

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

09 SEPTEMBER 2019

DAY 159

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PROCEEDINGS COMMENCE 9 SEPTEMBER 2019

CHAIRPERSON: Good morning Ms Norman, good morning everybody, good morning Doctor Ngubane.

ADV THANDI NORMAN SC: Yes good morning, good morning Mr Chairman. Mr Chairman Mr Ngubane is – Doctor Ngubane rather is legally represented. I forgot to introduce him so....

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Could you please place yourself on record?

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

ADV LESLIE MKHABELA: Good morning Mr Chairman.

CHAIRPERSON: Good morning.

ADV LESLIE MKHABELA: The name is Leslie Mkhabela I am the attorney representing Doctor Ngubane.

CHAIRPERSON: Thank you very much.

ADV LESLIE MKHABELA: Thank you.

CHAIRPERSON: Thank you.

20 **ADV THANDI NORMAN SC**: Thank you. Mr Chairman the evidence of this witness is relevant to terms of reference 1.1 and 1.6. With your leave Chair – Chair would – has heard evidence dealing with – from Mr Thekiso briefly, dealing with the purging which we are going to canvass with this witness of staff but we will focus on just one person that this person was quite – that the person was – that this witness knew quite well. And then we are going to deal with the TNA breakfast with him and we will deal with the appointment of Mr Motsoeneng and matters

that relate to him. Thank you. If you are satisfied may the witness then be sworn in?

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Of before – before that Chair just before you that will be Exhibit 20 to 24 and this witness' – Doctor Ngubane's statements appears under divider number 22.

CHAIRPERSON: Thank you. We have admitted this?

ADV THANDI NORMAN SC: Yes we have admitted it yes Chair.

CHAIRPERSON: Yes.

10 **ADV THANDI NORMAN SC**: But just to open.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: There – it is there.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: And Chair just one another addition you – as from Friday there was an addition to that bundle just on his statement. Chair will see it is marked Exhibit – it is 22.1. It is a divider would be marked 22.1.

CHAIRPERSON: Oh yes.

ADV THANDI NORMAN SC: Yes and it says Media Bundle.

20 **CHAIRPERSON**: Yes.

ADV THANDI NORMAN SC: Thank you Chair.

CHAIRPERSON: Okay, alright, thank you.

ADV THANDI NORMAN SC: Thank you. May the witness be sworn in?

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Please administer the oath or affirmation?

REGISTRAR: Please state your full names for the record?

DR BALDWIN SIPHO NGUBANE: Baldwin Siphon Ngubane.

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

DR BALDWIN SIPHO NGUBANE: No.

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

DR BALDWIN SIPHO NGUBANE: Yes.

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

DR BALDWIN SIPHO NGUBANE: So help me God.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Thank you Mr Chairman. Doctor Ngubane
is it correct that you have submitted a statement to the commission and
that statement appears in a bundle that is in front of you marked – with
a divider marked 22? I had asked that it be opened for you.

DR BALDWIN SIPHO NGUBANE: It is correct.

ADV THANDI NORMAN SC: Yes. Could you just identify that
20 statement and if you could go to page 15 of that statement?

DR BALDWIN SIPHO NGUBANE: 15?

ADV THANDI NORMAN SC: 15.

CHAIRPERSON: That refers to the red numbers at the top.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: On the right hand corner.

ADV THANDI NORMAN SC: No, no you must open in your statement Doctor Ngubane.

DR BALDWIN SIPHO NGUBANE: Oh okay.

ADV THANDI NORMAN SC: Yes, no, no not – the copy that we made. Yes under 22 it will be a file – there is a jacket – that is a sleeve – what do you call it? A divider – number 2.

DR BALDWIN SIPHO NGUBANE: Oh.

ADV THANDI NORMAN SC: And it contains you statement.

DR BALDWIN SIPHO NGUBANE: Yes. Which part of the statement?

10 **ADV THANDI NORMAN SC:** Okay page 15 of that – 15.

DR BALDWIN SIPHO NGUBANE: Okay.

ADV THANDI NORMAN SC: Are you there? Is that your signature?

DR BALDWIN SIPHO NGUBANE: That is not part of my statement.

ADV THANDI NORMAN SC: No – yes – I think you – okay you opened the wrong one. She is going to assist you.

DR BALDWIN SIPHO NGUBANE: Okay. I have got it.

ADV THANDI NORMAN SC: Yes thank you. If you could please turn to page 15, 15.

DR BALDWIN SIPHO NGUBANE: Yes, yes.

20 **ADV THANDI NORMAN SC:** Yes thank you. Is that your signature that appears there?

DR BALDWIN SIPHO NGUBANE: That is correct.

ADV THANDI NORMAN SC: Yes and did you sign that statement on the 27 August 2019 at Ballito?

DR BALDWIN SIPHO NGUBANE: That is right.

ADV THANDI NORMAN SC: Yes thank you. And are the contents of this statement true and correct?

DR BALDWIN SIPHO NGUBANE: Sorry?

ADV THANDI NORMAN SC: Are the contents of your statement true and correct?

DR BALDWIN SIPHO NGUBANE: Yes it is correct.

ADV THANDI NORMAN SC: Yes. Thank you. And you made this statement to the commission voluntarily?

DR BALDWIN SIPHO NGUBANE: Yes.

10 **ADV THANDI NORMAN SC:** Yes thank you. Could you just for the record Doctor Ngubane I know you have done so in Annexure BSN 001 that appears at page 16, the very next page after page 15 the one that you have – yes. And is that your CV or briefly your qualifications?

DR BALDWIN SIPHO NGUBANE: That is correct.

ADV THANDI NORMAN SC: Yes could you just for the record place that on record?

DR BALDWIN SIPHO NGUBANE: Okay.

ADV THANDI NORMAN SC: Just your academic qualifications please? But that also includes the BSN 001 at page 16 also includes your...

20 **DR BALDWIN SIPHO NGUBANE:** 63.

ADV THANDI NORMAN SC: Your careers – yes, yes.

DR BALDWIN SIPHO NGUBANE: Okay.

ADV THANDI NORMAN SC: If you could just place that on record, thank you.

DR BALDWIN SIPHO NGUBANE: Should I read this out?

ADV THANDI NORMAN SC: Yes, yes.

DR BALDWIN SIPHO NGUBANE: Okay.

“Baldwin Sipho [Ben] Doctor Ngubane started his career as a leader in the IFP where after I cross over to the ANC – where after I crossed over to the ANC. He has served in the following positions.

1994 he was appointed Minister of Arts, Culture, Science and Technology in the Government of National Unity.

10 In 1997 he was appointed as a Premier of KwaZulu Natal.

In 1999 he was reappointed Minister of Arts, Culture, Science and technology.

In 2004 he was appointed as an Ambassador to Japan.”

ADV THANDI NORMAN SC: Oh may I just interrupt? Chair the – I have just been advised that you are not really audible. Doctor Ngubane could you just pull the microphone closer to you?

DR BALDWIN SIPHO NGUBANE: Okay.

20 **ADV THANDI NORMAN SC:** Thank you.

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Should he start from the beginning if he was not audible?

ADV THANDI NORMAN SC: Yes, yes maybe you could just tell – yes.

CHAIRPERSON: I think.

ADV THANDI NORMAN SC: The Chair from the beginning.

CHAIRPERSON: Ja maybe if you could start from the beginning.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: But this is not the CV I supplied.
Someone has written this CV.

CHAIRPERSON: Yes. Where is the CV that he supplied – in his
statement does say CV's here.

DR BALDWIN SIPHO NGUBANE: You know they putting their own
10 assumptions.

ADV THANDI NORMAN SC: Maybe it is your attorney – because the
commission got it from [indistinct] statement.

CHAIRPERSON: No the attorney is shaking his head.

ADV THANDI NORMAN SC: He is shaking his head.

CHAIRPERSON: Is his CV here because his statement does say my CV
is supplied.

ADV THANDI NORMAN SC: I just want to check whether Mr Mkhabela
does have a copy of his CV.

DR BALDWIN SIPHO NGUBANE: Well I would prefer that we go to my
20 ...

CHAIRPERSON: Yes, no that is not...

DR BALDWIN SIPHO NGUBANE: My original CV.

CHAIRPERSON: Have you got it there – have you got it with you
outside of the bundle maybe?

ADV THANDI NORMAN SC: No this is the one. Doctor Ngubane the

one that you say is not yours is that what appears at page 16?

DR BALDWIN SIPHO NGUBANE: No, no, no. This is not what I supplied.

CHAIRPERSON: Yes that is the one – he was reading from the one ...

ADV THANDI NORMAN SC: From this one and he says this is not the one.

CHAIRPERSON: No, no I am sorry I think he was reading from – were you not reading from 63?

DR BALDWIN SIPHO NGUBANE: No I cannot find the one I supplied
10 unfortunately.

CHAIRPERSON: Ja let us try and see if he can...

ADV THANDI NORMAN SC: Okay.

CHAIRPERSON: Ja you see he was reading from page 63. You say there is something here at pag 63.

ADV THANDI NORMAN SC: Oh no, no, no that is – no that is not what you were supposed to be reading from.

DR BALDWIN SIPHO NGUBANE: Okay.

ADV THANDI NORMAN SC: This is the media bundle. I said page 16.

CHAIRPERSON: Well his statement does say – it says:

20 “My full curriculum vitae is annexed hereto as annexure BSN 001.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: That is correct.

CHAIRPERSON: That is supposed to be ...

ADV THANDI NORMAN SC: Yes, yes, yes.

CHAIRPERSON: Is it not attached to the statement because it should

be?

ADV THANDI NORMAN SC: It is Chair.

CHAIRPERSON: Where – what page?

ADV THANDI NORMAN SC: It is at page 16.

CHAIRPERSON: Have a look at page 16 Doctor Ngubane and see whether that is what you are looking for?

DR BALDWIN SIPHO NGUBANE: This is the one – yes Chairperson.

CHAIRPERSON: That is the one you were looking for?

DR BALDWIN SIPHO NGUBANE: That is right Chairperson.

10 **CHAIRPERSON:** Okay alright.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: I think read from that one rather then.

ADV THANDI NORMAN SC: Yes. Thank you.

DR BALDWIN SIPHO NGUBANE: Thank you.

CHAIRPERSON: Ja okay.

DR BALDWIN SIPHO NGUBANE: Well...

“Date of birth 1941 October 22.

Education and Professional Qualifications: Matric obtained at St Francis College Mariannahill, Pinetown KwaZulu Natal.

20 University: Bachelor of Medicine and Bachelor of Surgery KwaZulu Natal.

Emprex Med which is Master of Family Medicine, University of Natal.

Post Graduate Diplomas: Diploma in Tropical medicine and hygiene, WITS.

Diploma in Public Health – WITS.

Economic Principles – University of London.

Public Service – Minters of Arts, Culture, Science and Technology 1994 to 1996.

Premier of KwaZulu Natal 1997 to 1999.

Minister of Arts, Culture, Science and Technology 1999 to 2004.

Ambassador to Japan 2004 to 2008.

Awards: Grand Cordon of the Order of the Rising Sun bestowed by the Emperor of Japan for moratoria achievements in building up science and technology corporation between South Africa and Japan.

10 Honorary Degrees:

LLD – University of Natal

Phd – University of Zululand.

Phd – Medunsa.

Phd – University of Free Start.

Doctor of Humane Letters.

International Christian Univerisity Tokyo Japan.

ADV THANDI NORMAN SC: Yes thank you.

20 **CHAIRPERSON:** It seems to omit two aspects which are relevant to – at least one of them which relevant for present purposes. Chairperson of the board of the SABC?

DR BALDWIN SIPHO NGUBANE: Well I presume ...

CHAIRPERSON: I thought that was an important ...

DR BALDWIN SIPHO NGUBANE: I presume any professional training whether it is law or medicine qualifies you to be Chairman of a board.

ADV THANDI NORMAN SC: Yes. Thank you. Yes.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Thank you. Is it also correct that the matters that you deal with here in your statement are matters that relate to the period when you were the Chairperson of the SABC board?

DR BALDWIN SIPHO NGUBANE: No this is just my CV.

ADV THANDI NORMAN SC: No, no I mean in your statement Doctor Nbugane. In your statement you deal with matters that relate to your chairmanship of the SABC board?

DR BALDWIN SIPHO NGUBANE: Yes absolutely. Absolutely.

10 **ADV THANDI NORMAN SC:** Yes thank you. When you were appointed to the Chairperson of the SABC board?

DR BALDWIN SIPHO NGUBANE: January 2010.

ADV THANDI NORMAN SC: And you served until when?

DR BALDWIN SIPHO NGUBANE: March 2013.

ADV THANDI NORMAN SC: Who appointed you to the board?

DR BALDWIN SIPHO NGUBANE: Parliament through the President.

ADV THANDI NORMAN SC: Yes. And the – who was the responsible Minister for Communications at that time?

20 **DR BALDWIN SIPHO NGUBANE:** It was retired General Honourable Sipiwe Nyanda.

ADV THANDI NORMAN SC: And who was the Minister of Finance?

DR BALDWIN SIPHO NGUBANE: Honourable Pravin Gordhan.

ADV THANDI NORMAN SC: Yes. Then during your time then to the board of – as the Chairperson of the board of the SABC you deal with that and you say the first thing that you deal with you deal with the

financial position of the SABC at the time when you were appointed as Chairperson of the board.

DR BALDWIN SIPHO NGUBANE: Yes probably one can expand a bit on that.

ADV THANDI NORMAN SC: Yes. Could you please just tell the Chairperson then as to what was the situation when you were appointed?

DR BALDWIN SIPHO NGUBANE: Yes. But I need to start a little back.

ADV THANDI NORMAN SC: Yes.

10 **DR BALDWIN SIPHO NGUBANE:** The SABC ceased to be profitable or to make a profit in 2006. From 2007, 2008, 2009 they were making huge losses. For instance in the 2008/2009 annual report and audited statements they made a loss of more than R800 million. They could not flight new content for television. They could not pay the independent producers for television content. In fact the independent producers lost about 17 000 jobs during that time.

ADV THANDI NORMAN SC: Sorry Doctor Ngubane the one thing I forgot to mention to you was that please look at the Chairperson when you answer.

20 **DR BALDWIN SIPHO NGUBANE:** Oh.

ADV THANDI NORMAN SC: Sorry and – yes – sorry.

DR BALDWIN SIPHO NGUBANE: Okay. I will do that.

CHAIRPERSON: No that is alright.

ADV THANDI NORMAN SC: Thank you.

DR BALDWIN SIPHO NGUBANE: I will do that indeed.

CHAIRPERSON: You are not the only one.

DR BALDWIN SIPHO NGUBANE: Oh.

CHAIRPERSON: A lot like looking at the evidence leaders ja.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Ja no that is fine.

DR BALDWIN SIPHO NGUBANE: Ja. The situation became so critical that the interim board chaired by Ms Irene Charnley had to ask for a government guarantee of about R1.64 billion in order to meet the solvency requirements of the SABC. This was granted and we then –
10 when we came in in 2010 we then had this money R1 billion – R1 billion term load from Nedbank to settle the huge debts that were outstanding. So we came in into an organisation that was technically insolvent. In our first year 2009/2010 we had reduced the deficit of more than 800 to R465 million. We had improved the content in our television by paying the independent producers of content material by making the programs more attractive, raising our audience ratings so we could again go back to charge the relevant and properly priced amounts for television advertisements. A broadcaster makes money through advertisements. However when the audience ratings are low no-one wants to pay money
20 when they cannot reach a sufficient number of viewers. So it was very important to go back to produce content that was appealing to the public and therefore would attract investment revenue.

ADV THANDI NORMAN SC: So how did you then do that?

DR BALDWIN SIPHO NGUBANE: We did that by restricting content to only those movies or news item that would attract and retain viewers.

So we started to correct the financial situation. We progressively did so to a point where in 2013 we paid R800 million back to Nedbank. In other words saving about R45 million in interest which was being charged at the time. And this was in line with the requirements of the conditions set up in the government guarantee. So we found a dysfunctional organisation. The cause of the loss of profitability was widespread malpractice at the management level. For instance sales would be made for advertising time but the people who managed putting that into content and television viewing did not follow the schedules.

10 So the advertisers refused to pay. Secondly there was widespread corruption in the buying and procurement of international film material. People would go out to Hollywood, buy a bulk of material which was part of the bulk associated with crime content. Let me just give an example. If we bought the...

ADV THANDI NORMAN SC: The Bold and the Beautiful.

DR BALDWIN SIPHO NGUBANE: Ja the Bold and Beautiful thank you.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: They would say here are other films you must buy them as a bundle. You get the good one but you get a
20 whole lot of useless ones. There was an expression you buy the dog with its ticks – with his fleas. That was – became a popular expression. Now the problem these fleas you could not flight them because no-one want to see them. For instance if one took old cowboy films like Roy Rodgers or something no-one would be interested in viewing that. So these products or films would stay at SABC unused

until the licence expired. However money had been paid of them. No income from advertisements which are associated with the film material would be coming in so it was written off as impairment. There were other ways in which management over-rode the credit controls in the sales division. Ultimately almost all of them were expelled or charged. So I am trying to show you that the SABC we came to was under serious financial stress but we also had the conditions of the government guarantee which were very onerous. We had to produce a turnaround strategy and plan. We had to reduce head count by almost
10 1000 people. We had to put in what should I say – measures that reduced costs right across the board.

CHAIRPERSON: Cost cutting measures.

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: And those are the conditions you got from the Minister of Finance?

DR BALDWIN SIPHO NGUBANE: The money?

ADV THANDI NORMAN SC: No the conditions that you are mentioning.

DR BALDWIN SIPHO NGUBANE: Oh yes.

ADV THANDI NORMAN SC: Yes.

20 **DR BALDWIN SIPHO NGUBANE:** Ja that was to reduce costs across the board.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: Reduce headcount. Reduce the benefits that were going to senior management and middle management. And these costs us about R200 million just the issue of

retention, bonuses, the issue of post-retirement benefits were hugely expensive but they applied to the senior and middle management. When we said to the Minister that it was difficult to retrench people he pointed out that the cost element is in senior and middle management. So deal with those. Forget about unionised labour because they are not as expensive and that is when the policy of not renewing contracts that were ending. The senior management and some middle management had five year contracts. So the decision by the board was we will not renew contracts that are coming to an end. So this way we managed to re-shape the finances of the SABC. When I left in 2013 it was on an even keel and there was money on top of whatever we had paid to the term loan.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: The disclaimers that had been there in 2009 we had dealt with them. The Auditor General had found lack of governance at SABC. We dealt with this in the report to SCOPA where SCOPA wanted to know – SCOPA the Standing Committee On Public Accounts – wanted to know what we were doing to implement action to correct – corrective action in response to the findings of the Auditor General. We presented to SCOPA our plans, they were satisfied. So we had started to shift the situation to a profitable SABC, the return of advertisers. You know advertising time on TV costs a lot because that is the best form of advertising – of advertising. It reaches a huge number of people across the country. All categories. For instance if you advertise on say for an example Metro FM the lowest cost for half a

minute is R540.00 for half a minute. But it can go on up to R1200.00 depending on the quality of your audience ratings.

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: Which make you very costly to the advertised.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: So

ADV THANDI NORMAN SC: Oh sorry yes.

DR BALDWIN SIPHO NGUBANE: Okay.

10 **ADV THANDI NORMAN SC**: Sorry let me – if you could just finish that part?

DR BALDWIN SIPHO NGUBANE: Okay, no, no that is fine.

ADV THANDI NORMAN SC: Are you finished?

DR BALDWIN SIPHO NGUBANE: I think I have said ...

CHAIRPERSON: Yes okay.

ADV THANDI NORMAN SC: Yes. Alright. Thank you. Can we just deal with the one aspect that you have already mentioned that there was a plan that then the board decided to deal with the senior management?

DR BALDWIN SIPHO NGUBANE: Yes.

20 **ADV THANDI NORMAN SC**: In cutting costs.

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: Could you just tell the Chairperson other than not renewing contracts that had come to an end.

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: What other measures related to those cost

cutting measures insofar as the employment of those persons were concerned?

DR BALDWIN SIPHO NGUBANE: Well we wanted to change from defined benefits to defined contributions because if a person leaves SABC retires and he is on defined benefits it means he will get that money throughout his life post retirement. But if it is defined contribution then it goes along with a time span he spent at SABC. So we were trying to change those practices.

ADV THANDI NORMAN SC: Yes.

- 10 **DR BALDWIN SIPHO NGUBANE:** But we were also merging some of the positions and consolidating them. For instance there used to be Human Resources then there used to be a Chief People's Officer. The board looked at this, had a bit of research on it and discovered that it was actually two people doing the same job. So that was merged.

ADV THANDI NORMAN SC: Yes.

- DR BALDWIN SIPHO NGUBANE:** And there were managers who were reporting to other managers at the same level in the organisation. We eliminated that surplus expenditure. And of course there was austerity in terms of travelling. We decided to close the international news
20 bureaus that were opened in London, New York etcetera where we paid people in terms of foreign currency. You know Euros and Dollars that was eliminated.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: We forced news section for instance to cut its budget of R900 million to R600 as part of the austerity

measures.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: The allowances on petrol cards were changed because petrol cards were absolutely abused. People would go there, change their car engines, change their tyres, using petrol cards. We eliminated that. So there were a number of measures that fitted the austerity requirement that was in the government guarantee.

ADV THANDI NORMAN SC: Yes. I would like to just deal with the matter that relates to these measures insofar as one of the employees
10 of the SABC's concern. I would like to hear your comments on it. I see you make reference – there is a document that you have attached BSN 002 and it has his name. It was prepared – it is a presentation to SCOPA and it has the name of Mr Tiaan Olivier. And the Chief Financial Officer. Do you – you knew Mr Olivier?

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: At the time when you were the Chairperson of the board?

DR BALDWIN SIPHO NGUBANE: Yes when Mr Robin Nicholson.

ADV THANDI NORMAN SC: Yes.

20 **DR BALDWIN SIPHO NGUBANE:** Became acting CEO Tiaan Olivier became acting Financial...

ADV THANDI NORMAN SC: Financial Officer.

DR BALDWIN SIPHO NGUBANE: Officer.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: He was excellent. In fact he was one

of the members of the task team that the board asked Mr Motsoeneng to set up to deal with the findings of the Auditor General. They worked through December into the following year and produced a report that became acceptable to the SCOPA.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: He was a very good worker. I left the – at SABC so I do not know what happened afterwards.

ADV THANDI NORMAN SC: Yes. But what I would like us to talk about. Looking at the plan to make sure that contracts that have come
10 to an end do not get renewed. In that plan that the board had did you envisage a situation where a person would still have 5 years to go in the contract but it would be terminated?

DR BALDWIN SIPHO NGUBANE: No, no. That was not the policy. It was not the decision. It was contracts that were coming to a close.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: We would talk to the person who occupied the position, assess the performance in that position and explain to them that because of the policy your term is ending in two months or three months we will not renew it.

20 **ADV THANDI NORMAN SC:** Yes. And you would not push the person to leave before that expiry of that period of two months?

DR BALDWIN SIPHO NGUBANE: It might have happened once or so but that was not the policy as far as I remember.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: Ja.

ADV THANDI NORMAN SC: And what would you say because – I know you deal with the purging. You say during your time there was never any purging of officials. But I would like you to look at this scenario that I am going to put to you. According to the evidence of Ms Thekiso who is the Chief Executive Officer dealing with Human Resources. He has mentioned Mr Tiaan Olivier's case and we had tendered that evidence before the Chairperson showing that he had to leave and still had five years to go in terms of his contract and had to be paid huge sums of monies in order to make it possible for him to leave.

10 **DR BALDWIN SIPHO NGUBANE:** Well I think that was wrong because that was not what we had decided.

ADV THANDI NORMAN SC: Yes. So that would - if - if one looks at it and says that was purging you would agree with that situation. Am I correct?

DR BALDWIN SIPHO NGUBANE: Well it - I did not participate in that.

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: So there might have been other reasons. I do not know but ...

20 **CHAIRPERSON:** Hm.

ADV THANDI NORMAN SC:

DR BALDWIN SIPHO NGUBANE: As far as I am concerned if there were no other compelling reasons that was wrong because this should amount to fruit - fruitless and wasteful expenditure.

ADV THANDI NORMAN SC: Yes and from what you have told the

Chairperson if he was an excellent person even if he had to leave I am sure there would have had to be a person replacing him because that position of a Chief Financial Officer cannot be left vacant. Would you agree?

DR BALDWIN SIPHO NGUBANE: Oh no. In terms of the Chief Financial Officer certainly ...

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: But in terms of other positions as I said we - we tried to match positions in order to save money.

10 **ADV THANDI NORMAN SC:** Yes. Thank you.

CHAIRPERSON: Do - do you know whether he left at the time when Dr Ngubane was still Chairperson?

ADV THANDI NORMAN SC: No, no. No Chair.

CHAIRPERSON: Oh it was after?

ADV THANDI NORMAN SC: No it was after. After he left.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: *Ja.*

20 **ADV THANDI NORMAN SC:** When you - could you just confirm that Dr Ngubane?

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: When Mr Olivier left you - you had already left the SABC?

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: Yes, thank you. Now - then as the

Chairperson of the Board you have just told the Chairperson that you were asked to - to put up these austerity measures as the board to make sure that the SABC stops bleeding and you deal with those aspects in paragraphs 9, 10 and 11.

You have already mentioned to the Chairperson how you dealt with international buy - buying of films.

DR BALDWIN SIPHO NGUBANE: Huh-uh.

ADV THANDI NORMAN SC: Yes and you have dealt with the reduction of staff. Now could you just ...

10 **CHAIRPERSON**: May - may - maybe - maybe Ms Norman ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Before you proceed.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: Dr Ngubane do you have a recollection of more or less how many managers had their contracts not renewed pursuant to that policy that you decided upon. Namely if a manager is on a fixed term contract and that contract comes to an end we will not renew it as part of cost cutting measures.

20 Do you have a recollection of about how many you - might have gone based on that decision?

DR BALDWIN SIPHO NGUBANE: Probably - probably 10.

CHAIRPERSON: Probably 10?

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Yes. I guess that what you would do is not just to say well if and when a contract ends we will not renew it what you would

have done is look at the - at the work that that person does ...

DR BALDWIN SIPHO NGUBANE: Absolutely.

CHAIRPERSON: At the position. Obviously if the position - if the work - the responsibilities that are attached to that position are quite important or essential ...

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Then - then you would not have a situation where there is nobody performing those duties and it would be a question whether you renew or extend the contract of the existing person or you
10 do not renew that contract but you get somebody else. Of course if you get somebody else then it is not cost cutting measures.

DR BALDWIN SIPHO NGUBANE: Absolutely.

CHAIRPERSON: Is that right?

DR BALDWIN SIPHO NGUBANE: Absolutely.

CHAIRPERSON: So in each case you would have looked at ...

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: How important the function is?

DR BALDWIN SIPHO NGUBANE: And the performance Chairperson.

CHAIRPERSON: And the performance?

20 **DR BALDWIN SIPHO NGUBANE:** Yes.

CHAIRPERSON: Okay, alright. Thank you.

ADV THANDI NORMAN SC: Thank you Chair and all those 10 cases would have been brought to the board for the board to approve the exit - exit agreements with those persons?

DR BALDWIN SIPHO NGUBANE: Absolutely.

ADV THANDI NORMAN SC: Yes. Now - then in paragraph 11 you deal with the Sports and Film Rights. I am not sure whether you had listened to the evidence that has been tendered where the GCEO and the - the Chairperson of the current Board had - had mentioned this issue of cost rights being quite costly for the SA - SABC.

During your time as the Chairperson of the Board and as you deal with it in paragraph 11 what was happening insofar as Sports Rights are concerned?

DR BALDWIN SIPHO NGUBANE: SABC had lost its Sports Rights
10 when we came. They had even lost the PSL Sports Rights. What was being shown of - on - of rugby and PSL games was being bought from SuperSport and of course it was very costly. Hlaudi went to see Mr Irvin Khoza to say please the way PSL was handled by the people before us was wrong.

Can you please now start negotiating with us and give us back the Sports Rights. So SABC resumed broadcasting PSL games through that process but otherwise it did not have Sports Rights.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE:

20 **CHAIRPERSON:** Did you ...?

DR BALDWIN SIPHO NGUBANE: The Sports Rights that we had for the Africa Cup of Nations was hugely expensive. In fact we stopped that process. Our lawyers went to Paris where SportsFive was headquartered. They were going to charge us a penalty more than probably R2 million but our lawyers argued the case.

It was even in court in Paris and we ended up paying about R27 million penalty for cancelling the Africa Cup of Nations sports but we subsequently got the right to record and broadcast Bafana games and that went on and I think it is still going on.

ADV THANDI NORMAN SC: And the agreement then with the PSL that you say Mr Hlaudi reached with PSL - sorry. Was that agreement in writing?

DR BALDWIN SIPHO NGUBANE: Well that was a board - a board matter - a board decision that we try and re - regain the PSL Sports
10 Rights because it is one of the most popular shows on SABC 1.

ADV THANDI NORMAN SC: So there would have been a gentleman's agreement to deal with that aspect?

DR BALDWIN SIPHO NGUBANE: No, no. It was formalised.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: I do not have the records but I know it was formalised.

ADV THANDI NORMAN SC: Formalised, yes.

CHAIRPERSON: So there was a written agreement?

DR BALDWIN SIPHO NGUBANE: Yes there should be.

20 **CHAIRPERSON:** Hm, hm.

DR BALDWIN SIPHO NGUBANE: You know I do not have it ...

CHAIRPERSON: Yes, yes.

DR BALDWIN SIPHO NGUBANE: Chairperson.

CHAIRPERSON: No that is fine.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Did you get to know how SABC had lost these Sports Rights before your time? How it had come about that they lost those rights or is that something you never got to under - you know?

DR BALDWIN SIPHO NGUBANE: Well from what - from the discussions with Mr Khoza the officials at SABC were absolutely rude towards them. So any relationship broke down.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you. In - insofar as the reduction of staff you - you alluded to the fact that the Minister of Communications
10 then had indicated that he also wanted a head count strategy and - and then you deal with that in paragraphs 12 and 13 but in paragraph 13 what I would like us to talk about is that the - the head count strategy had not been finalised but do I get a sense that even though it had not been finalised you started embarking on the decision to let go of those managers whose contracts were not going to be renewed?

DR BALDWIN SIPHO NGUBANE: That is correct. That is correct because I should - I should say that is the highest cost came from the retention bonuses from - and from the benefits for senior management and middle management.

20 **CHAIRPERSON:** The retention bonuses. Just explain to me what that - that is so that I - I understand. What is the - I know a bonus even though Judges do not get a bonus but is that money that an executive gets paid to giving an incentive to stay in the institution and not leave?

DR BALDWIN SIPHO NGUBANE: Absolutely Chairperson. It is paid I think on a three yearly basis.

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: On top of the normal bonuses ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: But the - the cost becomes very high.

CHAIRPERSON: It - it has got nothing to do with performance?

DR BALDWIN SIPHO NGUBANE: Well it should be based on performance ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: But in practice everyone in a senior
10 position (intervenes) getting that.

CHAIRPERSON: Just gets it; and - and would there be a separate
bonus for performance or there would only be the retention bonus which
is supposed to take into account performance?

DR BALDWIN SIPHO NGUBANE: That will be separate because the
annual bonus ...

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: Based on performance ...

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: Depended on them achieving about
20 60 percent ...

CHAIRPERSON: Of the targets?

DR BALDWIN SIPHO NGUBANE: Ja, of the target.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: So that would be yearly.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: The - this one was to - just to retain talent ...

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: But in an organisation of course that is bloated ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: With figures.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: I mean with - with people. You know.

10 The usefulness was not very clear.

CHAIRPERSON: Yes. Well it is - it is kind of surprises me. You know. I do not know you know. From what you say I do not think it would have been limited to what might call people with rare skills. That you would not want to - you would not want to leave your organisation because getting people with those skills would be quite difficult and might take you long and in the process the institution might be suffering.

It was not based on that - this retainer. It was paid to a lot of other - a lot of people whose skills might not be said to be rare.

20 **DR BALDWIN SIPHO NGUBANE:** That is correct Chairperson. It became a sort of established practice that certain people got retention bonuses.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Did you have a recollection of more or less maybe

what percentage of a - a person's remuneration it would be in terms of how it would be calculated? Would it be like 10 percent of your annual salary or some - anything like that or is this - is that a detail that you cannot remember?

DR BALDWIN SIPHO NGUBANE: No I cannot remember the actual details ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: But ...

CHAIRPERSON: It was there?

10 **DR BALDWIN SIPHO NGUBANE:** It was there.

CHAIRPERSON: Yes, okay.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Thank you Mr Chairman. So then you - you say that was then some - one of the primary focus that you had to try and meet the 1 000 target that the Minister had set insofar in reduction of staff is concerned?

DR BALDWIN SIPHO NGUBANE: Chairperson it was a feeble effort to meet the reduction in head count.

20 **ADV THANDI NORMAN SC:** Huh-uh.

DR BALDWIN SIPHO NGUBANE: It did not go far at all but it was something that we had to do to try and meet the - the conditions.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Well let me just make sure I have not missed anything. I know that at a certain stage I asked you how many

managers you were able to - not to renew their contracts and you said maybe around 10.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Of course 10 out of 1 000 that may have been desired is quite a long way but are there other categories that you were able to - I do not want to say get rid of - but that you were able to allow or retrench or - or terminate at managerial level because I think the Minister said leave the unionised staff alone.

10 Look at the management. Are there others that you were able to allow to go?

DR BALDWIN SIPHO NGUBANE: Well through natural attrition Chairperson, yes.

CHAIRPERSON: And - and would that have ended up being quite a significant - significant number in terms of the targets ...

DR BALDWIN SIPHO NGUBANE: Ja.

CHAIRPERSON: Of 1 000 ...

DR BALDWIN SIPHO NGUBANE: Well ...

CHAIRPERSON: Or not really?

20 **DR BALDWIN SIPHO NGUBANE:** No, no. We - we just did not even come near ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: To reaching the target.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: And your own assessment as - as you sit here and I

know that you might not recall a lot of details - as you sit here would you estimate that maybe you went up to - you reached 100 or 200 or 500?

DR BALDWIN SIPHO NGUBANE: Well through natural attrition where we did not employ people ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: In the positions that were being vacated I would say yes Chairperson but ...

CHAIRPERSON: Yes.

10 **DR BALDWIN SIPHO NGUBANE:** Some of the - of the people left because of the findings ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: Of the Auditor-General.

CHAIRPERSON: Okay.

DR BALDWIN SIPHO NGUBANE: A lot of people - I mean the Auditor-General had found that 1 465 people ...

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: Were actually doing business with the SABC.

20 **CHAIRPERSON:** Yes.

DR BALDWIN SIPHO NGUBANE: Most of those people left.

CHAIRPERSON: Okay, okay.

DR BALDWIN SIPHO NGUBANE: *Ja.*

CHAIRPERSON: Okay. So - so in the end I - I guess that the - the number of people left either because of natural attrition or because of

the findings of the Auditor-General exceeded 500?

DR BALDWIN SIPHO NGUBANE: No, not exactly.

CHAIRPERSON: No, no, no.

DR BALDWIN SIPHO NGUBANE: Probably 300 or so.

CHAIRPERSON: Oh, okay.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: No that is fine. Thank you.

ADV THANDI NORMAN SC: Yes. Thank you Chair; and - and then - so
in other words the - the board would - would - was responsible in the
10 sense that it would ensure that whoever left in terms of the plan that
you had which you were carrying out left under proper and legitimate
circumstances?

DR BALDWIN SIPHO NGUBANE: That is correct Chairperson.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Of course if somebody leaves whether it is retirement
or they leave because of findings if you do not replace them logic
dictates that maybe you did not need somebody doing what they were
doing.

DR BALDWIN SIPHO NGUBANE: Well precisely Chairperson.

20 **CHAIRPERSON:** Yes.

DR BALDWIN SIPHO NGUBANE: When managers' report to managers
and they are at the same level that is fruitless expenditure.

CHAIRPERSON: And did you get to know how this had come about to
have maybe a - a significant number of people that really were not
really needed in the organisation? Did you get to know how this had

come about?

DR BALDWIN SIPHO NGUBANE: Well from 2007 the head count had just shot through the roof. People were being employed you know and the - I think I read somewhere that the wage bill because of these new people being employed exceeded something like 300 million.

CHAIRPERSON: So - so people were being employed whose services the institution did not really require?

DR BALDWIN SIPHO NGUBANE: That is correct Chairperson.

CHAIRPERSON: *Ja.* Hm. Thank you.

10 **ADV THANDI NORMAN SC:** Thank you. Is - is that the - thank you Chair - is that the figure that you deal with in paragraph 13 where you deal with the growth and staff numbers? If you go back to your statement doctor - Dr Ngubane page 4 of your statement.

DR BALDWIN SIPHO NGUBANE: Sorry. Which figure is that?

ADV THANDI NORMAN SC: The figure that you have just mentioned to the Chairperson in response to his question. Is that ...?

DR BALDWIN SIPHO NGUBANE: Oh, *ja.*

ADV THANDI NORMAN SC: Is that the one that you have mentioned?

DR BALDWIN SIPHO NGUBANE: Yes.

20 **ADV THANDI NORMAN SC:** In paragraph 13?

DR BALDWIN SIPHO NGUBANE: That is correct. Oh, no. I said 480 million here. Yes.

ADV THANDI NORMAN SC: Yes and no, no, no I think you did not follow my question. When you answered about the staff numbers and people being employed and you deal with that aspect in paragraph 13

and in the sentence that beings:

“The growth ...”

Is that the correct figure?

DR BALDWIN SIPHO NGUBANE: Well ...

ADV THANDI NORMAN SC: “The grown and staff ...”

DR BALDWIN SIPHO NGUBANE: I am - I am recalling it.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: Alright, thank you. Then in paragraph 15
10 you mention that whilst you were working on these plans trying to turn
around the SABC you had meetings with the Minister and you deal with
the frequency of those meetings. Could you just testify to what you
have got in that paragraph and the ...?

DR BALDWIN SIPHO NGUBANE: Sorry.

ADV THANDI NORMAN SC: Could you just testify to what you saying
about the Minister - having meetings with the Minister on the progress?
Sorry are you on the statement Dr Ngubane?

DR BALDWIN SIPHO NGUBANE: Where to ...

CHAIRPERSON: I think just tell him.

20 **DR BALDWIN SIPHO NGUBANE:** 200.

ADV THANDI NORMAN SC: I am sorry. Just to direct. Page 4 on top.

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: And then paragraph 15 - 1.5.

DR BALDWIN SIPHO NGUBANE: Yes, 15 yes.

ADV THANDI NORMAN SC: Yes, yes.

DR BALDWIN SIPHO NGUBANE: *Ja.*

ADV THANDI NORMAN SC: Yes. Could you just testify to that paragraph because you make an important statement and I would like to ask why you make that statement that there was no political pressure applied to you and I would like you to talk to that?

DR BALDWIN SIPHO NGUBANE: Well I was lucky in a way because I had been in Government before and I knew most - knew most of the players in Government. So it was easy to discuss on a sort of level playing ground. So I cannot say the Minister when we have discussed
10 the issue then forced me to do something.

ADV THANDI NORMAN SC: Yes. I just want to understand the relevance of that part in your statement. That there was no political pressure applied on you. I just want to know how - how did it come about that you felt that when you dealing with the meetings that you were having with the Minister ...

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: To deal with the progress ...

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: You felt that it was necessary for you to
20 put in that sentence.

DR BALDWIN SIPHO NGUBANE: Well ...

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: Because I mention that the Minister had said let us look at senior and middle management.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: Some people could interpret that as political pressure. I was just trying to clarify that.

ADV THANDI NORMAN SC: Alright. Okay. Thank you. Then you say you managed to pay off the Government guarantee - you have already testified - in one and a half years.

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: Is that correct? Alright.

CHAIRPERSON: What was the term of the Government guarantee?

DR BALDWIN SIPHO NGUBANE: The ...

10 **CHAIRPERSON:** How long were you supposed to ...?

DR BALDWIN SIPHO NGUBANE: Five years Chairperson.

CHAIRPERSON: And you paid it off within one and a half years.

DR BALDWIN SIPHO NGUBANE: *Ja.*

CHAIRPERSON: One and a half years?

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Okay. Thank you.

ADV THANDI NORMAN SC: And you deal with your support and in paragraph 17 you also make another statement that:

20 “My view is also that the private sector did not interfere with our work”

 And I would ask the same question that I asked about the other statement about no political pressure as to why you felt there was a need to make that statement.

DR BALDWIN SIPHO NGUBANE: Again because you know there was a

lot of talk about outside influences on SABC decision making. So I am just bringing that in to say it was market forces that guided our decisions not because someone put pressure for a decision.

ADV THANDI NORMAN SC: You - you also make in that sentence that:

“The only influence they had over us was the fact that our audience ratings had to be high for us to get advertising money.”

Could you just deal with that sort of influence? How does that come about from business?

- 10 **DR BALDWIN SIPHO NGUBANE:** Because the people who buy airtime there are organisations that buy airtime for different companies. Say *Lever Brothers, Kellogg's* you know and many other consumer materials whether it is house cleaning, liquid. They give it to a centralised buyer but the buyer is only interested in audience ratings because they want to have value for the money they are spending paying for the advert.

So that is the pressure that any broadcaster faces. That you must push up the audience ratings in order to get advertising revenue.

ADV THANDI NORMAN SC: Yes.

- 20 **CHAIRPERSON:** So in other words you are not attractive to them if you have low ratings?

DR BALDWIN SIPHO NGUBANE: Absolutely.

CHAIRPERSON: Audience ratings? *Ja*.

DR BALDWIN SIPHO NGUBANE: Absolutely.

CHAIRPERSON: The - the higher your rate - ratings are the more attractive you are to them?

DR BALDWIN SIPHO NGUBANE: Absolutely. Particularly in an organisation where income - 85 percent of income comes from advertising. It becomes a great pressure to raise your audience ratings.

ADV THANDI NORMAN SC: Yes. Thank you Chair and then you moved - you have another sub paragraph of page 5 of your statement:

“Relationship with the Members of the Gupta Family.”

Could you just tell the Chairperson about your relationship if any with
10 the members of the Gupta family as you deal with it in these paragraphs? Paragraphs 16 to 19.

DR BALDWIN SIPHO NGUBANE: Well there was this business partnership for morning breakfasts. I attended those breakfasts. Not all of them but quite a lot of them and I would sit with the people in the New Age editors, members of the Gupta family and on a few occasions I went to social events at their home and that is really the exposure I had to that family.

ADV THANDI NORMAN SC: Yes. Were - were you just as the start of the New Age Newspaper were you involved at all? Did you assist with
20 the negotiations of the New Age deal and TNA Breakfast?

DR BALDWIN SIPHO NGUBANE: No. This was an initiative through our news desk - our news editorial board and the officials of the news. We only got involved where I had to go and probably make a speech at a - to introduce the Minister at a breakfast meeting and that sort of thing but we were not involved as a board in the actual negotiations.

ADV THANDI NORMAN SC: Yes. Ms Mokhobo who was the GCEO had testified that when she was appointed to that position she was taken to be introduced to the Gupta family. Did that happen to you?

DR BALDWIN SIPHO NGUBANE: No because I did not have any power in terms of appointing companies or people who supply services at SABC. As Chairperson I did not have that power. So I presume I was irrelevant as far as that was concerned.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Well you - you could - you could be irrelevant if
10 somebody was looking doing business lawfully but you could be relevant if they wanted to do it unlawfully. You say to them I do not have power to do that. They say no come on you are the Chairperson of the Board.

DR BALDWIN SIPHO NGUBANE: Hm.

CHAIRPERSON: You are very powerful in SABC. Talk to so and so. Did nobody ever say anything along those lines? We want - we want to increase this. We want to get that.

DR BALDWIN SIPHO NGUBANE: No Chairperson. They did not need
20 to actually because the news people dealt with them on those business issues you know.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: *Ja*, but I am now talking more beyond just - just the breakfast shows. I am talking just in general.

DR BALDWIN SIPHO NGUBANE: No.

CHAIRPERSON: You know that they were - while - while you were

Chairperson. There were no business people or any people who made any attempts to get you to influence people to give them business at SABC?

DR BALDWIN SIPHO NGUBANE: No. That did not happen Chair.

CHAIRPERSON: That did not happen?

DR BALDWIN SIPHO NGUBANE: No.

ADV THANDI NORMAN SC: Hm.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you Chair and you say you had also
10 visited their home socially. You did visit them socially?

DR BALDWIN SIPHO NGUBANE: That is right.

ADV THANDI NORMAN SC: Yes. Who exactly invited you to these
social gatherings?

DR BALDWIN SIPHO NGUBANE: Well invitations used to come
through my PA. So I would get a list of invites and I say okay you can
take this one, not take this one and so on.

ADV THANDI NORMAN SC: Yes and I mean among the Gupta family
members who exactly invited you to attend these social gatherings?
There would be a person who would be in charge of that particular
20 event.

DR BALDWIN SIPHO NGUBANE: Well Nazeem Howa was in charge of
TNA and I think it was him who did the invites.

CHAIRPERSON: Did you at any stage become close to the Gupta
family or anybody in the Gupta family and when I say close I appreciate
that it might be difficult to say when - when is close, close but you -

you might be able on your own understanding to say well the following over time we did become close or we never became close. I went to one or two social events and that was it.

DR BALDWIN SIPHO NGUBANE: Well the editor of New Age we - we got to be friends ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: But not the rest of family.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: No.

10 **CHAIRPERSON:** And the - the editor at that stage was it Mr (indistinct)?

DR BALDWIN SIPHO NGUBANE: Moegsien Williams.

CHAIRPERSON: Williams?

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Oh, okay. No I was thinking of the witness.

ADV THANDI NORMAN SC: Oh. You - you thinking about TNA.

CHAIRPERSON: I am sorry. TNA - that is the New Age?

DR BALDWIN SIPHO NGUBANE: That is the New Age.

ADV THANDI NORMAN SC: Yes.

20 **CHAIRPERSON:** *Ja*. The editor of the New Age ...

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: That is the one you are talking about?

DR BALDWIN SIPHO NGUBANE: That is right.

ADV THANDI NORMAN SC: Yes Chair - ANN7.

CHAIRPERSON: Oh. I was thinking of the witness

ADV THANDI NORMAN SC: About ...

CHAIRPERSON: Who came to give evidence ...

ADV THANDI NORMAN SC: Mr Sundaram.

CHAIRPERSON: But he was for the television.

ADV THANDI NORMAN SC: ANN7. That is correct.

CHAIRPERSON: No. Is that ANN7?

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: Okay, okay.

ADV THANDI NORMAN SC: Yes Chair.

10 **CHAIRPERSON:** No that is alright. So that is the person that you consider yourself to have been close at some stage?

DR BALDWIN SIPHO NGUBANE: That is correct.

CHAIRPERSON: Yes, okay.

ADV THANDI NORMAN SC: Thank you; and then in the next paragraph you tell the Chairperson about the - the breakfast shows and what brought this about and how did this relationship between the SABC and the - the - and TNA develop insofar as these breakfast shows were concerned?

20 **DR BALDWIN SIPHO NGUBANE:** Well the - our news people developed that relationship that there would be these breakfast shows. We would record them and broadcast them live. There was even an agreement that was signed by members of the newsroom with the New Age/TNA which spelt out the modalities on how these shows will be arranged.

The New Age would hire the hall, provide the breakfast, pay

for flat screens, pay for projectors, pay for roving mics. The SABC would send out its outside broadcast vans with the technicians and the presenters and that is how the roles were divided.

ADV THANDI NORMAN SC: And were you in terms of that agreement expected to bill TIA for sending out your broadcast vans?

DR BALDWIN SIPHO NGUBANE: No, no, no, I mean our news section was always looking for new ways of attracting audiences of building up the audience ratings by new offerings so their approach to these breakfast was a new offering on the Morning Live slot. Now Morning
10 Live was a very popular, and I think still a very popular channel because people wake up, it's like morning coffee, I say to myself, they wake up to Morning Live. Morning Live deals with politics, with science and technology, with prominent personalities, with sport, with weather reports, with market related material. So it sort of prepares people in the morning as to what the agenda for the day is going to be. So it's got that value in it, it's the first kick-off as it were to the broadcast of the day so putting the breakfast in there was an addition in terms of the political side of Morning Live where Ministers are put before people, audiences, the audiences can question the Minister or the President on
20 anything and the people outside can join in through telephonic telephones, social media and so on SMS's to ask the Ministers, to hold the Ministers accountable. So this was seen as an innovation that could only benefit the audience ratings of the news section, particularly morning live, so that's how we perceived it as a content creating new content to the public and new opportunities.

ADV THANDI NORMAN SC: Yes how did that then assist with the ailing financial situation of the SABC?

DR BALDWIN SIPHO NGUBANE: Well as I said Chairperson let me take the cheapest which is a Metro FM R540 per half a second repeated many times between say seven and nine, that's a lot of money. So if Morning Live pushed up it's audience ratings they could charge even R1000 per half a second.

CHAIRPERSON: So the price which the SABC would charge for airtime or advertising would be influenced by, one, the level of the ratings, audience ratings at the particular time of the advert and I think you
10 said the type of people who would be watching around that time, I think you mentioned something like that. So that if the SABC knows that business A wants one minute at that time but there are many others who would like that one minute at that time, they could say we want more for this one minute because if you don't take it then somebody else will take it and therefore the businesses would be prepared to pay more as well because there is prime, I don't know if that is the term used, it's the best time, one of the best times to advertise?

DR BALDWIN SIPHO NGUBANE: You're absolutely right Chairperson
20 it depends on the time of day, it depends on the day in the week, for instance weekends Sunday and Saturday the prices are quite low but during the week, peak hour, morning, evening, sports you know all those get good pricing for airtime.

CHAIRPERSON: Well it's just interesting to me to say weekends the prices are low because I would have thought that weekends is when a

lot of people would be watching television because a lot of people would not be working, unlike during the weekdays and therefore the audience would be higher, is that just ignorance on my part?

DR BALDWIN SIPHO NGUBANE: Well weekends people go to church
Chairperson.

CHAIRPERSON: And most of them go to church only in the mornings.

DR BALDWIN SIPHO NGUBANE: And of course weekends is sports, sports is the winning number for weekends.

CHAIRPERSON: Okay.

10 **ADV THANDI NORMAN SC:** Thank you, thank you Chair, so you say in paragraph 23 you found that these were value adding, these breakfast shows?

DR BALDWIN SIPHO NGUBANE: Yes Chairperson because our sales kept on improving so these programmes were therefore adding value because we could make money and we improved year by year in terms of improving the finances of the SABC. So the value add there was that we could sell our airtime at higher prices and get better revenue.

ADV THANDI NORMAN SC: And weren't you at some point at all, concerned that now the SABC had established this relationship with
20 this particular company which was going to – according to the agreement to last for three years and did you at all, get concerns that maybe it might be seen that you had – the SABC had preferred a particular company over others or that the relationship itself was so close that it might have a way of interfering with what is expected within the editorial policy, that you shouldn't have – SABC shouldn't

have partners so as to keep it's objectivity and independence?

DR BALDWIN SIPHO NGUBANE: Well you know, Chairperson, in broadcasting it's probably different, you know if the SABC was creating a programme of it's own running it, probably then it would need to go the – follow the supply chain requirement, advertising, calling for interviews but when someone comes with a programme and says, we think this can make you money then there's no process of advertising that and this is what happened with the SABC New Age partnership. The people in news thought this was a novel idea, it would work for us
10 and then they signed an agreement on it. So it wasn't really preferring – if you say Business Day or Independent Newspapers came with such a proposal and it was appealing to people in news, I'm sure they'll take it. So it wasn't really a case of preferring group of people.

ADV THANDI NORMAN SC: Then, I'm not sure how familiar you were with the agreement, I'm sure it would have been brought to the Board because these shows were going to be twice a month, if I may just check, just make reference to it, it's in the same bundle – yes it's in the same bundle with your leave Chair can I just ask that the witness be assisted to page through to Ms Mokhobo's statement that said – that is
20 where the TNA agreement is.

CHAIRPERSON: What page?

ADV THANDI NORMAN SC: I'll give you now Chair, that's from page 10 – it's folder, the divider 21 and the agreement starts from page 10.

CHAIRPERSON: Are you able to see folder or divider 21 the green one?

DR BALDWIN SIPHO NGUBANE: Oh ja.

ADV THANDI NORMAN SC: Thank you Chair, if I may just – that is the agreement that was identified by Ms Mokhobo as having signed that agreement with TNA but I'd like to take you – yes if you could please turn to page 15 of that very document and I would like to direct your attention to [indistinct] paragraph 5.6. It reads,

“It is specifically recorded that the SABC shall broadcast two events per month and the SABC shall at all times have final editorial control”.

10 **DR BALDWIN SIPHO NGUBANE:** Yes.

ADV THANDI NORMAN SC: Yes were you also aware that this was the arrangement, this was the agreement that these breakfast shows would be two per month?

DR BALDWIN SIPHO NGUBANE: No this was a management issue, so the Board didn't really get involved in the terms, we were told, of course of how the expenditure is going to be but we were not participants.

ADV THANDI NORMAN SC: Alright so even when these numbers escalated you would have known as the Board?

20 **DR BALDWIN SIPHO NGUBANE:** As long as they didn't exceed the delegated authority of the people in news, as long as they were acting within that delegated authority, it was their matter.

ADV THANDI NORMAN SC: Yes thank you, then you say in paragraph 26 because 24 and 25 you refer to one thing, that you never asked for a further bail outs from Treasury, can you just tell the Chairperson about

that?

CHAIRPERSON: Yes paragraph 26.

ADV THANDI NORMAN SC: Oh you back, I beg your pardon, you go back to your statement now, yes thank you, paragraph 26 is at page 7.

CHAIRPERSON: Page 7 at the top right hand corner and paragraph 26 at the bottom of the page.

DR BALDWIN SIPHO NGUBANE: Sorry can you just repeat the page again?

CHAIRPERSON: Page 7 in your statement, have you found your
10 statement, we are back to your statement.

DR BALDWIN SIPHO NGUBANE: So paragraph 23 is it?

ADV THANDI NORMAN SC: 26.

CHAIRPERSON: 26 at the bottom of page 7.

DR BALDWIN SIPHO NGUBANE: We never asked Treasury for bail out yes we didn't.

ADV THANDI NORMAN SC: Yes and would you say then the finances at this point had improved?

DR BALDWIN SIPHO NGUBANE: Well yes the SABC was self sustaining.

20 **ADV THANDI NORMAN SC:** Yes.

CHAIRPERSON: And that was the position until you left?

DR BALDWIN SIPHO NGUBANE: That was the position, it was actually – we were improving all the time.

CHAIRPERSON: Yes okay.

ADV THANDI NORMAN SC: Thank you and then the [indistinct] aspect

you've already mentioned, we started with it, you remember this is where you told the Chairperson about the plan not to renew contracts that had come to an end, so that's what you deal with there in paragraphs 28 to 31.

DR BALDWIN SIPHO NGUBANE: Right.

ADV THANDI NORMAN SC: Then the next topic we are going to deal with Mr Hlaudi Motsoeneng – Chair I see the time is now quarter past eleven.

CHAIRPERSON: Oh yes let's take the tea adjournment it's quarter
10 past eleven, we'll take the tea adjournment and we'll resume at half past eleven, we adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes let us proceed.

ADV THANDI NORMAN: Thank you Mr Chairman. We are now at page
9 of your statement Doctor Ngubane. And you deal there from
paragraph 32 and following with your dealings with Mr Hlaudi
Motsoeneng could you then tell the Chairperson how did you get to
20 know Mr Motsoeneng and under what circumstances? Oh sorry your
microphone is off. I beg your – sorry. And also switch it...

CHAIRPERSON: If you can just press – there is a button there ja.

DR BALDWIN SIPHO NGUBANE: Okay thank you.

ADV THANDI NORMAN: Thank you. Yes.I

DR BALDWIN SIPHO NGUBANE: Well Hlaudi came from Bloemfontein

to the SABC transferred there by the CEO SABC Mr Mokwetle. All regional radio stations were losing money but the Bloemfontein station through Lesedi news was making a profit and Hlaudi was in charge of news if I remember correctly at Lesedi. So the CEO Mokwetle said he wants to bring this young man into SABC – Hlaudi was employed at SABC 1995.

CHAIRPERSON: 1995?

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Yes.

- 10 **DR BALDWIN SIPHO NGUBANE**: And somehow we had got to know the SABC very well. So we said we will bring him here so that he can use him to deal with the other problematic regional radio stations. So I agreed with him. I thought it was a good idea. Because we had to fix this problem. Our austerity measures were such that all these institutions had to be self-sustaining and self-funding. So Hlaudi came into the CEO's office as stakeholder relations regarding the regions.

CHAIRPERSON: Would that – would the position have been called Stakeholder Relations Manager or something like that?

DR BALDWIN SIPHO NGUBANE: That is right.

- 20 **CHAIRPERSON**: Okay.

DR BALDWIN SIPHO NGUBANE: That is right. And he started working on the regional stations. He even took me to some others which were problematic like Mpumalanga and others. I cannot remember them in their order where we – I was giving pep talk to staff. I mean he had prepared them of course of these reasons. And we started getting

people cooperating. They used to complain that head office does not care for them even if they want to buy tea and milk and sugar they must apply to head office. They are not given the authority. So we sort of managed to polish through those issues. And the morale was high and the stations started doing very well. So when the people responsible for turnaround in the CEO's office left because of money disputes – pay disputes the CEO appointed him on the turnaround position in the CEO's office. And of course from there then things started happening because Hlaudi was seen as a trouble-shooter.

10 **CHAIRPERSON**: Mr Motsoeneng I am...

DR BALDWIN SIPHO NGUBANE: Mr Motsoeneng oh sorry.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: Sorry Chairperson. Was seen as a trouble-shooter. And he was very pro-active. I mean with the labour unions you know with all issues that came up he would there hands on and so when ultimately he got to be elevated to Group to EXCO let us put it that way.

CHAIRPERSON: Hm.

20 **DR BALDWIN SIPHO NGUBANE**: And that is when really he came to prominence.

CHAIRPERSON: EXCO would be GCEO, CFO and COO?

DR BALDWIN SIPHO NGUBANE: COO and of course the senior managers.

CHAIRPERSON: Some senior managers as well?

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Okay alright.

ADV THANDI NORMAN: So – sorry this progression then from being a stakeholder liaison to being an acting COO how did that – how did that happen?

DR BALDWIN SIPHO NGUBANE: Well the board then decided – because you know when we came SABC management and labour unions were at real loggerheads mainly around salaries. There was so much differential in salaries and so on. So the unions were a problem for us particularly trying to deal with the turnaround and head count reduction
10 and so on. So Hlaudi was assigned to the board’s communication person. He would deal with – and stakeholder manager on behalf of the board not just the GCEO. And that is how he got to ultimately become an acting CEO. Because now a lot of assignments were being given him to deal with.

ADV THANDI NORMAN: Yes. And then ordinarily who is responsible for make – for appointing people to these executive positions in an acting capacity?

DR BALDWIN SIPHO NGUBANE: Well the CEO.

DR BALDWIN SIPHO NGUBANE: Appointed him in his office but we
20 needing active service in terms of communication in terms of dealing with issues like the Auditor General’s findings and many other aspects that were very thorny at the time he was then appointed acting COO.

ADV THANDI NORMAN: Yes. Could you just tell the Chairperson what – what skill did he bring? I mean if you talking about a Chief Operations Officer you talking about the Auditor General’s findings

those are largely matters that would deal with the financial aspects of the organisation. So what is the skill that he was bringing on board to deal with those matters?

DR BALDWIN SIPHO NGUBANE: Well the skill was people's skill. You know Mr Alwyn who appointed him in 1995 said that initially he had been a stringer for sports. But the way he wrote sports reports were very attractive to the listeners and so he brought him into other aspects of SABC like news because he had this ability to create a story. So I would say in short the skills he had were people skills and that is what we needed at that time.

10

CHAIRPERSON: When he was appointed Stakeholders Relations Manager I think that is the position you mentioned.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: I guess as the first position that he held at SABC head office after being brought in from the Free State, is that right?

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Yes. Who – had there been someone else who had held that position before namely Stakeholder Relations Manager?

DR BALDWIN SIPHO NGUBANE: There was in the SABC however there was none for the board.

20

CHAIRPERSON: There was none for the board?

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: But because of the pressure we were under to convince the unions to do all the types things of turnaround

which impacted on people we felt that he would be able to handle that.

CHAIRPERSON: So does that mean that there were therefore two Stakeholder Relations Managers one who had always been there who was doing this job on behalf of – or for the management and then now another one doing it for the board?

DR BALDWIN SIPHO NGUBANE: He combined it all Chairperson.

CHAIRPERSON: He combined the two?

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Okay what happened to the person who had done it –
10 had been doing it before him?

DR BALDWIN SIPHO NGUBANE: Well...

CHAIRPERSON: Or the management?

DR BALDWIN SIPHO NGUBANE: For the CEO?

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: Well I presume the CEO had dismissed whoever had been there because he brought him from the Free State.

CHAIRPERSON: Oh. So when he brought Mr Motsoeneng the other person did not continue doing this job?

20 **DR BALDWIN SIPHO NGUBANE**: No.

CHAIRPERSON: He might have – he or she might have gone – been given other responsibilities or whatever?

DR BALDWIN SIPHO NGUBANE: Ja we did not discuss that Chairperson but I assume.

CHAIRPERSON: Yes, yes, yes.

DR BALDWIN SIPHO NGUBANE: That should have been the situation.

CHAIRPERSON: Yes but when Mr Motsoeneng was doing this job was your understanding that he was at that stage doing it for the board but there was nobody else to talk to outsiders about the same issues?

DR BALDWIN SIPHO NGUBANE: Absolutely Chairperson.

CHAIRPERSON: Yes. Now I am wondering why the board needed somebody to do that for them simply because my understanding would have been that the – that would relate to operational matters that one would expect to go under the management and that it would not be
10 something that the board would be involved in relations with unions and so on and so on. Am I mistaken in that regard?

DR BALDWIN SIPHO NGUBANE: Chairperson under normal circumstances it would be exactly as you are saying it but this situation we were in and the board was becoming very activist at SABC because the relationship with management was in many ways very weak.

CHAIRPERSON: That is between the board and the management?

DR BALDWIN SIPHO NGUBANE: And the management.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: So there was a lot of communications
20 that the board wanted to get across to general staff, labour unions and so on.

CHAIRPERSON: Okay. So – so there was an appreciation that normally this is not what the board would be involved in but the board considered that the circumstances in which the SABC was were such that the board had to get involved in these issues?

DR BALDWIN SIPHO NGUBANE: That is correct Chairperson.

CHAIRPERSON: Yes.

ADV THANDI NORMAN: Thank you. Thank you Chair. And then in – when he acted in that position of the COO position when he acted there do you know who – what happened to the person who initially occupied – who was occupying that – who left having occupied that position as to what happened to that person?

DR BALDWIN SIPHO NGUBANE: Well there was an acting COO not – well probably I need to explain this a bit.

10 **ADV THANDI NORMAN:** Yes.

DR BALDWIN SIPHO NGUBANE: There had been an advertisement for the position of COO.

ADV THANDI NORMAN: Yes.

DR BALDWIN SIPHO NGUBANE: Mr Mbebe passed the interview was recommended to the Minister but the Minister did not take forward that recommendation to cabinet. So he was not appointed to that position.

ADV THANDI NORMAN: And who was the Minister at the time?

DR BALDWIN SIPHO NGUBANE: Ms Casaburri. Ms Casaburri.

ADV THANDI NORMAN: Yes.

20 **DR BALDWIN SIPHO NGUBANE:** Or Doctor Casaburri.

CHAIRPERSON: Yes. I remember ja Doctor Casaburri ja.

DR BALDWIN SIPHO NGUBANE: So Mr Mbebe went to court to want to force the Minister to recognise his appointment. Well that did not happen. The court decided no-one could fill that position until the Minister and cabinet had approved the appointment of a COO. So it

necessitated having people to act in that position for quite some time.

ADV THANDI NORMAN: Yes.

DR BALDWIN SIPHO NGUBANE: Ms Mabane had acted for quite some time in that position. Later on she was moved to editorial policy and other duties at SABC and then Hlaudi was appointed as acting COO.

ADV THANDI NORMAN: Yes. And during this time.

CHAIRPERSON: I am sorry.

ADV THANDI NORMAN: I am sorry.

CHAIRPERSON: The interviews for filling in the position of COO would
10 they normally be conducted by the board or would they be conducted by
the GCEO or a panel appointed by the board or a panel appointed by
the GCEO? Who would conduct those interviews?

DR BALDWIN SIPHO NGUBANE: The Group Chief Executive Officer,
the Chief Financial Officer and the COO are positions that can only be
confirmed by the Minister through cabinet. So there would be an
interview team which would be appointed – the board would have to
approve that interview team. They would sit through as a panel and
then make a recommendation to the board and the board would
recommend to the Minister.

20 **CHAIRPERSON:** Oh so – so the panel would be a panel that is
approved by the board?

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: And then that panel would make recommendations to
the board?

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: And then the board would then – the board would not have appointing powers but it would have recommending powers? It would recommend to the Minister or what would be the position?

DR BALDWIN SIPHO NGUBANE: No at that stage later on it became what you are describing Sir. At that stage the board would appoint.

CHAIRPERSON: Okay yes.

DR BALDWIN SIPHO NGUBANE: And then refer to the Minister for concurrence?

CHAIRPERSON: Oh.

10 **DR BALDWIN SIPHO NGUBANE**: And the Minister would refer to cabinet.

CHAIRPERSON: Okay yes.

DR BALDWIN SIPHO NGUBANE: For final agreement.

CHAIRPERSON: Oh okay. So the appointment was to be made by the board but the board for the appointment to be effective.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: They needed the concurrence of the Minister?

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: And the Minister would take the name to the cabinet.

20 **DR BALDWIN SIPHO NGUBANE**: That is correct.

CHAIRPERSON: And then come back.

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: Okay alright. And now in regard to I think you said Mr Mbembe is that right?

DR BALDWIN SIPHO NGUBANE: Mr Mbembe yes.

CHAIRPERSON: He was interviewed by a panel that had been approved by the board?

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: And – and the panel recommended that he be appointed?

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: And the board approved that he be appointed?

DR BALDWIN SIPHO NGUBANE: That is correct.

CHAIRPERSON: And then the board communicated with the Minister to
10 say here is the candidate that has been recommended by the
interviewing panel we are happy with him. We are appointing him but
we are asking you to concur?

DR BALDWIN SIPHO NGUBANE: That is correct.

CHAIRPERSON: Yes and then the Minister took long to come back?

DR BALDWIN SIPHO NGUBANE: That is correct.

CHAIRPERSON: Or maybe never came back?

DR BALDWIN SIPHO NGUBANE: Actually [indistinct] you come back.

CHAIRPERSON: You cannot remember? You cannot remember. But
for a long time she was not coming back to the board.

20 **DR BALDWIN SIPHO NGUBANE:** She did not take it to the cabinet so
there was no come back.

CHAIRPERSON: And as Chairperson I would have expected that you
would at some stage have approached her and say is there a problem
and if you did what did she say?

DR BALDWIN SIPHO NGUBANE: No that was before our time.

CHAIRPERSON: Oh that was before you time?

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Oh I am sorry I thought it was...

DR BALDWIN SIPHO NGUBANE: No.

CHAIRPERSON: During your time. So this is – this had happened before you came in?

DR BALDWIN SIPHO NGUBANE: That is right.

ADV THANDI NORMAN: So when you came in there was simply – there were acting people?

10 **DR BALDWIN SIPHO NGUBANE**: That is right.

CHAIRPERSON: Yes in this position?

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: You cannot remember how long the position had remained vacant more or less?

DR BALDWIN SIPHO NGUBANE: I would say probably three years.

CHAIRPERSON: That is quite a long time.

DR BALDWIN SIPHO NGUBANE: Quite a long time.

CHAIRPERSON: And in terms of the – in terms of the records of the board you do not remember that you found anything or correspondence
20 that had come from the Minister to tell the previous board what the problem was?

DR BALDWIN SIPHO NGUBANE: No we could not find any such.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: It was just assumed that the Minister had not wanted to appoint him.

CHAIRPERSON: Yes. But when you – when your board came in was Doctor Matsepe-Casaburri who was – to whom you referred earlier was she still the Minister or was it General Nyanda who was Minister when your board came in?

DR BALDWIN SIPHO NGUBANE: It was General Nyanda.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: But there had already been a court decision

CHAIRPERSON: Yes.

10 **DR BALDWIN SIPHO NGUBANE:** That the position cannot be filled.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: Until cabinet had approved.

CHAIRPERSON: Yes. Okay thank you.

ADV THANDI NORMAN: Thank you Mr Chairman.

CHAIRPERSON: I guess somewhere we have got those papers.

ADV THANDI NORMAN: Yes. Yes Chair.

CHAIRPERSON: Of that in order.

ADV THANDI NORMAN: Yes, yes we will make them.

CHAIRPERSON: Yes.

20 **ADV THANDI NORMAN:** Yes. Then in paragraph 39 then you deal with the elevation of Mr Motsoeneng now to a permanent COO position.

DR BALDWIN SIPHO NGUBANE: No he was always acting while I was there.

ADV THANDI NORMAN: Oh I am sorry can I just – that is my understanding of what you say in paragraph 39 I could be wrong.

Could you just read what is – what you say there in paragraph 39 [indistinct] 1?

DR BALDWIN SIPHO NGUBANE: What number is that?

ADV THANDI NORMAN: 39 at page 10.

DR BALDWIN SIPHO NGUBANE: Yes. Oh ja elevation to the Group Management position?

ADV THANDI NORMAN: Yes.

DR BALDWIN SIPHO NGUBANE: That was in the office of the CEO that he got elevated.

10 **ADV THANDI NORMAN:** Oh not – still not in the – not the COO position?

DR BALDWIN SIPHO NGUBANE: No, no, no.

ADV THANDI NORMAN: Alright oh sorry that is my mistake.

CHAIRPERSON: When he was put in the office of the Group Chief Executive Officer do you remember exactly what his title or position was at the time in that office?

DR BALDWIN SIPHO NGUBANE: He was just a manager for Stakeholder Relations.

20 **CHAIRPERSON:** Oh this position of Stakeholder Relations manager which he held – which was the first position he held when he came to head office?

DR BALDWIN SIPHO NGUBANE: That is correct Chairperson.

CHAIRPERSON: Was located in the office of the Group Chief Executive Officer?

DR BALDWIN SIPHO NGUBANE: That is correct Chairperson.

CHAIRPERSON: Okay.

ADV THANDI NORMAN: Thank you Chair. Then you deal in paragraph 40 about the Mr Motsoeneng attending board meetings and could you just tell the Chair how did that come about?

DR BALDWIN SIPHO NGUBANE: Well this happened when we had difficulty with communications. So the board decided that we needed a person who will do board communications. Because board decisions were not being reported correctly to the staff, to generally to people in the SABC. So we needed someone who will carry out exactly what we
10 have said and go and convince people about it. That is how we created this position of Communications Person for the board.

ADV THANDI NORMAN: Yes. Whose responsibility was it to communicate to the staff from whatever it is that the board wanted to communicate before you embarked on in deciding that Mr Motsoeneng must fill in that – that space?

DR BALDWIN SIPHO NGUBANE: It would have been the Group Chief Executives office to do that.

ADV THANDI NORMAN: Yes. Now when your say then that was not being done properly what exactly do you mean?

20 **DR BALDWIN SIPHO NGUBANE:** Well we did not have – the board felt that whatever it decided was not being communicated properly to people at SABC and therefore you had this conflictual relationship particularly with the unions and the general staff. That the board felt they needed direct access to the people.

ADV THANDI NORMAN: Yes. And then did you raise that matter with

the GCEO, the Group Chief Executive Officer that look we are not happy with the manner in which you communicate the board's matters to the staff and we believe that we need to have somebody else to do that.

DR BALDWIN SIPHO NGUBANE: Well Hlaudi Motsoeneng – Mr Motsoeneng was already in the CEO office dealing with Stakeholder Relations. So it was a simple matter that he must also deal with Stakeholder matters for the board.

ADV THANDI NORMAN: Yes. So then he got invited then according to
10 what you say – he attended to the board meetings at your request?

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN: What would be his role?

CHAIRPERSON: Wait I am sorry.

ADV THANDI NORMAN: Sorry.

CHAIRPERSON: Maybe before that on the face of it it does look strange that the board on which the GCEO, the Group Chief Executive Officer would be serving – would not be happy with how their decisions are communicated to the staff. Maybe let us leave aside the unions for the time being. Because the Group Chief Executive Officer is the Chief
20 Officer. He or she is in charge of the whole staff and one expects that he is best positioned to communicate to the whole staff whatever decisions the board has taken. I do not know if you want to say anything about that – to make any comment? It does sound strange. It sounds like a vote in no confidence in the GCEO.

DR BALDWIN SIPHO NGUBANE: We are absolutely correct

Chairperson. You know there was such a lack of trust that the board suspended the Group Chief Executive that is how he left SABC/

CHAIRPERSON: Yes. Was that still Mr Mokwetle or was it somebody else?

DR BALDWIN SIPHO NGUBANE: It was Mr Mokwetle

CHAIRPERSON: Mr Mokwetle ja.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: So that was the one who – with whom the board had lack of trust and he ended up leaving?

10 **DR BALDWIN SIPHO NGUBANE**: Yes the CEO unfortunately fell out of favour with the board.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: And the board got rid of him.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: Ja.

CHAIRPERSON: Okay, okay.

ADV THANDI NORMAN: Thank you Chair.

CHAIRPERSON: So it would be fair to say and probably this is what you have said but I just want to make sure I have got it right. Probably
20 it would be fair to say that the board's decision to shift the responsibility of communication to Mr Motsoeneng even to the staff.

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: Was a result at least in part of the board no longer having full trust in the CGEO. Would it be correct to put it that way?

DR BALDWIN SIPHO NGUBANE: Absolutely.

CHAIRPERSON: It would be correct okay. Thank you.

ADV THANDI NORMAN: Yes. Thank you. Thank you Mr Chairman. And then you say – you say in paragraph 40 Doctor Ngubane that his role at the board meetings would – that he would not participate.

DR BALDWIN SIPHO NGUBANE: He...

ADV THANDI NORMAN: Because he was not a board member.

DR BALDWIN SIPHO NGUBANE: He was – when I mean participation I mean being part of the decision making.

ADV THANDI NORMAN: Yes.

10 **DR BALDWIN SIPHO NGUBANE:** But he could give an input to board meeting – to the board meeting but he could not be part of the decision making like voting.

ADV THANDI NORMAN: Yes. And many a times...

CHAIRPERSON: I am sorry I think Ms Norman.

ADV THANDI NORMAN: Sorry.

CHAIRPERSON: Interrupted your earlier on I think you were wanting to get into how he came to be asked to attend board meetings.

ADV THANDI NORMAN: Yes, yes Chair.

20 **CHAIRPERSON:** And he might or might not have – Doctor Ngubane might or might not have answered that.

ADV THANDI NORMAN: Answered that question.

CHAIRPERSON: But I did not understand that.

ADV THANDI NORMAN: Oh yes.

CHAIRPERSON: And then maybe that is because I asked some question.

ADV THANDI NORMAN: Yes. Thank you. Yes.

CHAIRPERSON: Can you get back to that? How did he come to be invited to attend board meetings Mr Motsoeneng?

DR BALDWIN SIPHO NGUBANE: Because well in my view and I – this is the view I conveyed to the board. That whoever is going to be communicating for us must know precisely what we are talking about. That is how he came to be invited to be at board meetings.

CHAIRPERSON: So – so – so it was:

1. To make sure that when he communicates to stakeholders
10 whatever the decisions of the board – whatever decisions the board may have taken he would have a full understanding of the context of those decisions. In order to have that he must be present when the board is meeting.

DR BALDWIN SIPHO NGUBANE: Precisely Sir because you know in a situation like that you get a lot of false information floating around the organisation and exacerbating whatever problems. So that was the motivation.

ADV THANDI NORMAN: Yes.

CHAIRPERSON: But also you did not want him to be an observer as
20 such you wanted him to be able to participate in discussions but not in decision making?

DR BALDWIN SIPHO NGUBANE: That is correct Chairperson.

CHAIRPERSON: Yes. Okay.

ADV THANDI NORMAN: Yes. Thank you. And then just following up on the Chair's question – would the Company Secretary not do that?

Because if I am a member of staff and I hear that the board has taken a particular decision the first person to make the enquiries to – would be the company secretary and you say – could you just confirm with me at the meeting that the board held on such and such a day did this take place, what was the decision? Would that not have been the easiest way of controlling the situation?

DR BALDWIN SIPHO NGUBANE: Well I do not think the Company Secretary we had could have made any impression on the general workers on the unions at SABC.

10 **ADV THANDI NORMAN:** But at least the Company Secretary would have communicated the decisions of the board effectively because he or she is the one that records those decisions.

DR BALDWIN SIPHO NGUBANE: Well probably but under the circumstances we needed a dedicated person.

ADV THANDI NORMAN: Yes. Then could you just explain in paragraph – the last paragraph of paragraph 40 the last sentence. You say:

20 “He would however not participate in board meetings because he was not a board member. I considered his attendance necessary because I was of the view it would enable him to communicate and implement the turnaround strategy effectively.”

So in other words it was not just about communication you also expected him to implement that plan?

DR BALDWIN SIPHO NGUBANE: Well let us put it this way.

ADV THANDI NORMAN: Yes.

DR BALDWIN SIPHO NGUBANE: In order to implement the turnaround it was important for the board to know where the leakages of money were. Who was doing what in terms of syphoning money from the SABC? It is a long story Chairperson. It is to do with how the computers were manipulated between the sales – they used to call – have a landmark computer system which recorded the sales and put programs on TV and then the SAP which was the paying – paying component of SABC. There was a lot of manipulation and overriding the controls in those – in those two sectors of administration.

10 **ADV THANDI NORMAN:** **REGISTRAR:** Yes.

DR BALDWIN SIPHO NGUBANE: So he knew who was doing what let us put it that way.

ADV THANDI NORMAN: Okay.

CHAIRPERSON: And maybe just to confirm I think the answer you have - you gave me about the role - Mr Motsoeneng's role at the board effectively qualifies the third sentence in paragraph 40 where you say:

“He would not - he would have not participated in board proceedings because he was not a board member.”

20 I think the answer you gave me qualifies that because you say he would take part in the deliberation, the discussions ...

DR BALDWIN SIPHO NGUBANE: That is correct.

CHAIRPERSON: But not vote.

DR BALDWIN SIPHO NGUBANE: That is correct.

CHAIRPERSON: So - so that would be take - participating. So there

was some participation allowed to him except voting?

DR BALDWIN SIPHO NGUBANE: That is correct Chairperson.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you Chair; and then if you move on to paragraph 41 at page 11 ...

CHAIRPERSON: I am sorry.

ADV THANDI NORMAN SC: (Intervenues).

CHAIRPERSON: But let me - let me go back to that Dr Ngubane.

10 Under what circumstances would he be allowed to take part in the discussions? Would it be if there was something that the board wanted to be explained by him or clarified by him or was the situation such that he took part in all discussions normally like everybody who was there but just did not vote?

DR BALDWIN SIPHO NGUBANE: Well it is a thin dividing line Chairperson because - well let us put it this way. He could never introduce a resolution or a motion to the board but he could say that tender that is going on the so and so, so and so interfering or involved. It was that sort of participation.

20 **CHAIRPERSON:** Okay. The reason why I was thinking about it is to what extent it may have been acceptable in terms of good governance to have somebody taking part in discussions all discussions even if he does not vote who is not a board member. That - that is why I was asking that question.

Is that - is that an issue that you may have applied your mind

to in one way or another?

DR BALDWIN SIPHO NGUBANE: Certainly Chairperson but it said that the need may not justify the means.

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: However ...

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: We were dealing with very critical issues ...

CHAIRPERSON: Hm.

10 **DR BALDWIN SIPHO NGUBANE:** Involving people's lives.

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: Some people needing to be charged.

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: You know.

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: So it - it - we - we needed ...

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: As much information as possible.

20 **CHAIRPERSON:** Hm; and he was - you considered that he was the person who could give that - that ...

DR BALDWIN SIPHO NGUBANE: Absolutely.

CHAIRPERSON: That information?

DR BALDWIN SIPHO NGUBANE: Absolutely.

CHAIRPERSON: Yes, okay.

ADV THANDI NORMAN SC: Thank you Chair. Then in - at page 11

Dr Ngubane ...

CHAIRPERSON: Huh-uh.

ADV THANDI NORMAN SC: Paragraph 41 you deal with the interactions between the unions and Mr Motsoeneng.

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: Could you just testify to that?

DR BALDWIN SIPHO NGUBANE: Yes. I am just describing one aspect of the work that he was doing.

ADV THANDI NORMAN SC: Yes. Could you just testify to it? So that
10 it is on record. Yes. Meaning just talking to what you say there ...

DR BALDWIN SIPHO NGUBANE: Where?

ADV THANDI NORMAN SC: In paragraph 41, yes.

DR BALDWIN SIPHO NGUBANE: Yes. There was huge resistance to the turnaround because people felt threatened by the turnaround. They did not know whether they were going to lose their jobs. You know. In any environment where there is restructuring it becomes a threat to the workers.

So the workers had to be persuaded to see that all that we were trying to do was to secure the SABC and in fact secure their jobs
20 because as long as the SABC improved its finances continued to work some of the terms contained in the Government guarantee like drastic reduction in head count would not necessarily happen.

In fact we used to tell them if we get it right and pay off the loan to Nedbank then we are free from those conditions. So people had to cooperate. So this is one of the sessions where these things were

being discussed.

ADV THANDI NORMAN SC: Yes, thank you and - and you say that he was taking instructions directing from the board and as well as from the GCEO at that time?

DR BALDWIN SIPHO NGUBANE: At the time the GCEO was still functioning. Oh, no, no. That time it was Mr Nicholson who was acting CEO.

ADV THANDI NORMAN SC: Yes; and then at paragraph 43 you deal with the Auditor-General's findings. You did mention slightly as to what
10 the Auditor-General had found. That the SABC employees were actually doing business ...

DR BALDWIN SIPHO NGUBANE: That is right.

ADV THANDI NORMAN SC: With the SABC and then this was a matter that was before SCOPA. Could you just briefly tell the Chairperson as to what - what were the difficulties that at that point you had with SCOPA because Parliament - Auditor-General says there is 1 400 employees that are doing business with the SABC and then what action did you as a board take in order to make sure that when Parliament asked you to account as the board you were able to deal with that?

20 **DR BALDWIN SIPHO NGUBANE:** We had to segregate the categories that the Auditor-General had discovered and of course allocate actions according to the gravity of the situation. Some people needed to be disciplined. Some people needed to be reported to the police. Some people needed to be fired outright.

Some people were already on leave - I mean - suspension but

continued to earn a lot of money. So there were many aspects to the Auditor-General's finding. We had failed for quite some time to deal with this issue until we appointed the task team that contained - comprised of people like Sully Motsweni, Tiaan Olivier and many others who were experts in different areas.

That is how we ultimately managed to deal and categorise the people and the actions that needed to be taken.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: When you say you had not dealt with the issue for
10 some time are you talking about not dealing with it for some time despite knowing of its existence or are you talking about a situation where you did not know that it existed as a problem and that is why you did not deal with it?

DR BALDWIN SIPHO NGUBANE: We - there was a problem because there would be a disciplinary hearing but there would be no witnesses. So when we go to SCOPA and SCOPA says what have been done we would not be able to give definite answers. So we took - it was the reason why we now had to have a special team within SABC.

20 People who knew each unit - each business unit to come and deal with the issues relating to that unit. Probably Chairperson I could simply put it and say there was no real will among the managers to deal with the issues.

CHAIRPERSON: So that - that was the problem?

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Because I am - I am just wondering why there would

be any problems of witnesses in terms of people who were said to be doing business with the SABC because I mean the paper trail should be there and if they are linked to certain companies if they were members of close corporations or directors of companies that information is obtainable - is easily obtainable.

So - so - but you say there was a problem of the lack of will on the part of senior manager - managers to deal with the situation?

DR BALDWIN SIPHO NGUBANE: That would have been an - an internal audit function ...

10 **CHAIRPERSON:** Hm.

DR BALDWIN SIPHO NGUBANE: But the internal audit just did not do its work.

CHAIRPERSON: Hm, hm.

DR BALDWIN SIPHO NGUBANE: That was the problem.

CHAIRPERSON: Hm, hm. Okay, thank you.

ADV THANDI NORMAN SC: Thank you Chair; and then that report according to you what state at page - paragraph 44 page 11. It would mean that if this report the - the one that the - that Mr Olivier had prepared as it appears at page 17. It is dated 20 November 2012. At
20 page 17.

DR BALDWIN SIPHO NGUBANE: Yes. That is correct.

ADV THANDI NORMAN SC: Yes. That is correct?

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: So it - it would mean that the board had not - had not satisfied SCOPA's requests for at least for a period of

about two years. Am I correct?

DR BALDWIN SIPHO NGUBANE: That is correct.

ADV THANDI NORMAN SC: Yes. Then you dealt with the fact that Mr Motsoeneng and the task team then they worked to - to produce the report that you - you find at page 17. So that report deals with wide ranging matters. Am I correct?

DR BALDWIN SIPHO NGUBANE: (No audible reply).

ADV THANDI NORMAN SC: From staff matters to procurement issues. For instance if I may just direct your attention to page - page 32

10 because:

“The SABC to comply with requirements of Treasury Regulations and audit - Audit Committee Terms.”

And these are financial matters and also if you go to page 34.

That is where you deal with the specific item number five:

“Procurement and contract management; compliance with procurement policy and content commissioning and acquisition of policy; instances of premature procurement ordering taking place without appropriate legal contracts with suppliers.”

20 And then the other column has the:

“The Procurement of content is being migrated to be in line with standard Procurement Policy Guidelines as defined by the PFMA; Practice Note - Treasury Practice Note Regulations 13 of Supply Chain Management and the Institution of Bid

Adjudication and Bid Evaluation Committee.”

Did you find a lot of these matters where there was total disregard of procurement processes?

DR BALDWIN SIPHO NGUBANE: Most of those Chairperson had come from the period of 2007 to 2009. Most of those that is what the Auditor-General had discovered ...

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: And we were attempting to deal with that.

- 10 **ADV THANDI NORMAN SC:** Yes and then an aspect that you have already testified to about employees doing business with the SABC that we will find at page 35 Chair and as item number six.

“Numerous employees were found to have interests in companies that could not be supported by a signed declaration of interest forms. No centralised register to check and monitor whether all employees have declared their interests. For employees new and comprehensive declaration forms were created; extensive communications.”

- 20 That deals with failure to declare their interests but most importantly is what we find at page 36 item seven.

“Expenditure management: fruitless and waste less expenditure.”

And what is that amount?

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: What amount is that?

DR BALDWIN SIPHO NGUBANE: 22 120 - 22 120 000.

ADV THANDI NORMAN SC: Yes and you say that period to - predates your appointment?

DR BALDWIN SIPHO NGUBANE: No, no, no it was before. It was a historical ...

ADV THANDI NORMAN SC: It - it predates, yes.

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: Okay. Thank you. So then this report
10 then was compiled I take it with all the matters that you have - that it deals with. Then it was submitted to SCOPA. What was SCOPA's attitude after the submission of this report?

DR BALDWIN SIPHO NGUBANE: They were not completely satisfied but they thought it was a good effort.

ADV THANDI NORMAN SC: Yes and by the time you left the SABC had there been proper compliance with the Auditor-General's queries?

DR BALDWIN SIPHO NGUBANE: Some might as well still outstanding but in terms of losing money that had stopped.

ADV THANDI NORMAN SC: Yes. Thank you.

20 **CHAIRPERSON:** Now in - in regard to the years when you were Chairperson of the Board do you have a recollection of how the Auditor-General's reports looked like in terms of SABC. Where they quite okay? Where there still serious challenges that the AG was pointing out or is that something you might not be able to remember?

DR BALDWIN SIPHO NGUBANE: Well Chairperson the challenges

remained because there was not real full cooperation between management and the board. Although the SAU had come in. There was an Auditor-General report. People were aware that some action is being taken.

Some people were identified with their schemes of siphoning money. They were referred to the police. So there was an awareness that some control is coming back.

CHAIRPERSON: Okay, but still not - not satisfactory. There is still serious challenges?

10 **DR BALDWIN SIPHO NGUBANE:** No definitely not.

CHAIRPERSON: Yes, okay.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Thank you and - and then we deal with the matter from - from paragraph 47 which you refer to as:

“Of an accelerated salary adjustment division wanting to or deciding to review Mr Motsoeneng’s salary.”

Could you just tell the Chairperson what happened there?

20 **DR BALDWIN SIPHO NGUBANE:** Well there were many salary adjustments happening at a senior level and Human Resources identified Mr Motsoeneng’s position in that context of adjusting salaries of adjusting salaries to create parity.

ADV THANDI NORMAN SC: And - and by so doing then they would have - was this at the time when he was already appointed as COO or

the parity happened when he was still Acting as COO?

DR BALDWIN SIPHO NGUBANE: Well already in the Group Chief Executive's Office there was some adjustment because he had come in on a provincial salary which was well below the manager's salary in that position ...

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: But then when he became Group Executive then there was another adjustment and then when he became Acting COO there was then another adjustment.

10 **ADV THANDI NORMAN SC:** Yes.

CHAIRPERSON: Well the position that he occupied as stake - stakeholders - Stakeholder Relations Manager you have said it was a position that did exist before although the person occupying that position would not have been representing the board would have been representing the management as I understand the position.

Now one would have expected that if Mr Motsoeneng came from wherever he came to occupy that position or was appointed to that position he would earn what is the rate for somebody occupying that position. When you talk about an adjustment the way you talk it
20 creates the impression in my mind and I just want to give you a chance to clear that if that is not correct.

It creates the impression that it was something special that was done. Whereas I expect that there would be nothing special done. Somebody comes from a certain position, goes to (interference with mic) responsibilities that are attached to a certain position. That

position exists. They get paid what anybody occupying that position would be paid.

Of course you did say that before Mr Motsoeneng whoever was occupying this position of Stakeholder Relations Manager was speaking only for the management not for the board but I am not sure whether just adding that part of speaking for the board would necessarily have required the addition of any money.

10 So when he came to this position or was appointed did he not immediately and whatever was supposed to be the rate for this position?

DR BALDWIN SIPHO NGUBANE: Chairperson probably it is a matter of language ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: But it describes exactly how you translate ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: From a provincial salary scale level ...

CHAIRPERSON: Yes.

20 **DR BALDWIN SIPHO NGUBANE:** To one at Head Office.

CHAIRPERSON: Yes, yes. Okay. So - so you see that - that language might create the impression that it was something special for him.

DR BALDWIN SIPHO NGUBANE: No. Definitely ...

CHAIRPERSON: Whereas from what you are saying if the position was simply that at the Free State he was occupying a position that was for

argument's sake at Grade 5 but as Stakeholder Relations Manager that position is at Grade 7 - Grade 7.

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: Obviously he must earn the rate that is applicable at Grade 7 ...

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: And it has got nothing to do with him as a person. It is simply that anybody occupying that position must earn that salary. You - you understand?

10 **DR BALDWIN SIPHO NGUBANE:** I agree.

CHAIRPERSON: *Ja.*

DR BALDWIN SIPHO NGUBANE: I agree very much Chairperson.

CHAIRPERSON: That the use of the language could ...

ADV THANDI NORMAN SC: Yes it is not ...

CHAIRPERSON: Give a wrong impression.

DR BALDWIN SIPHO NGUBANE: I agree Chairperson. Unfortunately this term - terminology crept into the ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: Into this whole thing.

20 **CHAIRPERSON:** Yes, but whatever - what you call adjustment was nothing more than that he was from a certain time to be paid at - at a rate that was for somebody occupying the position he was occupying?

DR BALDWIN SIPHO NGUBANE: Absolutely Chairperson.

CHAIRPERSON: Yes, but before that was done did he for some time when he was already at the Head Office - did he for some time continue

to - to be paid at the rate of the position he occupied in the Free State?

DR BALDWIN SIPHO NGUBANE: Hm.

CHAIRPERSON: As you recall.

DR BALDWIN SIPHO NGUBANE: Well I - I would think so because Human Resources would not have done any translation.

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: They did it because of this discrepancy.

CHAIRPERSON: Yes, okay.

10 **ADV THANDI NORMAN SC:** Yes. Thank you Mr Chairman and then there is something that you mentioned in paragraph 47:

“I am mindful of the fact there were salaries. It was not just him. There were other people I would imagine.”

But then you say:

“Since these were adjustments outside the normal time periods the board was required to sign off on these adjustments.”

What does that mean?

20 **DR BALDWIN SIPHO NGUBANE:** Well this was purely in response to the CEO saying Mr Motsoeneng has just come in. He is going through different levels very quickly. He - she needs support from the board. That was the only reason why the board got involved.

ADV THANDI NORMAN SC: So would this relate only to Mr Motsoeneng or were - were there other people that the board had to

sign off on?

DR BALDWIN SIPHO NGUBANE: Well I think Mr Tsietsi - I am not too sure but now I am not too sure about that. Let me ...

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: Not comment.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: You might not recall but to you know how far apart the two positions were? The one that Mr Motsoeneng held in the Free State and the one that he held at the Head Office as Stakeholder
10 Relations Manager. Do - do you know how many grades higher the - the last one was?

DR BALDWIN SIPHO NGUBANE: Hm.

CHAIRPERSON: Or is it something that you might not recall because I am trying to think ...

DR BALDWIN SIPHO NGUBANE: *Ja.*

CHAIRPERSON: That maybe some of the confusion and maybe some of the things that may have been said might relate to the fact that even though he might be earning a salary that is appropriate for somebody occupying the position of Stakeholder Relations Manager maybe he has
20 jumped quite a number of ranks and therefore that is what may attract attention. Is that something you do not remember?

DR BALDWIN SIPHO NGUBANE: Well certainly the fact that he had come in and jumped a number of levels. Obviously I think that is why even the CEO was worried.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: However I think the information would be there in documentation from HR ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: As to ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: Exactly ...

CHAIRPERSON: To explain everything?

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Thank you.

10 **ADV THANDI NORMAN SC:** Thank you Chair. I will take the witness through that documentation.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Unfortunately there was just some problems with the numbering.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: So I probably do so ...

CHAIRPERSON: Okay.

20 **ADV THANDI NORMAN SC:** Once I am finished with the parliamentary records. Thank you. (Clearing throat) sorry - excuse me. Then you say according to you he had jumped about three steps in salary categories having come from a provincial scale to Group Executive scale.

DR BALDWIN SIPHO NGUBANE: Yes. I mean the differences become quite significant ...

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: If you move ...

ADV THANDI NORMAN SC: (Intervenues).

DR BALDWIN SIPHO NGUBANE: Someone in different positions ...

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: Into the next.

ADV THANDI NORMAN SC: Okay. Thank you.

CHAIRPERSON: From what you have said it seems that this was how he got to occupy this position of Stakeholder Relations Manager. It seems that he was just - he was just identified by the Group Chief Executive Officer as the right person to come and occupy this position at Head Office without any advertisements being made even internally to look for people who would apply for this position and be interviewed.

Am I correct in understanding that - that there was no advertisement internally of the position and other people were not allowed to apply? He was just identified by the Group Chief Executive Officer and he checked with either the Chairperson of the Board or the board that it would be fine if he brought that person and he brought the person.

DR BALDWIN SIPHO NGUBANE: Hm.

20 **CHAIRPERSON:** Is my understanding correct?

DR BALDWIN SIPHO NGUBANE: It is sir.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: It is what one - one would call *ad hominem*. You know. Where it is something that is just done because the person is needed.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Yes. As you understood the position this was quite allowed by the policies of the SABC for - for somebody to be identified like that and then to be taken to a particular position without any competition even from internally.

DR BALDWIN SIPHO NGUBANE: Yes. Of course we have Governance Committee, Remuneration Committee. Although I do not have the documents but I am quite sure that went through all those stages.

10 **CHAIRPERSON:** Yes, yes because it does strike me - I mean while on the one hand I - I can understand that sometimes there is somebody that appears to have certain skills and maybe qualifications and maybe special talents that you identify for a certain position and it might look like really you know everybody else within the organisation.

You do not think there is anybody who matches the skills or qualifications or experience of that particular person while on the one hand one can understand that that can happen but what I am thinking is if that person is so good. If that person has such skills what will you lose by advertising internally?

20 Let him be one of the candidates because if he is so good he is going to beat all of them and still be the one who gets appointed.

DR BALDWIN SIPHO NGUBANE: I agree Chairperson. However unfortunately that did not happen that way.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: I think it was the pressure of the

situation.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: That made this type of selection - you know ...

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: Appropriate.

CHAIRPERSON: Hm, because it - it does or it can leave room for abuse of power. Not that it always will be abused. It could be genuine and so on and so on ...

10 **DR BALDWIN SIPHO NGUBANE:** Sure.

CHAIRPERSON: But it does leave room that if I am in charge and I know there is a certain position and I would like to do you a favour. I could say no, no, no. Dr Ngubane has - is good for this position. I will say he must just come - come here and yet if I did not do things that way - I said look he has got good skills but let us - let us allow other people to apply and I think he will emerge victorious anyway.

20 Then it eliminates room for - for abuse. Of course it may well be that there may have been good grounds of urgency to - to appoint and not to follow certain procedures. I am not sure but I am just sharing with you what is going on in my mind as - as you give the evidence.

DR BALDWIN SIPHO NGUBANE: No I - I concede that point Chairperson.

CHAIRPERSON: Yes, yes.

DR BALDWIN SIPHO NGUBANE: Hm.

CHAIRPERSON: Yes. No thank you.

ADV THANDI NORMAN SC: Thank you Mr Chairman. Thank you and then you - Dr Ngubane then you deal with in paragraph 49 with an announcement that you made announcing that Mr Motsoeneng was going to be Acting COO as from 15 November 2011.

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: Yes thank you and that process happened in the manner in which the Deputy Chief Justice has explained to you without any advertisement nothing same applies to that position?

10 **DR BALDWIN SIPHO NGUBANE:** Well so an acting position does not require an advertisement but it's got to be announced to the staff when it happens.

ADV THANDI NORMAN SC: And then in paragraph 15 filling of the post of Chief Operating Officer so then Mr Hlaudi had been actin in that position and then there was an advert published on 15 February 2011. Could you just – I know that parliament asked you a lot about this advert and I'll take you in due course to those relevant transcripts of parliament where you were asked at length about the appointment and the advert that related to the – ultimately to the appointment of Mr
20 Motsoeneng, do you recall that evidence that you gave before the ad hoc committee of parliament?

DR BALDWIN SIPHO NGUBANE: Well Motsoeneng was only appointed after I had gone from SABC.

ADV THANDI NORMAN SC: No I'm talking about the advert, the advert that – there's the issue...[intervenes].

CHAIRPERSON: The question would be whether, at the time that the advertisement for the position was made or published, whether you were still Chairperson for the position of COO?

DR BALDWIN SIPHO NGUBANE: Yes I was still Chairperson.

CHAIRPERSON: You were still Chairperson ja okay thank you.

ADV THANDI NORMAN SC: Thank you Chair. Do you recall Dr Ngubane what were the requirements on that advert for a person who would qualify for the position of COO?

DR BALDWIN SIPHO NGUBANE: Well I don't have the advert in front
10 of me but I do know that...[intervenes].

CHAIRPERSON: Yes I'm sorry let's see if we can find it, if it in...[intervenes].

ADV THANDI NORMAN SC: The only challenge is that the pages, if you are going to be able to follow.

CHAIRPERSON: There's a problem with page numbers?

ADV THANDI NORMAN SC: The pagination it's affects my notes because now I've asked...[intervenes].

CHAIRPERSON: Well if you - there might be a problem like that, if you are able to read what the contents of the advert or the relevant
20 parts and show the advert to Dr Ngubane even if there's a problem with the page just so that he sees it, that would be fine.

ADV THANDI NORMAN SC: Thank you if you could just bear with me.

CHAIRPERSON: Maybe before you do that, let me ask this question, as I understand it, when it came to the Group Chief Executive Officer, the CFO and the COO I think you said that those appointments would

come to the Board. So you did say that in regard to the COO you would need – the Board would need the concurrence of the Minister and the Minister would take the name to the Board. I take it that, that would be the same process for all the three positions?

ADV THANDI NORMAN SC: That's correct.

CHAIRPERSON: So since those three positions would be filled by the Board, I take it that it would be the Board that would decide on what the requirements would be for any one of those positions whenever they were vacant. In other words, they would say, okay if we are going
10 to advertise for the position of Group Chief Executive Officer, what are we going to look for, what are the essential requirements, what are the recommended – I'm not sure if it's correct to say recommended requirements but what skills or qualifications would we regard as ones that would be good but are not essential for the person that we'll appoint to have, am I correct that, that – it would be the Board that would look at that?

DR BALDWIN SIPHO NGUBANE: That's true.

CHAIRPERSON: So that when the advert goes out it must have been approved by the Board to say it reflects what we are looking for?

20 **DR BALDWIN SIPHO NGUBANE:** That's correct Chair.

CHAIRPERSON: That's correct, okay thank you.

ADV THANDI NORMAN SC: Thank you Mr Chairman. Mr Chairman may I beg leave to hand up the reference bundle which is marked Exhibit CC32, I've already opened the place where the advert is...[intervenes].

CHAIRPERSON: Okay, alright.

ADV THANDI NORMAN SC: Yes thank you and I've asked that the witness be given a copy.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you. Dr Ngubane is that the advert that was issued in relation of the position of the COO?

DR BALDWIN SIPHO NGUBANE: That's correct Chairperson.

ADV THANDI NORMAN SC: Yes, could you just put on record what the requirements were for that position, or maybe we start with the key
10 accountabilities because that becomes...[intervenes].

CHAIRPERSON: Yes he may as well maybe read all the key accountabilities because I think those are the key responsibilities and then the requirements.

ADV THANDI NORMAN SC: Yes thank you Mr Chair.

DR BALDWIN SIPHO NGUBANE: "The Chief Operations Officer, key
20 accountabilities as a member of the Board and reporting to the Group Chief Executive Officer with full day-to-day operating responsibility for the economic content and platform performance of the SABC. The successful candidate will, ensure materials to key performance areas that is revenue, cost and quality. Ensure that the corporate strategy and the operational plans work in tandem and are geared towards positioning the SABC to being the best in [indistinct] public broadcaster. Work closely with the Group Chief Executive Officer and take direct corporate strategy for the operational

growth of the corporation in order to improve profitability and quality of the service offering. Build a digital and new media capabilities of the organisation, lead the various cross-functional teams across the organisation. Requirements, a relevant degree/diploma and/or equivalent qualification. Extensive broadcasting experience at managerial level, five years, a commercially astute executive with broad ranging experience of success in broadcasting, well developed negotiation and relationship building skills at the most senior level. Evidence of having successfully established new business streams and exploited technology related market opportunities. The ability to translate and promote the integration of new business objectives into financial human capital and organisational development changes on an ongoing basis. A demonstrative passion for public service. Preference will be given to candidates from designated groups in terms of the Employment Equity Act and the SABC's employment equity [indistinct]. Human communications has been retained to handle all responses, interested persons should forward their applications quoting reference number 94358 to SABC@humanresponse.co.za or fax 086 245 0724 or alternatively visit www.humanjobs.co.za and use the same reference number to make applications, closing date 15 February 2013".

There's a note here which says,

“If you have not received any response within six weeks of the closing date, please accept that your application has been unsuccessful, broadcasting for total citizen empowerment SABC [indistinct] human communications 94356”.

ADV THANDI NORMAN SC: Thank you, so at the time when this advert was published or even crafted by the SABC, they were aware of what is it that they wanted and as the Chairperson has asked you, they knew of particular skills that they required but most importantly they were aware that they needed someone who would qualify professionally and have a degree and diploma or an equivalent of those?
10

DR BALDWIN SIPHO NGUBANE: That’s correct Chairperson.

ADV THANDI NORMAN SC: So having looked then, I’m sure at this advert you would have said it’s not going to be possible for Hlaudi to meet these requirements...[intervenes].

CHAIRPERSON: Mr Motsoeneng.

ADV THANDI NORMAN SC: Sorry Mr Hlaudi Motsoeneng, sorry. Mr Hlaudi Motsoeneng to meet those requirements because he didn’t have a degree, he didn’t have a diploma and at the time I think he did not have a matric as well.

20 **DR BALDWIN SIPHO NGUBANE:** That’s correct Chairperson.

ADV THANDI NORMAN SC: Yes, so you would not have expected the SABC then, to appoint him permanently in that position?

DR BALDWIN SIPHO NGUBANE: That’s correct Chairperson.

ADV THANDI NORMAN SC: Thank you and maybe just dealing with that issue, maybe I could just deal with what – you also dealt with that

issue before parliament and may I just find out – because there is a point where parliament asked in relation to an advert and Chair I had placed next to the witness another bundle if I may beg your leave to look at Exhibit CC29.

DR BALDWIN SIPHO NGUBANE: Exhibit 29?

ADV THANDI NORMAN SC: Yes that's correct. Thank you Chair, I've asked the registrar to place it – it's also there, it is here Chair I placed it on his desk I beg your pardon. No, no it's the one marked parliamentary transcripts.

10 **CHAIRPERSON:** Look at the evidenced leader and listen to her, you're busy showing him but he's looking elsewhere.

ADV THANDI NORMAN SC: Thank you Chair, may I refer Chair to page 162 in red, it's page 162 right hand corner in red.

CHAIRPERSON: Well shouldn't you first tell us the divider, what divider number?

ADV THANDI NORMAN SC: Oh I beg your pardon, oh yes you're quite right Chair, it's divider number five.

CHAIRPERSON: Divider number five?

ADV THANDI NORMAN SC: Yes.

20 **CHAIRPERSON:** Okay that's a pink one.

ADV THANDI NORMAN SC: Yes and then if you could just turn to page 162.

DR BALDWIN SIPHO NGUBANE: Page?

ADV THANDI NORMAN SC: 162 or maybe before just to identify just to put it in context, is it correct that, Dr Ngubane I think you've already

mentioned...[intervenes].

CHAIRPERSON: Let him find it first, I don't know if he has found it.

ADV THANDI NORMAN SC: Alright, 162, it's in red.

DR BALDWIN SIPHO NGUBANE: 163?

ADV THANDI NORMAN SC: 162 yes.

CHAIRPERSON: Is it part of the report of the portfolio committee- ad hoc committee?

ADV THANDI NORMAN SC: That is correct Chair.

CHAIRPERSON: On the SABC Board, okay.

10 **ADV THANDI NORMAN SC:** Yes thank you, is it correct that you testified before the committee on the 13th of January 2017, Dr Ngubane?

DR BALDWIN SIPHO NGUBANE: Where are you reading?

ADV THANDI NORMAN SC: I'm reading – if you look at the very first page of that, after the divider immediately the page following the divider five, that page will be marked 141.

DR BALDWIN SIPHO NGUBANE: Okay – oh yes.

ADV THANDI NORMAN SC: That page is – there's parliament...[intervenes].

20 **CHAIRPERSON:** That's the cover page for the report of the ad hoc committee on the SABC Board of inquiry can you find that page on 141?

DR BALDWIN SIPHO NGUBANE: Yes that's correct.

CHAIRPERSON: Yes okay and she would like you to go to page 162, yes on the red numbers at the right-hand corner at the top.

ADV THANDI NORMAN SC: Yes thank you, you are asked a question

there Dr Ngubane at page 162 along – Mr Wagener asked you,

“No I’m not disputing that you do not have sight but I want to put it to you, I’m telling you that the reason why you did not care about that report, you didn’t bother to read the report is because you didn’t care about the damage you caused the SABC, what is your response to that”?

And then your response – I’m so sorry I apologise Chair because the part about the advert is actually on the next page but maybe this is worth dealing with because it is in any event something
10 that we are going to deal with and then Dr Ngubane,

“I did not cause damage at SABC, I saved the SABC, it was bankrupt when we came, the regulations were not observed, even the financial statements of the public service broadcaster and public commercial broadcaster were not finalised, it was in a mess. We sat around trying to stop the haemorrhaging of money out of the SABC there was a huge theft going on the AG found that, if you read the AG’s report, so don’t accuse me falsely of destroying the SABC”.

And then he referred you then to the Public Protector’s report
20 and he says, it speaks specifically to yourself it says,

“The former Chairperson [indistinct] acted irregularly when he ordered that the qualification requirement for the appointment to the position of COO would be altered to remove academic qualifications as previously advertised which was purely aimed at tailor making the advert to suit Mr Motsoeneng’s

circumstances. This constitutes improper conduct, maladministration and abuse of unjustifiable exercise of power, that is what she is saying”.

And then your response was,

“Could you produce that advert because there was no such advert that I altered, please produce it for me”,

Could you tell the Chairperson whether you first of all you were ever asked about this advert and whether you had altered an advert prior to you being confronted with the question by Mr Wagener?

10 **DR BALDING SIPHO NGUBANE:** No it is not true.

ADV THANDI NORMAN SC: Yes but when, for the first time, did you get to know that there were allegations that you had actually altered an advert to suit Mr Motsoeneng’s qualifications?

DR BALDWIN SIPHO NGUBANE: I never handled any advert Chairperson, I don’t know where – who said this to the Public Protector because there’s no advert where I wrote with my hand and say, change this and change that.

CHAIRPERSON: Did the Public Protector, before issuing her report ever ask you or afford you an opportunity to say something about
20 whatever allegation she might have been told that you were responsible for the alteration of an advert?

DR BALDWIN SIPHO NGUBANE: Yes she invited me to a meeting and I went...[intervenes].

CHAIRPERSON: Did she raise this with you?

DR BALDWIN SIPHO NGUBANE: She did raise this issue.

CHAIRPERSON: This was never put to you that there was an allegation that you altered the advert – the requirements for the position in the advert?

DR BALDWIN SIPHO NGUBANE: Chairperson I would have asked exactly about what I asked, show me, show me the report.

CHAIRPERSON: So she never raised that with you?

DR BALDWIN SIPHO NGUBANE: No.

CHAIRPERSON: And...[intervenes].

DR BALDWIN SIPHO NGUBANE: Well as far as I remember.

10 **CHAIRPERSON:** As far as you can remember?

DR BALDWIN SIPHO NGUBANE: Ja but if that was the case I would have actually, as I said to Advocate Wagener, let me see the report...[intervenes].

CHAIRPERSON: The altered advert ja, and you never instructed anybody to alter the requirements in the advert or anything like that?

DR BALDWIN SIPHO NGUBANE: No Chairperson, when we were talking about hiring a [indistinct] company, just general discussion, I think it was in the governance committee. My view was, the SABC had already appointed a COO who was then frustrated by the cabinet or the
20 Minister.

CHAIRPERSON: Mr Mbembe?

DR BALDWIN SIPHO NGUBANE: Yes sir, why don't you just take that report, I mean that advert it and use it, that was my only comment about this.

CHAIRPERSON: Yes that was in the discussion?

DR BALDWIN SIPHO NGUBANE: Just in the discussion.

CHAIRPERSON: At a Board meeting or outside of the Board meeting?

DR BALDWIN SIPHO NGUBANE: I think it was governance committee.

CHAIRPERSON: Yes governance committee.

DR BALDWIN SIPHO NGUBANE: Yes I think so but I said my view was we are going to now search for a search company pay money but someone had been appointed at SABC as COO.

CHAIRPERSON: Maybe just so that one can understand that suggestion, was that discussion, did that take place before the advert
10 that we talked about earlier, the one that we have seen as far as you recall or was it after, that discussion that you are talking about, do you know whether it happened before this advert was issued, the one that we have?

DR BALDWIN SIPHO NGUBANE: It happened before this advert.

CHAIRPERSON: It happened before the advert?

DR BALDWIN SIPHO NGUBANE: Yes I think this advert was drawn up by a search company, I'm not too sure who did it.

CHAIRPERSON: Yes, yes but in regard to the advert to which Mr Mbembe had responded by applying for the job do you know whether
20 the requirements that were in that advert and the key responsibilities were basically the same as the ones in the advert that we do have?

DR BALDWIN SIPHO NGUBANE: No sir.

CHAIRPERSON: You don't know.

DR BALDWIN SIPHO NGUBANE: I have not seen that advert.

CHAIRPERSON: Yes but what you had said before this advert was

issued was that in order to advertise this position they must simply use the one that had been used before to which Mr Mbembe had responded.

DR BALDWIN SIPHO NGUBANE: That's right.

CHAIRPERSON: Whether they did that or not, you don't know?

DR BALDWIN SIPHO NGUBANE: I don't know.

CHAIRPERSON: You just know that this is the advert that went out and you didn't have a problem with it?

DR BALDWIN SIPHO NGUBANE: I mean the previous Board had never had a problem with the advert [indistinct].

10 **CHAIRPERSON:** Yes thank you.

ADV THANDI NORMAN SC: Chair I'm going to have to – so that you don't lose this point that we're making about the advert and just direct the witness to what the Public Protector, in her report, says, with your leave may I just put it to the witness?

CHAIRPERSON: Ja that's fine yes do that ja.

ADV THANDI NORMAN SC: Dr Ngubane there is another bundle there maybe without looking at it we can...[intervenes].

CHAIRPERSON: I'm sorry Miss Norman I'm sorry I'm interrupting you, before we move away from the exchange between Dr Ngubane and Mr
20 Wagener, yes I'm also particular about not pronouncing people's names correctly, before we move away from that discussion between the two of them, are we done with it, was the issue left where it is?

ADV THANDI NORMAN SC: No Chair it's just because the advert issued then, becomes more prominent in the other bundle.

CHAIRPERSON: Oh okay.

ADV THANDI NORMAN SC: The other bundle yes which the findings of the Public Protector.

CHAIRPERSON: Oh okay that's fine.

ADV THANDI NORMAN SC: Thank you, that would be also Exhibit 27 Chair at page 290. You may close that one Dr Ngubane and open the one next to you, that one, sorry about that.

DR BALDWIN SIPHO NGUBANE: Sorry what cover?

ADV THANDI NORMAN SC: Folder number 10.

CHAIRPERSON: It's a green folder.

10 **ADV THANDI NORMAN SC:** This is the Public Protector's report entitled when governance and ethics fail.

CHAIRPERSON: Has he found – have you found it Dr Ngubane?

ADV THANDI NORMAN SC: Divider number 10.

DR BALDWIN SIPHO NGUBANE: Yes Chair.

CHAIRPERSON: And the Public Protector's report at page 244, the next page you have found it after the divider?

DR BALDWIN SIPHO NGUBANE: Sorry what page?

CHAIRPERSON: Public Protector's report after the divider.

20 **DR BALDWIN SIPHO NGUBANE:** I've got the Public Protector's report.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Could you turn to page 290?

DR BALDWIN SIPHO NGUBANE: Sorry?

ADV THANDI NORMAN SC: 290.

DR BALDWIN SIPHO NGUBANE: Oh okay, sorry I looked down here

alright, 294?

ADV THANDI NORMAN SC: 290.

CHAIRPERSON: 290.

DR BALDWIN SIPHO NGUBANE: Sorry.

CHAIRPERSON: Have you found page 290 at the top?

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Yes okay she will ask a question on that page.

ADV THANDI NORMAN SC: Thank you Mr Chairman, this is the Public Protector's report and this is what she says,

10 “First of all maybe you should start with appointment as Group Executive stakeholder relations and regions of the SABC. 6.1.2.1, Mr Motsoeneng was appointed as Executive stakeholder relations and regions SABC scale 115 and a total package CTC of R1 461 539. This fixed term contract was for a period of five years commencing on 1 April 2011 and was signed by both Mr Nicholson and Mr Motsoeneng on 1 April 2011. Mr Nicholson again, inexplicably omitted to insert the year on the date while the handwriting is similar on the contract where both signatures were appended, again,

20 although this raises questions of authenticity the matter was not pursued during the investigation. 6.1.3 appointment as acting COO SABC, advertisement of COO's position. 6.1.3.1 according to a copy of the advertisement received from Spencer Stuart the SABC's recruitment agency, the agency placed an advertisement on behalf of the SABC in the Sunday

Times and City Press on 9 July 2006 for the filling of the vacant position of COO which became vacant in 2005/2006. The advertisement indicated under the heading, qualifications that the applicant should have and appropriate academic background preferably post graduate qualification. In 2008 an internal advertisement was once again placed for the appointment of COO, the requirement for appropriate academic requirement, preferable post graduate qualification as per the advertisement in 2006 was removed and replaced by the following. Commercially astute Executive with broad ranging operational track record of success in broadcasting. 6.1.3.3, the same internal advertisement is mentioned in the paragraph above was circulated on Thursday 28 January 2012 with the closing date being 31 January 2012. 6.1.3.4, in reply to my questions, Miss Mokhobo, on 12 June 2012 stated that the SABC committed an act of fraudery and uttering in changing the advertisement for the position of the COO issued in April 2008 by removing the requirement for academic qualifications so as to suit Mr Motsoeneng who is without qualification to meet the criteria of the advertised position. The advertisement was an exact replica of previous advertisements dating as far back as 2006. During my meeting with Miss Mokhobo on 11 March 2013, Miss Mokhobo indicated that the Chairperson of the Board indicated to her that she was not allowed to change the requirements of the advertisement and that it had to go

exactly as the one in 2008. Miss Mokhobo indicated that the Chairperson was adamant that he did not want to see any qualifications reflected in the advertisement. This sentiment was echoed by Advocate [indistinct] Maglate, former member of the SABC Board. 6.1.3.6, this was disputed by Dr Ngubane who indicated to me on 15 March 2013 that the advertisement had not come before the Board for approval and it was something that was done by management”.

I think then – I had to read that because the Chairperson had
10 asked you about whether the Public Protector had asked you about this issue of an advert.

DR BALDWIN SIPHO NGUBANE: Well Chairperson, I mean this itself states the issue, the advert was changed by someone in 2008 that advert never came before me, it was a management issue. So I’m absolutely surprised that so much emphasis is placed here by Miss Mokhobo on something that never served, I didn’t know that this advert had been changed, all I said was, why waste money going to search companies because someone is appointed on an advert for a COO position.

20 **CHAIRPERSON:** And do you have – now at the time that Mr Mbembe was interviewed your Board was not in place yet, is that correct?

DR BALDWIN SIPHO NGUBANE: That’s correct.

CHAIRPERSON: So you didn’t interview or it wasn’t your panel that interviewed him but do you know what – you don’t know what qualifications may have been required for candidates who applied for

that position at the same time as he did, you don't know that or do you?

DR BALDWIN SIPHO NGUBANE: Well probably I was naïve chairperson, I assumed that if someone had been appointed by the Board surely it would have met all requirements, you know.

CHAIRPERSON: Yes, yes, so you might not have known what requirements were there but you assumed that those would have been the requirements that would have been approved by the Board and therefore they should be fine.

DR BALDWIN SIPHO NGUBANE: That's correct.

10 **CHAIRPERSON:** Okay now this part where, in the report of the Public Protector she says you indicated to her that she was not allowed to change the requirements of the advertisement and that it had to go out exactly as the one in 2008, if I stop there, it might be close to what you said earlier on but you must just tell me if it's not close. You had said that you said in the discussions that took place at the governance committee meeting in a governance committee meeting you said but an appointment – there is a candidate who had already been approved by the Board and you were referring to Mr Mbembe. There was an advert that would have gone out for – to which he responded, that is the
20 advert that should be used but I understood it, you are putting that as a suggestion, as an idea in the discussion is that right?

DR BALDWIN SIPHO NGUBANE: That's correct chairperson.

CHAIRPERSON: Now what she says here to the extent that, that's the advert that was used in 2008, to that extent she might be close to saying something that reflected your attitude, just that part that I read,

do you want me to read that part so you can just see whether it correctly reflects what your attitude was.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: She says, the Public Protector says the following about what Miss Mokhobo said to her at paragraph 6.1.3.5 page 291 and its paginated bundle and it's at page 48 of the report of the Public Protector, she says,

10 “During my meeting with Miss Mokhobo on 11 March 2013, Miss Mokhobo indicated that the Chairperson of the Board indicated to her that she was not allowed to change the requirements for the advertisement and that it had to go out exactly as the one in 2008”,

Now the Public Protector says Miss Mokhobo said you said to her you're not allowed to change it, that's the part where I say, maybe what she says is close to what you may have said but you can indicate whether that was your attitude, that it should not be allowed or whether you simply said, why not use the same advert that was used in 2008, without saying you are not allowed?

20 **DR BALDWIN SIPHO NGUBANE:** Well Chairperson I couldn't have said she mustn't change because we did not have that advert in front of us.

CHAIRPERSON: Yes so you might have – you might have said she mustn't change the advert because you wanted the same advert that had been used previously should be used again?

DR BALDWIN SIPHO NGUBANE: That's right, Chair that's correct

that's as opposed to going to someone to go to write a new advert.

CHAIRPERSON: Yes, yes so that part might be correct. Miss Mokhobo indicated that the Chairperson was adamant that he did not want to see any qualifications reflected in the advertisement, what do you say about that part?

DR BALDWIN SIPHO NGUBANE: Well I don't know where she got this because there was no basis for going into this detail at all.

CHAIRPERSON: So you never said that?

DR BALDWIN SIPHO NGUBANE: No.

10 **CHAIRPERSON:** Yes, okay, Miss Norman.

ADV THANDI NORMAN SC: Chair it's now five past one.

CHAIRPERSON: Okay let's take the lunch adjournment then we will resume at five past two, we adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us proceed.

ADV THANDI NORMAN SC: Thank you. Thank you Mr Chairman. Could you go back Chair to the Exhibit 29? The parliament transcript.

20 Doctor Ngubane may I just refer you to page 165 of that exhibit. The last sentence from page 164 says:

“Mr Wanage[?] further this is what the Public Protector says in view of your salary increases between yourself, Ms Mokhobo and whatever the HR Report was saying. The allegation that Mr

Motsoeneng's salary progression was irregular is also substantiated in that Mr Motsoeneng received salary appraisals three times in one year as hiking his salary as Executive Manager Stakeholder Relations from 1.5 million to 2.4 million. His salary progression on acting Chief Operations Officer concomitantly rose irregularly from R122 961.00 to R211 172.00 which was a 63% increase in twelve months and in violation of part 4 of the SABC personnel Regulations and SABC policy. Acting in higher scale and this constitutes improper conduct and maladministration."

10

And then your response was that this was not correct.

CHAIRPERSON: Did you put a question to...

ADV THANDI NORMAN SC: I am sorry – I am so sorry Doctor. Doctor Ngubane this is what the Public Protector stated it is read – it was read out to you by Mr Wanaage [?] what is your response to that?

DR BALDWIN SIPHO NGUBANE: Well you know I think she thought I engineered this. I did not. This was coming through HR – through the CEO, I would not have had a mechanism to create this as Chairman of the board.

20

CHAIRPERSON: Let us – let us go back and you can indicate what you know and what you do not know.

DR BALDWIN SIPHO NGUBANE: You are right.

CHAIRPERSON: When you did tell me already that the idea of bring Mr

Motsoeneng into the head office of SABC was that of the then Group Chief Executive Officer Mr Mokwetle I think that is the person who came with this idea to you.

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: Yes and you said okay that is fine as I understand the position after he gave some motivation which was that the station – radio station where he was in the Free State was making money while a lot of other SABC radio stations were losing money. Is that right?

DR BALDWIN SIPHO NGUBANE: Yes Mr Chairman.

10 **CHAIRPERSON:** Now the power to appoint somebody to that position did it lie with the Group Chief Executive Officer and not with the board or Stakeholder Relations Manager or did it lie with the board?

DR BALDWIN SIPHO NGUBANE: That lies with him. It is only when it comes to Group Executive.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: That the board – that the board gets consulted.

CHAIRPERSON: Yes. And that is – that if for the three positions that we mentioned earlier or is it four? Chief – Group Chief Executive,
20 CFO, COO was there a fourth one?

DR BALDWIN SIPHO NGUBANE: CEO, CFO and COO.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: So it was three?

DR BALDWIN SIPHO NGUBANE: Ys.

CHAIRPERSON: Yes. Okay. And those three the board has the power to appoint subject to the Minister concurring and so on?

DR BALDWIN SIPHO NGUBANE: That is correct.

CHAIRPERSON: Ja. But for the Stakeholder Relations Manager that was the – within the power of the Group Chief Executive Officer?

DR BALDWIN SIPHO NGUBANE: That is correct.

CHAIRPERSON: Now I asked earlier on whether you knew what the gap was between the position that Mr Motsoeneng held at the radio station in the Free State and the position of Stakeholder Relations
10 Manager and I think you did say he jumped quite a few ranks. But I do not know if you said three or you are not sure whether it was three or not but you know he jumped quite a few ranks.

DR BALDWIN SIPHO NGUBANE: Well if I remember well it was three. Yes.

CHAIRPERSON: Yes. And in terms of what the difference in salary between the two positions namely the one in the Free State and the one of Stakeholder Relations Manager do you have any recollection of how much difference there was between the two?

DR BALDWIN SIPHO NGUBANE: I ...

20 **CHAIRPERSON**: More or less.

DR BALDWIN SIPHO NGUBANE: I do not have the actual...

CHAIRPERSON: Figures.

DR BALDWIN SIPHO NGUBANE: Mental picture.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: But I know that it is very significant

differences.

CHAIRPERSON: It was a significant difference?

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Yes. Yes. Did you know at that time when Mr Motsoeneng was – when the Group CEO at the time wanted to appoint him to this position did you know what the requirements were for somebody to occupy that position of Stakeholder Relations Manager or is that something you did not know?

DR BALDWIN SIPHO NGUBANE: Well what I knew was that that
10 person would be dealing with Provincial Stations.

CHAIRPERSON: Yes, yes.

DR BALDWIN SIPHO NGUBANE: And the motivation by the CEO was that he had been good in the Free State.

CHAIRPERSON: Yes. Yes.

DR BALDWIN SIPHO NGUBANE: And that is why he wanted him.

CHAIRPERSON: Yes. Yes. That is all you knew?

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: About the position.

DR BALDWIN SIPHO NGUBANE: That is right.

20 **CHAIRPERSON**: And in terms of what his qualifications were at what stage did you get to know that – was that before he came to the head office or was that after?

DR BALDWIN SIPHO NGUBANE: When he came to head office no-one paid much attention to his qualifications.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: Because he was already within the SABC. This arose later on and then we sought information on the people who employed him. In fact Mr Alwyn produced an affidavit as to why he had employed him.

CHAIRPERSON: This is now people who employed him in the Free State?

DR BALDWIN SIPHO NGUBANE: In the Free State yes.

CHAIRPERSON: Yes okay.

DR BALDWIN SIPHO NGUBANE: So he was there, they found him fit
10 we were not going to revisit that you know.

CHAIRPERSON: So at that time when you sought an understanding from those who had employed him was he still Stakeholder Relations Manager as you recall or had he become acting COO?

DR BALDWIN SIPHO NGUBANE: He had become acting COO.

CHAIRPERSON: Okay. And at the time he was appointed acting COO I would have imagined that okay let me just start by this. The appointment of an acting COO I would imagine that is – that falls within the power of the board, is that correct or ...?

DR BALDWIN SIPHO NGUBANE: That is correct.

20 **CHAIRPERSON:** Ja. So he would have been appointed by the board?

DR BALDWIN SIPHO NGUBANE: That is correct.

CHAIRPERSON: As acting COO.

DR BALDWIN SIPHO NGUBANE: That is correct.

CHAIRPERSON: I would have expected that the board before appointing him as acting COO it would have sought to satisfy itself that

whatever qualifications or requirements there may have been for that position that he complied them is satisfied then, is that right?

DR BALDWIN SIPHO NGUBANE: Well unfortunately qualifications do not come in in that type of decision.

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: It is a question of track record

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: And the level in the organisation.

CHAIRPERSON: Hm.

10 **DR BALDWIN SIPHO NGUBANE:** That is how acting people are appointed. They must be at a certain level.

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: In other words Group level.

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: Then they get appointed to act.

CHAIRPERSON: Okay when he was appointed as acting COO the position he still held was that of Stakeholder Relations Manager?

DR BALDWIN SIPHO NGUBANE: He was already Group Executive.

CHAIRPERSON: Ja but holding what position?

20 **DR BALDWIN SIPHO NGUBANE:** In Stakeholder.

CHAIRPERSON: Stakeholder Relations Manager?

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: But what was still manager and nothing else.

DR BALDWIN SIPHO NGUBANE: Exactly. He was no longer a manager.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: He was Group Executive.

CHAIRPERSON: Oh okay. So he had moved from being Stakeholder Relations Manager and had gone higher up.

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: Is that right?

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: And the ranking of the position of Stakeholder Relations Manager and that of Group Stakeholder – Stakeholder
10 Executive was the Group Stakeholder Executive immediately above the position of Stakeholder Relations manager?

DR BALDWIN SIPHO NGUBANE: Very sig...

CHAIRPERSON: Or there was any jumping there?

DR BALDWIN SIPHO NGUBANE: Very significant.

CHAIRPERSON: There was a significant difference?

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: Okay and the one for Stakeholder Relations Executive had it always been there before?

DR BALDWIN SIPHO NGUBANE: It was a function that was within the
20 CEO's office.

CHAIRPERSON: Okay, okay. So – but not a position as such? In other words when you say it was a function I get the impression that what you mean is somebody did that function but that person might not necessarily have been given this title but it might have been one of his or her responsibilities together with other responsibilities?

DR BALDWIN SIPHO NGUBANE: I – it is a – my regional manager.

CHAIRPERSON: Regional Manager?

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: It is a category.

CHAIRPERSON: That is what it was.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: The category?

DR BALDWIN SIPHO NGUBANE: Yes.

10 **CHAIRPERSON:** Okay that is what it was before – before Mr Motsoeneng occupied the position.

DR BALDWIN SIPHO NGUBANE: That is right

CHAIRPERSON: Okay. So – so but you say there is a significant difference between that level and the level of Stakeholder Relations Manager?

DR BALDWIN SIPHO NGUBANE: No probably let us go back a bit.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: He comes in as ...

CHAIRPERSON: Stakeholder?

20 **DR BALDWIN SIPHO NGUBANE:** Manager Stakeholder.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: In the Group

CHAIRPERSON: CEO's office.

DR BALDWIN SIPHO NGUBANE: Chief Executives Office.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: He then gets promoted to Group Executive.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: That is a big jump.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: From that one of being manager.

CHAIRPERSON: Yes. Yes.

DR BALDWIN SIPHO NGUBANE: After that he gets appointed acting COO.

10 **CHAIRPERSON:** Yes, yes.

DR BALDWIN SIPHO NGUBANE: That is also another big jump.

CHAIRPERSON: Yes. Yes, yes. Okay what I want to understand is before he gets appointed as Group Executive for Stakeholder Relations.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: You said that before that the function he did – he performed in that position used to be done within the office of the Group Chief Executive Office.

DR BALDWIN SIPHO NGUBANE: That is right.

20 **CHAIRPERSON:** And then I said that gives me the impression that it might not have been a position on its own but it might have been a task or a responsibility that was done by somebody who may have held a different position so that is where we were. Is my understanding correct?

DR BALDWIN SIPHO NGUBANE: No.

CHAIRPERSON: ja.

DR BALDWIN SIPHO NGUBANE: It would be impossible.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: For the manager.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: For Stakeholder Relations.

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: To do other jobs.

CHAIRPERSON: Okay, okay.

DR BALDWIN SIPHO NGUBANE: Yes.

10 **CHAIRPERSON:** So – but the Stakeholder Manager that one I understand.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Because I think you explained earlier on that before Mr Motsoeneng was appointed to that position of manager there was somebody else but that person who was performing that function in relation to the management not the board but that after Mr Motsoeneng came in I do not know if you said you do not know what happened to the other person but there was only one person and that was Motsoeneng?

20 **DR BALDWIN SIPHO NGUBANE:** That is right.

CHAIRPERSON: Yes. Now at that level I understand what happened. Now I am now going to the level of Group Executive Stakeholder.

DR BALDWIN SIPHO NGUBANE: Yes right.

CHAIRPERSON: Now Mr Motsoeneng was promoted from Stakeholder Relations Manager to Group Executive for Stakeholder Relations.

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: And you have said that that was a big jump. So the question I was asking was whether before his appointment – before he was appointed Groups Executive for Stakeholder was there such a position? Your answer was some – well your answer was that function was being performed within the office of the Group Chief Executive Officer.

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: And my question is whether as far as you know and
10 you might not know – as far as you know whether there was somebody who held a position that had a certain title or was it somebody who had another title that had nothing to do with Stakeholder Relations but whose responsibilities included performing what Motsoeneng later performed as Group Executive Stakeholder. I hope – I hope I am clarifying myself?

DR BALDWIN SIPHO NGUBANE: Absolutely.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: But my understanding was that
20 whoever could have been doing that job had failed hence the CEO wanting somebody else.

CHAIRPERSON: Oh but you – are you able to say whether when Mr Motsoeneng got appointed as Group Chief – Group Executive for Stakeholder Relations this was a new position that was created it did not exist before but the job he was going to do under this new position had been done by somebody else under a different position, is that

something you are able to say or not really?

DR BALDWIN SIPHO NGUBANE: I am not too sure whether GE Stakeholder Relations never existed. I am not sure about that. Yes.

CHAIRPERSON: The jump from Stakeholder Relations Manager to Group Executive Stakeholder Relations are you also able to indicate whether it was a jump of two, three, four rankings as you are able to indicate earlier on or is that something – the detail that you are not able to remember?

DR BALDWIN SIPHO NGUBANE: I think ...

10 **CHAIRPERSON:** You just remember it was significant.

DR BALDWIN SIPHO NGUBANE: I think it is a jump from a level of say 1.5 million.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: To over 2 million.

CHAIRPERSON: Oh okay, okay. Thank you. Ms Norman.

ADV THANDI NORMAN SC: Thank you. Thank you Mr Chairman. So in other words what is stated then in that paragraph that I had read Doctor Ngubane that would correct at page 165?

DR BALDWIN SIPHO NGUBANE: Yes.

20 **ADV THANDI NORMAN SC:** Those figures are then correct?

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: Yes thank you. Then the Public Protector raises another issue in her report about your response to the application form.

CHAIRPERSON: Are you moving to another aspect?

ADV THANDI NORMAN SC: To another aspect yes Chair.

CHAIRPERSON: Aspect ja. Okay no let me then finish maybe on this one.

ADV THANDI NORMAN SC: Oh alright okay.

CHAIRPERSON: Now the appointment of Mr Motsoeneng as Manager Stakeholder Relations that was done by the Group Chief Executive Officer. Now his appointment as Group Executive for Stakeholder Relations was that done by the board or the Chief – Group Chief Executive?

10 **DR BALDWIN SIPHO NGUBANE:** I think the Chief Executive recommends that to the board. I am not sure of the details.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: But it would not have happened unless he recommended it.

CHAIRPERSON: Okay.

DR BALDWIN SIPHO NGUBANE: To the board.

CHAIRPERSON: Okay. And at that time it was still Mr Mokwetle as you recall? The Group Chief Executive Officer.

DR BALDWIN SIPHO NGUBANE: Mr Mokwetle?

20 **CHAIRPERSON:** Yes, yes.

DR BALDWIN SIPHO NGUBANE: As I remember.

CHAIRPERSON: I wonder whether the board – obviously the board would not be I would imagine rubber stamping what the Group Chief Executives are – Chief Executive Officer recommends.

DR BALDWIN SIPHO NGUBANE: Right.

CHAIRPERSON: It would apply its mind.

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: To the question, would this be a proper appointment.

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: Now on the understanding that the board would do that one is bound to then ask the question how did your board justify this significant jump in the promotion of Mr Motsoeneng from Stakeholder Manager to – to Group Executive for Stakeholder Relations at the salary difference that you have indicated. What was the
10 justification?

DR BALDWIN SIPHO NGUBANE: Well that have been on previous performance. He succeeded as a Stakeholder Manager. There was a new challenge and he was sought to be able to do it. Just like going from that to becoming acting COO it was not a matter of qualifications it was a matter of being able to do the job.

CHAIRPERSON: That is quite important. I would think that if I am running my own private company and here I have in mind a small company because the moment it is a big company and there are unions and so on sometimes you cannot run it the way you want. If I am
20 running a small company of mine – a private company you know if I identify that hey this person is doing a very good job. I need somebody to do this at a higher level. I do not need to advertise outside I can see somebody inside I can say okay this person I will put at the higher position. But now here one is dealing with a massive organisation and it is a state owned entity.

1. Why would that position not be open to – why would the board not see it as necessary to let there be competition for filling this position of Group Executive Stakeholder Relations even if it thought it is likely that Mr Motsoeneng is going to be – to emerge victorious as it were. Why would it have thought it is not the right thing to say let us advertise? You have this position let people be interviewed and then let us take it from there?

DR BALDWIN SIPHO NGUBANE: Well I presume the background to that is that prior experience is accepted as adequate if a person
10 demonstrates special knowledge or special capability. I think that is the reasoning that we went on.

CHAIRPERSON: But of course the difficulty there is that you are looking – you get satisfied that the person has prior experience that you consider adequate because you are looking at a particular person.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: You are not going to think about that if you are about people that you are not looking at. But if you opened the competition how do you know that you would not actually find somebody who surprises you and you might think Motsoeneng is so exceptional and
20 then somebody says look at my track record, look where I was before I came here? It is just that here at SABC I have been – I was appointed for this position I have never been given a chance in this area actually in the companies where I have been I have been exposed to this. Look at the wonders that I have done there. I can do this much better than anybody. How do you know that you will not get somebody who says

that if you open it up to competition?

DR BALDWIN SIPHO NGUBANE: Well Chairperson I fully understand what you are saying however when the house is burning anyone can pass a bucket of water as long as he can carry the water. That was a situation. SABC was burning with a lot of degreed people. It was being reduced to ashes. So anyone who could carry a bucket of water to put down – to put out the fire would be allowed to do that.

CHAIRPERSON: That – in principle that I understand.

DR BALDWIN SIPHO NGUBANE: Ja.

10 **CHAIRPERSON:** In principle that I understand but I would think that to the extent that you may have been dealing with a burning SABC appointing somebody even if it was Mr Motsoeneng as an act – in an acting capacity for that position of Group Executive for Stakeholder Relations would take care of making sure that somebody would be doing this job while the fires are burning but when you look at appointing permanently you would have time to advertise and he would be one of the candidates and then whatever decision you make would be a decision that could not easily be challenged because you would be seen to have been fair. What do you say to that?

20 **DR BALDWIN SIPHO NGUBANE:** Well I agree Chairperson. This is why for the permanent position there was an advert.

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: But for this we did not do that.

CHAIRPERSON: Yes. You mean for the position – permanent position of Group Executive Stakeholders Relations?

DR BALDWIN SIPHO NGUBANE: There was an advert for that.

CHAIRPERSON: Yes yes. Okay. So it is the acting appointment that was not advertised but the permanent appointment for that position was advertised?

DR BALDWIN SIPHO NGUBANE: That is correct.

CHAIRPERSON: Okay thank you.

ADV THANDI NORMAN SC: Thank you Mr Chairman. Thank you. Doctor Ngubane the Public Protector raised another issue.

DR BALDWIN SIPHO NGUBANE: Yes.

10 **ADV THANDI NORMAN SC:** At page 299.

DR BALDWIN SIPHO NGUBANE: Sorry?

ADV THANDI NORMAN SC: Of Exhibit 27

DR BALDWIN SIPHO NGUBANE: 29, 29.

ADV THANDI NORMAN SC: 299 yes.

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: I think this would relate to the question that the Chairperson had asked you about. At what point did you realise that Mr Motsoeneng did not hold a matric certificate.

DR BALDWIN SIPHO NGUBANE: Yes.

20 **ADV THANDI NORMAN SC:** You recall that question that the Chairperson asked you?

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: Thank you. So if you could go Doctor Ngubane to paragraph 6.1.3.36.

DR BALDWIN SIPHO NGUBANE: Probably I am on the wrong page.

Sorry.

ADV THANDI NORMAN SC: Page 299.

DR BALDWIN SIPHO NGUBANE: 299.

CHAIRPERSON: Well my...

ADV THANDI NORMAN SC: Yes are you...

CHAIRPERSON: My 299 does not have those paragraph numbers.

ADV THANDI NORMAN SC: Are you on the Public Protector's Report Chair?

CHAIRPERSON: Yes –

10 **ADV THANDI NORMAN SC:** On top.

CHAIRPERSON: Hang on maybe I am not.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: No, no, no I think I am at a wrong bundle.

ADV THANDI NORMAN SC: Yes. Sorry. It is Exhibit 27. On top it will say – it will have Report of the Public Protector. Do you have it Doctor?

CHAIRPERSON: Doctor Ngubane I suspect you and I were on a wrong page.

ADV THANDI NORMAN SC: Oh.

20 **CHAIRPERSON:** Are you on the right page now?

DR BALDWIN SIPHO NGUBANE: Well it is 299.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: And the top of it says And the issue of Public Protector.

ADV THANDI NORMAN SC: No.

DR BALDWIN SIPHO NGUBANE: Meeting the deadline.

ADV THANDI NORMAN SC: Oh no you are on the transcript. I beg your pardon. No I would like you to go to the Public Protectors Report.

CHAIRPERSON: The bundle that has got the Public Protectors Report ja.

DR BALDWIN SIPHO NGUBANE: Oh okay.

CHAIRPERSON: I was also on the same.

ADV THANDI NORMAN SC: On the transcript. Ja it will not be in that file Doctor Ngubane.

10 **CHAIRPERSON:** Ja it will be a different bundle.

DR BALDWIN SIPHO NGUBANE: Oh alright sure. Thank you. Okay.

ADV THANDI NORMAN SC: Thank you Chair. At paragraph 6.1.3.36 the Public Protector stated:

20 “On 5 April 2012 Doctor Ben Ngubane the Chairperson of the board responded in writing to questions I raised in respect of Mr Motsoeneng’s alleged misrepresentation to the SABC. In his written response Doctor Ngubane stated that the SABC perused Mr Motsoeneng’s file and could find no evidence that he misrepresented his qualifications.”

6.1.3.37.

“Doctor Ngubane made this remark despite the findings of the 11 September 2003 Group Internal Audit Report which indicated that the content of Mr

Motsoeneng’s application for employment was false.”

If I may just to conclude that point before you respond Doctor Ngubane if you could turn over the page, page 300. Paragraph 6.1.3.39:

10 “Advocate Mahlata indicated that when she tried to ascertain during the board meetings whether Mr Motsoeneng had initially lied about his qualifications when he applied to the SABC she was suppressed by the Chairperson with the support of the majority of the board members and that it was not necessary for the board to establish the true fact. Advocate Mahlata further drew my attention to the findings and verdict of the appeals panel of the Ombudsman to – for the press council who inter alia found that the Sunday Independent was justified in saying that Mr Motsoeneng had lied about having a matric certificate. Advocate Mahlata also indicated that she had information about how the Chairperson of the board hounded and threatened the previous acting Company Secretary of the SABC Ms Jane Mbathea
20 [?] and indicated to her that she was not allowed to hand over any information to outsiders.”

So if you may just go back to the first part of that finding if I may put it that – by the Public Protector. What was your understanding when the Public Protector approached you and asked you about whether Mr Motsoeneng had misrepresented his qualifications? What was your

understanding of that question when you answered that there was no such evidence?

DR BALDWIN SIPHO NGUBANE: Well the HR Report told us that there was no claim by Mr Motsoeneng that he had Matric. Ms Pippa Green who was a Board Member also said she knew that Mr Motsoeneng did not have Matric. That the people who employed him had merely employed him knowing this fact ...

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: And this was the position that we
10 had.

ADV THANDI NORMAN SC: (Intervenues).

CHAIRPERSON: Have you ever seen the application for employment to which they refer that Mr Motsoeneng apparently submitted to the SABC I guess when he was applying for employment for the first time because they seem to - to suggest that in that application for employment he misrepresented the position.

I - as I understand it he must have said - if they are correct - he must have said he has Matric. If they are correct in saying he misrepresented. Have you ever seen that - that application for
20 employment?

DR BALDWIN SIPHO NGUBANE: I saw the application.

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: It said he was doing Matric. It did not say he had passed Matric.

CHAIRPERSON: It - it said he was doing Matric?

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: At a certain time?

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: But it did not list Matric as ...

DR BALDWIN SIPHO NGUBANE: As a ...

CHAIRPERSON: As a - as an educational level he had ...

DR BALDWIN SIPHO NGUBANE: No.

CHAIRPERSON: Passed?

DR BALDWIN SIPHO NGUBANE: No.

10 **CHAIRPERSON:** Yes, okay.

ADV THANDI NORMAN SC: Hm.

CHAIRPERSON: Have you got it here?

ADV THANDI NORMAN SC: Not - not on this batch - on - on this file Mr Chairman, but - but I - I could just refer you to where the Public Protector quotes what is stated in that application form. That would be at page 302. Sorry Chair. Yes, two ...

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: 3-0-2 at paragraph 6.1.3.48.

CHAIRPERSON: Huh-uh.

20 **ADV THANDI NORMAN SC:** “According to the panel when Mr Lesala wrote this on 27 June 2017 he was fully aware as he had been told by Mr Lopaka (?) in writing just five days earlier that the application for employment form did indeed exist and that it had been removed in 2003 because it gave the

impression that Mr Motsoeneng passed Standard 10. What makes Mr Lesala's denial even more puzzling is that he even refer to having received Mr Lopaka inquiry."

But there is - the Public Protector actually records the symbols. If I may just take you to that page Chair. Can you just get that page? Sorry. They record the symbols as reflected on that form. Sorry. I will - just ahead just now. If you will just bear with me Chair.

CHAIRPERSON: Well paragraph 6.1.3.45 which is at page 3-0-1
10 reflects ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: The following:

"The panel ..."

That is I think the Appeal Panel.

20 "...noted that Mr Motsoeneng said that after he had again been refused appointment by the Regional Editor in Bloemfontein who told him and I quote: "I am not going to appoint you because you do not have Matric." He was asked by other people to fill in the application form which he did. He was then appointed. Mr Motsoeneng did not dispute that he had written 10 in the space for highest standard passed or that he had written the subjects and the symbols or the date when he claimed to have passed Standard 10."

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: You might have been looking for that one.

ADV THANDI NORMAN SC: No, no. Thank you Chair. Thank you for that but the one I am looking for ...

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC: Is at page 296.

CHAIRPERSON: 2-0-9?

ADV THANDI NORMAN SC: Two - 2-9-6 Chair.

CHAIRPERSON: Yes.

10 **ADV THANDI NORMAN SC:** 2-9-6.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you.

DR BALDWIN SIPHO NGUBANE: Sorry. What page?

ADV THANDI NORMAN SC: Two - 2-9-6 Dr Ngubane. I beg your pardon.

CHAIRPERSON: 2-9-0.

ADV THANDI NORMAN SC: 296.

DR BALDWIN SIPHO NGUBANE: 2-9 ...?

20 **ADV THANDI NORMAN SC:** 2-9-6. The same - same bundle. Have you found it - 2-9-6?

DR BALDWIN SIPHO NGUBANE: (No audible reply).

ADV THANDI NORMAN SC: Have you found it Dr Ngubane?

DR BALDWIN SIPHO NGUBANE: *Ja*, I have found it.

ADV THANDI NORMAN SC: You found it?

DR BALDWIN SIPHO NGUBANE: I think I have found it.

ADV THANDI NORMAN SC: Oh, thank you. Yes. It is - it is paragraph 6.1.3.20:

“Attached to the complaint from Ms Mbani (?) was an application for employment completed by Mr Motsoeneng.”

6.1 ...

CHAIRPERSON: I am sorry.

ADV THANDI NORMAN SC: Chair.

CHAIRPERSON: Did you not say we must go to page ...

10 **DR BALDWIN SIPHO NGUBANE:** Sorry.

CHAIRPERSON: 2-9-0?

DR BALDWIN SIPHO NGUBANE: Just come ...

ADV THANDI NORMAN SC: 2-9-6 Chair.

CHAIRPERSON: 2-9-6?

ADV THANDI NORMAN SC: Yes, yes Chair.

CHAIRPERSON: Oh.

ADV THANDI NORMAN SC: 2-9 - sorry. Thank you. Then 6.1.3.21:

20 “On the completed application Mr Motsoeneng indicated that he passed Standard 10 in 1991 at the age of 23 years with the following subjects: English, E; South Sotho, E; Afrikaans, E; Bibs, E; History, F.”

And then the Public Protector says:

“On the application form that Mr Motsoeneng completed he only noted five subjects completed

and not the usual six. During the interview Mr Motsoeneng admitted falsifying his Matric qualification and blamed an Ms Swanepoel whom he said gave him the application form to fill - to fill in anything. In other words to make up the symbols from the top of his head which he did. With regard to the Matric Certificate the form says outstanding giving the impression that the certificate exists and would be submitted in due course. A copy of a transcript of the interview held with Mr Motsoeneng on 19 July 2013 with me is annexed to the report. Below is an extract from the transcript.”

Now with this information now being placed before you by the Public Protector Dr Ngubane would you still say that there was no evidence then of misrepresentation? Supposing that you were aware of this information at the time when you were asked to comment and now it is placed before you now. What would your comment be?

DR BALDWIN SIPHO NGUBANE: Well I will go with the - Mr Alwyn’s affidavit. That they knew he did not have a Matric Certificate but they appointed him all the same ...

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: Because of the service that he was rendering.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: That to me sums up the attitude of

the board in advancing Mr Motsoeneng to the Acting position.

ADV THANDI NORMAN SC: Yes. If for example Mr Motsoeneng as he has admitted to the Public Protector had actually put in symbols - let us say everybody knew that he did not have Matric.

DR BALDWIN SIPHO NGUBANE: *Ja.*

ADV THANDI NORMAN SC: So if he did not have Matric all that he needed to do on his application form was to say my qualifications Standard 8 but then when he - if he goes beyond and puts - and puts in symbols and subjects on an application form would you regard that as
10 misrepresentation or would you feel that because he does not have the Matric it really does not matter that he had put in those symbols?

DR BALDWIN SIPHO NGUBANE: No the issue of symbols did not arise. As I say I am trying to look for what Mr Alwyn said because that is what I have - sort of influenced us ...

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: In our view. I cannot find him here but ...

CHAIRPERSON: I am sorry.

ADV THANDI NORMAN SC: Sorry.

20 **CHAIRPERSON:** This might help while you are looking.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: This might help. What you are looking for is it where you say somebody put up an affidavit?

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: And the affidavit was to the effect that they knew that he did not have Matric and they appointed him for whatever reason.

DR BALDWIN SIPHO NGUBANE: He had no - he had no Matric Chairperson.

CHAIRPERSON: He had no Matric, yes.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: They appointed him ...

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Despite knowing that?

10 **DR BALDWIN SIPHO NGUBANE:** That is write.

CHAIRPERSON: That - that is what you were looking for?

DR BALDWIN SIPHO NGUBANE: That is ...

CHAIRPERSON: That is what you are looking for now?

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: Yes, okay.

ADV THANDI NORMAN SC: Yes. Thank you Chair. No I - I understand that Dr Ngubane but my question is if he did not have Matric he would have said I do not have Matric when he is applying for the - for the position but if knowing that he does not have Matric but he puts up
20 symbols and subjects would you regard that as misrepresentation?

DR BALDWIN SIPHO NGUBANE: Well he - yes of course. However ...

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: He told us that he did not have Matric.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: So we knew that. I mean we did not search for all sorts of things.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: We knew he did not have Matric but he could do the job.

ADV THANDI NORMAN SC: So in other words as far as you are concerned then or now it really did not matter that he had put in those symbols on ...

DR BALDWIN SIPHO NGUBANE: No.

10 **ADV THANDI NORMAN SC:** On the application form.

DR BALDWIN SIPHO NGUBANE: No, no that did not arise. I am sorry.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: That issue did not arise. We went with the knowledge that he does not have Matric ...

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: But senior people in SABC saw fit to appoint him.

ADV THANDI NORMAN SC: When you say the issue did not arise do you mean it did arise before the Public Protector or that issue did not
20 arise at all at the SABC prior to his appointment?

DR BALDWIN SIPHO NGUBANE: Well at the SABC it did not arise. We knew that he did not have Matric ...

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: But we knew that we wanted certain services from him.

CHAIRPERSON: Hm. I think the - maybe one should look ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: At it from this angle because I think the public or part of the public might also be looking at it in this way. Namely was possession of Matric not required - was it not a requirement for the position of Stakeholder Relations Manager that - that might be one position but the board did not make that decision but once the board had to make a decision it - one would have expected that it would start by saying what are the requirements for this position.

10 Does he meet those requirements? So I think that one must say - ask the question for the position of Group Executive for Stakeholder Relations was possession of Matric not a requirement and was possession of Matric not a requirement for appointment as Acting CEO - COO. So I think that - that is where you might wish to focus.

DR BALDWIN SIPHO NGUBANE: Yes Chairperson.

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: We knew he did not have Matric ...

CHAIRPERSON: Hm.

20 **DR BALDWIN SIPHO NGUBANE:** But we knew that he could deliver what we wanted ...

CHAIRPERSON: Huh-uh.

DR BALDWIN SIPHO NGUBANE: And that is what guided us.

CHAIRPERSON: Hm. Would - would your answer therefore be that you knew that he did not have Matric but you knew that possession of Matric - Matric Certificate was a requirement for both of these positions

but for certain reasons you decided that it was fine or - or is the position that the board did not know whether Matric was a requirement for these positions?

DR BALDWIN SIPHO NGUBANE: Chairperson we know that or we knew that a Matric Certificate and higher qualifications are always required but like the people in the Free State they were dealing with a crisis where the people who were there were supposed to be able to deliver a successful broadcasting service were failing and hence they took this boy who did not have a Matric and he made a difference.

10 So it was the same approach here. We know normally you would want to have those qualifications but when people with those qualifications fail you then try anything.

CHAIRPERSON: Would you then be in a position to say whether appointing somebody to a position where he or she did not meet one of the requirements ...

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Was a breach of whether it was policy or whatever governance rules and regulations. You - you - that you knew that it was a breach but you considered that having regard to everything else
20 you considered - the board considered itself justified or what - what would you say?

DR BALDWIN SIPHO NGUBANE: I would say exactly you said ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: Chairperson ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: But the board knew ...

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: That the people we had ...

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: Had not delivered.

CHAIRPERSON: Hm, hm.

DR BALDWIN SIPHO NGUBANE: So we were trying to improve the situation ...

CHAIRPERSON: Hm. Okay, alright.

10 **DR BALDWIN SIPHO NGUBANE:** And - and ...

CHAIRPERSON: Hm.

DR BALDWIN SIPHO NGUBANE: There are people at SABC who do not have Matric.

CHAIRPERSON: Hm, hm.

DR BALDWIN SIPHO NGUBANE: This was not the precedent ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: Or the first time.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: People in quite senior positions.

20 **CHAIRPERSON:** Hm.

DR BALDWIN SIPHO NGUBANE: I am sure if HR could provide us...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: With a list of all the qualifications ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: Of people in sales of people ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: In different department you would find that there are some who do not have Matric.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: Some of them come from the old dispensation.

CHAIRPERSON: Yes, yes.

DR BALDWIN SIPHO NGUBANE: Before 1994.

CHAIRPERSON: Hm, hm.

10 **DR BALDWIN SIPHO NGUBANE:** Who did not have Matric but they were given these jobs and they were doing it very well.

CHAIRPERSON: Well the - well I do not know about the facts you - you might know much more because you were Chairperson of the Board there. I can - but I can understand a situation where there is a new dispensation that comes and comes in and it comes in when there was another dispensation before. That other dispensation may have done things in a certain way ...

DR BALDWIN SIPHO NGUBANE: Yes.

20 **CHAIRPERSON:** And the new dispensation wants to do things differently ...

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: But it is considered that maybe it would be unfair to then say people who had been appointed to a certain position under the previous dispensation should now be dismissed because the new dispensation has different requirements for those positions. I - I can

understand a situation where a decision is taken look when they came in they met the requirements that were required then.

We want different requirements because maybe we have a different level to which we want to take this institution but then what might happen is as I see it you say well if those people stay where they are you leave them alone but if they want to go up ...

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Then you will - you will want them to meet the requirements that are required at the time when they want to go up.

10 **DR BALDWIN SIPHO NGUBANE:** Yes.

CHAIRPERSON: That - that I can understand. Is - is it that kind of situation that you - you are talking about in terms of the HR or could it be a situation similar to Motsoeneng because as I understand - I may be wrong - as I understand the position Mr Motsoeneng seems to have come into the SABC at the Free State after 1994 which I would consider to be a new dispensation.

20 The other people - the other situations where there were people who did not have Matric do you know whether they would have been from the old - the dispensation or not really or is it something you would not know? You just know that there were other people who did not have Matric.

DR BALDWIN SIPHO NGUBANE: Well I would not have the documentation but HR would have.

CHAIRPERSON: Would have, yes.

DR BALDWIN SIPHO NGUBANE: But then Chairperson if you will allow

me.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: The same dispensation - the new dispensation recognised prior learning and this had a major effect on the thinking - you know - on the board.

CHAIRPERSON: Yes, yes. No I - I think that - I think that is important. I mean there - there are many people who might not have Matric. Who might not even have lower educational standards or grades than Matric who nevertheless are very good at what they are doing and who do a
10 very good job and one must never create the impression that if you do not have Matric you are nothing.

You know. If you do not have a Degree you are nothing. There are many people who make very important contributions in society without those formal qualifications but nevertheless I think what is important and you might wish to comment here is that it is important that the policies of an organisation that are put in place be followed ...

DR BALDWIN SIPHO NGUBANE: You are right.

CHAIRPERSON: And if the policies or regulations say for this position Matric is required ...

20 **DR BALDWIN SIPHO NGUBANE:** You right.

CHAIRPERSON: That you stick to that. Of course if you think that at a particular stage this policy does not serve the institution properly or these regulations do not serve the institution properly. It maybe be that there is a reason to put - there is a case to put forward to say let us change it ...

DR BALDWIN SIPHO NGUBANE: Right.

CHAIRPERSON: Because it prevents us for example from giving - from appointing somebody who might not have a piece of paper written Matric ...

DR BALDWIN SIPHO NGUBANE: Right.

CHAIRPERSON: But has a lot of experience that would be good for the organisation but then you say to do it the proper way you say well if there are generally more situations like that probably not to do it for an individual.

10 **DR BALDWIN SIPHO NGUBANE:** Right.

CHAIRPERSON: Then you change it and then when you - when you invite applications if that is the kind of situation you are dealing with everybody knows what the rules are.

DR BALDWIN SIPHO NGUBANE: Right.

CHAIRPERSON: They know that if you do not have Matric but you have this prior experience and it is relevant you could be allowed. You - you can apply ...

DR BALDWIN SIPHO NGUBANE: Right.

20 **CHAIRPERSON:** And then you appoint somebody who does not have Matric in that situation you can justify it because you are not in breach of your policy or regulations. That - that I think that - that is where the difference might be. I do not know if you want to say anything.

DR BALDWIN SIPHO NGUBANE: Well I accept that ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: Chairperson ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: But when appointing as Acting CEO we have to inform the Minister and get the concurrence. So that happened. It was approved by the Minister. So we thought ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: We were doing something alright.

CHAIRPERSON: Yes. So - so there was concurrence from the Minister and ...

DR BALDWIN SIPHO NGUBANE: Exactly.

10 **CHAIRPERSON:** The board thought then ...

DR BALDWIN SIPHO NGUBANE: Exact ...

CHAIRPERSON: It should be fine?

DR BALDWIN SIPHO NGUBANE: Exactly or ...

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: Otherwise he would never have been an Acting CEO.

CHAIRPERSON: Yes, yes. Of course the - the responsibility might be that before the board sends anything to the Minister - before it makes its decision it must satisfy itself.

20 **DR BALDWIN SIPHO NGUBANE:** Yes.

CHAIRPERSON: That if we do - if we make this decision. These decisions will - this decision will be in line with the regulations and the policies ...

DR BALDWIN SIPHO NGUBANE: Right.

CHAIRPERSON: And if it will not be they must not even send it to the

Minister. They must satisfy themselves. Is it in accordance with the policies? Is it in accordance with the regulations and the law?

DR BALDWIN SIPHO NGUBANE: Right.

CHAIRPERSON: That kind of thing because maybe when the Minister - when it comes to the Minister the Minister might also say oh the board has no problem. I will defer to the board. I think it must be fine. So then everybody is - is not checking. Everybody thinks the other one has checked. It should - must be fine.

DR BALDWIN SIPHO NGUBANE: Right.

10 **CHAIRPERSON:** You understand where I - I am coming from?

DR BALDWIN SIPHO NGUBANE: I do very well.

CHAIRPERSON: Yes. Thank you.

ADV THANDI NORMAN SC: Thank you Mr Chairman. Just to deal with that point that Dr Ngubane has made in response to your question Chair. May I ask the witness to turn to SABC EXHIBIT CC32? That is ...

DR BALDWIN SIPHO NGUBANE: So U?

ADV THANDI NORMAN SC: No, it is - it is another bundle, yes. You can close that one Dr Ngubane.

20 **DR BALDWIN SIPHO NGUBANE:** Okay.

ADV THANDI NORMAN SC: Thank you.

DR BALDWIN SIPHO NGUBANE: Sorry.

ADV THANDI NORMAN SC: This is - I beg your pardon Chair. Oh, I am told that this is your bundle. I am sorry. Could you just find whether there is a CC32 there? Maybe ...

CHAIRPERSON: Well there is one that has got his statement. There is one that has got the Public Protector's ...

ADV THANDI NORMAN SC: Report. No Chair CC ...

CHAIRPERSON: Report and there is one that has got the transcript of the Parliamentary Committee ...

ADV THANDI NORMAN SC: Hm.

CHAIRPERSON: But the best way to tell us what is - what is written on the spine.

ADV THANDI NORMAN SC: It is - it is written SABC Reference Bundle
10 Chair. It is the - the referenced bundle.

DR BALDWIN SIPHO NGUBANE: Thank you.

CHAIRPERSON: There are - there are too many of these bundles now.

ADV THANDI NORMAN SC: Yes Chair. 32 - I think it is underneath that one. Oh, yes. That one.

CHAIRPERSON: Okay. SABC Reference Bundle.

ADV THANDI NORMAN SC: Thank you Chair.

CHAIRPERSON: Got it.

ADV THANDI NORMAN SC: Could you please turn to page 2-1-8 the
red - there are two numbers there Chair? Please ignore the one in ink
20 and have a look at the one in red - 2-1-8. Thank you. This is a letter
confirming that Mr Hlaudi holds the title of Acting Chief Operations
Officer and it is from Mr Thabiso Lesala dated 28 November 2011 but
before that there is a page - page 2-1-9 precedes 2-1-8 but it follows in
terms of the bundle. The one dated 18 November 2011 is that your
signature Dr Ngubane?

DR BALDWIN SIPHO NGUBANE: This is the - 2-1-9?

ADV THANDI NORMAN SC: Yes 2-1-9.

DR BALDWIN SIPHO NGUBANE: Ja.

ADV THANDI NORMAN SC: It is a sub delegation of authority.

DR BALDWIN SIPHO NGUBANE: Sorry. Appointing of the Acting ...

ADV THANDI NORMAN SC: In 2-1-9?

DR BALDWIN SIPHO NGUBANE: The - the letter is from ...

CHAIRPERSON: On page 2-1-9 ...

ADV THANDI NORMAN SC: In red.

10 **DR BALDWIN SIPHO NGUBANE:** The letter is from the Minister.

CHAIRPERSON: The red number.

ADV THANDI NORMAN SC: No, no, no. In red. 2-1-9 in red is a (indistinct).

CHAIRPERSON: Not the - not the ...

ADV THANDI NORMAN SC: Not the black one.

CHAIRPERSON: Not the handwritten one.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: Oh.

CHAIRPERSON: The one typed to the right.

20 **DR BALDWIN SIPHO NGUBANE:** Oh, right.

CHAIRPERSON: Yes, okay.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: So that - that is sub delegation of authority. You - you were delegating that authority - am I right to

Mr Hlaudi Motsoeneng?

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: Is that correct?

DR BALDWIN SIPHO NGUBANE: That is correct.

ADV THANDI NORMAN SC: Thank you and then if you turnover to page 220. You will find a letter written 15 November 2011 to Minister Dina Pule where you were advising her of the resolution of the board and the letter reads:

10 “Appointment of the Acting Chief Operations Officer:
pursuant to the authority given by Article 18 of the
SABC Articles of Association the resolution taken
by the special board on 14 November 2011 in
respect of the Acting Chief Operating Officer be
implemented. One, the appointment of
Mr Hlaudi Motsoeneng as Acting Chief Operating
Officer with effect from 18 November 2011 until
such time that the Chief Operating Officer is
appointed. Two, the recruitment process for all
vacancies at executive level particularly Group
20 Chief Executive Officer, Chief Financial Officer and
Chief Operations Officer be urgently commenced
with the assistance of the Minister of
Communications. I hope you find the above in
order and we await your further instructions on this
matter.”

Signed by you Dr Ngubane. Is that correct?

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: Is that correct? Then the next page at page 221 is this the letter that you are referring to when you were answering the Chairperson? It - it is written to you from the Ministry Communications - Dr Ben Ngubane and it says:

10 “Dear Dr Ngubane, appointment of the Acting Chief
Operations Officer: the above mentioned matter
refers. I have noted the resolution taken by the
Board of the SABC to appoint
Mr Hlaudi Motsoeneng as the Acting Chief
Operations Officer of the SABC. I would like to
advise that in terms of Article 19.2 of the Articles of
Association of the SABC I hereby approve the
appointment of Mr Hlaudi Motsoeneng as the Chief
Operations Officer of the corporation. As a result
of my approval I would like to advise you - to advise
that you should proceed to implement the resolution
of the special board meeting taken on
20 14 November 2011. I trust that you will find the
above in order. Dated 28 November 2011.”

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: Is this the - the approval that you were referring to?

DR BALDWIN SIPHO NGUBANE: No. There is a mistake.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: She says as the Chief Operations Officer of the corporation. We were talking about an Acting COO.

ADV THANDI NORMAN SC: Oh yes because the heading does say:

“Appointment of Acting Chief Operations ...”

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: “...Officer.”

DR BALDWIN SIPHO NGUBANE: Yes but it is ...

ADV THANDI NORMAN SC: But you are quite correct then in - in the
10 body of the letter ...

DR BALDWIN SIPHO NGUBANE: That is right.

ADV THANDI NORMAN SC: She makes reference to Chief Operations Officer.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Yes but I think she made a mistake only in regard to that last line of the first of that paragraph. Earlier on in the paragraph she does refer to Acting Chief ...

ADV THANDI NORMAN SC: Acting Chief.

CHAIRPERSON: Operations Officer.

20 **ADV THANDI NORMAN SC:** Yes.

CHAIRPERSON: *Ja.*

ADV THANDI NORMAN SC: Yes Chair. Thank you. So - so that was the letter that you referred to. Then before we move from that bundle I would like to just deal with some of the minutes - the board minutes that (intervenes).

DR BALDWIN SIPHO NGUBANE: Sorry. Are the minutes here?

ADV THANDI NORMAN SC: They are in there yes. Thank you. I will -
I will just like to take you to some of the minutes.

DR BALDWIN SIPHO NGUBANE:

CHAIRPERSON: Maybe while you are looking for ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: The minutes I just ask another question. Acting appointments at Group Executive level were they throughout your time always made on the basis of simply identifying the individual and
10 appointing that individual to act or was there a different process that was followed at - at some stage or in regard to other positions other than those of COO or Group Executive Stakeholder Relations?

DR BALDWIN SIPHO NGUBANE: Well apart from the three positions the Chief Executive Officer can appoint Acting Group Executives.

CHAIRPERSON: Yes, but what I'm asking is whether the process, whether there was a particular process that was followed which was different from simply the appointing authority identifying who the person is that will be appointed to act, in other words whether sometimes what would be done is to say let's look at different names or
20 invite some people who are prepared to be considered and then one would be appointed or whether for acting appointments it was always the position that there was no particular process, the Board just appointed somebody to act in a particular position that it considered was suitable.

DR BALDWIN SIPHO NGUBANE: Chairperson the people who is

appointed acting should be in the same position as the person who occupied, in other words ...(intervention)

CHAIRPERSON: The vacant position.

DR BALDWIN SIPHO NGUBANE: Grade 5 or Grade 7.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: They must be in the same position.

CHAIRPERSON: Yes, yes.

DR BALDWIN SIPHO NGUBANE: Then the CEO will appoint and inform us that so and so is now acting.

10 **CHAIRPERSON:** Oh, so insofar as acting is concerned it was the Group CEO who made the appointment.

DR BALDWIN SIPHO NGUBANE: That's right.

CHAIRPERSON: And then he would just inform the Board also.

DR BALDWIN SIPHO NGUBANE: Yes sir, apart from the three positions.

CHAIRPERSON: Oh apart from the three positions.

DR BALDWIN SIPHO NGUBANE: That's right.

CHAIRPERSON: For acting appointments in regard to the three positions it will be the Board that would make the decision.

20 **DR BALDWIN SIPHO NGUBANE:** And reports to the Minister.

CHAIRPERSON: Yes, but in that case too there was no particular process, would the Board simply look at whoever they decide should they thought would be right then they would appoint the person, without circulating any notice or invitation internally to say we will be appointing an acting person, those who think they want to be

considered should send their names or CV's, there would be nothing like that for acting appointments.

DR BALDWIN SIPHO NGUBANE: No Chairperson absolutely.

CHAIRPERSON: Okay, thank you.

ADV THANDI NORMAN SC: Thank you Chair. I just want us to deal with the role that Mr Hlaudi was playing in one of the Board meetings, just to link up with your evidence earlier and I would like to direct your attention please to page 39 of that same exhibit, CC32, that same bundle that is in front of you.

10 **DR BALDWIN SIPHO NGUBANE:** Sorry, page?

ADV THANDI NORMAN SC: Page 39.

DR BALDWIN SIPHO NGUBANE: 39?

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Are we on the same bundle?

ADV THANDI NORMAN SC: The same bundle Chair yes thank you.

CHAIRPERSON: Page 39.

ADV THANDI NORMAN SC: Three nine, yes that's correct Chair. Sorry Chair.

CHAIRPERSON: Yes.

20 **ADV THANDI NORMAN SC:** Sorry Chair, that – those are the minutes of a special meeting, a Board meeting that was held on the 7th of February 2012 and that you were chairing Dr Ngubane, is that correct, according to that document?

DR BALDWIN SIPHO NGUBANE: It is correct.

ADV THANDI NORMAN SC: Yes, and we Mr Motsoeneng was one of

the persons that were in attendance, but I would just like to just raise something which is mentioned at page 11, I beg your pardon, at page 49, 49, I was looking at the document itself, page 49.

DR BALDWIN SIPHO NGUBANE: Page?

ADV THANDI NORMAN SC: Page 49, same document but on page 49.

DR BALDWIN SIPHO NGUBANE: Okay, right.

ADV THANDI NORMAN SC: Yes, then Mr – this is Acting COO and I believe that's Mr Hlaudi according to the minutes, the third paragraph:

10 "Agreed with Advocate Mhlase but stated that keeping the
 employee"

Or sorry, maybe I should read the earlier paragraph.

CHAIRPERSON: You must start earlier otherwise we don't know what the was agreeing with ...(intervention)

ADV THANDI NORMAN SC: Then the context, it becomes context correct Chair. Could you start from the second paragraph, the first one actually because I think it's the same person.

20 "She said that there was a need for an innovative solution
 taking into consideration her rights. Advocate Mhlase
 informed the Board that the maximum payable under the
 CCMA's twelve months. She was of the view that it was easier
 to pursue that route and the proposal by Mr Mutsepe other
 than make a payment of R4million plus which was excessive.
 Acting COO agreed with Advocate Mahlase but stated that
 keeping the employee would need to be budgeted for and that
 in turn around the interest of the company was paramount and

the employees to be productive. He stated that there was a need for radical and unpopular decisions to take the corporation forward. He requested the Board to assist in placing Ms Mampane in government.”

If one reads there without reading the full minute but the suggestion was that Ms Mampane could be placed on early retirement or transferred or redeployed to another government institution.

But what I wanted to raise with you Dr Ngubane I know that you had said Mr Hlaudi could participate but didn't have voting rights,
10 but would you say that he was doing more than just being of help, he is now making suggestions about people being placed in government.

DR BALDWIN SIPHO NGUBANE: No Chairperson let me clarify, that non-participation in terms of voting was when he was ...(intervention)

CHAIRPERSON: Stakeholder manager.

DR BALDWIN SIPHO NGUBANE: ...communications.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: Now he is Acting COO, he is now part of the three Group Executive members of the Board.

20 **CHAIRPERSON:** Who were entitled to ...(intervention)

ADV THANDI NORMAN SC: He was entitled ...(intervention)

DR BALDWIN SIPHO NGUBANE: He was a member ...(intervention)

CHAIRPERSON: He was for all intents and purposes an acting member of the Board.

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Yes, okay and therefore he could participate fully?

DR BALDWIN SIPHO NGUBANE: Exactly.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: Okay thank you, then my question then falls away, because I was under the impression that we are moving under the same part, but then these minutes as you will see Dr Ngubane that have been placed here they are the minutes of the Board, but they deal with various issues, and I would not take you through
10 them, save that I would like you to comment on one aspect which you deal with in your statement, the issue of encryption.

DR BALDWIN SIPHO NGUBANE: Alright.

ADV THANDI NORMAN SC: And just advise the Chair what was the attitude of the Board insofar as that encryption issue was concerned.

DR BALDWIN SIPHO NGUBANE: Ja, Chairperson the issue of encryption had been a ball that has been kicked around a lot at SABC. It has gone to the Supreme Court, I think even Constitutional Court. When I wrote this remark in my statement it applied to a discussion after the – I think the High Court or Constitutional Court had ruled that
20 this matter should be settled by broadcasters, and not involve politicians. So that opened a whole lot of discussion around the issue of encryption.

There was a strong view that encryption makes access to broadcasting material for the people conditionally, that the SABC Act stipulates that there must be universal access to any broadcast, but

done by the Public Broadcaster.

Now the encryption will mean that some people could switch off members of the public and not have – therefore contravene the full access requirement, that was the type of discussion that was happening, it was not decisive, but the majority view tended to be to a large extent that let's not create any obstacle for people who don't have subscription DSTV or whatever other subscription channel can be switched off and not have access.

ADV THANDI NORMAN SC: Yes, and if you – to go back to your
10 statement now, if you could just close the file in front of you and we go
back to EXHIBIT 24, we left off in the morning where at page 13
...(intervention)

DR BALDWIN SIPHO NGUBANE: Sorry that is the other file?

ADV THANDI NORMAN SC: Yes, where you have your statement
document on.

DR BALDWIN SIPHO NGUBANE: Sorry what is the number?

ADV THANDI NORMAN SC: Page 13.

DR BALDWIN SIPHO NGUBANE: Okay.

ADV THANDI NORMAN SC: Sorry you will have to go back to divider
20 number 22, if that is the ...(intervention)

CHAIRPERSON: Have you reached your statement, are you at your
statement?

DR BALDWIN SIPHO NGUBANE: Yes Chairperson.

CHAIRPERSON: Okay ...(intervention)

ADV THANDI NORMAN SC: Oh, oh.

CHAIRPERSON: Then page 13.

ADV THANDI NORMAN SC: Page 13, thank you. You dealt there, you are dealing there MultiChoice agreement on 24 hour channel, could you just summarise your evidence in those paragraphs and what is it that you wanted to convey to the Chairperson there?

DR BALDWIN SIPHO NGUBANE: Chairperson NCA – I'm sorry, eNCA was becoming a very powerful competitor for the SABC, so there was a lot of discussion as to how the SABC can host or provide a 24 hour news channel. You know ...(intervention)

10 **CHAIRPERSON:** In other words to compete with them?

DR BALDWIN SIPHO NGUBANE: To compete with them.

CHAIRPERSON: Ja.

DR BALDWIN SIPHO NGUBANE: The news people through the head of news examined this issue, even suggested that we would take SABC 3 and make it into a 24 hour news channel, but they needed partners, so Mr Olivier and Hlaudi Motsoeneng even went to India to try and find a partner who could help them turn SABC3 into a 24 hour news channel. They even went to London, I think they spoke to ITV on this issue.

20 When they came back and reference was made to ICASA, ICASA said there is no way SABC3 could be turned into a 24 hour news channel because the license conditions are that it is a commercial channel, it is even accounted for separately from the public broadcaster, which is SABC1 and 2, so that brought an end to that discussion.

But then the Minister of Communications, because the Portfolio Committee was very keen that we move on with the 24 hour news channel called me and Ms Mkobo to a meeting and said ...(intervention)

CHAIRPERSON: And that was still General Nyanda, the Minister ...(intervention)

DR BALDWIN SIPHO NGUBANE: No, no Minister Bule.

CHAIRPERSON: Bule, okay.

DR BALDWIN SIPHO NGUBANE: Yes. We went to a meeting, we
10 were told that it is important that we talk to MultiChoice because that is the only remaining alternative. So we started discussions with MultiChoice, we progressed the discussions very significantly, until we wrote, I am not sure whether it was a contract or an MOU, but we did sign a document that MultiChoice will host the SABC on DSTV as 24 hour news.

That seemed to fulfil the requirement that we have a 24 hour news channel. However the problem came when it came to how MultiChoice will pay for the SABC on their DSTV bouquet. They said they will pay R50million the first year, R40million the second year,
20 R30million the third year, R2million the fourth year, R1million etcetera, it was – and then there will be nothing payable to SABC after that. That broke the discussion.

CHAIRPERSON: It was still MultiChoice?

DR BALDWIN SIPHO NGUBANE: That was still MultiChoice.

CHAIRPERSON: Was that after the signing of some document that you

talked about before?

DR BALDWIN SIPHO NGUBANE: Yes I am not sure it was a contract or an MOU.

CHAIRPERSON: Ja.

DR BALDWIN SIPHO NGUBANE: But we had signed the document.

CHAIRPERSON: You had already signed.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Yes, okay.

DR BALDWIN SIPHO NGUBANE: But then the issue of money, of
10 payment, came in. There was another grouse on the side of the SABC,
that they must carry regulations which are included in the Broadcasting
Act, stipulate that any subscription provider who has thirty bequests or
so must carry SABC1 and SABC2 but they do this free of charge
without paying any money to the SABC. This was a sore point for
SABC in that they benefit from audience ratings, they get advertisement
out of the content produced by SABC, they just cream off the work of
SABC.

Now to add now to this fact that MultiChoice only would pay
R50million initially and end up paying nothing for the 24 hour news
20 channel broke the conversation, that is how I left it.

CHAIRPERSON: So when you left there was an MOU or contract that
had been signed but there were discussions that had not been
finalised.

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Yes, thank you. Dr Ngubane just to – you would have noticed that the bundle the reference bundle contained several media clippings.

DR BALDWIN SIPHO NGUBANE: Yes.

ADV THANDI NORMAN SC: Yes that relates to you and I am sure you have read the criticism about Mr Motsoeneng's acting position, just to conclude that point, you are aware of the media clippings at the time?

DR BALDWIN SIPHO NGUBANE: Well I am aware of many things that the media says.

10 **ADV THANDI NORMAN SC:** Yes. So I don't – you don't, or unless you wish me to take you through all or to some of them but generally the criticism generally is about the appointment of Mr Motsoeneng largely.

DR BALDWIN SIPHO NGUBANE: Well as I have stated everything was done in good faith on the assumption that it helps the SABC.

ADV THANDI NORMAN SC: Thank you, and then lastly – or not lastly, sorry before we get to your general comments.

CHAIRPERSON: Maybe because you said you were rounding off a point maybe let me say this and then Dr Ngubane you can just indicate if you – my understanding is correct. My understanding now is that
20 your – my understanding is that you are saying the appointment of Mr Motsoeneng to the position of Acting COO, maybe starting with Acting Corporate Executive for Stakeholder Relations and his appointment as Acting COO may have been or was in breach of the requirements because he did not have matric, that we accept, but we acted in good faith, we thought that the circumstances which prevailed justified that

we appointment him nevertheless, is my understanding correct of what
...(intervention)

DR BALDWIN SIPHO NGUBANE: It is correct sir.

CHAIRPERSON: Okay, alright.

ADV THANDI NORMAN SC: Thank you Chairman. I am just going to
read to you Mr Hlaudi Motsoeneng has submitted a statement to the
Commission, but I would like to read a paragraph that relates to you
and ask for your comment, because when, by the time it comes to
testify you will probably not be here, but it is paragraph – he says at
10 paragraph 57, if I may just read:

“All SABC Board Chairpersons, Dr Ngubane, Prof Maguve, and
Ms L M Tshabalala were given a mandate to get rid of me as I
was a stumbling block for the Board members who wanted to
“eat”.”

Do you have any comment to that?

DR BALDWIN SIPHO NGUBANE: No. Well this is now taking me by
surprise, there was no mandate given to me to get rid of Mr
Motsoeneng. Mr Motsoeneng raised some issues as Acting COO about
some Board members who were wanting to get into a Siemens contract,
20 he raised it sharply with the Board, and that process was stopped.
That is the only - but that did not lead to any of us being given a
mandate to fire him.

ADV THANDI NORMAN SC: Yes, and who would have given – if there
was a mandate who would have given a mandate to you, do you know?

DR BALDWIN SIPHO NGUBANE: Well it must be someone higher than

us, because I wouldn't have ...(intervention)

CHAIRPERSON: You can't get your mandate from somebody below you.

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: Certainly not.

ADV THANDI NORMAN SC: Thank you. And then in paragraph, if you go back to your statement now, in paragraph 62 of your statement you make general comments, could you just make those comments, tell the Chairperson what you are saying in that paragraph?

10 **DR BALDWIN SIPHO NGUBANE:** Sorry, this 56?

ADV THANDI NORMAN SC: That is 62, at page 14 of your statement.

DR BALDWIN SIPHO NGUBANE: 62?

ADV THANDI NORMAN SC: Yes.

DR BALDWIN SIPHO NGUBANE: Well because of the turnaround project the Board tended to be probably too involved in terms of the conditions of the government guarantee the Board had to ensure that all predetermined objectives such as austerity measures were timeously attended, this meant close monitoring and supervision of management in implementing the turnaround measures.

20 What I did not say here was that Board members felt compelled to be very closely involved with the turnaround, because there was this lack of trust between the Board and senior management.

ADV THANDI NORMAN SC: Yes thank you. And then lastly Dr Ngubane at the time when you were the Chairperson of the SABC Board did you have any business interests, or companies that did business

with the SABC and if so which companies and at what level?

DR BALDWIN SIPHO NGUBANE: No we did not have a company in the broadcasting sector at all.

ADV THANDI NORMAN SC: And none of your family members did any business with SABC?

DR BALDWIN SIPHO NGUBANE: No, not a single one of them, I mean unless they act in Generations or something like that, which I may not know about, but there was no one doing business with SABC.

ADV THANDI NORMAN SC: Yes, thank you very much Chair, that is
10 the evidence.

CHAIRPERSON: Thank you. I think I would like us to go back to Mr Motsoeneng. You did say that the SABC had had certain people do certain jobs and they had failed and that is people who may have had matric and above, and Mr Motsoeneng seemed to be able to be effective you know without those qualifications. Now in this regard I take it that you were talking about the position the job he had to do as stakeholder relations manager, and as Group Executive for Stakeholder Relations, is that right?

DR BALDWIN SIPHO NGUBANE: That's correct.

20 **CHAIRPERSON:** Yes, now you did say that the jump from stakeholder relations manager to Group Executive Stakeholder Relations was quite a significant jump, and your – for the acting appointment no other people were asked to make themselves available because that's how acting appointments were made.

DR BALDWIN SIPHO NGUBANE: Yes sir.

CHAIRPERSON: Ja, but you did say for the permanent appointment to that position the position was advertised, is that right, for the position of Group Executive for stakeholder relations, that position was advertised for permanent appointment.

DR BALDWIN SIPHO NGUBANE: That's right.

CHAIRPERSON: Yes, and do you remember what requirements were put for the advert for that position, do you require – do you remember in terms of requirements for educational qualifications or is that something you can't remember.

10 **DR BALDWIN SIPHO NGUBANE:** Well that is the adverts that I was given to read.

CHAIRPERSON: I think that one was for COO, I may be mistaken, I thought it was for Acting COO.

ADV THANDI NORMAN SC: It was for COO position.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: For a permanent position.

CHAIRPERSON: Yes. But I am now talking about not permanent for COO, I'm talking for permanent Group Executive for Stakeholder Relations, because I understood you earlier on, and you can just tell
20 me me if I misunderstood, I understood you to say the Board appointed Mr Motsoeneng as Acting Group Executive for Stakeholder Relations, but that later on there was an advert for a permanent position into – for that – a permanent appointment for that position, did I misunderstand?

DR BALDWIN SIPHO NGUBANE: No, when he was stakeholder manager in the office of the CEO.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: He was then asked to be also communication person for the Board.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: When he became Acting COO he did not do those jobs anymore.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: He was an Executive Member of the Board.

10 **CHAIRPERSON:** Yes, yes.

DR BALDWIN SIPHO NGUBANE: So there was no connection between him being stakeholder manager in the CEO's office and being Acting COO.

CHAIRPERSON: Yes.

DR BALDWIN SIPHO NGUBANE: Those two were still before the COO Acting stage.

20 **CHAIRPERSON:** Okay. I thought that he went through four stages, or three stages while you were there, I think the fourth stage namely a permanent appointment as COO happened when you were no longer there.

DR BALDWIN SIPHO NGUBANE: That's right.

CHAIRPERSON: I thought that you said while you were there, there were three positions to which he was appointed.

DR BALDWIN SIPHO NGUBANE: That's right.

CHAIRPERSON: One was where he was appointed by the Group Chief

Executive Officer as Manager for Stakeholder Relations.

DR BALDWIN SIPHO NGUBANE: That's right.

CHAIRPERSON: And the second was where he was appointed as initially Group Executive for Stakeholder Relations.

DR BALDWIN SIPHO NGUBANE: That's right.

CHAIRPERSON: And that later he was appointed as Acting COO.

DR BALDWIN SIPHO NGUBANE: That's right.

CHAIRPERSON: So I thought those were the three positions, but now I am talking about the middle one, and when I say middle it doesn't
10 necessarily it's below another one, I am talking about the Group Executive for Stakeholder Relations.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: I thought that your evidence was that initially he was appointed in an acting capacity to that position.

DR BALDWIN SIPHO NGUBANE: That's right.

CHAIRPERSON: But that later on that position was advertised for permanent appointment.

DR BALDWIN SIPHO NGUBANE: That's right.

CHAIRPERSON: Am I right in that – understanding that?

20 **DR BALDWIN SIPHO NGUBANE:** We were not involved in that.

CHAIRPERSON: You were not involved in that?

DR BALDWIN SIPHO NGUBANE: No.

CHAIRPERSON: Oh, for Group Executive?

DR BALDWIN SIPHO NGUBANE: That's right.

CHAIRPERSON: Okay, but it – there was an advertisement for that

post for permanent appointment as far as you know.

DR BALDWIN SIPHO NGUBANE: Well there should have been because it was now a vacated position.

CHAIRPERSON: Yes, okay, okay but you were not involved in that.

DR BALDWIN SIPHO NGUBANE: I was not involved.

CHAIRPERSON: The Board was not involved?

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Okay, I thought that all Group Executive appointments were made by the Board.

10 **DR BALDWIN SIPHO NGUBANE:** No the three, CEO, CFO, COO.

CHAIRPERSON: Oh.

DR BALDWIN SIPHO NGUBANE: But the others are made by the CEO but reports to us.

CHAIRPERSON: Oh, okay, okay, so to the extent that he may have been appointed as permanently as Group Executive for Stakeholder Relations.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: That appointment would not have been made by the Board.

20 **DR BALDWIN SIPHO NGUBANE:** No.

CHAIRPERSON: It would have been made by the Group CEO.

DR BALDWIN SIPHO NGUBANE: That's right.

CHAIRPERSON: Oh okay, alright. It's only at the level of Acting COO that the Board got involved with regard to him?

DR BALDWIN SIPHO NGUBANE: Absolutely, and informed the

Minister.

CHAIRPERSON: And informed the Minister, just for Acting.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: But when it came to the permanent appointment his permanent appointment to that position you had left?

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: Yes okay. Okay so – so

1. In terms of the board appointing him as an acting COO insofar as you did not consider other people you – your position was that for acting appointment as a practice to any of those positions advertisements were not made for acting appointments?

DR BALDWIN SIPHO NGUBANE: That is correct.

CHAIRPERSON: Even internally?

DR BALDWIN SIPHO NGUBANE: That is correct.

CHAIRPERSON: So the board would just have a look at people and identify a person that it thought was suitable and as long as that person was already employed at the same level.

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: Then is could appoint?

- 20 **DR BALDWIN SIPHO NGUBANE**: That is right.

CHAIRPERSON: Yes. Okay. So – so the one for Group Executive was it at the same level as COO?

DR BALDWIN SIPHO NGUBANE: No that is higher.

CHAIRPERSON: COO is higher?

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: Okay. So – so – so where you seek an acting appointment for COO does this require – did this requirement that the person must be on the same level apply or did it not apply? You indicated earlier on that when you are going to appoint somebody as an act – in an acting capacity.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: Although you do not advertise.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: But the person you appoint must be on the same
10 level?

DR BALDWIN SIPHO NGUBANE: Must be at the Group level.

CHAIRPERSON: Must be at the Group level.

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: But Group level is not everybody on the same level?
There are different levels to the Group level.

DR BALDWIN SIPHO NGUBANE: That is right. That is right.

CHAIRPERSON: So he was at Group level even though not at COO
level?

DR BALDWIN SIPHO NGUBANE: That is right.

20 **CHAIRPERSON**: And you were then entitled to – he was one of the
people you were entitled to look at?

DR BALDWIN SIPHO NGUBANE: That is right.

CHAIRPERSON: Yes. Okay. Okay. And then of course you – you
accept that for that position that position required qualifications that he
did not have but you say that you took the view as the board that

having regard to what had happened before and having regard to what – to his performance in the previous positions you thought that you should appoint him?

DR BALDWIN SIPHO NGUBANE: That is correct.

CHAIRPERSON: Yes and the difference I think you did say I am just refreshing my memory. The difference between the level at Group Executive for Stakeholder Relations and COO was also significant?

DR BALDWIN SIPHO NGUBANE: Absolutely.

CHAIRPERSON: Yes, yes. And again coming back to his skills. You
10 said earlier on what he had was people's skills or people skills, people's skills which I have – I understand to be he was good with dealing with people, is that right? Is there anything else?

DR BALDWIN SIPHO NGUBANE: In my time Mr Chairman.

CHAIRPERSON: Yes. During your time?

DR BALDWIN SIPHO NGUBANE: Yes.

CHAIRPERSON: But was there anything else that you thought he was he stood out – was outstanding about him in terms of the performance of the job other than being good with people?

DR BALDWIN SIPHO NGUBANE: He knew the SABC backwards. He
20 knew exactly who was doing what. What system was being overridden? How false commissions were being generated. He knew a lot. So he was very valuable to us to stop money flowing from the SABC illegally.

CHAIRPERSON: Okay and of course as far as the permanent appointment is concerned you were not there so therefore you cannot say anything – you cannot answer for when he was appointed

permanently?

DR BALDWIN SIPHO NGUBANE: Absolutely.

CHAIRPERSON: You do not know who else was available and so on?

DR BALDWIN SIPHO NGUBANE: Absolutely.

CHAIRPERSON: Yes. Okay thank you.

ADV THANDI NORMAN SC: Thank you Mr Chairman.

CHAIRPERSON: Anything arising?

ADV THANDI NORMAN SC: That is all Chair.

CHAIRPERSON: Yes.

- 10 **DR BALDWIN SIPHO NGUBANE**: Except that Chair maybe just to – the questions that you asked the witness now they are – about his progression and the career history.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Appears at page 217.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Of Exhibit CC32.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you Chair.

- 20 **CHAIRPERSON**: No thank you very much Doctor Ngubane. It may be that we might ask you to come back.

DR BALDWIN SIPHO NGUBANE: Alright.

CHAIRPERSON: So I have no doubt you will come back if we ask you to come back. But thank you very much for coming to give evidence and to share your knowledge of what happened at SABC with the commission.

DR BALDWIN SIPHO NGUBANE: Thank you.

CHAIRPERSON: Thank you very much.

DR BALDWIN SIPHO NGUBANE: Can my legal representative have a record of this?

CHAIRPERSON: Yes, yes he can have it – he can have it. There should be no problem at all. He will talk to the legal team. There should be no problem.

ADV THANDI NORMAN SC: Yes thank you.

CHAIRPERSON: Thank you very much you are excused.

10 **DR BALDWIN SIPHO NGUBANE:** Thank you very much.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Thank you Chair may I have just a five minute adjournment just for change. We are having another witness and also he has slides.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: And some things to demonstrate.

CHAIRPERSON: Yes okay.

ADV THANDI NORMAN SC: Such as – yes.

CHAIRPERSON: Five minutes or ten?

20 **ADV THANDI NORMAN SC:** No ten will also be good Chair. The only challenge I have Chair today is that we – I was – I am not going to ask Chair to proceed beyond four o'clock.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: The reason being that there is a witness that we have to meet with now we said he must come at four o'clock.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: That is the challenge I have Chair.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: But we are in your hands Chair. If you feel that maybe we should adjourn for the day because it is already twenty to four and resume tomorrow morning.

CHAIRPERSON: Oh you say you – the next witness should take how long in terms of the evidence?

ADV THANDI NORMAN SC: He is long Chair.

10 **CHAIRPERSON**: He is long.

DR BALDWIN SIPHO NGUBANE: He deals with the DTT and he is going to demonstrate how it works and he is going to be along witness and I would not want to rush him Chair.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Well maybe we should then – but you say he is not available after four or you are...

ADV THANDI NORMAN SC: I am – the team is not available Chair.

CHAIRPERSON: The team is not available.

20 **ADV THANDI NORMAN SC**: We have a witness that we have arranged to meet.

CHAIRPERSON: Oh you have a witness to...

ADV THANDI NORMAN SC: Yes, yes.

CHAIRPERSON: Okay maybe we should adjourn now.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Then and not start four and then...

ADV THANDI NORMAN SC: And then leave it.

CHAIRPERSON: And then do it for ten minutes and then break.

ADV THANDI NORMAN SC: Yes Chair thank you.

CHAIRPERSON: And – and if we start tomorrow is how long do you think he might – the whole day or...

ADV THANDI NORMAN SC: No, no Chair he will not take the whole day. Maybe two and half hours.

CHAIRPERSON: Maybe two and half hours.

10 **ADV THANDI NORMAN SC**: Yes. Yes.

CHAIRPERSON: I am trying to see whether there is a need to start early tomorrow or not. We do not need to start early if we will be fine.

ADV THANDI NORMAN SC: I think we will be fine Chair.

CHAIRPERSON: We should be fine.

ADV THANDI NORMAN SC: Yes because I have only – there was only witness for tomorrow.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: And then if we start with him.

CHAIRPERSON: Ja.

20 **ADV THANDI NORMAN SC**: Because he has been here today.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: Then we should finish both witnesses yes thank you.

CHAIRPERSON: Okay. Alright we will adjourn for the day and then we will start at ten o'clock tomorrow.

ADV THANDI NORMAN SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 10 SEPTEMBER 2019