

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

02 OCTOBER 2019

DAY 175

20

PROCEEDINGS RESUME ON 2 OCTOBER 2019

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

ADV PAUL JOSEPH PRETORIUS SC: Morning Chair.

CHAIRPERSON: We...

ADV PAUL JOSEPH PRETORIUS SC: Chair...

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: You have set down for final hearing the Application for Cross-examination of Minister Gordhan on behalf of Mr Moyane and I believe Mr Mpofo will commence.

10 **CHAIRPERSON:** Yes just for the record we are interrupting the evidence of Colonel Naidoo for me to hear argument on an application that has got nothing to do with him relating to Leave to Appeal – Leave to Cross-examine sought by Mr Moyane. That is Leave to Cross-examine Minister Gordhan. And we will resume the hearing of Colonel Naidoo's evidence after that. Yes okay. Maybe we can just have everybody place themselves on record first and then Mr Mpofo can start.

ADV DALI MPOFU: Thank you. Good morning Chairperson.

CHAIRPERSON: Good morning Mr Mpofo.

20 **ADV DALI MPOFU:** Thank you. Chairperson I appear once again for Mr Moyane in this application.

CHAIRPERSON: Hm.

ADV DALI MPOFU: With my learned friend and junior Mr Khasiboto.

CHAIRPERSON: Yes thank you.

ADV MICHELLE LE ROUX: Morning Chair I appear for...

CHAIRPERSON: Good morning.

ADV MICHELLE LE ROUX: For Minister Gordhan in this application and place on record my gratitude for the timing of the application this morning. Thank you.

CHAIRPERSON: Thank you very much. Thank you.

ADV DALI MPOFU: Chair can I have permission to have Mr Khasiboto sitting here?

CHAIRPERSON: Yes, yes, yes. It is fine ja.

ADV DALI MPOFU: I would not want him to be evicted by Ms Norman.

10 **CHAIRPERSON:** No that is fine.

ADV DALI MPOFU: Thank you. Thank you...

CHAIRPERSON: Well I am just going to summarise to make a few remarks that are intended to facilitate argument and expedite it. And as you address me I will sometimes be making remarks or putting questions that might not all be intended for you really but that might be intended to assist Ms Le Roux to know what my – what is in my mind so that when she stands up – when she rises she can address all of those issues.

20 As you recall except in regard to one issue I dismissed Mr Moyane's application for Leave to Cross-examine Minister Gordhan and I gave reasons for that and I subsequently asked both sides to make certain – to file affidavits or make written submissions which was done. And of the things I wanted was for Mr Gordhan to clarify a certain issue in his affidavit.

I think from his clarificatory affidavit he understands that I –

he thinks I misunderstood his affidavit. Maybe I did but if I did I think then it must be because there are various parts that might – that give one different understanding.

That issue was really whether Minister Gordhan was saying that in laying criminal charges against him Mr Moyane acted with malice.

ADV DALI MPOFU: Hm.

CHAIRPERSON: And of course acting with malice could be based on various things. Could be because you just do not like the person. It
10 could be because you have a certain illegitimate agenda. You want to put the person in trouble.

ADV DALI MPOFU: Hm.

CHAIRPERSON: It could be all kinds of things. But his clarificatory affidavit well said

1. It was never – he never said in his affidavit that Mr Moyane acted with malice. He said it was Mr Moyane's who said in his affidavit he understood that it was implied in Mr Gordhan's affidavit that he had acted with malice.

ADV DALI MPOFU: Hm.

20 **CHAIRPERSON:** And – but in the end – well at some stage Mr Gordhan says in his affidavit, clarificatory affidavit that he did not know what was in Mr Moyane's mind when he laid charges against him.

ADV DALI MPOFU: Yes.

CHAIRPERSON: And somewhere he says whatever may have been in his mind was irrelevant. Maybe if he had stopped there might have

been no need for this hearing because maybe that would have been a ground for me to say well he is not alleging any malice against Mr Moyane in laying charges therefore there is no issue.

ADV DALI MPOFU: Yes.

CHAIRPERSON: But in his affidavit he then

ADV DALI MPOFU: Goes further.

CHAIRPERSON: Went further and said as I understand his affidavit what he did mean or what he does mean or what he does contend is that Mr Moyane abused the legal process. By which I mean I
10 understand him to mean in laying charges against him Mr Moyane abused the legal process.

ADV DALI MPOFU: Hm.

CHAIRPERSON: And he the also says as I understand it – his affidavit. He says in effect Mr Moyane was doing this in furtherance of ...

ADV DALI MPOFU: State capture.

CHAIRPERSON: The state capture agenda. I may be putting this in my own words but that is how I understand it. It may be that he is not confining this to the laying of charges. Maybe that he goes further to say there are a lot of other things that he did while – Mr Moyane did
20 while Mr Gordhan was Minister of Finance which Mr Moyane did as part of furthering the agenda of state capture.

ADV DALI MPOFU: Hm.

CHAIRPERSON: Now my prima facie view is that within the context of this commission if you say that somebody did certain things to further the agenda of state capture that is quite a serious allegation and that

provided all other requirements that need to be met for purposes of granting Leave to Cross-examine provided they are met the inclination would be to grant Leave to Cross-examine. Because it is quite a serious allegation.

But of course Minister Gordhan says my – the basis for me saying that Mr Moyane was acting as he did in furtherance of the agenda of state capture is now to be found in the findings of the new Nugent Commission.

ADV DALI MPOFU: Hm.

- 10 **CHAIRPERSON:** So then – then the question for me arises okay how do we deal with it. [Indistinct] did not give evidence in the Nugent Commission. So there is the question of his version hence the – the idea that maybe if I – I and I am being inclined to grant leave there would need to be some provision for Mr Moyane to provide his version in relation to those findings.

Basically that is my thinking and most of it would have – would have been in the letter that – in the email that was sent to you. But then you can address me you have a full picture of what is in my mind.

- ADV DALI MPOFU:** Yes. Thank you – thank you Chairperson and also
20 thank you for – for giving us a preview so to speak of your prima facie view. It might or might not depending on the attitude of Ms Le Roux or Mr Gordhan curtail the proceedings.

Well Chairperson the – then really we have two issues that I need to deal with – broad issues. There might be sub-issues within them.

The first one which I want to deal with very quickly is to confirm that your prima facie view is – is correct. If I persuade you that that prima facie view is correct or if Ms Le Roux does not say anything to disturb that prima facie view then I will address you Chair on what should then happen.

The options – there were two options which you presented.

CHAIRPERSON: Yes.

ADV DALI MPOFU: Option 1 was that you would grant leave or rather you would ask for

10 **CHAIRPERSON**: The version.

ADV DALI MPOFU: A version.

CHAIRPERSON: Yes.

ADV DALI MPOFU: And then – and then give a ruling.

CHAIRPERSON: Ja. Yes.

ADV DALI MPOFU: Option 2 was that you would grant leave.

CHAIRPERSON: Yes.

ADV DALI MPOFU: Provisionally so to speak.

CHAIRPERSON: Yes.

ADV DALI MPOFU: Grant leave provisionally.

20 **CHAIRPERSON**: Hm.

ADV DALI MPOFU: On receiving a version.

CHAIRPERSON: Hm.

ADV DALI MPOFU: In our response last night to you we – we presented a third option.

CHAIRPERSON: Hm.

ADV DALI MPOFU: Which is what I want to address.

CHAIRPERSON: Hm.

ADV DALI MPOFU: In my second leg.

CHAIRPERSON: Hm.

ADV DALI MPOFU: That third option is that – is that the Chair should actually grant leave unconditionally and I will address the Chair as to why and that is because we – our view is that the linkage which the Chair has just articulated between the allegations of malice if they stand and the Nugent Report is – is in our view unsubstantiated and it cannot stand. And I will address Chair on that.

10

So let us start quickly with the first issue. Chair the – you will recall that we – in our submissions which we filed on the 28 May 2019.

CHAIRPERSON: Yes.

ADV DALI MPOFU: We made the point that the Chair is making. Namely that it is – one cannot say that the allegations were not made without malice. It is inconsistent with the very affidavit of Mr Gordhan. That is why we did not even file an affidavit because our view was that it would be a waste of the time of the commission. Because in his own affidavit there is enough to sustain the accusation.

20 And we quoted page 2 of that document – some of the – the excerpts that the Chair was referring to. We say – he has never denied the imputation of malice and I will explain why we say that.

All he say he does it what we lawyers call confession and avoidance. In other words he says yes you were malicious but it is irrelevant. Ja.

Now I will show you Chair that it cannot be irrelevant and once you remove the avoidance so to speak then you are left with the confession which is that it was malicious and therefore on that basis the Leave to Cross-examine should be granted.

And we then list very – the – four quotation from the – from his affidavit. It is at 7.1 of our submissions. Rather paragraph 7. He says at paragraph 15 of his affidavit I am quoting the affidavit of Mr Gordhan.

10 “The key point of my evidence was my personal belief that the entire process of investigation and brining – bringing which is what Mr Moyani did and withdrawal of charges against me by the NPA was part of a campaign of state capture institutions.”

He then says at paragraph 22.4.

“I therefore do mean that the Mr Moyane was motivated wholly or in part or he sought to advance the objectives of state capture and he was abusing a legal process for his own personal goals.”

Then the third one he says:

“I believe”

20 That is now at paragraph 22.5

“I believe that Mr Moyane’s personal goals included the advancement of state capture.”

And then he says at paragraph 31.

“My personal belief remains that Mr Moyane abused his position.”

Somewhere in his affidavit he even says Mr Moyane was motivated by racism. Now the simple point we will make there Chairperson is that it hardly lies in the mouth of a person who says these things to deny that there is an imputation of malice. Because how can – how can you abuse – lay false charges so to speak in the advancement of the state capture project but you do it nicely without any malice – without any malicious intent. It is just nonsensical.

CHAIRPERSON: Ja I – I – you see as I understand his affidavit now certain parts of it give different – make you understand it differently. I
10 mean in the direction that I issued when I asked for the – a clarificatory affidavit.

ADV DALI MPOFU: Hm.

CHAIRPERSON: Even in that direction I did say that when you read certain parts.

CHAIRPERSON: Yes.

CHAIRPERSON: Of his affidavits you think he is meaning this.

ADV DALI MPOFU: Going this way.

CHAIRPERSON: When you read other parts you think he is...

ADV DALI MPOFU: He is going...

20 **CHAIRPERSON:** On this issue of malice. I did say that.

ADV DALI MPOFU: Yes. You did Chair.

CHAIRPERSON: Yes.

ADV DALI MPOFU: Even in your ruling by the way.

CHAIRPERSON: Yes.

ADV DALI MPOFU: You said well we differ.

CHAIRPERSON: Yes.

ADV DALI MPOFU: We differ with that.

CHAIRPERSON: Yes.

ADV DALI MPOFU: Because you said in the ruling if I remember the words.

CHAIRPERSON: Yes, yes.

ADV DALI MPOFU: That he equivocating.

CHAIRPERSON: Yes, yes.

ADV DALI MPOFU: Now our view of course is that he was not
10 equivocating he is very clear.

CHAIRPERSON: Yes ja.

ADV DALI MPOFU: But

CHAIRPERSON: Ja well it is an interesting situation. I thought he equivocating you thought he is very clear.

ADV DALI MPOFU: That is malicious.

CHAIRPERSON: He agrees with you he thinks he was very clear.

ADV DALI MPOFU: Yes.

CHAIRPERSON: But you are on opposite ends about that clarity.

ADV DALI MPOFU: Yes yes of course.

20 **CHAIRPERSON:** You would think

ADV DALI MPOFU: Of course. Naturally Chair.

CHAIRPERSON: Anyway but when it comes to malice I think that if you try and understand what he has to say about malice insofar as you take the issue of state capture agenda out of it. I am far from certain as to what he says.

ADV DALI MPOFU: Yes Chair.

CHAIRPERSON: But once you bring in the aspect of state capture it seems to me that it would be difficult to say – it would be difficult to say somebody was laying charges against you in pursuit of the agenda of state capture but he was not acting with malice. But maybe it can be argued I am not sure.

ADV DALI MPOFU: Yes.

CHAIRPERSON: But maybe it can be argued. That is fine. So he may be making some distinction but it seems to me that even if one were to
10 say let us leave out the issue of malice the moment you say what you actually mean is that this person was acting in pursuit of the agenda of state capture.

ADV DALI MPOFU: Yes. That is enough.

CHAIRPERSON: That is the kind of allegation that should ordinarily attract the grant of Leave to Cross-examine if all the requirements are met.

ADV DALI MPOFU: Yes.

CHAIRPERSON: Ja.

ADV DALI MPOFU: Thank you Chair I will not even spoil that – that is
20 exactly what we are saying. In other words the alternative and shortcut so to speak is to say let us forget about this debate about malice.

CHAIRPERSON: Hm.

ADV DALI MPOFU: And the semantic meaning of malice. Let us just look at what he says forget malice. I therefore do mean that Mr Moyane was motivated wholly or in part or he sought to advance the

objectives of state capture in laying the charges. It cannot be clearer than that.

CHAIRPERSON: Hm.

ADV DALI MPOFU: So that address is a double barrel answer to the whole issue because it both addresses the question of motive but it also addresses the question of relevance. Because if he was doing this to advance some other motive about football...

CHAIRPERSON: Yes now things.

ADV DALI MPOFU: Ja then it had nothing to do with you Chair. But if
10 he is doing it – the malice the kind of malice is in advancement of state capture then it is likely in your zone. This after all is the state capture commission.

CHAIRPERSON: Hm.

ADV DALI MPOFU: So anything – any accusation that is motivated by state capture must be – must be – well

- a. Is clearly negative to Mr Moyane's interests so that he wants to cross-examine on it but
- b. It is relevant to this commission.

So I will not address that any further Chair. As I say the affidavit
20 speaks for itself.

CHAIRPERSON: Ja.

ADV DALI MPOFU: It does not even deal in the so called malice and motive from the laying of the charges which is the core accusation. It says that action of bringing was part of a campaign of state capture.

CHAIRPERSON: Hm. The...

ADV DALI MPOFU: So...

CHAIRPERSON: The part of the concern I have and this is one of the things I am mentioning so that also Ms Le Roux can think about it. One of the concerns I have is that – is whether the insofar as the clarificatory affidavit of Minister Gordhan says whatever Mr Moyane did he did in pursuit of the agenda of state capture to get me removed as Minister of Finance so that another Minister who would

ADV DALI MPOFU: Pliant.

CHAIRPERSON: Go along with that agenda would be put in. Another
10 concern I have is whether that does not have – if I allow cross-examination on it does not have the effect of opening up effectively the whole issue and issues – all the issues that I have already decided there should be no cross-examination on. So if I were to grant Leave part of my concern is how do I make sure that this does not unravel as it were what I have already decided is not going to be the subject of cross-examination.

ADV DALI MPOFU: Yes.

CHAIRPERSON: And of course you will recall that in – in the direction that I issued in – directing that there should be a clarificatory affidavit.

20 **ADV DALI MPOFU:** Hm.

CHAIRPERSON: One of the things I said was that this should not be used to bring up new issues. I think I said that. Now of course the moment I want to – the moment I think about whether Mr Gordhan is bringing up new issues when he says Mr Moyane did this in furtherance of the agenda of state capture. The moment I am thinking along those

lines I then remember that what he says in his clarificatory affidavit is what I meant in what I was saying in my affidavit or what I mean is this. He seems to me to be clarifying...

ADV DALI MPOFU: Yes.

CHAIRPERSON: What he was saying in the previous affidavit. So there is that issue. So – so it would be important as far as possible it seems to me subject to argument that whatever happens if I do grant leave I should put in checks and balances that would make sure that whatever I have decided is not going to be the subject of cross-
10 examination it should not be undermined. So that is what is in my mind and ...

ADV DALI MPOFU: Ja Chair...

CHAIRPERSON: You might be able to say something.

ADV DALI MPOFU: Yes no I will – again I will not spend much time on that because we will probably cross that bridge

CHAIRPERSON: Yes.

ADV DALI MPOFU: If and when we come to it.

CHAIRPERSON: ja.

ADV DALI MPOFU: But suffice to say the following

20 **CHAIRPERSON:** Hm

ADV DALI MPOFU: The issue – this issue arose in the context of what we called theme 5.

CHAIRPERSON: Hm.

ADV DALI MPOFU: If you remember we had 5 themes.

CHAIRPERSON: Yes.

ADV DALI MPOFU: In respect of the four themes.

CHAIRPERSON: Ja.

ADV DALI MPOFU: The Chair ...

CHAIRPERSON: Yes.

ADV DALI MPOFU: Refused

CHAIRPERSON: Ja.

ADV DALI MPOFU: Cross-examination and by the way the – we have instructions to take that decision on review.

CHAIRPERSON: Yes.

10 **ADV DALI MPOFU:** But that is a matter for another day.

CHAIRPERSON: Yes.

ADV DALI MPOFU: The – as far as theme 5 is concerned and the issue that the Chair narrowly defined.

CHAIRPERSON: Hm.

ADV DALI MPOFU: Chair you are quite correct. There is bound to be some spill over.

CHAIRPERSON: Hm.

ADV DALI MPOFU: That spill over however can be contained.

CHAIRPERSON: Hm

20 **ADV DALI MPOFU:** And the spill over comes for example in the following fashion.

CHAIRPERSON: Hm

ADV DALI MPOFU: You remember when you opened Chair you said that Mr Gordhan says that his attitude was informed by the Nugent Commission.

CHAIRPERSON: Hm

ADV DALI MPOFU: Yes. Now that issue is clearly integrally related to – to this question.

CHAIRPERSON: Hm

ADV DALI MPOFU: And number 1. Number 2 you will also remember that our argument was always that – remember there are two things here. At the end the Chair must either accept Mr Gordhan's version.

CHAIRPERSON: Hm.

ADV DALI MPOFU: That Mr Moyane is a state capturer.

10 **CHAIRPERSON:** Ja.

ADV DALI MPOFU: Conspirator.

CHAIRPERSON: Yes.

ADV DALI MPOFU: Or it must – the Chair must accept that no Mr Gordhan acted as any commissioner of SARS would have acted in those circumstances.

CHAIRPERSON: Hm

ADV DALI MPOFU: There is no halfway house.

CHAIRPERSON: Hm.

20 **ADV DALI MPOFU:** Now – for that to happen then obviously Mr Moyane is going to have to take the Chair into his confidence even in terms of the questions that he puts as to why he says that his version is correct. Mr Gordhan on the other hand in answering the questions will say no, no, no all that notwithstanding you were part of the conspiracy or whatever. So it is inevitable that questions such as the – whether the reliance on the Nugent Commission was correct will be –

will be – will have to be answered. What even compounds it further is that since we last spoke here there have been two significant developments in regard to this so called rogue unit issue which was at the core of the charges. And that is that there is a Public Protectors Report on the rogue unit and the Chair only has to take judicial notice that it exists not that it is good or bad or indifferent. There is such a thing. The second is that the Inspector General's Report which was part of what Mr Moyane relied on has been and I am using the word loosely borrowing from the media declassified. I do not think it is – it goes that far but let us just say at least it is in the public domain. Now it is not possible for Mr Moyane Chair to convince you or Mr Gordhan or anybody that he was acting bona fide without saying I relied on the Sikhakhane Report. I relied on the KPMG Report. I relied on the Kroon Report. I relied on the IGI – the IGI Report. And by the way the so called Nugent Report final Nugent Report that is now being used opportunistically did not even exist. It – the – Mr Moyane his charges were in 2015. Mr Gordhan's evidence here was in November 2018 and Mr Nugent's final report was in December 2018. So when you are sitting here you could not have been motivated by anything that Mr Nugent said. And that is why Chair I am almost getting into my second argument. That is why we say the – it is a red herring this whole thing of the Nugent Commission and the Chair should give the Leave to Cross-examine without any regard to whatever is in the Nugent Commission. And the reason – we have outlined four reasons why that is so Chair. One is that – we say the actually this suggestion is

motivated by what we call perjury on the part of Mr Gordhan. Because Mr Gordhan the Chair was correct in his summary of the – in the ruling that Mr Gordhan actually says that at page 399 in his affidavit

“More important for the purposes of this application the Nugent Commission specifically found that the so called rogue unit was lawfully established and recommended that it sought to be re-established.”

Then later it says:

10 “It is instructive to consider how emphatic the Nugent Commission was about the legality and the – of the establish of the so called rogue unit.”

Now Chair I will not bore you with reading it out but I will refer you to what Justice Nugent says in the interim report which did exist at page 245 to 6 of these papers and I will also refer you to what he says in the ruling on his recusal or rather the recusal – ja – of Mr Katz at page 442 and then I will also refer you for what it is worth even though the sequence does not work to what he says in the final report at page 467 and 530. And I will paraphrase. If the Chair goes to those passages you will see that Justice Nugent says the following:

20 “There have been efforts by people ...”

He says:

“...including Mr Moyane to bring this rogue unit thing to this Commission. I - I will not be side-tracked or deviated ...”

I think is the word he used.

“...into investigating that issue.”

Three: he says:

“If anybody found any unlawfulness ...”

In fact he says:

“There may have been unlawfulness in the operation of ...”

He says:

“...about six people in the rogue unit.”

And then fourthly he says:

10 “If anybody found - finds that there was such unlawfulness. They must go to the authorities.”

A - a very good approach by Justice - in other words he is saying this is not relevant to my Commission. I am not going to investigate it and I am not going to be waylaid into investigating it and there may or may not have been lawfulness and if there is such it must be taken to - to - so to say under oath that he found it to be lawful is actually - it is just lying.

20 It is - it is untrue because he could. When he says it is irrelevant I am not going to investigate it then how could he have found it to be lawful and when he even says there might be unlawfulness associated with it but it must go to the authorities? So what we say is that the - the allegation by Mr Gordhan that Mr - that Judge Nugent found the rogue unit to be lawful is false, one.

Then we say even if it was not false that finding - let - let us assume Judge Nugent make - made such a finding. That finding is -

cannot overcome the four - remember we are dealing with Mr Moyane's state of mind. Mr Moyane could not have been motivated or demotivated by the Nugent report of 2018 in 2015. Right?

What did motivate him was the Sikhakhane report which says specifically at paragraph - at page 2-0-8 that:

"The establishment of the unit is unlawful."

It says so at - at page 2-0-8. What also motivated Mr Moyane is the Inspector-General's report which says that:

10 "Not only is the rogue unit unlawful but Mr Gordhan must be charged criminally."

Now this is the point Chairperson. Now you or I or Mr Pretorius or anybody is the Commissioner of - of SARS sitting there. You have a report from an independent senior Counsel that say the thing is unlawful. You have access to a report from the Inspector-General.

20 An independent office as well of some sort which says Mr Gordhan must be charged criminally. You should be fired you do not then take it to the police and - and report it which is all he did. What is worse is that that is actually what Judge Nugent says at 530. The - the same Judge Nugent that they rely on ...

CHAIRPERSON: Yes, but that - that goes now ...

ADV DALI MPOFU: I am ...

CHAIRPERSON: To the merits of whether or not he acted maliciously which - which belongs down the line.

ADV DALI MPOFU: No, no, no Chair.

CHAIRPERSON: Hm.

ADV DALI MPOFU: It goes to the second question.

CHAIRPERSON: Ja.

ADV DALI MPOFU: Which is whether the Chair should give the -
should grant - if you grant the ...

CHAIRPERSON: Ja.

ADV DALI MPOFU: Conditionally.

CHAIRPERSON: Yes.

ADV DALI MPOFU: My point is that there is no room for the Chair to
10 say I will grant you conditionally. You must address what happened in
Nugent. With Nugent ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Justice Nugent - sorry.

CHAIRPERSON: Hm.

ADV DALI MPOFU: Is completely irrelevant ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: To this question of ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Of malice. In other words the Chair ...

20 **CHAIRPERSON:** Hm.

ADV DALI MPOFU: What I am really motivated for ...

CHAIRPERSON: Yes.

ADV DALI MPOFU: Is what we said in our letter as option three.

CHAIRPERSON: Yes.

ADV DALI MPOFU: Namely to delink ...

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: The - the leave to cross-examine ...

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: From the ...

CHAIRPERSON: The Nugent report.

ADV DALI MPOFU: From whatever said ...

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: Was said and - and the - the final point I was making in that respect Chair ...

10 **CHAIRPERSON:** *Ja.*

ADV DALI MPOFU: Is that ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: To - to crown it all ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Mr Moyane did exactly what Justice Nugent said about three or four times.

CHAIRPERSON: Hm.

ADV DALI MPOFU: That if anybody has any information they must go to the authorities.

20 **CHAIRPERSON:** Hm.

ADV DALI MPOFU: He wanted the authorities ...

CHAIRPERSON: Yes.

ADV DALI MPOFU: The police.

CHAIRPERSON: Yes.

ADV DALI MPOFU: So how on earth can - can ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: If - if - the Chair ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: At the end of it all is then left with these two versions.

CHAIRPERSON: Hm.

ADV DALI MPOFU: How - how can the Chair not be convinced or rather at least there be no grounds for cross-examination ...

CHAIRPERSON: Hm.

10 **ADV DALI MPOFU:** To establish ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: The fact that there are these four reports ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Which were operating in Mr ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Moyane's mind ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: And therefore that Mr Gordhan is wrong ...

CHAIRPERSON: Hm.

20 **ADV DALI MPOFU:** Or - or lying that he was motivated by malice.

CHAIRPERSON: Yes.

ADV DALI MPOFU: For what is - I am not now obviously that will be argued at the end ...

CHAIRPERSON: Yes. *Ja.*

ADV DALI MPOFU: After the cross-examination.

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: All I am saying now is that ...

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: That if - there is - there is - there can never be more ground for - for cross-examination than that.

CHAIRPERSON: *Ja.* You see if we - if we - that is why - I said earlier on if in his clarificatory affidavit Mr Moyane had stopped ...

ADV DALI MPOFU: Mr Gordhan.

CHAIRPERSON: Mr Gordhan, *ja* had stopped - I am sorry - had
10 stopped on saying I do not know what was in Mr Moyane's mind when he laid charges ...

ADV DALI MPOFU: Yes.

CHAIRPERSON: And - and I am not saying he acted maliciously ...

ADV DALI MPOFU: Yes.

CHAIRPERSON: And if he had stopped ...

ADV DALI MPOFU: Stopped.

CHAIRPERSON: There then it seems to me that that would amount to saying well there is therefore no issue that Mr Moyane acted maliciously and therefore there is no need for - to grant leave to cross-
20 examine.

ADV DALI MPOFU: That is correct. I ...

CHAIRPERSON: You see, but the problem is that he went further ...

ADV DALI MPOFU: *Ja.*

CHAIRPERSON: And he says although I say what I have said about malice I do believe or what I do mean is that Mr Moyane abused the

legal process and he abused it ...

ADV DALI MPOFU: In the advancement.

CHAIRPERSON: In furtherance of the agenda of State Capture. That - that is the part that complicates things. Well you might say it does not complicate things.

ADV DALI MPOFU: It simplifies things.

CHAIRPERSON: You might say it simplifies. I mean from the question of principle as I said you know once you say that for me the inclination is to grant leave provided other requirements for leave to
10 cross-examine are met ...

ADV DALI MPOFU: Hm.

CHAIRPERSON: But of course he - he is not in his clarificatory affidavit he does not say it is because of A, B, C, D that I am saying.

ADV DALI MPOFU: He does.

CHAIRPERSON: He says it is because of these findings that have been made. Now those findings that have been made have been made on the basis of evidence before the Commission that Commission or on the basis of whatever material and then there is the concern also whether one does not then end up - open up the whole inquiry that was
20 before Justice Nugent.

ADV DALI MPOFU: Hm.

CHAIRPERSON: You know but at the same time I cannot make a finding that anybody or let me not say anybody. I cannot make a finding that Mr Moyane acted in furtherance of the agenda of State Capture and say - make that finding on the basis of what

Justice Nugent found ...

ADV DALI MPOFU: *Ja.*

CHAIRPERSON: Without my own evaluation of the basis and the evidence for that.

ADV DALI MPOFU: Yes.

CHAIRPERSON: So that creates the problem because - so - so you might ...

ADV DALI MPOFU: Chair ...

CHAIRPERSON: Want to say something about that.

10 **ADV DALI MPOFU:** Yes. No Chair.

CHAIRPERSON: Now if I were to - if we were - I think part - your - your option three I think. It seems to me if one were to confine the - the - confine oneself to the issue of malice without this issue of State Capture. It seems to me that - that is one area but once you - you go to the question of saying did Mr Moyane act in furtherance of the agenda of State Capture. It seems that there is a risk that one is opening up too many things.

ADV DALI MPOFU: No Chair. Okay. Let me try ...

CHAIRPERSON: *Ja.*

20 **ADV DALI MPOFU:** Again.

CHAIRPERSON: Yes.

ADV DALI MPOFU: The point I am making Chair ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Is that there is no connection ...

CHAIRPERSON: Yes.

ADV DALI MPOFU: Between Mr Gordhan's evidence here ...

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: And whatever Judge Nugent found.

CHAIRPERSON: Yes.

ADV DALI MPOFU: If it was true ...

CHAIRPERSON: Yes.

ADV DALI MPOFU: And not false and not a lie ...

CHAIRPERSON: Yes.

ADV DALI MPOFU: That Judge Nugent had found that the rogue unit
10 was lawful ...

CHAIRPERSON: Yes.

ADV DALI MPOFU: And therefore that then motivated Mr Gordhan's
evidence.

CHAIRPERSON: Yes.

ADV DALI MPOFU: Then the Chair would be right.

CHAIRPERSON: Yes.

ADV DALI MPOFU: The Chair obviously would say well ...

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: If - if it is based on this but if that premise is false
20 then what has it got to do with Judge Nugent over the version of
Mr Moyane and Nugent because ...?

CHAIRPERSON: So your argument - is your argument this? That when
- when Mr Gordhan's filed his original affidavit there was no - there
were no findings by the Nugent Commission and when he gave
evidence before the Commission. There were no findings - there was

no final report. I may be getting the facts ...

ADV DALI MPOFU: No, no.

CHAIRPERSON: The timing wrong.

ADV DALI MPOFU: Chair let me ...

CHAIRPERSON: Yes.

ADV DALI MPOFU: Make it easy.

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: In life ...

CHAIRPERSON: *Ja.*

10 **ADV DALI MPOFU:** Until today ...

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: There has never been a finding on the lawfulness of the rogue unit by Judge Nugent. Whether it is not the standard ...

CHAIRPERSON: No, no. No, no I am not talking about the rogue unit.

ADV DALI MPOFU: Yes.

CHAIRPERSON: I am not talking about the rogue unit. I am talking about the findings to which he refers in the clarificatory affidavit.

ADV DALI MPOFU: Yes.

CHAIRPERSON: Yes.

20 **ADV DALI MPOFU:** Now I am saying - well the - those findings must first exist Chair ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: For you to refer to them.

CHAIRPERSON: Yes.

ADV DALI MPOFU: They do not exist. Judge Nugent says I am not

going to investigate this issue.

CHAIRPERSON: Hm.

ADV DALI MPOFU: What is that issue? It is the issue that Mr Moyane went to report to the police.

CHAIRPERSON: Hm.

ADV DALI MPOFU: In respect - in respect of which Mr Gordhan says he was motivated by State Capture.

CHAIRPERSON: Hm, hm.

ADV DALI MPOFU: So it is like saying - if I can say I was motivated by
10 the Bible ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: And you find that that thing is not there. Then there is no - you cannot then say oh well I want your version on ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: On a non-existent ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Premise.

CHAIRPERSON: Hm.

ADV DALI MPOFU: So the - the connect - the connection between the
20 allegation of Mr Moyane's ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: State Capture motives ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: And the Nugent Commission ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Is false.

CHAIRPERSON: Hm.

ADV DALI MPOFU: Big false, false, false. It is - it is manufactured.

CHAIRPERSON: Hm.

ADV DALI MPOFU: For the reason that a, Judge Nugent did not make such a finding.

CHAIRPERSON: Hm.

ADV DALI MPOFU: Could not make such a finding having said it was irrelevant.

10 **CHAIRPERSON:** Hm.

ADV DALI MPOFU: B, the final report only came after Mr Gordhan ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Testified here. So if those reasons are not enough to show that the two things are not connected ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Whatsoever.

CHAIRPERSON: Hm.

ADV DALI MPOFU: Then nothing ever will be.

CHAIRPERSON: Hm.

20 **ADV DALI MPOFU:** Now if the two things are not connected ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Then the Chair is at liberty - if the Chair is still of the *prima facie* view ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: That there is an allegation of State Capture.

CHAIRPERSON: Hm.

ADV DALI MPOFU: What we are saying is that the Chair is at liberty to grant leave to ...

CHAIRPERSON: Huh-uh.

ADV DALI MPOFU: To cross-examine ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Here and now or ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: After consideration ...

10 **CHAIRPERSON:** Hm.

ADV DALI MPOFU: Of - of ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Of our arguments ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: And if that is so then the third question that arises what the Chair has correctly identified.

CHAIRPERSON: Huh-uh.

ADV DALI MPOFU: Of circumscribing the parameters of ...

CHAIRPERSON: Hm.

20 **ADV DALI MPOFU:** Of that cross-examination ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: And that by the way is also not a mechanical process.

CHAIRPERSON: Hm.

ADV DALI MPOFU: You remember when we argued earlier ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: We said that is what the Chair is here for.

CHAIRPERSON: Hm.

ADV DALI MPOFU: The reason a Judge is appointed to chair the Commission ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Is because in cross-examination ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Of course Counsel might ask and ...

10 **CHAIRPERSON:** Hm.

ADV DALI MPOFU: And then Chair will say no ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Mr Mpofo now.

CHAIRPERSON: Hm.

ADV DALI MPOFU: This - this is beyond the scope of ...

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: What we agreed and so on.

CHAIRPERSON: Hm.

ADV DALI MPOFU: So you cannot circumscribe ...

20 **CHAIRPERSON:** Hm.

ADV DALI MPOFU: It mechanically ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Because this - these issues are intertwined but obviously it will also be the duty of Counsel ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: To not through the backdoor so to speak ...

CHAIRPERSON: *Ja.* To try and bring things, *ja.*

ADV DALI MPOFU: Bring other issues ...

CHAIRPERSON: Yes.

ADV DALI MPOFU: That in respect of which there - there is still some dispute ...

CHAIRPERSON: Yes.

ADV DALI MPOFU: In another court.

CHAIRPERSON: *Ja.*

10 **ADV DALI MPOFU:** *Ja.*

CHAIRPERSON: Hm.

ADV DALI MPOFU: But that ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Is not something you can legislate now.

CHAIRPERSON: Hm.

ADV DALI MPOFU: The - the only question now ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: For the Chair is does Mr Gordhan implicate ...

CHAIRPERSON: Hm.

20 **ADV DALI MPOFU:** Mr Moyane in State Capture.

CHAIRPERSON: Hm.

ADV DALI MPOFU: Obviously yes.

CHAIRPERSON: Hm.

ADV DALI MPOFU: Is it necessary for Mr Moyane to clear his name in that respect?

CHAIRPERSON: Hm.

ADV DALI MPOFU: Obviously yes.

CHAIRPERSON: Hm.

ADV DALI MPOFU: Is it in the interest of the State Capture Commission ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: To know whether Mr Moyane is furthering State Capture or not?

CHAIRPERSON: Hm.

10 **ADV DALI MPOFU:** Obviously yes ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: And if those ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Three yeses are existent ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Then leave to cross-examine must be granted.

CHAIRPERSON: Hm.

ADV DALI MPOFU: Obviously it is in the discretion.

CHAIRPERSON: Hm.

20 **ADV DALI MPOFU:** We - we understand that ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: And I want to clarify one thing Chair.

CHAIRPERSON: Hm.

ADV DALI MPOFU: To pre-empt my - Mr - Ms Le Roux might say.

CHAIRPERSON: Hm.

ADV DALI MPOFU: I said this the last time but in the ruling maybe ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: It looked like it was not clear what I was saying.

We accept ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Unreservedly ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: That there is no right to cross-examine.

CHAIRPERSON: *Ja*. No, you did ...

10 **ADV DALI MPOFU:** Yes. I did ...

CHAIRPERSON: You did make that clear, *ja*.

ADV DALI MPOFU: But what we do not accept is that there might not be a right to cross-examine but there is a right to fairness ...

CHAIRPERSON: Yes. Of course, *ja*.

ADV DALI MPOFU: And that right to fairness with respect does not even belong to you Chair.

CHAIRPERSON: Of course, *ja*.

ADV DALI MPOFU: It comes from the Constitution.

CHAIRPERSON: *Ja*. Hm. *Ja*.

20 **ADV DALI MPOFU:** So what we demand here is fairness and fact.

CHAIRPERSON: Hm.

ADV DALI MPOFU: So the - the linkage between cross-examination ...

CHAIRPERSON: *Ja*.

ADV DALI MPOFU: And fairness I do not have to ...

CHAIRPERSON: *Ja*.

ADV DALI MPOFU: Make that point.

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: So we insist on our right to fairness.

CHAIRPERSON: Hm.

ADV DALI MPOFU: In other words Mr Moyane cannot be ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Somebody cannot come here ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: And say Mr Moyane is a State Capturer.

10 **CHAIRPERSON:** Hm, hm.

ADV DALI MPOFU: And then that person is immunised ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: From being questioned.

CHAIRPERSON: Hm.

ADV DALI MPOFU: I mean what is that?

CHAIRPERSON: So the only - the only issue as I - as I see it once you have that situation is whether Mr Moyane meets the other - whatever other requirements for leave to cross-examine? *Ja.*

ADV DALI MPOFU: Yes. That is what I have just

20 **CHAIRPERSON:** Yes, yes.

ADV DALI MPOFU: Sneaked into my ...

CHAIRPERSON: We - we - *ja, ja.*

ADV DALI MPOFU: My last sentence.

CHAIRPERSON: Yes.

ADV DALI MPOFU: In other words ...

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: The criteria ...

CHAIRPERSON: Yes.

ADV DALI MPOFU: Chair will remember in 3.3. Is that ...

CHAIRPERSON: Which we have dealt with.

ADV DALI MPOFU: Yes.

CHAIRPERSON: Hm.

ADV DALI MPOFU: It - it must be necessary ...

CHAIRPERSON: Hm.

10 **ADV DALI MPOFU:** The Chair must find out it is necessary ...

CHAIRPERSON: Hm, hm.

ADV DALI MPOFU: And that it is ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: It is in the interest or ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Furthers the objectives of the Commission.

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: Words to that effect.

CHAIRPERSON: Hm.

20 **ADV DALI MPOFU:** Those criteria are - are clearly ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: There my - Chairperson because it is implication.

We know that it is implicate - he is implicated ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: And then - and then as far as his version which is

really the issue that we have been debating ...

CHAIRPERSON: Yes.

ADV DALI MPOFU: Is concerned. That version Chair ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Is contained amply in - in the ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: In his affidavit.

CHAIRPERSON: Hm.

ADV DALI MPOFU: It was in the - in the explanation of that version.

10 **CHAIRPERSON:** Hm.

ADV DALI MPOFU: That we referred in the first place ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: To Sikhakhane.

CHAIRPERSON: Hm.

ADV DALI MPOFU: We referred to KPMG.

CHAIRPERSON: Hm.

ADV DALI MPOFU: We referred to Kroon.

CHAIRPERSON: Hm.

ADV DALI MPOFU: We referred to IGI.

20 **CHAIRPERSON:** Hm.

ADV DALI MPOFU: Obviously we could not refer then to the Public Protector ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Because again it - it did not exist ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: But now we can say that ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: On top of that - so there are five ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Independent reports that have found the rogue unit to exist ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: And the worst one of them finds it - finds that Mr Gordhan is - is criminally ...

10 **CHAIRPERSON:** Hm.

ADV DALI MPOFU: Responsible ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Thereof. Rightly or wrongly. That - that may be debated in other forums.

CHAIRPERSON: Hm.

ADV DALI MPOFU: The point here is that a Commission of SARS faced with these reports ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: For - let us take out the Public Protector.

20 **CHAIRPERSON:** Hm.

ADV DALI MPOFU: Which say there is criminality.

CHAIRPERSON: Hm.

ADV DALI MPOFU: Would - would - if - when he goes to the police can - is he motivated by State Capture ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: As alleged or is he motivated by ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: His duty ...

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: But that is really the only - the only issue and if Mr Moyane succeeds ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: To clear his name ...

CHAIRPERSON: Hm.

10 **ADV DALI MPOFU:** By - by - through the cross-examination establishing that he was motivated ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: By good governance.

CHAIRPERSON: Hm.

ADV DALI MPOFU: Then that is the end of it.

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: If Mr Gordhan or if Mr Moyane fails ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: And Mr Gordhan's view that he is ...

20 **CHAIRPERSON:** Hm.

ADV DALI MPOFU: Actually was motivated by State Capture.

CHAIRPERSON: Hm.

ADV DALI MPOFU: That is also well and good.

CHAIRPERSON: *Ja.* Thank you.

ADV DALI MPOFU: So - so Chair to round it off.

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: The - the ...

CHAIRPERSON: Your first prize is option three?

ADV DALI MPOFU: My first prize is option three Chair.

CHAIRPERSON: Yes.

ADV DALI MPOFU: If - if ...

CHAIRPERSON: But if I do not grant option three ...

ADV DALI MPOFU: If you do not grant option three ...

CHAIRPERSON: Then ...

10 **ADV DALI MPOFU:** Then option two.

CHAIRPERSON: Option two.

ADV DALI MPOFU: Option two Chair, yes.

CHAIRPERSON: *Ja.* Okay, okay.

ADV DALI MPOFU: Because it is very important Chair. I do not want to go into some of the broader issues ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: But you know the - the - this Commission is watched by everybody out there ...

CHAIRPERSON: Hm.

20 **ADV DALI MPOFU:** And the issue of fairness ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Is - is really central to this ...

CHAIRPERSON: Yes.

ADV DALI MPOFU: And the Chair may or may not know that there was a general outcry ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: After the first ruling.

CHAIRPERSON: Hm.

ADV DALI MPOFU: Rightly or wrongly ...

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: But the point is that the - the - some of it was uniformed but - but Chair the point is that really this and - and I must commend the Chair to have isolated this issue. Not that I agree on the other issues. I - I strongly disagree. I - I am ...

10 **CHAIRPERSON:** I know you disagree.

ADV DALI MPOFU: I disagree with the Chair.

CHAIRPERSON: Vigorously.

ADV DALI MPOFU: Yes vigorously as the lawyers say. I even disagree on the test ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: That the Chair applied but that is ...

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: A debate for another day ...

CHAIRPERSON: *Ja.*

20 **ADV DALI MPOFU:** But at least here the Chair to your credit identified an issue ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Which was the clearest - the one in your zone ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Because if someone is accused of State Capture ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: It is not like these other ones ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: That might be indirect.

CHAIRPERSON: Hm.

ADV DALI MPOFU: No we had a fight in some ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Place. This one is literally ...

CHAIRPERSON: Hm.

10 **ADV DALI MPOFU:** In your - in your province ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: And with the greatest respect Chair the notion that there are people who are beyond cross-examination ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Must be dispelled ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Because as Mr Moyane says in his affidavit ...

CHAIRPERSON: Hm.

20 **ADV DALI MPOFU:** The root of this problem is this notion that there are angels and devils ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: And that there are people who are State Capturers ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: And others are not.

CHAIRPERSON: Hm, hm.

ADV DALI MPOFU: This Commission - there experience in this Commission ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Has shown that that ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Theory ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: If you talk about Mr Nene ...

10 **CHAIRPERSON:** Hm.

ADV DALI MPOFU: Bosasa ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Even Ms Munusamy ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: All the so called angels ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Are not as - as pure as - as snow.

CHAIRPERSON: Yes.

20 **ADV DALI MPOFU:** So it must - there must never be a message that says Mr Gordhan is above the law.

CHAIRPERSON: No. I think ...

ADV DALI MPOFU: If anybody implicates Mr Moyane ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Whether it is Mr Gordhan or my junior they must ...

CHAIRPERSON: Ja.

ADV DALI MPOFU: Face the music.

CHAIRPERSON: No. I think you - you - well I would hope that nobody doubts our commitment ...

ADV DALI MPOFU: No.

CHAIRPERSON: To fairness.

ADV DALI MPOFU: I can raise my hand.

CHAIRPERSON: That does not mean that everybody will always agree that decisions we make are fair and we accept that.

ADV DALI MPOFU: *Ja.*

10 **CHAIRPERSON:** There will be times when people disagree. What is important is that from certainly my side that I do my best to show fairness to everybody within the constraints of time and other resources that we have and within the constraints of the Constitution and the law but also to accept that it is fine for people sometime to disagree and to think differently but as long as people throughout accept that whatever decisions are made they are made in good faith ...

ADV DALI MPOFU: Yes.

CHAIRPERSON: And if there is a decision they - they are not happy with it is not because of anything. It is simply because we see things
20 in a particular way. They see things in a certain way ...

ADV DALI MPOFU: Yes.

CHAIRPERSON: But we - we are committed to do our best to make sure there is fairness. As I have said before it does not necessarily mean that we will seek to meet any particular person's notion of fairness.

ADV DALI MPOFU: Hm.

CHAIRPERSON: It means that we will seek to ensure fairness as we understand it. As we believe most people would understand it ...

ADV DALI MPOFU: Yes.

CHAIRPERSON: But we accept that ...

ADV DALI MPOFU: Chair ...

CHAIRPERSON: We will - we may make mistakes or we may be criticised and that - that is fine.

ADV DALI MPOFU: Yes.

10 **CHAIRPERSON:** *Ja.*

ADV DALI MPOFU: Chair for what it is worth ...

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: Speaking for myself I - I accept that unreservedly ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: And Chair as you correctly say I think there is also a - a misconception about the role of Commissions ...

CHAIRPERSON: Hm, hm.

ADV DALI MPOFU: And that is why Commissions unlike Judges ...

20 **CHAIRPERSON:** Yes.

ADV DALI MPOFU: You are not sitting there as a Judge as such.

CHAIRPERSON: Yes, yes.

ADV DALI MPOFU: Although we benefit from ...

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: That office.

CHAIRPERSON: Yes.

ADV DALI MPOFU: And that is why I say we have instructions to review your ...

CHAIRPERSON: Yes.

ADV DALI MPOFU: Your ruling ...

CHAIRPERSON: Yes, yes.

ADV DALI MPOFU: Because unlike a judgment ...

CHAIRPERSON: Yes.

ADV DALI MPOFU: We - Commissions' findings ...

10 **CHAIRPERSON:** Yes.

ADV DALI MPOFU: Can be - can be reviewed ...

CHAIRPERSON: Yes.

ADV DALI MPOFU: And it may be confirmed or it might be changed ...

CHAIRPERSON: Yes.

ADV DALI MPOFU: Or not and it - it will not reflect.

CHAIRPERSON: It is part of the process.

ADV DALI MPOFU: *Ja.*

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: And I can assure you ...

20 **CHAIRPERSON:** Yes.

ADV DALI MPOFU: Whatever grounds of review we have ...

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: None of them will be bad faith or ulterior motive or anything like that. It will be the ...

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: Usual ...

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: The usual grounds of - of review.

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: While I am on that subject I might as well say that we also hold instructions because another of the four reasons I wanted to raise was that ...

CHAIRPERSON: *Hm.*

ADV DALI MPOFU: Which is in the papers. One of the reasons why I
10 say the Chair should discard the Nugent report is because we say in
the - in our affidavit that the witness Mr Gordhan had an - an improper
meeting with Judge Nugent ...

CHAIRPERSON: *Hm.*

ADV DALI MPOFU: Before the - the Commission started.

CHAIRPERSON: *Hm, hm.*

ADV DALI MPOFU: That is going to be subject of a complainant ...

CHAIRPERSON: *Hm.*

ADV DALI MPOFU: That my learned - that my client is going to lay
with ...

20 **CHAIRPERSON:** *Hm.*

ADV DALI MPOFU: The Judicial Services Commission.

CHAIRPERSON: *Huh-uh, huh-uh.*

ADV DALI MPOFU: Again that will take its own ...

CHAIRPERSON: *Hm. Process.*

ADV DALI MPOFU: *Process.*

CHAIRPERSON: Hm.

ADV DALI MPOFU: Save to say Chair that the - Judge Nugent at page 1-4-7 or rather not Judge Nugent. Mr Gordhan at page 1-4-7 does admit to that meeting taking place in his own affidavit under oath and he says:

“The issue relating to my provision of the substantiating affidavit to the disciplinary inquiry against Mr Moyane or the fact that ...”

And this is the important part.

10 “...a preliminary meeting was held between myself and Justice Nugent at his request before the public hearings of the Nugent Commission.”

So the - again the JSE might find that hat was proper or not proper ...

CHAIRPERSON: Yes.

ADV DALI MPOFU: But my parting shot is just imagine if you Chair before you started this Commission had had a preliminary meeting with Mr Zuma for example about the Commission. There would be justifiably an outcry. So the - these are some of the issues which will - will be ventilated by the court o the appropriate authorities.

20 **CHAIRPERSON:** Well - well when the former President came here I - I am sorry ...

ADV DALI MPOFU: Sorry Chair.

CHAIRPERSON: Or let me not say this ...

ADV DALI MPOFU: *Ja.*

CHAIRPERSON: But let me say that I have heard it said that maybe

before the Commission started the Commission should have approached the former President ...

ADV DALI MPOFU: Hm.

CHAIRPERSON: On the basis that he was a former Head of State and - and sought his ...

ADV DALI MPOFU: The person who appointed ...

CHAIRPERSON: Assist - assistance in terms of whatever.

ADV DALI MPOFU: Hm.

CHAIRPERSON: The Commission did not do so and it was - it has
10 been criticised ...

ADV DALI MPOFU: Yes.

CHAIRPERSON: For not doing so ...

ADV DALI MPOFU: Hm.

CHAIRPERSON: But for example I can say that because this is a
Presidential Commission ...

ADV DALI MPOFU: Hm.

CHAIRPERSON: I do meet with the current President ...

ADV DALI MPOFU: Yes.

CHAIRPERSON: Because in regard to certain needs of the
20 Commission I have got to talk to him ...

ADV DALI MPOFU: Yes.

CHAIRPERSON: But he will appear here at some stage.

ADV DALI MPOFU: Yes.

CHAIRPERSON: So I - I just mention that, ha.

ADV DALI MPOFU: Yes. No Chair that - that is - thank you.

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: I think that helps also the public again to understand some of the nuances. No, yes.

CHAIRPERSON: Some of the nuances, yes.

ADV DALI MPOFU: Chair that is correct. I mean I was in the Marikana Commission. Judge Farlam met with the president a hundred times. That is - that is not what we are complaining about.

CHAIRPERSON: Yes.

ADV DALI MPOFU: If Mr Gordhan was either the President or even the
10 Minister of Finance at the time then the meeting might have been explainable but he had nothing - he was just a Minister of Cooperate Governance and a witness - a key witness in the - in the Commission. So there was no question about having to meet a witness before the - but again those are as I say those are issues.

CHAIRPERSON: Yes.

ADV DALI MPOFU: So the example of - of meeting for official reasons.

CHAIRPERSON: Hm.

ADV DALI MPOFU: No that is acceptable.

CHAIRPERSON: *Ja.*

20 **ADV DALI MPOFU:** And if people see you with the President one day they must not rush and think there is something untoward.

CHAIRPERSON: Well then do not ...

ADV DALI MPOFU: That we accept.

CHAIRPERSON: You do not you know. Otherwise if you did not say that they would go - they would seek your - they would brief you.

ADV DALI MPOFU: Exactly. Well I will take the brief.

CHAIRPERSON: Take the brief.

ADV DALI MPOFU: Thank you.

CHAIRPERSON: Okay. I think ...

ADV DALI MPOFU: Thank you sir.

CHAIRPERSON: I think that is enough, *ja*.

ADV DALI MPOFU: Those are our submissions Chair.

CHAIRPERSON: Yes, yes.

ADV DALI MPOFU: In short.

10 **CHAIRPERSON**: *Ja*.

ADV DALI MPOFU: *Prima facie* review stands.

CHAIRPERSON: *Ja*.

ADV DALI MPOFU: And ...

CHAIRPERSON: *Ja*.

ADV DALI MPOFU: There - there is no - the dealing cage ...

CHAIRPERSON: *Ja*.

ADV DALI MPOFU: And therefore the Chair is at large to grant ...

CHAIRPERSON: *Ja*.

ADV DALI MPOFU: To grant the - the leave to cross-examine ...

20 **CHAIRPERSON**: Yes.

ADV DALI MPOFU: Unconditionally.

CHAIRPERSON: Yes, yes.

ADV DALI MPOFU: Well I mean unconditionally I mean ...

CHAIRPERSON: On the basis of the ...

ADV DALI MPOFU: In relation to the Nugent issue ...

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: But obviously the Chair will as ...

CHAIRPERSON: Yes.

ADV DALI MPOFU: Well determine his own procedures.

CHAIRPERSON: *Ja.* No that is fine.

ADV DALI MPOFU: As the Chair pleases.

CHAIRPERSON: Well I have ended up giving you much more than I should have given you and Ms Le Roux ...

ADV DALI MPOFU: Chair.

10 **CHAIRPERSON:** Okay, alright. Let me hear Ms Le Roux.

ADV DALI MPOFU: Thank you Chair.

CHAIRPERSON: Ms Le Roux you have heard everything that ...

ADV MICHELLE LE ROUX: In ...

CHAIRPERSON: I wanted you to be able to hear?

ADV MICHELLE LE ROUX: Indeed.

CHAIRPERSON: Yes.

ADV MICHELLE LE ROUX: And Chair let me start with - with the preliminary framing submission and then a summary of where I think the debate has gotten to this morning and ...

20 **CHAIRPERSON:** Yes.

ADV MICHELLE LE ROUX: The options that I think are available to you and why.

CHAIRPERSON: Yes.

ADV MICHELLE LE ROUX: The first point that has to be made and stressed again is that Minister Gordhan agrees that no one is beyond

scrutiny and he has nothing to hide and if it will assist the Commission and if you determine that it is necessary and in the interest of the function of the Commission that he returned to be cross-examined he will obviously make himself available.

His opposition to this application on legal advice is not to be understood as anything but that and he is entirely supportive of the work of the Commission and consistent with its rules. Is willing to make himself available if that is what you - you rule of course. So there is no basis on which to claim that he is somehow subject to other
10 rules.

He is entirely prepared to come back and assist the Commission if that is what you - what you would like. The debate this morning also demonstrates that under the title of malice this application is in fact trying to get you to undo what you have already ruled and I will take you to your ruling and what was - what was before you at that point in time to demonstrate that because ...

CHAIRPERSON: Of course you - of course you did hear what I said ...

ADV MICHELLE LE ROUX: Yes.

CHAIRPERSON: To Mr Mpofu which was more meant for - for you ...

20 **ADV MICHELLE LE ROUX:** Yes of course.

CHAIRPERSON: For you, *ja*. To say if Mr Gordhan had stopped on this - on - talk about malice and said nothing about State Capture maybe it would have been easy to dismiss the application. Okay, but address that at your own convenience. I just ...

ADV MICHELLE LE ROUX: Yes. Thank you.

CHAIRPERSON: *Ja.*

ADV MICHELLE LE ROUX: But Chair the - the point is that Minister Gordhan is not saying anything new in his clarificatory affidavit. He has ...

CHAIRPERSON: Well he - he never said - well Mr Mpofu might disagree with this but I am saying this also not necessary having refreshed my memory on everything that he said in previous affidavits ...

ADV MICHELLE LE ROUX: Hm.

10 **CHAIRPERSON:** But I did not understand him to have said in his original affidavit that Mr Moyane had acted in furtherance of the agenda of State Capture, because if he had said that definitely Mr Moyane in his answering affidavit would have dealt with that head-on, and I doubt that it would have escaped my attention when I prepared my previous judgment, but maybe there is something, when there are so many affidavits you might miss something.

ADV MICHELLE LE ROUX: So let me ...[intervenes]

CHAIRPERSON: But it is possible that one might have to read the affidavits in a certain way so I am not saying that just because I might
20 not have picked it up it is not there.

ADV MICHELLE LE ROUX: Chair let me then summarise, because obviously there have been multiple affidavits placed before you from Minister Gordhan and obviously his three days of evidence before you under oath. Minister Gordhan's position has been entirely consistent throughout this process and what he placed before you in his witness

statement, in his oral testimony and in the affidavits that were filed in response to your direction what he has always said is the following; he does not know what was in Mr Moyane's head when he went and filed the criminal complaint that produced 27 questions from the Hawks on the eve of the budget, and criminal charges that were brought and ultimately withdrawn by the former National Director of Public Prosecutions, Sean Abrahams.

He says that he understands the 27 questions and the charges that flowed from the criminal complaint filed by Mr Moyane to have
10 been part of a political campaign against him, and it forcing him to resign from the position of Minister of Finance.

You will recall his testimony was that he understood that former President Zuma seemed to regret his reappointment but understood he could not be fired, and so there was a campaign against him and Mr Gordhan's belief is that part of that campaign was law enforcement agencies, the Hawks with their 27 questions, and then the NPA with its charges brought and then withdrawn, used the criminal complaint laid by Mr Moyane in that campaign, so he has only ever repeated ...[intervenes]

20 **CHAIRPERSON:** Yes.

ADV MICHELLE LE ROUX: ...the fact that Mr Moyane was the person who laid the charges when he makes that statement.

CHAIRPERSON: Yes, you see if you go back to my judgment/ruling you will see that there is a part where I say if you go to certain parts of Mr Gordhan's affidavit, I hope I explained it like this, maybe I did not

explain it the way I am explaining it, you know certainly when you read the affidavit you could – you found parts where he was saying you know the bringing of criminal charges, the prosecution seems to have been part of an agenda, let us call it State Capture agenda, okay, but my difficulty was now I do not know whether he means – I do not know whether he excludes the laying of charges when he talks about things being done as part of the State, the bringing of charges ja, in other words when he said the bringing of charges was part of this agenda did he mean, did he include the laying of charges by Moyane or did he only
10 talk about the 27 questions, the decision to charge and not the laying of the complaint.

So that was part of the difficulty and then, bearing in mind, a lot of things that had been said in the affidavit about the two of them, in the various affidavits about Mr Gordhan and Mr Moyane you then say what are the chances that he is excluding him from this accusation that the bringing of charges was part of the agenda, then you doubt that he is excluding him.

ADV MICHELLE LE ROUX: Yes.

CHAIRPERSON: But then when you read somewhere you say maybe he
20 is excluding him, maybe he is focusing on the Hawks and the NPA, those are the institutions that he is talking about when he says they were bringing these charges as part of some agenda, and then you are not sure, hence my seeking clarification you see, that is where I came from, I just had difficulty understanding whether he was excluding him from that.

ADV MICHELLE LE ROUX: So the – and Chair I am indebted to that further clarification of your thinking and your reading of the affidavits, so what Minister Gordhan has always said is the following; he identifies Mr Moyane as the individual who laid charges.

CHAIRPERSON: Yes.

ADV MICHELLE LE ROUX: He says I do not know why he laid those charges.

CHAIRPERSON: Mmm.

ADV MICHELLE LE ROUX: Those charges were then picked up by the
10 Hawks and by the NPA to do 27 questions and bring in withdrawal criminal charges against me and that component of it was the politi – part of the campaign to try to force me out.

CHAIRPERSON: Yes.

ADV MICHELLE LE ROUX: And that is what he clarifies in his affidavit.

CHAIRPERSON: Yes, yes.

ADV MICHELLE LE ROUX: So he only ever repeats Mr Moyane was the origin of the complaint that was then picked up and used by Law Enforcement Agencies, first the Hawks, then the NPA, in the campaign.

20 **CHAIRPERSON:** Yes, yes.

ADV MICHELLE LE ROUX: So all he says about Mr Moyane is he was the man who walked in and laid the criminal complaint.

CHAIRPERSON: Yes.

ADV MICHELLE LE ROUX: That is why he says I do not know why he did that, so on the charges question, which is the only issue that is still

remaining for decision, Minister Gordhan has said, and has only ever said Mr Moyane was the person who did that.

CHAIRPERSON: Mmm.

ADV MICHELLE LE ROUX: That complaint was then used in the campaign, and he does not say Mr Moyane was part of 27 questions or charges because he does not have any information to that effect.

CHAIRPERSON: Mmm.

ADV MICHELLE LE ROUX: Where he dealt with Mr Moyane otherwise in his evidence was to say from the moment he was appointed SARS
10 Commissioner he resisted my authority, and then did things at SARS that made no sense to me and now makes sense if you understand them in terms of State Capture, and in your ruling you went through all of that and dismissed the application on all of those other topics.

What you are being asked to do today is revisit that application and permit that cross-examination which you have previously disallowed.

CHAIRPERSON: Well let us take it step by step. As you stand there are you able to say to me, and maybe you have already said so, but I just want to make sure there is no misunderstanding, that Mr Gordhan
20 is not saying that in laying charges against him Mr Moyane was acting maliciously, one, or was acting in furtherance of the State Capture agenda. Are you able to say that?

ADV MICHELLE LE ROUX: Indeed Chair. So if we look Mr Moyane's – sorry Minister Gordhan's clarificatory affidavit under the heading where he is trying to recap his evidence before the Commission and

show that it is Mr Moyane who introduces this idea of malice and poses the question of whether you should entertain the debate about what was in his head when he laid the complaint, Minister Gordhan says my evidence – and this is paragraph 10 of his clarificatory affidavit, it starts there. He says:

10 “My evidence focused on the overall pressure and political campaign which was part of the efforts to capture State Institutions in recent years, that I was subjected to following my reappointment as Minister of Finance. I believe that the investigation [that’s the Hawk’s 27 questions], the later criminal charges [that’s the bringing and withdrawal of the charges by the NPA] that both originated from Mr Moyane’s complaint were part of that campaign.”

So again all he is saying is factually Mr Moyane laid the complaint that produced what the Hawks and the NPA did to me in terms of a campaign that Minister Gordhan believes was aimed at getting him to resign, that is paragraph 11.

20 “If I could be pressured into resigning I believe that efforts to capture National Treasury by appointing a compliant Minister of Finance in my place would have continued.”

You will recall that obviously his reappointment was because of the disastrous appointment of Mr Des van Rooyen for a weekend essentially.

CHAIRPERSON: Mmm.

ADV MICHELLE LE ROUX: Then when he – then paragraph 12 he

takes you back to his evidence before you, and the only time he mentioned Mr Moyane in relation to the charges was when he testified and he quotes it, the envelope containing 27 questions addressed to me from the Hawks demanding that they be answered by 2 March 2016, the questions related to the high risk investigation unit within SARS formed years earlier. Charges against me relating to that unit had been filed by Moyane on 15 May 2015.

Again it is a factual recording that Moyane was the individual who laid the charges.

10 **CHAIRPERSON:** Mmm.

ADV MICHELLE LE ROUX: He then goes on about the charges being brought and withdrawn and then in paragraph 17 and following of his affidavit he says

“the source of the claim that Mr Moyane acted with malice when he laid the charges is Mr Moyane himself, not me.”

He explains how he dealt with that in his answering affidavit and then at paragraph 22.5 where he is dealing specifically with your directions on what you want clarified, because what you wanted clarified was are you saying that Mr Moyane and your – and to quote you – the directive
20 was motivated wholly or in part by or he sought to advance the objectives of State Capture, and that he was abusing a legal process for his own personal goals that it had either nothing or little to do with a legitimate complaint relating to an alleged crime.

So in trying to respond to those hypothetical options that your direction posed Minister Gordhan says at paragraph 22.5:

“I believe that Mr Moyane’s personal goals while he was SARS Commissioner include the advancement of the State Capture project. The belief is founded on what we know now about the failure of integrity and governance at SARS, evidenced by the change over four years, compromising its core function of collecting tax as found by Judge Nugent.”

And then he turns to highlight based on the Nugent findings that those are the basis for his belief that Mr Moyane’s actions as SARS Commissioner were part of the State Capture process, and then he
10 says at paragraph 29, because he then goes through all the Nugent findings and he records at 28, paragraph 28 that when he came before you he explained to you the acrimonious nature of the relationship with Mr Moyane once he was appointed and Minister Gordhan was his Executive Authority, his boss, and there was this acrimony and there was this resistance to Minister’s Gordhan’s oversight of SARS and he recounted all of the various instances where Mr Moyane appeared to resist his accountability to the Minister of Finance, and then he says at paragraph 29:

20 “This provides the context to and the basis for my belief that his laying of a complaint against me was something other than the action of a reasonable SARS Commissioner.”

So he is saying in light of everything we know at the time where this man was acting in a way to dismantle and restructure SARS and resisting in our reporting relationship my authority at the time I thought something else was going on here and now that I have the Nugent

Commission reports it confirms that suspicion that I had that Mr Moyane may have been advancing the State Capture project.

That has got nothing to do with the malice question, which is the only issue that remains before you for debate.

So again to recap Minister Gordhan only ever says Tom Moyane laid the original complaint ...[intervenes]

CHAIRPERSON: Yes let us try and deal with it this way, so I go back to my question; are you able as you stand there to say to me Minister Gordhan is not saying that in laying charges against him Mr Moyane
10 was acting in furtherance of State Capture.

ADV MICHELLE LE ROUX: Yes Chair.

CHAIRPERSON: Because if that is what you say I think it may make a big difference.

ADV MICHELLE LE ROUX: Yes Chair, because what ...[intervenes]

CHAIRPERSON: That is what you are saying?

ADV MICHELLE LE ROUX: Yes Chair, so what Mr Minister Gordhan has said to this Commission in his evidence and in all of his affidavits is Mr Moyane's dismantling of SARS and his resistance to my authority appears to serve the State Capture agenda.

20 **CHAIRPERSON:** Yes.

ADV MICHELLE LE ROUX: And the Nugent Commission has found that that was so.

CHAIRPERSON: Yes.

ADV MICHELLE LE ROUX: With respect to charges Minister Gordhan has only ever said I do not know what was in his head, and I do not

think – and he has said to you that he does not believe that it would assist the Commission for you to try to make a finding on that.

CHAIRPERSON: Yes.

ADV MICHELLE LE ROUX: He has only ever said Mr Moyane was the person who filed the charges. So the State Capture part of any of the allegation is to say at the time I had this relationship that where he was resisting my authority, he took decisions and took action at SARS that dismantled and undermined that organisation and I am bolstered in my belief now knowing what Justice Nugent has found.

10 **CHAIRPERSON:** You see it seems to me that if Mr Gordhan's position is as far as the laying of charges against him by Mr Moyane is concerned he is not saying that the laying of charges was done in furtherance of State Capture.

It seems to me therefore that whatever he may be saying in his clarificatory affidavit about that associates Mr Moyane with State Capture might be relating to other things other than the laying of charges and if it relates to other things and not the laying of charges it might mean that the issue of the application for leave to cross-examine that was left undecided can be decided on its own and then Minister
20 Gordhan might have to make up his mind whether he does want to then come up with something separate which on my reading of his affidavits, which might be different from Mr Mpofu's reading, might not have been there.

So where he might say I actually do believe that Mr Moyane did a number of things in pursuance of the agenda of State Capture,

here is the basis for my belief and I am willing to come and give evidence, that affidavit gets given to Mr Moyane, he is able to respond to it and then everything is clean you know, it can be dealt with, everybody knows where they stand and about what, but then it becomes a separate thing. That is part of what I am thinking now.

What do you have to say about that?

ADV MICHELLE LE ROUX: Chair I have two things to say about that, the first is that you are with respect entirely correct that the decision can be taken today on the outstanding issue that hangs over from the
10 earlier application, this question of malice, and it can be dismissed, so you can decide on the basis of what you have before you already that this residual issue that was left over for argument, and further clarificatory affidavits and submissions can now be decided and decided in a way that dismisses the application because all Minister Gordhan has ever said is Tom Moyane was the origin of a criminal complaint that was then used in a subsequent complaint – campaign by other people, the Hawks and the NPA.

So there is no basis on which Mr Moyane cross-examining Minister Gordhan helps you because that issue is now decided.

20 **CHAIRPERSON:** Of course if I am correct in the approach I just outlined the consequence of that may well be that therefore in saying what he said about State Capture in his clarificatory affidavit Mr Gordhan was saying something that had nothing to do with the issue at hand, because the issue at hand was whether in laying charges Mr Moyane acted maliciously or as part of the State Capture if the position

is that he is saying the laying of charges, he is not saying that the laying of charges was part of furthering the aim of State Capture, then really whatever he said might be what he believes but it therefore might not have been relevant to the issue.

ADV MICHELLE LE ROUX: Precisely Chair.

CHAIRPERSON: Yes.

ADV MICHELLE LE ROUX: So he says the laying of charges is only – the only reference that Minister Gordhan makes to the laying of charges is to say how it subsequently picked up by other entities in the
10 campaign to try to get him to resign.

CHAIRPERSON: Mmm, mmm.

ADV MICHELLE LE ROUX: That's all he says. In the clarificatory affidavit where he recaps his evidence about the attack on Treasury and the attempt to capture Treasury and what Mr Moyane did at SARS he is trying to respond to the Chair's direction that said are you saying that there was another – there was something else going on and he says it is my personal belief that Tom Moyane played a role in the capture project based on what he did at SARS, which has nothing to do with charges.

20 **CHAIRPERSON:** But of course ...[intervenes]

ADV MICHELLE LE ROUX: And also – sorry Chair if I could just complete the point.

CHAIRPERSON: Yes.

ADV MICHELLE LE ROUX: It has – it is nothing new because that's what he testified about already and in your ruling you went through all

of those themes that they hoped to cross-examine on Minister Gordhan and State Capture, SARS and State Capture, the high risk investigation unit and capture and you dismissed all of those themes and topics so you have already decided that the other is not going to be the basis for cross-examination, certainly not without a version from Mr Moyane.

CHAIRPERSON: You see in the direction that I issued where I asked whether he meant that in laying charges Mr Moyane abused legal process or whatever wording I used. I was talking about the laying of charges and nothing else, therefore he should only have responded to
10 that within the context of the laying of charges, but if – but from what you say it seems that you are saying as far as the laying of charges is not associating that with State Capture but other things that Mr Moyane may have done while he was Commissioner of SARS there are other things that he is associating Mr Moyane within the context of State Capture, so my question is then he should not have bothered to tell me about those because all I was interested in was the laying of charges, you understand that?

ADV MICHELLE LE ROUX: So he – yes – he may well, should not have bothered in going further but as I have explained it was trying to –
20 it was obviously a misunderstanding of your direction.

CHAIRPERSON: Yes, yes.

ADV MICHELLE LE ROUX: He thought that the direction invited Minister Gordhan to address the laying of charges issue, which he did, and then where the direction said what was – what are you saying about Mr Moyane's role in the State Capture and then he clarified again

the part that he – but the critical point for today's purposes is that you have already considered that other aspect and rejected the application.

You had already decided in your earlier ruling that it does not assist the work of the Commission to have Mr Moyane's legal team cross-examine my client about why he believes the Nugent Commission, which is essentially what the exercise would be, so he is already explained and in your ruling if we – you know it starts at 42 and continues through the ruling until we – and it goes all the way through the various themes until we get to paragraph 67, that is where in – from
10 paragraph 42 all the way to 67 is where your ruling dealt with the unit narrative, the findings of the Nugent Commission and you determined that it was not going to assist the work of the Commission to have cross-examination on that question.

CHAIRPERSON: Yes, but remember that, at least as far as I recall now, and I may be mistaken, none of that was put within the context of State Capture, as I understand it, I may be mistaken, but the – what he added in his clarificatory affidavit was quite so clear, he says Mr Moyane acted in furtherance of State Capture.

Now this is the State Capture Commission, if somebody is
20 accusing somebody of acting in furtherance of State Capture surely the Commission wants to hear more about that, and – but I don't want us to ...[intervenes]

ADV MICHELLE LE ROUX: And Chair ...[intervenes]

CHAIRPERSON: I don't want us to go around in circles.

ADV MICHELLE LE ROUX: No but Chair I absolutely, with respect I

absolutely agree with you.

CHAIRPERSON: Yes.

ADV MICHELLE LE ROUX: Because for the Commission – the Commission absolutely needs to hear more about how Mr Moyane was, or was not, part of the State Capture project.

CHAIRPERSON: Yes.

ADV MICHELLE LE ROUX: But it must hear it from Mr Moyane.

CHAIRPERSON: Yes, but ...[intervenes]

ADV MICHELLE LE ROUX: It must be a version from Mr Moyane that
10 deals with his time at SARS.

CHAIRPERSON: Yes.

ADV MICHELLE LE ROUX: Deals with his time at Correctional Services where he was mentioned in relation to the Bosasa payments, deals with his role in the Waterkloof landing, that has also been handled by the Commission.

CHAIRPERSON: No, no, no I ...[intervenes]

ADV MICHELLE LE ROUX: So there is a version from Mr Moyane that would assist the work of the Commission.

CHAIRPERSON: Yes, no, no, no ...[intervenes]

20 **ADV MICHELLE LE ROUX:** It is not by cross-examining Mr Gordhan on his beliefs based on the Nugent Commission.

CHAIRPERSON: I think we should put it this way. Anyone who has information suggesting that anybody was part of the State Capture Agenda should come forward and bring that information to the Commission. They bring that information by way of a statement or

affidavit, once the Commission has got that it makes a copy available to the persons implicated therein. They get a chance to respond and at some stage somebody will give evidence and applications for leave to cross-examine will be made, but that is what – and then that's where the issue comes up that if you want be granted leave to cross-examine you must up your version.

ADV MICHELLE LE ROUX: Indeed.

CHAIRPERSON: You know. So that is why it may well be that in the light of the stance you have taken, and I think it would be important
10 that maybe there be another affidavit where Mr Gordhan confirms exactly what you have said.

It may well be that therefore if Mr Gordhan wants to supply the Commission with whatever information that he has personal knowledge of that suggests that Mr Moyane was acting in furtherance of the agenda of State Capture maybe he can then put that up afresh and then that can be given to Mr Moyane, he gets a chance to respond, and we take it from there, but maybe this one can be closed on the basis, and I know Mr Mpofo is still going to going to have a right of reply and Mr Pretorius has not said anything, it may be that if Mr Gordhan says I am
20 not saying that in laying charges against me Mr Moyane acted in furtherance of the State Capture, I am not saying that he acted maliciously, maybe that should close off one chapter, and the if there is going to be another chapter then it is a new chapter.

Yes?

ADV MICHELLE LE ROUX: Chair Minister Gordhan has always said

precisely that.

CHAIRPERSON: Yes.

ADV MICHELLE LE ROUX: He has only ever said Mr Moyane was the origin of what turned into a campaign.

CHAIRPERSON: Mmm.

ADV MICHELLE LE ROUX: He has already provide to the Commission relying on Nugent and relying on the evidence he gave you already about his personal experience of what Mr Moyane did as soon as he arrived as SARS Commissioner, to say this seemed to be a part of the
10 State Capture Project.

So I will obviously take instructions, but I am not sure Minister Gordhan will have further information to help you.

But that is the critical point. It is time for Mr Moyane to tell you and to tell the country why – what he did at SARS was not part of state capture.

CHAIRPERSON: Hm;

ADV MICHELLE LE ROUX: Because he never went to Nugent and explained it

CHAIRPERSON: Hm

20 **ADV MICHELLE LE ROUX:** He has never despite promising you the last time we were here that at – a review of Nugent would be launched imminently it has never happened.

CHAIRPERSON: Hm.

ADV MICHELLE LE ROUX: And now he want to come to this commission and try to rerun the same arguments, the same themes, the

old narratives that are being used outside of this room to try to discredit my client in a political campaign. And that is Public Protector Reports and IGI Reports and the like.

CHAIRPERSON: Hm

ADV MICHELLE LE ROUX: And the question for the commission when it receives Mr Moyane's version is whether it will be useful for Minister Gordhan to return on that basis.

CHAIRPERSON: Hm. Ja.

ADV MICHELLE LE ROUX: But for purposes of today.

10 **CHAIRPERSON:** Hm

ADV MICHELLE LE ROUX: And obviously if you would like a further and we will – we will keep it very, very short.

CHAIRPERSON: Yes very short ja.

ADV MICHELLE LE ROUX: So that it is very, very clear.

CHAIRPERSON: Yes, yes.

ADV MICHELLE LE ROUX: If you would like a paragraph that says I have only ever said ...

CHAIRPERSON: To say exactly.

ADV MICHELLE LE ROUX: He was the origin of the charges.

20 **CHAIRPERSON:** Hm

ADV MICHELLE LE ROUX: Everything else I have said about Mr Moyane and state capture is based on my personal experiences that I have already testified to and ...

CHAIRPERSON: Not in relation to the laying of charges.

ADV MICHELLE LE ROUX: Not what Nugent says. Not in relation to

the laying of charges.

CHAIRPERSON: Ja.

ADV MICHELLE LE ROUX: We could – we could do that. Because that would close off this application and it would mean that once Mr Moyane finally takes the country into his confidence and says This is what was actually going on when I was doing what I was doing.

CHAIRPERSON: Hm

ADV MICHELLE LE ROUX: And obviously you would have to decide if you can entertain that evidence given that you are not sitting as a
10 review court of the Nugent Commission.

CHAIRPERSON: Hm.

ADV MICHELLE LE ROUX: Presumably he may...

CHAIRPERSON: Well it is...

ADV MICHELLE LE ROUX: Say something about Minister Gordhan and we could have a further application then.

CHAIRPERSON: Well – I am not and I will not be sitting as a review court of the Nugent Commission but at the same time just because Justice Nugent had made certain findings.

ADV MICHELLE LE ROUX: Of course.

20 **CHAIRPERSON:** I cannot just accept his findings.

ADV MICHELLE LE ROUX: No of course.

CHAIRPERSON: And make – and make them my own.

ADV MICHELLE LE ROUX: No of course.

CHAIRPERSON: If I am to make any findings I may – I may take into account what he has said but in the end I must make up my own mind.

ADV MICHELLE LE ROUX: Absolutely.

CHAIRPERSON: So – so there is that but I think I understand – understand what your sub – your – the gist of your submissions.

ADV MICHELLE LE ROUX: Chair if I could then just briefly correct – correct one factual error made by my friend in his submissions.

CHAIRPERSON: Hm

ADV MICHELLE LE ROUX: Because it is important for the record. So Mr Mpfu submitted to you that there was no way when he was – when he was arguing to you the – that Minister Gordhan could not possibly
10 have relied on the Nugent Reports when he made – when he said that this is why I believe there is no rogue unit and he made that finding. Let us just recall what was in fact going on there. So the allegation against Minister Gordhan has only ever related to his role in the establishment of the unit. That is when he was still SARS Commissioner. He then became Minister of Finance for the first time and as has been clear in the Public Protector Review that is pending never played any role in the functional operation of the unit. He has only ever been said to have played role in its establishment.

CHAIRPERSON: Hm.

20 **ADV MICHELLE LE ROUX:** In Judge Nugent’s interim report which is dated the 27 September 2018 which is before Minister Gordhan comes and testifies here. At paragraph 36 and 37 Justice Nugent says:

“I find no reason why the establishment in existence of the unit was indeed unlawful and I am supported in that by an opinion given to Mr Moyane by leading

senior counsel in late 2015.”

He then continues at paragraph 37.

“What sparked this off was a report in the Sunday Times and that is the start of the so called rogue unit narrative.”

So when Minister Gordhan sat in this room and when he clarified in his subsequent affidavit that his belief about – that his belief about Mr Moyane’s role in state capture including the disbandment of the unit and the rogue unit narrative that is then being repeated and repeated
10 and repeated despite its falsehood he was relying on that finding by Nugent which predated his evidence. It say:

“I find no reason why the establishment was unlawful.”

And that is the only part of Minister Gordhan’s role in the unit that has ever been the subject of any inquiry.

CHAIRPERSON: Yes.

ADV MICHELLE LE ROUX: So he is perfectly entitled to say I am – my ground, my belief on the Nugent finding that Justice Nugent could not find why the establishment of the unit was unlawful. And this – this – it
20 is also something that I do have to put on the record precisely because my learned friend astutely recognised that this commission is something that the public is watching. That the country is looking at. And it is to say that the attempt to try to introduce into these proceedings the full narrative around the investigation unit at SARS. Not only does it fall outside of your terms of reference but it runs the

risk of this commission losing its credibility and being captured itself when it is used as a platform to run this narrative. Because my learned friend stood before you...

CHAIRPERSON: Well but – but it is your client who – who says look at the Judge Nugent Report.

ADV MICHELLE LE ROUX: Yes Chair so let me be clear what I am saying.

CHAIRPERSON: Is – he is the one who says look at the Judge Nugent Report.

10 **ADV MICHELLE LE ROUX:** Indeed. But let us be clear what the submission is – what the position is. The position is the same...

CHAIRPERSON: Yes I am sorry let – so that you can address this fully.

ADV MICHELLE LE ROUX: Yes.

CHAIRPERSON: Your client says: Look at the Nugent – Judge Nugent Report. Here are the findings he makes. These findings are relevant to this commission in effect that is what he says. And then I say to you and I do not see you disagreeing with me. I say to you – but I cannot just take Judge Nugent findings and make them mine. I have got to evaluate – I have got to hear evidence. In other words the moment you
20 say I must look at the Nugent Report and its findings and you say they are relevant you are the one who are – who is now opening ...

ADV MICHELLE LE ROUX: But Chair...

CHAIRPERSON: The possibility of me having to hear things that were heard by that commission.

ADV MICHELLE LE ROUX: Chair we must keep two things very clear

and distinct in looking at this question. The only reason why Minister Gordhan references the Nugent Commission is to explain to you the basis of Minister Gordhan's personal belief about what went on under Tom Moyane's reign at SARS.

CHAIRPERSON: Yes.

ADV MICHELLE LE ROUX: A sep – an entirely separate question in which the evidence of Mr Moyane not the evidence of Minister Gordhan because he has already given you everything he has on this topic.

CHAIRPERSON: Hm

10 **ADV MICHELLE LE ROUX:** Is to say was what went on at SARS part of state capture.

CHAIRPERSON: Hm.

ADV MICHELLE LE ROUX: So those are two very different points again. Minister Gordhan only references the Nugent findings to say that is why I believe.

CHAIRPERSON: Hm

20 **ADV MICHELLE LE ROUX:** That my involvement in the establishment of the unit was lawful and why all of this narrative that gets repeated and repeated and now is used in Public Protector Reports and hate speech proceedings and outside and political rallies is because of – there is a campaign against me that began when I when I was reappointed as Minister of Finance and continues to this day. I mean there is a certain opposition party in this country that seems to make weekly media statements about my client. So it is a narrative that is getting perpetuated outside. That is all that Minister Gordhan says

about it and why he references the Nugent Commission. We – it has never been our submission.

CHAIRPERSON: But if – but if – if nobody...

ADV MICHELLE LE ROUX: That you should not look at Tom Moyane and state capture. That has never been the submission.

CHAIRPERSON: If nobody references the Nugent Commission maybe I might not look at it.

ADV MICHELLE LE ROUX: And Chair it is – it is – I mean obviously it is useful – so again let me – let me try one more time to explain why
10 these are two different points. What went on at SARS under Mr Moyane and the role that this narrative has played in our politics and the way that it is used by the proponents and beneficiaries or state capture and corruption at National and Local Government level is an issue that this commission may well be interested in investigating and it probably falls under your term of reference that deals with the relationship between procurement and the state.

CHAIRPERSON: Hm.

ADV MICHELLE LE ROUX: And investigating Mr Moyane and him coming to up a version and testify and be cross-examined would
20 probably be useful and of assistance to the function of the commission.

CHAIRPERSON: Hm.

ADV MICHELLE LE ROUX: It is not to allow Mr Moyane to cross-examine Minister Gordhan.

CHAIRPERSON: Hm.

ADV MICHELLE LE ROUX: Where he has only ever given you that

second hand information.

CHAIRPERSON: Hm

ADV MICHELLE LE ROUX: And that is the critical point.

CHAIRPERSON: Ys.

ADV MICHELLE LE ROUX: So – yes the – the – and I must just again because my learned friend put it all on the record I must be given the opportunity to rebut it. He takes you through KPMG, Sikhakhane, Kroon, Public Protector. Each one of those legs on which Mr Moyane may well rely have been destroyed. They have been discredited. The
10 Public Protector Reports are on review and they have not yet been determined but there is a serious legal challenge to all of them. Unlike the promised review of Nugent by Mr Moyane.

CHAIRPERSON: Well – well if the...

ADV MICHELLE LE ROUX: KPMG has withdrawn....

CHAIRPERSON: I am sorry – I am sorry Ms Le Roux.

ADV MICHELLE LE ROUX: Chair if I could just complete the point?

CHAIRPERSON: No, no I do not want to forget this.

ADV MICHELLE LE ROUX: Yes.

CHAIRPERSON: Please do not forget your points. Is it fair to the
20 Public Protector to say her report has been discredited if the review has not been finalised?

ADV MICHELLE LE ROUX: Well it has been – let me say it has been – is the base – it is currently under a serious legal challenge that will be decided in due course.

CHAIRPERSON: Yes. So – but it is not fair to say...

ADV MICHELLE LE ROUX: So I withdraw the –

ADV DALI MPOFU: It is not fair to say it has been discredited.

ADV MICHELLE LE ROUX: I withdraw the discredit.

CHAIRPERSON: Yes.

ADV MICHELLE LE ROUX: I withdraw that. So the legs that Mister Mpofo referred to Sikhakhane Report said I find that the unit was established unlawfully. Judge Nugent says and I have read to it I find no basis for saying that. Judge Nugent has discredited that leg.

CHAIRPERSON: You know when I...

10 **ADV MICHELLE LE ROUX:** KPMG – KPMG has withdrawn its report.

CHAIRPERSON: Yes.

ADV MICHELLE LE ROUX: The Sunday Times has withdrawn its articles and apologised. Judge Kroon has disavowed his statements in his evidence before Judge Nugent and apologised to the members of the unit. Today we are heartened when we see media reports that say that the new SARS Commissioner is re-establishing this capacity and implementing the recommendations of the Nugent Report.

CHAIRPERSON: Hm.

20 **ADV MICHELLE LE ROUX:** So the commission you will have to decide whether allowing one more repetition of a narrative that is only serving a political campaign and is not actually getting you to the truth of what happened should be entertained. That is not for Minister Gordhan to – to debate.

CHAIRPERSON: Yes.

ADV MICHELLE LE ROUX: So the question is simply if Mr Moyane

were to come and give you a version on what happened at SARS.

CHAIRPERSON: Hm

ADV MICHELLE LE ROUX: On what happened on the Waterkloof landing.

CHAIRPERSON: Hm.

ADV MICHELLE LE ROUX: On what happened at – with the Bosasa payments.

CHAIRPERSON: Hm/

ADV MICHELLE LE ROUX: As he – as his name was mentioned. That
10 would certainly assist this commission.

CHAIRPERSON: Hm.

ADV MICHELLE LE ROUX: But that then means Minister Gordhan may well be back but it is in response to a version finally from Mr Moyane. So this application we submit there are – there are really only – there is really only one outcome here given where we are which is to dismiss this residual issue.

CHAIRPERSON: Hm.

ADV MICHELLE LE ROUX: Get a full version from Mr Moyane on all of the things he could possibly assist this commission with and then we
20 will see where we stand. And perhaps when he puts that version up he mentions my client and the commission will engage with us and we will obviously assist the commission as much as we can as Minister Gordhan has to date.

CHAIRPERSON: Hm. Okay.

ADV MICHELLE LE ROUX: And that is – that may well be where we

end up on this.

CHAIRPERSON: Okay.

ADV MICHELLE LE ROUX: And Chair the – ja – let me – unless there are further questions I think that is where I should...

CHAIRPERSON: Yes. No, no that it is fine.

ADV MICHELLE LE ROUX: I should leave it.

CHAIRPERSON: No I have no further questions.

ADV MICHELLE LE ROUX: Thank you Chair.

CHAIRPERSON: Yes let me hear Mr Pretorius before I can have Mr
10 Mpofo in reply.

ADV PAUL JOSEPH PRETORIUS: Yes thank you Chair I will be brief. The factual issues Chair appear to be firstly why did Mr Moyane lay charges in relation to the conduct of Minister Gordhan? Secondly was that part of a state capture project as appears at least now to be alleged by Minister Gordhan and I will give you the references in a moment. And thirdly was the laying of charges based on reasonable and probable cause as alleged by Mr Moyane. Of course those two issues are not mutually exclusive. It is at least theoretically possible that both were correct but that is a matter that can be dealt with in the
20 course of time.

CHAIRPERSON: Well as I see it the question of whether Mr Moyane acted reasonably and with reasonable maybe also without probable cause is neither here nor there until you say there was malice. Or you say he was acting in furtherance of state capture. In other words if he was – if he acted unreasonably that on its own does not bring that

issue within [indistinct].

ADV PAUL JOSEPH PRETORIUS: Not within your terms of reference.

CHAIRPERSON: Yes, yes.

ADV PAUL JOSEPH PRETORIUS: That is the point to which I would now like to move.

CHAIRPERSON: Yes, yes.

ADV PAUL JOSEPH PRETORIUS: Chair because both are possible he could have acted with reasonable cause, he could have acted without reasonable cause. The issue for determination whether in the terms of reference is the allegation as to whether that was part of the state capture project or not. Malice is a label that is placed on the conduct but it is the underlying conduct of course that is important rather than the label which is given to it or it is categorisation although it may become legally relevant at a later stage. But may I just put to you Chair that there is at the very least uncertainty and confusion about who is saying what. At page 8 of your papers

CHAIRPERSON: Hm

ADV PAUL JOSEPH PRETORIUS: Minister Gordhan says in paragraph 12 in that quote

20 “Charges against me relating to that unit had been filed by Mr Moyane.”

Then in paragraph 57 – paragraph 15 on page 8 rather he says:

“That entire process of investigation and the bringing and withdrawal of charges against me by the NPA was part of a campaign to capture state institutions.”

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS: So it seems what Minister Gordhan subject to clarification and I will come back to that point might be saying is that the laying of charges was part of a campaign of state capture.

CHAIRPERSON: Hm

ADV PAUL JOSEPH PRETORIUS: It is further clarified in paragraph 31 on page 14 where he says in paragraph 31

10 “Considering my interactions with Mr Moyane over
this period and the subsequent findings in the
Nugent Inquiry my personal belief remains and I
emphasise the word remains that Mr Moyane abused
his position as the former SARS Commissioner to
institute criminal proceedings against me and others
since there was no reasonable basis for him to do
so.”

And then in paragraph 33 he said:

20 “It also served whether deliberately or not needs
clarification the political purpose of attempting to
pressure me and others to resign thereby advancing
state capture and the capture of National Treasury in
particular.”

And then if one goes...

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS: Finally to paragraph 22.4 Minister

Gordhan says:

“To use the words of the chairperson’s directions I therefore do mean that Mr Moyane was motivated wholly or in part or he sought to advance the objectives of state capture and that he was abusing a legal process for his own personal goals that had either nothing or little to do with the legitimate complaint relating to an alleged crime.”

CHAIRPERSON: Hm.

10 **ADV PAUL JOSEPH PRETORIUS:** And then he says quite clearly in paragraph 22.5

“I believe that Mr Moyane’s personal goals while he was SARS Commissioner included the advancement of the state capture project.”

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS: So leave aside all that at the very least one can say there is confusion about what Mr Gordhan

CHAIRPERSON: Is saying.

ADV PAUL JOSEPH PRETORIUS: Is saying about Mr Moyane.

20 **CHAIRPERSON:** Yes.

ADV PAUL JOSEPH PRETORIUS: That being a little generous I think to Minister Gordhan.

CHAIRPERSON: Mr Mpofu nods.

ADV PAUL JOSEPH PRETORIUS: But the purpose of cross-examination of course is to clarify.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS: Not only to challenge but it is also to clarify.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS: Of course that same object may be achieved from a statement of clarification by Minister Gordhan but that is a decision you will make Chair. If I may just raise another issue? Of course these issues are dealt with in a number of other fora and by a number of other instances.

10 **CHAIRPERSON:** Hm.

ADV PAUL JOSEPH PRETORIUS: In a related way possibly the Nugent Commission, the Public Protector and others. This commission is not a review or appeal body and it is not here to second guess or comment really in any decisive way and I stress decisive way. Collateral comment may be possible on those instances. So if cross-examination is to be granted Chair it must be

- a. In accordance with our own rules and
- b. Based on evidence given before you as Commissioner.

So in that respect there must be a version.

20 **CHAIRPERSON:** Hm.

ADV PAUL JOSEPH PRETORIUS: Mr Moyane must clearly state what his version is in relation to all the allegations that might remain at any stage.

CHAIRPERSON: Hm

ADV PAUL JOSEPH PRETORIUS: After clarification.

CHAIRPERSON: Of course we have to be clear what ...

ADV PAUL JOSEPH PRETORIUS: Or otherwise.

CHAIRPERSON: Mr Gordhan's is also saying.

ADV PAUL JOSEPH PRETORIUS: Correct. Correct Chair. That might alleviate the difficulties.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS: That arise out of taking all these issues.

CHAIRPERSON: Yes.

10 **ADV PAUL JOSEPH PRETORIUS:** Further. Then Chair you raised the issue of narrowing the issue into manageable proportions.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS: Given the real constraints of time and resources.

CHAIRPERSON: Hm

ADV PAUL JOSEPH PRETORIUS: Under which we operate. And Chair may I suggest that the formulation on page 1 of your communication to the parties of the 6 May 2019.

20 "1a. In laying the charges against Mr Gordhan and others was Mr Moyane motivated wholly or in part or he sought to advance the objectives of state capture."

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS: That really is the crisp issue.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS: And no other issue falls within your terms of reference.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS: Finally just a comment on the point raised about you having made a ruling and therefore not entitled to make any further ruling. It seems clear Chair that in the light of the further statements put before you at the very least you are free to make a ruling and in fact obliged to make a ruling to clarify any uncertainty. Whether by cross-examination or otherwise.

10 **CHAIRPERSON:** Yes. Thank you. Mr Mpofu. I have got to restrict you quite seriously this time otherwise we will not finish.

ADV DALI MPOFU: Yes Chair.

CHAIRPERSON: But I am sure that you – your response would be quite pointed.

ADV DALI MPOFU: Yes. Chair let me – firstly I must just on a lighter note I am wary on Mr Pretorius supports my – the last time he did that the application was dismissed.

CHAIRPERSON: But I saw that as he was referring to various paragraphs you were nodding.

20 **ADV DALI MPOFU:** Yes I was nodding but – I was particularly nodding when he was saying he is being generous to Mr Gordhan because Chair on a serious note that really is a correct statement. I do not understand Chairperson how counsel can stand here and the Chair asks her twice are you saying that Minister Gordhan is not saying that Mr Moyane was motivated by the advancement of state capture? And

Chair her answer is indeed Chair. How you can do that Chair in the light of Mr Gordhan's sworn affidavit which says as Mr Pretorius has just read out at paragraph 22.5 I think. Mr Gordhan says:

"I do say that Mr Moyane was motivated by state capture motives."

I mean how can we can do that you know if you are to take this proceedings seriously? If that is so – if what his counsel is saying now is his new version well that is even more reason for cross-examination because it means he is now contradicting what he says under oath in
10 the affidavit. Because now we must assume that what his counsel is saying is said by him via her. So the new version now is that all the – she says I only ever said Mr Gordhan only ever said Mr Moyane was the origin of what turned out to be state capture by others. Where – that is – this is a first time we hear that. What we know is what Mr Gordhan said here and what Mr Gordhan says here. Remember and deceptively the words are taken out from your letter. Mr Pretorius correctly reads them out properly. Remember your letter said – the question is in laying the charges not in doing something else in laying the charges against Mr Gordhan was Mr Moyane motivated wholly or in
20 part by or he sought to advance the objectives of state capture and that he was abusing the legal process and so and so on. Mr – to that question which you asked Chair Mr Gordhan says to use the words of the Chairperson that is at paragraph 22.4 I therefore do mean that Mr Moyane was motivated wholly or in part by the – and sought to advance the objectives of state capture. And his counsel now says no he never

said that. The only thing he ever said was that he was just a trigger and then others took over. I mean that is just a lie, a blue lie. And if – just on that basis alone Mr Gordhan should not be given another chance to do another clarificatory affidavit. He must come under cross-examination and tell us which is his version. Is his version the one that he swore under oath here or the one that his counsel has now introduced which is that he distances himself from anything that happened after he laid the charges? I mean really. So this thing will never end Chair we will be here forever if for every time we will be
10 doing a clarificatory affidavit, another clarificatory affidavit. There is – Mr Pretorius is quite right. At best you can say there is confusion.

CHAIRPERSON: Hm.

ADV DALI MPOFU: I say there is no confusion.

CHAIRPERSON: Hm.

ADV DALI MPOFU: It is very clear what Mr Gordhan is saying.

CHAIRPERSON: Hm.

ADV DALI MPOFU: And all he must do is either to justify it or not – justify it or withdraw it if he wants but under cross-examination.

CHAIRPERSON: Hm

20 **ADV DALI MPOFU:** And then he must explain why he – he under oath to God had said two different things.

CHAIRPERSON: Hm.

ADV DALI MPOFU: That is exactly the purpose of cross-examination. Number 2 Chair. The – I must just clarify something. Mr Moyane said in his affidavit and in case again I am – he is saying it through me. Mr

Moyane said in his affidavit he is willing to come and testify here. So this notion that he is – he must come and talk about the air force and what what he is prepared to come here. But that is a completely separate transaction. That has nothing to do with his right to cross-examine Mr Gordhan. So Mr Moyane can come and testify and assist the commission and that will take its own course but right now he is busy with one thing and one thing only to apply to cross-examine Mr Gordhan insofar as Mr Gordhan has testified. So whether Mr Moyane was going to testify or not testify his rights or his entitlement to that cross-examination is untouched. The next issue Chair is that the – Mr
10 Moyane's version there is this thing about Mr Moyane's version. Mr Moyane's version is there Chairperson. There is nothing for him to come and

CHAIRPERSON: The Sikhakhane Report, the IGI Report.

ADV DALI MPOFU: No, no. No Chair. Yes that – that.

CHAIRPERSON: Ja.

ADV DALI MPOFU: Chairperson but he puts it very clearly in the supplementary affidavit page 265.

CHAIRPERSON: Hm.

20 **ADV DALI MPOFU:** Page 265 he says? Remember this whole debate comes from the supplementary affidavit and the Chair in your ruling you actually made it clear. Because at first you said well he did not clarify this. And then in his supplementary affidavit he then – which is what sparked the Chair to give this ruling.

CHAIRPERSON: Hm.

ADV DALI MPOFU: He then says that he quotes, he does all the things that the Chair asked for in the ruling. Says how he is implicated and then says that this means that there is vindictiveness and malice and so on but more important he says at paragraph 13 my version. It is here so there is no need for him to give another version.

CHAIRPERSON: Hm.

ADV DALI MPOFU: My version is of course that I was not justified but duty-bound to act as I did and that any reasonable SARS Commissioner in the same position would have done the same. It is therefore my
10 strong case that Gordhan's evidence led before this commission which implicates me in any wrongdoing must be viewed against this background and declared to be false, unconceived and very far from being objective or credible. It must accordingly be rejected. I will elaborate further on this aspect when I testify.

ADV DALI MPOFU: Hm.

CHAIRPERSON: In other words there is no requirement and that is another qualm we have with our – with your ruling Chair as an aside. There is – this thing that you must put your version or you must reject or whatever is not what I would call the motion court test. That you
20 must now put chapter and verse of every basis upon which you – you and tell the person that you are going to be cross-examining every word that you are going to say. What is needed is a hybrid where you must reject and then say what the basis is. And this is what he did. He says I reject it because and we know that goes to the IGI and all those things.

CHAIRPERSON: Well - well the understanding - the understanding and of course you know whenever it is relevant you could make submissions. The general understanding is that there must be - you must put your version. You must ...

ADV DALI MPOFU: Yes.

CHAIRPERSON: A factual basis for - for what you put in issue and so on because this being an inquiry one is quite interested to establish what is common cause and (intervenes).

ADV DALI MPOFU: Was assisted.

10 **CHAIRPERSON:** Yes.

ADV DALI MPOFU: Fair enough.

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: Fair enough Chair.

CHAIRPERSON: Okay.

ADV DALI MPOFU: No. I - I accept that one cannot just put a boiled ...

CHAIRPERSON: Yes, *ja.*

20 **ADV DALI MPOFU:** But I am saying Chair if you go to paragraphs 13, 14, 15, 16 of Mr - 16, 17, 18, 19, 20 of Mr Moyane's supplementary affidavit.

CHAIRPERSON: Hm.

ADV DALI MPOFU: It gives you the version.

CHAIRPERSON: Hm.

ADV DALI MPOFU: He says what I have just said and then says:

“The evidence contained ...”

CHAIRPERSON: Hm.

ADV DALI MPOFU: "...in the answer is freely available in the
court ..."

CHAIRPERSON: Hm.

ADV DALI MPOFU: "I wish to draw specific attention to two
documents referred to the Sikhakhane Panel ..."

CHAIRPERSON: Hm.

ADV DALI MPOFU: "...and the I - IGI report ..."

CHAIRPERSON: Hm.

10 **ADV DALI MPOFU:** And then it says:

"In a nutshell the - it corroborates my long held
view that inter alia Mr Gordhan is prima facie
criminally liable in respect of the rogue unit."

And so ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: So the version is here.

CHAIRPERSON: Hm.

ADV DALI MPOFU: There is no need a, to give Mr Gordhan another
opportunity to clarify what is clear ...

20 **CHAIRPERSON:** Hm.

ADV DALI MPOFU: And b, there is no room for the Chair to say Mr ...

CHAIRPERSON: Well I guess - I guess that if - if his Counsel - his
Counsel's understanding of Mr Gordhan's affidavit is - one goes one
way. My understanding of it goes a different way. Mr Pretorius'
understanding of it might be going my way or someway ...

ADV DALI MPOFU: Or may way.

CHAIRPERSON: Between - or your way or your way.

ADV DALI MPOFU: Anyway I am the same person Chair. The understanding - you just have to read. Even a two year child will - will read the affidavit and says I do say he was motivated by State Capture.

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: It is not a question of understanding.

CHAIRPERSON: Okay. Let us wrap up - let us wrap up.

ADV DALI MPOFU: Yes, yes.

10 **CHAIRPERSON:** Yes.

ADV DALI MPOFU: So Chair on that and - and this is a crucial point because as I say otherwise this thing will go on forever. Chair anybody can stand up and say it is sun - Sunday today but the - the ...

CHAIRPERSON: You say it is clear?

ADV DALI MPOFU: It is - it is - clear is an understatement Chair. If a man says I do say he was motivated by State Capture ...

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: In laying the charges.

CHAIRPERSON: *Ja.*

20 **ADV DALI MPOFU:** What more ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Needs to be clarified really?

CHAIRPERSON: hm.

ADV DALI MPOFU: What more Chair?

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: You know. Let us ...

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: Otherwise we will be clarifying here forever.

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: Remember that is why you asked for clarification.

CHAIRPERSON: Hm.

ADV DALI MPOFU: In - as I said earlier Chair.

CHAIRPERSON: Hm.

ADV DALI MPOFU: In my submission even ...

10 **CHAIRPERSON:** There was clarity even then?

ADV DALI MPOFU: There was no equivocation even before.

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: But let us - let us for a moment say there was.

CHAIRPERSON: *Ja.*

ADV DALI MPOFU: That equivocation was clarified beyond any doubt
by Mr Gordhan ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Under oath in an affidavit.

CHAIRPERSON: *Ja.*

20 **ADV DALI MPOFU:** If there was equivocation. The one way the other.

CHAIRPERSON: Okay.

ADV DALI MPOFU: So there is nobody who can stand here now and
say that ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: He is not saying what he said and as I say if - if

indeed that is so ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: He is guilty of perjury. Actually if he comes with another affidavit ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: That says the opposite of this.

CHAIRPERSON: Hm.

ADV DALI MPOFU: We will go and lay criminal charges of perjury.

CHAIRPERSON: Hm.

10 **ADV DALI MPOFU:** Because he will be lying ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Because he said - he did say here ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Clearly what is; last point Chair.

CHAIRPERSON: Yes.

ADV DALI MPOFU: The - the question - this - this thing about Judge Nugent I want to elaborate on it because the Chair has correctly pointed out that ...

CHAIRPERSON: Hm.

20 **ADV DALI MPOFU:** You are not bound by whatever Judge Nugent said ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: But even - even on Mr Gordhan's version ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Chair he says no more than that. He - he says

what we now know ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: In other words now in May whenever he signed that thing.

CHAIRPERSON: Hm.

ADV DALI MPOFU: Is that Justice Nugent said this and that and the other.

CHAIRPERSON: Hm, hm.

ADV DALI MPOFU: So that is completely irrelevant.

10 **CHAIRPERSON:** Hm.

ADV DALI MPOFU: It has got nothing to do with what he knew ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: When he was sitting here ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: When - when the Judge gave the - the ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: He says that in his own words but again on this thing of selective reading. This is what Mr Gordhan - Mr Nugent said at 243.

20 "I have not yet found why the creation and the - not yet - why the creation and existence of the unit was said to be unlawful, which is how it was consistently uncritically depicted. I find no reason why the establishment of the unit was indeed unlawful, and I am supported by the opinion of ...; as far as I am

aware that opinion was never publically disclosed.”

And then he says:

“It might be that some of the activities of one or more of six members was unlawful but that is something else. If that was indeed the case it is nonetheless incredible that unlawful acts of one or more six men led to millions of Rands being spent.”

So he is criticising the fact that there - there was more than one investigation, but he says:

10 “It might well be that there was unlawfulness.”

And in another report he says:

“If there is such unlawfulness it must be taken to the ...”

So to come here and say Judge Nugent found that the rogue unit to be lawful is just another blatant lie because he did not - he said he did not - he will not investigate it ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: And if there was an unlawfulness it should be referred ...

20 **CHAIRPERSON:** Hm.

ADV DALI MPOFU: And he says he has not yet found ...

CHAIRPERSON: Ja. I - I am certainly not to in this - not at this stage. I do not wish to get involved into ...

ADV DALI MPOFU: Yes.

CHAIRPERSON: The lawfulness or otherwise ...

ADV DALI MPOFU: Okay.

CHAIRPERSON: Of that unit ...

ADV DALI MPOFU: Of the report.

CHAIRPERSON: But in terms of what I have read and I cannot say I have read everything but I did look at the part of the Judge Nugent report that relates to that part ...

ADV DALI MPOFU: Huh-uh.

CHAIRPERSON: About the lawfulness of the unit and I may also have looked at what the Sikhakhane report ...

10 **ADV DALI MPOFU:** Yes.

CHAIRPERSON: Said but I am not 100 percent sure ...

ADV DALI MPOFU: Yes.

CHAIRPERSON: But I - I came out with an impression that was saying it is a pity that at least whatever it is that I had read ...

ADV DALI MPOFU: Hm.

CHAIRPERSON: And it did include Judge Nugent's report that there was no analysis of any constitutional provisions of statute to say this is the statute that says this.

ADV DALI MPOFU: Hm.

20 **CHAIRPERSON:** This is what happened. This is what happened and therefore ...

ADV DALI MPOFU: Yes.

CHAIRPERSON: This - this is the conclusion.

ADV DALI MPOFU: Is this, yes.

CHAIRPERSON: To the extent that I might have seen the Sikhakhane

report. I do not remember that it did - did that. It might have referred to one section of some Act. I am not sure but I have not come across any document that gives a proper analysis or detailed analysis to say to be lawful such a unit needed to be ...

ADV DALI MPOFU: To do this and that.

CHAIRPERSON: Do this and that in terms of that legislation.

ADV DALI MPOFU: Well Chair ...

CHAIRPERSON: This was done or this was not done and somebody else saying but that legislation is not applicable because to this and
10 that and that ...

ADV DALI MPOFU: Yes.

CHAIRPERSON: But again that is something I should not bother myself with at this stage.

ADV DALI MPOFU: Well Chair I will bother you with it a little bit. This is what he said:

“Instead of requesting the departmental in ...”

Sikhakhane by the way does ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Do an analysis ...

20 **CHAIRPERSON:** *Ja.*

ADV DALI MPOFU: Of the legislation that is why I said it is unlawful ...

CHAIRPERSON: Yes.

ADV DALI MPOFU: But put that aside.

CHAIRPERSON: Okay.

ADV DALI MPOFU: In the IGI report it says:

“Instead of requesting departmental intelligence from the designated agencies as contemplated in the National Strategic Intelligence Act 1994 it was unlawful for SARS to take it upon themselves to establish structures for the collection of intelligence. Such structures existed outside the scrutiny of the Inspector-General of Intelligence. It is therefore not surprising that the allegations are from propriety are levelled against the said SARS covert structure. It was on the basis of this that it was concluded that Minister Gordhan who was part of the establishment of the unit and knew about its activities should be charged criminally.”

So ...

CHAIRPERSON: Okay. Let us - let us leave it that.

ADV DALI MPOFU: There is no doubt about that, *ja* ...

CHAIRPERSON: Let us leave it at that.

ADV DALI MPOFU: And - and that is the first thing.

CHAIRPERSON: *Ja*.

20 **ADV DALI MPOFU**: The Public Protector also says the same thing and it is not true ...

CHAIRPERSON: Yes. Just leave it at ...

ADV DALI MPOFU: I have to say this. No, no, no I have to say ...

CHAIRPERSON: Remember that on the issue of cross-examination that is really neither here nor there.

ADV DALI MPOFU: *Ja.*

CHAIRPERSON: Lawfulness is neither here nor there.

ADV DALI MPOFU: Well and so - unless ...

CHAIRPERSON: No, no.

ADV DALI MPOFU: Only accepted so far as they rely on it.

CHAIRPERSON: She - she mentioned but ...

ADV DALI MPOFU: Yes.

CHAIRPERSON: Otherwise really it is not - the lawfulness as such ...

ADV DALI MPOFU: Yes.

10 **CHAIRPERSON:** Does not (intervenes).

ADV DALI MPOFU: Well the lawfulness is what you must make ...

CHAIRPERSON: In terms of the issue on cross-examination that we are dealing with.

ADV DALI MPOFU: No man. No Chair.

CHAIRPERSON: Hm.

ADV DALI MPOFU: It cannot be. The lawfulness it is - if - Mr Moyane wants to lay a charge about something that was perfectly lawful that is one thing ...

CHAIRPERSON: Yes.

20 **ADV DALI MPOFU:** But if he wants to lay a charge about something that was a criminal activity. That is another thing. So it is not irrelevant. So ...

CHAIRPERSON: Yes. No, no but remember going back to the issue of reasonable - even if Mr Moyane laid a charge that Mr Gordhan ...

ADV DALI MPOFU: Turned out to be ...

CHAIRPERSON: It turns out - if he believed that Mr Gordhan's conduct was unlawful ...

ADV DALI MPOFU: Hm.

CHAIRPERSON: And it turns out to be lawful.

ADV DALI MPOFU: Hm.

CHAIRPERSON: That might have nothing to do with State Capture.

ADV DALI MPOFU: True but if ...

CHAIRPERSON: You see.

ADV DALI MPOFU: If he had grounds to - if he saw him shooting
10 somebody and went to a police station then you cannot say he is
motivated by malice. That is the point I am making.

CHAIRPERSON: Yes.

ADV DALI MPOFU: So - so if indeed there was criminal activity or
unlawful activity and on the basis of that he went to the police how he
can you say he is motivated by malice. So it goes to the very nub of
the question.

CHAIRPERSON: No, but - but you see I am - I am moving from this
point that even if he did not have good grounds ...

ADV DALI MPOFU: A place.

20 **CHAIRPERSON:** To lay a charge.

ADV DALI MPOFU: Agreed.

CHAIRPERSON: You know.

ADV DALI MPOFU: Hm.

CHAIRPERSON: For which you might criticise him ...

ADV DALI MPOFU: Hm.

CHAIRPERSON: In another forum ...

ADV DALI MPOFU: Yes.

CHAIRPERSON: But for purposes of this Commission that might be irrelevant ...

ADV DALI MPOFU: Yes.

CHAIRPERSON: Until you say it is connected with ...

ADV DALI MPOFU: State Capture.

CHAIRPERSON: *Ja, ja.*

ADV DALI MPOFU: Fair enough.

10 **CHAIRPERSON:** Yes, but I think let us ...

ADV DALI MPOFU: Chair I just have to ...

CHAIRPERSON: I understand your submissions, *ja.*

ADV DALI MPOFU: The - the notion - going back to Mr Moyane's state of mind it is also not true - well fortunately it was withdrawn to say that the Public Protector's report is discredited.

CHAIRPERSON: Hm.

ADV DALI MPOFU: Sikhakhane's report is also not discredited.

CHAIRPERSON: Hm.

ADV DALI MPOFU: The fact that Justice Nugent says ...

20 **CHAIRPERSON:** Hm.

ADV DALI MPOFU: He does not see anything ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Is - that is his problem.

CHAIRPERSON: Hm.

ADV DALI MPOFU: It has got nothing - it is not a discredit ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Justice Nugent was not sitting as a review ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Or an Appeal Court of Sikhakhane.

CHAIRPERSON: Hm.

ADV DALI MPOFU: Sikhakhane stands as we stand now.

CHAIRPERSON: Hm.

ADV DALI MPOFU: Nobody ...

CHAIRPERSON: Hm.

10 **ADV DALI MPOFU:** Not even ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Mr Gordhan has ever ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Reviewed the Sikhakhane report.

CHAIRPERSON: Hm.

ADV DALI MPOFU: So it stands.

CHAIRPERSON: Hm.

ADV DALI MPOFU: Right? Kroon.

CHAIRPERSON: Hm.

20 **ADV DALI MPOFU:** The Kroon - Justice - Judge Kroon's judgment ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: I have said this before when I was here.

CHAIRPERSON: Hm.

ADV DALI MPOFU: It is a fallacy to say that it was withdrawn.

CHAIRPERSON: Hm.

ADV DALI MPOFU: Justice Kroon sat as one of seven people.

CHAIRPERSON: Hm.

ADV DALI MPOFU: He went to the Nugent report - Commission ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: And he withdraw his support ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: For the report.

CHAIRPERSON: Hm.

ADV DALI MPOFU: Of the seven people.

10 **CHAIRPERSON:** Hm.

ADV DALI MPOFU: So if - that is what I said - if there - there were seven of them ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: And let us say Justice Kroon voted against ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: And the other six voted for.

CHAIRPERSON: Hm.

ADV DALI MPOFU: The report still stands.

CHAIRPERSON: Hm.

20 **ADV DALI MPOFU:** So this notion that the Kroon report is discredited is also ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: Completely a fallacy.

CHAIRPERSON: Hm.

ADV DALI MPOFU: The IGI report says the must be charged criminally.

It has never been challenged.

CHAIRPERSON: Hm.

ADV DALI MPOFU: So all the four reports - I am excluding the Public Protector.

CHAIRPERSON: Hm.

ADV DALI MPOFU: That Mr Moyane had access to - I say the same and the only report on the other side is one which did not investigate the issue.

CHAIRPERSON: Hm.

10 **ADV DALI MPOFU:** Which deals with it tangentially ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: And which says that it will not be diverted ...

CHAIRPERSON: Yes.

ADV DALI MPOFU: To looking at it. So all in all there is no ...

CHAIRPERSON: I give you one minute.

ADV DALI MPOFU: There is no report that - that finds the -the rogue unit lawful. At best if you twist the language you will say there is one out of six or seven.

20 **CHAIRPERSON:** Thank you. Let us end the proceedings relating to this application here.

ADV DALI MPOFU: I am sorry Chair. I was trying to listen to you. You see I cannot multitask.

CHAIRPERSON: *Ja.* I am - I am saying let us end the ...

ADV DALI MPOFU: The - the ...

CHAIRPERSON: The proceedings relating to the application for leave

to cross-examine.

ADV DALI MPOFU: Yes. Okay, Chair.

CHAIRPERSON: Yes.

ADV DALI MPOFU: I - I - can I just say one thing.

CHAIRPERSON: Huh-uh.

ADV DALI MPOFU: Otherwise my attorney will fire me.

CHAIRPERSON: *Ja*.

ADV DALI MPOFU: That - Chair this notion of dragging this thing and further opportunities and endless ...

10 **CHAIRPERSON**: Hm.

ADV DALI MPOFU: Clarifications ...

CHAIRPERSON: You have done - you have done (intervenes), *ja*.

ADV DALI MPOFU: Will only add to the notion of that Mr Gordhan is untouchable ...

CHAIRPERSON: Hm.

ADV DALI MPOFU: And is not treated like other witnesses or that he should be cross-examined. Let him come and face the music and do his own clarification here.

CHAIRPERSON: Yes. Let us - let us end it - end it there.

20 **ADV DALI MPOFU**: Hm.

CHAIRPERSON: I am going to reflect on the arguments presented and - and revert to the parties. *Ja*, I think let us - let us leave it on ...

ADV DALI MPOFU: Hm.

CHAIRPERSON: That basis, *ja*.

ADV DALI MPOFU: Thank you Chair.

CHAIRPERSON: Okay.

ADV DALI MPOFU: Thank you very much.

CHAIRPERSON: So my decision in regard to this outstanding issue on cross-examination will remain reserved.

ADV DALI MPOFU: Thank you Chair.

CHAIRPERSON: Okay, thank you.

ADV DALI MPOFU: Thank you very much Chair.

CHAIRPERSON: Okay. I think we will take the tea adjournment. We will take some adjournment before we proceed with the other matters.

10 We will resume at quarter to 12. It is 25 past 11 now.

ADV PAUL JOSEPH PRETORIUS: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Miss Norman?

ADV THANDI NORMAN SC: Good Morning Mr Chairman.

CHAIRPERSON: Good morning.

20 **ADV THANDI NORMAN SC**: Yes thank you, Mr Chairman this morning we intended to lead the evidence of Lieutenant General Matakata, who is present today, she is represented by Mr Maringa and Mr Jonas is represented by Miss Ndagula, they are present.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Chair the only difficulty we've encountered is that Chair...[intervenes].

CHAIRPERSON: Do you want to get them to place themselves on record?

ADV THANDI NORMAN SC: On record yes Chair.

CHAIRPERSON: Then you can start saying something.

ADV LIPU NDAGULA: Chairperson my name is Lipu Ndagula and we are representing Mr Jonas.

CHAIRPERSON: Thank you.

ADV MARINGA JOWEL: Chair I'm Maringa Jowel from Maringa Attorneys in Pretoria I'm representing Lieutenant General Matakata.

10 **CHAIRPERSON:** Thank you very much, okay.

ADV THANDI NORMAN SC: Thank you, Chair will recall that this was a matter that was handled by my learned friend Mr Mokoena.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: There is a transcript Chair which I asked the registrar to place before you, it was apparent from that transcript that there was some confusion about what happened when General Nonopi [?] withdrew her application to cross-examine Mr Jonas and Chair does deal with that together with Mr Jonas and Mr Jonas' lawyer and they made it very clear that they thought that because it was
20 withdrawn and then they – that was their understanding that everything was – appeared to have been withdrawn and they deal with that Chair at page 80 of that record and then Mr Mokoena also confirms to you Chair in the very last sentence and he says,

“He withdrew his application before this Commission to cross-examine so he never dealt with it”,

Yes, so clearly Mr Jonas never dealt with the affidavit of Miss Nonopi and that – of General Nonopi and that of General Matakata. There are quite some critical matters especially those that relate to General Matakata, Chair will recall that there is a letter that was written to Parliament so those are matters that have not really been – they are slightly canvassed in the re-examination of Mr Jonas by Mr Louw but they do not really deal with everything that is contained in those. I think also due to pressure and in terms of time factors which Mr Louw does deal with in response to the Chair.

10 **CHAIRPERSON**: Yes.

ADV THANDI NORMAN SC: For that reason Chair we ask that witnesses' evidence be postponed to a date to be determined by the Chair and that Chair directs that Mr Jonas deals with the versions of both General Nonopi and General Matakata.

CHAIRPERSON: Yes, and there is no problem from the legal teams?

ADV THANDI NORMAN SC: No Chair I did explain – we explained to both of them Chair.

CHAIRPERSON: Okay.

20 **ADV THANDI NORMAN SC**: As we also explained in the presence of General Matakata, thanks.

CHAIRPERSON: Yes you understand the situation General Matakata?

GENERAL YOLISA MATAKATA: Yes Chair I understand thank you.

CHAIRPERSON: Yes, okay alright. Okay then we will postpone the hearing of the evidence Lieutenant General Matakata to a date to be determined later and in the meantime the legal team must make

arrangements to request Mr Jonas to depose to an affidavit or affirmed declaration dealing with the versions put up in the affidavit of Major General Nonopi, I hope I've got the title correct and Lieutenant General Matakata.

ADV THANDI NORMAN SC: Yes thank you Chair.

CHAIRPERSON: Ja I hope I've got all of those correct.

ADV THANDI NORMAN SC: Thank you Chair.

CHAIRPERSON: And if this could be dealt with, today's the 2nd of October, if we could have Mr Jonas' affidavit not later than the 20th of
10 October.

ADV THANDI NORMAN SC: That will give sufficient time, thank you Chair.

CHAIRPERSON: Yes, and of course once that his affidavit is at hand it will be important to give a copy to Lieutenant General Matakata to have a look at and if there's a need to respond to anything to also respond as well as General Nonopi.

ADV THANDI NORMAN SC: Will do so Chair.

CHAIRPERSON: And then once we have got all of those then hopefully it will be quite clear where the areas of dispute are or there might not
20 be much in terms of areas of dispute, there might be a convergence of views on some of the issues at least. Probably there will still be some issues that remain in dispute.

ADV THANDI NORMAN SC: Thank you Chair.

CHAIRPERSON: Ja, no that's fine. Thank you very much Lieutenant General Matakata you are excused and you'll be advised of another

date but thank you very much for coming forward to give evidence, thank you.

ADV THANDI NORMAN SC: Thank you Chair, may I also be excused Chair?

CHAIRPERSON: Yes you are also excused, thank you. Miss Wentzel we are the only ones that are not excused. Yes good morning Miss Wentzel, good morning Colonel Naidoo.

COLONEL DHANAJAYA GANGULU NAIDOO: Good morning Chair.

CHAIRPERSON: Yes, okay are we ready?

10 **ADV SUSAN WENTZEL:** Yes Chair.

CHAIRPERSON: Yes, let's continue.

ADV SUSAN WENTZEL: Colonel Naidoo when we adjourned yesterday we were dealing with page 47 of your witness statement and in particular we got to the point where you deal with the sale of SR vehicles and New World Motors, is there something you would like to say about that?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct, Chair regarding point M, sale of vehicles, the heading, New World Motors, Chair from point or paragraph 195 to paragraph 201, Chair all that is
20 here in my statement hinges on what I believe or assume how the system was abused with regards to the tender process so I would not speak on this in detail but I'm willing to help the investigation team with their investigations regarding this matter.

CHAIRPERSON: Okay, no that's fine, is that alright with you Miss Wentzel?

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: So these issues can be investigated further and depending on the outcome of the investigation Colonel could come back and talk about – give evidence about them or other witnesses could be called.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Or both.

ADV SUSAN WENTZEL: Yes

CHAIRPERSON: Okay alright.

10 **ADV SUSAN WENTZEL:** Thank you Chair. Colonel Naidoo then proceeding from page 49 you deal with, what you call a trade-in of General Mdluli's private BMW, could you explain to the Chair what happened there?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair yes, if I can just give the background as to my own involvement in this transaction, I was given an instruction, this was probably in July 2010 Chair by General Lazarus to go to General Mdluli's house in Vosloorus to pick up his BMW, his private vehicle at that stage, 730 diesel and I must take the vehicle to Nissan Atlantis. This I carried out Chair, I indeed did this
20 and handed the vehicle over to Mr Jan Venter at Nissan Atlantis. Chair after about two weeks I ...[intervenes].

CHAIRPERSON: I'm sorry were you told why it was necessary for you to take this vehicle to Atlantis Motors?

COLONEL DHANAJAYA GANGULU NAIDOO: At that stage, no Chair.

CHAIRPERSON: You were not told at that stage?

COLONEL DHANAJAYA GANGULU NAIDOO: No Chair.

CHAIRPERSON: And then you say after two weeks, I either got a call or had a conversation with Colonel Barnard, he asked me to collect the BMW from Mr Venter, who's a dealer principal at Atlantis and that I must take that particular vehicle to Leo Haese where I encountered a Mr Nico Visser. Chair Leo Haese is a BMW dealership in Pretoria. Mr Nico Visser is sales person at Leo Haese Pretoria.

CHAIRPERSON: Okay before we proceed let's go back to when you took the car to Atlantis, did you not have to say why you were bringing
10 the car there or did you find that somebody knew about - was expecting the car and somebody had spoken to them about it?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair that is correct, I believe that Mr Venter – or arrangements rather had been made with Mr Venter to receive this car, this particular vehicle as, like I mentioned when I picked up the vehicle from General Mdluli's house and subsequently dropped it off with Mr Venter he did not ask me any questions or who does this vehicle belong to, so it's my belief that arrangements was made and I handed the keys over to him and I left.

CHAIRPERSON: Yes, okay then two weeks later General Lazarus
20 asked you to pick the car up and take it to?

COLONEL DHANAJAYA GANGULU NAIDOO: No Chair it was Colonel Barnard.

CHAIRPERSON: Oh Colonel Barnard?

COLONEL DHANAJAYA GANGULU NAIDOO: That's correct.

CHAIRPERSON: Ja and asked you to take it where?

COLONEL DHANAJAYA GANGULU NAIDOO: He asked me to pick up the car from Nissan Atlantis and take it to Leo Haese, I'm not sure if I'm pronouncing that correctly, it's Leo Haese or Leo Huis, it's a BMW dealership in Pretoria.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: And I dealt with a gentleman by the name of Mr Nico Visser, he was actually one of the sales persons at Leo Haese.

CHAIRPERSON: What's the name of the gentleman?

10 **COLONEL DHANAJAYA GANGULU NAIDOO:** Nico Visser.

CHAIRPERSON: Okay Visser?

COLONEL DHANAJAYA GANGULU NAIDOO: That's correct Chair.

CHAIRPERSON: Okay yes.

COLONEL DHANAJAYA GANGULU NAIDOO: The reason Colonel Barnard gave me – regarding picking up the vehicle from Mr Venter and taking it to this particular dealership is that Mr Venter was battling to get a decent price or they were struggling to sell this particular vehicle at Nissan Atlantis, that was the reason that was told to me and I'm referring now to Mr Visser of Leo Haese. After me taking the vehicle to
20 him...[intervenes].

CHAIRPERSON: So you picked it up from Mr Visser – Venter and took it to Mr Visser?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: Okay.

COLONEL DHANAJAYA GANGULU NAIDOO: Mr Venter being the

dealer principal of Atlantis Nissan and Mr Nico Visser being the sales person at Leo Haese BMW.

CHAIRPERSON: Yes okay.

COLONEL DHANAJAYA GANGULU NAIDOO: Mr Visser did an appraisal Chair and he informed me that the windscreen was cracked and he suggested to me that the windscreen be replaced or should be replaced as this would affect the value of the vehicle. Chair I'm not sure if this was ever done, I can't recall.

CHAIRPERSON: Yes.

10 **COLONEL DHANAJAYA GANGULU NAIDOO:** What I can say though is General Mdluli's private BMW was eventually sold, I say this because Colonel Barnard asked me to make contact with General Mdluli because the sales person, Mr Nico Visser wanted a spare key.

CHAIRPERSON: Wanted?

COLONEL DHANAJAYA GANGULU NAIDOO: The spare key Chair, I believe those keys are quite expensive.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: So he wanted a spare key. I contacted General Mdluli Chair and I managed to obtain the
20 spare key from him, I also recall when he handed over the key to me, and I'm referring to Genera Mdluli, he remarked or said something to the effect that, I'm giving you the key and I'm getting nothing in return. This was quite light hearted Chair it was almost [indistinct].

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: I then relayed this

message to General Lazarus, also light hearted on my side and General Lazarus, I remember him saying, does he know how much we spent to sort out his car, this is what General Lazarus said referring to General Mdluli.

CHAIRPERSON: He said does he know what?

COLONEL DHANAJAYA GANGULU NAIDOO: Does he know how much we spent to sort out his car.

CHAIRPERSON: Oh okay talking about the same car?

COLONEL DHANAJAYA GANGULU NAIDOO: That's correct Chair.

10 **CHAIRPERSON:** Okay at that stage you also didn't know or did you know how much had been spent on this car?

COLONEL DHANAJAYA GANGULU NAIDOO: I'll speak about that in my next – in the next paragraph Chair.

CHAIRPERSON: Yes but tell me whether you knew at that stage or not?

COLONEL DHANAJAYA GANGULU NAIDOO: No Chair.

CHAIRPERSON: Ja okay.

COLONEL DHANAJAYA GANGULU NAIDOO: And I'm speaking about the same meeting or the same conversation that I had with General
20 Lazarus, he had a page on his desk Chair, it was a few figures written, I think it was three different figures that he showed me and he told me – he gave me the page and he told me to go and show it to General Mdluli to show him how much they spent to sort out the said vehicle, the transaction or rather the shortfall. Chair I did not show General Mdluli this page that was given to me by General Lazarus, I shredded

the document Chair.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair if I can continue?

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: After I collected the key from General Mdluli I went over to Leo Haese and this handed this key to Mr Visser. Chair after this transaction concluded or was concluded General Lazarus told me that I must organise or make arrangements for a loan agreement to be drawn up between Mr Jan Venter of Nissan
10 Atlantis and General Mdluli, the reason given to me by General Lazarus was that there was a shortfall of R50 000 on the transaction on General Mdluli's private BMW. Chair at this stage I do not know why the instruction was given to me to draw up an agreement between Mr Visser of Atlantis Motors and General Mdluli because the vehicle was actually sold through BMW, Leo Haese. So at this stage I don't know why this instruction was given to me, however, I can say that the document was drawn up Chair, there were three different documents Chair. I'll now refer to the first one, I'm referring now to the acknowledgment of debt between General Mdluli and Mr Jan Venter of
20 Atlantis Motors regarding the sale of his BMW.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair during the – or rather let me go back regarding the acknowledgment of debt, I think this was about, around July 2010 where I went to Mr Venter on the instruction of General Lazarus and asked him to have a loan agreement

drawn up between himself and General Mdluli regarding the R50 000 as I explained to you previously. This is now the first document I refer to, I said there were three different documents Chair and I refer to the acknowledgment of debt, this is the first one I referred to.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Now I speak on the second – rather the first one again, the document was indeed drawn up by General – or rather Mr Venter but at that stage Chair, it was not signed. So basically there was no legality to that document because
10 neither Mr Venter of Atlantis Motors nor General Mdluli had signed that document, however, what I can say regarding the first one, the first acknowledgement of debt, during late 2010 General Lazarus reminded me or asked me – this is now when Crime Intelligence got wind of the Hawks investigation into General Mdluli’s activities. General Lazarus reminded me Chair of the agreement that was initially drawn up which I had actually forgotten about because it was a few months later but after having checked in my bag and looking for it Chair, I indeed found this document and like I said it was not signed. I then showed this document to General Lazarus, he instructed me to get it signed by Mr
20 Venter and General Mdluli which I subsequently did and after the document was signed I’m not sure if I gave it to Mr Venter or I kept in my bag with me, I can’t recall exactly.

ADV SUSAN WENTZEL: Do you have a copy of that document?

COLONEL DHANAJAYA GANGULU NAIDOO: I’m just going to refer to the Annexures.

ADV SUSAN WENTZEL: If you have a look at Annexure DGN11 page 118 is the document part of those Annexures?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair I don't see that document here I'm not sure that document is not here there's two other documents which I refer to as acknowledgment of debt, there was three I said I don't see the first one.

ADV SUSAN WENTZEL: So can you assume that you may have given this document to Mr Venter?

COLONEL DHANAJAYA GANGULU NAIDOO: This is – it could be with
10 Mr Venter or it could be with Colonel Roelofse.

ADV SUSAN WENTZEL: Yes, thank you, you can proceed.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair I – this is now the first document that I referred to, I now go to...[intervenes].

CHAIRPERSON: I'm sorry what page is that document?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair it's not in the bundle.

CHAIRPERSON: Oh I thought I missed it.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair it's not in the bundle.

20 **CHAIRPERSON:** Okay alright.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair I now go to – and I'm speaking on the acknowledgement of debt page 118.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: The Annexure, this is the second document that I referred to.

ADV SUSAN WENTZEL: And how did it arise that you came into possession of this document?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair this was when – this was a period, it would have been probably between June 2011 to October 2011. This was a period when General Mdluli was suspended Chair. Chair on paragraph 210 I'd just like to clarify something, it reads,

“Subsequent to General Mdluli's suspension on the instruction of General Lazarus I went to General Mdluli”.

10 Chair that is incorrect, General Mdluli via another member from CI made contact and requested that I see him. So this was not the instruction of General Lazarus this was a request by General Mdluli for me to make contact and to see him but I did inform General Lazarus of the request and he then allowed me to meet with General Mdluli. So he basically had knowledge of this meeting. Chair I then met – made arrangements to meet with General Mdluli, I think it was the Nando's we met in the carpark in the Nando's, the Boksburg area, he handed me a handwritten document and instructed me to take that document to Mr Venter which I did. Chair I refer to the third document as Annexure 119
20 or rather page 119, pardon me.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: Yes you can explain this document Colonel Naidoo.

COLONEL DHANAJAYA GANGULU NAIDOO: I showed this document to Mr Venter...[intervenes].

ADV SUSAN WENTZEL: Do you mean the document on page 118?

COLONEL DHANAJAYA GANGULU NAIDOO: 118, I showed this document that I picked up from General Mdluli and I showed it to Mr Venter. He had a look at it and he told me that he will draw up a new agreement, this is now referred to the third acknowledgment of debt on page 119 Chair.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair when this document, and I refer to the third one, when it was ready I got a call
10 from Mr Venter, he told me that he had the documents prepared. I went to his dealership in Centurion, I picked up that document, I made arrangements to meet General Mdluli again at the carpark at Nando's in Boksburg. He signed this document Chair, I took it back to Mr Venter, he had it signed – or he signed the document and I subsequently made arrangements with General Mdluli's son to meet me at the Total garage in Centurion and I handed over this document to him, this is now the third one Chair, I refer to the third acknowledgment of debt.

ADV SUSAN WENTZEL: Yes and Colonel Naidoo can you explain then what happened in April 2011?

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** Chair in April 2011 I was on leave I had undergone an operation I was off work for three months. I was visited by three members of the Asset for Future Unit, they explained to me that they were investigating some activities regarding General Mdluli more especially the vehicles. Chair I had a discussion – they requested an affidavit from me, I explained to them that I was on

leave and at that stage I couldn't give them an affidavit until I got permission from my superiors. On that same day Chair, I went to – while I was on leave, I drove to Pretoria to General Lazarus' office and explained to him that these three individuals or rather the visit of these three individuals to my house and requesting an affidavit from me. Chair it's then that General Lazarus informed me that General Mdluli's private BMW had eventually been sold or trading-in when CI purchased two BMW's to offset the shortfall on General Mdluli's private vehicle.

ADV SUSAN WENTZEL: Can you explain that?

- 10 **COLONEL DHANAJAYA GANGULU NAIDOO:** Chair for the purposes of explaining it, if I may, let's not call it a trade-in I'll get to that in a moment. Let's just say that General Mdluli sold his car or his vehicle to Leo Haese. So basically he took this vehicle, it was appraised and there was a shortfall of R90 000 if I can remember correctly, R90 000 some change. So there was no trade-in, so in effect if that vehicle was purchased by Leo Haese and General Mdluli was in debt because they would have settled the car because there was an outstanding hire purchase on this vehicle so he would have owed – either owed Leo Haese R90 526.01 or he had to settle the hire purchase on his vehicle.
- 20 I'm not sure how that would have unfolded but eventually what happened, now we call it a trade-in because what happened was CI eventually bought two vehicles, namely a BMW 330 diesel and a BMW 530 diesel, both were 2010 models basically – now I'm saying this is a trade-in because these vehicles basically were bought Chair to offset the amount that was owing on General Mdluli's private BMW.

ADV SUSAN WENTZEL: And how did that work, how does buying a car offset the amount – balance owing?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair how I'm given to understand this transaction if I can explain it, basically there was no need for CI to purchase these two vehicles. They were purchased solely to offset the R90 000 that was owing on General Mdluli's vehicle. So the loss actually was not only R90 000 to Crime Intelligence but also the purchase of these two vehicles, I'm not sure at this stage what their value was but that's what would be the loss to Crime Intelligence
10 it would be the value of these two vehicles and the R90 000 because this would have been – if CI had bought these vehicles purely for their use or in normal circumstances, that discount of R90 000 would have actually gone to Crime Intelligence. In this case it went or rather offset the R90 000 that was owing on General Mdluli's private BMW

ADV SUSAN WENTZEL: And Colonel Naidoo I'm not sure if the Chair can understand that explanation so can we just unbundle it slowly.

COLONEL DHANAJAYA GANGULU NAIDOO: Sure.

CHAIRPERSON: Well maybe let's do it this way. You took General Mdluli's BMW to Leo Haese?

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** That is correct Chair.

CHAIRPERSON: Yes. You did not know at that stage what the purpose was for this vehicle to be taken there, is that right?

COLONEL DHANAJAYA GANGULU NAIDOO: No Chair.

CHAIRPERSON: But you found when you arrived there that it appeared that there was some understanding by the people there what the car

was there for, is that right?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair. Because an appraisal was done by Mr Nico Visser.

CHAIRPERSON: Yes. Now you say that at a certain level of – for the initial stage we must take the position to be that the vehicle was there for sale to Leohaese by General Mdluli.

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: And then later on you say we can then take it as a trade in? Is that right?

10 **COLONEL DHANAJAYA GANGULU NAIDOO:** That is correct Chair.

CHAIRPERSON: Let us talk about the first part. In the discussions that you had with Mr Visser is there anything he said which suggested that this car was being sold to them?

COLONEL DHANAJAYA GANGULU NAIDOO: No Chair.

CHAIRPERSON: No – did the discussion that he may have had with you reveal that the car was being traded in with them?

COLONEL DHANAJAYA GANGULU NAIDOO: Not at that stage Chair.

CHAIRPERSON: Not at that stage.

COLONEL DHANAJAYA GANGULU NAIDOO: No.

20 **CHAIRPERSON:** Okay. But he did talk about the fact that the crack on the windscreen would devalue the car?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: Okay. And then you say later on Crime Intelligence bought two vehicles, is that right?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: They bought them from Leohaese?

COLONEL DHANAJAYA GANGULU NAIDOO: That is indeed correct.

CHAIRPERSON: And do you have – how much those vehicles – what their prices were?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair it was – it was I do not have the exact amounts.

CHAIRPERSON: Yes

COLONEL DHANAJAYA GANGULU NAIDOO: Because I do not have the documents but it was a 2010 BMW 330 Diesel and 2010 BMW 530
10 Diesel.

CHAIRPERSON: Yes. Were they brand new cars?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: Okay. And you said also that when General Mdluli's vehicle was taken to Leohaese it had not been paid up in terms of Hire Purchase or Credit Agreement?

COLONEL DHANAJAYA GANGULU NAIDOO: Not at that stage I was not aware of it Chair.

CHAIRPERSON: You were not aware at that stage?

COLONEL DHANAJAYA GANGULU NAIDOO: No Chair.

20 **CHAIRPERSON:** But you subsequently got aware?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: And when you subsequently became aware is the position that you became aware that there was an amount of is it R50 000,00 outstanding? That was still to be paid?

COLONEL DHANAJAYA GANGULU NAIDOO: That is what was told to

me by General Lazarus Chair.

CHAIRPERSON: Okay. Okay. So when you heard about the purchase of the two vehicles by Crime Intelligence – okay you said these were bought from Leohause?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: Ja. How – was there a connection between the buying of those two vehicles and General Mdluli's vehicle being at Leohaese?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair
10 because those – like I said there was a shortfall on his private vehicle which was R90 526.01.

CHAIRPERSON: Hm.

COLONEL DHANAJAYA GANGULU NAIDOO: So these two vehicles that I mentioned basically offset the – or rather let me put it this way. The two vehicles purchased by Crime Intelligence the R90 526.01 would have been a discount to Crime Intelligence. Crime Intelligence did not get that discount Chair instead it was offset against the outstanding value or outstanding debt against General Mdluli's private BMW.

20 **CHAIRPERSON:** So – so in purchasing the two vehicles you say Crime Intelligence was entitled to a certain discount?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: And instead of Leohaese giving them – giving them that discount he did not give them the discount but the money was taken to be part of the trade-in price of General Mdluli's car?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair. It offset the outstanding amount that was owing on General Mdluli's private car.

CHAIRPERSON: Okay. So would this have been reflected in the books of Leohaese do you know?

COLONEL DHANAJAYA GANGULU NAIDOO: I do not have an idea Chair. I am – I was not privy to that.

CHAIRPERSON: The discount that was not given to Crime Intelligence was that a discount that was always given to – or that was general speaking given to Crime Intelligence whenever they bought vehicles from Leohaese?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair I do not know how the deals took place but I believe so because the – and I refer back to the – to the discussion that I had with General Lazarus. He said those two vehicle were purchased to sort out the shortfall on General Mdluli's vehicle.

CHAIRPERSON: Okay. Ms Wentzel.

ADV SUSAN WENTZEL: Colonel Naidoo can you explain then why at the end of these transactions there was an acknowledgement of debt between General Mdluli and not Leohaese but rather with Mr Jan Venter of Nissen Atlantis?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair I am really not sure why because the vehicle was actually traded in at Leohaese or Leohaese and I do not know why that the acknowledgement of debt was between General Mdluli and Mr Venter. I cannot say for certain.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: And Colonel Naidoo do you know what then happened to the two BMW's that were purchased?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair the one – the one vehicle namely the 330 Diesel was handed over to FM24 for use. FM24 is a close associate of General Mdluli and the other 530 Diesel was used by General Mdluli himself. Chair I must add also at this stage General Mdluli already was – or already had two vehicles in his possession – state vehicles – SR vehicles.

10 **CHAIRPERSON:** Now the vehicle the General Mdluli vehicle that we are talking about that you took to initially Mr Venter and later Mr Visser that was his personal car?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair that was a BMW7 Series.

CHAIRPERSON: Now in order for – in order for General Mdluli's personal BMW to have been taken as a trade-in what – General Mdluli would have had to be given a personal car by Leohease, is it not? Because he – if he was trading in his personal car that would mean he is buying another car – another personal car is it not?

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** Chair that is why initially I said let us call it a sale.

CHAIRPERSON: Ja.

COLONEL DHANAJAYA GANGULU NAIDOO: As there was no trade-in because that is initially – that is what it was. Because he was not buying another car. He was basically selling the car off to Leohease

and that would have been the outstanding debt of R90 000.00.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: And then I went to the second part and I say it eventually became a trade-in because there was a trade-in. Crime Intelligence bought two vehicles against that BMW and the outstanding amount was offset against the purchase or rather the purchase of these two vehicles offset the outstanding balance on General Mdluli's car. So that is why I said initially we will call it a sale with no trade-in but it eventually became a trade-in
10 because two vehicles were purchased.

CHAIRPERSON: But I do not understand why General Mdluli would trade in his personal car for the benefit of Crime Intelligence because the other two cars as I understand the position that were bought by Crime Intelligence in this regard related – were going to be – were going to belong to Crime Intelligence.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair no the – no Chair the benefit was not to Crime Intelligence the benefit was for himself because he was selling his car and he still had to settle the debt of R90 000.00 some change.

20 **CHAIRPERSON:** Yes but you are not saying that his car was then to be sold and he was going to get the – any money out of that.

COLONEL DHANAJAYA GANGULU NAIDOO: He did not get any money out of it Chair.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: And I refer back to – let

me go back to where he – I will refer you to 206.

CHAIRPERSON: Page 206?

COLONEL DHANAJAYA GANGULU NAIDOO: Rather paragraph 206.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Where I say I collected a spare key from General Mdluli and he remarked I am giving you the key and I am getting nothing in return.

CHAIRPERSON: You see General Mdluli when his BMW was taken to Leohaese if on his credit agreement with the relevant bank owed a
10 balance of R90 000.00 and he – he arranged that Crime Intelligence should buy two cars but that the discount which should have come to – been given to Crime Intelligence should not be given to Crime Intelligence instead it should be given to him because it should be used to settle his balance with the bank for the BMW. If that is what happened and the BMW remained with Leohaese and became their car then – then – and these other cars were Crime Intelligence official cars it seems to me that he sold the vehicle to Leohaese for R90 000.00 which should have been for the benefit of Crime Intelligence but it was used for his benefit. Am I way off the mark?

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** Chair I am not sure how I explained it.

CHAIRPERSON: Because you see he – you are not saying that he asked for any balance from Leohaese for the vehicle, is it not? You do not know anything about any balance?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair there was – there

was an outstanding balance of R90 000.00.

CHAIRPERSON: No, no I am not talking about that balance.

COLONEL DHANAJAYA GANGULU NAIDOO: Ye Chair.

CHAIRPERSON: You see as I understand the position if I have a car which is still under a bank I cannot sell it to you without the consent of the bank. If I sell it to you without the consent of the bank that agreement is illegal. But the bank can give their consent and if I still owe the bank R90 000.00 and I – the value of the car might not be R90 000.00 it might be R200 000.00 – it might be R150 000.00 so I
10 might then say well you must pay me R150 000.00 and when you pay me that I take R90 000.00 and I pay the bank. But it may be that for XYZ reasons I say to you if you can give me the R90 000.00 that I owe the bank that balance – if you can pay it then that is the – then you can have the car I do not want anything on top of that. I just want to get out of this obligation. You see the ownership of the car gets transferred. So if Leohaese was to keep the vehicle the BMW and the value of the BMW was more than R90 000.00 so it may be that Mdluli – General Mdluli effectively sold the car to Leohaese for R90 000.00 that Leohaese had to pay to the bank. Or am I causing you more
20 confusion? Am I causing you more confusion?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair as I explained...

CHAIRPERSON: I will let Ms Wentzel – maybe she might give clarity.

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair. That is – as I explained that is how I understand this transaction that how it unfolded.

CHAIRPERSON: Yes but if it unfolded the way that I am explaining it

then it might be a misnomer to talk about a trade-in. It might be that it was simply for all intents and purposes a sale. But Crime Intelligence being prejudiced in the process. I think Ms Wentzel is dying to say something so Ms Wentzel you might wish to say something or clarify or ask questions that will bring some clarity?

ADV SUSAN WENTZEL: Yes Chair. Chair the way that I understand it. This transaction can only make sense in the following scenario and Colonel Naidoo you must tell me whether you understand it in the same way or not?

10 **COLONEL DHANAJAYA GANGULU NAIDOO:** Sure.

ADV SUSAN WENTZEL: Very sadly when one buys a brand new vehicle they say the minute you drive it out you immediately lose value on that vehicle. So one is often in a situation where you owe more on a car than you are offered in a sale. So if for instance the amount owing was R600 000.00 on a car but Hertz were only prepared to pay R510 000.00 for the car essentially you are correct Chair an amount of R510 000.00 needed to be paid to General Mdluli who would then pay it to the bank. But it may have been and one does not know whether that happened or whether the R510 000.00 was paid directly to the bank.

20 Because in essence there was no equity in that car at all. So at the end of this transaction there was no equity and in fact there was a R90 000.00 shortfall.

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct.

ADV SUSAN WENTZEL: And so in order to settle that shortfall the discounts on purchases of two new vehicles was offset against that.

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct.

ADV SUSAN WENTZEL: Is that correct?

COLONEL DHANAJAYA GANGULU NAIDOO: That is indeed correct.

CHAIRPERSON: Let us proceed. I think I am not the only one who does not understand what it is. Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair if I may I have given statements to this regard to Colonel Roelofse. He would probably have more insight in his investigations if that would help.

CHAIRPERSON: Yes. Okay.

10 **ADV SUSAN WENTZEL:** Thank you. Colonel Naidoo can we then deal with the discounts given to Crime Intelligence members for the purchase of private vehicles by Nissan Atlantis from page 52 of your witness statement?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair I purchased a vehicle – a private vehicle from Mr Jan Venter of Atlantis Nissan. The discount that I received was R30 000.00.

CHAIRPERSON: .Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: My wife's niece also purchased a vehicle. She also received a discount of R30 000.00

20 Chair.

ADV SUSAN WENTZEL: How did you arrange these discounts?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair I approached General Lazarus this was probably in 2007 and I informed that I wanted to replace my wife's car or trade it in. General Lazarus then directed me to Colonel Barnard and see how he could help me. Colonel Barnard

then said to me that he would speak to Mr Venter to arrange a vehicle for me or if he could arrange a vehicle. Chair what I can remember is that I did eventually or my wife eventually purchased a vehicle Honda Civic from the Honda dealership. It is still within – the Honda dealership is – falls within the wing of Nissan Atlantis it is one of the dealerships that belongs to Nissan Atlantis. It was a Honda Civic and the discount I received on this vehicle was R30 000.00. Chair in the same process that I just explained my wife's niece also purchased a vehicle from Nissan Atlantis and she also received approximately
10 R30 000.00 discount.

ADV SUSAN WENTZEL: And as far as you are aware did General Lazarus also receive discounts for private vehicles from Nissan Atlantis?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair General Lazarus bought two VW Golfs, a Kia Picanto, a Honda CRV, a Nissan Murano, two quad bikes, a scooter and motor bike through Nissan Atlantis. Chair I am not sure what the total discount that he would have received on all of these vehicles that I mentioned.

ADV SUSAN WENTZEL: And then Colonel Naidoo could you deal with
20 the purchase of the CDTI grey Honda Civic by General Mdluli?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair this was also a vehicle from Mr Jan Venter of Nissan Atlantis. Chair this was a 2.2 CDI it was a grey Honda Civic. From what I can recall of this incident Chair this was initially a vehicle that was given to General Mdluli's wife. This is now a private vehicle just to test drive. However the vehicle was

driven by General Mdluli's wife at that stage for a few months. I say this because I remember having a conversation with Colonel Barnard and he told me that he was getting a lot of pressure from Mr Venter because the vehicle was not returned to Mr Venter and there was no payment forthcoming regarding this vehicle. Meaning – simply meaning that this vehicle was being driven by General Mdluli's wife for a few months without paying for it. Chair I do not know if this vehicle was indeed returned to Mr Venter or if it was paid for by General Mdluli or his wife at that stage.

10 **ADV SUSAN WENTZEL:** And did you have any other dealings with that vehicle?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair I recall an incident where General Mdluli asked me to fetch this vehicle from his house and take it to Nissan Atlantis for a service and also on another occasion there was – there was that rim was damaged and there was a few other things that needed attention on the vehicle.

ADV SUSAN WENTZEL: And what happened?

COLONEL DHANAJAYA GANGULU NAIDOO: The total – sorry Ms Wentzel.

20 **ADV SUSAN WENTZEL:** No – yes.

COLONEL DHANAJAYA GANGULU NAIDOO: The total amount for the repairs of that vehicle was R2 485.00. Chair the invoices were shown to me with my signature on it but for the reasons of it these invoices were generated by Company X so it is not annexed.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: So what happened about the invoice?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair...

ADV SUSAN WENTZEL: Who paid that?

COLONEL DHANAJAYA GANGULU NAIDOO: I contacted Colonel Barnard about the payment. Colonel Barnard said that he will deal with it. I am not sure I cannot say for certain that it was paid or if it was paid how it was paid.

ADV SUSAN WENTZEL: Yes and Colonel Naidoo can you then deal with the – your private purchase of a VW Golf R32?

10 **COLONEL DHANAJAYA GANGULU NAIDOO:** Chair this was not a private purchase this was a vehicle that was bought and paid for by the Secret Service Account and subsequently I made use of this particular vehicle. Chair if I can just give you some insight as to how this transaction came about? Chair during 2011 at that stage I was driving a silver Golf GTI which was still in fairly good condition. The kilometres were quite low. It was probably around 40 000 kilometres and it was in good condition. Chair around April or May 2011 I was in the company of Colonel FM11. I remember it very clearly Chair because this was the period where I was off sick from work. I had
20 undergone an operation. It was from the 1 March to the 1 June so I was at home. I remember Colonel FM11 picking me up from home. We – I cannot recall where we were driving to but we were driving in the Boksburg area when we passed a dealership Chair. S4 Auto when I noticed a Golf R32 for sale. Chair I subsequently informed General Lazarus about the vehicle and indicated to him that I wanted to

purchase or rather wanted CI to purchase the vehicle for me to be used as a SR vehicle. Simply meaning Chair I wanted General Lazarus to replace this R32 or rather replace the Golf 6 that I have been driving at that stage with this particular vehicle that I mentioned which was the Golf R32.

CHAIRPERSON: Ja.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair I am not sure if it was – it was still within this period that I was on leave or off sick. Colonel FM11 drove to S4 Auto where I met with General Lazarus and
10 FM12. Chair we inspected the vehicle but that particular vehicle Chair was not in very good condition so that vehicle was not purchased.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Although I informed or Colonel FM11 informed me that he would continue to look for that particular vehicle in another province. He would speak to his contact in Durban to see if his contact could source one there. Chair I am not sure of the time period but I can say that some stage later Colonel FM11 informed me that his contact in Durban had indeed managed to locate a Golf R32. We made arrangements when I say we it was myself
20 and FM11 we made arrangements to fly to Durban or I am not sure if we drove to Durban or flew to Durban but his contact made arrangements for us to inspect this vehicle. Chair the person that I refer to – the contact of FM11 I remember his name as Lalu. I cannot remember or recall his surname chair.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: He informed us that –
pardon me Chair.

CHAIRPERSON: Was it a man or a woman?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair?

CHAIRPERSON: Lalu was it a man or a woman?

COLONEL DHANAJAYA GANGULU NAIDOO: It is a man Chair.

CHAIRPERSON: Okay.

COLONEL DHANAJAYA GANGULU NAIDOO: He informed us that the
owner wanted 240 000 for the Golf R32. After inspecting the vehicle
10 and - and seeing that it was - is - was quite - was quite in good
condition. It was actually in better condition than the one that we had
seen earlier or a few months earlier at S4 Auto.

We - I am not sure if it was me or Colonel FM11 told Lalu that
we were interested and that he should speak to the owner and tell the
owner to keep the vehicle for us and not to sell it. Chair on my return
to Pretoria I informed General Lazarus that FM11 and myself had seen
this particular vehicle and that it was in good condition and it was in
better condition than the one that we had seen previously and that I
wanted it.

20 Chair General Lazarus gave me the go ahead to purchase the
vehicle. With regards to how the purchase or how the transaction
would - would unfold Chair. He asked me to speak to Colonel Barnard.
At that stage Colonel Barnard was Head of the Procurement Section
and he asked me to - to speak to him and see what the best way would
be to - to purchase this particular vehicle.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair before meeting with Colonel Barnard or having a conversation with Colonel Barnard I remember meeting with Colonel FM11. Chair and I suggested to him that - to Colonel FM11 that we inflate the price of the vehicle by R40 000,00. Seeing that the ...

ADV SUSAN WENTZEL: Is it another 40 000? *Ja.*

COLONEL DHANAJAYA GANGULU NAIDOO: Yes. 40 000.

CHAIRPERSON: *Ja.* No. These people liked ...

10 **COLONEL DHANAJAYA GANGULU NAIDOO:** Yes.

CHAIRPERSON: R40 000,00. Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair, I suggested this to FM11 seeing that the previous - the previous vehicle that we had inspected in Johannesburg S4 Auto was selling for 280 000 and the vehicle that we inspected in Durban was in much better condition and it was 40 000 less.

20 So this was my suggestion to - to FM11 to speak to Lalu and that he should speak to the owner and see if he can facilitate that for us. I informed FM11 that I needed extra - the 40 000 extra to pay for some of the renovations that I was undertaking at that stage at my house. Chair Colonel FM11 agreed to check with his contact Lalu to speak to the owner to see if this deal can - could indeed be negotiated.

Chair FM11 subsequently informed me that he did speak - did speak to - to Lalu and the arrangement that we suggested to them could be facilitated. Chair this would be done once the vehicle was

sold and the owner was paid. Colonel FM11 or myself through Lalu would fetch the extra R40 000,00 in cash.

CHAIRPERSON: Huh-uh.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair, I had already previously spoken to Colonel Barnard as to how we would facilitate this deal. Colonel Barnard informed me that we should - it should be done through Nissan Atlantis. Chair at that stage Nissan Atlantis was a supplier to Company X.

The arrangement was that Nissan Atlantis would pay for this
10 vehicle at the full price of R280 000,00 and Company X would be invoiced for this vehicle. So basically what it means is on paper it shows that Company X bought the vehicle from Nissan Atlantis as to oppose to the real owner in Durban.

Chair like I explained whilst this whole process was going on I also started renovations at my - at my house as my wife was going to leave work and we were going to start a business from our home. I remember one afternoon whilst travelling from - from work General Lazarus was with me as I would normally - as he would normally travel with me.

20 He - he asked me how the renovations were going and if I had enough money. It is then I recall Chair that I told General Lazarus it was - I was going to use the money from the sale of the R32 to sort out the renovations. General Lazarus was aware of this transaction Chair and my exact words to him were I am going to jack up the price of the 32 by 40.

Simply meaning Chair, I was going to inflate the price of the R32 by R40 000,00.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair when I told General Lazarus this he was not upset or angry in anyway nor did he reprimand me in anyway. In fact he nodded his head which indicated that he was okay with what I just told him. Chair at a later stage FM11 and I went to Durban and met Lalu at a shopping centre.

I cannot recall the name of the shopping centre. When we
10 arrived there I sat in the car Chair and told Colonel FM11 to go ahead and meet with Lalu. On his return Colonel FM11 handed me a money bag and said it is sorted. This I believe Chair was the money that was the - the inflated price of R40 000,00 on the initial - on the purchase of this specific vehicle.

I did not open or count the money Chair. I told FM11 that he must keep the money with him as he still needed to settle the outstanding modifications done to the car by Lalu. There was some other stuff that was done Chair. I think there was some modifications done to the exhaust and there was - the mags were replaced.

20 I cannot recall exactly but eventually what happened Chair after reconciling all of these payments there was 20 - R25 000,00 left over from the R40 000,00 Chair.

CHAIRPERSON: Huh-uh.

COLONEL DHANAJAYA GANGULU NAIDOO: At that stage when Colonel FM11 was handing me over the - the cash of R25 000,00 he

told me that his washing machine had packed up and that he needed to buy a washing machine. Chair, I gave him R5 000,00 from that - from the - from the amount of 25 and the balance of R20 000,00 I used for the renovations to my house.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Then Colonel Naidoo can you deal with the purchase of airline tickets?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair if I may before I go there. I must also state that it was not normal practice for Crime
10 Intelligence to purchase vehicles from private individuals.

CHAIRPERSON: Yes. Okay.

ADV SUSAN WENTZEL: Thank you Colonel Naidoo. Will you now deal with the purchasing of the airline tickets?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair. Chair when General Mdluli was appointed in 2009 almost immediately Chair he was flying to Cape Town almost every week. Initially I used to take - on instruction of General Lazarus I used to take an advance on my name. Go to the airport and pay for the - for his flight and subsequently hand the air ticket to General Mdluli.

20 Chair this was putting quite some pressure on me because basically this was almost every week that General Mdluli was either flying to Cape Town or he was flying somewhere but most of the trips I remember were to Cape Town.

CHAIRPERSON: Was it like over weekends or during the weekdays or both?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair most - most often it would be from a Friday to a Monday and some instances Thursday to a Sunday or Monday. So - so you correct in saying that it was mostly over weekends.

CHAIRPERSON: Okay.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair, I also recall booking flights for two individuals linked to General Mdluli. Ms T Lyons and E K Lyons. Chair at that stage Ms Lyons was General Mdluli's girlfriend and E K Lyons was her sister. Chair, I also made bookings
10 for - for his two children whose names are known to me but I will not mention them.

CHAIRPERSON: Yes. Yes, continue.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair all of these - all of these bookings for flight tickets were paid out of the Secret Service Account.

CHAIRPERSON: Hm.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair like I mentioned initially it was cash payments that I would take in advance and go and pay for these tickets ...

20 **CHAIRPERSON:** Hm.

COLONEL DHANAJAYA GANGULU NAIDOO: But like I said the - the flights were almost every week.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Eventually arrangements were made to book tickets through Westville Company - Westville

Travel - pardon me Chair. I previously testified to Westville Travel and their role in - with regard to the flight tickets insofar as Crime Intelligence goes. The process was that I would get an instruction from (intervenes).

CHAIRPERSON: Do - do you know - I am sorry. Do you know of any reason why when you were all operating from Gauteng the travel agent in Durban had to be used - Westville Travel Agents?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair this was a contact of FM - FM08 Chair. FM08 was previously based in KZN. He was a
10 Constable there prior to being appointed during the 250 posts ...

CHAIRPERSON: Huh-uh.

COLONEL DHANAJAYA GANGULU NAIDOO: And he was transferred to - to Head Office. So this was FM08's contact. He made use of this particular travel agent while he was based in Durban Chair. So when FM08 relocated to Gauteng he was based at Head Office Crime Intelligence.

We used this contact and I know this person by the name of Mahesh was introduced or - introduced to me by FM08. So in terms of General Mdluli's flights Chair whenever he wanted to fly an instruction
20 of General Lazarus. I would either get the details from General Mdluli himself or via General Lazarus and I would make the bookings telephonically with Mahesh who is a travel agent at Westville Travel.

Chair this was all done telephonically. There was no paperwork for any of these flights ...

CHAIRPERSON: Huh-uh.

COLONEL DHANAJAYA GANGULU NAIDOO: Or approvals or anything to that effect.

CHAIRPERSON: But Westville Travel Agents would have some records?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair, I believe they would.

CHAIRPERSON: I would - for their own purposes they would have kept some records I guess.

COLONEL DHANAJAYA GANGULU NAIDOO: I - I believe they would
10 have records Chair.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Hm.

CHAIRPERSON: But you do not know do you whether as part of his investigation Colonel Roelofse has made contact with them and has their records or part of their records?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair, I previously -
previously testified to an incident where plans were made to - to
destroy evidence regarding the air tickets. Colonel Roelofse would
have documents relating to this particular service provider - Westville
20 Travel.

ADV SUSAN WENTZEL: Colonel Naidoo if - just to clarify this. Was that shortly before you went into witness protection when you had this meeting around the braai area of General Lazarus' house?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair. This was on 19 October 2011. This was two days before I was admitted into the

Witness Protection Program.

ADV SUSAN WENTZEL: And after you had spoken to Colonel Roelofse?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct.

CHAIRPERSON: The - the records that were mentioned in connection with destruction were they records of the Westville Travel Agency?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair but more especially it would be regarding Crime Intelligence.

CHAIRPERSON: Yes. That is what I am talking about insofar as they
10 related to Crime Intelligence.

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: But you do not know whether that was - that plan was carried out?

COLONEL DHANAJAYA GANGULU NAIDOO: No Chair.

CHAIRPERSON: Okay, alright.

ADV SUSAN WENTZEL: Thank you Chair. Colonel Naidoo you say on page 58 of your statement that you know the number of renovations that were carried out using the SSA account on the instruction of General Lazarus. Could you deal with those?

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** Yes Chair that is correct. I know of the following renovations that were carried out with Secret Service Account money. Chair this was an instruction - on the instruction of General Lazarus. Chair and I refer to paragraph 247.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair Nchwe who I

previously - previously testified to receiving a vehicle from Crime Intelligence. Chair she had a burglary at her house. It was in Essexwold Chair in Bedfordview. On - on the instruction of General Lazarus Chair electric fencing, security beams and an alarm system was installed.

I personally know of this because I put in a claim on my name. Chair again R40 000,00.

CHAIRPERSON: (Indistinct) of approximately R40 000,00?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair. I
10 cannot say exactly but if the documents are shown to me I can confirm
but I know that I put in a claim for approximately R40 000,00.

ADV SUSAN WENTZEL: And you said the claim was in your name?

CHAIRPERSON: What was the obsession with R40 000,00?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair, I really do not
know. I think we - once the investigations are done maybe we will have
more insight into these things.

CHAIRPERSON: Was there anything like if it is above R40 000,00
maybe there were certain procedural requirements or certain things to
be done and you have to keep it not more than R40 000,00 or
20 something like that?

COLONEL DHANAJAYA GANGULU NAIDOO: I would be speculating if
I say anything Chair. I am not certain.

CHAIRPERSON: Okay, alright. Yes. Continue.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair 248 - I am also
aware of renovations carried out at the residence of General Mdluli in

Dawn Park in Vosloorus. Chair, he - this also on the instruction of General Lazarus. He had a security overall by installing electric fencing, security beams and an alarm system, new electronic gates, cameras, burglar bars were also purchased.

Chair this was paid out of the SSA. I say this because I personally put in an amount totalling and it is not 40 000 Chair. It is 200 000.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: And again was that claim put in, in your
10 name?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: So do you know whether in some cases even with regard to General Mdluli General Lazarus could just say something like it looks like you know you need some security upgrade in your house? Let us do that or say to you Colonel Naidoo do you not need renovations to be made in your house or do you not need a new car.

Does your wife not need a new car and then things would then be bought on the - with S - with the Secret Service Account money. I mean one - one gets the impression that you know money was
20 just being dished out. Hm.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair that is exactly what happened chair.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Yes. Chair, I also refer to Annexure 13 an application for the - these - as I have mentioned in

paragraph 248 for these renovations or - or security upgrades to be carried out.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair it is very, very unclear. The copy is not very good but this was a document that was authored by myself.

CHAIRPERSON: What page?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair it is page 121.

CHAIRPERSON: 121?

10 **COLONEL DHANAJAYA GANGULU NAIDOO:** That is correct Chair.

CHAIRPERSON: Okay. What document it that?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair regarding what I have just testified to in paragraph 248. It was an application for these upgrades to be carried out.

CHAIRPERSON: At General Mdluli's Dawn Park Residence?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: Okay. So this is - this is an application that you had to make to whom?

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** This was to General Lazarus for his signature.

CHAIRPERSON: Huh-uh.

COLONEL DHANAJAYA GANGULU NAIDOO: His signature is on the bottom as being approved. It was also signed by Colonel Rolebile (?) Chair.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: This document refers to - to the - to the upgrades at General Mdluli's house. It was approved by General Lazarus.

CHAIRPERSON: Did the - did this - did the fact that this was in writing and that it was approved did it make it legitimate or that had nothing to do with its legitimacy? It was just because it had to be done. There had to be some paperwork.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair, I - I believe that there had to be some paperwork just to legitimise this particular
10 transaction ...

CHAIRPERSON: Hm.

COLONEL DHANAJAYA GANGULU NAIDOO: But having said that ...

CHAIRPERSON: Hm.

COLONEL DHANAJAYA GANGULU NAIDOO: I do not know what the policy is regarding security upgrades.

CHAIRPERSON: Well - so you would not know whether General Mdluli was entitled to any security upgrade in his residence at the expense of Crime Intelligence?

COLONEL DHANAJAYA GANGULU NAIDOO: I cannot be certain Chair.

20 **CHAIRPERSON:** Yes, okay. Continue.

ADV SUSAN WENTZEL: Yes Colonel Naidoo which other upgrades ...

CHAIRPERSON: Well I am sorry we are at five past one but I think we are close to finishing.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: So I think let us just go on and finish and then ...

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: We can take - adjourn for the day.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: *Ja*, okay. Is that fine with you Colonel Naidoo?

COLONEL DHANAJAYA GANGULU NAIDOO: That is fine Chair.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Colonel Naidoo could you then deal with the renovations that were carried out to Minister Nathi Mthethwa's property?

- 10 **COLONEL DHANAJAYA GANGULU NAIDOO:** Yes Chair, I was personally involved in this transaction. I was informed by General Lazarus that we needed to do some upgrades at the Minister's house. Chair, I am not sure where this instruction came from but with regards to myself it came from General Lazarus to me.

Chair this was to put up a boundary wall. This was at the Minister's house.

CHAIRPERSON: I am sorry. I think I have - I thought you were going to 2-4-9. You have gone beyond that hey. Was 2-4-9 taken care of?

COLONEL DHANAJAYA GANGULU NAIDOO: We are at 2-5 ...

- 20 **ADV SUSAN WENTZEL:** Yes. It was.

CHAIRPERSON: Okay. Are you ...?

ADV SUSAN WENTZEL: It deals with that annexure that was so badly ...

CHAIRPERSON: Oh, okay. Are you at 2-5-1 now?

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Okay, alright. Yes continue.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair, I was given instruction by General Lazarus. Chair, I - I just want to correct this 2-5-1 and I am going to read it.

“General Lazarus informed me that I received an - that he had received an instruction from General Mdluli who had received an instruction from Minister Mthethwa.”

Chair, I - I am not sure about that. I - I can say that I
10 received an instruction from General Lazarus and he received an instruction from General Mdluli. This part I am not sure of.

CHAIRPERSON: He did not say to you that General Mdluli had received an instruction from the Minister?

COLONEL DHANAJAYA GANGULU NAIDOO: No Chair.

CHAIRPERSON: Okay. So this was an error on your part?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: Okay.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair ...

CHAIRPERSON: Yes and the instruction from General Mdluli according
20 to General Lazarus ...

COLONEL DHANAJAYA GANGULU NAIDOO: General Lazarus.

CHAIRPERSON: Was?

COLONEL DHANAJAYA GANGULU NAIDOO: That arrangements be made for the construction of a boundary wall Chair. This was on the - for - or rather on the perimeter of - of the residence of

Minister Nathi Mthethwa. Chair this was in KwaMbonambi in KwaZulu-Natal.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair, I know where the premises is because I had previously gone there. We flew to - to KwaZulu-Natal Chair and I say we. I refer to General Mdluli and myself. He was having a meeting with Minister Mthethwa and I had - drove him there to this particular premises.

CHAIRPERSON: Yes.

10 **COLONEL DHANAJAYA GANGULU NAIDOO:** So I know where the premises is.

CHAIRPERSON: Yes, okay.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair subsequently made on the instruction of General Lazarus I travelled with FM09 to the Minister's property to meet with another agent. Chair this is FM46. This was the agent who was going to oversee this project at the Minister's house.

ADV SUSAN WENTZEL: And so did you fly ...

CHAIRPERSON: That is MF - I am sorry. FM46?

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** That is correct Chair.

CHAIRPERSON: Okay. Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: FM46 and I flew to Durban with FM09 ...

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: To meet with FM46.

CHAIRPERSON: Huh-uh. Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair this was purely to familiarise FM46 as to where the property was and what needed to be done.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair, I am - I am not sure on this occasion. General Lazarus accompanied us or on the second occasion but what I can say was when the project did start I remember having a conversation with General Mdluli and he said to me
10 the Minister wanted to know why we are taking so long with the project.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair what I understood to be is that the Minister inquired from General Mdluli why we as in Crime Intelligence is taking so long with the project.

CHAIRPERSON: *Ja.*

COLONEL DHANAJAYA GANGULU NAIDOO: Chair, I informed General Lazarus about the conversation that I had with General Mdluli. We made arrangements to fly to - to KwaZulu-Natal. Drove to KwaMbonambi to meet with FM46. This was myself, General Lazarus
20 and FM09.

Chair Minister Mthethwa's - his concerns I would say was indeed correct because there was hardly any work done. I think there were just a few trenches that were - that were dug.

CHAIRPERSON: I am sorry. I must have missed something. Concerns arising out of?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair with regards to the progress of the project Chair. It was taking too long.

CHAIRPERSON: Oh, you mean the concerns about the delay?

COLONEL DHANAJAYA GANGULU NAIDOO: That is - that - that is correct Chair because this - this trip came about - the conversation that I had with General Mdluli the Minister inquired from him why we - why the project was taking so long. This trip that I undertook with General Lazarus and FM09 came about from the conversation that I had with General Mdluli regarding the - the delay in the project or the
10 progress of the project.

We flew to Durban. Met with FM46 and as I said Chair indeed the - the progress was quite slow. It was very slow in fact. There was just a few trenches done. In that conversation or in that meeting General Lazarus put pressure on FM46 to expedite the project. Chair the arrangement for - for payment for this whole project at the Minister's property I remember putting in three claims Chair.

It was over a period of a few months. I cannot remember the exact - the exact figure but it was just under R200 000,00. If the claims are shown to me Chair, I can confirm that it is my signature ...

20 **CHAIRPERSON:** Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: And it was for that particular project.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: So again Colonel Naidoo the claims were put in under your name?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: Those claims would relate to - that is to get money to buy - buy material and to pay for labour?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair that money was paid for - for labour, building material and other related expenses that were needed.

CHAIRPERSON: Travelling?

COLONEL DHANAJAYA GANGULU NAIDOO: Not so much travelling
Chair because this was an agent. He had a vehicle. He was making
10 use of an SR vehicle at that stage. So there was no travelling cost. It
was purely building related costs.

CHAIRPERSON: So the actual building of the wall was undertaken by an agent?

COLONEL DHANAJAYA GANGULU NAIDOO: The - the agent oversaw this project Chair.

CHAIRPERSON: Oh.

COLONEL DHANAJAYA GANGULU NAIDOO: Yes that is correct.

CHAIRPERSON: Oh, he oversaw the project ...

COLONEL DHANAJAYA GANGULU NAIDOO: That is ...

20 **CHAIRPERSON:** But did not necessarily do the actual building of the wall?

COLONEL DHANAJAYA GANGULU NAIDOO: No Chair. There were local ...

CHAIRPERSON: He got somebody else to do that?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

There were local - local contractors ...

CHAIRPERSON: Contractors.

COLONEL DHANAJAYA GANGULU NAIDOO: Hired to do this particular work.

CHAIRPERSON: Okay. Okay. What - did the - the wall that or the wall that was built did it go right round the house or there was another wall and there was maybe one side or two sides that did not have a wall or what was the position?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair it was a perimeter -
10 it should have been perimeter wall. I am not certain Chair because I cannot comment because I - I did not go back to KwaMbonambi after this meeting that we had with the agent. So I cannot say for certain.

CHAIRPERSON: But when you went there before - before the wall was built was there a wall that was there already. Either going right round the house or was there no wall at all or was there a wall that covered one side of the house and not other sides?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair if I can remember correctly when you enter the premises there were two pillars on the entrance, and if I can recall correctly there was fencing Chair, wire
20 fencing.

CHAIRPERSON: Wire fencing?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: Okay, alright. Yes continue.

ADV SUSAN WENTZEL: Colonel Naidoo under the heading miscellaneous do you have personal knowledge of what is stated in

your statement under that heading?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair I referred to paragraph 253, I remember having a conversation with FM46, Chair this was around the time that preparations were undertaken for Mr Marimuthu's birthday party in KZN. Chair FM46 complained to me that the demands from Mr Marimuthu were increasing and that the bill was escalating. This is the conversation that I had with FM46 Chair.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: And the further things stated?

10 **COLONEL DHANAJAYA GANGULU NAIDOO:** This is the conversation I can recall Chair with FM46.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: I'm sorry, where are you now Ms Wentzel?

ADV SUSAN WENTZEL: On page 60, paragraph 253 onwards.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: The other events do you have personal knowledge of them stated the?

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** Chair I also had a conversation with General Lazarus, I cannot remember the time period where he informed me that General Bheki Cele allowed him to use money from the Secret Service Account to pay for his attorney's fees. Chair this was a time when General Lazarus was being investigated by the Hawks. At that stage General Mdluli was suspended.

CHAIRPERSON: So just repeat that?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair like I said I

remember having a conversation with General Lazarus where he informed me General Bheki Cele allowed him to use money from the Secret Service account to pay for his attorneys fees. Chair this was when the Hawks was investigating General Lazarus and at that stage General Bheki Cele was a National Commissioner.

CHAIRPERSON: Yes. And General Lazarus said General Cele gave him permission to use the Secret Service Account funds to pay for his, that is General Lazarus' attorneys fees.

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

10 **CHAIRPERSON:** Okay.

ADV SUSAN WENTZEL: Thank you. Colonel Naidoo could you tell the Chair whether you submitted false claims for your own benefit during the time that you were employed at Crime Intelligence?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair, like I testified to earlier in my statement or in my testimony it was probably around R100 000 Chair, I cannot be sure, it might be more than that, but like I said I will only confirm when the claims are shown to me.

CHAIRPERSON: Yes.

20 **ADV SUSAN WENTZEL:** Now Colonel Naidoo after you were placed in witness protection did you testify at disciplinary proceedings brought by the South African Police Services against General Lazarus in March 2013?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair in 2013 on behalf of the police I was a witness in the disciplinary proceedings of General Lazarus, Chair if I – of what I understand he was subsequently

dismissed from the police.

ADV SUSAN WENTZEL: And could you tell the Chair what occurred at those proceedings?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair during that proceedings Chair I was accused or rather let me put it ...[intervenes]

CHAIRPERSON: Well let us start with what were the charges that General Lazarus was facing, you do not have necessarily to – I do not expect you necessarily to be exact in terms of how they were termed but in terms of substance what, as far as you know what charges was

10 he facing?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair it was a few incidents regarding his conduct while the CFO of the Secret Service Account Chair, I cannot remember the exact charges but one was for the safe house that he lived in while he was renovating his house.

CHAIRPERSON: Did some of the allegations relate to matters that you have covered in your evidence in this Commission relating to the ...[intervenes]

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair, yes Chair, if I can remember correctly it was.

20 **CHAIRPERSON:** Yes, okay so was it fraud related, corruption related allegations?

ADV SUSAN WENTZEL: That is correct Chair.

CHAIRPERSON: Yes okay and you say he was found guilty and was dismissed?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: Okay and you were about to say something about yourself. You gave evidence in that disciplinary inquiry?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: Okay, was your evidence – were the allegations based to a very large extent on your evidence or is that something that you are unable to say?

COLONEL DHANAJAYA GANGULU NAIDOO: It is a few matters that I have covered already in my testimony Chair.

CHAIRPERSON: Yes, yes, so – but what I mean is your evidence was
10 as far as you know quite important for the disciplinary inquiry, or is that something you do not know?

COLONEL DHANAJAYA GANGULU NAIDOO: I would believe Chair, I am not sure the actual, what was the actual outcome or the – on what grounds General Lazarus was dismissed, I do not have the detail.

CHAIRPERSON: Oh, you do not know what he was dismissed for?

COLONEL DHANAJAYA GANGULU NAIDOO: No Chair.

CHAIRPERSON: You do not know the outcome of that disciplinary process?

COLONEL DHANAJAYA GANGULU NAIDOO: I know that he was
20 dismissed from the police Chair but I do not know the circumstances on which charges he was found guilty.

CHAIRPERSON: Yes but do you know whether his dismissal emanated from the disciplinary inquiry in which you testified?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair.

CHAIRPERSON: Ja, what you do not know is which of the charges he

may have been found guilty of?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: Yes, but the dismissal followed the disciplinary hearing in which you testified?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: Okay, alright, Ms Wentzel?

ADV SUSAN WENTZEL: What transpired at that disciplinary inquiry Colonel Naidoo?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair ...[intervenes]

10 **CHAIRPERSON:** You might wish to formulate your question much more narrowly because I think I know what you are looking for, but if you put it like that you are inviting him to tell us everything about that inquiry.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: *Ja*.

ADV SUSAN WENTZEL: Thank you Chair. Colonel Naidoo did something ...[intervenes]

CHAIRPERSON: Well let me put it for you. Did you ever get a chance subsequent to that disciplinary inquiry to know the findings that were made by the Chairperson of that inquiry, either in – *ja* in writing, did
20 you ever get to know his ruling or his decision and the reasons that he gave for his decision?

COLONEL DHANAJAYA GANGULU NAIDOO: No I was not privy to that Chair. I have not seen any document.

CHAIRPERSON: As you speak today have you been given that document in preparation for this – in preparation for your evidence in

this Commission?

COLONEL DHANAJAYA GANGULU NAIDOO: No Chair.

CHAIRPERSON: Okay, well Ms Wentzel might have something to say about that.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Mmm, how come?

ADV SUSAN WENTZEL: Chair it was in doubt by him, we have subsequent to obtaining, to preparing the statement I believe that because Advocate Pretorius was involved in this disciplinary inquiry
10 that now that document has become available to the Commission, and it can be dealt with, with him, but it has not been dealt with with him.

CHAIRPERSON: Yes, but how can it be dealt with him now without him having had a chance to read the ruling and understand exactly what it says and how it affects him.

ADV SUSAN WENTZEL: He ...[intervenes]

CHAIRPERSON: It could have been given to him even last week.

ADV SUSAN WENTZEL: Yes, it could have.

CHAIRPERSON: As I understand it the – you or Mr Petersen you were aware of it at the time of even before Colonel Roelofse gave evidence.

20 **ADV SUSAN WENTZEL:** Yes ...[intervenes]

CHAIRPERSON: So it could have been given to him then to read and understand and he could have been told that he would be asked about it.

ADV SUSAN WENTZEL: Yes, Chair to clarify what was not dealt with was going through the entire transcript, but what was certainly dealt

with with him were the findings that Mr Pretorius made about him and his credibility.

CHAIRPERSON: That was brought to his attention?

ADV SUSAN WENTZEL: That was brought to his attention?

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: And it was brought to his attention in the context of the *in camera* application, and Chair you will remember that in that context Minister Cele's counsel had said that this should not be heard *in camera* and that he is not a credible witness, Colonel Naidoo,
10 and he was shown what Mr Pretorius had said, and that was ...[intervenes]

CHAIRPERSON: But was he not given the whole ruling to read?

ADV SUSAN WENTZEL: He was shown the ruling that we had ...[intervenes]

CHAIRPERSON: He was shown but not given to take home and read?

ADV SUSAN WENTZEL: No not to take home and read.

CHAIRPERSON: Why not?

ADV SUSAN WENTZEL: Chair because we dealt with it during the course of the consultation and we ...[intervenes]

20 **CHAIRPERSON:** Yes, but I am saying it is only fair that he should have a copy especially if certain findings were made that are adverse to him and – because that maybe may come up, it is only fair that he should have the benefit of reading the whole ruling.

ADV SUSAN WENTZEL: Yes Chair, I understand that and I appreciate that, and I was not going to deal at this stage with that in any more

detail than to give him an opportunity, which we have discussed, and which he very much wants to deal with, that finding that was made against him and he has comments that he would like to make on that.

CHAIRPERSON: *Ja* I am concerned about giving him an opportunity to comment on that in circumstances where he has not had the benefit of reading the whole ruling, that is my concern, and I do not know if he appreciates the disadvantage that he may be putting himself under if he wants to comment on part of the ruling without reading the whole ruling, and the reasons.

10 **ADV SUSAN WENTZEL:** Yes Chair. Chair I understand that difficulty, I did contemplate that after Colonel Naidoo's evidence there would be a number of applications to cross-examine Colonel Naidoo, We have already had communication at the Commission with a number of people stating that they would like to cross-examine him and I viewed that this is an issue that would have been dealt with properly during that cross-examination, if it were to be granted.

What I wanted to put to Colonel Naidoo at this point is that he is aware that because he admitted to wrongdoing, in the Commission himself, Mr Pretorius found that this was a man who on his own version

20 ...[intervenes]

CHAIRPERSON: *Ja*, but that is my point, why must you even deal with that before you give him a chance to read the whole judgment. It is only fair.

ADV SUSAN WENTZEL: Yes Chair.

CHAIRPERSON: Yes, why don't you say you give him the judgment,

the ruling, he reads the whole ruling, then you say after that I want to put certain questions to you, then he can comment with a full understanding of the context.

ADV SUSAN WENTZEL: Chair the – if I might try and explain to you what happened is I met with Colonel Naidoo, and we spent a long time together and we went through this whole aspect, we went through the whole ruling together. I did not give it to him and say go away with it and read ...[intervenes]

CHAIRPERSON: So he has read the whole judgment, the whole ruling?

10 **ADV SUSAN WENTZEL:** I understand that we went through that whole process but can I just deal with it?

CHAIRPERSON: Okay, hang on, Colonel Naidoo?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes Chair.

CHAIRPERSON: You understand the exchange that I have been having with Ms Wentzel?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair I can't remember reading the judgment Chair.

CHAIRPERSON: Yes, but I am asking you whether you have been following the exchange between myself and Ms Wentzel?

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** Yes Chair.

CHAIRPERSON: Are you happy to be asked questions on aspects, on whatever aspects that Ms Wentzel wants to ask you to comment on without having had the benefit of reading the whole ruling first?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair this is not regarding the actual transcript as *per se* in totality I would just like to

10 speak on one aspect or incident that occurred during this proceedings
Chair, so it's not going to put me at a disadvantage...[intervenes].

CHAIRPERSON: Ja but why must you speak about this piecemeal,
are you not going to want to deal later with other aspects of the ruling?

ADV SUSAN WENTZEL: Chair perhaps what we could do is, if we
could adjourn now and I can give Colonel Naidoo the whole ruling, he
can have an opportunity to go through it...[intervenes].

CHAIRPERSON: No, no, no I'm not happy about this. Give Colonel
Naidoo the whole ruling, he must have a chance to read it properly, he
10 might not appreciate certain things, he might be in a rush to comment
on things without reading it. He must be given the opportunity to read
the whole ruling properly and then at some stage or another he can
then deal with it. Deal with any aspect of the ruling and not piecemeal
so – and as I say he should have been given a copy, his own copy to
read at his own time...[intervenes].

ADV SUSAN WENTZEL: Yes I appreciate that.

CHAIRPERSON: Long before today so I don't want to allow any
question relating to the ruling.

ADV SUSAN WENTZEL: Yes.

20 **CHAIRPERSON:** That may relate to any adverse finding made against
him until he has had – he has read the whole ruling.

ADV SUSAN WENTZEL: Yes Chair.

CHAIRPERSON: And in terms of when he may be asked there is, I
think, no reason why we should then now adjourn for a short time to
read that and we come back. I think he can be given a full copy, if you

have got no other questions, if you've got other questions outside of the ruling you can ask him and we can finish for the day otherwise if and when anybody is granted leave to cross-examine him then he can come back and before he is cross-examined he can be asked questions on whatever you wanted to ask him. He can deal with any questions having fully read the ruling, I think that is how we should deal with it.

ADV SUSAN WENTZEL: Yes Chair.

CHAIRPERSON: Ja you understand Colonel Naidoo?

COLONEL DHANAJAYA GANGULU NAIDOO: Yes I understand Chair.

10 **CHAIRPERSON:** Yes so before anybody will be able to say, but such and such an adverse finding was made against you, he must have had a chance to read the whole ruling and be ready to deal with any question.

ADV SUSAN WENTZEL: Yes Chair.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Chair I don't intend to ask question directly about the ruling. Colonel Naidoo I want to deal with you with what it's been like for you to be in witness protection but before we do that, I think that there is an issue that the Chair would like to understand and indeed the public would very much like to understand and that is, why
20 when – after you had first been questioned by Colonel Roelofse on the 18th, I think it was, of October...[intervenes].

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct.

ADV SUSAN WENTZEL: Why did you say that on the 19th, despite your own involvement in this wrongdoing did you decide to tell him everything that you knew including about your own wrongdoing?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair, this might take a few moments if I may.

CHAIRPERSON: Ja that's fine.

COLONEL DHANAJAYA GANGULU NAIDOO: It's not just a straightforward answer. Chair when I was appointed at Crime Intelligence initially in 2002 over the next few years Chair I became quite close to General Lazarus and over the next further few years I became his close confidant, well established within his inner circle and to an extent involved in the web of corruption that he had already
10 established. Chair I spoke of the relationship with Mr Marimuthu and General Lazarus, how he came into the picture. Chair when Mr Marimuthu or rather when General Lazarus established a relationship with Mr Marimuthu the abuse and the extravagance regarding the Secret Service Account just went to another level. Chair all of these things started to affect me personally, knowing what was going on. I remember two months before being placed in witness protection, on two occasions I came home and my wife noticed that I was not myself and she asked me what was going on. Chair without giving any detail I said there's stuff that is going on at work which is not right and I don't know
20 what to do...[intervenes].

CHAIRPERSON: I'm sorry just repeat that sentence?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair I explained to my wife – my wife picked up that I was not myself and we had a discussion, Chair without giving any detail to my wife as to what exactly what is going on at work, I told her that there are things that are going on that

is not right and I don't know what to do about it.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair at that stage, if I remember correctly my wife told me that I need to speak out or I need to leave that unit and get a transfer. Chair like I said I was well established within General Lazarus' inner circle taking a transfer would not be an option for me at that stage, it would arouse suspicion as to why I'm transferring out of the unit. So at that stage a transfer was not an option for me Chair and then this came around where I was
10 interviewed by the Hawks on the 18th. Chair like I testified to earlier whatever questions were put to me on the 18th I answered all questions honestly but I was hesitant simply because I could not trust them because as I've testified to I've implicated numerous people, serious corruptions or allegations of corruption so I didn't know if I could trust them. Chair on the 18th after being interviewed by the Hawks [indistinct] and Roelofse and Colonel Viljoen I had another discussion with my wife and explained to her the events of the day and Chair it was actually my wife who convinced me – it was my wife who convinced me to come clean Chair and on the 19th of October, on my own accord I
20 disclosed all the allegations of criminality taking place within Crime Intelligence including myself. Chair there was a version put forward that I only did this because I wanted a secure deal for myself to avoid prosecution. Chair this is totally untrue, on the 19th I went there by myself, I didn't have any legal representative, I made admissions incriminating myself with the prospect of being arrested myself.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: So this is totally untrue Chair, in fact after giving all of this information to Colonel Roelofse on the 19th, he was very frank and he was very honest with me, he said, you know I can't say there's nothing going to happen to you there's no deal for you. Chair, however, he said he will speak to the prosecutor and see what he can do. Chair on the 25th of October 2011 this was my first, if I can call it my blanket affidavit which I deposed to, to Colonel Viljoen. In that statement or affidavit, I did say that I would like to be
10 treated as a section 204 witness.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair that process still has to unfold in the Courts and a decision has to be made. So the notion or suggestion that I only came forward with all of this to get a deal for myself to avoid prosecution is totally untrue Chair.

CHAIRPERSON: So the position is that you appreciate that you have no immunity from prosecution as things stand and that you may well be charged but you may well not be charged. You are ready to face any consequences of your own actions?

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** That is correct Chair.

CHAIRPERSON: Ja okay, yes.

ADV SUSAN WENTZEL: Colonel Naidoo is it correct though when you made your statement on the 25th of October, you did say you wanted to be treated as a Section 204 witness?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct.

ADV SUSAN WENTZEL: And in the subsequent affidavits that you have deposed to, as requested by the Hawks are those affidavits given by you on the basis that you would be treated as a 204 witness?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: Does that mean that they – the Hawks have made the decision that from their part they will treat you as such a witness?

COLONEL DHANAJAYA GANGULU NAIDOO: That is what I'm given to understand Chair.

CHAIRPERSON: Yes okay but before that decision was taken you had
10 no guarantee for anything?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: So Colonel Naidoo if I understand you correctly what you are emphasising is that when you essentially came clean on the 19th of October at that stage there was no decision offered to you or taken in terms of which you would receive immunity from prosecution yourself?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct.

CHAIRPERSON: And you were making the point earlier that you
20 didn't even go and get your own lawyer to assist you and guide you and – so that you could have some legal protection. You went to meet with the Hawks on your own without a lawyer?

COLONEL DHANAJAYA GANGULU NAIDOO: That is correct Chair, over the two days of the 18th and the 19th Chair, there was no subpoena for me to present myself to the Hawks, I went there willingly, it was a

request for me to be interviewed. So there was no obligation on myself to present myself.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: I went there willingly Chair.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: And on the 19th as I explained having made the decision and settled within myself already the previous night that I was going to disclose all information that I was
10 privy or had personal knowledge of regarding criminality within Crime Intelligence, I'd already made that decision the previous night and still presented myself on the 19th without any legal representative, knowing well that I could have well be arrested myself, that is my position Chair.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: Thank you, Colonel Naidoo could you please tell the Chair what it has been like for you to be in witness protection?

COLONEL DHANAJAYA GANGULU NAIDOO: Chair before I go there, if I can just say this as well.

CHAIRPERSON: Yes.

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** My testimony has been quite extensive I've touched on numerous incidents.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: I've implicated numerous people, Chair insofar as where I was personally involved and had personal knowledge, Chair I'm prepared to avail myself for a polygraph

test and for the results of that test be placed on record before this Commission.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair regarding witness protection I cannot go into much detail but Chair it has been difficult. It has been extremely difficult.

CHAIRPERSON: Both to you and your family.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair next – next month will be eight years.

10 **CHAIRPERSON:** Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: That I will be in witness protection.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: It has been extremely difficult Chair especially the first few years.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: My children basically grew up.

CHAIRPERSON: Yes.

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** They have spent their prime years in witness protection. Our situation is very fluid Chair. We live our lives on a month to month basis. We cannot make plans further than a month. So I am hoping Chair that me coming and testifying before this commission it will give some urgency to the processes that are outstanding be it the declassification of documents or other

information that has not been forthcoming.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: So I am hoping that something positive comes out of me testifying at this commission.

CHAIRPERSON: Yes. Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: Chair lastly if I may?

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: During my time at Crime Intelligence I made decisions that – that I deeply regret Chair.

10 **CHAIRPERSON:** Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: And I am truly sorry

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: I am sorry for my actions.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: And I humbly apologise Chair.

CHAIRPERSON: Yes.

20 **COLONEL DHANAJAYA GANGULU NAIDOO:** Here I also want to thank you for allowing me to come and share what I know. Extend my appreciation to you and the commission Chair.

CHAIRPERSON: Yes.

COLONEL DHANAJAYA GANGULU NAIDOO: I thank you.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: Thank you Chair I...

CHAIRPERSON: Thank you.

ADV SUSAN WENTZEL: I have no further questions.

CHAIRPERSON: You have no further questions.

ADV SUSAN WENTZEL: No.

CHAIRPERSON: Thank you very much Colonel Naidoo. I have no idea what it must be like to be in witness protection – in a witness protection program. I have no idea what it must be like to have your whole family in a witness protection program for one year. I have no idea how it must be like to have your whole family, your wife and your children in a
10 witness protection program for seven or eight years. I understand that when you are in a witness protection program your freedom of movement is very limited and you live a life that is very unlike the life you would have lived before going into such a program. So it must really be quite difficult. I must thank you Colonel Naidoo for coming forward to give evidence to the commission. Persons who are implicated by you in your evidence will have opportunities to apply for Leave to cross-examine you and will have opportunities to apply to give evidence themselves. I do not know what conclusions I will reach later in the work of the commission when I look at your evidence as well as
20 the evidence of those who are implicated in your evidence. But I do think that it was important that if you believed that you had been party to various acts of criminality and corruption involving tax payers money that you spoke to the Hawks and placed before them what you believed were the facts and in that way you may have helped in us understanding what may have been going on in Crime Intelligence and

it may be that all of this will also help in measures being taken to avoid criminality happening within Crime Intelligence particularly with regard to the Secret Service Account and society does need people who will give cooperation to law enforcement agencies when there are suspicions of criminality particularly with corruption which has reached very unacceptable levels in our country. And without some of the people in society making decisions to tell the authorities about wrongs that may be happening not much can be done. So I just want you to know that I think I do have an appreciation that what you and your family must have gone through over the past seven/eight years could not have been easy and must have been difficult. And I want you to know and your family to know that I really appreciate and the commission appreciates the sacrifices that you may have done in order to try and share with the nation what you believe are the facts of what happened. As I say other people will come forward and will put what they believe are the facts and in due course I will make findings but I appreciate very much that you made yourself available and we probably will ask you to come back because you also might need to deal with certain aspects relating to the ruling. But there is some further investigation that needs to be conducted in regard to some of the aspects of your affidavit. Those where you also felt that more investigation needed to be done before you could deal with them because you were not sure of the facts in regard to those – so – but thank you very much for coming to share with the commission and with the nation what you know in terms of what has been happening or what

happened in Crime Intelligence. I have already asked the Head of the legal team of the commission to be in touch with relevant authorities with a view to getting finality on the issue of the declassification of documents that may be important for some of the allegations that you have dealt with and that Colonel Roelofse dealt with as well. But thank you very much Colonel Naidoo we appreciate your having come forward.

COLONEL DHANAJAYA GANGULU NAIDOO: Thank you Chair.

CHAIRPERSON: Yes. We are therefore going to adjourn the
10 proceedings for the day and the legal team will be in touch with you
Colonel Naidoo in regard to the other matters and also in due course
when you may have to come back. Tomorrow the commission is
scheduled to hear the remaining evidence of Mr Thabethe the former
Head of Department of the Department of Agriculture in the Free State.
That is scheduled for tomorrow and Friday because he did not finish his
evidence. But we will not be able to start in the morning because
tomorrow the judiciary will be – will be accounting to the nation with
regard to its activities and that will be happening at the Constitutional
Court. The Chief Justice will be doing that and I need to be there for
20 the morning. So we will start here tomorrow at two to then hear the
further evidence of Mr Thabethe. I thought I must mention that so that
those who might need to be here they know that we will only start at
two. We will then adjourn for today. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 3 OCTOBER 2019