dukwana about what he wants to say about me I will – it is fine I will deal with him in that way. Or I will give evidence and – and it is fine let us proceed you know but somebody else might say – might take the attitude that Mr Hellens has taken. But having said that if Mr Dukwana
10 feels that he would rather not proceed to mention certain names at this stage because he feels there may be a need for further engagements in the same way as in regard to Mr Hellens’ client. That is something that he might need to raise with Mr Mokoena and of course you – you would be there and then we take it from there. But as I say some people would have different approaches to issues and just because I have a particular inclination in regard to Mr Hellens’ client does not necessarily mean it would be the same inclination to others. But I do not know each one would need to be – I would need to be informed of how – I mean for example with regard to Mr Hellens client it is initials
20 that are there and Mr Dukwana says in effect I believe those initials represent so and so. But I think I have seen if I am not mistaken some names that are given in full you know. I may be mistaken. So – so it may differ. So – but – but I am sure – I am sure if they are here they would be able to speak for themselves but to the extent that you might say on behalf of Mr Dukwana you would prefer that he does not mention

certain names I would allow you and Mr Mokoena to discuss that and then we take it from there.

ADV SMANGA SETHENE: In that regard Chair I think we will have to take instructions also to Mr Dukwana – from Mr Dukwana.

CHAIRPERSON: Yes, no, no that is in order.

ADV SMANGA SETHENE: And it would – it would mean [intervention].

CHAIRPERSON: Yes.

ADV SMANGA SETHENE: A short adjournment would be fitting.

CHAIRPERSON: No that would – that would be fine.

10 **ADV SMANGA SETHENE:** Thank you Chair.

CHAIRPERSON: Thank you. I think Mr – I do not know if I saw Mr Hellens wanting to stand up.

ADV MIKE HELLENS: Just my learned friend has gone very far – sailed very close to the wind of revealing what he should not but having said that we are fully in accord with the inclination intimated by you Sir. I think PM he agrees. We would just ask for formality sake and procedural sake if the supplementary affidavit is an affidavit that the commission wants to put to us under Rule 3.3 they must decide to do that and secondly if they want to see our client then we must just make
20 an arrangement. And then lastly in accordance with your – your inclination it is obviously not only the name of my client but the designation which goes with it because that identifies him. So I do not have to say do not say Zondo but you can say the Chairperson of the Zondo Commission well that would be defeating. So it is five – 52.3.1 it is that entire description but apart from that we are in accordance

with your indication.

CHAIRPERSON: Okay thank you.

ADV PHILLIP MOKOENA SC: Mr Chair all this does violence to my preparation but it is fine we will adjust accordingly.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: The only things that we should be cautious not to invite objections which were not there before. The objections that we have formulated are the ones for the client of Mr Hellens and we have them on paper. I do not have any other objections
10 and we have indicated that the Rule 3.3 Notices.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Were dispatched timeously.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: And if there was any party that was wishing to react.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: He could have done so [intervention].

CHAIRPERSON: They would have done so.

ADV PHILLIP MOKOENA SC: So for now I am comfortable that we can
20 lead the evidence.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: With simply without reference to Mr Hellens client's name.

CHAIRPERSON: Client yes.

ADV PHILLIP MOKOENA SC: Even if he may ventilate as to why he

says there but we can definitely make sure that we do not say that.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Mention the name and the designation.

CHAIRPERSON: Yes. Yes.

ADV MIKE HELLENS: Chair there is just one more thing. Perhaps if I did not make myself clear. If you use the initials in the total context that might identify the person so it should be not the initials and not the name and not the designation.

ADV PHILLIP MOKOENA SC: Yes.

10 **CHAIRPERSON**: Well as I recall the document to which Mr Dukwana refers bears certain initials.

ADV MIKE HELLENS: It does.

CHAIRPERSON: Now on the face of it I do not see anything wrong with – with Mr Dukwana saying that document in – on that part mentions these initials and stopping there.

ADV MIKE HELLENS: Perhaps that is the only practical way of it.

CHAIRPERSON: Ja – yes. Yes.

ADV MIKE HELLENS: As the commission pleases.

CHAIRPERSON: Yes, yes. Thank you. I think counsel for Mr Dukwana
20 might be wishing to have some discussion with you Mr Mokoena.

ADV PHILLIP MOKOENA SC: To take instructions. Yes Chair.

CHAIRPERSON: We are at twenty-two/twenty-three minutes past twelve. Maybe you do not need more than five/ten minutes?

ADV PHILLIP MOKOENA SC: Or Chair we can do it the other way around. We can take the early lunch adjournment and come back at

half past twelve.

CHAIRPERSON: Ja I thought of that.

ADV PHILLIP MOKOENA SC: Instead of [intervention]

CHAIRPERSON: But I am thinking that you probably would not need more than ten minutes and then maybe – if we – if we take about ten minutes maybe then we could have about twenty/twenty-five minutes before the lunch and [intervention]

ADV PHILLIP MOKOENA SC: And we can proceed.

CHAIRPERSON: And we could take Mr Dukwana through certain
10 portion and then we take lunch at the normal time.

ADV PHILLIP MOKOENA SC: I am at your hands Chair.

CHAIRPERSON: Yes. Okay let us – let us – we will adjourn now and resume at twenty-five to one. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Mr Mokoena.

ADV PHILLIP MOKOENA SC: Mr Chair maybe it will be opportune to afford my learned colleague to put the instructions of the client and we will in either way that they deem it necessary to proceed with the
20 matter. We are ready to do so.

CHAIRPERSON: Thank you.

ADV SMANGA SITHINI: Thank you Chairperson.

CHAIRPERSON: Yes.

ADV SMANGA SITHINI: We have consulted with Mr Dukwana. He says we must place this on record that there are other witnesses who came

before the Commission. They - they mentioned certain names of persons who prior to come - to coming here to testify and he sees nothing really special about certain witnesses or a witness why they - why he should be treated differently.

He makes reference of the fact that the former President was here. He made mention that retired General Sipiwe Nyanda was a spy and that processes out there are ventilated in the courts. Why this particular one - why this particular one should not be treated or be given the same attitude.

10 In addition to that he says in any case there has been - the list is out of persons implicated and all their names were read out and fortunate - unfortunately there has also been a slip of the tongue and we live in a technological world. It now becomes mute. The identity of Mr X becomes mute because it will be headline news in any case.

CHAIRPERSON: Hang - hang on one second. I note that as you place what you are placing on record Mr Hellens is no longer here.

ADV SMANGA SITHINI: Correct Chair.

CHAIRPERSON: Hm.

ADV SMANGA SITHINI: Now it - it - we are in your hands Chair with
20 regard to that. Perhaps it is a discussion that we would have to have with Mr Hellens together with the legal team of the Commission to say in the light of this what are we doing because I can tell you now Chairperson it maybe now trending on the social network as to who is this Mr X and why the identity of Mr X is being concealed by the Commission and it places the Commission in a serious predicament as

to how is it going to deal with other witnesses moving forward because the inclination of the Chairperson certainly opens floodgates of other witnesses wanting to go the similar route that Mr Hellens client has - has advanced.

This - I am not sure if the Commission as well is also inclined to hear evidence of Mr Dukwana in piecemeal fashion and I doubt that will be - I doubt it will be desirable that evidence of Mr Dukwana is - is heard on a peaceful - on a piecemeal basis. Perhaps Chair it will be prudent as Mr Mokoena proposed earlier that let us take an extended
10 lunch and then he Mr Mokoena would contact Mr Hellens to request him to do a U-turn and failing which we may have to meet later with Mr Hellens and - and Mr Dayal to - to explore this matter because otherwise the Commission is going to be said to be a mommyish in a sense that ...

CHAIRPERSON: Well - well let us - let us look at this. Well one you say your client mentions the fact that the former President mentioned certain names.

ADV SMANGA SITHINI: Yes.

CHAIRPERSON: Now the former President had not furnished the
20 Commission's legal team or the Commission with a statement beforehand ...

ADV SMANGA SITHINI: Correct Chair.

CHAIRPERSON: To enable the Commission to know what he was going to say and then to make a decision as to what should be done and to have its or copies sent or notices sent to certain persons that he might

have intended to mention. That is the - the first point.

The second point I think would be that generally speaking it would be reasonable to expect that where information that might assist the Commission is readily available that it be looked at so that it is taken into account before a witness' statement is finalised or before a witness gives evidence.

Of course it depends what the information is and one has got to bear in mind that a witness does not - the information that the witness has does not have to be 100 percent correct.

10 **ADV SMANGA SITHINI**: Correct.

CHAIRPERSON: You know. We - but it would be important to see that where there was awareness that certain information could be checked with relative ease that - that that could be checked first. Of course then there is the point which I made earlier on that different persons - different people take different - adopt different attitudes or approaches to different issues.

A few weeks ago Mr or Ms Jiba's counsel came here when Mr Nxasana was going to give evidence and I heard argument and as a result of the argument and my response to it certain arrangements were
20 made and - and Mr Nxasana was able to continue with his evidence without dealing with certain aspects of it and he subsequently came back I think last week or the week before and was able to continue with his evidence with no objection at all from Ms Jiba and without as I understand the position even an application from Ms Jiba for leave to cross-examine him.

ADV SMANGA SITHINI: Correct.

CHAIRPERSON: So the objection had fallen away. Mr Nxasana is still going - has not finished. Will - he will still come back and finish his evidence. So as I say one keeps on trying to strike a balance. One does not want a situation where just because somebody objects to something then everything stops but at the same time one does not want a situation where people believe that even if you have - you object you will just be dismissed because the Commission wants to continue.

10 **ADV SMANGA SITHINI:** Hm.

CHAIRPERSON: One tries to strike a balance and - and one of the factors as I mentioned earlier on is to say okay if we allow the opportunity to have the investigators or the legal team of the Commission interview Mr X and he tenders certain information and his bank account and he is prepared to answer whatever questions he may be asked.

That is what Mr Hellens said if I recall correctly. If that process has been done we may still come back and be able to say no that is fine. Let - let Mr Dukwana mention what he believes the initials
20 represent and it maybe that at that stage they might say look we - we have - we have been heard and we will still get a chance to challenge.

That - that is fine. So one tries to strike a balance. Of course different people will strike a balance in different places.

ADV SMANGA SITHINI: Correct Chair.

CHAIRPERSON: Yes. So that - that - so that is - that is - that is the -

that is the at least one of the distinguishing factors relating to the former President is that we - we did not have his statement. It was ...

ADV SMANGA SITHINI: Yes Chair.

CHAIRPERSON: All came as a surprise.

ADV SMANGA SITHINI: Yes Chair.

CHAIRPERSON: *Ja.*

ADV SMANGA SITHINI: Chair I see that Mr X ...

CHAIRPERSON: Counsel.

ADV SMANGA SITHINI: Counsel (intervenes)...

10 **CHAIRPERSON:** Other than Mr Hellens.

ADV SMANGA SITHINI: Other than he - he is present.

CHAIRPERSON: *Ja.*

ADV SMANGA SITHINI: Certainly they were listening to the news and that is why they - they deem it fit to do a U-turn but Chair ...

CHAIRPERSON: Hm.

ADV SMANGA SITHINI: Mr Dukwana tells us ...

CHAIRPERSON: Hm.

20 **ADV SMANGA SITHINI:** That Mr X actually in a newspaper edition last year he actually disputed that he is indeed Mr X. So he says in any case - he says in any case even if he Mr X is referred to as Mr X a context is still out there in the public domain but as proposed earlier Chairperson is now that Mr Hellens is here perhaps that extended lunch should be - should be - should be proposed ...

CHAIRPERSON: Hm.

ADV SMANGA SITHINI: And then we - we favour Mr Hellens and his -

and the team of Mr X with what ...

CHAIRPERSON: But I am not sure what Mr - what prejudice Mr Dukwana will suffer if we go along with my inclination because it is a question of if he does not mention today he might still be able to mention at a later stage what he believes those initials represent.

ADV SMANGA SITHINI: But Chairperson ...

CHAIRPERSON: *Ja.*

ADV SMANGA SITHINI: It will be prudent that the - the legal team of Mr X is present so that in the event they wish to challenge his evidence

10 ...

CHAIRPERSON: Hm.

ADV SMANGA SITHINI: They do so because the issue of reputation we are told from Mr Hellens that it is at issue here.

CHAIRPERSON: Yes but they have no problem. They are happy with my inclination. Mr Mokoena accepts that inclination and as I understand the position you are not totally against it but you ...

ADV SMANGA SITHINI: Certainly.

CHAIRPERSON: But you - you have certain concerns.

ADV SMANGA SITHINI: Certainly Chair.

20 **CHAIRPERSON:** Yes. So, so but I see that I think your instructing attorney seems to want to say something.

ADV SMANGA SITHINI: *Ja.*

CHAIRPERSON: I have got to bring this to a close.

ADV SMANGA SITHINI: Can - can I please take instructions?

CHAIRPERSON: Take instructions but I want to bring it to a close, *ja.*

ADV SMANGA SITHINI: Chair I understand that the client is amendable to ...

CHAIRPERSON: To the inclination.

ADV SMANGA SITHINI: To the inclination and we must proceed as - as ...

CHAIRPERSON: As previously indicated.

ADV SMANGA SITHINI: Thank you Chair.

CHAIRPERSON: Okay. No that is fine. I - I take it that Mr Hellens does not have to say anything in the light of that.

10 **ADV PHILLIP MOKOENA SC:** Mr Chair if you ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Grant Mr Hellens time we will leave here at 6 o' clock. I think he goes with the inclination Mr Chair. I am sure of it.

CHAIRPERSON: I - I think Mr Hellens you do not have really to say anything because ...

ADV MIKE HELLENS: I missed some of it Chair but if it as was - if it as it was when I left ...

CHAIRPERSON: Yes.

20 **ADV MIKE HELLENS:** When you adjourned.

CHAIRPERSON: Yes.

ADV MIKE HELLENS: Then I have nothing to say.

CHAIRPERSON: Yes. No.

ADV MIKE HELLENS: As shortly as possible.

CHAIRPERSON: It is as it was when we adjourned. Okay. Alright.

Thank you. Thank you every - to everybody. Okay. Mr Mokoena should we get the witness ...?

ADV PHILLIP MOKOENA SC: Mr Chair may the witness be sworn in.

CHAIRPERSON: To sworn in, *ja*. Okay.

REGISTRAR: Please state your full names for the record.

MR MXOLISI DUKWANA: Mxolisi Dukwana.

REGISTRAR: Do you have any objection to taking the prescribed oath?

MR MXOLISI DUKWANA: No.

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

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: I am sorry. I do not know. It looks like the ...

REGISTRAR: Yes.

CHAIRPERSON: Oh, it is working now. Okay. I think you must give that answer - that last answer again.

MR MXOLISI DUKWANA: Yes.

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

MR MXOLISI DUKWANA: Yes I do.

20 **REGISTRAR:** Do you swear that the evidence you will give will be the truth, the whole truth and nothing but the truth if so please raise your right hand and say so help me God.

MR MXOLISI DUKWANA: So help me God.

MR MXOLISI DUKWANA: (duly sworn, states)

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Mr Dukwana (intervenes).

CHAIRPERSON: Just before Mr Mokoena. Mr Dukwana thank you very much for coming back to continue to give evidence in the Commission.

MR MXOLISI DUKWANA: My pleasure sir.

CHAIRPERSON: Thank you and Mr Mokoena you will obviously be alive to the relevant parts of - of his evidence and you will ...

ADV PHILLIP MOKOENA SC: I - I have put red stickers where I am not supposed to go Chair.

CHAIRPERSON: Okay.

10 **ADV PHILLIP MOKOENA SC:** Yes.

CHAIRPERSON: Alright.

ADV PHILLIP MOKOENA SC: Mr Dukwana we have placed a file before you and if you open that file you will see that it has been subdivided into six folders. Do you have that file?

MR MXOLISI DUKWANA: Yes I do.

ADV PHILLIP MOKOENA SC: *Ja* and if you go through - there is an index in front of it which will assist you to navigate you know through the file. However for the purpose of your testimony today we will be going to folder number six and if I may request you to turn to page 1 of
20 that document. Could you please identify that document for us?

MR MXOLISI DUKWANA: The what?

ADV PHILLIP MOKOENA SC: Could you please identify - what is that document that you see on page 1? The pages are numbered ...

MR MXOLISI DUKWANA: Evidence of Mxolisi Dukwana.

ADV PHILLIP MOKOENA SC: Yes. No but I think you are looking at

the cover page. Turn again, yes. There is a document. What is that document?

MR MXOLISI DUKWANA: It is I the undersigned Mxolisi Dukwana.

ADV PHILLIP MOKOENA SC: It is - it is your statement.

MR MXOLISI DUKWANA: It is a statement.

ADV PHILLIP MOKOENA SC: Now let us go to page 34 of that document and could you please identify the signature appearing there?

MR MXOLISI DUKWANA: It is mine.

ADV PHILLIP MOKOENA SC: And do you confirm that this statement it
10 in a form of an affidavit?

MR MXOLISI DUKWANA: I do.

ADV PHILLIP MOKOENA SC: Yes and do you confirm the contents of that statement to be true and correct?

MR MXOLISI DUKWANA: I do.

ADV PHILLIP MOKOENA SC: Yes. Now in your preparation also you were presented with an affidavit that was deposed to by Mr Iqbal Sharma. Am I correct?

MR MXOLISI DUKWANA: Yes sir.

ADV PHILLIP MOKOENA SC: And then if you may turn please to folder
20 number five would that be the statement of Mr Iqbal Sharma which you had the opportunity to peruse?

MR MXOLISI DUKWANA: Yes it is.

ADV PHILLIP MOKOENA SC: Yes. Now let us go back then to your statement. We will in due course come to that statement of Mr Sharma. If I may refer you to page 3.

CHAIRPERSON: I am sorry Mr Mokoena. I think - should - is there something you should tell me about pagination here? Normally we - with these bundles the pagination is from beginning to end but I see that this may be different.

ADV PHILLIP MOKOENA SC: It - it is different Chair because the - the documents that you are having ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: Which are at the beginning of the file ...

CHAIRPERSON: Yes.

10 **ADV PHILLIP MOKOENA SC:** Have already been you know admitted as evidence.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: On - on a particular set of numbers.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: So we do not want to disturb that pagination that exists from his initial evidence.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: That is why we kept it that as the way it is but if you go to EXHIBIT 5 we then created it as a separate bundle
20 altogether which is on folder number six.

CHAIRPERSON: Oh. That is - that is what I want to understand.

ADV PHILLIP MOKOENA SC: Yes. Folder number six Chair, yes.

CHAIRPERSON: So from folder number six it is a different pagination?

ADV PHILLIP MOKOENA SC: It is a different pagination. It goes with its own pagination.

CHAIRPERSON: But it holds good for the balance of ...

ADV PHILLIP MOKOENA SC: Definitely.

CHAIRPERSON: The pages?

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: So before folder six it is one pagination?

ADV PHILLIP MOKOENA SC: Definitely Chair.

CHAIRPERSON: And after folder six it is a different pagination?

ADV PHILLIP MOKOENA SC: Different pagination Chair.

CHAIRPERSON: But it is - it is complete? It is from beginning to end?

10 **ADV PHILLIP MOKOENA SC**: To end.

CHAIRPERSON: In that section?

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: As we have also alluded to in our opening address ...

CHAIRPERSON: *Ja*.

ADV PHILLIP MOKOENA SC: When we are introducing the documents Chair.

CHAIRPERSON: Okay.

20 **ADV PHILLIP MOKOENA SC**: Now Mr Dukwana I was just about to refer you to page 3 of your statement. Would I be correct that you know from that page and onwards you are then reacting to the averments and statements which are contained in the affidavit of Mr Iqbal Sharma?

MR MXOLISI DUKWANA: It is true sir.

ADV PHILLIP MOKOENA SC: Yes. Now in paragraph 6 of that statement you give a background and in paragraph 7 you state to the Chair as follows:

10 “Sharma’s statement was not intended to be an application to cross examine me but an attempt to respond to the allegation I made relating to him. Notwithstanding the status of Sharma’s statement at the Commission I am advised that I need to deal with the relevant matters conversed in his statement further in Sharma’s annexures. There are documents that I purportedly signed and I will demonstrate that the signature appended in those annexures have been forged.”

And that is what you are conveying to the Chair. Am I correct as a means of a background?

MR MXOLISI DUKWANA: It is correct Chair.

ADV PHILLIP MOKOENA SC: Yes. Now may you proceed in your own words and start dealing with Sharma’s affidavit from your own reaction with reference to paragraph 8.

20 **CHAIRPERSON:** I am sorry Mr Mokoena. We - we are at 1 o’ clock but I was thinking maybe we could go up to quarter past and then take an adjournment but we may - we - we could adjourn and start and come back at two. If we adjourn at quarter past we would come back at quarter past two.

ADV PHILLIP MOKOENA SC: Chair Mr Zutini (?) is very hungry. He

indicates to me and says now.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: He says adjourn now Mr Chair. So I am normally a creature of instructions ...

CHAIRPERSON: *Ja.*

ADV PHILLIP MOKOENA SC: Chair but we may adjourn now and come back at two.

CHAIRPERSON: May - maybe we should adjourn and so that he can start properly after lunch. Okay. Let us - let us do that. We - we try to
10 start earlier. It was not possible. Okay. We will adjourn and then we will resume at two o'clock. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Let's proceed but before we do that let's address the question of whether we will stop at four or later, seeing that we have lost quite some time this morning. Mr Mokoena you are in a better position to assess the situation.

ADV PHILLIP MOKOENA SC: Mr Chair Mr Dukwana is set down to
20 testify today and tomorrow, we also have a very short witness that it is a corroboratory witness more than anything else, we can do either two things Chair, we can either adjourn at four o'clock today and maybe attempt to start early, at nine o'clock tomorrow, because at least I will be able to gauge at four o'clock as to how far we are.

CHAIRPERSON: Yes, okay maybe we will hear what – maybe let us

deal with it at four.

ADV PHILLIP MOKOENA SC: At four o'clock yes.

CHAIRPERSON: And then we will see whether we add some time today or we start early tomorrow.

ADV PHILLIP MOKOENA SC: Tomorrow, that will assist ja.

CHAIRPERSON: Okay alright, thank you.

ADV PHILLIP MOKOENA SC: Mr Dukwana just before the lunch adjournment I have referred you to your statement where you begin to react to the averments which are contained in Mr Iqbal Sharma's
10 affidavit. You do so starting from paragraph eight on page three of your witness statement, please take us through the contents of that paragraph and what you are conveying to the Chair.

MR MXOLISI DUKWANA: Chair Mr Sharma, in his affidavit indicated that on paragraph 11 of that, that I requested him to draft letters for – I requested him to draft these letters for me and of course, it is not correct it is not true because the office also had legal advices, we're capable of doing this type of work besides also that one being a teacher for a very long time and one could not ask a person to draft you any letter that you want to do especially with the expertise that we
20 had in the disposal in the office and the fact that we are not talking about a person who is not knowledgeable especially about the running of – in the Public Sector he's a former senior employee of a State owned company and he's well clued with the Public Finance Management Act one of 1999 as amended and he...[intervenes].

CHAIRPERSON: Are you now talking about – who are you talking

about when you say he's well clued in whatever?

MR MXOLISI DUKWANA: I'm talking about the – on page four number nine.

CHAIRPERSON: Oh okay.

MR MXOLISI DUKWANA: I'd indicated here – here the page eight I deny the fact that he said I asked him – I requested him to draft this...[intervenes].

CHAIRPERSON: Oh you're talking about Mr Sharma, is that right?

MR MXOLISI DUKWANA: Yes Mr Sharma.

10 **CHAIRPERSON:** Yes okay that's fine, I thought I...

MR MXOLISI DUKWANA: And the fact that he was a very senior employee at one of the State owned companies, he's knowledge in as far as the Act and the Regulation that pertain to the kind of work, he should have known, I mean he's more clued up and he's knowledge far exceeds mine. But it does not explain, why, in his view given his prowess in the legislative from work, did he find it, you know a [indistinct] to deal with me as the MEC, instead of dealing with the Accounting Officer of the Department. The question is, why would a person persist in dealing with a Politician when he knows that in terms
20 of the administration the head of the department would be the one who would deal with all these matters. So I think the only thing that one could conclude is that it falls within the practice that has fallen – the Public Sector in the sense that you – once you get hold of the head, despite the fact that you would hear from time to time political heads or Executives will always be proud stating that they don't sign anything

the, you know and every time putting the officials under the bus but the fact of the matter is that once you have a MEC or these political heads it is easy – once you are finished with him, it is easy for you to get what you want because...[intervenes].

ADV PHILLIP MOKOENA SC: What do you mean when you say finished about him, I mean it ...[intervenes].

MR MXOLISI DUKWANA: I'll make an example, I think what he was doing here, he believed it will be easy for him to get into the department and get what he wants, if he were to convince me to do
10 what they wanted me to do and once we have the hearing of a Politician in this matter it will be easy to go to the officials and I would further, as we go, when we start with what we're here for, I will demonstrate why I find it very, very disturbing every time that most capable officials have found themselves in a predicament where they are given instructions by their political heads and when it becomes hot they are just pushed under the bus and the Politicians will not take responsibility. So I will demonstrate that but I'm just saying this was very simple that once he agrees it will be easy for him and it is for that reason that I think it was a clear instruction from Magashule as I say it was in furtherance of
20 advancing the commercial interests of the Gupta's at that time.

ADV PHILLIP MOKOENA SC: Are you now aligning what you're saying with what you stated to the Chairperson in a previous testimony?

MR MXOLISI DUKWANA: Yes.

ADV PHILLIP MOKOENA SC: When we – at the Gupta compound?

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: Well I wanted to say, you know when I asked you who you were talking about, when you talked about him having certain expertise you mentioned that it was Mr Sharma, it seemed a little odd to refer to he's experience and expertise in circumstances where you were saying you wouldn't have made it – him to do the letters for you, you understand. What one would expect is something along the line that, look, I didn't need him because I had this capacity, which you did say, the department had the capacity but maybe to compare and show that whatever experience or expertise he had really didn't match that
10 which you had therefore you would have no reason to need him to do anything, I think that's what kind of confused me.

MR MXOLISI DUKWANA: Can I help the Chairperson from that confusion?

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: The page eight, you know, the paragraph eight.

CHAIRPERSON: Paragraph eight ja.

MR MXOLISI DUKWANA: Deals with the drafting of the letters.

CHAIRPERSON: Yes.

20 **MR MXOLISI DUKWANA:** That is where I'm saying I had this skills in the office so I did not need him to do this.

CHAIRPERSON: For the drafting.

MR MXOLISI DUKWANA: On the paragraph nine I'm not dealing with the drafting of the – I'm dealing with him knowing...[intervenes].

CHAIRPERSON: It's a follow-up – it's not a follow-up on earlier

points.

MR MXOLISI DUKWANA: No it's not a follow-up.

CHAIRPERSON: It's a different point.

MR MXOLISI DUKWANA: Yes I'm saying I'm raising this matter that for him to be dealing with me he would have known that the best person you should go to would be the HOD not this, so I'm just stating that as a fact.

CHAIRPERSON: Ja, so effectively the point you make at paragraph nine is to say, I've dealt with the question of drafting and the capacity
10 to draft, I say I had that the department had that I didn't need him to draft letters for me, that's one point but then you say – in effect what you're saying on his own version he sought to deal with me as MEC and yet because of his knowledge of the PFMA and the fact that he had been a senior employee of a State owned company, he should know that he should – I wasn't the person he should have dealt with, maybe he should have dealt with the Head of Department, that's the point you're making, is that right?

MR MXOLISI DUKWANA: Yes that's the point.

CHAIRPERSON: But you must say if I don't understand the point
20 you're making, do I understand it correctly?

MR MXOLISI DUKWANA: You do, you do now.

CHAIRPERSON: Alright, thank you, okay let's proceed.

ADV PHILLIP MOKOENA SC: May I now refer you to page – paragraph 10...[intervenes].

CHAIRPERSON: Your voice has gone down Mr Mokoena at least from

my side where I am.

ADV PHILLIP MOKOENA SC: Mr Chair it might be the effects of lunch, if I may refer you to paragraph 10 Mr Dukwana where you are now referring to a document that was Annexed to Mr Sharma's affidavit and you're making certain remarks about that document.

MR MXOLISI DUKWANA: If you check this statement that was marked IS1, the copy of a tender or special development of the Machabeng local Municipality and what is very interesting here is, whatever was happening with the special planning framework, development framework
10 of the Machabeng Local Municipality had nothing to do with the concept of a new city. So even when we were thinking about this and when I went to the Municipality to present the idea of building a new city, specially after the 1994 elections where we were saying, for us to be - to do justice to the special setting we needed to build a city that would not have the hallmarks of the other cities that were built before 1994 and I presented this, without the knowledge of the tender that they had issued out and for him to link this is actually not correct.

ADV PHILLIP MOKOENA SC: So you are disputing what he's saying in his answering affidavit in line with that document?

20 **MR MXOLISI DUKWANA:** I do.

ADV PHILLIP MOKOENA SC: Yes, now you make reference to one person called Tshepiso Magashule from paragraph 11, before we deal with those contents could you explain as to how do you know him and who is he?

MR MXOLISI DUKWANA: Tshepiso Magashule is the son to the then

Premier of the Free State, Ace Magashule, I know him as a businessman but also as a son to Ace...[intervenes].

CHAIRPERSON: Well you must just indicate that when you say businessman, you seem to put that in quotation marks with your hand, is that correct or am I misreading what you are doing with your hand?

MR MXOLISI DUKWANA: Chairperson you see...[intervenes].

CHAIRPERSON: Is it something I should take note of or is it something I shouldn't take note of?

MR MXOLISI DUKWANA: No, there aren't many people you'd find
10 outside who will you that they are business people, they are businessmen but you will only see their lifestyles etcetera but you're not linking with any business whatsoever and even if you were to check, you know, you won't find him linked with any person, I'm not talking about him specifically.

CHAIRPERSON: Yes just in general.

MR MXOLISI DUKWANA: I'm talking about people who go around, everybody whilst you get into a tender you just tender and you're not doing the work that you are tendering for, you have no skills, you get the tender give it to somebody else you get the money, you call
20 yourself a businessman. So I'm using this term adversely that not everybody who calls himself a businessman is a businessman.

CHAIRPERSON: Okay.

MR MXOLISI DUKWANA: So in this case he was referring to him as a businessman and that he knew him as a businessman that's what, in his statement how he described him. So I'm just saying, trying to indicate

from his statement also he was being disingenuous in the sense that Tshepiso Magashule not only as a businessman, he knew him very well but to just put it – to create a situation that they're only meeting as businessmen is not correct.

CHAIRPERSON: In other words you're saying he knows much more about him than simply that he's a businessman?

MR MXOLISI DUKWANA: He does.

CHAIRPERSON: Okay.

MR MXOLISI DUKWANA: He does.

10 **ADV PHILLIP MOKOENA SC:** Now let's deal with the specifics of that paragraph in order to place your evidence in its proper context.

MR MXOLISI DUKWANA: He believed that – he sent him an email trying to ask him to facilitate such a meeting and what I'm just saying is there was nothing wrong for him if he had a [indistinct] in the proposal to actually ask me to meet me and explain what he wanted to do. There was no need for them to go to him, if you check this – that's why I used this, you know...[intervenes].

CHAIRPERSON: The quotation marks?

20 **MR MXOLISI DUKWANA:** Yes just to demonstrate that here it was coming as a pressure, if you check what I said at paragraph nine and this one, you would understand the content of what I raise in that, that in this case the intention is to, whilst – people believe whilst you have Tshepiso coming to me or Tshepiso arranges such a meeting I will then tremble and then grant them such. So I'm just saying people who mention that he is the son to the Premier and all those things. He was

doing that deliberately hoping that it will influence me, but I'm just saying there was no need for such. If he want to meet me, you can just arrange for such a meeting and do that, that's what the contention of this paragraph is all about.

ADV PHILLIP MOKOENA SC: You may then proceed to canvas paragraph 12 of your statement Mr Dukwana.

MR MXOLISI DUKWANA: For instance I would not have met a person to speak about the lapsed tender as they state here that our discussion was the idea that they had – and the way forward in relation to a new
10 concept for the lapsed tender. So I did not have any clue of any of the tenders that the Municipality had issued and besides that, I'm staying in Welkom and people who were in that Municipality at the time, this was discussed, peopled I know very well and I would have been aware if there was something of this nature and as I say I don't think here the person was telling the truth, he was very [indistinct] with the truth especially with regard to the statement he raised about the purpose of our meeting that he's not telling the truth in that regard.

ADV PHILLIP MOKOENA SC: Yes you also reacted to Mr Sharma's paragraph 10 and you dispute the assertions that are contained therein,
20 you do so in paragraph 11, Mr Dukwana.

MR MXOLISI DUKWANA: This also, I'm going to put some context at a later stage but in this case the most important thing, Chairperson, is that when you get the kind of information for instance the desire was coming from us and we wanted to do that we wanted to build this, we were engaging people that we could have as partners. It will be my

responsibility as the MEC to engage with the HOD to really prepare a submission that will go to Exco but if they have unsolicited bids then they are free to approach the Premier or would come to the office and engage with the HOD who would then prepare these – this is a normal practice that will be there but in the Free State, I will come and explain that a new system and a new culture emerged. So this paragraph, also that the – Mr Sharma refers to that I advised them to approach the Provincial Executive Committee. Look at the logic of the whole statement, it is not them that is P3 and Yolane, that's Mr Sharma and
10 the other person, that were interested in the building. It's initiative coming from us to say we want to do this and opening up and discussing with other people you will discuss with them and they came also to say, they are interested to do this. So I would not logically I would not just – now that the idea is ours and then I turn to somebody and say go to – you advice you go to the – make a submission to the Provincial Executive Committee. In any case the memo – I'm going to demonstrate why this is a problem because it happened in one Executive meeting, it's part of the issues that I will raise, that an office that was not aligned department – line function department presented a
20 memo in the Executive Council and there was a problem with the consent MEC and in this case if you bring anything to the Executive Committee it has to go through the department making a submission, under normal circumstances that will be the fact but in any rate as you'll see Chairperson, even when the matter was presented, I was not even in the Executive at that time, I did not even present the matter. If

it was so, why would the MEC who was acting on my behalf at that time, take the matter to Exco if the advice was for them to go to Exco, them to go to Exco.

ADV PHILLIP MOKOENA SC: Yes so you're distancing yourself from what Mr Sharma is saying in his statement?

MR MXOLISI DUKWANA: In the statement, yes I do.

ADV PHILLIP MOKOENA SC: Now if you may summarise for us what you are dealing with from page six you dedicate part C of your statement to deal with the documents that were Annexed to Mr
10 Sharma's affidavit, if you can summarise those issues which you believe are critical for you to outline to the Chair in relation to the documents.

MR MXOLISI DUKWANA: Can I paint a picture, Chairperson, here we are sitting in a meeting, it's myself, Mr Sharma and the other gentlemen, Mr Thomas for P3 and then a document is presented and then this document is going to create – help create a project that is worth billions of rands. I'm sitting in the meeting with the gentlemen and to also give the background in what I'm going to say, I was the speaker of the legislature for a very long time and I got to understand a
20 number of things and how to deal with these issues but sitting there, here's a witness, they sign, I sign as a HOD and I sign as a MEC. The two gentlemen are sitting there looking at me signing as a HOD, signing as a MEC and then signing and they're signing and we don't have any witnesses and then they go out with the document which of course you will not find this document in the department except even when we were

looking for information we could not find that but then the document surfaces and then they say, this is where I signed, I signed both as a HOD as well as a MEC. Now if it does not sound strange that here I'm sitting with people, as I said earlier who's knowledgeable, he's looking at me signing and not even suggesting that, hey what are you doing, why are you signing but if you check the two signatures you will find that they are not identical.

CHAIRPERSON: I want to go to that document Mr Mokoena if you can tell me where it is?

- 10 **ADV PHILLIP MOKOENA SC:** Yes Chair I'm just about to go to it, the document will be found at Mr Sharma's [indistinct] statement Chair if I may go to it on page...

CHAIRPERSON: I am at page one of Mr Sharma's statement or is it one of the Annexures?

ADV PHILLIP MOKOENA SC: It's page 36 and I think page 38, would that be the document Mr Dukwana?

MR MXOLISI DUKWANA: Yes.

ADV PHILLIP MOKOENA SC: Yes that is the document that the witness is referring to Mr Chair.

- 20 **CHAIRPERSON:** Yes okay.

ADV PHILLIP MOKOENA SC: Now in line with that document, now that we have opened page 17 and 18 you can demonstrate the point to the Chair with reference to that document.

MR MXOLISI DUKWANA: If you check it says, the witness- the parties hereto have caused this argument to be executed by their respective

duly authorised offices. For the Provincial Government of the Free State acting through its Department of Economic Development, Tourism and Environmental Affairs there's a signature and then it says Head of the Department, Provincial Government of the Free State and it's written M A Dukwana 5th October and I've said this over and over Chairperson that despite the fact that when I write I write Dukwana as Dukwana, you have it again on page 18 and you have it there at page 18. So that is why I said if the Commission so wishes can take these two signatures because as I say I would not be that stupid to sign here and to sign also as a MEC. In this I was representing the Provincial Government as a member of the Executive Council and then doing this. When they did this with Mr – that is Mr Sharma and the other – Mr Thomas, now and as you know Chairperson in every document that you sign there will be witnesses and this one also would not have been an exception so I would be signing a document and the document signed by me there would of course be a witness, in this case there's none and here also he's signing and if you check the witness 1, there is space for witness in the document but nobody signed in those gaps including the consortium itself of Yolane Management and P3 International. It is with that in mind that I request the Commission do a thorough investigation into the matter.

CHAIRPERSON: Well I see that it looks like no date is reflected as to when – no date is reflected on the document as to when the signatures were appended is that correct?

MR MXOLISI DUKWANA: The date is there is the 5th of October 2011.

CHAIRPERSON: Oh it's – okay it's written below the name- no thank you but I don't know what – Mr Sharma has not had a chance to respond to your supplementary affidavit is that correct? So he doesn't know what his response is to...[intervenes].

ADV PHILLIP MOKOENA SC: No he was responding to the initial statement of Mr Dukwana.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: So this is the response.

CHAIRPERSON: Yes what I am asking is whether [intervention].

10 **ADV PHILLIP MOKOENA SC**: Exhibit – yes.

CHAIRPERSON: Is whether Mr Sharma is as – is aware of Mr Dukwana's response to his statement?

ADV PHILLIP MOKOENA SC: Oh yes. He was also [intervention]

CHAIRPERSON: He was given.

ADV PHILLIP MOKOENA SC: We did furnish him with the 3.3.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: And the relevant portions of the statement definitely.

CHAIRPERSON: And there has been no reaction?

20 **ADV PHILLIP MOKOENA SC**: There has not been any reaction Mr Chair.

CHAIRPERSON: Yes. Well [intervention].

ADV PHILLIP MOKOENA SC: You would recall Mr Chair that also in my – when we opened – in our opening remarks when we dealt with the different individuals.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: We indicated that he was one of the persons that was favoured with the statement of Mr Dukwana.

CHAIRPERSON: Yes. Well – we will hear what he will come when he says here but it is quite strange because I guess you may have a situation where one signs the same document in two different places where Mr Dukwana signs for himself as MEC. And then maybe he signs in the place of the Head of Department on behalf of the department PP. The Head of Department theoretically that could happen. But maybe if
10 you talking about the structure of a Provincial Government that the one is a political head the other one is a civil servant it could make – it could cause problems even then.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: But I see that here it is not even PP As I see it – it is seems that the person who signs in both places holds both positions as MEC and as Head of Department.

ADV PHILLIP MOKOENA SC: At the same – at the same time Chair.

CHAIRPERSON: And – and of course that is a legal impossibility. So that is –

20 **ADV PHILLIP MOKOENA SC**: Yes.

CHAIRPERSON: That seems quite – really strange.

ADV PHILLIP MOKOENA SC: Yes. But Mr Dukwana maybe to remind the Chair in your early testimony when you commenced with your evidence in April you indicated that your legal team did bring an application in the Free State court where certain documents were

sought, am I correct?

MR MXOLISI DUKWANA: You are correct.

ADV PHILLIP MOKOENA SC: And that there was an understanding that you were going to be favoured with certain documents. Was this document ever produced officially by the government of Free State?

MR MXOLISI DUKWANA: No.

CHAIRPERSON: Well let me go back to the question – to the issue on which I have just remarked. You set out your – your history from 1994 – your – the positions you have held in government in the Free State
10 Province but you also set out your history to some extent as a member of the ruling party and as an activist. Have you ever known of anybody in any province who has held the position of MEC and Head of Department at the same time since 1994?

MR MXOLISI DUKWANA: It is not allowed. It cannot happen.

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: It can happen. It does not happen.

CHAIRPERSON: And you have never heard of anybody who does that?

MR MXOLISI DUKWANA: No I have not.

CHAIRPERSON: Ja.

20 **MR MXOLISI DUKWANA:** I have not.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: Now if I may refer you to page 7 of your statement. You make a further point on paragraph 22 and 23 as to why you are distancing yourself from the averments contained in Mr Sharma's affidavit. Please take us through what you have stated

therein?

MR MXOLISI DUKWANA: The – the Premier I think we were also demonstrate issued a directive that [intervention]

CHAIRPERSON: I am sorry Mr Dukwana. I do not know if it is me but both you and Mr Mokoena are – your voices are very soft this afternoon. Please try and raise it if you can? Last time I did not have any difficulty hearing you.

MR MXOLISI DUKWANA: It is food, it is food, it is food.

CHAIRPERSON: Okay alright.

10 **MR MXOLISI DUKWANA:** I am saying Chair that the most important thing is that the – the then Director General issued a statement indicating that all contracts or any contract that is to entered into they should go to the state law advisors.

CHAIRPERSON: Is that the Director General of the Province?

MR MXOLISI DUKWANA: Ja the then Director General of the Province Doctor Nohela [?]

CHAIRPERSON: Doctor Ngwenya.

MR MXOLISI DUKWANA: Nohela.[?]

CHAIRPERSON: Oh okay yes.

20 **MR MXOLISI DUKWANA:** The – that is something that I will also talk to. And in this – in this – and also the fact that in the department we have got legal people who would do the drafting of these documents. And at any rate once you have a document like this and you say it is legal this was the same document that Mr Sharma used at some stage when they wanted payment. And if I had signed the document I will be

the worried person who would want to see payment made but there were so many threats coming from him in relation to taking us to court about all these and making so many allegations. But that – those threats never saw the day of light or the light of day. And the – all I am trying to say is when people do these kinds of things and go out and threaten us that you have signed a document and therefore you must deliver on the document it was at that time because we – when we met with them we wanted – we were still getting information. We only indicated to them – I personally said to them they should come in and

10 we arranged for them to have a workshop with the staff. And then we – there they will understand because we had established a team. So they will then get to understand what exactly we want. But for them even before we had finalised that process they had issued – they wanted to be paid you know an amount that they requested at the time. And if you recall in the previous submission that where we pointed out that they – they had indicated when we met with Pitri [?]. Pitri [?] was willing to help us in terms of the pilot project that we wanted to do first. They would get the information and then they will do it at their own expenses but at a later stage we were armed with this document.

20 There was a request for payment and I declined such request because it was not what we had agreed with these people. You would – you will recall – you will remember also the fact that this thing happened and at a later stage there was a request to visit the Gupta's compound. If I had signed and agreed to this thing I do not think there would have been any need for me to go to the Gupta Compound. So this is exactly

what I am just stating as a fact that and giving that context that I am not just denying you know saying this and then it is not possible and that I did not do that. I am just saying these things as they are presented here are not reflecting the truth of what exactly aspired – happened when we met. And we were not meeting only them. And the fact that they then wanted the project to be run by them we you needed to go out on a tender. It is a huge amount of money. It is a huge project. It was going to be a huge project. You would not just do a project like that without going to be a tender and allowing the processes to continue. But they thought that it would be easy that is why I was saying once they have the – the MEC they thought that it will be easy and then they can get whatever they wanted. So when I refused this payment they went to the HOD and the HOD also did not want himself involved in this.

ADV PHILLIP MOKOENA SC: Yes.

MR MXOLISI DUKWANA: And then they threatened to go to court and up until I was fired in 2012 nothing happened to this.

ADV PHILLIP MOKOENA SC: Can we now move to deal with something slightly different arising from your statement? You are mentioning certain threats which were made by Mr Magashule pursuant to you having testified in this commission. You begin dealing with those from paragraph 27 on page 8 of your statement. If you can explain to the Chair?

MR MXOLISI DUKWANA: Chairperson I have – on the [intervention].

CHAIRPERSON: I am sorry Mr Dukwana I just want to say for the

benefit of the technicians I think there is something they have done which has made both of you quite audible to me now. I am saying it so that in future if I have complaints they can remember what they did. Whatever it is.

ADV PHILLIP MOKOENA SC: Chair we are told that – we are told that the [intervention].

CHAIRPERSON: It is the air conditioner.

ADV PHILLIP MOKOENA SC: The air conditioner is interfering with our voices.

10 **CHAIRPERSON:** Oh. Oh okay. Then next time they will know it is the air conditioner. Now I can hear both of you very well.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Thank you.

MR MXOLISI DUKWANA: In this paragraph I stated the fact that on the 5th April after my being here at the commission Mr Magashule was interviewed by Mr Samkele Maseko from ENCA and in that interview he intimated that he was going to take me to court. And upon hearing that I without delay instructed my attorney to address a letter to him to receive any court documents pertaining to his legal threats.

20 **CHAIRPERSON:** In other words you wanted to make it easy for him that if he wanted to sue you he knew where to take the papers to?

MR MXOLISI DUKWANA: I know that because I was no longer in government. It would be difficult for him to – because I do not think he knows [intervention].

CHAIRPERSON: Maybe to find you?

MR MXOLISI DUKWANA: Yes I did not want to make it difficult for him.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: So I then asked my lawyers to do that.

CHAIRPERSON: You did not want him to say I have been looking for this man I cannot find him. I want to serve him with court papers.

MR MXOLISI DUKWANA: Exactly I was making it easier for him.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: May I refer you to page 35 and provide some [intervention].

10 **CHAIRPERSON:** What page?

ADV PHILLIP MOKOENA SC: Page 35 Chair.

CHAIRPERSON: 35?

ADV PHILLIP MOKOENA SC: Yes. In order to provide context to what you have stated to the Chair and if you may identify that document for us?

MR MXOLISI DUKWANA: It is a document from Mashala Komani Masekela Attorneys.

ADV PHILLIP MOKOENA SC: And who are they?

MR MXOLISI DUKWANA: They are my attorneys.

20 **ADV PHILLIP MOKOENA SC:** Yes. Now what does it say re – what is the subject of this correspondence?

MR MXOLISI DUKWANA: It was addressed to Mr Elias Sekgobela Magashule through Thuli House and the address is given and the date was on the 9th April. And then it is service of court [intervention].

CHAIRPERSON: You can read the letter.

ADV PHILLIP MOKOENA SC: Yes please read the letter.

MR MXOLISI DUKWANA:

“We act for and on behalf of Mr Mxolisi Dukwana our client who on the 5th April 2019 testified at the commission of state capture before Deputy Chief Justice Raymond Zondo. Our client learnt through the media that you intend approaching the courts in relation to his testimony at the commission and instructs us to receive all the correspondence and or court papers on his behalf. We urge you to direct any correspondence and or serve any court documents to us. We trust that you will find the above in order”

It is signed.

ADV PHILLIP MOKOENA SC: Yes. And if you may turn to page 36. 36 Chair. And if you may also identify that correspondence for us who it was intended to and the contents of that email?

MR MXOLISI DUKWANA: It is a letter to Mr Magashule. It is from the office I suppose. ANC 1912 from Maseko, Pule Maseko. It was signed on the 10th April and it says:

“Good morning Ma’am kindly take note that the office of ANC SG Comrade Ace Magashule has received your email on the 10th April 2019. From Pule Maseko PA of the ANC SG”

And the number is there.

ADV PHILLIP MOKOENA SC: So this confirms that it – this correspondence was indeed received by the office of Mr Magashule?

MR MXOLISI DUKWANA: Yes.

ADV PHILLIP MOKOENA SC: And from that date when he threatened legal action against you do you know if anything has happened?

MR MXOLISI DUKWANA: My legal team has not informed me of that therefore I take it; it has not come to – to pass.

ADV PHILLIP MOKOENA SC: Yes. May I then refer you back to your statement with particular reference to page 8 and you may proceed
10 please dealing with the contents – the last paragraph just to put context on paragraph 28?

MR MXOLISI DUKWANA: Chair I am stating here that to date my attorneys have not received any correspondence such as a letter of demand for me to retract my submissions at the commission or legal documents from Mr Magashule. I stand ready to face Mr Magashule at any court in the Republic.

ADV PHILLIP MOKOENA SC: Yes. So you maintain your evidence which you have actually conveyed and stated or adduced before this commission before the Chair?

20 **MR MXOLISI DUKWANA:** I do whole heartedly.

ADV PHILLIP MOKOENA SC: Yes. Now may I refer you to paragraph – to page 9 where you are providing the Chair with the reasons as to why you deemed it necessary to provide evidence to this commission? You may proceed to summarise paragraph 29 and 30 of your statement please.

MR MXOLISI DUKWANA: The – the ANC in its National Conference known – commonly known as the NASREC Conference in 2017. One of the resolutions that they – that was accepted and came out of that conference was for – was encouraging members of the ANC.

1. To fight corruption with everything that they have and where they know of any corrupt activities they should report that. Encouraging every member of the ANC to come to with evidence that they have at their disposal – at their disposal to come to the commission.

- 10 And as you would know Chair there has been so much noise about implementation of the – of the conference resolution. And many people only think of those that relate to radical economic transformation. There are many. Building the organisation etcetera, etcetera, etcetera including this one. And – and as a member of the ANC, disciplined member of the ANC as I said earlier that there is an ANC that I know that I got to know very well when as an ex official member of the ANC back in 1991 when there were leaders at the time as I said where one got an opportunity to drink in the well of such greatness. And understanding the ANC and not the – what we see happening now. I
- 20 then felt that as a disciplined member of the ANC I needed to respond to this call. And that is why despite the fact that there are risks involved appearing at the commission. You know so one was responding to this call and notwithstanding the risk that is involved. But one thing that is driving one to come to the commission here is because we were left a legacy and by generations before us and it is

important for us to leave a legacy for many generations. I am not doing it for this generation here I raising this matter because once we allow corruption to be endemic as you would see when I deal with some of the issues on the side that once corruption becomes normal it becomes difficult for us as a nation to – to bring up responsible adults. And you need people with ethics to be leaders in society. But once you get – I will make an example. In one ward when people were told that this Mayor is actually stealing the money from the Municipality and you are suffering. Some in one ward were saying but at least he – he is giving us some. So people do not care about the consequences of this as long as they are getting something. And I believe that it is our responsibility all of us that we should stand up if we truly love this country and deal with this – this thing that is destroying our country. And if you can get every member of our society especially in the ANC as the ruling party – if you can get them to detest corruption, fraud and everything I think it will help. It will go a long way to deal with this. But also I am very mindful of the fact that you are not going to fight corruption by only raising these matters. We have also set up a community you know forum and where we think we will use this to train, educate and empower our own citizens to be very active. I was encouraged Chair when especially when the reports – the newspaper were raising a matter about the funding of the campaign of now the President. And that everything was put there. It was encouraging to realise that there is so much excitement in terms of engaging from our own people to engage things that they say they do not like. But at the

same time I was disappointed that the Auditor General had raised so many other things especially in the Municipalities what has been happening. Monies misappropriated etcetera. And the same energy was not demonstrated by the – our public in terms of raising these issues. The – all I am just saying not justifying some of the things because also at the time I was also responsible in the campaign and when people raise these matters one thing that people did not know that one participated in many campaigns starting from the campaign that was in Polokwane. I think if people can be honest and understand
10 what happened they will realise that these things started long time ago in doing this. And it was encouraging that people were starting to say it – it is wrong to do certain things and it affects the standing of any person if certain things are not done the proper way. But people do not understand that at the time also some of us when we were saying in the commission but hey you guys want to go this way, you want us to sign things, you want us to – you have bank accounts, you do this. It does not happen and people say no, no we want to make sure that whatever money we get we can account for that. The only way we can account for this is to make sure that there are no plastic bags full of money
20 going out. And as I am sitting here I am very proud to have been a member of that campaign and made sure even that when they were raising all these issues that I – we can actually say you can have a – still have some reports where I can show that this is where the money went. But if you check nobody also cares to ask what happened to other campaigns? If you remember Chairperson also that the – when

the DA was in the campaign for leadership in 2015 the person who was contesting Musi Maimane. I think it is Wilma James I think raised – challenged Musi Maimane to declare the source of the funding of his campaign and on the 29th April I think 2015 and the 30th there were some statements, some reports that were made where they indicated that it had nothing to do with the public but it was an internal matter of the party and the – and the fact that the donors or those who were giving out money had requested to remain anonymous they will defend that. Even – so I am just saying that this matter was much bigger than
10 all the people looking at the – at what happened at the CR17 campaign. So I am raising this matter just to say as members who are disciplined there are things that we know sometimes we get off the road but when people raise these matters and started engaging and you see the sieve that people were raising about the possibility of being captured etcetera I also in some indi – in some cases I said the same precedent with this foundation raising money and going even in our province we became number 1 province in education. Money – money that was spent in dealing with were coming from the Cyril Ramophosa Foundation and contributed immensely. At the time nobody said
20 because you are receiving money from those who are said to be our white compatriots' etcetera therefore nobody went to you and said we will not accept this money it comes from this white people, white business people. But it helped and for one to suggest at any given time that if you are given an opportunity to contest and money spent and somebody spent money for you that automatically opens up you to

being aboard etcetera, etcetera. What happens to those who contributed money and they did not make it. So I am – all I am trying to say is all of us have a responsibility as members of the society to make sure that when we see things that are not going according you know – some – what we expect as our values in society. I have my value system but once I get into a group I get also to understand the value system of that or the culture of that group. And if it does not all go well with my value system I walk away. But if the – if the organisation then swallows your value system it leaves you shallow. It leaves you inhuman. You do not feel. You will not live. You will not contribute. So that why I am saying that [intervention].

CHAIRPERSON: I guess the point that you are – you are really making without going astray is simply that you feel that both as a citizen and as a member of the ANC having regard to the values of the ANC as you understand them. Having regard to one of the resolutions that was passed by the ANC at conference in 2017 December you feel that you have an obligation because you know that certain things happened that fall within the terms of reference of this commission to come forward in response to that call made by the ANC through that resolution to come forward and share with the commission what you know.

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: That is what you are saying.

MR MXOLISI DUKWANA: That is correct Sir.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: That is correct Chair.

CHAIRPERSON: Well I - I - you may have heard that I have said quite a few times that I believe that there must be many past and present Ministers, Deputy Ministers and Directors-General and other senior officials who - who know some things that happened that would fall within the terms of reference of this Commission over the years and that I still think that the number of Ministers, Deputy Ministers past and present and Directors-General who have come forward to this Commission to assist it is - is very - is a very small number compared to all those numbers and I do not know whether because when you talk
10 about that - those categories of people most of them would - would be people who are - who come from the ruling party.

I do not know whether any of them who may be having knowledge of lots of matters relating to state capture and matters relating to corruption that fall within the terms of reference of the Commission are not coming forward because they think if they come forward and expose these - these things and tell the Commission and the nation what they know maybe they feel as if they will be putting their party in a bad light and that it will be - it may be construed as if they are not loyal but I do not know whether you can enhance the
20 status of your organisation by sweeping corruption under the carpet and things like that rather than coming forward but what you are saying is there is a specific resolution that encouraged all members who may have knowledge to come forward and to do something about these matters and you are responding to that call.

MR MXOLISI DUKWANA: Chairperson somebody once said that for you

to - sometimes you will need to go deeper - go down into the world for you to see the stars in daylight and sometimes you need to get to the bottom of things for you to be you know to - to see things clearly. I do not think - in my view I do not think - you see there is a difference also that we need to look into what the ANC stands for and also people who come into the ANC.

There are those who just joined the ANC because they think by associating with the ANC they will get certain things but there are those who are revolutionary who were activists at some stage when
10 there was - there was nothing for them. It was risky just to be involved in these things with no rewards whatsoever. I am talking to - to such individuals that who understand exactly whilst other people had sacrificed with their lives for us to be where we are and I do not think it puts the organisation in - in a bad light when we deal with these matters because the fact of the matter is you are not going to do anything drastic you know as you say radical economic transformation when there is so much corruption prevalent in society.

Services are becoming expensive because you have leaders who are not dedicated in making sure that the laws the Acts everything
20 that have been passed to make sure that we have got good governance are implemented. As leaders making sure that these things do happen and - and you find yourself entangled in that. What suffers is then the implementation of some of these resolutions.

So it is therefore very important that the work of the Commission should be enhanced and make sure that all those who

know anything should come forward because once you do that you are able to cleanse even your organisation and clean society because what is happening in the ANC is a microcosm of our society you know. It was not surprising at some stage when it was reported recently that in one school in KZN children were demanding that there should be an one hour smoke break you know and if - if you find such things happening as a parent as a citizen you should be worried.

Where are we going? You know. So I am just saying this is a problem that we need to fix. It is not only about economy, about this.

10 You need also to look into your - your society and fix this what is happening what is wrong in - in our society. Once you have that you would have a better way of dealing with all the challenges that you have because you would have everybody understanding what is happening.

If you go - if we - we leave this. For instance you would have police you know sometimes I am asked in Welkom why are police not doing - why not - why are they not arresting these people are all over you know especially illegal miners etcetera. I was shocked when one policeman said to me you know the problem is we arrest these people.

20 When we get to the police station this person will then claim that he had 100 000 in his pocket and you stole that money. He wants it and then what is going to happen. There is going to be a departmental investigation taken and sometimes these police go through these difficult things and because we are not dealing with this we are not dealing with corruption and uprooting it.

Some others now get involved and they see there is no value in arresting these people. What do we do? We get into this. So there is that logic now coming in, in our society and the other fact Chairperson is that people are so tired of Commissions after Commissions after Commission. People want to see these people getting arrested but once they do not see this thing happening people get discouraged.

As I am sitting here and as I said earlier on the unfortunate thing that is happening is the threat to a breed of professionals in the -
10 in the Public Sector and many have been destroyed. You talk about Brian Molefe very brilliant guy but because of these things you have lost such brilliance you know and there are many others that are out there. Others are afraid Chair.

There - if you check in our society now especially in the Public Administration if you can do you know research you will find many especially in the senior management position. Many of them have one way or another admitted for - for depression because they are giving instructions that are very different. They know I cannot do this but because they have seen that if you do not do this there are
20 possibilities.

You are going to lose your job or you are not going to get any promotion and - and that is a problem. So I am just saying for us ...

CHAIRPERSON: I am sorry. I am interrupting you. You see that - that is part of my problem because precisely what you say from what one has - has heard from people and read over the years one would have

thought that there would be a number of people fall within the categories that I mentioned earlier whether it is a DG or a Deputy DG who says I was in charge of a department - of that department and this is what happened or I was a Deputy Minister.

I became aware of this or I was a Minister. I became aware of this and so on and to the extent that one is talking about DGs, Deputy DGs and maybe lower officials. They are not coming forward to say well for example I was instructed to give this tender to so and so and yet there may well be many such cases and - and what part of what
10 is worrying is why do we have so few people who are prepared to stand for the truth and say this cannot be allowed to continue.

You referred a few minutes ago to an era in our country where a lot of people were prepared to stand up for the truth and for justice when there was no reward or monetary reward or reward for them personally. That would be there for standing for the truth. Who were prepared to take risks, who were prepared to leave their families and go into exile, spend time in jail, be detained, be beaten up by the police - apartheid police - and stay true to the truth and where are those big numbers now.

20 We knew that there were big numbers of people who were like that and some many of them are around and - and - but people - the numbers of people who are coming forward who fall into the categories that I am talking about are very you know small. I mean we - we appreciate and greatly appreciate those numbers those people who have come forward and we commend them.

It is good but one just feels that the numbers are small. There must be so many people in the provinces, in municipalities, in national departments who know a lot of things but who are keeping quiet who are not saying this is our country. I owe loyalty to this country and I am going to go forward and tell the nation what I know. So that there is a chance that this country can change for the better.

ADV PHILLIP MOKOENA SC: Mr Dukwana we have heard the Chair's plea and I am sure that you have also tried to articulate the reasons why you thought it - you deemed it necessary to come before this
10 Commission. If you may now deal with ...

CHAIRPERSON: Hang on. Before that Mr Mokoena. Mr Dukwana do you want to say anything to that?

MR MXOLISI DUKWANA: Chair there are many people out there who are willing to come to the Commission. If Chair remembers the last time I was here I indicated that the fact that some people think that it is only English and I saw that there were people who had ...

ADV PHILLIP MOKOENA SC: Translators.

MR MXOLISI DUKWANA: There were translations and many people are excited you now ...

20 **CHAIRPERSON:** Yes I remember you said that.

MR MXOLISI DUKWANA: But also you have a challenge. You see toxic leaders have a way of dealing with things. They instil fear and - and many of these people are - are left vulnerable. Let me make an example. There is a vide now - a video clip doing rounds in - in my province of one Mayor - ex Mayor who was making threats about a

person in the supply chain who was alleged to have given information either to the Public Protector or to the Hawks and these people were there and you know this Mayor was going on and on and on threatening them and know - we know you.

We know your phones. We have seen. We know. We can track your - your email. You send this email and then you started using that and doing this and we are not going to be working with such people and we will take you - you will go home and you will stay home. So if - if you have these kinds of things in the environment that we have many
10 of these people some of them are still in the employ of Government and this is the only way that they have now you know and if you get fired because there is only something that is happening.

You have many offers as politicians or these people in Government. There is an issue that if I - if you fight me you fighting the State. The resources that I am using to fight that are not mine, are the State resources. You as a person you are using your own resources. So I will make sure I deplete your resources fighting you.

So I will go to court you know remind this - cause all these things and you have got to go on paying these lawyers. Ultimately
20 these people are sitting with such huge bills and then to face this. So what option do you have in this case when people knowing exactly that they are in the wrong but go back and use State coffers, State money to defend themselves and make sure that these poor people are left outside there and they lose everything.

So people - there are people who just as I am saying there

are willing participants but there are those who are not willing at all who feel ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: Very bad about what is happening ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: And the little that they do. In some cases these are the same people who would say to you I have this information. You know.

CHAIRPERSON: They give you the information.

10 **MR MXOLISI DUKWANA:** Yes and then and then they - they you know ...

CHAIRPERSON: They say do not mention my name.

MR MXOLISI DUKWANA: As long as you are not mentioning them.

CHAIRPERSON: *Ja.*

MR MXOLISI DUKWANA: As long as you do this.

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: So they are helping us in that way.

CHAIRPERSON: Yes.

20 **MR MXOLISI DUKWANA:** They are not coming up but as I am saying also as - as a societal problem ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: Where you have workers. I will make an example. They do not work Monday, Tuesday, Wednesday, Thursday during the week.

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: They do not see that as corruption. It is quite corruption. They do not see it as corruption ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: But they get paid ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: And then come Sunday come Saturday it is overtime.

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: In one municipality for instance we have a
10 person who is in hospital - who was in hospital at the time ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: But get paid his - his overtime.

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: So you have these kinds of things happening in our society.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: So people think that it is only by stealing or doing this but also it is by omission you are not doing certain things.

CHAIRPERSON: Yes.

20 **MR MXOLISI DUKWANA:** You have got leaders who are not brave enough ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: But also the fact is what do you do as these political leaders. You appoint people you know that they are compromised and this is the case in the province. If I know you are

compromised and I have something against you so it is easy to make your call. You will do these things ...

CHAIRPERSON: *Ja.*

MR MXOLISI DUKWANA: And then we continue ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: And I will be sitting there and saying I am not signing anything ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: And that is the problem because ...

10 **CHAIRPERSON:** Hm.

MR MXOLISI DUKWANA: They - they do not take responsibility.

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: So I am hoping that there are many of the colleagues also in the ANC who will stand up ...

CHAIRPERSON: Who will stand up (intervenes).

MR MXOLISI DUKWANA: And who will come to the Commission ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: And help the work of the Commission.

CHAIRPERSON: Huh-uh, huh-uh.

20 **MR MXOLISI DUKWANA:** Not to help the Zondo Commission but to help South Africa ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: Cleanse itself of this sickness ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: That we are seeing now.

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: In our society that undermines development, growth and ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: And all other things.

CHAIRPERSON: Hm. No, thank - thank you Mr Dukwana. I - I particularly wanted to hear the perspectives that you have given me about challenges in people who should be coming forward who may be having knowledge of things that fall within the terms of reference but
10 who are not coming forward. I have asked other witnesses who - who were in Government also to share with me their perspectives because it is something that is quite concerning to me. Yes, you may proceed Mr Mokoena.

ADV PHILLIP MOKOENA SC: Mr Dukwana from paragraph 31 you trace your history with Mr Magashule and the role that you played in his career. Could you please deal with those aspects from paragraphs 31 and 32?

CHAIRPERSON: I am sorry. What page are you now?

ADV PHILLIP MOKOENA SC: I am on - I am on page 9 Chair.

20 **CHAIRPERSON:** Okay.

ADV PHILLIP MOKOENA SC: Paragraph 31 ...

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: Leading to paragraph 32.

MR MXOLISI DUKWANA: I served with - with Ace Magashule from 1992/1993/1994. You will remember Chair I indicated that I was the

first Chairperson of the ANC in the region when the ANC was unbanned and later on Ace Magashule came in and we started working and I knew him at the time and many other comrades and I also - I am reminded also of what happened when I was fired.

The then SG called me to his office and he indicated that you see we wanted to save you from this but you were there speaking this English and defending this thing. Now it bites you. So the - the issue what I am trying to say here is I am one of the - of - of the people who - who in the Free State at the time worked with Ace. We protected him.

10 We defended him and this was at the time when we were - there was an arrangement - agreement that whoever becomes the Chairperson of the province would become the Premier. So it was a position that was taken by all branches. So we defended that collective decision that was taken and made sure that we will defend him. We will make sure that he comes in and becomes the Premier.

20 Unfortunately the then President the late President Mandela did not appoint him as a Premier and then later on Thabo Mbeki did not do that. President Thabo Mbeki did not do that and then it was only 2009 after the conference in 2007 that he found himself here. I am the person that when we came back from Polokwane we went to sit together just to demonstrate some of the - we went to sit together at - at a hotel south - at the - what is this street?

In one of the hotels in Sandton, Katherine Street Southern Sun and because I saw that in the conference there were two people who were popular in the conference at the time. You would hear when

the then President Zuma was coming in. It would be that noise Zuma, Zuma, Zuma, Zuma and when Ace came in it will go Ace. So - and then I - I - when we were together I asked him - I even indicated to him you - is it not time that you have out grown the Free State politics and go to national and we could engage to that level and I - I as we were speaking I got the feeling that he - he was actually hearing me and understanding what I was saying because I was saying if you check in the Government at the time we only had Mbalula who were coming from the Free State etcetera but not necessarily throughout structures.

10 Mbalula at the time was in the Youth League and he was so in the national level. So we were saying as the Free State we have not been able to contribute in terms of leadership especially even at the national level and - and also Cabinet. So I felt that it was my duty as a friend or so to talk to him heart to heart and we had that discussion and he was feeling like agreeing up until some people came in who later became business people who actually influenced him otherwise and it was at that point when he felt that I was pushing him out because I wanted to be the - the Chairperson.

20 That is what people were saying at the time and that was not the case because we understood processes. We had at the time who was Deputy. We had Comrade (indistinct) who was fairly capable of leading us and we were not in a hurry to lead as Chairperson at the time. So we had the discussion and I - I sincerely believe that my coming here it is - it is not because I hate the person or what.

 It is out of love for - for some of these people that you know

we are mentioning them here because I believe some of them do not sleep Chairperson very well. You know when you have done something wrong and you feel - some of them do not even enjoy the money that they are having. So the issue here is just to say when even at the time when in 1996/1997/1998 when - I think it was 1996 before we were disbanded.

There was a - a case where Mr Magashule was accused of corruption by (indistinct) and because we felt that (indistinct) could have come to the organisation and dealt with this matter but wanted to
10 do that solo we then rallied around Ace and defended him. There is one poor comrade who was - when Ace was removed as MEC and this comrade was in QwaQwa.

He had to come and fetch the car. Go out as MEC but when he came back he was no longer MEC. So he became an MEC for a short while and - and replacing Ace Magashule but because of our efforts and everything we were able to overturn that - that decision and Comrade Ace became an MEC again and continued but that led to us being disbanded in 1996 as the PEC.

So I am just saying the - these things that we see that we are
20 raising here are - are very worrisome because the kind of a person I came to know at that time when we - we were still at Masada in Welkom was a very caring individual Chairperson. In fact he would buy clothes etcetera and if he gets people he would give them. He was a person who was giving out and showing that - that he cared a lot about people.

I do not know what happened and there was a sudden change

and one - even when I did not support him at Nasrec. I went to his office while he was still the Premier and in our discussion together with him I indicated to him - I showed him why - I indicated to him you know I do not support you even when - even as I am seated now here. I think that it was not a good position I said to him and he knows this.

I said to him not anywhere and I said I am worried. I wonder whether these people are going to get their minutes because you are not the person who writes and all those things and sometimes you are going to chase those minutes and he jokingly said to me I am not going
10 to write minutes. It is going to be Comrade Jessie Duarte who will write minutes and etcetera.

So I am just saying just to demonstrate this even after the Nasrec Conference. So when we went and met and discussed with him in - in his office. I indicated to him that look you are not in this position. It is either you going to make it difficult for any person who comes from the Free State to actually be recognised at the national level or you are going to make it easier for us if you now move away from the Free State and become the SG of the ANC all of us and I think it will work and I thought he - we understood each other. As I left I had
20 the impression that because he said he is willing to do that. He wants to do that. He wants to be this but I was shocked that two days later one of the MECs told me that when they were in Botshabelo he was - he was you know telling them how he managed myself and Thabo. That when Thabo came through this door and then he - he fetched me through this door so that myself and Thabo should not meet and then

he says he was managing us. Then I felt that I do not think the person would actually ...

CHAIRPERSON: Who is the person you are referring to?

MR MXOLISI DUKWANA: I am talking about Ace - Ace Magashule.

CHAIRPERSON: As Thabo.

ADV PHILLIP MOKOENA SC: Who is Thabo?

MR MXOLISI DUKWANA: (Intervenes).

CHAIRPERSON: Who is the person you are referring to as Thabo?

MR MXOLISI DUKWANA: Thabo Manyoni.

10 **CHAIRPERSON:** Oh, okay.

MR MXOLISI DUKWANA: Yes and at that meeting I found Thabo there but we were put in different offices. It was clear that it was meant for us not to meet but unfortunately nature called and Thabo had to come and he found me at the reception and then - then I said I do not know that you are here. So now that you are here let us go and meet him together and I do not what happened.

I waited I waited and after that I saw I was fetched by then Premier Ace Magashule into his office only to understand that when he fetched me he allowed Thabo to go out the other way and I was put in -
20 so I am just saying that disappointed me a lot to say here is a person you are trying to help because this is what we had done all the time.

Trying to help him. You know sometimes when we work with people you would understand your weaknesses and you will understand his weaknesses and you will think that you are saying to a person you can do this and become a better person. So - but then I realised that I

was - I was wrong.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: So the essence of paragraph 31 and 32 is that you are here to testify on the issues that you are raising not of any ill feelings with anyone but to provide the facts that falls within your knowledge.

MR MXOLISI DUKWANA: Chairperson the difficulty and the one painful thing that has actually been with me since I came here it is people that I am going to talk about here are people that I was, you
10 know I happen to know them very well, and these are people that I associated and worked with etcetera, but to see such a change in people and see people changing other things, actually was very hurtful to say the least, but it is what it is. I am here not because that I want to pull any person down, but I just want to put these facts and the facts will talk for themselves, and I just hope that sometime, some day action or actions will be taken against some of these people who are doing all these things with impunity.

People are even proud to tell others that – and they use – it is a Sotho word [African language] you know and people will be proud to
20 say we will do this to you, we would – some people proudly in public platforms would say we will deal with you, you will go ...(intervention)

CHAIRPERSON: And they do nothing about it.

MR MXOLISI DUKWANA: And then you would be out of work and you will be you know you will be poor. In some instances (indistinct) and we will take your wife, and this is how serious ...(intervention)

CHAIRPERSON: They say they will take your wife?

MR MXOLISI DUKWANA: Yes, and then they use – in fact I am just using a better word here Chairperson because I don't want to use the very strong words but in fact we have seen these things happen. In the Province I see these things and many people see these things. As I am speaking to you Chairperson I strongly believe there are many people in the Free State who are really, really hurt and who feel that nothing is being done to deal with this matter, but I will come to this at a later stage.

10 **CHAIRPERSON:** Yes, okay thank you.

ADV PHILLIP MOKOENA SC: Mr Chair loosely translated [African language] I will make sure that you are poor, I can't take it any better than that.

CHAIRPERSON: [laughing] I hear you Mr Mokoena.

ADV PHILLIP MOKOENA SC: Mr Dukwana on paragraph 34, 33 and 34 you then demonstrate how Mr Magashule would be able to dispense patronage and you gave some of the examples, could you please talk to those paragraphs.

MR MXOLISI DUKWANA: Chairperson ...(intervention)

20 **CHAIRPERSON:** I'm sorry Mr Dukwana, just to go back to what you were saying earlier on, in effect what you were telling me is that the situation is so bad that some of the people who are engaged in wrong things, who are engaged in corruption they will tell people in public if you do A, B, C, D meaning things that somebody could do if they are fighting corruption if you do that we will see to it, we will deal with you,

we will see to it that you will become nothing, that is the gist of what you are saying?

MR MXOLISI DUKWANA: It is Chairperson.

CHAIRPERSON: Okay, thank you. Okay, I interrupted Mr Mokoena.

ADV PHILLIP MOKOENA SC: No, that is fine, we are just about to deal with 33 and 34 of the statement from page 10 Chair.

MR MXOLISI DUKWANA: If you check that I was pointing, there were signs Chairperson, there were signs that were there for us, for all of us, and I think we did a disservice to the Free State people because
10 being close to the man you could see the signs but instead we protected this. What I am trying to demonstrate here is if you go to any department that Ace served in you would have a person for instance if (indistinct) Kekama were to come to the Commission and testify about what he knows happened when Ace was in Agriculture, and what you know you have Ndegú Thuli who would be able to tell you what he knows when he became the Chief immediately after him and many other things.

Just to make an example, when I was MEC of Transport and Security it was in 2008, at the time Ace was in Sports and you know
20 things – there was a Head of Department who had come from suspension and won the case, (indistinct) Klaas who became the HOD in the department. Every time I went to a meeting I was told I must fire him, and the person who was pushing that, that I must fire him
...(intervention)

CHAIRPERSON: He was head of ...(intervention)

MR MXOLISI DUKWANA: Of the Department that I was political head, that is Transport and Security, now I will be told you must fire this person.

ADV PHILLIP MOKOENA SC: Who would tell you that?

MR MXOLISI DUKWANA: It would be Ace who would be telling me and then there will be meetings where it will be said we told you to fire this person, the question was what is it that he did, and nothing came to it, and as Gama will have it Ace then became MEC ...(intervention)

CHAIRPERSON: Mr Magashule.

10 **MR MXOLISI DUKWANA:** Oh, Mr Magashule then became MEC for – in that department where this person, Mr Klaas, was now HOD, and I watched deliberately if he was going to fire him, and when I realised that it was not happening I went to him and said why are you not firing him now. And he said no, no, these things don't happen just, you have got to follow processes, and at the time the Premier was Ma'am Beatrice Marshoff, and then he managed to make sure that Ma'am Beatrice Marshoff was able to take Mr Klaas to the office of the Premier, and he came to me excited to say you see I was able to deal with him, but I said but you did not do what you wanted me to do, you
20 wanted me to do this in the wrong way but you do this.

So I am trying to figure that you have a person here in Mr Magashule who from time to time in corridors etcetera where we talk he was frustrated by processes that these processes are taking too long, and if it were according to him these processes he would you know demonstrate it by the fact that in 1994 when he was MEC for Economic

Development, when he submitted, and that is where people don't also understand, he submitted bills to be discussed in the Executive Council for the establishment of these entities, it was the investment and also tourism and under his department, but they were delayed and every time he brought this submission it would not be discussed, so he felt that he can as well go without this legislation, so he went in and established the entities without a legislation regulating such establishment and also transferred money that is what they called fraud at the time and corruption, he then transferred money when there was
10 no legislation governing that etcetera, into this entity, and it was that when this report came out that (indistinct) Lekota ran around with it and that is what we were defending, and we defended that the money went but of course it did not go as it was supposed to go in terms of processes.

So I am saying had we nicked that at that level also to say whilst we're defending you but you were wrong in doing this, we did not do that, we failed dismally and I think it dawned to him that if I do things and then I have the support of the organisation I am protected and I can do this, and this developed into a cult in the Free State that
20 everybody if you have something you would have somebody says I can take you to him [African language] to ask for forgiveness and some people have gone and then once you are gone then things will change and many – I remember we went to a wedding and there was this person who had some businesses and it went bad, and he was not happy and he went to speak to Mr Magashule at that wedding and a few

weeks after that I saw a drastic change in this person, in some instances he was driving an R8, when the person did not have money to pay a DSTV three weeks before the wedding.

So I am just saying these are some of the things that you see happening and I think our failure to deal with this at the time when these things were happening created a problem and probably also it is what also motivated me to say I am not going to make the same mistake as I did you know before where I will protect people when I know that they are doing wrong, so it is with that in mind that I come to
10 this Commission to say I am not going to sit down and keep quiet when things are happening that are wrong, because – simply because the person that – people that I am going to talk to are people that I know, and in some instances some were going around and saying they have assisted me how can I suddenly deal with them in this – and I am surprised that there are these people who would go out and say this, so nevertheless what I am trying to say is I am here Chairperson to give you what I know and to the best of my ability in terms of raising issues that I know and issues that happened and some of the issues that you see happening. As I am saying I feel you know we failed the people of
20 the Free State when we did not act at the time when we were supposed to have acted, and I have learnt my lesson that you don't allow something small to fester and once it has grown you are not going to be able to deal with it and this is one lesson in life that I have learnt.

ADV PHILLIP MOKOENA SC: Yes, you sketch for the Chair the eight topics which you will be addressing in your statement and you do so on

page 11 with reference to paragraph 36. Could you please mention into the records those topics that you will be canvassing in this Commission during the session of your testimony.

MR MXOLISI DUKWANA: I am going to be dealing with the asbestos eradication audit which I referred to earlier as the asbestos heist. The Department of Human Settlement which also as we said is a heist and the role of Ndableki Siwe[?] and the operation cluster medium communications procurement, the Executive Council meetings and sanitising forensic reports and the international scholarship program.

10 **ADV PHILLIP MOKOENA SC:** Okay now we turn to the first topic which ...(intervention)

ADV SMANGA SETHENE: Sorry Mr – through you Chair?

CHAIRPERSON: Yes.

ADV SMANGA SETHENE: Sorry Mr Mokoena could you please perhaps take Mr Dukwana through paragraph 34.

CHAIRPERSON: 24?

ADV SMANGA SETHENE: 34, three four Chairperson.

CHAIRPERSON: Yes okay.

ADV SMANGA SETHENE: Yes, thank you.

20 **CHAIRPERSON:** Thank you.

ADV PHILLIP MOKOENA SC: Mr Dukwana you mentioned to the patronage, do you want to mention specifics in relation to that paragraph 34?

MR MXOLISI DUKWANA: Chairperson earlier on I mentioned that you know you have X, you have all these things that are meant to help us,

you have the Constitution, we have the Public Finance Management Act, we have got everything that if we were to follow what is inside there we would actually be having departments that function properly, but a system, they say if you want to fight the system you don't fight it, you create your own system that will render this one obsolete, and in the Free State ...(intervention)

CHAIRPERSON: Yes, I am sorry, before you proceed Mr Dukwana I think that paragraph 33 leads nicely to 34, so I think before you go to 34 you might wish to ...(intervention)

10 **MR MXOLISI DUKWANA:** Deal with 33 as well?

CHAIRPERSON: Ja, okay I interrupted you, but I just wanted to alert you to that. You may continue.

MR MXOLISI DUKWANA: No that 33 Chairperson you see when you have a person like Mr Magashule we thought at the time that yo this man has brains, who could remember who is the supply chain manager in this office, who is in the municipal offices, who is the Speaker, who is the municipal manager, he would know these people by name, and because he would travel, he would go, he would visit, he will do – but what is very interesting also he would know that there is a vacancy of a
20 clerk, a vacancy of of you know lower ranking officials.

CHAIRPERSON: Positions.

MR MXOLISI DUKWANA: Positions and lower positions, he would know exactly in each municipality and even when we were sitting at the deployment committee sometimes we would look at this and names will come and you are hoping that let's allow the processes and let's get

the person, then you will see that he knows this one, you know so at the time we were really impressed that we have got a person who has keen interest in knowing people he worked with.

Little did we know that it was not intended in the way that we thought it was, and as one will demonstrate later that when I said a system was built in the Free State, a system of patronage, instilling fear, you know dispensing patronage instilling fear and to a large extent Chairperson that many structures were compromised. You can go to the police in the Free State, many of them you know very much
10 compromised, from the highest level to down.

You go to the Judiciary Chairperson, remember that I mentioned that, you go to the Judiciary and that is very interesting that I am making this just to demonstrate that there is also a case of defamation of character by one person who claimed that he wanted to build – establish this movement, ATM, and the fact that he is taking it to Bloemfontein I personally have said to other people there is a reason that he is taking it to Bloemfontein, because he knows in Bloemfontein he will not lose the case, and I am saying this ...(intervention)

CHAIRPERSON: I'm sorry this is the case of who taking the
20 defamation of character ...(intervention)

MR MXOLISI DUKWANA: Mr Magashule, remember the ANC is investigating allegations that during the election there were people who actually contributed or worked in establishing a party, I think it is ATM, and then there was a person who came forward with information to say and started mentioning Mr Magashule and others and Mr Magashule

ended up taking the person to court, demanding that you know this has actually besmirched his name and all those things, so – and when we realised that it was taken to the High Court you know in Bloemfontein, me personally and some of my friends and some people who know what is happening in that space we then said well he knows that he is going to get a verdict that will favour him and it will actually make it very difficult for that Commission to even start working. He will get a verdict that will favour him.

And we are saying this with utmost humility because we feel
10 that once as activists, as members of the organisation in the Free State it is actually he feeling that we share with many people, we have seen this in action, and there is actually one person who is involved in all this as a legal person, as an attorney, who will be there every time the ANC takes you to court, if you take the ANC to court whatever the attorney that would be that will be taking the matter will be this one, you know we know what is happening, and I cannot mention the person because this – we did not make him aware.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: But I am just saying there is this person who
20 is an attorney in the Free State who facilitates some of these things and then we know exactly what is happening, and some of the utterances of some of the people about when people are proudly indicating that if you have a case you can bring it to us, we will help you squash the case, so I am just saying there is that feeling (indistinct) is rife in the Free State, that some of our people who are

serving in the Judiciary in the Free State are really compromised and some of them, some of them were also doing business at some stage with the Provincial Government.

Some would have a ...(intervention)

CHAIRPERSON: Is that before they became Judges or what?

ADV PHILLIP MOKOENA SC: Ja, it was before they became judges and some will have their wives also working doing business with government, so we know what is happening in the Free State and as I say you have got a system running parallel to what you see, when
10 things are wrong this system that you are supposed to be doing you know people will only comply.

An example when I mention all these things is the fact that you see also pastors, you've got so many pastors ...(intervention)

CHAIRPERSON: Well before you go to pastors you know you mentioned what you have mentioned in regard to what is happening in the Free State in relation to litigation that goes to I take it you are referring to the High Courts, I may be wrong but I don't know whether I may have read anything along those lines, I happen to have been to have sat together with my colleagues in the Constitutional Court in the
20 matter that was brought to the Constitutional Court before Mangaung Conference in 2012, that matter as you should remember had started at the High Court in the Free State. I don't know, I seem to have the impression that maybe either something that may have been written in some affidavit or maybe something that some or other counsel might have mentioned during argument but I seem to remember that there

was some statement that I heard that seems to be in line with a concern similar to the line that you are mentioning.

Now I would like you and all those who have got information, evidence about that uneasiness, to come forward and give that information to the Commission, because of all the arms of the State the Judiciary is the one arm where people should feel comfortable that if they bring cases those cases will be dealt with impartially, without fear, favour or prejudice and it would be a matter of grave concern, even if there was just a perception so one would like to see whether there is a
10 factual basis for the perception, so that if there is that can be dealt with, but if there isn't then the Nation can be told boldly that that perception has got no factual basis.

So that is what I would like to happen, so that those concerns can be looked at and if there are facts to it, we can look at them. So that's what I would like you, I would like to say to you and to all those who many know what you are talking about and have got information. Okay is that right?

MR MXOLISI DUKWANA: I think many of us will be prepared to do that.

20 **CHAIRPERSON:** Yes, please, ja, it is not in the interest of the country that there should be any such perception and it should not be resolved one way or another.

MR MXOLISI DUKWANA: We will do that Chair.

CHAIRPERSON: Ja, okay.

MR MXOLISI DUKWANA: So as I was saying with regard to this

dispensing of patronage but for them to be doing some things, I am just making an example of some of things that have happened.

CHAIRPERSON: Yes, yes.

MR MXOLISI DUKWANA: And if you check here at 34.1 ... (intervention)

CHAIRPERSON: No I interrupted you while you were going to the pastors.

MR MXOLISI DUKWANA: And that is where I am heading.

CHAIRPERSON: Oh, that is where you are going.

10 **MR MXOLISI DUKWANA:** It is not food Chair. You would have Chair the – there is a pastor well known in the Free State Ntate Moruti Daniel Mthobi Lekota. You would find that he was appointed as Deputy Director Research in the Department of Police Roads and Transport and he was born on the 31st of July 1948, and if you take, you look into the position when he took you know the position effectively it was the 1st of August 2015, and at the time he was at the age of 67.

Now all I am raising is these things would only happen in Provinces where you have undermined systems. This is the retirement age and there is no system that – in the Public Administration that will
20 welcome, that will do this. It happened also with ... (intervention)

CHAIRPERSON: You mean where somebody who has gone beyond retirement age would be appointed afresh?

MR MXOLISI DUKWANA: Yes, yes.

CHAIRPERSON: Mmm.

MR MXOLISI DUKWANA: I don't know what happened because the

system itself will reject that. For instance we had an HOD, unfortunately he passed on, and when they could not renew his contract because of his age he was then taken to the Lindelani, we call that Lindelani the office of the Premier, if you are on your way out there's a collection or area that will be the office of the Premier, you will stay there and then you still get the packs and all that and afterwards you either decide to leave because you are not doing anything, or you stay. So many other people who were HOD's and at the end were demoted or whatever from the position, they will go to Lindelani, to the Office of
10 the ...(intervention)

CHAIRPERSON: To Lindelani?

MR MXOLISI DUKWANA: Lindelani.

CHAIRPERSON: And of course Lindelani means ...(intervention)

MR MXOLISI DUKWANA: It's taken from when people are being deported etcetera they would ...(intervention)

CHAIRPERSON: Ja, where you wait.

MR MXOLISI DUKWANA: Yes where you wait and then you will be deported, so we would use such words in reference to what was happening in the office at the time, that yes, if he is not comfortable
20 with you as an HOD, if you are not removed you will end up at Lindelani and then we know you're moving, yes.

There is an example of one person, he is actually good, he is a good HOD, he was an HOD and ended up becoming a CEO of an entity in the Free State, and now he is at Lindelani. So it goes that way, if you are not wanted you go to Lindelani.

CHAIRPERSON: You mean Lindelani is still there now, or you mean at that time?

MR MXOLISI DUKWANA: Chairperson we are dealing with a system, it doesn't mean, it does not matter whether the person is there or not, the system is still there.

CHAIRPERSON: So you mean the system continued beyond the the time of the former Premier.

MR MXOLISI DUKWANA: It is continuing.

CHAIRPERSON: Okay.

- 10 **MR MXOLISI DUKWANA:** Until you deal with the system it is not going to – as I say you can do whatever now, you can put any person you think is better would not be able to do anything meaningful in that Province up until you have dealt with the system that has been introduced in the Free State, where people would disregard processes and feel nothing has happened, and people will just play dumb, I saw one witness some time who was here and could not also, I mean this is a bright guy, he is bright, qualified, highly qualified person, some of the things that he was saying here you could the difficulty as a person accepting, he would just take responsibility and taking the fall for
- 20 others, but when the person knows exactly what happened you know and people will play stupid, but they are not stupid, they know what is happening and then you would have such characters in the Province who would rather protect individuals and take the fall than to expose this individual, so that is the problem that we have, that is the system that I am talking about, the system if you get, as I say if you go to any

department you get – and any municipalities the system that I am talking about Chair and why I am saying this inconsistency there's a case in I think in 2000, where a person, I will mention the name, because I had spoken to him at length, he was a councillor, Ketso Totumakumi[?], here is a person who was a mayor during the transition period, or during the transition local government and in the Northern Free State at the time and I will show you Chairperson that how inconsistent we are in applying this.

This comrade was one of the comrades when they were
 10 approaching 1997, somewhere 1997/1998 by Mr Magashule. At the time you will remember we were, it was in 2000 the ANCPC had been dissolved and there was an ILC under the leadership of Ndumusala and the late Novimgomba, and Mr Magashule approached many municipalities at that time in the Northern Free State and asking them to consider the privatisation of water system, within their municipalities, and it was that (indistinct) municipality Sasolberg, the Transitional Local Council, that rejected that and the person who was leading that was (indistinct) so this (indistinct) was then elected as a mayor, as an executive mayor but it was not before he was discouraged
 20 by Mr Magashule not to stand, where he wanted he even encouraged him to go to school that he has more (indistinct) funds for him to go to school, but he rejected that, and he ended up being (indistinct). He was then approached by then the Regional Secretary, Deputy Regional Secretary and the Chair, without mentioning their names, and then to appoint certain, when he was appointed the Executive Mayor he was

then asked by these individuals when he was approached that they should put some people, the majority of these people who were coming from Parys to be members of the mayoral committee and to this he rejected, refused to do that, but what then happened was the his refusal was informed by the fact that it was not coming from any structure, he was part of the original, our WC, the original Working Committee and the ILC at the time had not pronounced itself on that, and what then happened to Toto he then had a trip to China and then along the way, because there was threats of a typhoon etcetera, I'm
10 just ...(intervention)

CHAIRPERSON: One second, is that still in your statement or is it something outside your statement?

MR MXOLISI DUKWANA: It deals with dispensing of patronage, I am just mentioning an example of this, that I said about this patronage.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: And then he went to China, unfortunately there was a problem, they had to go through Spain and his bag was left here and he did not have clothes to change, they phoned back, then they said he can use his credit card, but when – and he did not, he
20 used the credit card, almost about R300 less than that and then when he came back with the you know, when he came back with the intention of paying because it was – he was advised. What actually became a problem Chairperson what I am trying to point to you, is that in 2000 when we were elected as in the leadership and the first casualty was this man, he was then removed and the argument was that he was

removed for using the credit card, the official credit card and the argument was that the credit card was written goodies the statement and for that it was seen that the person had actually gone in and was paying for prostitutes at the time, and that is what was said in the ...(intervention)

CHAIRPERSON: Ja, I think we must ...(intervention)

ADV PHILLIP MOKOENA SC: Can I also request you that we deal – that's why I avoided you to go into 34, I was happy the way you've dealt with it because I think you've conveyed the message. Can we try
10 to deal with the issues that are ...(intervention)

CHAIRPERSON: ...In the statement.

ADV PHILLIP MOKOENA SC: In the statement.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: To the extent where you might seek to clarify certain issues it must not be outside the ambit of the statement and we are trying to do so in order to be fair to other individuals, entities, that might not be here who might simply be mentioned for the first time and for us also to be caught by surprise by the evidence.

CHAIRPERSON: Yes, but also Mr Dukwana while one accepts that
20 there might be, that not everything you say might be in the statement, there might be additions but one does not expect too much of a detour or departure from the statement, and the advantage of having the statement is that both your legal team and the Commission's legal team have looked at the statement, they know what you are going to say but once you go outside it too much you might say things that they would

have said it is not proper to go into, so it's – there is wisdom in sticking to it but as I say it does not mean that you cannot depart at all, but a limited departure when there are grounds to justify it is understandable, but one the departure is too much then there may be a problem.

Okay, alright ,Mr Mokoena continue.

ADV PHILLIP MOKOENA SC: Yes thank you Chair.

MR MXOLISI DUKWANA: I take the counsel Chairperson because the – and I am not arguing the point further, all that I needed with this was just to demonstrate that in terms of taking decisions in some cases you
10 may have a person with this and then you have got other people with – who had done a lot of damage and nothing was done to them, so it was with that in mind but I take your counsel.

CHAIRPERSON: Yes, yes, and if there is anything else what you might not have included in the statement that you think is important you can later on talk to your counsel and if there is a need to do a supplementary statement that can be done, okay thank you.

ADV PHILLIP MOKOENA SC: Chair I was just about to move to the specific topics and the first one being the asbestos eradication audit. It is quite an involved topic Mr Chair, and subject to directions if we
20 may have an early start tomorrow and deal with it right away rather than to deal with it now.

CHAIRPERSON: I wonder whether you don't think we should take – go a little further, even if it is up to quarter to five, you think if we ...(intervention)

ADV PHILLIP MOKOENA SC: I might mention the names which I am

not supposed to mention, it's late in the afternoon and I think that I need to restructure that – those agreements carefully.

CHAIRPERSON: Okay I see counsel for Mr Dukwana agrees. So alright then tomorrow what time would you like to start?

ADV PHILLIP MOKOENA SC: Nine o'clock should be sufficient.

CHAIRPERSON: Ja, is that fine?

MR MXOLISI DUKWANA: It is in order Chair.

CHAIRPERSON: Okay we will adjourn now then and then we will commence at nine o'clock tomorrow morning. We adjourn.

10 **REGISTRAR:** All rise.

INQUIRY ADJOURNS TO 28 AUGUST 2019