

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

27 SEPTEMBER 2019

DAY 172

20

PROCEEDINGS RESUMES ON 27 SEPTEMBER 2019

CHAIRPERSON: Good morning Ms Wentzel, good morning everybody.

ADV SUSAN WENTZEL: Good morning Chair.

CHAIRPERSON: Are we ready? Yes. Mr Khuba you will continue to give evidence on the strength of the oath that you took two days ago. Okay.

MR HUMBULANI INNOCENT KHUBA: Thank you.

CHAIRPERSON: Thank you. Alright. Continue.

ADV SUSAN WENTZEL: Mr Khuba you were testifying yesterday that
10 you briefed Mr McBride on the Rendition case and he then instructed you to go and collect the docket which you did. Could you then tell the Chair how it came about that what is now known as the second report was prepared?

CHAIRPERSON: I am sorry Ms Wentzel I did not hear the question and the reason I did not hear it is because I saw what they have written on your name tag there. Did you see that?

ADV SUSAN WENTZEL: No.

CHAIRPERSON: It says you are Advocate Wentzel SC.

ADV SUSAN WENTZEL: I know that is a very nice promotion. I will
20 tell the bar council.

CHAIRPERSON: Okay yes. Do you want to repeat the question so I can hear it?

ADV SUSAN WENTZEL: Yes Chair. Could you explain to the Chair how it came about that you compiled the second report together with Sibiya? I mean Sesoko – Sesoko. I beg your pardon.

MR HUMBULANI INNOCENT KHUBA: Thank you. After I was allowed to go and collect the docket from Gauteng I came back with the docket and I had already been informed because Mr Sesoko was not involved from the onset to say that I need to involve Mr Sesoko. So I did attachment of the evidence that we – that I had already acquired and we evaluated the evidence in totality which gave birth to what is called the second report.

ADV SUSAN WENTZEL: And is that the report that appears in the bundle at page 139?

10 **MR HUMBULANI INNOCENT KHUBA:** That is correct.

ADV SUSAN WENTZEL: Now the final recommendation in that report is as follows:

CHAIRPERSON: I think let us always as far as possible refer to them as either the first report, the amended report or the second report so it would be clear which one we are talking about.

ADV SUSAN WENTZEL: Thank you.

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: The – if you have regard to page 176 of the second report it says:

20 “Based on the available evidence the independent police investigative directorate recommends that no charges should be brought against Lieutenant General Dramat and Major General Sibiya. The investigation established there is no prima facie case against them. However with regard to Colonel

Maleleke there is a prima facie case to sustain charges of kidnapping and defeating the ends of justice.”

Is that correct?

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: And this report was signed both by you, Mr Sesoko and Mr McBride, is that correct?

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: And what was Mr McBride’s involvement in the
10 compilation of the report?

MR HUMBULANI INNOCENT KHUBA: Mr McBride was not involved in the actual compilation however what happened is that because he was going to co-sign the document went to him for spelling check and it was returned to us until he was satisfied about the quality of the report.

ADV SUSAN WENTZEL: Now if you go to page 25 of your statement at – in paragraph 81 you say:

“Shortly before Mr McBride’s suspension in March
2015 you received a number of calls from the
personal assistance of the then Minister of Police
20 Minister Nathi Nhleko.”

Could you tell the Chair and direct your answers to the Chair please what was that about?

MR HUMBULANI INNOCENT KHUBA: The call was about the Minister wanting to see me personally.

CHAIRPERSON: Before we go further on that point. Let us go back to

the point that – to the answer that you just gave earlier to Ms Wentzel's question. I understand from the report of Werksmans or Werksmans do you know whether they prefer to be called Workmans or Werksmans?

ADV SUSAN WENTZEL: I do not know. I always call them Workmans but other people call them Werksmans.

CHAIRPERSON: Okay, alright. It seems from that report of Workmans or Werksmans that the report says that when they interviewed Mr McBride he said that he had not seen the first report when he signed the second report. But they say that you contradicted
10 him when they interviewed you and in this regard if I am not mistaken they say that you – he had – you said he instructed you to retrieve the docket and from that they seem to infer that he must have seen the first report. Did you say to them that he had seen the first report?

MR HUMBULANI INNOCENT KHUBA: Chairperson I still remember very well that they wanted to know whether when he wanted an update he – I had handed him a copy of the report.

CHAIRPERSON: Of the first report?

MR HUMBULANI INNOCENT KHUBA: Of the first report but I indicated to them that I handed a copy to Mr Sesoko who might have handed to
20 McBride.

CHAIRPERSON: Who might have handed it to – oh.

MR HUMBULANI INNOCENT KHUBA: Handed it to McBride.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: I never saw whether he ...

CHAIRPERSON: He did or not.

MR HUMBULANI INNOCENT KHUBA: He handed – not.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And yesterday when I was testifying I indicated that the report – there was a report which was sent to Mr Sesoko on the 23rd which means that report had already changed. So if I can say what I handed to Sesoko was a January report I would not really be very correct on the basis that they had that slight change only on recommendation that we cannot place General Sibiya at the scene.

10 **CHAIRPERSON:** But the short answer is that you do not know whether or not Mr McBride did see the first report before signing the second report?

MR HUMBULANI INNOCENT KHUBA: I do not know Chairperson.

CHAIRPERSON: Yes. He may or he may not you do not know?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay. Thank you.

ADV SUSAN WENTZEL: And Mr Khuba just to clarify the report that you sent to Mr Sesoko was that what we are now calling the amended report

20 **MR HUMBULANI INNOCENT KHUBA:** That is correct.

ADV SUSAN WENTZEL: So it was not the first report it was the amended report?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: And do you know whether Mr McBride saw the amended report before signing the second report?

MR HUMBULANI INNOCENT KHUBA: I do not know.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Thank you Chair. Now if you go now please deal with the telephone conversation – the telephone call you received from the Minister's personal assistant dealt with in paragraph 81 of your statement, page 25?

MR HUMBULANI INNOCENT KHUBA: I received a call from the personal assistant to the Minister. It was Minister Nhleko and she made it clear that she is the personal assistant of the Minister and she
10 told me that the Minister wanted to meet me personally. I then requested to know what was that about – she just gave me a highlight to say it is about the Rendition. Then I indicated – I informed her that I would need permission from the Executive Director Mr McBride and I cannot be able to just go and meet with the Minister. Then she suggested and that was I think on the subsequent call. She suggested and said to me the Minister would want to meet with you in Cape Town over the weekend. They will arrange transportation and McBride will never know. Then on Sunday you will be back and then on Monday you will be able to report on duty. Now I indicated to her that it does not
20 matter it is over the weekend because if I come there I will be discussing issues pertaining to the department and the Accounting Officer must know.

CHAIRPERSON: And what was her response to that?

MR HUMBULANI INNOCENT KHUBA: No she indicated to me that she will talk to the Minister again.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: That is when on the following day I received a call from the Minister himself.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Both these numbers were saved in my cell phone and I still have them today.

CHAIRPERSON: Okay and therefore you would – would you have the – even the exact date when you received these calls or not the dates?

MR HUMBULANI INNOCENT KHUBA: I may not remember but it may
10 appear somewhere.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Because shortly after that I had spoken to the Executive Director. There were some ...

CHAIRPERSON: Mr McBride?

MR HUMBULANI INNOCENT KHUBA: McBride.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: There were some documents which were done. I think they might have captured the date I cannot – but now I cannot remember the date.

20 **CHAIRPERSON:** But it was March?

MR HUMBULANI INNOCENT KHUBA: But what I have it is ...

CHAIRPERSON: But it was March 2015?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes okay so you...

MR HUMBULANI INNOCENT KHUBA: But the exact date I cannot

remember.

CHAIRPERSON: So you received a call from the Minister himself Mr Nhleko?

MR HUMBULANI INNOCENT KHUBA: Yes.

CHAIRPERSON: Yes and what – what did he say in the telephone call?

MR HUMBULANI INNOCENT KHUBA: His call lasted very – it might be less than – not even a minute. He just said I want you to cooperate with Werksmans. And then I said okay and then he terminated the call.

CHAIRPERSON: Oh. At that stage had you been – had Werksman
10 been in touch with you at that stage?

MR HUMBULANI INNOCENT KHUBA: Yes.

CHAIRPERSON: They had been in touch with you.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: But had you had an interview with them already or not yet?

MR HUMBULANI INNOCENT KHUBA: No I had not yet had the interview with them.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: They just call me requesting me
20 to attend the...

CHAIRPERSON: Interview.

MR HUMBULANI INNOCENT KHUBA: Interview.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And I referred them to ...

CHAIRPERSON: The Executive Director.

MR HUMBULANI INNOCENT KHUBA: To the Executive Director.

CHAIRPERSON: Oh. And what did the – what was their response when you referred them to the Executive Director?

MR HUMBULANI INNOCENT KHUBA: At some stage there were some exchange I think of emails between them and Mr Sesoko.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Because I also indicated to them that even though the Executive Director is the head of the department.

CHAIRPERSON: Hm,

10 **MR HUMBULANI INNOCENT KHUBA:** Sesoko is the direct supervisor and I report direct to him.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: So I gave them I think the email of Mr Sesoko and then they started liaising with him.

CHAIRPERSON: Hm. And when you – if you look at the time when you had that interaction with Werksmans and the time or the date when the Minister spoke to you and said he wanted you to cooperate with Werksmans did – how much time had elapsed? Do you have a recollection? A week, two weeks, a few days?

20 **MR HUMBULANI INNOCENT KHUBA:** I cannot remember but the time lapse there was not really huge on the basis that after I indicated that I will not be able to meet with the Minister in Cape Town McBride was then suspended.

CHAIRPERSON: Was that like in a few days' time after the call?

MR HUMBULANI INNOCENT KHUBA: It did not take a month.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: But I cannot really quantify in terms of...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Days.

CHAIRPERSON: Oh but maybe around a month or so after the call.

MR HUMBULANI INNOCENT KHUBA: Less than a month – less than a month – let us say...

CHAIRPERSON: Less than a month?

10 **MR HUMBULANI INNOCENT KHUBA:** Weeks.

CHAIRPERSON: Weeks ja.

MR HUMBULANI INNOCENT KHUBA: Ja.

CHAIRPERSON: Okay. So did you get the impression that Werksmans had reported to the Minister that you had referred them to Mr McBride when they wanted to – you to come for an interview?

MR HUMBULANI INNOCENT KHUBA: I just got an indication that probably Werksman had contacted him.

CHAIRPERSON: Hm.

20 **MR HUMBULANI INNOCENT KHUBA:** That is why he had to contact me.

CHAIRPERSON: Hm. And he must have formed the view that you were not cooperating with them?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: And thought it was necessary that he should make the call personally to you and – actually he had wished to have a meeting

with you.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: In Cape Town.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: The call must – he must have made the call because you kept on saying that you would need Mr McBride's permission.

MR HUMBULANI INNOCENT KHUBA: That is correct but I need to indicate clearly Chairperson that it is not the Minister himself who proposed Cape Town. It is the PA saying the Minister wants to meet me
10 with – with me in Cape Town.

CHAIRPERSON: Yes, no, no I understand that completely but obviously she was conveying to you what the Minister had asked her because she was the PA's Minister and she was – I am saying she it could have been a he – was – had been sent by the Minister to call you and ask you come to Cape Town. Otherwise the PA would not say come to Cape Town unless the Minister wanted you to come to Cape Town.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes. And was this the first time that you spoke to – you were speaking to the Minister?

20 **MR HUMBULANI INNOCENT KHUBA:** That is correct.

CHAIRPERSON: Yes. But he – what he had to say was just brief. I want you to cooperate with Werksmans.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: When he came on the – when he phoned – were you phone by his PA who then said please hold on for the Minister or did he

phone and you picked up the phone – the call. You did not know the number and he said this is the Minister of Police or I am Nathi Nhleko the Minister of Police I would like you to cooperate with Werksmans. How did it – how did he introduce himself to you?

MR HUMBULANI INNOCENT KHUBA: He phoned directly.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: They were having different numbers.

CHAIRPERSON: Yes. Yes. Well was that on a cell phone or on a
10 landline?

MR HUMBULANI INNOCENT KHUBA: He used a cell phone.

CHAIRPERSON: A cell phone okay. So how did he start the conversation with you?

MR HUMBULANI INNOCENT KHUBA: He introduced himself.

CHAIRPERSON: Ja in what way?

MR HUMBULANI INNOCENT KHUBA: To say that he is the Minister of Police.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And I could hear the voice
20 because I think few weeks he had come to our office and addressed us.

CHAIRPERSON: Okay.

MR HUMBULANI INNOCENT KHUBA: So I was really familiar with his voice.

CHAIRPERSON: With his voice yes. And then he just said he would like you to cooperate with – with Werksmans.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes. Okay thank you.

ADV SUSAN WENTZEL: Mr Khuba after Mr McBride was suspended who replaced him?

MR HUMBULANI INNOCENT KHUBA: It was Mr Israel Kgamanyane.

ADV SUSAN WENTZEL: And ...

CHAIRPERSON: I am sorry Ms Wentzel. Did you see the direct approach by the Minister to you as opposed to him talking to the Executive Director to pass on the message to you as something
10 unusual or strange or did you see nothing unusual?

MR HUMBULANI INNOCENT KHUBA: For me it was very unusual because politicians normally will not communicate with the staff. They make communicate with heads of departments because they report direct to them. So I felt that probably he wanted me to do something without Mr McBride knowing.

CHAIRPERSON: And Mr McBride never told you anything along the lines that the Minister did approach him to ask him to release you to go and see him in Cape Town?

MR HUMBULANI INNOCENT KHUBA: No he did not.

20 **CHAIRPERSON:** And if he – if that had happened he probably would have told you?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Did you get any impression that the Minister was trying to bypass the Executive Director on this matter – on the Rendition matter?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Hm. Okay.

ADV SUSAN WENTZEL: Thank you Chair. Mr Khuba you say in paragraph 83 on page 26 of your statement that hereafter you went to Duma Nokwe Chambers in Sandton and met with Advocate William Mokhari SC. Could you explain what happened at that meeting? Firstly who told you to go and what happened?

MR HUMBULANI INNOCENT KHUBA: Shortly after the appointment of Mr Kgamanyane as the Acting Executive Director I was told by him to
10 go to Duma Nokwe Chambers in Sandton to meet with Advocate William Mokhari. In the morning I went there as I was instructed and when I arrived at the reception I just sat there and waiting for him. He came down and never requested me to go with him to his office. He spoke with me at the reception. He was standing. And I was standing because I was shaking his hand.

CHAIRPERSON: Is that Mr Kgamanyane?

MR HUMBULANI INNOCENT KHUBA: No that is Advocate Mokhari at Duma Nokwe Chambers.

CHAIRPERSON: Oh in his chambers.

20 **MR HUMBULANI INNOCENT KHUBA:** That is correct.

CHAIRPERSON: Okay. Ja.

MR HUMBULANI INNOCENT KHUBA: Now he requested me to make a support affidavit a confirmatory affidavit in support of the Minister. I then refused and I told him that if I do that I will be lying. And he did not say anything. He said no it is fine you can go back. And then I

left. It was the shortest meeting I had. Then I went back.

ADV SUSAN WENTZEL: Now tell me...

CHAIRPERSON: Had you seen – I am sorry. Had you seen the Minister's affidavit that you – that he was asking you to – to sign a confirmatory affidavit about.

MR HUMBULANI INNOCENT KHUBA: I had not yet seen it. I – even now.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: I do not know that affidavit.

10 **CHAIRPERSON:** Oh But what – how – how could you say if you signed a confirmatory affidavit you would be lying if you had not yet seen what the Minister's affidavit said or was saying?

MR HUMBULANI INNOCENT KHUBA: I said that on the basis that this issue was on the media and the Minister had a version of what happened. So now it immediately came to my awareness that what I have to confirm it is what he has been speaking publicly.

CHAIRPERSON: In the media. Yes.

MR HUMBULANI INNOCENT KHUBA: Because – and that was not the true reflection of what happened.

20 **CHAIRPERSON:** And in brief what was the version that you had seen in the media being attributed to the Minister?

MR HUMBULANI INNOCENT KHUBA: The version is that McBride altered – influenced me to alter the report.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: The report was deleted to suit

the recommendation that NPA cannot charge Dramat and Sibiya.

CHAIRPERSON: Hm. Okay.

ADV SUSAN WENTZEL: Did you hereafter attend further interviews with Werksmans or Worksmans?

MR HUMBULANI INNOCENT KHUBA: That is correct. I had three interviews with them. And in my first meeting with them they assured me – it was a panel of three or four – I think three and they assured me that the investigation they were doing will not result in a criminal or departmental recommendation against me or resulting in me being
10 charged. And I said is there a need for me to be legally represented? And they said no. I did not record that but we had discussed this at length with Mr Sesoko and Sesoko said we – you must not forget we need to raise this issue. And I thought they captured it in their record. For some reason I did not see that appearing. And that is when I started to be free to talk to them after that assurance.

CHAIRPERSON: Were they recording you?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes. So from their recording whatever you said in terms of this issue should appear?

20 **MR HUMBULANI INNOCENT KHUBA:** That is correct.

CHAIRPERSON: Do you know whether it does appear in their transcripts or have you not had a chance to...

MR HUMBULANI INNOCENT KHUBA: I checked the transcript because we once requested them when we were being charged but we could not get the audio. They sent the transcribed record.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And that part did not appear.

CHAIRPERSON: Hm. Hm. Did you ask for the audio and they did not provide it or did you not ask for it?

MR HUMBULANI INNOCENT KHUBA: I think we might have asked for it but let me say I am speaking under correction now.

CHAIRPERSON: Yes okay.

MR HUMBULANI INNOCENT KHUBA: But my common sense tells me that if you are to do a [indistinct] you want to compare.

10 **CHAIRPERSON:** Yes.

MR HUMBULANI INNOCENT KHUBA: The difference between what is transcribed.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Because some words cannot be as audible as one may think.

CHAIRPERSON: Ja. Ja. But do you have a clear recollection whether when you raised that issue namely could this result in me being disciplined or being charged. Do I need a lawyer here? Do you have a clear recollection that at that stage the recording was on because it – it
20 having been a first thing – the first thing you raised it may well be that you raised it before the proceedings started formally and therefore it might not have been captured?

MR HUMBULANI INNOCENT KHUBA: I did after they introduced themselves. They indicated that they are on record.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And then they introduced each other. Then I started asking the question. And that part I was fortunate enough because Mr Sesoko had a separate recording which he used himself and that was captured.

CHAIRPERSON: Your one as opposed to Mr Sesoko's one?

MR HUMBULANI INNOCENT KHUBA: His one?

CHAIRPERSON: Ja.

MR HUMBULANI INNOCENT KHUBA: And it just gave me a consolation.

10 **CHAIRPERSON:** Yes.

MR HUMBULANI INNOCENT KHUBA: That I could not record but our situation was just exactly the same.

CHAIRPERSON: Hm. Hm. But – but is your answer to my question that you do know that it was recorded and therefore if the audio recording could be accessed it will be there or it should be there or are you saying you are not sure?

MR HUMBULANI INNOCENT KHUBA: I am sure that if it is recorded it is there. But let me just give a little bit of just...

CHAIRPERSON: Well – I am sorry before you do that. You see my
20 question is whether if we get the recording we are likely to find it there unless there has been interference. As far as you know and that depends

1. On whether you know that when you raised that point the recording had started or you do not know?

MR HUMBULANI INNOCENT KHUBA: What I can say Chairperson is

that after they introduced themselves that is when I indicated that part regarding legal representation. But the point that I am coming to Chairperson is that I am not sure whether they – but the recording was there in front of me.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: So that part I may not know.

CHAIRPERSON: Yes or whether the recording was on.

MR HUMBULANI INNOCENT KHUBA: It was playing or...

CHAIRPERSON: Or not.

10 **MR HUMBULANI INNOCENT KHUBA:** I cannot really tell that much.

CHAIRPERSON: Yes. But you said something earlier on about them saying we are on record.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Was that before you raised the point?

MR HUMBULANI INNOCENT KHUBA: That was before they raised the point because they indicated they had a way where they did their things. They would firstly indicate the day ...

CHAIRPERSON: Hm, *ja*.

20 **MR HUMBULANI INNOCENT KHUBA:** And mention the date and then after that they will say ...

CHAIRPERSON: The recording?

MR HUMBULANI INNOCENT KHUBA: They are on record.

CHAIRPERSON: Yes, but what I am asking is whether when - as far as you can remember - when they said we are on record ...

MR HUMBULANI INNOCENT KHUBA: Hm.

CHAIRPERSON: Whether that was before or after you had raised the point to say do I need a lawyer to - to represent me here. Am I at risk for a disciplinary charge or a criminal charge?

MR HUMBULANI INNOCENT KHUBA: What I can say I think it was after they said they are on record but what I remember vividly ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Is that it is after they introduced themselves.

CHAIRPERSON: Okay, okay. Thank you. I think attempts should be
10 made to try and get the record - the audio.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: *Ja.*

ADV SUSAN WENTZEL: We will make a note of that.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Now after the interviews Werksmans produced a report which appears at the bundle page 178.

CHAIRPERSON: Before you deal with the report Ms Wentzel.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: You will recall that yesterday I indicated that I would
20 like Mr McBride, Mr Sesoko and Mr Khuba to look at the report properly and submit affidavits that deal with the findings of the report and the reasons given for the findings relating to them. Now I do not know whether in regard to Mr Khuba you propose to deal with those issues with him now while he is on the witness stand or whether you intend - you propose to let him also go and do that - submit that an - an

affidavit that does so of course with him, Mr McBride and Mr Sesoko if there is a need for anyone of them or all of them to be called back to deal with that aspect that can be done. Have you applied your mind as to how you propose to deal with it?

ADV SUSAN WENTZEL: Chair, I was going to deal with it with the witness because ...

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: There is a great deal of what is said ...

CHAIRPERSON: Hm.

10 **ADV SUSAN WENTZEL:** In the report is based upon what they say they were told by Mr Khuba.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: There is also part of these papers a confirmatory affidavit that Mr Khuba deposed to in support of McBride ...

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: In his disciplinary proceedings.

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: In that ...

20 **CHAIRPERSON:** Affidavit.

ADV SUSAN WENTZEL: Affidavit ...

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: He deals with

CHAIRPERSON: The report?

ADV SUSAN WENTZEL: Comprehensively all the things ...

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: The - the grounds upon which Werksmans say they came to their final conclusion that the report had been altered.

CHAIRPERSON: Oh, okay.

ADV SUSAN WENTZEL: And ...

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Because of that I think that perhaps ...

CHAIRPERSON: No, no that is ...

ADV SUSAN WENTZEL: He is in a position to ...

10 **CHAIRPERSON:** That is fine.

ADV SUSAN WENTZEL: To deal with it.

CHAIRPERSON: That is - this fine and Mr Khuba you are ready to deal with this report ...

MR HUMBULANI INNOCENT KHUBA: *Ja.*

CHAIRPERSON: Properly?

MR HUMBULANI INNOCENT KHUBA: I - I think - I am okay. We - we dealt with - with it ...

CHAIRPERSON: Yes.

20 **MR HUMBULANI INNOCENT KHUBA:** But I think what will be a little bit of a challenge ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Would be if I get more time ...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: The recollection is ...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Enhanced.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: In terms of certain things.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Because how I articulated it in a confirmatory affidavit.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: It was when things were still fresh.

10 **CHAIRPERSON:** Yes, yes, yes. Well of course when things were still fresh it would mean that you had a better recollection ...

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Of what had happened?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: So - so you said something about if you have more time.

MR HUMBULANI INNOCENT KHUBA: More time to go through that confirmatory affidavit ...

CHAIRPERSON: Oh, okay.

20 **MR HUMBULANI INNOCENT KHUBA:** And the report itself.

CHAIRPERSON: Yes, okay. Okay.

MR HUMBULANI INNOCENT KHUBA: That is ...

CHAIRPERSON: You have not had time to do that comprehensively of late?

MR HUMBULANI INNOCENT KHUBA: I - I did it last night ...

CHAIRPERSON: Yes, yes.

MR HUMBULANI INNOCENT KHUBA: Because that is when you raise it Chairperson ...

CHAIRPERSON: Yes, yes.

MR HUMBULANI INNOCENT KHUBA: But ...

CHAIRPERSON: You prefer to have more time?

MR HUMBULANI INNOCENT KHUBA: Then if I can have a little bit of indulgence to ...

CHAIRPERSON: Yes, yes.

10 **MR HUMBULANI INNOCENT KHUBA:** Really make the difference.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: *Ja.*

CHAIRPERSON: No I - I would be - I - I would want you to do that because you see that report is important with regard to the role of Werksmans on this whole issue and I will give Werksmans an opportunity. I think Mr July will need to be called to give evidence and to give their side of the story with regard to how they handled this and the conclusions that they reached in the - he reached in the report but I - I would like you, Mr Sesoko and Mr McBride to really look at the - the
20 report. How it dealt with issues.

What it says about each one of you and what findings it makes? What the reasons are that given for each finding against you and against the material that Werksmans had before the remuneration to - what statements did they have? What documents did they have you know on which their findings were supposed to be made.

So - I - I would be inclined to give you that opportunity because also the - because I think that the Minister and Mr Kgamanyane or the Minister must have made the decisions to suspend or was it the - the Acting Director. I cannot remember now who made the decision to suspend the three of - the three of you - must have made that on the basis of that report and the three of you were put through quite a difficult situation and - and I would like you to be able to deal with it quite properly so that when I evaluate all the evidence about how the three of you were dealt with and how the
10 Minister - what role the Minister played, what role Werksmans played, what role Mr Kgamanyane played and everybody.

I have a full picture. So that - that is what I am inclined to do. What do you say Ms Wentzel?

ADV SUSAN WENTZEL: I - I have got no difficulty with that ...

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: That approach whatsoever.

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: The only thing Chair is ...

CHAIRPERSON: Hm.

20 **ADV SUSAN WENTZEL:** There are one or two aspects in the report ...

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: That I would like to draw to your attention ...

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: And also to the attention of the witness ...

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: Which do not deal specifically with the allegations ...

CHAIRPERSON: Huh-uh.

ADV SUSAN WENTZEL: Against him or things that they say he said.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: Hm.

CHAIRPERSON: No that is fine. That is fine.

ADV SUSAN WENTZEL: So if we could have regard to page - the report Chair starts at page 178.

10 **CHAIRPERSON:** 100-and ...?

ADV SUSAN WENTZEL: 78.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: And then if you can go to page 182 of the bundle and you will see the introduction. It says:

“The Offices of Werksmans has been mandated by the Honourable Minister of Police Mr Nathi Nhleko to conduct an investigation into the report submitted by IPID which deal with the rendition.”

20 But the terms of reference for the investigation are very important Chair. They say:

“In conducting the aforesaid investigation the Minister has provided Werksmans with the following terms of reference. Your terms of reference in the investigation are the following.”

And they are quoting it would appear from the instruction

from the Minister.

“Who and under what circumstances was the original report altered or how the second report came about with both reports signed by the same person i.e. Mr Khuba? Whether any misconduct or offence has been committed and if so by whom? Whether there is a prima facie evidence of misconduct and criminal liability by Lieutenant Dramat, Major Sibiya and any other officers mentioned in the original report? The circumstances under which the report and the docket was handed to the NPA and what happened to the docket whilst in the NPA’s possession and five any other matter that might come to your attention during the investigation relevant to your conclusions and findings.”

Now to me and the way that I read this if it is correct that as you and Mr Sesoko say that you were told that you were not being investigated and there was no prospect of you being investigated for any misconduct or wrongdoing or offence even. This would seem not to be correct because their terms of reference were specifically whether any misconduct or offence has been committed and if so by whom.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: The other aspect ...

CHAIRPERSON: May - maybe what one can ask is whether Werksmans

at any stage before the interview started told you what their terms of reference were.

MR HUMBULANI INNOCENT KHUBA: That part Chairperson I cannot remember.

CHAIRPERSON: You cannot remember?

MR HUMBULANI INNOCENT KHUBA: I cannot remember.

CHAIRPERSON: Yes. Okay. Do you know when for the first time you saw in writing what their terms of reference were? Whether it was when you saw the - their report for the first time or whether you got to
10 know the terms of reference at some stage as they are put here.

MR HUMBULANI INNOCENT KHUBA: That part Chairperson it - it is very difficult to say because I cannot remember whether they show me there ...

CHAIRPERSON: Oh.

MR HUMBULANI INNOCENT KHUBA: But I saw it in this report

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: When I did the (intervenes).

CHAIRPERSON: Yes. Okay, alright. Thank you.

ADV SUSAN WENTZEL: Chair the second aspect I wanted to deal with
20 is what you testified to yesterday. You were explaining what the purpose and role was of an IPID Report and what the - what you understood the role was of the NPA once they received the report ...

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: And just by that I would like you to comment on this. If we can have regard to page 196.

CHAIRPERSON: What page?

ADV SUSAN WENTZEL: 196. In paragraph 3.1.2 it says what you have stated.

10 “The first report was compiled by Khuba with the assistance of Moukangwe and the guidance of Mosing and Moletsi. In the section we elucidate the circumstances under which this report was produced by Khuba and Moukangwe. Our explanation of the circumstances under which this report was produced is based on the interviews conducted with Khuba, Moukangwe and Mosing.”

But then they state this:

 “It is important to state that the Special Projects Division in the Office of the NDPP was tasked to provide guidance to Khuba and Moukangwe during the course of their investigation. The Special Projects Division is headed by Mosing assisted by Moletsi. The role of Mosing and Moletsi was never to make a decision on whether to prosecute or not.”

20 Can you comment on that?

MR HUMBULANI INNOCENT KHUBA: This part it is - it is very misleading because my experience when I deal with prosecutors who are guiding the case quite often they are the ones who will take the decision on the matter and they model out that case in terms of what they can really prove in court.

Now this also comes to the issue of the guidance of the report to say here they indicate that the - Advocates Mosing and Moletsi were guiding this report but the truth of the matter is that it is IPID that needs to make that report without the involvement of any advocate from the NPA because it is like when I am writing a letter to you but you write a letter to yourself.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: You are communicating to yourself.

10 **CHAIRPERSON:** Hm.

MR HUMBULANI INNOCENT KHUBA: So it was supposed to be an independent one but I have already given a justification because of the closeness we had. It just became so normal that it flew that they started commenting and ...

CHAIRPERSON: But who - who said that Mr Mosing was the person who was going to guide the investigation? Who came with that - from whom did you hear that for the first time?

MR HUMBULANI INNOCENT KHUBA: For the first time when I had a meeting with Colonel Moukangwe at Emperors Place.

20 **CHAIRPERSON:** Hm.

MR HUMBULANI INNOCENT KHUBA: That meeting was aimed at him explaining to me the investigation he did, what was outstanding, what needed to be done.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: So that is when he said there

are prosecutors who are already guiding this investigation and he gave me their name and their numbers.

CHAIRPERSON: And Mr Mosing was one of them?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: And did you initiate communication between the two of you or did he call you at some stage or is that something you cannot remember?

MR HUMBULANI INNOCENT KHUBA: I remember because one - once I was given the number I called him.

10 **CHAIRPERSON:** Oh, okay.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: And you confirmed from him that he was - he had a role in this investigation and that role was to guide the investigation?

MR HUMBULANI INNOCENT KHUBA: I cannot remember whether I confirm ...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: But I indicated that I am now investigating this case which I heard that he was ...

CHAIRPERSON: Hm.

20 **MR HUMBULANI INNOCENT KHUBA:** He was - he was dealing with and then we scheduled a meeting from there.

CHAIRPERSON: Okay, okay and that is how you then cooperated throughout?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Was it the first time that you were involved in an - in

an investigation under IPID where a member of the NPA was playing an active role during the investigation?

ADV SUSAN WENTZEL:

MR HUMBULANI INNOCENT KHUBA: No. I - I think there was a - a certain investigation like the Cato Manor which I indicated that I investigated first. That is when I started to know Advocate Mosing but at that time we put dockets together and he told us what needed to be done but I think I had only one or two meetings with him.

Then after that they put another person who was
10 Advocate Mathenjwa. So Advocate Mathenjwa came at a time when I was already on exit. Then I had to meet with him. That is the advocate who was very, very close who was telling them on a daily basis what to do but most of the activities I cannot really attest to because I used to get a telephone call from the team members.

We still had a link even though I was not there. They would tell me what was happening. Some I used to advice.

CHAIRPERSON: Okay. Thank you.

ADV SUSAN WENTZEL: Mr Khuba if you could then have a look at page 200 paragraph 3.1.21.

20 **MR HUMBULANI INNOCENT KHUBA:** Page?

ADV SUSAN WENTZEL: This is another issue that you - you dealt with ...

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: Extensively yesterday.

CHAIRPERSON: Page - page 200.

ADV SUSAN WENTZEL: 200.

CHAIRPERSON: What paragraph?

ADV SUSAN WENTZEL: 3.1.21.

CHAIRPERSON: Have you got it Mr Khuba - the paragraph?

MR HUMBULANI INNOCENT KHUBA: I got it.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: It says here:

10 “According to Khuba the first report was submitted
 as a final report and they expected the NPA to take
 further action as required by law on the basis of
 their recommendation set out therein.”

Can you comment on that?

MR HUMBULANI INNOCENT KHUBA: That is correct. The - during the
interview as I indicated ...

CHAIRPERSON: Well Ms Wentzel that would form part of what he is
going to deal with.

ADV SUSAN WENTZEL: It is ...

CHAIRPERSON: Yes.

20 **ADV SUSAN WENTZEL:** But it is only that he was debating yesterday.
 He said he was party to drafting the IPID statute and he said in terms
 of that statute they are not required by law to take the
 recommendations that IPID sends them. That - if you remember he
 said there was this distinction ...

CHAIRPERSON: Did you have a look at - at the statute?

ADV SUSAN WENTZEL: I actually did not get a chance as yet because

I have been trying to do that.

CHAIRPERSON: I - I suggest you have a look at it first.

ADV SUSAN WENTZEL: I will.

CHAIRPERSON: Before you ask him ...

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Because that will be much more helpful. I saw something quoted in the - in the Werksmans Report which may be relevant to what he was saying and it might - I did not understand it to be consistent with what he said but he will get a chance to deal with
10 everything that refers to him here in the report by way of an - of an affidavit and he will have a chance - he will have had a chance to reflect on everything and probably he will need to come back after submitting that affidavit and then he deals openly with all of these issues.

So - so it seems to me that as far as the report is concerned we should not go further. Let him go and ...

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Do that homework. Submit that affidavit.

ADV SUSAN WENTZEL: Chair.

20 **CHAIRPERSON:** Then we will call him again. Then he can deal with all of these issues and in the meantime also Mr McBride and Mr Sesoko can do the same but as far as other matters are concerned I think you can still ask other questions if there are other matters other than the contents of the report.

ADV SUSAN WENTZEL: Yes. It was only with regard to the ...

CHAIRPERSON: To the report.

ADV SUSAN WENTZEL: Cellphone records ...

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: But I will deal with that ...

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: When he testifies again.

CHAIRPERSON: Okay. No that is fine. Would that then place us a stage where I can release him ...

ADV SUSAN WENTZEL: Hm.

10 **CHAIRPERSON**: For now?

ADV SUSAN WENTZEL: Not quite yet.

CHAIRPERSON: Not - *ja*, okay.

ADV SUSAN WENTZEL: But ...

CHAIRPERSON: I thought you said there was nothing else. It was just the report you wanted to deal with.

ADV SUSAN WENTZEL: No. I - I just need a few issues.

CHAIRPERSON: Yes. Not that is fine.

ADV SUSAN WENTZEL: I am not going in a lot of detail.

CHAIRPERSON: You can - you can deal with them, *ja*.

20 **ADV SUSAN WENTZEL**: Thank you. We know that Werksmans recommended that you, McBride and Sesoko be criminally charged for defeating the ends of justice or obstructing the administration of justice and that disciplinary charges be brought against you in your capacity as employees.

Now you will deal with the report and you will deal with that

recommendation. If you can go now to paragraph 87 on page 27 of your report ...

CHAIRPERSON: Of his affidavit?

ADV SUSAN WENTZEL: Of - of his affidavit. I am sorry.

CHAIRPERSON: What page?

ADV SUSAN WENTZEL: 27 Chair.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: There it is said that:

10 “Around November 2014 Mr Sesoko, Mr McBride
and I had a meeting with the reference group
appointed by the Minister.”

Could you just explain what happened at that meeting and what happened thereafter?

MR HUMBULANI INNOCENT KHUBA: We had the meeting with the reference group and they indicated that they were set up by the Minister to look into policing matters. One of the members of the reference group was known to me because I walked with him summarily in KZN investigating Cato Manor and that is Advocate Mathenjwa.

20 He gave me a call the other day after the meeting and he said
to me he wants the copies of the rendition docket. He was mentioning it in a - like as if he was demanding it but I - I never had a problem with that because we had some dealings in the past. Probably he was so free to - to talk to me.

I refused and I told him and I still remember I was no, no you need to speak with ...

CHAIRPERSON: The Executive Director?

MR HUMBULANI INNOCENT KHUBA: The Executive Director.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: That is what happened.

CHAIRPERSON: And what did he say?

MR HUMBULANI INNOCENT KHUBA: He said it is okay.

CHAIRPERSON: Okay.

MR HUMBULANI INNOCENT KHUBA: *Ja.*

ADV SUSAN WENTZEL: Could you then deal with your suspension
10 which you start to deal with from paragraph 88 of your report?

MR HUMBULANI INNOCENT KHUBA: Chairperson in - in May 2015
that was 21 May I received a letter of precautionary suspension signed
by the then Acting Executive Director Mr Kgamanyane. The letter was
served to me by Ms Netsianda. That was after McBride was suspended
around March 2015.

Now she gave me a telephonic call and told me that she
wanted to serve the suspension letter and apparently the Minister
wanted me to receive that letter. Now at that time she indicated that
she was driving. It was very late and I knew that she was going to
20 cover between 200 or 250 to 300 kilometres to arrive in Polokwane.

CHAIRPERSON: And when she - when you say at that time that - which
I - I take - I assume you mean at the time she phoned you. You say it
was very late. Around what time would you think it was?

MR HUMBULANI INNOCENT KHUBA: I think it might have been around
three or 4 o' clock because she was leaving Pretoria I think around that

time.

CHAIRPERSON: Yes. To - to go to Limpopo?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes, okay. Continue.

MR HUMBULANI INNOCENT KHUBA: And then I said it is fine.

Whatever time you arrive I am going to wait for you and then I - the call was recorded. I also sent it to the company that transcribed it and she also deposed a statement confirming that because I made her to listen to the call. I still remember the day I made her listen. She just said

10 you are a witch. Why did you record me? So ...

CHAIRPERSON: *Ja.*

MR HUMBULANI INNOCENT KHUBA: And said I am putting her at a very difficult position.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And I said even if you do not give a statement I have your ...

CHAIRPERSON: Your recording?

MR HUMBULANI INNOCENT KHUBA: *Ja ...*

CHAIRPERSON: *Ja.*

20 **MR HUMBULANI INNOCENT KHUBA:** But the statement was not given direct to me. I think she did a confirmatory to either ...

CHAIRPERSON: *Ja.*

MR HUMBULANI INNOCENT KHUBA: McBride or Mr Sesoko.

CHAIRPERSON: So where she said the Minister wanted you to receive the letter of suspension that day was that captured in the recording as

well?

MR HUMBULANI INNOCENT KHUBA: It was.

CHAIRPERSON: Yes. Do you have any idea why if the decision to suspend you was that of the Acting Executive Director namely Mr Kgamanyane why the Minister would have an interest that you receive the letter of suspension on that day? What did that have to do with him?

MR HUMBULANI INNOCENT KHUBA: I'm not really sure, but seeing previously I had received a call from the Minister, I realised that
10 probably that the acting Executive Director was just being...[intervenes].

CHAIRPERSON: Was just being an instrument.

MR HUMBULANI INNOCENT KHUBA: An instrument to achieve that goal.

CHAIRPERSON: These were decisions being taken by the Minister?

MR HUMBULANI INNOCENT KHUBA: That's correct and probably to add on that Chairperson, if I had not had an experience where the Minister called me directly it would have been another issue, but because he had called me, I realised that these things
20 above...[intervenes].

CHAIRPERSON: The Executive Director.

MR HUMBULANI INNOCENT KHUBA: The Executive Director it's no longer the interest of the Department there is somewhere where their interest is being said and I was not aware of that – what kind of interest they were saying.

CHAIRPERSON: Yes, if you had not - you say if you had not received this call – the call from the Minister directly earlier on it would have been another issue, what do you mean, how would you have taken this interest of the Minister in you being served with a letter of suspension on a particular day?

MR HUMBULANI INNOCENT KHUBA: Normally I would not really have – I would have doubted the words of the person.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Not necessarily, I would thought
10 that probably she's just trying to make the situation big, so that I feel compelled to cooperate but the previous call, I realised what I was dealing with.

CHAIRPERSON: So the letter of suspension and I know I'm jumping now, the letter of suspension was signed by Mr Kgamanyane?

MR HUMBULANI INNOCENT KHUBA: That's correct.

CHAIRPERSON: Suspending you.

MR HUMBULANI INNOCENT KHUBA: That's correct.

CHAIRPERSON: But the Chief Director, Miss Nitsiyanda who came to serve it – who called you to say he had a letter to give to you said that
20 the Minister wanted this letter served on you on the particular day, is that right?

MR HUMBULANI INNOCENT KHUBA: That's correct.

CHAIRPERSON: And – okay and you say when the call came it was around – it must have been around three in the afternoon.

MR HUMBULANI INNOCENT KHUBA: That's correct.

CHAIRPERSON: So you said you would wait for her.

MR HUMBULANI INNOCENT KHUBA: That's Correct.

CHAIRPERSON: Okay continue.

ADV SUSAN WENTZEL: If you have regard to page 25...[intervenes].

CHAIRPERSON: I'm sorry I think he – you don't want him to continue how Miss Nitsiyanda then reached Limpopo and served first or is there something that you want to deal with before that?

ADV SUSAN WENTZEL: It's about exactly what he's testifying now, I want to show him the transcript of this conversation.

10 **CHAIRPERSON:** Oh okay.

ADV SUSAN WENTZEL: If you could have regard to page 253.

CHAIRPERSON: 253?

ADV SUSAN WENTZEL: Yes, now this is not a certified transcript, you've said you recorded this, when was this transcribed?

MR HUMBULANI INNOCENT KHUBA: It was transcribed – I did it in Polokwane but it was – I think it was some weeks after the incident it took a bit of time before – I cannot remember exactly when but it was sometime after this call but I did it in Polokwane.

ADV SUSAN WENTZEL: And did you personally transcribe it?

20 **MR HUMBULANI INNOCENT KHUBA:** Yes and I think I can go to the company and get any record probably regarding this matter.

ADV SUSAN WENTZEL: Okay it's also confirmed in an affidavit by Miss Nitsiyanda but if we can just have a look at what is said at line 10- well let's start at the beginning, she says,

“Yes Mr Khuba, how are you, I'm fine okay I've been asked

[inaudible] where are you, I must come and serve you with a letter. Okay I'm in Polokwane. You are in Polokwane? Yes. Because apparently the Minister said that you must have the letter today and I am still in the office which means I must drive right now, will you wait for me and then I will call you when I am closer so that we can meet somewhere. Yes, yes. Okay no thank you so much for your understanding. Okay thank, sure yes",

And then if we have regard to an affidavit that was deposed
10 to...[intervenes].

CHAIRPERSON: I'm sorry, maybe just in case we didn't ask this. You confirm that substantially this transcript reflects the conversation that took place between you and Miss Nitsiyanda?

MR HUMBULANI INNOCENT KHUBA: That's correct.

CHAIRPERSON: Okay, thank you.

ADV SUSAN WENTZEL: Thank you Chair. Mr Khuba if you can then look at a confirmatory affidavit that was deposed to in the disciplinary proceedings in the matter between IPID and Mr Sesoko on page 257 and at page 258 paragraph three, she says,

20 "I confirm in addition that upon receiving instructions from – sorry I hereby confirm same insofar as they relate to me regarding circumstances around the handling of a letter to Mr Khuba. I confirm in addition that upon receiving instructions from the current acting Executive Director Mr Kgamanyane, he specifically told me, in no uncertain terms that the

aforesaid letter must be delivered to Mr Khuba that same day and that those were the specific instructions of the Minister at IPID when we refer to the term Minister, it is the Minister of Police that we duly – that we normally refer to. I duly complied with the instruction and called Mr Khuba to arrange for delivery of the letter as properly articulated in the Annexure to Mr Sesoko's affidavit marked NS6".

MR HUMBULANI INNOCENT KHUBA: That's correct.

ADV SUSAN WENTZEL: Now is it correct...[intervenes].

- 10 **CHAIRPERSON:** Now Miss Wentzel you said something earlier on about, I think in response to which Mr Khuba may have said that he would need to go back to the people who transcribed that conversation, or did I misunderstand? In response to which he – I understood him to be saying he would go to the people who made the transcription.

ADV SUSAN WENTZEL: Oh yes.

CHAIRPERSON: What was that about, it seems to be quite – especially with the affidavit, I'm not sure if we need anything further?

ADV SUSAN WENTZEL: I don't think we probably need anything further.

- 20 **CHAIRPERSON:** Yes ja I don't think so because the person who had a conversation with Mr Khuba has confirmed in an affidavit the relevant part.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Ja.

ADV SUSAN WENTZEL: Thank you Chair. After you received your

notice of suspension did you, thereafter participate in a disciplinary hearing?

CHAIRPERSON: Or maybe let's connect it to where he was before we went to the transcript. Miss Nitsiyanda left Pretoria and drove to Pretoria to serve the letter on you, is that right?

MR HUMBULANI INNOCENT KHUBA: Ja she came to Polokwane.

CHAIRPERSON: Polokwane yes and she served you with the letter.

MR HUMBULANI INNOCENT KHUBA: That's correct.

CHAIRPERSON: In the conversation that the two of you may have
10 had is there anything of importance that you want to mention?

MR HUMBULANI INNOCENT KHUBA: What she did was to appreciate my understanding and also compromising because I had to fit within her schedule. I also had to gather all the things that I had to hand over to her. I had a laptop, I had a 3G card, those things that I was using I had to hand over the items and I still remember she arrived, it was late, very late.

CHAIRPERSON: Around what time in the evening?

MR HUMBULANI INNOCENT KHUBA: I do not know whether it's eight or nine but it was late.

20 **CHAIRPERSON:** Okay.

MR HUMBULANI INNOCENT KHUBA: So when she phoned me...[intervenes].

CHAIRPERSON: Well from Pretoria to Limpopo is it not about three hours or is it two hours?

MR HUMBULANI INNOCENT KHUBA: It's around three hours but I do

not know what caused further delay because when she came, I saw she was with her husband.

CHAIRPERSON: Okay.

MR HUMBULANI INNOCENT KHUBA: So I realised probably she might have gone home first but she came late to Polokwane.

CHAIRPERSON: But other than that there's nothing of consequence that transpired in the conversation when you met with her?

MR HUMBULANI INNOCENT KHUBA: No and also from my side, I could not talk. For me it was – I was not settled because it was my
10 first time in my 16 or 17 years' career in the IPID to be getting that...[intervenes].

CHAIRPERSON: A suspension letter.

MR HUMBULANI INNOCENT KHUBA: Ja so I was really unsettled, so I could not really formulate any discussion about anything.

CHAIRPERSON: Did the letter of suspension or did the news that you're being suspended come as a shock to you or not really?

MR HUMBULANI INNOCENT KHUBA: It was a shock, it was a big shock.

CHAIRPERSON: Okay thank you, have we got the letter of
20 suspension here?

ADV SUSAN WENTZEL: Yes we have.

CHAIRPERSON: Let's go through it.

ADV SUSAN WENTZEL: The letter of suspension is Annexure HIK15, if you just bear with me I don't seem to have put a reference it will be 250 something. It's page 382, Mr Khuba is that your letter of

suspension?

MR HUMBULANI INNOCENT KHUBA: That's Correct.

ADV SUSAN WENTZEL: If you have a look at the...[intervenes].

CHAIRPERSON: Well I think it appears from the first paragraph of the letter that we might have skipped a step earlier. Prior to you receiving the letter of suspension did you receive a letter in terms of which you were asked to make representations why you should not be suspended.

MR HUMBULANI INNOCENT KHUBA: That's correct.

10 **CHAIRPERSON:** Yes, and did you consult with attorneys who helped you to prepare such representations?

MR HUMBULANI INNOCENT KHUBA: That's correct.

CHAIRPERSON: Yes, and you submitted the representations to Mr Kgamanyane?

MR HUMBULANI INNOCENT KHUBA: That's correct.

CHAIRPERSON: Yes, and the letter that had asked you to make those representations had come from Mr Kgamanyane, the letter that asked you to make representations, did it come from him?

MR HUMBULANI INNOCENT KHUBA: Ja all the correspondence I think
20 they were coming from Mr Kgamanyane.

CHAIRPERSON: Yes, yes I get the impression in making that point you are emphasising that the decisions might not have come from him but the correspondence was coming from him.

MR HUMBULANI INNOCENT KHUBA: That's correct.

CHAIRPERSON: Okay alright, you think the decisions were coming

from where?

MR HUMBULANI INNOCENT KHUBA: I think the decisions were coming from people outside the department and in this case I suspect the Minister.

CHAIRPERSON: Okay alright, did - and Miss Wentzel have you got that letter here, the letter that preceded the letter of suspension?

ADV SUSAN WENTZEL: I don't believe so but I will verify.

CHAIRPERSON: Because we should also have a copy of the representations that he made.

10 **ADV SUSAN WENTZEL:** Yes.

CHAIRPERSON: We don't have them either here?

ADV SUSAN WENTZEL: No Chair I don't remember seeing it myself.

CHAIRPERSON: Would you have that letter somewhere and the representations somewhere?

MR HUMBULANI INNOCENT KHUBA: I think if I try Chairperson I can also get it from the lawyer.

CHAIRPERSON: Ja from your lawyer.

MR HUMBULANI INNOCENT KHUBA: Because he might be having ...[intervenes].

20 **CHAIRPERSON:** Ja try and get those and send them to the legal team because it will be important to see what was said in that letter to which you needed to respond and to also see how you responded in order to evaluate the decision – the decision to go ahead and suspend

ADV SUSAN WENTZEL: Thank you Chair. In paragraph 91 page 28 of your statement, you say that on the 19th of June 2015 you deposed

to a supporting affidavit in the High Court in the matter between Mr McBride and the Minister of Police, could you have regard to page 260 and confirm whether this is the supporting affidavit that you referred to?

MR HUMBULANI INNOCENT KHUBA: That's correct.

ADV SUSAN WENTZEL: And Chair it is also in this supporting affidavit that certain issues and aspects in – with regard to the Werksmans report are dealt with but that we will canvas at a later stage.

CHAIRPERSON: Yes, no that's fine.

10 **ADV SUSAN WENTZEL:** Then on the 7th of July 2015 you were served with a notice to attend a disciplinary enquiry and that appears at page 284, is that correct, is that the notice?

MR HUMBULANI INNOCENT KHUBA: That's the one.

ADV SUSAN WENTZEL: Could you please tell the Chair what happened at that disciplinary inquiry?

CHAIRPERSON: I'm so you were called to a disciplinary inquiry and effectively a senior counsel Advocate William Mokare SC and a junior counsel Mr Thembetha Nkatube [?] instructed by Morgan Lourens Attorneys were appointed effectively to be the prosecutors to prosecute
20 you in the disciplinary inquiry, is that correct?

MR HUMBULANI INNOCENT KHUBA: Ja.

CHAIRPERSON: Had there been any disciplinary inquiries of IPID personnel before – before he disciplinary inquiries of yourself and Mr McBride and Mr Sesoko?

MR HUMBULANI INNOCENT KHUBA: I think there were

but...[intervenes].

CHAIRPERSON: Did they – did IPID always bring senior counsel to prosecute its staff in disciplinary inquiries?

MR HUMBULANI INNOCENT KHUBA: What I can say Chairperson is that the one that I remember I don't think – they did not bring the person who is at this level.

CHAIRPERSON: Yes, I mean senior counsel is very high level of an Advocate somebody who has – usually who has been an Advocate for many years and somebody who is very good and somebody also who
10 doesn't come cheap.

MR HUMBULANI INNOCENT KHUBA: Chairperson I understand that, but I think I looked at it to say, if really you want to draw blood from the stone you need experts probably because you get your normal people, they may not be able to achieve that with ease.

CHAIRPERSON: But is your answer that there had been disciplinary inquiries involving IPID personnel before this and the organisation had brought outside lawyers but not at the level of senior counsel, is that what you're saying?

MR HUMBULANI INNOCENT KHUBA: Ja I don't remember where they
20 brought a heavyweight like this.

CHAIRPERSON: Yes, a heavyweight but did they always or often or sometimes bring an outside lawyer?

MR HUMBULANI INNOCENT KHUBA: It was not often but also considering that our department, more especially on a higher level, you don't really get a lot of misconduct cases.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: It would be once after a while.

CHAIRPERSON: The ones that you can remember, namely disciplinary inquiries that had happened before your one and Mr McBride's one and Mr Sesoko's one you would think would have been how many more or less that you can remember that had happened, two, three, more or less even if it's not an exact number?

MR HUMBULANI INNOCENT KHUBA: There was one which was done for the person who was in a Provincial Head for KZN and the one which
10 was done for the Provincial Head of Eastern Cape but these, I don't think they brought any senior person.

CHAIRPERSON: Any senior lawyer from outside?

MR HUMBULANI INNOCENT KHUBA: Any senior lawyer because we are very economical with our budget.

CHAIRPERSON: Yes, but do you know whether they brought any lawyer from outside at all or only internal people were used?

MR HUMBULANI INNOCENT KHUBA: That one I cannot really...[intervenes].

CHAIRPERSON: Because that's the important part, whether it was
20 the first time that outside lawyers were brought to – in regard to disciplinary inquiries when your inquiry, Mr Sesoko's inquiry, Mr McBride's inquiry happened or whether it was not the first time but it had happened before but rarely but even then not senior lawyers such as these?

MR HUMBULANI INNOCENT KHUBA: I remember most especially on

the KZN one because it was coinciding with the time when I was going to assist the Province but I cannot remember what was the level of that person, I cannot remember.

CHAIRPERSON: Okay during the interval that is going to be there before you come back, please find out that information, how many disciplinary inquiries had there been before your one and Mr McBride's one and Mr Sesoko's one, did it involve outside lawyers who were there, what was their level and so on.

MR HUMBULANI INNOCENT KHUBA: Okay.

10 **CHAIRPERSON:** Okay thank you.

ADV SUSAN WENTZEL: Thank you. Now just for the record Advocate Makwari was the same Advocate who you say, a month or two prior to this had asked you to depose to a confirmatory affidavit in favour of the Minister.

MR HUMBULANI INNOCENT KHUBA: That's correct.

ADV SUSAN WENTZEL: And that was in proceedings against Mr McBride?

MR HUMBULANI INNOCENT KHUBA: That's correct.

20 **ADV SUSAN WENTZEL:** Now do you remember when the disciplinary proceedings were ultimately held?

MR HUMBULANI INNOCENT KHUBA: The disciplinary inquiry was held on the 17th of July 2015 but on that day it was postponed, we finally had it on the – it was set for the 13th, 14th and 17th of August and we made an application for suspension of that hearing pending outcome of the Constitutional Court which was brought about by McBride and the

Chairperson dismissed that application...[intervenes].

CHAIRPERSON: And the Chairperson was Advocate Mojana?

MR HUMBULANI INNOCENT KHUBA: I think that's the one, he was the Chairperson.

CHAIRPERSON: Yes, okay.

MR HUMBULANI INNOCENT KHUBA: Now we finally had it on the 22nd and 23rd of September 2015. What happened on that particular day, Mr Sesoko could not avail himself because he was not well. Now they requested that we need to separate this hearing so that they could have
10 some progress. I was represented by Advocate Phooko, let me say I might be just using the word Advocate loosely but it's a lawyer.

CHAIRPERSON: He's a lawyer so he would be an Advocate or an attorney you're not sure?

MR HUMBULANI INNOCENT KHUBA: Ja.

CHAIRPERSON: Ja okay.

MR HUMBULANI INNOCENT KHUBA: Now what happened is that, while we were there Advocate Makari went out with – he requested my lawyer to say, let's go out and have a discussion. It was after there was an issue of separating the hearings. Now when they went out, he
20 came in but Mr Phooko called me and he says, come I want to talk to you. Then I went out and he said to me – and I just want to indicate how he put it, he says, these people are proposing that we need to settle this case and he used the word – they say if you continue they're going to fire you, it does not matter what you are going to say. Now that part...[intervenes].

CHAIRPERSON: I'm sorry just repeat, he said, bru if you what they're going to fire you, they say if what they're going to fire you?

MR HUMBULANI INNOCENT KHUBA: If I continue.

CHAIRPERSON: With the hearing?

MR HUMBULANI INNOCENT KHUBA: Ja and lead evidence, they are going to fire me.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: So they're proposing a...[intervenes].

10 **CHAIRPERSON:** Okay just repeat that because it's important, you said something about no matter what, just repeat exactly how he put it to you?

MR HUMBULANI INNOCENT KHUBA: He said, no matter what evidence you are going to lead there, they are not going to take it, they are going to fire you. So it also gave me a bit of surprise on the basis that he was one person who was saying – he was enjoying doing my case, he said, this one it's just going to be a walk in the park.

CHAIRPERSON: As you were preparing for...[intervenes].

20 **MR HUMBULANI INNOCENT KHUBA:** I was preparing, I was telling him.

CHAIRPERSON: He was confident yes.

MR HUMBULANI INNOCENT KHUBA: He was very, very confident.

CHAIRPERSON: Yes but now he said this is what they're saying.

MR HUMBULANI INNOCENT KHUBA: He said this is what they are saying. Now I had a very lengthy discussion and I said, I think I need

to talk to Mr Sesoko. I gave him a call sometimes we had a discussion with Mr Sesoko's lawyer.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And the discussion there was to discuss the issue of how we are going to do that because immediately when he said they were going to fire me I started to panic.

CHAIRPERSON: hm.

MR HUMBULANI INNOCENT KHUBA: Because when you receive such type of information.

10 **CHAIRPERSON:** Hm.

MR HUMBULANI INNOCENT KHUBA: The first thing that you think is how are you going to pay for your car?

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: How are you going to pay for your house?

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: You switch off completely.

CHAIRPERSON: Hm.

20 **MR HUMBULANI INNOCENT KHUBA:** From the amount of evidence that you can have.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Because the fate has been decided.

CHAIRPERSON: Hm. Hm.

MR HUMBULANI INNOCENT KHUBA: Now I tried to speak to Mr

Sesoko and Mr Sesoko he was warning me.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: To say he does not think that it is right idea.

CHAIRPERSON: To settle.

MR HUMBULANI INNOCENT KHUBA: To settle.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And he also indicated that once you settle they will take you as dishonest. Because you settle on a
10 level that you accept this and you go back to work. Now I went back to my lawyer it was like to and fro. We were discussing trying to find out – and my lawyer was telling me, do you want to keep your job let us just get these things wrapped up. And he was telling me that the way I spoke with the council you are not going to make it. Whatever we are going to do they are going to deal with you. Now...

CHAIRPERSON: And this is the same lawyer who as you are preparing to come the disciplinary hearing was saying this is a walk in the park.

MR HUMBULANI INNOCENT KHUBA: Ja this...

CHAIRPERSON: Who was very confident?

20 **MR HUMBULANI INNOCENT KHUBA:** That is correct.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Now I then – I phoned my wife, I phoned my uncle it was all calls all over.

CHAIRPERSON: Hm. Trying to get...

MR HUMBULANI INNOCENT KHUBA: Trying to get...

CHAIRPERSON: Other people's views and so on.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Now it came to a part where – what I did...

CHAIRPERSON: At this stage as you were making these calls had your lawyer told you whether there was an offer on the table that they were putting – these – the employer was putting on the basis of – on the basis of which they were saying let us settle this matter. Or at that
10 stage they just wanted to find out whether in principle you would be agreeable to talk in settlement but – and if you were agreeable they were still going to come up with an offer?

MR HUMBULANI INNOCENT KHUBA: He told me immediately.

CHAIRPERSON: Ys.

MR HUMBULANI INNOCENT KHUBA: That they are going to give you a warning.

CHAIRPERSON: Yes

MR HUMBULANI INNOCENT KHUBA: A final warning.

CHAIRPERSON: Yes.

20 **MR HUMBULANI INNOCENT KHUBA:** Written warning.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Now and there was this...

CHAIRPERSON: Did you say what you would need to admit to in order for them to give you a warning or what it is they wanted from you? Because I – I assume if you were going to give – to be given a warning

you were going to be required to admit that you are guilty of something?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Hm. What was that?

MR HUMBULANI INNOCENT KHUBA: He said I need to make a statement admitting to the wrongdoing of the report. Now that part I refused from the onset. And I said it cannot be. Because I will be lying. I did not do what they say I have done. Now what he did he also went back to [indistinct] and they discussed.

10 **CHAIRPERSON:** Hm.

MR HUMBULANI INNOCENT KHUBA: But the following day because I even stopped everything there and I said I need to go and sleep on this issue.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Yes.

CHAIRPERSON: On the first day of the hearing.

MR HUMBULANI INNOCENT KHUBA: Ja I said I was going to sleep. They gave me a chance.

CHAIRPERSON: Yes

20 **MR HUMBULANI INNOCENT KHUBA:** Ja.

CHAIRPERSON: So before you – I take it the disciplinary hearing was adjourned to enable you to go and sleep over the matter. Around what time of the day was it after you had been making calls to various people and there have been discussions between the Advocates?

MR HUMBULANI INNOCENT KHUBA: It was in the afternoon.

CHAIRPERSON: And they – and you had met at what time – in the morning at the disciplinary hearing?

MR HUMBULANI INNOCENT KHUBA: I cannot remember whether it was nine or ten.

CHAIRPERSON: But it was in the morning?

MR HUMBULANI INNOCENT KHUBA: It was in the morning.

CHAIRPERSON: So...

MR HUMBULANI INNOCENT KHUBA: But when it was towards or in the afternoon.

10 **CHAIRPERSON:** Yes.

MR HUMBULANI INNOCENT KHUBA: That is when...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: They indicated that okay we are going to give you an opportunity go and think about it.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Now I went...

CHAIRPERSON: And the matter was adjourned to the following day?

MR HUMBULANI INNOCENT KHUBA: To the following day.

CHAIRPERSON: Okay.

20 **MR HUMBULANI INNOCENT KHUBA:** I went to the hotel I continued with the calls.

CHAIRPERSON: As you – as the proceedings were adjourned at what stage were the discussions in terms of what you needed to do in order to say have the matter settled. Now initially they said according to your lawyer you would have to admit to wrongdoing in regard to the

report. Did that – had that changed to something else by the time you adjourned or had that not changed as yet?

MR HUMBULANI INNOCENT KHUBA: They – it had slightly changed because they were proposing something. They were trying to bend to what I was...

CHAIRPERSON: To compromise.

MR HUMBULANI INNOCENT KHUBA: To compromise.

CHAIRPERSON: Okay.

MR HUMBULANI INNOCENT KHUBA: Because I said I cannot ...

10 **CHAIRPERSON:** Admit to wrongdoing.

MR HUMBULANI INNOCENT KHUBA: Ai.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And they were – they were slightly mentioning the issue of what if we do an agreement.

CHAIRPERSON: Oh they were saying.

MR HUMBULANI INNOCENT KHUBA: Ja an agreement.

20 **CHAIRPERSON:** What – what would you give – what were you prepared to give in order for there to be an agreement to settle. They were talking along – they were trying to find out if you were not prepared to admit to wrongdoing what is it that you were prepared to admit?

MR HUMBULANI INNOCENT KHUBA: You can – that is correct.

CHAIRPERSON: ja.

MR HUMBULANI INNOCENT KHUBA: But even the issue of the settlement agreement they were the ones who came up with – because

that word was not even in my mind.

CHAIRPERSON: Yes, yes.

MR HUMBULANI INNOCENT KHUBA: The one who came with it and they indicated that if we do an agreement where this issue is resolved we want you to come back to...

CHAIRPERSON: You would keep your job.

MR HUMBULANI INNOCENT KHUBA: You keep your job, you come back to work.

CHAIRPERSON: Ja.

10 **MR HUMBULANI INNOCENT KHUBA:** And I want to tell you when you have been suspended for the first time in your over 20 years' experience in different sectors or in government I have never met that.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: To tell you the honest truth my mind switched into survival mode.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And I said what do I do to save my family.

CHAIRPERSON: Hm.

20 **MR HUMBULANI INNOCENT KHUBA:** But I was not ready to compromise the issue that I was not going to put a statement.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Because a main investigator I know you cannot really put the statement on same issue different.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Because I said this is the position but I need to keep my job I want my job back. Now then I went to the hotel and then I continued with the calls. And that time I was not only confined to – to only relatives. I was calling even the friends in government, in – who have senior positions because we normally know – communicate and – and they were telling me that if they are giving you that deal let me tell you one thing with our government they are going to fire you the [indistinct]. That was one of the friends that is what he said to me.

10 **CHAIRPERSON:** Yes.

MR HUMBULANI INNOCENT KHUBA: He say with this government of ours when they want to get rid of you...

CHAIRPERSON: They will get rid of you.

MR HUMBULANI INNOCENT KHUBA: They will get rid of you. It does not matter what you do.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: So now they are giving you a life line.

CHAIRPERSON: Take it.

20 **MR HUMBULANI INNOCENT KHUBA:** At least you will – you will carry this shame just for a bit but you will come...

CHAIRPERSON: Ja.

MR HUMBULANI INNOCENT KHUBA: You will be back at work.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Now...

CHAIRPERSON: Those were the sort of advises you were getting from people.

MR HUMBULANI INNOCENT KHUBA: I was getting.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Now then I – the following day then we had to engage in the issue of that settlement agreement. They went and drafted it.

CHAIRPERSON: Yes. Well overnight when you came back in the morning was there something that you – had you made up your mind
10 how you wanted to sort this out or you just wanted the discussions to continue.

MR HUMBULANI INNOCENT KHUBA: No I had already decided that as long as whatever I am going to sign it is not going to make me to commit perjury. That is what I told myself.

CHAIRPERSON: Yes, yes. Yes.

MR HUMBULANI INNOCENT KHUBA: As long as I ...

CHAIRPERSON: You did not want to say anything that was not true.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes okay.

20 **MR HUMBULANI INNOCENT KHUBA:** And my wife was very supportive of the fact that it is better to go back to work and really continue sustaining the family. Now when I went back they drafted the – it did not take too long

CHAIRPERSON: An agreement.

MR HUMBULANI INNOCENT KHUBA: An agreement. Now the

agreement the first page it was talking about ...

CHAIRPERSON: Sorry let us go to the agreement.

ADV SUSAN WENTZEL: The agreement is at page 287 Chair.

CHAIRPERSON: 287?

ADV SUSAN WENTZEL: Yes.

MR HUMBULANI INNOCENT KHUBA: 287.

CHAIRPERSON: Yes okay continue talking I just wanted us to find where the agreement is for later but I want you to continue to talk – to tell me how the discussions went up to the time that the agreement was signed.

MR HUMBULANI INNOCENT KHUBA: When they brought the agreement the – it was already typed. There was a...

CHAIRPERSON: Was that – was that before you told them what you – what would be acceptable to you? Because you must have come back and your lawyer must have said what did you think or what do you think? Are you prepared or not prepared and you must have told him something which he passed on to Mr Mokhari.

MR HUMBULANI INNOCENT KHUBA: They had something that has already been drafted which I...

20 **CHAIRPERSON**: Before you came?

MR HUMBULANI INNOCENT KHUBA: Ja which I – when I pointed some of the things I do not know how it was changed.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And then I was called to a smaller office to sit and discuss. Now when it came back now we

discussed and my lawyer was happy with it. He was really fine.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Now if you check the part of the agreement it is where he talks about plea to the charges as per departmental hearing charges.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: But the issue there when we got this – this report I was still not comfortable – I was still not comfortable with this part.

10 **CHAIRPERSON:** When you signed?

MR HUMBULANI INNOCENT KHUBA: When I signed. In fact I said to my lawyer when we were doing this that this first page I am having a problem with it. But he indicated that this is an agreement there is nothing – it does not have any effect on what you said previously.

CHAIRPERSON: Ja.

MR HUMBULANI INNOCENT KHUBA: And they have already indicted that I am free to testify in support of Mr Sesoko.

CHAIRPERSON: Which was important to you?

MR HUMBULANI INNOCENT KHUBA: Yes which was important to me.

20 Now I do not know being out of sarcastic or what but I took this agreement and did not want to sign the first page. And it was initialled by my lawyer. It was only the page where he initialled. And I signed the subsequent one. So my lawyers initials

CHAIRPERSON: Ja.

MR HUMBULANI INNOCENT KHUBA: Are only on the first page.

CHAIRPERSON: Is that the one looking like...

MR HUMBULANI INNOCENT KHUBA: LEP stand for Poko.

CHAIRPERSON: Oh the – he initialled there.

MR HUMBULANI INNOCENT KHUBA: Ja. If you check that HI – HI was basically for me when I was preparing this thing for the – for this hearing.

CHAIRPERSON: Oh so it was not there.

MR HUMBULANI INNOCENT KHUBA: It was not there ja.

CHAIRPERSON: Oh which – okay.

10 **MR HUMBULANI INNOCENT KHUBA:** Yes.

CHAIRPERSON: Okay, okay.

MR HUMBULANI INNOCENT KHUBA: Ja.

CHAIRPERSON: And MB or well – or is it MS?

MR HUMBULANI INNOCENT KHUBA: That MS is the police officer who certified the documents.

CHAIRPERSON: Oh okay.

MR HUMBULANI INNOCENT KHUBA: And then you have a signature towards the corner that...

20 **CHAIRPERSON:** But did not somebody initial on this part of the – on behalf of the employer? On the first page.

MR HUMBULANI INNOCENT KHUBA: It is initialled at the corner there. If you check there is a...

CHAIRPERSON: Yes I see that.

MR HUMBULANI INNOCENT KHUBA: Ja a [indistinct]

CHAIRPERSON: Who did that, do you know?

MR HUMBULANI INNOCENT KHUBA: That is the head of Legal Services.

CHAIRPERSON: What is her name – his name?

MR HUMBULANI INNOCENT KHUBA: Ms Morashe[?].

CHAIRPERSON: Oh okay.

MR HUMBULANI INNOCENT KHUBA: Marine Morashe

CHAIRPERSON: Okay.

MR HUMBULANI INNOCENT KHUBA: And if you check there that signature there it is similar to the one in the subsequent page which
10 is...

CHAIRPERSON: Yes on page 2.

MR HUMBULANI INNOCENT KHUBA: The second page.

CHAIRPERSON: Yes. So you – you were – you went – you had some discomfort with the first page?

MR HUMBULANI INNOCENT KHUBA: I had a discomfort with the first page.

CHAIRPERSON: And you were not prepared to even initial it.

MR HUMBULANI INNOCENT KHUBA: Yes.

CHAIRPERSON: And your lawyer initialled it?

20 **MR HUMBULANI INNOCENT KHUBA:** That is correct.

CHAIRPERSON: But you signed the second page?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Was that your own way of trying to protect yourself by not signing at a page that you were not comfortable with?

MR HUMBULANI INNOCENT KHUBA: No I was – I was – for some

reasons.

CHAIRPERSON: Ja. You were just not comfortable.

MR HUMBULANI INNOCENT KHUBA: I was just not comfortable. I knew that when I sign at the end it binds me of course.

CHAIRPERSON: Ja that will mean – yes yes.

MR HUMBULANI INNOCENT KHUBA: But the truth of the matter is that I was just really not comfortable.

CHAIRPERSON: You – ja, ja. You knew that it would bind you but...

MR HUMBULANI INNOCENT KHUBA: And it seems as in terms of
10 negotiation on the proposed offer that was the cul-de-sac for us. There was no way I could go.

CHAIRPERSON: Hm. Yes Ms Wentzel.

ADV SUSAN WENTZEL: Now if we have regard to that letter that you signed and I think it is important that – that we see what was actually said so that we can understand why you felt so uncomfortable. It says under the introduction

20 “The first employee Innocent Khuba was charged with dishonesty and defeating the ends of justice as more fully set out in the charge sheet attached hereto marked A. Pursuant to the institution of disciplinary action against Mr Khuba the parties have reached agreement on the 23rd September 2015. The parties wished to record in writing the terms of the agreement which terms they record below. Under the terms of the agreement:

Mr Khuba being legally represented freely and voluntarily pleads guilty to the charges proffered against him as set out in Annexure A.”

Is that the – the main part that made you feel very uncomfortable? Sorry are you still looking for the page? It is 287. I did not realise you had closed your file.

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: Then it says:

10 “The employer will impose a sanction of a final written warning valid for six months against Mr Khuba. Mr Khuba’s suspension will be uplifted and he will report for duty on Monday the 28th September 2015 and then under 7 it says:

Despite the seriousness of the offence the employer is satisfied that Mr Khuba’s candid and openness about the offence the fact that he did not waste the employer’s time by engaging in a protracted disciplinary inquiry and his remorse to be a sufficient mitigation against a sanction of dismissal which
20 ordinarily would have been appropriate.”

How did you feel about that?

MR HUMBULANI INNOCENT KHUBA: I will just request you to – to just repeat that?

ADV SUSAN WENTZEL: Oh sure. Do you want to have a look at page 288

MR HUMBULANI INNOCENT KHUBA: Thank you.

CHAIRPERSON: Well he was looking at the agreement. Is that not the - what you want him to look at?

ADV SUSAN WENTZEL: Yes but he seemed to not – I noticed him paging...

CHAIRPERSON: No, no I think it is your question. I think he had the agreement. You had the agreement?

MR HUMBULANI INNOCENT KHUBA: I have the agreement.

CHAIRPERSON: Ja.

10 **ADV SUSAN WENTZEL:** Oh.

CHAIRPERSON: No it was your question.

ADV SUSAN WENTZEL: Yes oh okay.

CHAIRPERSON: I think your question – let me say this. It would seem that the reason why you were uncomfortable with the first page is that it saying you were pleading guilty to a charge of dishonesty and defeating the ends of justice. Is that right?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes. You were uncomfortable about that?

MR HUMBULANI INNOCENT KHUBA: I was very uncomfortable.

20 **CHAIRPERSON:** Because your position was that you were not guilty of any dishonesty and you were not guilty of anything?

MR HUMBULANI INNOCENT KHUBA: That is correct Chair.

CHAIRPERSON: Is that right?

MR HUMBULANI INNOCENT KHUBA: Chairperson and actually for me to look at the charges of dishonesty and look at what they were

bargaining with me to say this is the sanction. It could not really – it could not balance. To say a warning when somebody say you have been dishonest in the department. It – more especially as my level.

CHAIRPERSON: Hm at your level yes.

MR HUMBULANI INNOCENT KHUBA: I would have expected the employer to say whatever may.

CHAIRPERSON: You have to go.

MR HUMBULANI INNOCENT KHUBA: We are not really settling.

CHAIRPERSON: Yes.

- 10 **MR HUMBULANI INNOCENT KHUBA:** So I think the strategy was they put a dangling carrot to say we are going to give you this warning.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: For this serious, serious, serious charge and I took it on the basis that I felt a warning but the charges which they were saying they were very serious – they were not balanced. It was not proportional. Ja.

CHAIRPERSON: Do you want – could you just reiterate again your reasons for signing the agreement nevertheless?

MR HUMBULANI INNOCENT KHUBA: The reason for signing for...

- 20 **CHAIRPERSON:** Despite your discomfort, despite your position that you were saying you were not guilty of anything where – what was your – what were your reasons for signing nevertheless?

MR HUMBULANI INNOCENT KHUBA: As I have indicated and I think that part is squarely falling in my warning statement. Because I reflected exactly to how I reached that level to such an extent that I

said to myself I have never been in that situation before with the department. I came from the private sector and everywhere I go I was the most abused employee. In terms of the work because I had to do a lot of work. Now the thing was even though the position was so senior the picture came that you took yourself to the university. The struggles, the pain of which many people had been saying to me you managed to reach a level where the position is regarded as a political – they normally appointed directors from a ruling party. And I am there in this position and I said I am just me. So that part it kind of really took
10 the sense of the implication and I was stuck with the reality of how I reached there. It was difficult but I never saw an alternative.

ADV SUSAN WENTZEL: Chair would this be an appropriate time.

CHAIRPERSON: I think we should adjourn.

ADV SUSAN WENTZEL: Yes if we could?

CHAIRPERSON: Ja we will adjourn and return at twenty five to twelve.
We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 **CHAIRPERSON:** Yes. Let us continue.

ADV SUSAN WENTZEL: Thank you Chair. Mr Khuba were you during the course of these disciplinary proceedings asked to sign an affidavit?

MR HUMBULANI INNOCENT KHUBA: That is correct. The first ...

CHAIRPERSON: I am sorry. Do you say in the course of these proceedings?

ADV SUSAN WENTZEL: Disciplinary proceedings.

CHAIRPERSON: Disciplinary proceedings. Okay. *Ja*.

MR HUMBULANI INNOCENT KHUBA: I was before the settlement agreement the first thing which I was requested to do was to sign a statement acknowledging that I lied. I altered the report. That was done by Advocate Mokhari. I refused.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I said no I cannot do that and that is when the issue of the settlement agreement kicked in.

10 **CHAIRPERSON:** Was that on the first day of the disciplinary hearing?

MR HUMBULANI INNOCENT KHUBA: It was on the first day.

CHAIRPERSON: *Ja*.

MR HUMBULANI INNOCENT KHUBA: Where we had ...

CHAIRPERSON: That is now before he went out to get and then your lawyer - and asked to come so that they could discuss or was it later than that?

MR HUMBULANI INNOCENT KHUBA: He had already went out with the lawyer.

CHAIRPERSON: Oh. Then later on he asked you to sign an affidavit?

20 **MR HUMBULANI INNOCENT KHUBA:** Yes.

CHAIRPERSON: Okay.

MR HUMBULANI INNOCENT KHUBA: That part I refused.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: I indicated that I cannot really do that because I will be lying.

CHAIRPERSON: Yes, yes.

ADV SUSAN WENTZEL: Did they want you to say anything about Mr McBride or Mr Sesoko in that affidavit?

MR HUMBULANI INNOCENT KHUBA: Yes. They wanted me to say that they forced me.

CHAIRPERSON: They wanted you to say in the affidavit that Mr McBride and Mr - Mr Sesoko to do what?

MR HUMBULANI INNOCENT KHUBA: To alter the report.

CHAIRPERSON: To alter the report?

10 **MR HUMBULANI INNOCENT KHUBA:** Yes.

CHAIRPERSON: The first report?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Hm. So you saw the affidavit. You read it or did not even see it but you knew what it was saying?

MR HUMBULANI INNOCENT KHUBA: No I did not see the affidavit.

CHAIRPERSON: Ja, but they told you what it was saying?

MR HUMBULANI INNOCENT KHUBA: They were saying that we need you to - to do an affidavit where you say that Mr McBride and Mr Sesoko forced you to change that report.

20 **CHAIRPERSON:** Yes and you refused?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: Thank you Chair. Mr Khuba after signing the settlement agreement did you go and see Mr Sesoko?

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: Can you just explain what happened?

MR HUMBULANI INNOCENT KHUBA: I went to Mr Sesoko. I found him at the hospital.

CHAIRPERSON: Would this have been on the first - same day that you signed the settlement agreement or would it have been a few days later?

MR HUMBULANI INNOCENT KHUBA: The same day.

CHAIRPERSON: The same day, okay.

MR HUMBULANI INNOCENT KHUBA: I - I went to the hospital and I
10 told him what transpired but he had already known the details because I kept him abreast telephonically ...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: In terms of these developments.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: When I was meeting with him he was - he - he was not really in supportive of what I did but he was more relaxed. We - we could talk about and I said no rest assured I did not implicate you there ...

CHAIRPERSON: Yes, yes, yes.

20 **MR HUMBULANI INNOCENT KHUBA:** And ...

CHAIRPERSON: Did you have a copy of the agreement with you at the time or not really?

MR HUMBULANI INNOCENT KHUBA: I cannot remember.

CHAIRPERSON: Oh, you cannot remember.

MR HUMBULANI INNOCENT KHUBA: I think it was with my lawyer.

CHAIRPERSON: Yes, okay.

MR HUMBULANI INNOCENT KHUBA: I think it was with my lawyer.

CHAIRPERSON: So you assured him that you had not implicated him.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay.

MR HUMBULANI INNOCENT KHUBA: Then I went back to Polokwane.

Suddenly the - I do not know whether it was on television or on newspaper but there - there was an issue of saying IPID investigator has now spilled it all. He implicated McBride and Mr Sesoko.

10 **CHAIRPERSON:** Was that in the media?

MR HUMBULANI INNOCENT KHUBA: It was in the media. There was some talk about it.

CHAIRPERSON: Yes, okay.

MR HUMBULANI INNOCENT KHUBA: Now I received a call from Mr Sesoko and he wanted to know whether I implicated him and I was - I was very angry. I was very angry because number one I knew that that agreement my lawyer would not really leak it to the media. So I started to have doubts because the other copy - my understanding was given to the employer. Who then leaked this thing and also they are
20 distorting. They are not putting the way it happened. So I said to Mr Sesoko I said you know what we had a discussion and an agreement that I can even testify in support of your - your disciplinary hearing ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And I said I am going to do a confirmatory - confirmatory affidavit.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I did not waste time. I went - drafted. I went to the police station ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And after - I think I did an assent to him or something ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: But I finally signed it at the station.

10 **CHAIRPERSON:** Hm.

MR HUMBULANI INNOCENT KHUBA: Then I give it to - to him. I do not know what he did with that.

CHAIRPERSON: And what was the affidavit saying in essence?

MR HUMBULANI INNOCENT KHUBA: The affidavit explained what had happened ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And also indicating ...

CHAIRPERSON: Hm.

20 **MR HUMBULANI INNOCENT KHUBA:** In fact it is in line with other affidavits like the confirmatory affidavit that I deposed in support of McBride earlier.

CHAIRPERSON: Yes, yes, yes. Yes. So - so it was - it was consistent with what you understood to be the true facts?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Could you have regard to page 2-9-2? Is that the confirmatory affidavit that you gave to Mr Sesoko?

MR HUMBULANI INNOCENT KHUBA: Just a little - *ja*. That is - that is the one. That is correct.

ADV SUSAN WENTZEL: And if you can have a look at page 2-9-5 paragraph 15 you say:

10 “I wish to state categorically except for what I have
 stated above that neither McBride nor Sesoko
 instructed me to either make any specific changes
 in the report or to exonerate any person in the
 report.”

Is that correct?

MR HUMBULANI INNOCENT KHUBA: That is correct and if I want to add it is also in line with what is in - in Werksmans Report. There is a paragraph they talk about the interview and says Mr Khuba indicated that he never received any instruction ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: To exonerate anyone.

CHAIRPERSON: Hm, hm. Yes.

20 **ADV SUSAN WENTZEL:** And then at page 2-9-6 paragraphs 20 and 21 you say:

 “In respect of my plea to the charges that I was
 facing I do not in any way given the manner in
 which the charge/s are phrased implicate or intend
 to implicate or in any manner suggest that

Mr Sesoko is also guilty of the charge that he is facing. In fact in my plea bargain with my employer it was also agreed though same is not included as a term in the settlement agreement that I am free to testify for Mr Sesoko should he find it necessary to call me as a witness.”

MR HUMBULANI INNOCENT KHUBA: That is correct and also in - as part of that my lawyer deposed a confirmatory affidavit in terms of what happened during that process.

10 **CHAIRPERSON:** Yes.

ADV SUSAN WENTZEL: Now did your employer know that you had deposed to this affidavit?

MR HUMBULANI INNOCENT KHUBA: I reported on duty on 28 September. That was the Monday because it was concluded I think it was around Friday. Early in the morning while I was having a meeting with my staff telling them that I am back and I wanted to check how they were doing in terms of the work. I received a call - telephonic call from Mr Kgamanyane. He asked me why did you depose to this statement. I told him that it is because it is the truth and then after
20 that we had some discussions but on the 29th that is when I received a letter to state reasons in writing why I should not be dismissed. Those - that letter was delivered. It was delivered late.

CHAIRPERSON: On the 28th?

MR HUMBULANI INNOCENT KHUBA: On the 29th.

CHAIRPERSON: The 29th?

MR HUMBULANI INNOCENT KHUBA: I think it was the 29th.

CHAIRPERSON: The 29th would that have been a Monday - a Tuesday?

MR HUMBULANI INNOCENT KHUBA: I think it was on Tuesday if I am not mistaken.

CHAIRPERSON: Because Monday was the 28th - the 28th I think you said.

MR HUMBULANI INNOCENT KHUBA: Was the 28th ...

CHAIRPERSON: *Ja*, okay.

MR HUMBULANI INNOCENT KHUBA: And then he indicated to me in
10 that letter ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: To say I must not - I must tell him why he must not replace the final written warning ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: With dismissal.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: He gave some background on the top to say ...

CHAIRPERSON: Hm.

20 **MR HUMBULANI INNOCENT KHUBA:** You concluded this agreement.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Now you deposed a statement ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And when I got that I still remember I could not continue. I had to leave the office. I went and

consulted with the doctor because I was really depressed. I could start to see where it was going.

CHAIRPERSON: I guess especially after what you were told at the disciplinary hearing which led to the agreement. Namely whatever you say if you continue - if the hearing continues you will be fired.

MR HUMBULANI INNOCENT KHUBA: That is correct ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And my expectation there was that if anyway they wanted to discipline me.

10 **CHAIRPERSON:** Hm.

MR HUMBULANI INNOCENT KHUBA: The first process had already been concluded.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: They were supposed probably to initiate a new process ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And use that agreement as an aggravation.

CHAIRPERSON: Hm.

20 **MR HUMBULANI INNOCENT KHUBA:** The way I know the ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: The Labour Relation processes.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Now I did not involve the lawyer.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I drafted my own response.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I indicated in my response ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: That I do not know who leaked that - the information about the agreement ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And that I think that agreement was done in bad faith ...

10 **CHAIRPERSON:** Hm.

MR HUMBULANI INNOCENT KHUBA: And I stated that I was ready that the agreement can be withdrawn ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And face the disciplinary hearing.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I was ready for that.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I indicated in the letter.

20 **CHAIRPERSON:** Hm. You had reached that point?

MR HUMBULANI INNOCENT KHUBA: I - I have reached that point ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Because I have realised that it seems as if there was threat which was used.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Now let me go and really face this ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Hearing ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And then give all I had ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: In order to prove my innocence.

CHAIRPERSON: Hm.

10 **MR HUMBULANI INNOCENT KHUBA:** Now I - I sent that letter ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I cannot remember the exact time when I emailed it ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: But in the afternoon ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: There was a person from Head Office.

CHAIRPERSON: Hm.

20 **MR HUMBULANI INNOCENT KHUBA:** That day I did not go to work because when I consulted with the doctor the doctor had given me the medication. So I decided to be at home and say I will not be able to go to work. Now I - I was told that there is somebody on the way delivering a letter.

Now I was so - so surprised but I felt this letter is the letter

of dismissal. I went to the gate.

CHAIRPERSON: This was now after you had sent your representations?

MR HUMBULANI INNOCENT KHUBA: Yes.

CHAIRPERSON: Your explanation?

MR HUMBULANI INNOCENT KHUBA: Yes.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Then I went to the gate because it is an estate setup and I went to collect the letter and I got the letter.

10 **CHAIRPERSON:** It meant you are dismissed with immediate effect.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Hm.

CHAIRPERSON: No hearing nothing?

MR HUMBULANI INNOCENT KHUBA: No hearing.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I remember very well how I reached the gate but I do not remember how I reached the - the house.

CHAIRPERSON: After getting the letter?

MR HUMBULANI INNOCENT KHUBA: That is correct.

20 **CHAIRPERSON:** What was your state of mind after getting the letter that makes you not to remember how you reached the house?

MR HUMBULANI INNOCENT KHUBA: The biggest problem is that it seemed as my mind was separated from my body.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I was with my son but when I

went back I do not remember whether he was there.

CHAIRPERSON: Huh-uh, hm.

MR HUMBULANI INNOCENT KHUBA: Now - and I was walking barefoot.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I collected. I went back.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I could not remember what happened but I remember while I was in the house ...

10 **CHAIRPERSON:** Hm.

MR HUMBULANI INNOCENT KHUBA: Then it started to sink in ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: That I am now dismissed ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: From the employment.

CHAIRPERSON: Hm. Which is the thing you had sought to avoid when you agreed to this settlement agreement even though you were not happy with page 1?

MR HUMBULANI INNOCENT KHUBA: That is what I was seeking avoid

20 ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: But I want to say Chairperson that ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I somehow got the consolation

...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Later very late.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: The consolation was when I heard in the news ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: That Mr Sesoko was fired when he was admitted in hospital

10 **CHAIRPERSON:** Hm.

MR HUMBULANI INNOCENT KHUBA: Without leading any evidence.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I realised that what I did was simply to cross the bridge early ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: But anyway I had to cross.

CHAIRPERSON: Hm. You - you become more convinced that what had been told to your lawyer that you were going to be fired anyway you were going to be fired if the disciplinary hearing proceeded must have
20 been true?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Hm. Okay.

ADV SUSAN WENTZEL: Mr Khuba who hand delivered this letter of dismissal to you?

MR HUMBULANI INNOCENT KHUBA: It was - it was a gentleman

called Mosie but I remember the time there was my Deputy Provincial Head came at the gate.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: So he was used to hand deliver that letter to me and I accepted the letter ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And he then went back ...

CHAIRPERSON: Hm, hm.

MR HUMBULANI INNOCENT KHUBA: But from Head Office it was a
10 gentleman who was - it was - he was from Gauteng.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I cannot remember the name now.

CHAIRPERSON: Hm and the letter was signed by Mr Kgamanyane?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: So did somebody from Head Office in Pretoria again have to drive to Limpopo to hand deliver this letter to you?

MR HUMBULANI INNOCENT KHUBA: That is correct.

20 **ADV SUSAN WENTZEL:** And if you can look at the timing between sending your representations in response to the letter you have received on 29 September 2015. Is it possible that those representations could have been considered before leaving Pretoria with this letter?

MR HUMBULANI INNOCENT KHUBA: I - I think the way it happened

looking at when the - the report was - was sent. Even though I cannot remember vividly the times. I got this sense that the person was already dispatched before they could even entertain what I have written because my understanding is that when you have a representation if you are an Executive Director you will apply your mind and request maybe to have a meeting with your Legal Services or Labour Relations and consider the reason - evaluate them and then decide on the decision but the way it happened so quick when I sent it in the morning or around nine.

10 I do not know whether it was nine or 10 and you have in the afternoon a person there. It really shows that it was just what they requested me to do was just a formality.

CHAIRPERSON: Did you email your - your explanation?

MR HUMBULANI INNOCENT KHUBA: I think I emailed Chairperson.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Hm.

CHAIRPERSON: Okay. Hm.

ADV SUSAN WENTZEL: Now please will you have regard to the document at page 298. It is a document addressed to you by
20 Mr Kgamanyane dated 29 September 2015. Is that the notice of dismissal essentially?

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: That was sent to you?

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: And if we have regard to paragraph 3 it says:

“The settlement agreement containing your guilty and the sanction was read out to the Chairperson in the inquiry who then made a ruling in which he confirmed its contents and pronounced you guilty of the charge. The inquiry then terminated on that day 23 September 2015. A copy of the settlement agreement and Annexure A the charge sheet is attached. On Friday 25 September 2015 in breach of your guilty plea and the agreement for a lenient
10 sanction short of dismissal as contained in the settlement agreement ...”

CHAIRPERSON: You do not - you are not going to read the whole letter, hm?

ADV SUSAN WENTZEL: No.

CHAIRPERSON: *Ja.* I think just go to what is important because

ADV SUSAN WENTZEL: “...without my knowledge or consent deposed to an affidavit in Polokwane which contradicted the terms of your guilty plea as contained in the settlement agree.”

20 So - and then he in paragraph 6 says:

“I am of the view that your conduct as explained above was a perpetration of a dishonest act and the defeating of the ends of justice and you have already pleaded guilty to and a serious breach of the leniency of the sanction that I gave you with the

final written warning.”

So he uses as you say the fact that you proposed to the affidavit. Now your response is contained on page 3-0-2. Is that correct?

MR HUMBULANI INNOCENT KHUBA: *Ja.*

ADV SUSAN WENTZEL: And that refers to you saying that there was no condition in the agreement that you could not depose to the affidavit and you regard the agreement as being invalid and you are going to go to court if need be to set it aside.

10 **MR HUMBULANI INNOCENT KHUBA:** That is correct.

ADV SUSAN WENTZEL: Then the next document on page 3-0-5 dated 30 September 2015 is that the letter of your summary dismissal?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: I see when I look at this letter that Mr Kgamanyane wrote to you asking you to - inviting you - you to make representations why it is - *ja*. That in terms of that letter what he was seeking to do - to - is to in effect do away with the final written warning that had been agreed to as part of the settlement in respect of the charges that you - you had that been preferred against you and he was seeking to replace
20 that with dismissal. So he was seeking to unbundle the settlement agreement?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: He - he was seeking to charge you with misconduct in regard to you deposing to an affidavit. He was seeking you to give a penalty - a sanction for the charges that you had faced at the

disciplinary inquiry.

MR HUMBULANI INNOCENT KHUBA: That is correct Chairperson.

CHAIRPERSON: And that is quite strange because it looks like on the one hand he was seeking to do away with the - with the settlement agreement but on the other hand he also wanted to use it because your plea of guilty was part of the settlement agreement. If the agreement is put aside that means there is no plea of guilty.

MR HUMBULANI INNOCENT KHUBA: That is correct and Chairperson ...

10 **CHAIRPERSON:** And therefore there should be an inquiry?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: And the inquiry that had been scheduled from the beginning should then proceed?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: But he - he wanted to retain the part of the settlement agreement where you had pleaded guilty but to discard the part of the settlement agreement that related to a final written warning and to then put in a different - a different sanction that had - that had not been part of the settlement agreement.

20 **MR HUMBULANI INNOCENT KHUBA:** That is correct.

ADV SUSAN WENTZEL: Thank you. Mr Khuba I am now dealing with paragraph 103 on page 31 of your statement.

MR HUMBULANI INNOCENT KHUBA: It is 100?

ADV SUSAN WENTZEL: 103 page 31.

MR HUMBULANI INNOCENT KHUBA: Okay. I am - I am there.

ADV SUSAN WENTZEL: Please could tell the Chair what happened on 3 October 2015 which was three days after your dismissal?

CHAIRPERSON: I am sorry Ms Wentzel. I may have missed this while I was focusing on this letter from Mr Kgamanyane at page 3 - the earlier letter at page 3-0-1 or is it the one ending at page 300. I see Mr Khuba that in your representations to Mr Kgamanyane among other things or in the last paragraph you say:

10 “You have - you had approached the PSA for an
 urgent High Court application to have the
 agreement set aside based on a number of reasons
 to allow you to go through the process of a hearing.
 If you decide to serve me with a letter of dismissal
 please use the same address that appears on your
 letter. I have been booked off sick due to my ill
 health and will only be back on 08/10/2015.”

You had a sense that dismissal was going to follow. Is that right?

MR HUMBULANI INNOCENT KHUBA: That is correct.

20 **CHAIRPERSON:** Yes, but you - you made it clear here that you were
 quite happy to actually go through to - to resume the disciplinary
 process and go through a disciplinary process?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Hm. Okay.

ADV SUSAN WENTZEL: And if - if you can perhaps have regard also
to page 3-0-2. Sorry. I can see you already closed it.

MR HUMBULANI INNOCENT KHUBA: Okay. 3-0-2. Okay.

ADV SUSAN WENTZEL: And then one, two, three - the - the last paragraph on that page. You say:

“The agreement does not have any condition or terms which require me to depose or not depose to statement regarding this matter or testify in favour or against Mr Sesoko.”

Your paragraph 4 states that:

10 “My conduct of deposing an affidavit after the settlement contradicted the terms of the guilty plea. The agreement does not have terms with regard to this issue. If the employer made an offer for a settlement agreement with ulterior motive unfortunately I fail to read such during the acceptance of the offer. I concluded the agreement in good faith putting the interest of my family first.”

That is in line with what you testified.

CHAIRPERSON: Well the - three is a paragraph which is I think important also on the last - second page of your letter. Namely page 3-0-3. You say to Mr Kgamanyane:

20 “Your paragraphs 6 and seven states that I should explain why you should not revoke the final written warning and replace it with dismissal. The same plea agreement which was signed by the employer does not have a clause that allows the position of dismissal without a hearing on the so called new

misconduct or any contravention if really there was such. This clearly shows that this agreement is used as an instrument of victimisation by the employer. With this threat of dismissal I am not convinced that the employer made such an offer - I am convinced that the employer made such an offer in bad faith. It is clear that with this amount of victimisation the so called six months in which the sanction would be active is going to be a nightmare for me.”

10

That is what you said.

MR HUMBULANI INNOCENT KHUBA: That's correct.

ADV SUSAN WENTZEL: Thank you Chair. Okay now Mr Sesoko can you tell the Chair what happened on the 3rd of October 2015 three days after your dismissal, where you deal with it in paragraph 103 of your statement.

MR HUMBULANI INNOCENT KHUBA: I received a visitation from Brigadier Ramela and Colonel Mahlangu of the Hawks and...[intervenes].

20 **CHAIRPERSON:** I'm sorry excuse me Miss Wentzel I think you did refer to the letter of dismissal but I actually didn't go there, what page is it again?

ADV SUSAN WENTZEL: It's page 305 Chair.

CHAIRPERSON: I see that in the letter of dismissal he says, that is Mr Kgamanyane,

“Due to the seriousness of this transgression and the seniority position you hold in IPID as the Provincial Head, I find that I’m unable to trust you anymore and as such the trust relationship has been irreparably broken down. The position you occupy is one of trust and the person who occupies it, must be a person with integrity. You have demonstrated through your dishonest conduct that you lack integrity and cannot be trusted by the employer, I therefore dismiss you from your employment with immediate effect”.

10 Does this in any way go back to a point you made earlier on with regard to why they would want to keep you as part of the settlement if you were guilty of such serious misconduct as dishonesty and defeating the ends of justice.

MR HUMBULANI INNOCENT KHUBA: That’s correct Chairperson because my understanding is that if then what he was saying was true why did he stomach the first one.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: He would not have negotiated to have that settlement agreement because we talk about dishonest but
20 the truth of the matter is, they were using me to say, how can they get me to turn me against McBride and Mr Sesoko and when it backfired now they play this strict employer, why are you – why did you depose this statement?

CHAIRPERSON: Yes and – okay let me ask this question, how was your relationship with Mr Kgamanyane before this – before the

disciplinary hearing?

MR HUMBULANI INNOCENT KHUBA: Mr Kgamanyane was one of my best friends in the department.

CHAIRPERSON: Before he became acting Executive Director.

MR HUMBULANI INNOCENT KHUBA: Before he became acting.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: To such an extent that we used to call each other even over the weekend, we were very, very close and when we were attending either strategic planning, when we would go to
10 eat we would eat [indistinct] sit together because our offices – our provinces were regarded as the best performing.

CHAIRPERSON: He being Provincial Head in Free State?

MR HUMBULANI INNOCENT KHUBA: Provincial Head.

CHAIRPERSON: And you being in Limpopo?

MR HUMBULANI INNOCENT KHUBA: While me being in Limpopo.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Normally they wouldn't find staff with us.

CHAIRPERSON: Yes.

20 **MR HUMBULANI INNOCENT KHUBA:** And it's just that he was not utilised in the investigation of high profile cases or setting up offices.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Then when this thing happened it really gave me a shock but somehow I just understood it this way, some people are so ambitious to such an extent that when they are

looking for a bigger position, integrity no longer matters, so I just felt that way and really it was like – and I just want to put this part so that Chairperson can understand because after my dismissal when I was struggling with how am I going to run my life I realised that I have put in petrol claim of the travelling that I did while I was doing this hearings. That petrol claim was supposed to pay me R8 000, I phoned head office - I think it was paid maybe eight months or sometime. I phoned head office, our policy says they pay the claim within 30 days. Now when I checked and I kept on phoning, phoning then one of the
10 employees told me, we were told not to process your claim because if we pay you this money you're going to pay the lawyer and try to fight back, they want you to suffer.

CHAIRPERSON: Is that so?

MR HUMBULANI INNOCENT KHUBA: That's correct, so what I did I went to another lawyer in Polokwane, not Mr Phooko I was using, we wrote numerous letters saying we would have to go to Court you have to pay me the thing and they ended up not paying, they paid way after.

CHAIRPERSON: Did you say after eight months or so?

MR HUMBULANI INNOCENT KHUBA: After I had gone to the Labour
20 Court to – it was way after.

CHAIRPERSON: Now Mr Sesoko testified that when Mr Kgamanyane, I think his suspension letter if I'm not mistaken, he basically, I think asked him a question which kind of required Mr Kgamanyane to say why he was doing this because Mr Sesoko said I think the two of them also had – they had a very good relationship before Mr Kgamanyane became

acting Executive Director of IPID. He said he had even helped him, I think, when he was setting up in the Free State, setting up offices and so on and he said Mr Kgamanyane responded and I think there's a transcript for it by saying something along the lines that when you join the police before they confirm you or confirm your appointment and they instruct you to go and arrest your father, you have to go and arrest your father, which Mr Sesoko understood as a way of saying, I've been instructed to do this. So in other words it's not me, I've been instructed to do this. You did not have any such situation in your

10 interactions with Mr Kgamanyane?

MR HUMBULANI INNOCENT KHUBA: No I did not on the basis that because I was far from Pretoria I could not have engagement with him and I avoided him to make any call to him.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: So he would use someone to serve me so I think with Mr Sesoko it was easier because he resides around there.

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

ADV SUSAN WENTZEL: Thank you Chair. Mr Khuba could you
20 please now tell the Chair what happened on the 3rd of October it's dealt with at paragraph 103 of your statement?

MR HUMBULANI INNOCENT KHUBA: On the 3rd of October 2015 it was approximately three days after my dismissal I received a visitation from Brigadier Ramela and Colonel Mahlangu of the Hawks. When they were there, I did not even - I was not aware because when you

enter through the gate you need to get approval the security, they will telephone the house but I was just surprised when they were there, I don't know how did they get access. So they entered the house and then we – before they could sit down they were like moving in the sitting room, so my garage it's facing the sitting room, they could see the car parked there and they could see – they checked the house and they were saying you have such a big house, it might be expensive on a monthly basis? You have a beautiful car, now because you're not working it might be really, really difficult and I was surprised because

10 they were saying these things before we could even start to – they were just doing like this, ah the house is nice but how are you going to pay for this house because now you are not working? Then when I told them we can sit, they said, Mr Khuba we have a solution for you...[intervenes].

CHAIRPERSON: This is even before they could sit down?

MR HUMBULANI INNOCENT KHUBA: Before they could even sit down, they said they had a solution for me, they're having something good for me, then we sat down. They were having a docket and fortunately that docket, I was able to check because while I was seated

20 you know, I just become suspicious why there is a docket when these people are visiting me. So that docket, I wrote the case number down, not while I was with them, after they had left and now the – what they did was to explain to me, they were very direct, but I need to indicate the person who was talking was the junior Colonel, because they introduced themselves, the Senior Brigadier Ramela was always – just

quiet.

CHAIRPERSON: He was quiet?

MR HUMBULANI INNOCENT KHUBA: He was quiet, not talking much.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: The person who was a spokesperson was...[intervenes].

CHAIRPERSON: Mahlangu.

MR HUMBULANI INNOCENT KHUBA: Mahlangu and that is when he said we want you to make a statement that will implicate Dramat – not
10 Dramat, Mr Sesoko and McBride and then you are going to be...[intervenes].

CHAIRPERSON: Mr Sesoko and Mr McBride?

MR HUMBULANI INNOCENT KHUBA: Ja so that you can be reinstated.

CHAIRPERSON: So you say he was very direct that's how he put it?

MR HUMBULANI INNOCENT KHUBA: No they were very direct with me there, they never duck and dive.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Now I refused, I said no I can't, why should I make that statement and I saw a charge...[intervenes].

20 **CHAIRPERSON:** Did they say in what way they wanted you to implicate them, to implicate Mr McBride and Mr Sesoko?

MR HUMBULANI INNOCENT KHUBA: They indicated...[intervenes].

CHAIRPERSON: What did they say?

MR HUMBULANI INNOCENT KHUBA: Because they said they forced you to do – to alter the report isn't it, then I said no, they didn't force

me. Now I'd already seen the charge there in the docket so I just started to talk to them and say, no, no they persuaded, persuaded, persuaded, came with tricks, you know it's going to be difficult to sustain yourself, how are you going to pay this and what he was talking, he was really playing with my emotions, he was really playing with my emotions. Somewhere somehow I felt to say, really why this guy is saying this thing because it was – you know when you have just gone through a traumatic situation pictures are not far fetched, immediately a person mentioned a word it just comes. So he was
 10 telling me what I – I even asked myself how I'm going to pay and he says, no we're going to help you Ntlemenza sent us here.

CHAIRPERSON: What did they say?

MR HUMBULANI INNOCENT KHUBA: They said General Ntlemenza sent us here.

CHAIRPERSON: Oh yes and they were from the Hawks and at that time he was already acting head of the Hawks.

MR HUMBULANI INNOCENT KHUBA: The Hawks yes, and he said he's going to make everything in his power that you go back to work. Now I knew once bitten twice shy but I wouldn't have done a statement but I
 20 realised this is coming again, it's coming again and after that, after we had a discussion then they...[intervenes].

CHAIRPERSON: Well before – after you had, had a discussion tell us how the discussion ended?

MR HUMBULANI INNOCENT KHUBA: The discussion ended when they were saying they will come the following day, they wanted me to think

about it and if it's possible you can consult with your lawyer, any person, this is good for you. They were just indicating how, you know it will really assist me. Then the following day, I'm not recollecting completely what happened but it seems as they came again...[intervenes].

CHAIRPERSON: The following day?

MR HUMBULANI INNOCENT KHUBA: The following day and we could not understand each other...[intervenes].

CHAIRPERSON: This was February 2016?

10 **MR HUMBULANI INNOCENT KHUBA:** No that was October.

CHAIRPERSON: Oh I'm sorry October 2015?

MR HUMBULANI INNOCENT KHUBA: 2015 Yes.

CHAIRPERSON: Okay yes.

MR HUMBULANI INNOCENT KHUBA: Then they left again.

CHAIRPERSON: So on the second day, what did they say, I want that discussion?

MR HUMBULANI INNOCENT KHUBA: They wanted to know from me whether I thought about it and they were like playing like my friends, please we are going to help you.

20 **CHAIRPERSON:** They were being nice to you?

MR HUMBULANI INNOCENT KHUBA: Very, very nice.

CHAIRPERSON: Yes and this time was it just the two of them again or was there different...[intervenes].

MR HUMBULANI INNOCENT KHUBA: I think it was the two of them I don't remember any person coming there, now...[intervenes].

CHAIRPERSON: So they – I want the discussion between the two of you, just tell me more this time now?

MR HUMBULANI INNOCENT KHUBA: No the discussion was whether you have spoken with your lawyer, what happened what is the decision that you have taken, I said, no I can't.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: They still insisted to say we want to help you if you have a problem just give us a call and they were saying they were leaving and then they left but at that time I was under
10 a medication, I think I used it for almost a week.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And it made me to kind of really sleep, I would sleep sometimes from 9 o'clock until 4.

CHAIRPERSON: 9AM to 4PM.

MR HUMBULANI INNOCENT KHUBA: 4PM and again in the evening I would just sleep.

CHAIRPERSON: You'd just sleep?

MR HUMBULANI INNOCENT KHUBA: But I only use it for – I think for a week and then while I was just – I think I was in my sleep, I think – ja
20 I was in my sleep or just woken up, I got a call from Mahlangu, that is the call that was recorded, it was recorded because I had an app on my phone that would record every call but I will just choose which one I want to save.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Now – then that is when they

said to me, but he was a little bit diplomatic in the call.

CHAIRPERSON: On the phone ja.

MR HUMBULANI INNOCENT KHUBA: But he was reiterating what he said, to say that, you know your enemies, if you make this Ntlemeza, you know Ntlemeza will reinstate you, I just felt that he was a little bit cautious unlike when he was there.

CHAIRPERSON: When he was in the house.

MR HUMBULANI INNOCENT KHUBA: In the house then...[intervenes].

CHAIRPERSON: But tell me on that conversation on the phone, just
10 tell me in full what he said and what you said back as far as you are able to remember?

MR HUMBULANI INNOCENT KHUBA: What I remember is that he said make a statement against your enemy.

CHAIRPERSON: Is that how he put it?

MR HUMBULANI INNOCENT KHUBA: Ja put it, because he was indicating this people, Mr Sesoko and Mr McBride are my enemies.

CHAIRPERSON: Okay.

MR HUMBULANI INNOCENT KHUBA: My close friend is General Ntlemeza because I've been interacting with him for quite some time.

20 **CHAIRPERSON:** Yes.

MR HUMBULANI INNOCENT KHUBA: So – and he said they would want me to make a statement. So I was – I was like dizzy I just okay I never engaged with them and even the first part, it indicated that there was something wrong with me because I even thought it was Phooko, I said Mr Phooko because I thought it was my lawyer but it was later that

I realised that it was Colonel Mahlangu because he was there in the house but I also want to add that even from that call I realised that the medication was not really doing me any good, I still remember my wife saying, let's put this in the dustbin you go and see how you look for a job outside, even if you pick up papers as long as our kids eat and that was the last time I...[intervenes].

CHAIRPERSON: Oh she was saying maybe just forget the IPID issue.

MR HUMBULANI INNOCENT KHUBA: Yes.

CHAIRPERSON: Just look for another job.

10 **MR HUMBULANI INNOCENT KHUBA**: Recover.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: So it was the issue of that just step down and make whatever you can make.

CHAIRPERSON: Ja make peace with and put it behind you.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: So – but the conversation on the telephone or with Colonel Mahlangu ended on the basis that he said make a statement against your enemies and you said – or something like that?

20 **MR HUMBULANI INNOCENT KHUBA**: Yes and including that you will be reinstated.

CHAIRPERSON: And that you will then be reinstated?

MR HUMBULANI INNOCENT KHUBA: That's correct.

CHAIRPERSON: Yes okay and then what happened – oh I'm sorry Ms Wentzel you may continue, do we have that – a transcript of that telephone conversation?

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Let's go to it.

ADV SUSAN WENTZEL: The transcript is Annexure 24 and it starts at page 308, the actual wording at 310. Now...[intervenes]

CHAIRPERSON: Yes page 310.

ADV SUSAN WENTZEL: So you'll see, I don't know you would like to read it or are you happy for me to read it Mr Khuba?

CHAIRPERSON: Well maybe read it yourself Miss Wentzel, I think it will be quicker.

10 **ADV SUSAN WENTZEL:** That's fine he says...[intervenes].

CHAIRPERSON: We don't need to read the whole thing, just the important features.

ADV SUSAN WENTZEL: He says,

"No I'm not at home down at the bottom paragraph 20, yet but I'm at a elder's house, where – okay, okay. In the rural areas here I am home, no one stays here so I decided to come and open the windows for some fresh air. Oh that's good yes. Then he says, you say no man thanks I will talk to Brigadier maybe tomorrow to finalise the appointment on Monday. Yes...[intervenes].

20 **CHAIRPERSON:** I think just say Khuba, Mahlangu so that...

ADV SUSAN WENTZEL: I apologise yes,

"Khuba, no man thanks I will talk to Brigadier maybe tomorrow to finalise the appointment on Monday. Colonel Mahlangu, yes, yes I forgot to show you something, then Khuba, okay, Colonel Mahlangu, yes I forgot to show you

something just so that you know that everything that you do for good for yourself. Khuba, okay. Mahlangu, General, General remember General is your friend. Khuba, Yes. Mahlangu remember General Ntlemeza is your friend. Khuba, yes I know he is my friend. Colonel Mahlangu, you must understand that whatever you do well for yourself. Khuba, yes. Colonel Mahlangu, not to support your enemies. Khuba yes. Mahlangu, we will make him we will make him and we will empower him to ensure that you restore your job that is

10 what you must do. Khuba, okay. Mahlangu, that you must know whatever everything of good you do for yourself. Khuba, okay. Mahlangu, and you are not in line with your enemy. Khuba, yes, yes yes. Mahlangu, as soon as everything is finalised General is the one who will do good for you. Khuba, okay okay. Mahlangu, as a friend, as a person you know. Khuba, yes. Mahlangu, I do not think he will dump you, I do not think he will throw you in the mud the only thing you must do is be honest to yourself, fix everything, do not take wrong ideas and advices and then we will tell General

20 the NPA will deal with whatever they deal with but we will inform General that since this guy has pushed for us to reach where we are. Khuba, yes. Mahlangu, as a witness. Khuba, yes. Mahlangu, then he is acquitted. Khuba, okay. Mahlangu, and something has to be done, he has to be restored next to his position or to his [indistinct]. Khuba,

okay. Mahlangu, yes please you must underline it, you must put NB behind it and underline it do not do it. Khuba, Okay and then the response, do not highlight it with a highlighter you must write it with a red pen underneath it is the best statement to you, you must empower yourself”.

CHAIRPERSON: Yes thank you, that transcript of course she hasn’t read everything on the transcript, that transcript of that telephone call, does it reflect substantially the conversation you had on the phone with Colonel Mahlangu?

10 **MR HUMBULANI INNOCENT KHUBA:** That’s correct.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Mr Khuba if we can then go to paragraph 107 on page 32 of your statement and if you could please the Chair what happened on Wednesday the 24th of February 2016?

CHAIRPERSON: Maybe before we go there, did Colonel Mahlangu follow-up on the issue that the two of you discussed on the telephone at a later stage?

MR HUMBULANI INNOCENT KHUBA: No what happened, I am the one who gave him a call, it was on Monday because he was supposed to
20 come on Monday.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And that is when I said I was in Pretoria and I said I won’t be available.

CHAIRPERSON: Would that have been a few days after the day on which the telephone call took place?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay. You called him.

MR HUMBULANI INNOCENT KHUBA: Ja just to say I am not going to available at home.

CHAIRPERSON: Oh the – was he going to come home

MR HUMBULANI INNOCENT KHUBA: He was going to come again on Monday because he wanted to see whether I have changed my mind.

CHAIRPERSON: Now on the – on the – on the transcript of the telephone conversation I did not pick up anything in terms of which he
10 was going to come home. Did he call after – afterwards to say I would like to come home or is it in the conversation?

MR HUMBULANI INNOCENT KHUBA: I think if we check...

CHAIRPERSON: I might not have picked it because I did not read everything. But that is your understanding? In the telephone conversation...

MR HUMBULANI INNOCENT KHUBA: Let me go to the – just to refresh my mind. Telephone conversation. The transcript where is it?

ADV SUSAN WENTZEL: It is on page 3 – well it starts – you can look at page 310 onwards.

20 **CHAIRPERSON:** 3?

ADV SUSAN WENTZEL: 310.

CHAIRPERSON: 310?

ADV SUSAN WENTZEL: Ja.

MR HUMBULANI INNOCENT KHUBA: 310. Okay. Okay there it says –

“No man thanks I will talk to Brigadier maybe

tomorrow to finalise the appointment on Monday.”

CHAIRPERSON: Oh that is

MR HUMBULANI INNOCENT KHUBA: That is it.

CHAIRPERSON: Okay so that.

MR HUMBULANI INNOCENT KHUBA: Ja.

CHAIRPERSON: He was going to talk to the Brigadier.

MR HUMBULANI INNOCENT KHUBA: ja.

CHAIRPERSON: With a view to make an appointment for either him or them to see you on Monday.

10 **MR HUMBULANI INNOCENT KHUBA:** That is correct.

CHAIRPERSON: Okay. And then you phoned him before they could come?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: And you had said to him you are not at home?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: And what else did you say in that telephone conversation?

MR HUMBULANI INNOCENT KHUBA: It was very, very short.

CHAIRPERSON: Yes.

20 **MR HUMBULANI INNOCENT KHUBA:** I do not remember having said anything further than that.

CHAIRPERSON: Oh.

MR HUMBULANI INNOCENT KHUBA: And he just said okay.

CHAIRPERSON: Okay and there was no further arrangement made?

MR HUMBULANI INNOCENT KHUBA: No.

CHAIRPERSON: Okay and nothing actually...

MR HUMBULANI INNOCENT KHUBA: I do not remember.

CHAIRPERSON: They did not pursue the issue?

MR HUMBULANI INNOCENT KHUBA: No there was ...

CHAIRPERSON: Ja they did not.

MR HUMBULANI INNOCENT KHUBA: Hm.

CHAIRPERSON: Okay alright. I think then you can continue.

ADV SUSAN WENTZEL: So just so we can get the timeline. This first visit that you had from Colonel Moukangwe was the 3rd October 2015.

10 **MR HUMBULANI INNOCENT KHUBA:** Okay.

ADV SUSAN WENTZEL: Then I am not going to deal with the – the Labour Court application yet. Then the following year on Wednesday the 24th February 2016 is it correct that you were again visited by members of the Hawks? If you have a look at paragraph 107 of your statement page 32.

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: Please could you tell the Chair what happened?

20 **CHAIRPERSON:** I am sorry I think – I think we should say for what it is worth Ms Wentzel. You – Mr Khuba you did in October 2015 you lodged an application in the Labour Court challenging your dismissal, is that right?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: And you have attached your founding affidavit and loss of motion as Annexure HIK25?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Ms Wentzel will not go to that now but just for the sequence let us do – I wanted us to record the sequence. And then that it seems was decided in April 2017. She will deal with that later. In the meantime then she wants to talk to you about what is in 107. Okay. Then you can continue Ms Wentzel.

ADV SUSAN WENTZEL: Thank you Chair. So if you can have a look at paragraph 107 of your statement.

MR HUMBULANI INNOCENT KHUBA: I received a visitation again from
10 members of the Hawks it was on the 24th February 2016.

CHAIRPERSON: You should not ask him to look at it unless he says he wants to refresh his memory. You just ask him a question and then he can tell the story.

ADV SUSAN WENTZEL: Yes. No I intended him to do that I just wanted him to understand where – you know what it is what – just for the dates.

CHAIRPERSON: What happened in February 2016? Did you have any meeting or visit by members of the Hawks?

MR HUMBULANI INNOCENT KHUBA: That is correct.

20 **CHAIRPERSON:** Tell me more. Tell me about that visit? Who visited you? Where it was? And what was discussed.

MR HUMBULANI INNOCENT KHUBA: It was Brigadier Xaba. It was Sewela I do not remember the rank.

CHAIRPERSON: You can refresh your memory if you want to look at the names that is fine.

MR HUMBULANI INNOCENT KHUBA: Okay. And Colonel Maluleke.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And those three when they came.

CHAIRPERSON: Yes did they make an appointment before or not?

MR HUMBULANI INNOCENT KHUBA: I cannot remember.

CHAIRPERSON: You cannot remember?

MR HUMBULANI INNOCENT KHUBA: I cannot remember whether there was any appointment made.

10 **CHAIRPERSON:** Yes. They came to your house?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And that is when they told me about the case of defeating.

CHAIRPERSON: Defeating the ends of justice.

MR HUMBULANI INNOCENT KHUBA: Ends of justice.

CHAIRPERSON: ja.

MR HUMBULANI INNOCENT KHUBA: And fraud. But when they showed me the case number I realised that it is the same case number
20 that I have already quoted it in my Labour Court papers long time ago during the initial visit in...

CHAIRPERSON: Of Colonel Mahlangu and ...

MR HUMBULANI INNOCENT KHUBA: Ja in October.

CHAIRPERSON: Yes which you saw...

MR HUMBULANI INNOCENT KHUBA: Ja.

CHAIRPERSON: Which they – had with them.

MR HUMBULANI INNOCENT KHUBA: But this time the charge had changed. It is no longer perjuries now.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Fraud and ...

CHAIRPERSON: Defeating the ends of justice.

MR HUMBULANI INNOCENT KHUBA: Defeating the ends of justice.

CHAIRPERSON: Yes okay.

MR HUMBULANI INNOCENT KHUBA: Yes. And they told me that they
10 were investigating – they wanted my warning statement.

CHAIRPERSON: Now the Hawks of course at that time were under General Ntlemeza?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes. Your friend.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay. Yes. The one who according to Mr Mahlangu was going to re – have you reinstated if you – if you signed and – statement implicating Mr McBride and Mr Sesoko.

MR HUMBULANI INNOCENT KHUBA: That is correct. Yes continue.

20 **MR HUMBULANI INNOCENT KHUBA:** So I then agreed that I will submit a statement.

CHAIRPERSON: So what did they say to you and what did you say to them? I want that conversation.

MR HUMBULANI INNOCENT KHUBA: They told me about the charges and they gave me questions. They were questions I think they were up

to I think it was 21 or cannot remember vividly now. But those questions were written down to say did you do a report with Colonel Moukangwe? Did you sub – those type of things?

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And what I did...

CHAIRPERSON: Was there a purpose – was the purpose of their visit to give you those questions or was the purpose to serve you with a charge sheet or summons or what was their purpose? The purpose of their visit?

10 **MR HUMBULANI INNOCENT KHUBA:** There were no not – they...

CHAIRPERSON: They did not say what the purpose was?

MR HUMBULANI INNOCENT KHUBA: No they just indicated that there is this case of alteration of report.

CHAIRPERSON: Ja.

MR HUMBULANI INNOCENT KHUBA: We want to obtain a warning statement from you.

CHAIRPERSON: Oh they wanted to get a warning statement from you?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay.

20 **MR HUMBULANI INNOCENT KHUBA:** Then I took the questions and I said I am going to submit a warning statement.

CHAIRPERSON: Okay

MR HUMBULANI INNOCENT KHUBA: Of which I did.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: But I think I need to put this in

context. Because that was for the first time that I told myself that now here I am going to say it all.

CHAIRPERSON: Hm in your statement?

MR HUMBULANI INNOCENT KHUBA: In my statement. At that time I had not yet even told McBride about the visitation I got from...

CHAIRPERSON: Colonel Mahlangu.

MR HUMBULANI INNOCENT KHUBA: Ntlemeza, Mdluli and that one was ...

CHAIRPERSON: Oh.

10 **MR HUMBULANI INNOCENT KHUBA:** Sorry Ntlemeza.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Telling me about being seen by...

CHAIRPERSON: Dramat.

MR HUMBULANI INNOCENT KHUBA: General Mdluli.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Those parts – those details...

CHAIRPERSON: You had not shared them with Mr McBride and Mr Sesoko.

20 **MR HUMBULANI INNOCENT KHUBA:** Even Mr Sesoko did not know.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Now I felt that this time let me open the lid and I was doing it out of the feeling that I held the secret which if I do not say it out it will never be known. So I then did the statement. When I did the statement at the bottom there when I

finalised the statement then I started to respond to those questions. I think my warning statement were almost eleven pages then.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And then two or three or one page – let us say around two pages might have been the response to the questions.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Now I took the warning statement and went to the office of Brigadier Xaba. He had hired or
10 requested somebody to give him an office in Polokwane.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: So it directed me where I had to submit that statement.

CHAIRPERSON: Yes otherwise were these people from Gauteng or were they Limpopo people?

MR HUMBULANI INNOCENT KHUBA: From – I think they were from Gauteng.

CHAIRPERSON: Okay, okay.

MR HUMBULANI INNOCENT KHUBA: Then what happened there I
20 gave him the statement. I was accompanied with a lawyer whom I requested from Limpopo. The one who assisted me to write those letters demanding for R8 000.00. Now this lawyer was that he read the statement – we sat there.

CHAIRPERSON: Just before you get there. If you have got those letters please give them – copies to the legal team where you were

writing to the head office of IPID asking them to pay your claim and they were not doing that.

MR HUMBULANI INNOCENT KHUBA: I will check that.

CHAIRPERSON: Ja okay continue.

MR HUMBULANI INNOCENT KHUBA: Then the – we handed – I handed over the statement. Before I could sign because there are some processes that need to be followed when you are take – you are obtaining a warning statement. It is not simply an issue of signing and – he read it and pre – he prepared something that entails the rights of
10 the person so that one could understand as a suspect that whatever he says is going to be used in the court of law. Now when he read it he said to me – in the middle he just stopped.

CHAIRPERSON: Who was that now?

MR HUMBULANI INNOCENT KHUBA: It was ...

CHAIRPERSON: Your attorney or?

MR HUMBULANI INNOCENT KHUBA: Brigadier Xaba.

CHAIRPERSON: Oh Brigadier Xaba ja.

MR HUMBULANI INNOCENT KHUBA: Ja.

CHAIRPERSON: Oh he read it while you were there.

20 **MR HUMBULANI INNOCENT KHUBA:** I was there I was seated there because I wanted to sign.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: He read it and he took my warning statement somewhere in the middle he put it on the table.
[Indistinct] Mr Khuba was he this necessary to say? That is what he

asked.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I said to him for me it was necessary but my lawyer was quick to say you cannot really tell what the suspect needs to say. It is his right. So he then took and he was no longer willing. I could see that he took the page where I was just had to sign.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: But he was not really ...

10 **CHAIRPERSON:** He was not happy with your statement.

MR HUMBULANI INNOCENT KHUBA: He was not happy.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: He was not happy.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Then after that I signed and I requested a copy which I got.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: If you have a look at page 351 of the bundle it is Annexure 27.

20 **CHAIRPERSON:** You did not say 251?

ADV SUSAN WENTZEL: 351.

CHAIRPERSON: 351.

ADV SUSAN WENTZEL: Is this the statement that you are referring to where you said you are now going to set the truth out?

CHAIRPERSON: The warning statement.

ADV SUSAN WENTZEL: The warning statement?

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: And as you testified you set out everything that had occurred and it was only in the last part of the statement from page 361 that you say you will respond to the remaining questions.

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: Do you know what it was in the statement that the General had problem with or the Brigadier had a problem with?

MR HUMBULANI INNOCENT KHUBA: I could not see what he was
10 reading but somewhere somehow while he was reading – he took a bit of time but he reach a part where he seems as he could not continue and then he said: “Was it necessary Mr Khuba to put this thing in?”

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: And is it correct that this statement is substantially in line with what you have testified here today?

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: Mr Khuba were you later arrested?

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: And please could you tell ...

20 **CHAIRPERSON:** Was that on the 16 March 2016?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: Please could you tell the Chair the circumstances of your arrest?

MR HUMBULANI INNOCENT KHUBA: We firstly went to the so called

CATS office that the office of a unit headed by Brigadier Xaba which was responsible for crimes against the state. We had a meeting saying that we are going to be appearing on this date. We had a discussion of the bail – bail.

CHAIRPERSON: At this stage when you were being – when you were arrested your case in the Labour Court was still pending? It had not been dealt with – decided yet?

MR HUMBULANI INNOCENT KHUBA: Chairperson I would want to cover that part because there is also a bargaining council.

10 **CHAIRPERSON:** Yes, yes.

MR HUMBULANI INNOCENT KHUBA: Which I want to talk to. If you allow me I can start with it?

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And just indicate what happened before I come to the issue of the arrest.

CHAIRPERSON: If in terms of the sequence of events

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: It happened later that is fine but otherwise if it is not going to disorganise your plan you can deal with the arrest and then
20 deal with – with that. Which one is – would it make – enable you to tell your story better?

MR HUMBULANI INNOCENT KHUBA: I can deal with the Labour issue.

CHAIRPERSON: Later.

MR HUMBULANI INNOCENT KHUBA: Now.

CHAIRPERSON: Now Okay.

MR HUMBULANI INNOCENT KHUBA: And just finalise so that – because the arrest took place.

CHAIRPERSON: Yes okay.

MR HUMBULANI INNOCENT KHUBA: Ja.

CHAIRPERSON: Okay deal with the labour issue.

MR HUMBULANI INNOCENT KHUBA: The labour issue as I indicated to – in my letter to Mr Kgamanyane which of course he did disregard was that I was going to make an application at the high court.

CHAIRPERSON: To – yes.

10 **MR HUMBULANI INNOCENT KHUBA:** To request ...

CHAIRPERSON: The setting aside of the settlement agreement.

MR HUMBULANI INNOCENT KHUBA: Setting aside of the settlement agreement. I had already spoken to a person working at the labour – at the union – the PSA and already indicated that you need to come and see me so that we can discuss this issue. Now I then had a subsequent meeting with him and he said the urgent application PSA will not be able to cover. And that is when I then turned to another lawyer.

CHAIRPERSON: Oh your application to the Labour Court was an
20 urgent application.

MR HUMBULANI INNOCENT KHUBA: It was an urgent application.

CHAIRPERSON: Yes okay.

MR HUMBULANI INNOCENT KHUBA: Because I wanted them to set aside. When I had a discussion with my lawyer not Mr Poko the new one now.

CHAIRPERSON: Yes. And who was the – was that the one who helped you with the letters or was that somebody else?

MR HUMBULANI INNOCENT KHUBA: It was somebody else. It was the one who was helping Mr Sesoko. It was Mr Mathibe.

CHAIRPERSON: Mr Mathibe okay.

MR HUMBULANI INNOCENT KHUBA: Ja. And I requested – then he advised that when you challenge

CHAIRPERSON: A dismissal.

MR HUMBULANI INNOCENT KHUBA: A dismissal you do not have to
10 challenge per se the agreement because these are labour matters.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: You need to go through to the labour court.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Now I followed the advised it is correct and then we started to work. He gave me the bill I accepted it in the – I did not have money.

CHAIRPERSON: But the bill.

MR HUMBULANI INNOCENT KHUBA: Yes to say.

20 **CHAIRPERSON:** Ja. You said we will see it later.

MR HUMBULANI INNOCENT KHUBA: We will see it later I just want the thing to be sorted out.

CHAIRPERSON: Ja.

MR HUMBULANI INNOCENT KHUBA: We were given the date of – when was that – that was the 15th I cannot remember very well but it

was shortly after the – they were very quick. They give us the date. And the advocate was helping me.

CHAIRPERSON: Ja.

MR HUMBULANI INNOCENT KHUBA: Was a junior advocate and he said no he is confident that we are going to really make it. But when we went there I think the argument of the employer was that this matter is not urgent. They did not dwell on the...

CHAIRPERSON: On the merits.

MR HUMBULANI INNOCENT KHUBA: On the merits on the subject.

10 **CHAIRPERSON:** Now after that it means that I had to wait for the bargaining council.

CHAIRPERSON: The – ja the dispute about the dismissal.

MR HUMBULANI INNOCENT KHUBA: Ja.

CHAIRPERSON: Was referred to the bargaining council.

MR HUMBULANI INNOCENT KHUBA: Ja.

CHAIRPERSON: Ja.

MR HUMBULANI INNOCENT KHUBA: Now Mr Poko had prepared papers and then we were given a date for the conciliation part. And I still remember the employer representative was there. I went there I was also represented by Mr Poko.

20 **CHAIRPERSON:** Yes.

MR HUMBULANI INNOCENT KHUBA: When we – we had a discussion because they wanted us to state the case and then the employer rep also stated the case. During your discussion the employer representative indicated that we were given mandates not to settle or entertain this.

CHAIRPERSON: That is the employer's representative?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Ja yes.

MR HUMBULANI INNOCENT KHUBA: Now she wanted to know the facts what happened and there and there she indicated that you are not going to succeed here. Why did you not have a hearing – they were talking and they were just really...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: They know we were told to come
10 and do this.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And then after that we left. That is the first time that I had a meaningful smile. That somebody coming from an institution has already gathered these facts. And then after that we waited now for arbitration. It took for quite some time. Then we were told – and they decided that because there was no hearing we are not going to lead any evidence. We are going to prepare arguments. And I still remember we – they did a research – there was also a similar case like mine and they say an employer cannot replace
20 any sanction by a chairperson. When the chairperson decide you cannot do anything. Because you have appointed that chairperson to represent you as an employer and his decision about the matter it is what closes the case.

CHAIRPERSON: That case may have been the case of BMW in the Labour Appeal Court a number of years ago?

MR HUMBULANI INNOCENT KHUBA: I think you are correct
Chairperson.

CHAIRPERSON: That I happen to know.

MR HUMBULANI INNOCENT KHUBA: Okay.

CHAIRPERSON: Yes continue.

MR HUMBULANI INNOCENT KHUBA: And then we did our submission.
I was very, very, very confident. Now after that I was told that within
fourteen days I am going to get the award. It might have taken more
than 30 or 35 days. Now there was this person whom I was – I got his
10 number – he was the person who was dealing with. Because when I
phoned the bargaining council they told me that if you want award you
deal with this person. So I was dealing with that person. Now when it
come to the 21st I could not take it anymore and I said – can you tell
me what is happening? And he says – no, no, no I will come back to
you they are busy dealing with this issue. And I was phoning him daily.
I would not mind that I called him the previous day I will keep on calling
him. Now this other day – that was the day before he sent a report. He
mentioned something that I felt there is something going on. And – but
I down played because you desire certain results you kind of really
20 shun your mind from the negatives. And then he says: the process here
– he was trying to explain the delay. He says the process here it takes
14 days to give an award but there is a panel that sits because the
presiding officers of this arbitration are not the employees they get
them from outside. He said this person if you right – he did not
indicate or – this person is the one that he said – if you give a report

and a finding which the panel does not agree with it they will engage you and write back to you. But if you says it is my report I will stick with the – they will never change it. It is up to you. That is why it had to take long. And when I got this report now – arbitration award I was just seated on the bed and I was checking on the – on the email.

CHAIRPERSON: And it came through?

MR HUMBULANI INNOCENT KHUBA: And it came through that is the following day. When it came through I read the report. I could not believe the finding.

10 **CHAIRPERSON:** What was the finding?

MR HUMBULANI INNOCENT KHUBA: The finding was that my position was so senior that it did not require that hearing. That Mr Kgamanyane later requesting me to explain why I did not – why I depose a statement amount to affording me with an opportunity similar to a hearing.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: He said the dismissal was both fair and he indicated another word which I cannot remember now.

CHAIRPERSON: Valid and fair or something like that or fair and equitable.

20 **MR HUMBULANI INNOCENT KHUBA:** Something like that.

CHAIRPERSON: Ja.

MR HUMBULANI INNOCENT KHUBA: But I looked at this report and I had to call my lawyer. And one time after these presentations were served my lawyer said to me the chairperson of the hearing is the gentleman I work with because I am sometimes requested by the

bargaining council to – he knows him very well.

CHAIRPERSON: To arbitrate.

MR HUMBULANI INNOCENT KHUBA: He knows him very well. Now I was not really settled on the basis that they – on the basis that they know each other. I was settled on the basis that my case is strong. He is going to be objective. And then after that when I got this I phoned my lawyer and my lawyer said to me Mr Khuba you can just suspect what happened. This case involves big people politician and he dropped the phone. And that part I realised that I was dealing with
10 bigger monster than what I thought. I then – at the time I had not yet claimed my patience. I was just working. You know I started something putting in boards that I can clean carpets going to houses. And now I was doing that.

CHAIRPERSON: Just to earn a living in the meantime.

MR HUMBULANI INNOCENT KHUBA: To earn a living. Then I said to my wife I said I do not want to stop that job. But let me claim my pension so that when I have deficit I will just take probably a little bit of interest and drop into the deficit so that I can be able to break even. And she agreed. Because I really realised there that the journey was
20 going to be long. I realised the journey was going to be long.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Having heard that to get your case finally heard by Labour Court it will take nearly two years. So I realised that the journey was going to be long and then I started to – the reality started to sink in at that time.

CHAIRPERSON: Yes and then did you then launch a review application in the Labour Court or what happened?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes. To set aside that – that aware and to – to try and get reinstated?

MR HUMBULANI INNOCENT KHUBA: That is correct. And when the PSA studied the report I still remember I met with the head now not with the person who was assisting me initially. The head of PSA at a Provincial level and he just said I cannot believe these findings. And
10 what he did then was to say I will motivate that they approve the review of this and that is what he did.

CHAIRPERSON: Yes. And then there was a review application in the Labour Court?

MR HUMBULANI INNOCENT KHUBA: There was a review application and I got – there was a final judgment which was made I think it was April 2017

CHAIRPERSON: 17.

MR HUMBULANI INNOCENT KHUBA: 17. It was almost a year and ...

CHAIRPERSON: Ja. I think there is a reference to 2017. Ja.

20 **MR HUMBULANI INNOCENT KHUBA:** 2017. It was a year and seven months or ...

CHAIRPERSON: And - and what was the out - the order that was made there?

MR HUMBULANI INNOCENT KHUBA: The order was made that the dismissal was both - was unfair.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: It was a contrary of what ...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: The person said, *ja*.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Hm.

CHAIRPERSON: And you - you were reinstated?

MR HUMBULANI INNOCENT KHUBA: I was reinstated and also the order was like very - somehow I felt that it was a little bit ...

10 **CHAIRPERSON:** Unfair?

MR HUMBULANI INNOCENT KHUBA: Not unfair.

CHAIRPERSON: *Ja*.

MR HUMBULANI INNOCENT KHUBA: Because the department was given only five days to pay ...

CHAIRPERSON: A lot of money?

MR HUMBULANI INNOCENT KHUBA: To pay back - I mean ...

CHAIRPERSON: Your back pay?

MR HUMBULANI INNOCENT KHUBA: My back pay.

20 **CHAIRPERSON:** Oh. You - you - oh. Oh. You - you thought- you thought they should have been given more time?

MR HUMBULANI INNOCENT KHUBA: But finally what - of course the one which I was really interested I was really happy about ...

CHAIRPERSON: Was the job?

MR HUMBULANI INNOCENT KHUBA: It was going back to work. Even if they had said they will take another year to pay.

CHAIRPERSON: *Ja*, you ...

MR HUMBULANI INNOCENT KHUBA: I never had a problem.

CHAIRPERSON: As long as you got your job back?

MR HUMBULANI INNOCENT KHUBA: Yes.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: That is why when the employer approached me they said there is this order.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: We have a problem that we
10 cannot just implement it.

CHAIRPERSON: *Ja*.

MR HUMBULANI INNOCENT KHUBA: The space is very short. We requested that you give us some more time. I ...

CHAIRPERSON: And but that time the - the Executive Director was back?

MR HUMBULANI INNOCENT KHUBA: He was already back.

CHAIRPERSON: Mr McBride?

MR HUMBULANI INNOCENT KHUBA: He was already back.

CHAIRPERSON: So basically it was his decision now?

20 **MR HUMBULANI INNOCENT KHUBA:** That is correct.

CHAIRPERSON: Yes, okay.

MR HUMBULANI INNOCENT KHUBA: *Ja*.

CHAIRPERSON: Okay.

MR HUMBULANI INNOCENT KHUBA: And then I - I came back to the department ...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And ...

CHAIRPERSON: Were you paid ultimately for the whole time that you had not been working?

MR HUMBULANI INNOCENT KHUBA: That is correct including all the benefits.

CHAIRPERSON: All the benefits, *ja*.

MR HUMBULANI INNOCENT KHUBA: *Ja*.

CHAIRPERSON: Okay, thank you. I am sure you were very happy and
10 the family was very happy.

MR HUMBULANI INNOCENT KHUBA: You see Chairperson sometimes I was happy ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: But sometimes we normally gain more than what - we normally gain less than what we lost.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: *Ja*.

CHAIRPERSON: Yes, yes.

MR HUMBULANI INNOCENT KHUBA: Because to go ...

20 **CHAIRPERSON:** I understand this yes.

MR HUMBULANI INNOCENT KHUBA: And start rebuilding the pension again is another issue.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: When I went back to SARS to say I want to - to pension fund.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: I want to deposit back my money.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: They told it is such a big penalty ...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And I realised that it is going to be very ...

10 **CHAIRPERSON:** It is a difficulty. Yes.

MR HUMBULANI INNOCENT KHUBA: Difficult.

CHAIRPERSON: And in any event whatever pain you went through just because later on you get an order reinstating you in your job does not mean you did not go through that pain.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: You still went through that pain. The job comes later and the back pay but you - you and the family went through the - that pain.

MR HUMBULANI INNOCENT KHUBA: That is correct.

20 **CHAIRPERSON:** Hm, thank you. I think Ms Wentzel we are close to finishing with him.

ADV SUSAN WENTZEL: Yes Chair.

CHAIRPERSON: Let us finish before and then we take the lunch break.

ADV SUSAN WENTZEL: Yes. No. We - we are virtually finished.

CHAIRPERSON: Is the arbitration award and the Labour Court

judgment ...

ADV SUSAN WENTZEL: Hm.

CHAIRPERSON: Are they both here?

ADV SUSAN WENTZEL: No, but I will make them available.

CHAIRPERSON: *Ja*.

ADV SUSAN WENTZEL: Chair.

CHAIRPERSON: *Ja*, put them in so that we have a complete picture.

ADV SUSAN WENTZEL: Thank you. We will. I am afraid now that we have dealt with the - a happy result can we go back and remember your

10 arrest.

CHAIRPERSON: We go back to pain and suffering.

MR HUMBULANI INNOCENT KHUBA: *Ja*. I was arrested on the 16th and ...

ADV SUSAN WENTZEL: The 16th of what?

MR HUMBULANI INNOCENT KHUBA: It was - let me just ...

CHAIRPERSON: Page - paragraph 1-1-1.

MR HUMBULANI INNOCENT KHUBA: *Ja*.

ADV SUSAN WENTZEL: *Ja*.

CHAIRPERSON: (Intervenes).

20 **MR HUMBULANI INNOCENT KHUBA:** I was arrested on 16 March 2016 for defeating the ends of justice and I think just - to just give a little bit is that I thought probably we are just going to go there and appear. They are going serve us with J175 but we were arrested. We went through the cells and it was - it was very traumatic for me because we - we went through - we had a group of other people who were going for

court.

We were put in a big hall where there were other suspects or criminals or - but I think what - what was happening was everybody was staring at us.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: On the basis that we were the only people wearing suits (indistinct).

CHAIRPERSON: Yes, hm.

MR HUMBULANI INNOCENT KHUBA: And they were requested - they
10 requested a belt. I still remember I took out mine. Fortunately the
trouser was - trouser was very tight. I could not hold it by my hand.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I then - we then went for
fingerprints. We then joined others again and after that they decided to
give us our belts back ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And I think there was mention
one officer indicated because Mr McBride had a problem with the issue
of the belts.

20 **CHAIRPERSON:** Hm.

MR HUMBULANI INNOCENT KHUBA: He said why would you need
these belts ...

CHAIRPERSON: Exactly.

MR HUMBULANI INNOCENT KHUBA: And then they said - he said
what if you hang yourself and Mr McBride says ...

CHAIRPERSON: I mean were you prisoners already?

MR HUMBULANI INNOCENT KHUBA: Mr McBride indicated that he had been in the (indistinct) for some time ...

CHAIRPERSON: In the gallows?

ADV SUSAN WENTZEL:

MR HUMBULANI INNOCENT KHUBA: Waiting to be hanged and never decided to die. Why would he hang himself by this thing that does not have any - it does not have a head and a tail and then - that is when he decided to give us our belts back. They gave us a small cell. We went
10 and sat there and then we went to court.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: Just one final question. Mr Sesoko testified that recently there has been a Public Protector's Report implicating him.

MR HUMBULANI INNOCENT KHUBA: Hm.

ADV SUSAN WENTZEL: Are you also implicated in that report?

MR HUMBULANI INNOCENT KHUBA: I am also implicated
Chairperson.

CHAIRPERSON: I am sorry. What report is that?

20 **ADV SUSAN WENTZEL:** You remember Mr Sesoko testified that there is a recent report by the Public Protector. It had come out I think in the - the last week - in the week that he was testifying or in the previous week.

CHAIRPERSON: Oh, but have you finished on the arrested and prosecution?

ADV SUSAN WENTZEL: Hm.

CHAIRPERSON: Issue?

ADV SUSAN WENTZEL: No Chair.

CHAIRPERSON: Ja.

ADV SUSAN WENTZEL: Your right. Sorry.

CHAIRPERSON: I think finish on the ...

ADV SUSAN WENTZEL: On the ...

CHAIRPERSON: On the prosecution.

ADV SUSAN WENTZEL: What ultimately happened to your - your
10 criminal case?

MR HUMBULANI INNOCENT KHUBA: We had three court appearances
if I remember well and then they were just being postponed and we
realised that the state was just buying time. They will refuse to give us
a certain part of the docket that we have right over and they indicated
that no, no, no that is sensitive information.

So we ended up saying no, no, no you can keep whatever you
keep. What you are giving us we are going to use that and that is when
we appeared on 1 November 2016 and I was ready with my statement in
order to plea to say I plead not guilty and that is when the prosecutor
20 refused to continue with the case.

We pressurised him saying we want to continue. He said no
this case is not winnable. There is a Constitutional Court judgment.
You people were doing your work. There were a lot of just explanation
juggling around.

CHAIRPERSON: This was the prosecutor saying this to you?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: So effectively saying the state has no case?

MR HUMBULANI INNOCENT KHUBA: He was saying that.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: He also said that now the witnesses do not want to come forward and testify and we were surprised because there is a - a remedy for that. You subpoena a witness ...

CHAIRPERSON: Hm.

10 **MR HUMBULANI INNOCENT KHUBA:** But they said no they - they cannot do that until they said no they are withdrawing.

CHAIRPERSON: Did you ever understand who those witnesses were supposed to be or - or were that they were talking about?

MR HUMBULANI INNOCENT KHUBA: They - they spoke about - the witness whom they were speaking about was the person who accompanied me to take a docket and anyone will know that that person did not participate in ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: The report.

20 **CHAIRPERSON:** Hm.

MR HUMBULANI INNOCENT KHUBA: He only filed the docket ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: and he indicated that no I accompanied him ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And I said I accompanied him.

CHAIRPERSON: Hm, hm.

MR HUMBULANI INNOCENT KHUBA: He accompanied me. What was that? What was that? What was ...

CHAIRPERSON: Hm, hm.

MR HUMBULANI INNOCENT KHUBA: Of evidential material ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: In his statement?

CHAIRPERSON: Hm.

10 **MR HUMBULANI INNOCENT KHUBA:** But they say because McBride is back he may not want to testify but I just realised that no, no that was just an excuse.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Hm.

CHAIRPERSON: Hm. So you - you - other than that person were you ever told who else was - was understood by the state to be state witnesses?

MR HUMBULANI INNOCENT KHUBA: It was Sandile July of Werksmans ...

20 **CHAIRPERSON:** Yes.

MR HUMBULANI INNOCENT KHUBA: Because they indicated that he was not ready when he was ready to go to court ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: In order to challenge.

CHAIRPERSON: He was refusing to testify?

MR HUMBULANI INNOCENT KHUBA: He was refusing to testify ...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: But I could not understand if then Mr July can sub - submit a report and recommend criminal charges.

CHAIRPERSON: Recommend that you be charged.

MR HUMBULANI INNOCENT KHUBA: And now he turns around and says no, no I rather to go to court and challenge you to say I do not want to go and testify.

10 **CHAIRPERSON:** Yes. That was strange indeed.

MR HUMBULANI INNOCENT KHUBA: It was strange.

CHAIRPERSON: So it was like he was not prepared to stand in court and - and show why his conclusions were - were justified?

MR HUMBULANI INNOCENT KHUBA: That is correct and - and my - my assessment there was that I do not think these things were intended ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: To have ultimate result of serving justice.

20 **CHAIRPERSON:** Hm.

MR HUMBULANI INNOCENT KHUBA: It was simply to have quick wins ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Because you can charge me. That is process ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: But when you have to prove there ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: In front of the ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: The Judge.

CHAIRPERSON: Hm. **MR HUMBULANI INNOCENT KHUBA:** It is another story. So they did not want to reach that stage.

10 **CHAIRPERSON:** Yes.

MR HUMBULANI INNOCENT KHUBA: Hm.

CHAIRPERSON: Hm. Yes and then - and then the charges were withdrawn?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Ja, okay. Thank you.

ADV SUSAN WENTZEL: Just finally if you could deal with the recent Public Protector's Report.

20 **MR HUMBULANI INNOCENT KHUBA:** The Public Protector's Report is challenging. I am just going to give a quick indication of what really happened.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: The Public Protector recommended ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: That a number of people within

IPID be charged ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: But for some reasons ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I am also ...

CHAIRPERSON: The charge - disciplinary?

MR HUMBULANI INNOCENT KHUBA: Disciplinary.

CHAIRPERSON: *Ja*, okay.

MR HUMBULANI INNOCENT KHUBA: I am also part of that because of
10 an appointment of a specialist who deals with cellphone analysis but
what happened is that the post was advertised and they did short
listing. I was not there.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I think they did. They did the
advert even - before I even arrived in I - I was reinstated.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Now the other day because I
was given a responsibility to head the task team - all task teams in the
IPID.

20 **CHAIRPERSON:** Hm.

MR HUMBULANI INNOCENT KHUBA: Now I was working in Head
Office and then I wanted to go to the lift and then I was told that there
is an interview and one of the panel members was not there. They
requested me to assist and I indicated to them that when you assist in
the panel you need to be appointed.

So I said because I am only participating in the - in the interview I request that you get permission. They got the approval of the - the ED. Then I sat in the panel. We recommended but what I want to say is that ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: That - the role that I play ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I played it is governing in terms of Provision 11 of ...

10 **CHAIRPERSON:** Hm.

MR HUMBULANI INNOCENT KHUBA: The procurement ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Sorry. Of - for the Recruitment Policy ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: But that policy on that provision ...

CHAIRPERSON: Hm.

20 **MR HUMBULANI INNOCENT KHUBA:** It specifically say what is expected of a person ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Who it is - who it is interviewing.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: The consistency with posing questions ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And all - all the things.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: The - the Public Protector never made a finding on that ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: But they made a finding that I ...

CHAIRPERSON: Well I want - I am sorry. I wanted to ask Ms Wentzel why - why must I hear about the Public Protector's Report that was
10 issued recently?

ADV SUSAN WENTZEL: Because if you remember Mr Sesoko's testimony.

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: It is his view that this is still part of a fight back.

CHAIRPERSON: But - but have you - has the Commission investigated that in relation to the conduct of the Public Protector?

ADV SUSAN WENTZEL: Well not in relation to the conduct of the Public Protector but only from their perspective that ...

20 **CHAIRPERSON:** Yes. No. What I am asking is if they say the Public Protector is doing this - what the Public Protector is doing is part of the fight back. Has that being ...

ADV SUSAN WENTZEL: It is being ...

CHAIRPERSON: Tested by the Commission? Was that being investigated?

ADV SUSAN WENTZEL: It is being investigated. Yes.

CHAIRPERSON: Yes. Why do we not wait until ...

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: That has happened?

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: *Ja*, because it is not in the statement.

ADV SUSAN WENTZEL: Yes. No. We will not deal with it.

CHAIRPERSON: It is a recent thing.

ADV SUSAN WENTZEL: Yes.

- 10 **CHAIRPERSON:** If - if they say it is part of whether you call it fight back or whatever you need to get statements from them. Hear what the substantiation is. How they substantiate that and then if necessary then we - we can - can come back ...

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: But I do not think we should ...

ADV SUSAN WENTZEL: Yes that is - that is about it.

CHAIRPERSON: Deal with it ...

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Before there is proper investigation.

- 20 **ADV SUSAN WENTZEL:** Yes.

CHAIRPERSON: *Ja*. You understand that - you understand that Mr Khuba?

MR HUMBULANI INNOCENT KHUBA: I understand that but ...

CHAIRPERSON: That what I am - what I am saying is and - and it is just that I - I - when Mr Sesoko gave evidence I think it was dealt with

very superficially. What I am saying is it may be that it is something that should be add here but it should not be add before the investigators of the Commission and the legal team take statements and look at it properly. You understand that?

MR HUMBULANI INNOCENT KHUBA: I understand that and I think we can deal with it ...

CHAIRPERSON: Yes, it can ...

MR HUMBULANI INNOCENT KHUBA: Later if it needs to be dealt with.

CHAIRPERSON: Yes. *Ja* that is right.

10 **ADV SUSAN WENTZEL:** Yes.

CHAIRPERSON: So because otherwise we are dealing with something that has not been properly investigated ...

ADV SUSAN WENTZEL: Yes. I understand.

CHAIRPERSON: And it should not be like that.

ADV SUSAN WENTZEL: Yes. I understand that Chair.

CHAIRPERSON: *Ja*. Okay.

ADV SUSAN WENTZEL: Chair I do not have any ...

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: Further questions for the witness.

20 **CHAIRPERSON:** Okay. Thank you very much Mr Khuba for coming to give evidence and to share with the Commission your experiences and what you know. You probably will come back because there is still some further - an affidavit that you are going to put together and so arrangements will be made in due course for you to come back so that you can deal with the Werksmans Report but be in touch with the legal

team.

If at all possible depending on your situation I think I would like - I would be glad if the preparation of that affidavit can happen without delay. I do not know what - what the chances are that by end of this - of this coming week it could be done but if not at least it should not delay for more than two weeks.

I would like to - those affidavits to be available. Your one, Mr McBride's one and Mr Sesoko's one and the legal team must be in touch with them but I know you would share the information with them
10 as well. Am I right Mr Khuba?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes. *Ja* and then we will take it from there but otherwise thank you very much for - for coming to give evidence but for now you are excused.

MR HUMBULANI INNOCENT KHUBA: Thank you.

CHAIRPERSON: Thank you. We are going to take the lunch adjournment now. The time is 26 passed. We will - pass one - we will resume at 20 - we will resume at half past two.

ADV SUSAN WENTZEL: Thank you Chair.

20 **CHAIRPERSON:** And when we resume we will then start with the evidence of Colonel Naidoo.

ADV SUSAN WENTZEL: Yes Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Are you ready Ms Wentzel?

ADV SUSAN WENTZEL: Yes I am.

CHAIRPERSON: Yes we are now going to hear the evidence of Colonel Naidoo to whom Colonel Roelofse referred in his evidence. In accordance with the order that I made yesterday he is not present here in this hearing room but he was – he will be heard here and when he is asked questions he will hear the questions and be able to give an answer. He has already been sworn so the oath has been administered
10 to him but when we start I will just get him to confirm that the oath has been administered to him, but before we get there Ms Wentzel is there anything you want to say before we start?

ADV SUSAN WENTZEL: No, not at this stage.

CHAIRPERSON: Do you not want to explain how he will deal with the question of identities of some of the implicated persons so that everybody knows so that when you get to that stage people don't wonder what is happening.

ADV SUSAN WENTZEL: Yes Chair I was going to deal with it with Colonel Naidoo so that he could also understand why we're doing what
20 we're doing but I can just as well ...[intervenes]

CHAIRPERSON: I think just say it for the public and then you can repeat it with him later.

ADV SUSAN WENTZEL: Yes in Colonel Naidoo's statement because he was involved in Crime Intelligence a good number of the people referred to in his statement either are or were or may have been agents

of Crime Intelligence, or also informers. Because of this a letter was addressed to Crime Intelligence asking them to state who are the actual agents involved in covert operations because it was Colonel Naidoo's view that the vast majority of people who were placed into the agent program were placed into that program as a result of nepotism.

However General Jacobs of Crime Intelligence has responded to the request but in view of the fact that the – it is not a 100% clear from the response as to who in fact are agents or whose safety may be compromised should their identity be revealed. As a matter of caution
10 we have taken a decision that we will nevertheless redact the names of all the people who could possibly be an agent and we will only refer to them by reference to a number, which will be FN1, FN2, FN3 etcetera.

DCJ we have provided you with those names in a sealed envelope which – so that for our purposes you will know the names but during the course of the testimony these people will only be referred to by number.

CHAIRPERSON: Of course you will make further efforts to obtain clarity on the persons who were agents or informers or are still agents and informers among the people that he implicates or the group in
20 respect of which you were requested, you previously requested clarity because it was not clear exactly who falls under what, so it may well be, or what is contemplated is that once clarity is obtained then certain names would be or could be revealed if those people were not or are not agents or informers and in which case if during Colonel Naidoo's evidence he has referred to them as FN1 or FN2 or FN3 it would be

indicated what acronym or number was used for that person in due course but to try and not compromise the identity of people who might be involved in sensitive intelligence work we will use the numbers. Will they all start with FN?

ADV SUSAN WENTZEL: Yes Chair.

CHAIRPERSON: FN and then a number?

ADV SUSAN WENTZEL: Yes Chair.

CHAIRPERSON: Yes, okay alright, no that's fine then.

ADV SUSAN WENTZEL: Thank you Chair.

10 **CHAIRPERSON:** Yes, are we now connected, Colonel Naidoo can you hear me?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes I can.

CHAIRPERSON: You can. Good afternoon to you.

COLONEL DHANAJAYA GANGULU NAIDOO: Good afternoon Chair.

CHAIRPERSON: Thank you very much for availing yourself to give evidence in proceedings of this Commission. We appreciate it very much that you have availed yourself. Various measures have been taken in accordance with an order that I issued to try and ensure that your situation is protected as somebody who is in the witness
20 protection program, but before we start I just want you to confirm that you are the Colonel Naidoo who was referred to by Colonel Roelofse in his evidence before the Commission.

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: Okay thank you. Do you confirm that you have taken an oath to speak the truth, the whole truth and nothing else but the

truth when you are giving evidence in the Commission?

COLONEL DHANAJAYA GANGULU NAIDOO: I do confirm Chair.

CHAIRPERSON: And that you have indicated that you consider the oath binding on your conscience?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes I did.

CHAIRPERSON: Okay thank you very much. Ms Wentzel will then ask you questions to lead your evidence. Ms Wentzel?

COLONEL DHANAJAYA GANGULU NAIDOO: (duly sworn, states)

ADV SUSAN WENTZEL: Thank you Chair. Colonel Naidoo what are
10 your full names?

COLONEL DHANAJAYA GANGULU NAIDOO: Dhanajaya Gangulu Naidoo.

ADV SUSAN WENTZEL: And is it correct that you were approached by investigators from the Commission of Inquiry into State Capture and requested to give evidence in these hearings?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct.

ADV SUSAN WENTZEL: And that the request resulted from certain disclosures that you made to Colonel Roelofse from the Hawks during criminal investigations undertaken by him into certain fraudulent
20 activities involving the Secret Services account at Crime Intelligence?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct.

ADV SUSAN WENTZEL: Do you understand that in testifying at this Commission you may potentially incriminate yourself?

COLONEL DHANAJAYA GANGULU NAIDOO: I do.

ADV SUSAN WENTZEL: And this evidence is given freely and

voluntarily?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes.

ADV SUSAN WENTZEL: Colonel Naidoo have you been offered a Section 204 indemnity to testify in any of the criminal cases to be prosecuted by Colonel Roelofse and the State Prosecuting Authority in any of the criminal matters that you have described in your affidavit?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes I am in fact a Section 204 witness with regards to the criminal cases that are still pending.

10 **ADV SUSAN WENTZEL:** And can you tell the Chair whether this offer was made to you before you informed Colonel Roelofse of the nature of the fraud and corruption perpetrated by members at Crime Intelligence or after this?

COLONEL DHANAJAYA GANGULU NAIDOO: After the information that I have given to Colonel Roelofse.

ADV SUSAN WENTZEL: Could you just briefly at this stage detail the circumstances, if you could just detail those events, how that happened?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair if I may with your
20 permission and before we start.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: There is an incident that I would like to bring or place on record before the Commission, it actually happened on Wednesday this week.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: I got word that one of my close relatives their home was broken into, this might just be a random act of criminality.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Or a direct result as to maybe to send me a message to intimidate me or to deter me from testifying at this Commission Chair.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: So I just wanted to place
10 that on record.

CHAIRPERSON: What happened to ...[intervenes]

COLONEL DHANAJAYA GANGULU NAIDOO: There was a break-in, there was a home invasion Chair.

CHAIRPERSON: Oh there was a break-in?

COLONEL DHANAJAYA GANGULU NAIDOO: Ja.

CHAIRPERSON: Was that did you say it was at the house of a relative of yours?

COLONEL DHANAJAYA GANGULU NAIDOO: A close relative of mine.

CHAIRPERSON: A close

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** Yes Chair.

CHAIRPERSON: Oh but you say you – it could be just normal criminality or it could be connected with attempts to intimidate you?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair it is due to the close proximity of my testifying at this Commission, I cannot rule out that it is maybe a concerted effort to intimidate or deter me from

testifying at this hearing.

CHAIRPERSON: Yes, yes. Okay thank you very much. Has the matter been reported to the relevant authorities already or not?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair at this stage I – the information that I have is very limited.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: But with your permission Chair if I may suggest that the investigations into this matter be escalated to the Hawks so they can see if there is in fact a link to the robbery itself and to me testifying at this hearing.

CHAIRPERSON: Yes, okay, Ms Wentzel just make sure that you get in touch with the Hawks or somebody in the legal team, get in touch with the Hawks so that they can look into the matter urgently.

ADV SUSAN WENTZEL: Yes Chair I will do that.

CHAIRPERSON: Okay that will be done Colonel Naidoo.

COLONEL DHANAJAYA GANGULU NAIDOO: Thank you Chair, I appreciate it.

CHAIRPERSON: Okay thank you. Let me take this opportunity to check that everybody in the room can hear everybody? Okay, thank you, alright, let's continue.

ADV SUSAN WENTZEL: Colonel Naidoo I am assuming that you have a bundle in front of you that is marked Exhibit KK1.1 and KK1.2.

CHAIRPERSON: That is a lever arch file hey?

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Have you got a lever arch file Colonel Naidoo that is

marked on the spine Exhibit KK1.2 and Exhibit KK1.1?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: Okay

ADV SUSAN WENTZEL: And Colonel Naidoo if you have a look at the numbers on the top right hand side you will see your initials DGN and then it says in red 001. Those are the page numbers, so when I refer you to a page it will be 1, 2, I am not going to say DGM-001, I will just say one, two, three or whatever, do you understand that?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes.

- 10 **ADV SUSAN WENTZEL:** And the document that the bundle that is in front of you is this the affidavit that you have given to the Commission which appears from pages 1 to 70?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct.

ADV SUSAN WENTZEL: And is it correct that you have also deposed to an affidavit which is Exhibit KK1.2 and that is a supplementary affidavit to support your application *in camera* and that appears at pages 141 to 153, is that correct?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct yes.

- ADV SUSAN WENTZEL:** Chair if I might place exhibits into evidence,
20 marked KK1.1 and KK1.2.

CHAIRPERSON: The lever arch file containing – you see I think where you have a supplementary affidavit there was no need to give it a separate exhibit number because that causes confusion.

ADV SUSAN WENTZEL: It causes confusion.

CHAIRPERSON: Because all the lever arch files you just have one, so

once you say inside the same lever arch file there is exhibit – there are Exhibit KK1.1 and Exhibit KK1.2 it causes confusion especially because they can all go into one file, but we now have to be careful if you are not going to – is the numbering in terms of the red numbers, sequential from page 1 up to the end or does it change somewhere and start from one again?

ADV SUSAN WENTZEL: No it is sequential.

CHAIRPERSON: Because if that is so we can actually delete any reference to Exhibit KK1.2 and simply say the lever arch file and its
10 contents are Exhibit KK1.1 and it starts from page 1 up to whatever and as long as you bear in mind where the supplementary affidavit is that should be enough, is that fine?

ADV SUSAN WENTZEL: Yes, that is perfectly fine, thank you Chair.

CHAIRPERSON: Yes, okay, alright. So the lever arch file containing the statement of Dhanajaya Gangulu Naidoo will be marked as Exhibit KK1.1. So what will remain is that we just change this so that is no reference to KK1.2.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Okay, alright, so Colonel Naidoo if we talk about
20 Exhibit KK1.1 it will be the lever arch file in front of you and its contents.

COLONEL DHANAJAYA GANGULU NAIDOO: I follow Chair.

CHAIRPERSON: Thank you.

ADV SUSAN WENTZEL: Chair if I might just mention one thing to you before we start leading the evidence, is at page 70 you will notice that

the place and identity of the Commissioner has been redacted, Chair you will have a complete version but this was done in order to conceal the place where the affidavit was attested to.

CHAIRPERSON: So there is an affidavit which has got everything.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Because the one I have in front of me doesn't have that as well.

ADV SUSAN WENTZEL: I understood it and I apologise Chair, I will make sure that you will have the one that has everything.

10 **CHAIRPERSON:** Okay, alright. Yes continue

ADV SUSAN WENTZEL: Colonel Naidoo could you explain the sequence of events from when you first consulted Colonel Roelofse and when you first requested Section 204 immunity from prosecution?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair if I may with your permission there is in this timeframe of the 18th or rather September when I was initially interviewed by Colonel Roelofse that was just a once-off interview and then I go to the 18th of October 2011 to the 21st of October 2011, within those days there are pockets of incidents that happened during this timeframe, if I can just ...[intervenes]

20 **CHAIRPERSON:** Ja if you can start with them.

COLONEL DHANAJAYA GANGULU NAIDOO: The timeline for the record.

CHAIRPERSON: Yes, no that is fine, you can start with them.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair this is just an overview.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: I was employed in the SAPS as a member stationed at CI, Head Office, as a clerk. During my service myself and various other members were involved in the looting of the funds from the Secret Service account.

CHAIRPERSON: Mmm.

COLONEL DHANAJAYA GANGULU NAIDOO: This we did on instruction of mainly General Lazarus, together with General Mdluli, Colonel Hein Barnard. Chair in September I was approached via
10 General, Commissioner Henkel, General Henkel sorry.

CHAIRPERSON: Yes I'm sorry Colonel Naidoo just remind me again you did give the timeframe from when to when what period are we talking about in 2011 when these incidents happened? I just want to be reminded of that.

COLONEL DHANAJAYA GANGULU NAIDOO: Well it starts on the 18th of October 2011, up to the 21st of October 2011.

CHAIRPERSON: Okay, yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair before I go there I just want to go to September 2011, this is when I was first approached
20 by the Hawks, more especially Colonel Roelofse, via General Henkel, he wanted and interviewed me to explain certain aspects of Crime Intelligence. I cannot remember the exact date Chair, it was probably around the latter part of September 2011. This interview was conducted at Crime Intelligence Head office, myself, Colonel Roelofse and General Henkel was present. It was not a very long interview

Chair, it was just more administrative to explain agent files etcetera, probably an hour or so and our meeting was done.

Subsequent to that Chair in the 18th ...[indistinct]

CHAIRPERSON: Or do you want to, is there anything you want to tell me about the content of the discussions on that hour long interview more or less?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair that was more or less to explain the agent files. At that stage I was handling seven agents.

10 **CHAIRPERSON:** Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: It was basically administrative – I had to explain how I got to handling these agents.

CHAIRPERSON: Oh, how you operate?

COLONEL DHANAJAYA GANGULU NAIDOO: Not really how the operations of it Chair, it was just more administrative because at that stage I had to explain their salaries, their medical aid payments.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: So that was done in that hour long interview.

20 **CHAIRPERSON:** Okay, okay, yes?

COLONEL DHANAJAYA GANGULU NAIDOO: And subsequently I was asked again to meet with Colonel Roelofse, again via General Henkel, this was on the 18th and 19th of October 2011.

CHAIRPERSON: Yes?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair on the 18th of

October I met with Colonel Roelofse and Lt Colonel Piet Viljoen of the Hawks at their offices in Pretoria at Silverton. It was regarding Crime Intelligence and the alleged looting of the account Chair.

On the first date Chair I was quite reluctant or hesitant to – not as to not to cooperate with the investigation but I had quite a lot of information that I needed to speak about, and I did not know if I could trust them at that stage Chair.

CHAIRPERSON: At that stage had they officially asked you if you could tell them certain information or not yet, they were just having
10 discussions with you without necessarily asking you to give them sensitive information?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair if I can remember correctly on the 18th there were certain questions put to me by Colonel Roelofse and Lt Col Piet Viljoen which I answered honestly, I did not lie to them about anything, like I said I so much information that I did not know if I could trust them, that was the first day of the 18th.

However on the 20th, sorry the next day which is the 19th Chair, out of my own accord I decided to take them into my confidence and explain all of the allegations, or made numerous allegations to
20 them regarding the looting of the secret service account.

CHAIRPERSON: The secret service account, the looting of the secret service account.

COLONEL DHANAJAYA GANGULU NAIDOO: At large Crime Intelligence Chair but it was more the Secret Service Account because this is situated within Crime Intelligence.

CHAIRPERSON: Yes, so this would have been on the 19th of October 2011.

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair.

CHAIRPERSON: Yes, okay. So that was Colonel Roelofse and Henkel, did you say Colonel Henkel?

COLONEL DHANAJAYA GANGULU NAIDOO: It was no Chair it was Colonel Roelofse and Colonel Piet Viljoen.

CHAIRPERSON: Piet Viljoen?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair.

10 **CHAIRPERSON:** Yes, okay, continue.

COLONEL DHANAJAYA GANGULU NAIDOO: This had disclosed on the 19th of October to the various allegations of the looting of the account, including myself, by members of Crime Intelligence, including myself.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: On the same day 19th October 2011, sorry Chair I am just trying to get my dates in order.

CHAIRPERSON: Your dates, okay, yes.

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** Going back to the 18th, after my interview with – on the first day, I went back to my office and General Lazarus wanted to know what the Hawks were questioning me about.

CHAIRPERSON: The 18th of October, that interview on the 18th of October is that the one that you said was about an hour long?

COLONEL DHANAJAYA GANGULU NAIDOO: No, that was in

September Chair.

CHAIRPERSON: Oh that was in September.

COLONEL DHANAJAYA GANGULU NAIDOO: September of the same year, 2011.

CHAIRPERSON: But the 18th October one was the second interview with them.

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: With Colonel Roelofse.

COLONEL DHANAJAYA GANGULU NAIDOO: That's correct.

10 **CHAIRPERSON:** And whoever he was with.

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair.

CHAIRPERSON: Okay, alright, yes. So you say after the interview of the 18th of October 2011 General Lazarus spoke to you.

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair.

CHAIRPERSON: Yes, continue.

COLONEL DHANAJAYA GANGULU NAIDOO: During the 18th, I will call it the first day, although it is not the first day but because ...[intervenes]

CHAIRPERSON: Yes.

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** ...of the timeframe.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: If I can remember correctly there was a question put to me by the investigating team if any members of Crime Intelligence had their premises rented by Crime Intelligence and I answered honestly I explained to Colonel Roelofse

that General Mdluli and General Lalla their premises were being rented by CI when – I am going back to the afternoon when I went back to my office and I explained to General Lazarus that I did concede or confirm that I have – confirmed with the Hawks that this was indeed the case, in terms of the rental of the premises for the two Generals, he was quite furious with me and asked me ...[intervenes]

CHAIRPERSON: I am sorry may I just interrupt you.

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair.

CHAIRPERSON: Just to get certain things straight. The first interview
10 with the Hawks – your first interview with the Hawks was sometime in September 2011. That is the interview which you say related to administrative issues, is that right?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair regarding agents that I was handling at the time.

CHAIRPERSON: Yes. And then the second interview is the one that happened on the 18 October 2011, is that right?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair. That was almost a day long – almost entire day Chair.

CHAIRPERSON: Yes. Now is that the one where you say you had
20 decided to tell them many of the things that you knew which were – which related to corruption and looting of the Secret Service Account?

COLONEL DHANAJAYA GANGULU NAIDOO: No Chair.

CHAIRPERSON: Or is that on the 19th?

COLONEL DHANAJAYA GANGULU NAIDOO: On the 18th – this was on the 18th October.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Where certain questions were put to me.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Regarding certain aspects of criminality within CI which I indeed answered honestly and correctly or I would say honestly.

CHAIRPERSON: Yes okay but – but with regard to the 18th – so with regard to the 18th you were simply answering questions that ...

10 **COLONEL DHANAJAYA GANGULU NAIDOO:** That were put to me Chair.

CHAIRPERSON: That they were putting to you.

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair.

CHAIRPERSON: And that is the – that is the day where in respect of which you say you were not sure whether you could trust them or not at that stage?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: So you knew you had knowledge of a lot of things that were happening but you were not sure whether you could trust them.

20 But insofar as the questions that they put to you you say you answered those questions honestly?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: And you say that interview took the whole day?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair.

CHAIRPERSON: On the 18th?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes.

CHAIRPERSON: And then after the Hawks were gone General Lazarus called you and asked you about their visit to you?

COLONEL DHANAJAYA GANGULU NAIDOO: No Chair. When my interview concluded for the day I am referring to the 18th.

CHAIRPERSON: Ja.

COLONEL DHANAJAYA GANGULU NAIDOO: There was quite a few missed calls on my phone.

CHAIRPERSON: Yes.

10 **COLONEL DHANAJAYA GANGULU NAIDOO:** And I am not sure who it was but there was a few but General Lazarus was looking for me.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Or rather wanted to speak to me.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: To see how the interview went with the Hawks.

CHAIRPERSON: Oh he knew that you were going to be having an interview with the Hawks?

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** Yes Chair. Yes Chair.

CHAIRPERSON: Okay.

COLONEL DHANAJAYA GANGULU NAIDOO: I conceded that I admitted that the two generals whom I refer to as General Mdluli and General Lala that their premises were being rented by CI and like I explained he was – was not happy. He was quite – he was quite upset.

CHAIRPERSON: Yes that is General Lazarus?

COLONEL DHANAJAYA GANGULU NAIDOO: General Lazarus. Yes Chair.

CHAIRPERSON: Do you want to just you know remind us what position General Lazarus held at Crime Intelligence at the time?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair General Lazarus was the Head of the Secret Service Account at Crime Intelligence.

CHAIRPERSON: Yes. And who was the head of the Crime Intelligence at the time?

10 **COLONEL DHANAJAYA GANGULU NAIDOO:** At that stage I am not sure – I am not sure because General Mdluli was suspended by then.

CHAIRPERSON: Well if he was suspended it means he was – he was Head of the Crime Intelligence.

COLONEL DHANAJAYA GANGULU NAIDOO: Yes.

CHAIRPERSON: But there would have been somebody acting in his – in the position?

COLONEL DHANAJAYA GANGULU NAIDOO: That would be – that would be correct Chair.

CHAIRPERSON: So he – so General Mdluli was the Head of Crime
20 Intelligence but he was on suspension?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: You cannot remember who was acting in his position?

COLONEL DHANAJAYA GANGULU NAIDOO: I am not sure Chair I am not sure.

CHAIRPERSON: Okay. And General Lazarus would he have been like

number 2 in Crime Intelligence or not?

COLONEL DHANAJAYA GANGULU NAIDOO: I would not...

CHAIRPERSON: In terms of the hierarchy in Crime Intelligence?

COLONEL DHANAJAYA GANGULU NAIDOO: I would not say number 2.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: But he would be quite – he was...

CHAIRPERSON: Quite close to – his position was it like one grade
10 below that of General Mdluli or is that something you do not know?

COLONEL DHANAJAYA GANGULU NAIDOO: You could say that Chair he was a rank below General Mdluli he was the CFO of the Secret Service Account.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: So yes you correct in saying that Chair.

CHAIRPERSON: Oh okay alright. Okay if you may then continue with your – to tell us about the discussion that you were having with General Lazarus. You said he was upset when...

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** He was very upset with me.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: That I conceded in giving that information to the Hawks.

CHAIRPERSON: Hm

COLONEL DHANAJAYA GANGULU NAIDOO: I explained to him Chair that it was a direct question that was put to me and I could not lie to them. It was an official investigation and I could not lie to them.

CHAIRPERSON: Hm.

COLONEL DHANAJAYA GANGULU NAIDOO: Nevertheless that was – that conversation ended there. I cannot really remember exactly what transpired thereafter.

CHAIRPERSON: How did he show his – I think you said earlier he was furious and then later you said he was upset. How did he show it?

10 **COLONEL DHANAJAYA GANGULU NAIDOO:** Chair it was not – it was not any physical attributes.

CHAIRPERSON: Ja.

COLONEL DHANAJAYA GANGULU NAIDOO: But in how he said what he said to me that made me believe that he was upset with me.

CHAIRPERSON: Okay. Okay.

COLONEL DHANAJAYA GANGULU NAIDOO: In the manner in which he said it to me.

CHAIRPERSON: Oh the manner in which he spoke to you after you told him what you had told the Hawks?

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** That is correct Chair.

CHAIRPERSON: Okay continue.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair I am going back or rather not back I am going to the 19th which is the next day – 19th October 2011.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair on this day I made a decision that on my own accord I am going to reveal to the Hawks all of the allegations of ...

CHAIRPERSON: All of the things you knew relating to corruption and crime and the looting of the Secret Service Account?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair the abuse of the account by various members as most of which were senior members of Crime Intelligence including myself Chair.

CHAIRPERSON: Okay. Okay. Did you have an arrangement to meet
10 with Colonel Roelofse on the 19th or there was no arrangement as such you – but once you made this decision you were going to contact him?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair there was an arrangement that I would meet them over those two days which was the 18th. Like I said I concluded on the 18th and there was regiment that I meet the next day as well.

CHAIRPERSON: Oh okay. Yes and what happened on the 10th then?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair on the 19th – on the 19th October again I had to give General Lazarus feedback on how my interview went with the Hawks. Like I said Chair at this stage I had
20 explained or confided in them. Going back to General Lazarus I gave him a very watered...

CHAIRPERSON: Oh okay.

COLONEL DHANAJAYA GANGULU NAIDOO: I gave him a watered down version of what really transpired.

CHAIRPERSON: Okay I am sorry I am interrupting you again Colonel

Naidoo. Let us deal first with your interview with the Hawks on the 19th October before we go to your meeting or discussion with General Lazarus after the interview.

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair.

CHAIRPERSON: What happened at the interview – at your interview with the Hawks on the 19th October? Did you tell them everything that you knew?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair. At that stage what I could – because there were so many incidents of corruption Chair. On the 19th what I could remember I conceded and
10 given them that information. But all of that...

CHAIRPERSON: Oh yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Information that I have given to them on the 19th Chair.

CHAIRPERSON: Hm.

COLONEL DHANAJAYA GANGULU NAIDOO: And a little bit of the 18th is contained in an affidavit that I deposed to Colonel – Lieutenant Colonel Piet Viljoen on the 24th October 2011.

CHAIRPERSON: Yes. Okay no that is fine.

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** Most of that information that came out of the interview over these two days was contained in that initial investigation. If I can call it the “blanket investigation” sorry Chair pardon me. If I can call it the “Blanket Affidavit” that I deposed to.

CHAIRPERSON: Yes I think Ms Wentzel then can take it from there.

COLONEL DHANAJAYA GANGULU NAIDOO: Thank you.

ADV SUSAN WENTZEL: Thank you. By the stage that you depose to this “Blanket Affidavit” on the 25th October 2011 had you been placed into the witness protection program?

COLONEL DHANAJAYA GANGULU NAIDOO: Pardon me. Can I get the date again?

ADV SUSAN WENTZEL: You said you deposed to an affidavit on the 25th October 2011 which you call your “Blanket Affidavit” which confirmed what you had told Colonel Roelofse on the 18th and the 19th
10 October, is that correct?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes that is correct I was already in the witness protection program by then.

CHAIRPERSON: Sorry Ms Wentzel. Let us finish first what he touched on earlier on and I stopped him. He said after his interview with the Hawks on the 19th he had a discussion with General Lazarus.

ADV SUSAN WENTZEL: Yes Chair.

CHAIRPERSON: But I stopped him before he could tell us exactly what transpired.

ADV SUSAN WENTZEL: Yes.

20 **CHAIRPERSON:** In that discussion. Let us hear about that part?

ADV SUSAN WENTZEL: Yes. Colonel Naidoo did you hear the Chair? Could you explain what happened on the 19th October 2011 after your interview with the Hawks?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes yes. As per the previous day I had to again give General Lazarus feedback as to how

the interview went with the Hawks. Like I explained I gave him at this stage on the 19th I had given them all the information that I knew at that stage. I gave General Lazarus a watered down version of what really transpired just to get him off my back.

CHAIRPERSON: The – was there an arrangement between the two of you namely yourself and General Lazarus that after the interview – your interview with the Hawks on the 19th you should come back to him and tell him what you discussed with them?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair not really but I fell
10 within the Secret Service Account so he was indirectly my boss. I actually reported to Colonel Barnard who reported to General Lazarus.

CHAIRPERSON: Yes so you – you went – you went to tell him on your own not because he had asked you to come and tell him?

COLONEL DHANAJAYA GANGULU NAIDOO: I cannot remember the details Chair.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: But I do remember having this conversation with him on the 19th.

CHAIRPERSON: Yes. And you say you gave him what you call a
20 watered version – a watered down version of what you had disclosed to the Hawks, is that right?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair. Like I mentioned on the 19th I decided on my own accord to give the Hawks all the information that I knew at that stage which was quite substantial many incidents that I referred to.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: So I did not give him all the details – I am referring to General Lazarus my conversation with him that I had with him on the afternoon of the 19th I gave him a watered down version of what really transpired with my interview with the Hawks.

CHAIRPERSON: What was your motivation for giving him a watered down version of what you had disclosed to the Hawks?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair the previous day I
10 had only told him about one incident regarding the safe premises and he was quite upset with me.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: And on the 19th I gave them a whole lot of information and I do not think he would have taken kindly to that.

CHAIRPERSON: Yes. And he was one of the people who were implicated in what you had disclosed to the Hawks?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: Yes. Okay. So how did that meeting end – that
20 discussion between the two of you?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair it is some time ago.

CHAIRPERSON: It just accepted...

COLONEL DHANAJAYA GANGULU NAIDOO: It is almost seven years.

CHAIRPERSON: Accepted what you said and that is – it ended there?

COLONEL DHANAJAYA GANGULU NAIDOO: I would say so Chair I cannot remember the details.

CHAIRPERSON: You cannot remember. Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: No.

CHAIRPERSON: Okay. Alright. Ms Wentzel you can proceed.

ADV SUSAN WENTZEL: Now you said that before you gave this “Blanket Statement/Affidavit” to the Hawks on the 25th October 2011.

COLONEL DHANAJAYA GANGULU NAIDOO: Ja.

ADV SUSAN WENTZEL: You were placed in the witness protection
10 program and I think perhaps we should deal with that now at this stage.
If you could have regard to page 63 of your statement that you have
given to the commission could you please tell the Chair being careful
not to refer to names and have regard to the list of names that have
been provided to you with this abbreviation which will be FM1, 2 or
etcetera could you please tell the Chair the circumstances under which
you ended up being placed in the witness protection program?

COLONEL DHANAJAYA GANGULU NAIDOO: Sure. Chair if I can just
go back to the overview and I will get to 63 in a moment?

CHAIRPERSON: Yes.

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** Like I said on the 19th I
had this discussion with General Lazarus. I dropped him off at his
residence and I went to my home. The next day I picked him up as I
would normally do because he travelled with me to work – to his office.
I dropped him off at his office and I explained to him that I was quite
tired mentally having been interviewed by the Hawks for the previous

two days and I informed him that I would want – like to go home to rest. He agreed Chair. After I dropped him off at his office I decided – I am talking about the 20th Chair the Thursday.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: I decided to confide in one of my colleagues namely Colonel Barnard.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: And I confided in him Chair and I told him about the interview that I had with the Hawks. And
10 also informed him that I also informed the Hawks that I had also conceded that I put in claims to the value of R100 000.00 – false claims.

CHAIRPERSON: Just repeat that please? You told him that you had told the Hawks that you had put in false claims to the value of R100 000.00.

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: Okay alright. Continue.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair during this – during this confession that I made to Colonel Barnard another member of
20 Crime Intelligence that was present there I am not sure if I can mention his name?

ADV SUSAN WENTZEL: No it would be better if you can just refer to the list.

COLONEL DHANAJAYA GANGULU NAIDOO: Oh pardon me sorry.

CHAIRPERSON: Just have a look at the list that you have. If it is

somebody who is supposed to be referred to by way FM and a number just mention the number. The FM and the number. But I take it Ms Wentzel that anybody that is not mentioned here that is not in the list and that he does not know to be an agent or informer he could mention but those are people in the statement.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Yes. Yes Colonel Naidoo do you understand that?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair.

CHAIRPERSON: Yes okay.

10 **COLONEL DHANAJAYA GANGULU NAIDOO:** There was another Colonel who ...

CHAIRPERSON: So if the person that you were wondering whether you can mention you would have to look if you find then you mention FM and the number. But if it looks like it takes you some time we can see what to do but it is not a list that is terribly long. It is one page I think. It is one page. Okay do you want to check there or is the name not there?

COLONEL DHANAJAYA GANGULU NAIDOO: I do have the number Chair.

20 **CHAIRPERSON:** Oh okay.

COLONEL DHANAJAYA GANGULU NAIDOO: I would refer to this Colonel as FM40.

CHAIRPERSON: FM40?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair.

CHAIRPERSON: 40?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair.

CHAIRPERSON: Okay.

COLONEL DHANAJAYA GANGULU NAIDOO: He was also present when I confided in Colonel Barnard.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: With my admissions to the Hawks.

CHAIRPERSON: Hm.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair at that stage I was
10 – I was – I – or rather I had the impression that they were genuinely concerned about my wellbeing.

CHAIRPERSON: That is now the two of them?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair.

CHAIRPERSON: Ja.

COLONEL DHANAJAYA GANGULU NAIDOO: Initially they were quite shocked though with my admissions regarding the R100 000.00.

CHAIRPERSON: Now do you think what was shocking them was that you had disclosed that to the Hawks or what was shocking them was that you had put in claims for that kind of amount?

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** It was more the amount that I put in Chair.

CHAIRPERSON: Oh it was more the amount.

COLONEL DHANAJAYA GANGULU NAIDOO: And the – or rather I would the admissions Chair not so much the amount.

CHAIRPERSON: Oh the admissions okay.

COLONEL DHANAJAYA GANGULU NAIDOO: The admissions that I had made to the Hawks.

CHAIRPERSON: Okay. Alright.

COLONEL DHANAJAYA GANGULU NAIDOO: Regarding the amount.

CHAIRPERSON: Okay.

COLONEL DHANAJAYA GANGULU NAIDOO: And I genuinely believed Chair that they were concerned about my wellbeing and they said that I must take care of myself I must go home and have a rest.

CHAIRPERSON: This is still on the 19th October 2011?

10 **COLONEL DHANAJAYA GANGULU NAIDOO:** Chair this is on the 20th October.

CHAIRPERSON: Oh on the 20th October yes okay.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair which I did. I was quite tired. I was exhausted mentally because remember I was interviewed quite extensively the previous two days so I went home.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: And I think I had a sleep for a few hours.

20 **CHAIRPERSON:** So the interview of the 20th also was like a daylong interview? Took more or less the whole day?

COLONEL DHANAJAYA GANGULU NAIDOO: Pardon me Chair I did not hear that part?

CHAIRPERSON: The interview of the 20th October – oh I am sorry – ja the interview of the 19th October did it last the whole day?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair it did.

CHAIRPERSON: More or less?

COLONEL DHANAJAYA GANGULU NAIDOO: More or less because it was quite extensive in terms of what I disclosed to Colonel Roelofse and Colonel Viljoen.

CHAIRPERSON: Okay no that is fine. So the two of them were concerned and asked – and suggested that you go and rest?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: And this is on the 20th now?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

10 **CHAIRPERSON:** Yes and then what happened?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair I am still referring to the 20th. The evening of the 20th probably between 6 or 9 I cannot be sure or more or less during that time my wife and I decided to go for a walk because like I said I was quite stressed out and also mentally tired from the previous two days. My eldest son was at home. He was asleep Chair. It was my wife and I and my youngest son he was on his bicycle we went – decided to go for a walk around the block around my house.

CHAIRPERSON: And this was around what time of the day?

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** This was in the evening Chair of the 20th probably between six and seven.

CHAIRPERSON: Okay. Yes continue.

COLONEL DHANAJAYA GANGULU NAIDOO: We went around the block Chair. There is a park opposite my house. We walked around the park and as I was getting closer to my house I saw two of my

colleagues Colonel FM08.

CHAIRPERSON: Colonel FM08 yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Sorry Chair I – it is just...

CHAIRPERSON: You are looking for the other one.

COLONEL DHANAJAYA GANGULU NAIDOO: I am just looking for the...

CHAIRPERSON: Number – ja no that is fine just have a look. It was FM08 Chair

CHAIRPERSON: Yes.

10 **COLONEL DHANAJAYA GANGULU NAIDOO:** And FM09.

CHAIRPERSON: Oh FM08 and FM09?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair.

CHAIRPERSON: Yes okay.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair I cannot remember exactly which one of them but one of them – I refer to both of them in this incident but one of them and like I said I do not know which one I cannot remember exactly.

CHAIRPERSON: Yes.

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** I saw them jumping over the gate of my house the driveway gate.

CHAIRPERSON: When you saw them for the first time were they in a car or were they walking?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair there was a car that was parked in front of my driveway gate which I recognised as one of the vehicles that I previously drove at CI as a covert vehicle.

CHAIRPERSON: Oh.

COLONEL DHANAJAYA GANGULU NAIDOO: It was subsequently handed to one of my colleagues FM08 at that stage was driving that particular vehicle. So I recognised it to be the vehicle that he was driving.

CHAIRPERSON: Yes. So when you saw the car and you saw one of them I think you said climbing over the fence. Was it when you, your wife and your son were coming back home from the walk?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.
10 Around the block, around the park and we were on our way back nearing the house.

CHAIRPERSON: Oh okay.

COLONEL DHANAJAYA GANGULU NAIDOO: And I noticed one of them jumping over the fence or rather the driveway gate Chair.

CHAIRPERSON: And the car was outside the gate?

COLONEL DHANAJAYA GANGULU NAIDOO: In front of the gate Chair that is correct.

CHAIRPERSON: In front of the gate.

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct. On the
20 outside of the gate.

CHAIRPERSON: Yes. And you say one of them was jumping over the fence?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair from within the property jumping over the gate back outside. So obviously they were...

CHAIRPERSON: Oh he was coming from inside the premises?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct.

CHAIRPERSON: Okay. Yes continue.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair

CHAIRPERSON: Who had you left at home? Was there – were there children that you had left at home or anybody?

COLONEL DHANAJAYA GANGULU NAIDOO: It was my eldest son he was asleep Chair at the time.

CHAIRPERSON: Yes.

10 **COLONEL DHANAJAYA GANGULU NAIDOO:** And my youngest son accompanied us on his bicycle.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: My wife walked and he came on his bicycle.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair like I said as I was nearing the premises I noticed this – one of my colleagues jump over the fence and they got into the vehicle Chair that was parked in front of the driveway gate and they started the car – sorry Chair.

20 **CHAIRPERSON:** Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: And they started to drive in my direction which was not very far off from my house.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: As the car approached or came nearby I noticed General Lazarus sitting in the front seat.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: The car stopped and he told me I am a very hard man to get hold of.

CHAIRPERSON: That is – who was saying that to you now?

COLONEL DHANAJAYA GANGULU NAIDOO: General Lazarus.

CHAIRPERSON: Yes okay.

COLONEL DHANAJAYA GANGULU NAIDOO: And I explained to him I just went for a walk around the block. So he asked me to jump into the car.

10 **CHAIRPERSON:** Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: He offered my wife a lift home and I explained to him that it was just around the corner so I gave her the house key and she continued together with my son they went back home. I jumped into the car Chair.

CHAIRPERSON: Did you not ask why at that stage?

COLONEL DHANAJAYA GANGULU NAIDOO: No.

CHAIRPERSON: You did not.

COLONEL DHANAJAYA GANGULU NAIDOO: He basically instructed me to jump into the car.

20 **CHAIRPERSON:** Yes. And – yes. This was after hours hey?

COLONEL DHANAJAYA GANGULU NAIDOO: This was between 6 and 7 in the evening Chair.

CHAIRPERSON: Yes. So your – your wife and your son proceeded to walk home.

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair.

CHAIRPERSON: And you jumped into this car?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair.

CHAIRPERSON: Yes. Continue.,

COLONEL DHANAJAYA GANGULU NAIDOO: Like I said General Lazarus was in the front passenger seat.

CHAIRPERSON: And who was driving do you remember whether it was FM08 or FM09?

COLONEL DHANAJAYA GANGULU NAIDOO: FM08 was driving the car Chair.

10 **CHAIRPERSON:** Okay.

COLONEL DHANAJAYA GANGULU NAIDOO: FM09 was sitting in the backseat on the left side.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: And I jumped into the right side of that – behind the driver's seat.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: And when I jumped in FM08 who was driving the vehicle started to drive around the block. If I can remember correctly General Lazarus enquired from me if I was
20 okay and I said no I was indeed okay. He subsequently asked me if there is anything I want to tell him. I said no. I think if I can remember correctly he asked me the question again. And I said no. Chair.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair if – just bear with me Chair I...

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Sorry it is a few years now I am just trying to ...

CHAIRPERSON: To remember.

COLONEL DHANAJAYA GANGULU NAIDOO: [Indistinct] my thoughts together.

CHAIRPERSON: No that is fine.

ADV SUSAN WENTZEL: Colonel Naidoo.

COLONEL DHANAJAYA GANGULU NAIDOO: Yes.

10 **ADV SUSAN WENTZEL:** Just so that you can refresh your memory you are dealing with events that are dealt with on page 63 and 64 onwards of your statement. If you just want to have a look there that will also help you with the – the FM names of the agents so you do not have to always look them up.

COLONEL DHANAJAYA GANGULU NAIDOO: Yes okay that is fine. Chair I am also trying to just remember the events but I will – I will refer to the different pages.

CHAIRPERSON: Yes okay.

COLONEL DHANAJAYA GANGULU NAIDOO: Just to refresh my
20 memory as well.

CHAIRPERSON: Yes. In the meantime Ms Wentzel I just see that some of the copies here are very bad.

ADV SUSAN WENTZEL: I apologise Chair.

CHAIRPERSON: So please make arrangements I always say to the legal team in advance of bundles coming to me once you have

identified that they are copies that are not legible or that really are just too of poor quality arrangements should be made if at all possible so that we have copies that are legible.

ADV SUSAN WENTZEL: I apologise Chair.

CHAIRPERSON: So you can try for maybe – so that next week we have better pages.

ADV SUSAN WENTZEL: I apologise Chair. I unfortunately was in Botswana last week when these ...

CHAIRPERSON: Yes.

10 **ADV SUSAN WENTZEL:** Bundles were prepared for you but I will make sure that it rectified.

CHAIRPERSON: Yes, okay.

ADV SUSAN WENTZEL: You can continue Colonel Naidoo.

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair. Like I said General Lazarus there asked me you do not want to tell me anything. That was his exact words to me. If I can remember or according to my statement and I said that I did not. General Lazarus then said he heard that I had made some admissions to the Hawks.

Chair I said that he - he got it wrong and then he asked me
20 then why is Colonel Barnard saying that you are - you - you admitted to putting in false claims to the value of R100 000,00.

CHAIRPERSON: Huh-uh.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair at that stage I admitted to - to speaking to - to - I am talking about General Lazarus now. I admitted to him that I or rather I - I said that I - I admitted to -

to speaking to Colonel Barnard but the night that I - I told Colonel Barnard that I put in false claims or admitted to him putting in false claims.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Thereafter Chair General Lazarus then told me that he had spoken to a certain pastor - Pastor Jonathan. Chair this pastor was an associate of Mr Marimuthu which I will deal with further or later in my statement or (intervenes).

CHAIRPERSON: Marimuthu?

10 **COLONEL DHANAJAYA GANGULU NAIDOO:** Mr Panganathan - to me - Marimuthu.

CHAIRPERSON: Okay.

COLONEL DHANAJAYA GANGULU NAIDOO: And that this whole thing would be over soon and I must be strong. So ...

CHAIRPERSON: So he - I am sorry. So General Lazarus said he had spoken to a certain pastor.

COLONEL DHANAJAYA GANGULU NAIDOO: Pastor Jonathan.

CHAIRPERSON: Pastor Jonathan ...

COLONEL DHANAJAYA GANGULU NAIDOO: Ja.

20 **CHAIRPERSON:** And he said everything will be over soon?

COLONEL DHANAJAYA GANGULU NAIDOO: He - that is correct Chair.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: And that I must be strong.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: So what I understood from this - from what General Lazarus told me is when he said that I understood that I must be strong through this investigation. That it will be over soon.

CHAIRPERSON: Yes. So did it - did it appear like to you he accepted that you might not have told Colonel Barnard that you had put in a false - false claims amounting to R100 000,00?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair, I - I managed or I - I think I managed to stay calm and ...

10 **CHAIRPERSON:** Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: I - I was convinced that I had convinced him that I did not speak or I did not make any such admissions.

CHAIRPERSON: Okay, yes.

COLONEL DHANAJAYA GANGULU NAIDOO: So while this whole conversation was taking place we had circled the block around the park near my house and we came to close my house again and FM08 drove into the driveway.

CHAIRPERSON: Yes.

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** Chair before I could get out of the car General Lazarus told him to reverse and to carry on driving ...

CHAIRPERSON: Hm.

COLONEL DHANAJAYA GANGULU NAIDOO: And from there we proceeded to General Lazarus' house in Isandovale in Edenvale which

is not very far from - from my own house.

CHAIRPERSON: Huh-uh.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair as we were all getting out of the car and I am referring to all. It is myself, General Lazarus, FM ...

CHAIRPERSON: 08 and FM09.

COLONEL DHANAJAYA GANGULU NAIDOO: 08 and FM09.

CHAIRPERSON: Huh-uh.

COLONEL DHANAJAYA GANGULU NAIDOO: FM10 also arrived at
10 General Lazarus' house ...

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: And we all proceeded or proceeded to the braai area.

CHAIRPERSON: You proceeded to ...?

COLONEL DHANAJAYA GANGULU NAIDOO: The braai area - the braai area of the house.

CHAIRPERSON: To the braai area in General Lazarus' house?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: Okay.

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** Chair at this stage there was just general conversation. I cannot remember the details of it but I like I say it was general conversation. Up to a stage that FM10 made a statement that his contact at the Hawks had informed him that I had made certain admissions to them and that I am now on the side of the Hawks.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair I again had to go into defence mode. I again denied what was being said.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair and at this stage I started to feel uncomfortable ...

CHAIRPERSON: Huh-uh.

COLONEL DHANAJAYA GANGULU NAIDOO: As more questions were being directed to me regarding my involvement in the admission of
10 putting in false claims to the Hawks.

CHAIRPERSON: Huh-uh.

COLONEL DHANAJAYA GANGULU NAIDOO: Nevertheless Chair I still managed to stay calm ...

CHAIRPERSON: Huh-uh.

COLONEL DHANAJAYA GANGULU NAIDOO: But although - although still remaining calm I was uncomfortable.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair - pardon me Chair. Like I said there was general conversation up to a point where
20 Westville Air Travels - Air Travel Tickets were discussed ...

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: And Colonel FM08 said that General Hankel had requested certain documentation from him regarding air tickets. Colonel FM10 then told Colonel FM08 that he must speak to his contact. Contact referring to the contact at Westville

Air Travel. This particular individual I - I know as Mahesh. I am - I am not sure what is his surname Chair.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: And that they must destroy the evidence of the air tickets.

CHAIRPERSON: Now - okay. Who was giving the instruction that the evidence of air tickets should be destroyed?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair, F - FM08 said that General Hankel was making certain inquiries regarding air tickets ...

10 **CHAIRPERSON:** Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: From this particular service provider namely Westville Air Travel.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: FM10 told FM08 that he must speak to his contact at the travel agent and that they must destroy all of the - the invoices or related matters ...

CHAIRPERSON: *Ja.*

COLONEL DHANAJAYA GANGULU NAIDOO: Regarding the travel. More especially to - to Crime Intelligence.

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

COLONEL DHANAJAYA GANGULU NAIDOO: Chair, I forgot to mention or I did mention FM09 was also part of this.

CHAIRPERSON: Yes. You did mention FM09.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair when this suggestion was made by FM - FM10 to FM08 all - all who were present

at the braai area was agreement - was in agreement with the suggestion. No one disagreed.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair what I can remember next FM08 said that he will speak to his contact whom I referred to previously as Mahesh. He worked off a laptop.

CHAIRPERSON: Do you want to spell Mahesh?

COLONEL DHANAJAYA GANGULU NAIDOO: I think it is

CHAIRPERSON: Is it ...?

10 **COLONEL DHANAJAYA GANGULU NAIDOO:** I think it would be M-A-H-E-S-H Chair.

CHAIRPERSON: Okay. Thank you.

COLONEL DHANAJAYA GANGULU NAIDOO: Like I say I am - I am not too sure what his surname was.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: FM08 said that he would speak to Mahesh as he worked off a laptop and he would speak to him to ensure that the laptop was either destroyed or damaged so the evidence would be lost.

20 **CHAIRPERSON:** Hm.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair I was later given to understand this was apparently not done in time as - I am not sure. Pardon me Chair.

CHAIRPERSON: Huh-uh.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair this was apparently

not done in time because I was later informed that the investigators did manage to - to obtain certain records from - from Mahesh prior to - to him destroying ...

CHAIRPERSON: The records?

COLONEL DHANAJAYA GANGULU NAIDOO: The records.

CHAIRPERSON: Okay; and how did this gathering at the braai area of General Lazarus' house end?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair if I may just go to the next incident that is still happened at the braai area.

10 **CHAIRPERSON:** Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: After this - this conversation took place regarding the - the destruction of the evidence ...

CHAIRPERSON: Hm.

COLONEL DHANAJAYA GANGULU NAIDOO: Relating to the air tickets FM09 asked General Lazarus if he should spin a story.

CHAIRPERSON: Ja.

COLONEL DHANAJAYA GANGULU NAIDOO: General Lazarus did not say anything but he nodded his head.

20 **CHAIRPERSON:** Huh-uh.

COLONEL DHANAJAYA GANGULU NAIDOO: This made me believe that he had agreed with what FM09 had suggested.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair I cannot remember the details thereafter. I am taking about the braai area. If there was

any more talk or it was just general conversation ...

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: But what I can say is after - after we had finished at General Lazarus' house ...

CHAIRPERSON: Hm.

COLONEL DHANAJAYA GANGULU NAIDOO: FM09 suggested that he, FM08 and I go for a drink.

CHAIRPERSON: Yes, okay. I think I would like us to stop there for the day and then when we resume on Monday you can then take us from
10 there where there was the suggestion that you go for drinks. Is that alright?

COLONEL DHANAJAYA GANGULU NAIDOO: That is perfect Chair. Thank you.

CHAIRPERSON: Yes. Okay. We are going to adjourn at this stage then and tomorrow - I mean on Monday not tomorrow. On Monday we will start at 10 as usual. Thank you very much Colonel Naidoo. Arrangements will be made for you to be also available on Monday for us to continue.

COLONEL DHANAJAYA GANGULU NAIDOO: Thank you Chair.

20 **CHAIRPERSON:** Okay. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 30 SEPTEMBER 2019