

**COMMISSION OF INQUIRY INTO STATE CAPTURE**  
**HELD AT**  
**CITY OF JOHANNESBURG OLD COUNCIL CHAMBER**  
**158 CIVIC BOULEVARD, BRAAMFONTEIN**

**11 AUGUST 2020**

**DAY 248**



**Gauteng Transcribers**  
Recording & Transcriptions

22 Woodlands Drive  
Irene Woods, Centurion  
TEL: 012 941 0587 FAX: 086 742 7088  
MOBILE: 066 513 1757  
[info@gautengtranscribers.co.za](mailto:info@gautengtranscribers.co.za)

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 11 AUGUST 2020**

**ADV HULLEY SC:** Of the – of the commission those affidavits place in context the substantial documents that were obtained from – from MTN relating to the – the location of certain important witnesses related to the evidence of Mr Van Rooyen.

There is also a Public Protector's Report that became available to – to me during the latter course of yesterday that we have included in the bundle as well and I  
10 have discussed the matter with my learned friend for Mr Van Rooyen but he would prefer to address you directly on both those issues i.e. the attitude towards the affidavits and the additional documentation that has come in during the latter course of yesterday as well as on the – the address relating to the order of proceedings.

During the latter part of last week Mr Chair, we also gave notice to some of the witnesses whose names will be mentioned this morning or during the course of today's proceedings including Mr Bobat and Mr Whitley. I  
20 understand that Mr Whitley is in fact represented by the same firm of attorneys as Mr Van Rooyen and I understand that Mr Bobat has an attorney present this morning a certain Mr Krause of BDK Attorneys.

As it pleases Your Worship – Mr Chair.

**CHAIRPERSON:** Thank you.

**ADV MASUKU SC:** Morning Deputy Justice.

**CHAIRPERSON:** Good morning, good morning, good morning.

**ADV MASUKU SC:** Together with Mr Mathipa we appear for Mr Van Rooyen on the instructions of Lucky Thekisho Attorneys.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** Chief Justice we – sorry Deputy Chief Justice we did think this would be a matter that occupies  
10 any of your time but we are informed that we have a right to cross-examine a witness who implicated our client. You recall that there is a ruling in terms of which Mr Van Rooyen was given that right so the evidence of Mr Fuzile is incomplete until my client has had the opportunity to cross-examine him on the issues that he testified in respect of their interaction. It is quite unusual to have a cross-examination done in the manner that my learned friend suggests and there are two reasons for it.

The first one is something I would have thought  
20 would dispose of this issue quite quickly. On the 8 February 2019 this commission addressed a letter to our attorneys in which it is clearly – it was made perfectly clear that the process – the sequence is going to be as we always – as we all know cross-examination and then the leading of the witness not the other way around.

So that letter...

**CHAIRPERSON:** Have you got a copy of that letter by any chance?

**ADV MASUKU SC:** Yes I...

**CHAIRPERSON:** Other than your own copy?

**ADV MASUKU SC:** I am happy to – my...

**CHAIRPERSON:** If there is a spare copy.

**ADV MASUKU SC:** My attorney has got a copy of that letter.

10 **CHAIRPERSON:** Hm.

**ADV MASUKU SC:** If I may just be – while the...

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** I can read it.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** It says:

“We refer to two applications submitted to the commission on the 30 January 2019. The legal team has decided not to oppose your application for condonation your application to testify – to testify and cross-examine Mr Fuzile. This  
20 decision will be communicated to the Chairperson and he will be requested to decide the application without hearing any oral submissions. The evidence of Mr Fuzile and Mr Magojane is scheduled for the 18<sup>th</sup> and 19<sup>th</sup> February 2019. It will be convenient to cross-examine Mr Fuzile immediately after he completes his evidence thereafter you

must testify and be cross-examined – you must testify and be cross-examined as soon as you complete your evidence. The approach will ensure the smooth running of the work of the commission. You are accordingly required to – requested to indicate the proposed duration of cross-examination as this is a matter of – for that Chairperson must decide as soon as possible. In view of the legal team is that one hour will be sufficient for cross-examination for Mr Fuzile.”

10           And we agree that one hour would...

**CHAIRPERSON:** Sorry Mr Masuku let me just read it. Yes continue.

**ADV MASUKU SC:** Thank you. And then on the – just when we were preparing to come to this commission on the 24 July 2020, we addressed a letter to the commission in which we sought to ask – just to confirm that the procedure is as we always understood it would be. And we said we are writing this letter to seek your confirmation that as it is normal practice the order of the day shall be as following:

20           We as the legal representatives of our client will cross-examine Mr Fuzile first. After the cross-examination of Mr Fuzile has been completed it is then that our client will testify and be asked questions. Please confirm that this is – this will be the – this will indeed be the order of the day?

And of course, we got the response that that is not the order of the day. That will not be the order of the day that the order of the day will in fact be that Mr Van Rooyen will testify first and then Mr Fuzile will be cross-examined thereafter.

We then checked the rules of the commission to ascertain what the procedural justification for this unusual procedure is and we could find none in the rules of the – in the Rules of the Commission.

10           What regulation – what rule number 8 says is:  
“That the order and sequence in which witnesses will be called before the commission will be subject to the discretion of the Chairperson.”

I specifically asked my learned friend yesterday whether he had obtained a directive from the Chairperson regarding the procedure that he was indicating would apply to today and his answer was no and that is why we are addressing you now.

20           And then he said – then the rule also says that the Chairperson may in his discretion direct the cross-examination of a witness by any implicated person or his legal representative to take place and this is important after the commission’s legal team and the Chairperson have exhausted their respective questions of the witnesses.

So we can see no procedural justification for adopting the approach suggested by my learned friend.

**CHAIRPERSON:** Hm.

**ADV MASUKU SC:** We certainly think it is unfair firstly because the purpose of cross-examination is – cross-examination is always done after the witness has – I am sorry – the evidence and the property value of the evidence is determined after a witness has been cross-examined. So Mr Fuzile with respect has not completed  
10 his evidence until the cross-examination has been done.

**CHAIRPERSON:** Ja. Let us talk about that. The – the letter that – to which you have referred I think it is clear from it that was written by the acting Secretary probably drafted by somebody in the legal team to reflect what their attitude was.

At a certain stage last year and probably after this month – probably later in the year than February or so I began to say it is not going to be – it may not be generally speaking appropriate or warranted for purposes of the work  
20 of the commission that we follow what is followed in trials in courts in terms of a sequence.

It may be that if the witness who is sought to be cross-examined if it is accepted that he or she has subjected himself or herself to the questioning by the evidence leaders of the commission it may be that the

person who seeks to cross-examine him or her should first subject himself or herself to the same process. But also, to say once both of them have subjected themselves to this process the areas of factual disputes might be much more limited, they may have appeared at – after the evidence of the one would be helpful in terms of us using our time optimally.

So the idea did not necessarily emanate from the legal team you know. It emanated to me from me but it is  
10 not necessarily like most things you know. Most things are not meant to be rigid but that is where it comes from. That is point 1.

Point 2 and you may address this when one talks about fairness. If the person who seeks to cross-examine a witness has been furnished with the statements or affidavits of that witness knows all the evidence basically because the evidence has been transcribed is available that this witness has given – has been given – well knows all of that evidence has had enough time to prepare to deal  
20 with that evidence. And then is asked to take the witness stand so that he can put his side of the story and the evidence leaders and the Chairperson can probe issues that they think are important for purposes of the inquiry.

He is ready – he has been given enough time – he has had enough notice – he knows what the allegations are

– he knows what the evidence given by the other witness is  
– he gets a chance to deal with those. On the fact of it it  
does not seem to me that within the context of an inquiry  
which might be different in litigation in a trial – within the  
context of an inquiry there would be any unfairness in him  
being allowed to exercise his right to cross-examine that  
he has been given after both have subjected themselves to  
that process.

So that is what I say. It may well be that in the  
10 light of what was communicated to your side by way of this  
letter it may well be that I must consider your request in a  
certain way but generally this is my thinking and you may  
wish to address that.

**ADV MASUKU SC:** Yes on the first issue Deputy Chief  
Justice we are not aware of any directive coming from  
yourself.

**CHAIRPERSON:** Hm.

**ADV MASUKU SC:** Regarding that regulates cross-  
examination in the manner you have just explained. It is  
20 the first time that I hear that you have a view that cross-  
examination should not be conducted in a manner that is –  
in a manner that fits the purpose of cross-examination.

**CHAIRPERSON:** Hm.

**ADV MASUKU SC:** Because once the commission accepts  
that part of its truth finding mission.

**CHAIRPERSON:** Hm.

**ADV MASUKU SC:** Is to – is going to be – is going to be – is going to depend on cross-examination of witnesses it must accept that the purpose of cross-examination generally which is to test evidence that has been given by a witness is very important for the commission as well.

**CHAIRPERSON:** Hm.

**ADV MASUKU SC:** Because we cannot see any reason why the commission would say that the witness who has specifically made an application asked to cross-examine a witness of – who has presented evidence that implicates him.

**CHAIRPERSON:** Hm.

**ADV MASUKU SC:** And pursuant to the Chairperson that is married in the request to cross-examine that when it comes to cross-examination on the day that he is meant to cross-examine the person before he gives the evidence is now asked to give his evidence before he has cross-examined. Part of his evidence of the person that seeks to cross-examine is – is embedded in what the cross-examination has. So my answer really is – seeks to answer the second question.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** Which relates to fairness.

**CHAIRPERSON:** Yes, ja that is what I want, what is unfair

about it?

**ADV MASUKU SC:** It is extremely unfair.

**CHAIRPERSON:** Hm. Why?

**ADV MASUKU SC:** For a witness to be asked or to be told by the commission that its procedural rules are intended to find the truth and part of the device that the commission will rely on finding the truth is the right of the witness to cross-examine a witness who has implicated that particular applicant for the commission.

10 **CHAIRPERSON:** Hm.

**ADV MASUKU SC:** The – Mr Van Rooyen applies to cross-examine. He comes here, argues before you – the Chairperson. He says I want to cross-examine and he is told by his lawyers that cross-examination is important because what has been said about you is in some material respect it is not true.

**CHAIRPERSON:** Hm.

20 **ADV MASUKU SC:** And it is important for a truth finding mission of the commission for the commission to get the truth. And the only way it can get the truth is if cross-examination is permitted. We persuade your – the Chair that cross-examination is important for our client.

**CHAIRPERSON:** No I accept that – I accept that but I think the real issue is how is it – how is it unfair when the cross-examination takes place after your witness – after

the witness or implicated person has made – has subjected himself or herself to questioning by the evidence leader and the Chairperson?

**ADV MASUKU SC:** Firstly, Deputy Chief Justice.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** It has got no precedence. That procedural – that procedure has no precedence.

**CHAIRPERSON:** Alright.

**ADV MASUKU SC:** At all.

10 **CHAIRPERSON:** Ja.

**ADV MASUKU SC:** Not in commissions.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** It has no precedence in commissions.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** It has no precedence even in this commission.

**CHAIRPERSON:** Yes but what is unfair about it?

**ADV MASUKU SC:** What is unfair.

**CHAIRPERSON:** Yes.

20 **ADV MASUKU SC:** Is that it is – that is why it is never used because the purpose of cross-examination is that the witness who is being cross-examined's evidence is not complete until that witness has been cross-examined.

**CHAIRPERSON:** Hm.

**ADV MASUKU SC:** So Mr Fuzile's evidence in your – when

you evaluate Mr Fuzile's evidence you are going to evaluate it from the point of view of the questions he asked when he – the answers he gave to the questions you asked him and the answers he gave when he was cross-examined. That is the complete set of his evidence. His evidence is only complete when he has been cross-examined. That is the only basis on which you can then go to the people he implicates – the people that Mr Fuzile implicates with the full evidence of Mr Fuzile.

10 **CHAIRPERSON:** Hm.

**ADV MASUKU SC:** Right now, Mr Van Rooyen will take the stand before Mr Fuzile to testify. What is the purpose of cross-examining Mr Fuzile after Mr Van Rooyen has testified – has given his evidence.

**CHAIRPERSON:** Let us look at this scenario Mr Masuku. I am asked to conduct an inquiry which I decide to for example conduct without any evidence leader. Think of any inquiry. I call Mr Fuzile. I asked – I ask him to tell me what happened in regard to the matter that I am – that is  
20 the subject of the inquiry. He tells me the story and the – I asked him – I ask him whatever questions and he is done. I let him go. Now in his – in what he tells me implicates somebody else. I call that person. I say, tell me what happened and he tells me what happened and I tell him what Mr Fuzile said as well to say but Mr Fuzile says this

and that and that. He tells me the story and at a certain stage I am done with that – with him. And I look at the – at what both of them have told me maybe I am satisfied that even though there are some disputes of fact here and there between the two versions in terms of what is really material I have got enough evidence. Mr Fuzile has finished giving evidence. The person he has implicated has finished giving evidence. If I am satisfied that I can make a decision without any cross-examination I go ahead and  
10 make a decision. But if I think that there are certain material differences even after I have heard both of them, I might say, look I cannot really decide unless this is sorted out. So I will let the implicated person cross-examine Mr Fuzile. I do so at that stage. What is unfair about that process?

**ADV MASUKU SC:** It is – I am happy that that – is that what you have given to me Deputy Chief Justice is theoretical.

**CHAIRPERSON:** Ja.

20 **ADV MASUKU SC:** I want to address the court – I mean the commission on the basis of its own rules.

**CHAIRPERSON:** Ja.

**ADV MASUKU SC:** And practice.

**CHAIRPERSON:** Ja.

**ADV MASUKU SC:** You upfront you tell the participants to

the commission what your rules are.

**CHAIRPERSON:** Ja.

**ADV MASUKU SC:** And they play by those rules. And in this case.

**CHAIRPERSON:** One second. Just give me the – oh – yes continue.

**ADV MASUKU SC:** And so, what – what you have said is that – what you say upfront to the public that I have an interest in the commission these are the rules of  
10 engagement. The party who is implicated has a right to do a number of things, three of them. And one of them is the right to ask for – from the Chairperson for the right to cross-examine a witness who has implicated him. The witness who has implicated or the person who is implicated exercises that right. He comes before you he says, please I have heard the evidence of Mr Fuzile. There are certain material issues that he raises about me which I – which are unfair.

**CHAIRPERSON:** Hm.

20 **ADV MASUKU SC:** And I want the opportunity to cross-examine him on that evidence.

**CHAIRPERSON:** Hm.

**ADV MASUKU SC:** You agree with it.

**CHAIRPERSON:** Hm.

**ADV MASUKU SC:** In other words, you say to him, yes I

am giving you the right to come and cross-examine the implicated – I mean the person who implicates you.

**CHAIRPERSON:** Hm.

**ADV MASUKU SC:** Now you do not say to the person I am only – that right can only be exercised after you have given the evidence that I need you to give.

**CHAIRPERSON:** Hm.

**ADV MASUKU SC:** Because it is clear that the evidence of Fuzile – of Mr Fuzile is not complete until the implicated  
10 person who has been granted the right to cross-examine tests through cross-examination the version that he has been – he has given. There are certain aspects it is not everything that Mr Fuzile has said that is contentious. There are certain aspects that Mr Van Rooyen would have wanted to cross-examine Mr Fuzile on before he can give his evidence. That is material because the cross-examination also exposes what Mr Van Rooyen's own evidence is going to be.

**CHAIRPERSON:** Hm.

20 **ADV MASUKU SC:** In the absence of cross-examination being complete then of course it is difficult for Mr Van Rooyen to say, this is my evidence which evidence there will be – it may well be disposed of by cross-examination. Cross-examination will result in a situation where we say we do not have to deal with 1, 2, 3 aspects because

through cross-examination we have been able to get to the truth of this aspect of the dispute between the two of us. Chairperson I urge you to – I did not think that this would be an issue that we would occupy your time.

**CHAIRPERSON:** Well let me say you refer to rule 8. I think you did read 8.1.

**ADV MASUKU SC:** Yes.

**CHAIRPERSON:** It says:

“The order of sequence in which witnesses will be called  
10 before the commission will be subject to the discretion of the Chairperson.”

So when you say – when you say through the rules the commission says this is how we will operate that includes that rule.

**ADV MASUKU SC:** No, no, no. I accept that but what is fundamental in it.

**CHAIRPERSON:** Ja.

**ADV MASUKU SC:** Is that here the facts are different. You have already granted Mr Van Rooyen the right to  
20 cross-examine Mr Fuzile’s evidence. You have already done that.

**CHAIRPERSON:** Except that the – the order granting him the leave to cross-examine does not tell him the sequence.

**ADV MASUKU SC:** No but then we have got a letter. In fact, this rule tells you the sequence. This gives you the

sequence.

**CHAIRPERSON:** You mean the letter or the rule?

**ADV MASUKU SC:** No both the rules and the letter.

**CHAIRPERSON:** Well let us go to the rule. I read – I rule – I read rule 8.1 to say:

“The sequence of witnesses in the – is in the discretion of the Chairperson.”

**ADV MASUKU SC:** If you – if you read rule 1 with reference also together with rule 8.2.

10 **CHAIRPERSON:** Just let us go to 8.2.

“The Chairperson may in his discretion direct the cross-examination of a witness by an implicated person or his legal representative to take place after the commission’s legal team and the Chairperson has exhausted their respective questions for the witness.”

**ADV MASUKU SC:** The Chairperson.

**CHAIRPERSON:** Ja.

**ADV MASUKU SC:** And the legal team have exhausted their questions to Mr Fuzile.

20 **CHAIRPERSON:** Yes.

**ADV MASUKU SC:** Only after that.

**CHAIRPERSON:** Ja.

**ADV MASUKU SC:** This rule say direct may – in his discretion direct the cross-examination of a witness by implicated persons.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** So the Chairperson and the legal....

**CHAIRPERSON:** But – but I know I am interrupting you. But I think – I think we – I just want to make sure on this. You see the first 8.1 effectively says the sequence is in the discretion of the Chairperson.

**ADV MASUKU SC:** Deputy Chief Justice perhaps let me make it easy for you. It is clear that you – this is the procedure you want.

10 **CHAIRPERSON:** Yes.

**ADV MASUKU SC:** Let me make it easy for you.

**CHAIRPERSON:** Ja.

**ADV MASUKU SC:** Let us do it this way. May I suggest that I record that we are deeply concerned by the debate you and I are engaged in.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** About a procedure that is elementary.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** On cross-examination.

20 **CHAIRPERSON:** No, no, no. You...

**ADV HULLEY SC:** But secondly.

**CHAIRPERSON:** Ja.

**ADV MASUKU SC:** To say to you Chairperson.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** That I do not understand.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** What is unfair.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** About the procedure that it is normally adopted.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** Of giving a witness who is being cross-examined – to be cross-examined first before. I do not understand. The question should be what is the unfairness  
10 in the normal procedures of cross-examination? Why should there be a deviation from the normal practice of cross-examination? What is it that we are protecting here about getting Mr Fuzile to be cross-examined first before Mr Van Rooyen gives his evidence? What is unfair about that process?

**CHAIRPERSON:** Well Mr Masuku I said to you earlier on it may be that in terms of this letter I may have to look at your request differently from how I would have looked at it. So the debate we have been having is for me to try and  
20 understand your submissions and for you to understand what my thinking is. That is the – that is why we have heard that – we have been having this debate. But I did say to you it may well be that in the light of this letter I might have to look at your request different. But I wanted to benefit from what you may have to say about the general

approach.

**ADV MASUKU SC:** No I have said my submissions I think it is unfair.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** That is my approach.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** The fairness of the process of cross-examination is guaranteed. It is a long-held procedure that dates back to – to eternity that a person who is implicated  
10 he is cross-examined first before the – the fairness of that is in your judgments. I mean your judgments are – they have – there is a lot about the importance of cross-examination to guarantee – to guaranteeing fairness. If you deviate from that – from that process it must be because there is some fairness that you are trying to – to ring fairness. So your discretion is – must be exercised in order to ring fairness in order to promote fairness and also in the process.

**CHAIRPERSON:** Yes but also it is important to promote an  
20 optimal utilisation of our time. You remember I said one of the issues is once I have had the benefit of hearing both before there is cross-examination it might become very clear where the areas of dispute are that remain. It may be disputes of fact. It may be that the disputes of fact that remain are really in my view not so important or material.

It may be that I say, no they are – they are quite important. But I have heard what you have said.

**ADV MASUKU SC:** But Chief Justice – Deputy Chief Justice.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** The – when we request for the cross-examination right we spell out all that. You ask us to identify the areas on which we intend to cross-examine.

**CHAIRPERSON:** Hm.

10 **ADV MASUKU SC:** And that is the basis on which you grant cross-examination.

**CHAIRPERSON:** Hm.

**ADV MASUKU SC:** It is not a cross-examination of everything.

**CHAIRPERSON:** Hm.

**ADV MASUKU SC:** It is particular areas that we think do not warrant a cross-examination.

**CHAIRPERSON:** Yes. Yes I think you said you – you have made submissions.

20 **ADV MASUKU SC:** Yes so but the second one relates to the documents that we got last night. And I did convey that to my learned friend that the unfairness of it is obvious. We sat on the whole weekend we sat with our client consulting on documents that we have been given by the commission on which they – when they gave us those

documents so that the documents on which they said we are going to – the rules of the play are going to be based on these documents that we are giving you.

Yesterday I made a call to Mr Hulley at quarter to five in the evening, I made the call, he didn't call me to tell me that there are further documents that he is going to be sending us. After I had called me that is the time that he tells me that that documents, but to his fairness he did say that he had received those documents also late, but we  
10 have got to be fair to our witnesses and to our clients. We should expect that when they come here, they are able to help the Commission by giving clear evidence. How am I expected to help Mr van Rooyen tell the truth and to give the Commission the truth of what he is about when he has been given, when documents are put under the door, over the window a day before the hearing.

I mean we are given the report of the Public Protector, you know, learned friend knows that that report is the subject of litigation as we speak.

20 But we do not know what aspect of the report they want to cross-examine on. We just got this document yesterday in the evening around eight and it is just not right.

It is not how the Commission should be doing its work but clearly through its legal team.

**CHAIRPERSON:** Oh. No, what do you propose in regard to

the issue of the documents?

**ADV MASUKU SC:** Well, he should... should my... we are also mindful of the time. And my client has got... as you know, he is no longer working. So the less he comes here the better for him.

We will consider that... we will consider the questions that are being asked in relation to those documents. And if, in our view, they require a consultation with him, would raise our objection at the time that the questions are being raised.

10 But we will allow him to use the documents subject to our right to object to... or even now, our client to object to answering questions from documents that he was never given yesterday or that he has just received last night.

In fact, he has not even received them because they were sent to us, not him. So we still have to say him here are the documents that came yesterday. This is what they say about you.

But subject to what the legal team seeks to do... to ask of our client, subject to our right to object to those  
20 documents being used, we will allow these documents to be used.

And there should not be a problem if we stand up say, “Can we be given an opportunity to consult with our client on those documents, on those questions?”

Because clearly, they are documents for which legal

advice is necessary for our client to get.

**CHAIRPERSON:** Well, it is unfortunate if there are documents you received were that late. I will hear what Mr Hulley has to say.

If I were to allow the cross-examination of Mr Fuzile first rather than Mr Van Rooyen getting into the witness stand first before he cross-examines Mr Fuzile, would that afford your client and maybe your junior counsel to have time to look at the documents with the client so that when later on  
10 he gets to the witness stand he will have... had a look at them properly?

**ADV MASUKU SC:** If that... that would be... we could do that Deputy Chief Justice. I mean, I think it is important that the Commission proceeds ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** ...on the... on its work. And if these documents are necessary for what the Commission intends to use them, then they must be used. So we welcome that opportunity.

20 **CHAIRPERSON:** You would ...[intervenes]

**ADV MASUKU SC:** Particularly because we are keen to have Mr Fuzile cross-examined first before our witness is given. The only problem though is that now I have to consult with my witness while Mr Fuzile is giving his evidence ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** ...which my client is entitled to listen to  
...[intervenes]

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** ... the cross-examination.

**CHAIRPERSON:** Yes, yes.

**ADV MASUKU SC:** And then engage with the answers that  
he gives while he does that.

**CHAIRPERSON:** Yes, yes, yes.

10 **ADV MASUKU SC:** But the easier one Chief Justice...  
Deputy Chief Justice is if you could rule that we cross-  
examine Mr Fuzile for one hour and then we take a break  
maybe for twenty or thirty minutes.

**CHAIRPERSON:** Ja.

**ADV MASUKU SC:** We come back and then we decide what  
the position is.

**CHAIRPERSON:** Yes, yes.

**ADV MASUKU SC:** I can assure the Chair that we are not  
going to be obstructing in as far as these documents are  
20 concerned.

**CHAIRPERSON:** Okay.

**ADV MASUKU SC:** We think that some of the documents are  
not signed. I mean, the affidavits are not signed. The other  
relates to a Public Protector's report which is a subject of  
current litigation and I do not understand what it is that they

are really seek to find from that document but it is not for us to speculate.

**CHAIRPERSON**: Okay.

**ADV MASUKU SC**: We will have to deal with that. I would propose that that approach be adopted.

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

**ADV MASUKU SC**: Thank you, Deputy Chief Justice.

**CHAIRPERSON**: Thank you, Mr Masuku. Mr Hulley?

**ADV HULLEY SC**: Thank you, Mr Chair.

10 **CHAIRPERSON**: Yes.

**ADV HULLEY SC**: Mr Chair, just briefly if I can just deal with the issues in the order in which they have been dealt with by my learned friend i.e. firstly the application for leave to cross-examine first, Mr Fuzile before the evidence of Mr Van Rooyen is tendered.

The... if I can make a few submissions only to be of assistance to the Commission rather than to advance an argument in support either way.

20 When it comes to the rules and the rules have already been debated between yourself Mr Chair and my learned friend.

Rule 8.1 is quite clear. It deals with the sequence in which the... the sequence in which the witnesses should be called to testify before the Commission.

And it makes the point that it is subject to the discretion

of the Chairperson. And as far as 8.2 is concerned, it says that:

“The Chairperson may, once again in his discretion, direct that the cross-examination of a witness by an implicated person or his legal representative is to take place after the Commission’s legal team and the Chairperson have exhausted their respective questions of the witnesses...”

So that sets out a fairly broad ambit in which the  
10 Chairperson, yourself, is entitled to order the sequence.

Now, you have asked my learned friend a very pertinent question which is: “Why is this... the order that has been suggested by ourselves as the legal team to the other side, why is this unfair?”

And with respect, if one considers what is being said other than with reference to the actual letter itself that was sent in February of 2019 by the legal team. Although the argument appears to be simple that this is the established practise.

20 Now in truth it is an established practice that the parties will testify in a particular order and even that practise is also subject to the discretion of a court where that is done.

It may depend upon who bears the onus of prove. The court is not always going to... it is not always going to call witnesses in the order, in a particular order.

Sometimes the plaintiff will testify first because he or she bears the onus. Other times it may well be that there is an onus which rest upon the defendant and in which even the defendant will be... might be called to testify first.

And the two do not necessarily goes hand-in-hand. The onus to adduce evidence and the... what we refer to as the onus proper or the burden of prove as it were.

So there is a lot of discretion insofar as those issues are concerned. Additional discretion arises in the context of  
10 where you have got more than one plaintiff and more than one defendant. The court has to exercise a discretion in that regard.

The... not necessarily confronted with that over here but of course Mr Van Rooyen has been implicated by more than one person. He, of course, has applied for leave to cross-examine specifically one person and you have granted him leave to cross-examine that one person which happens to be Mr Fuzile.

But there are other witnesses who have implicated him  
20 as well in relation to specified issues, not as... not quite as broad as what Mr Fuzile's evidence has gone.

There would be nothing wrong, for instance, when one contemplates how the order in which things should be done.

There would be nothing wrong, for instance, conceivable if the Chairperson of the disciplinary... sorry, the

Chairperson of this inquiry were to, for instance, order one witness to testify about a specific thing and then turn to the other party and say to the other party: “Well, what do you say in response to that?”

There is a whole range of different options. There is a permutation. There is a number of different permutations that may be utilised. Certainly, disciplinary inquiries. It is not unheard of for proceedings to unfold in that fashion.

Frequently it is when attorneys and advocates and  
10 counsel and legal representatives get involved that they tend to become very rigid in the way in which they perceive the... that proceeding should unfold and that is, of course, informed by their background.

It is a comfort zone for them. The rules offer structure. The rules of court offer a safe zone for in which they are to present the evidence but it is not... that it is not to say that it is the gold standard against which every form of adducing evidence should be tested.

It is always a question of the discretion of the  
20 chairperson and it is always a question of what might be convenient.

In light of that context, of course, that one must consider the letter that was sent off by the legal team in February of last year.

Now I have tried to ascertain precisely who it was that

sent out the letter and the context in which it was sent out.

Sadly, I have been unable to get to the bottom of that. It seems to have been, not only before the time of the present legal team, but also prior to the time of some of the members of the secretariat. So they actually do not know the background.

But having read the letter for myself, it struck me that what was been contemplated at the time was that there would be a number of witnesses testifying.

10       And that the evidence of Mr Fuzile would be led first and that there were at least two other witnesses that would come and testify in support of what he was saying including Mr Magubane to come and testify to bolster some of the expenses.

In the context and without knowing... actually knowing the background, it seems to me that it would have been convenient in that context to follow the procedure that was contemplated or which was proposed in the letter.

20       There is no suggestion by our learned friends that what is stated over there is somehow considered to be binding. Had there been such a suggestion, of course the suggestion of court could be repelled on the basis that the legal team has no... it cannot bind the Chairperson.

We are subject to the Chairperson, not the other way around and we certainly cannot make a suggestions or

proposals that would ultimately become binding upon the Chairperson.

A letter itself does not suggest that and my learned friends quite correctly have not proposed or not argued that that is the case. So the discretion is entirely within your hands Mr Chairperson.

The order that has been suggested would, in fact, make sense for a number of the reasons that you have debated with my learned friend.

10 One of which is of course that we need to hear from Mr Van Rooyen to his own testify what he has said on affidavit. He needs to come and explain that.

So it is true that you have granted him leave to come and testify and to cross-examine but it is in the context of having done so on paper.

He needs to know get into the witness box and advance the same argument, if you like, in-chief and also be questioned about some of the answers he has given.

It is also clear from the evidence that Mr Fuzile has  
20 really just triggered an investigation into some of the allegations.

The allegations, ultimately, found their way into the report of the previous public protector which then became the basis upon which this Commission was established.

So it is in that context that Mr Van Rooyen finds himself

here. Mr Van Rooyen does not understand for a moment that the case against him is confined to what Mr Fuzile has said. In fact, it has ranged much further than that. Investigations which have gone beyond that, have been then triggered on matters which Mr Fuzile has not, for instance, testified.

Mr Fuzile at the time when he made his affidavit was quite unaware of the fact that, in fact, there was interaction between Mr Van Rooyen and certain members of the Gupta family prior to that.

10 He did not testify to that but in fact the previous public protector picked that up based on cell phone records that she had investigated and after some interaction between this Commission and Mr Van Rooyen, it seems that he has conceded that there was indeed interaction. Those issues need to be tested.

So it would seem to me Mr Chairperson, in having regard to what is the appropriate procedure, one must have regard also to the fact that the evidence that has been uncovered goes way beyond what Mr Fuzile has testified to.

20 In that context, we leave it ultimately to your discretion Mr Chairperson. That brings me, of course, to the question of the provision of documentation to our learned friends that at a very late stage.

Unfortunately, there... some of the documentation including the protector's report only came to my attention

last night.

And to be clear, it seems that I had been told of the public protector's report before but I misunderstood it to be a reference to the previous public protector's report. In other words, the one that is presently or had been in the bundles previously.

It turns out that it was in fact a reference to the new Public Protector's report. One which is dated 2018. And I was quite unaware that there was this distinction that was  
10 been drawn and that I was not aware of the fact or the existence of the new public protector's report until I was given it last night.

It is in that context that we had made it available to our learned friends. We understand that Mr Fuzile... sorry, Mr Van Rooyen has in fact brought an application to set aside that public protector's report.

We are not aware, having only obtained it last night, we are not aware of how far those proceedings have gone but it there certainly the new public protector's report deals with  
20 the interaction between the public protector's office and Mr Van Rooyen and certain responses that is given in that public protector's report.

That is certainly very important to us and we would certainly wish to have an opportunity to cross-examine him on that.

Insofar as he suggests that they may want an opportunity to stand down in the middle of being questioned. Well, it seems to me that the appropriate route to take is to make their call now to suggest which process they wish to follow.

I have asked my learned friend to suggest whether he has got any... any... if he is unhappy about the report going in and if he would need an opportunity to consider the report and perhaps to consult with his client beforehand.

10 The indication that is given is, more or less, consistent with what he has indicated to yourself Mr Chair but certainly it would seem to me in considering that issue, it would seem to me to be rather inappropriate if there is a consultation that takes place while the witness is being questioned.

Or to use the language that we use in the context of the rules which govern the members of the bar, the profession of advocates that it is inappropriate to consult with a witness while he is under cross-examination.

And it seems to me that they must make their call. So  
20 that is as far as I can take it Mr Chair.

**CHAIRPERSON:** Yes. No, that is fine. Obviously, there is... there may be some unfairness there.

**ADV HULLEY SC:** We accept ...[intervenes]

**CHAIRPERSON:** Maybe unfairness when somebody is given documents as late as they were given to him. That is partly

why it may be important that attempts be made to mitigate that unfairness.

It may be that it would not be appropriate. And I do not know if Mr Masuku meant this it would not be appropriate that while Mr Van Rooyen is being questioned by the evidence leader, there is consultation, he might not have intended that.

But what I certainly heard is that they might raise objections to certain questions. Whether those would lead to a need for a consultation might be something else.

I think that it may be important to see how that is handled to make sure that we strike a balance between two things.

One, being fair to Mr Van Rooyen to, at the same time, be able to complete the business of the day.

**ADV HULLEY SC:** Indeed, Mr Chair.

**CHAIRPERSON:** And I understood Mr Masuku's attitude to be one that seeks to strike a balance the two as well in terms of not wanting to obstruct the smooth running of the proceedings but at the same time, being alive to his duty to protect his client as well. So. No, that is fine.

**ADV HULLEY SC:** Thank you, Mr Chair.

**CHAIRPERSON:** Let me hear what Mr Masuku might wish to say in response to your submissions. Mr Masuku.

**ADV MASUKU SC:** Yes. Deputy Chief Justice, I have just

conferred with my learned friend about my previous presentation.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** And he said that I looked angry. I am just ugly.

**CHAIRPERSON:** [laughs]

**ADV MASUKU SC:** And if I did sound or look angry, I apologise if you got the same impression.

**CHAIRPERSON:** Ja.

10 **ADV MASUKU SC:** I am generally a pleasant guy who likes to laugh.

**CHAIRPERSON:** I thought you are a generally a pleasant guy. [laughs]

**ADV MASUKU SC:** I am glad you think so Chief Justice. Deputy Chief Justice, the discretion you have, obviously, must be exercised with due regard to the rights that you must vigorously protect. It is not a discretion, the nature of which must just disregard procedural fairness and the purpose of cross-examination.

20 As we say, the difficult position that your adopting... the position that are adopting now or the position that you articulated to me is a different... is not a different position.

A different position is that the cross-examination follows after the witness... sorry, the cross-examination completes the evidence of the witness who is going to be cross-

examined.

And if you are going to deviate it from there, it must never lose the attribute of fairness. That procedure must not lose the attribute of fairness.

If your procedure protects the fairness aspect of my client, then it must be adopted, and I cannot argue against the procedure that you say is fair. I do not believe the one that you have explained to me is fair and I made my points on that aspect.

10 **CHAIRPERSON**: [laughs] H'm.

**ADV MASUKU SC**: But the second thing is that we do think that it would make the Commission's work must faster to eliminate those aspects. I know my learned friend has got a number of witnesses that he wants to cross-examine or that he wants to cross-examine our client on.

That is fair enough. But Mr Fuzile should not have to sit here for the whole day listening to what my client has to say about witnesses. He has no interest in that.

20 And I think, it seems to us, that the best way is to have him be cross-examined so he can go and do important work that he does outside this Commission.

**CHAIRPERSON**: And we agreed about an hour. Is that right?

**ADV MASUKU SC**: We would not want more than an hour.

**CHAIRPERSON**: Ja.

**ADV MASUKU SC:** And my learned friend, Mr Mathipa is dealing with that cross-examination.

**CHAIRPERSON:** Yes, okay, okay.

**ADV MASUKU SC:** I think with all the others.

**CHAIRPERSON:** Okay. And about the issues of the documents. Were you seeking an arrangement in terms of which while Mr Van Rooyen is being questioned, you might ask that we adjourn so that you can consult with him?

**ADV MASUKU SC:** Well, it depends. We have not also  
10 engaged with the documents ...[intervenes]

**CHAIRPERSON:** Evidence? Yes.

**ADV MASUKU SC:** ...to give you an undertaking that the kind of consultation we would require with the client is much longer than ten minutes.

**CHAIRPERSON:** Ja. Yes, okay.

**ADV MASUKU SC:** But our purpose of the document is not... we do not think Mr Van Rooyen will be unable to answer or some of the questions there.

**CHAIRPERSON:** Yes, yes.

20 **ADV MASUKU SC:** Although we think it is grossly unfair.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** And we accept that it is unfair to give him documents today to ask him about documents he has not seen. When they do ask him questions, they must remember that their position is not to cross-examine him.

It is to elicit answers from documents that they must understand he got today. So it means that in the manner in which they ask him, it must accommodate that possibility that he might say, “Look, can I seek legal advice from my legal team to understand what exactly it is?”

**CHAIRPERSON:** I think what I am quite happy to do and I do not think anybody would have a problem is that if I allow Mr Fuzile be cross-examined first, when that is done, we have a certain amount of time.

10 **ADV MASUKU SC:** Yes.

**CHAIRPERSON:** You estimated twenty minutes.

**ADV MASUKU SC:** Ja.

**CHAIRPERSON:** We have about that time to enable your team to consult with Mr Van Rooyen on those documents or whatever you... and then he takes the stand after that.

**ADV MASUKU SC:** We will be indebted on that.

**CHAIRPERSON:** In that way, there would be no need for any adjournments to consult while he is being questioned.

**ADV MASUKU SC:** We would consider that Mr Chair.

20 **CHAIRPERSON:** Okay, alright. Thank you Mr Masuku.

**ADV MASUKU SC:** Thank you Deputy Chief Justice.

**CHAIRPERSON:** I am going to allow your side to cross-examine Mr Fuzile before Mr Van Rooyen takes the stand. It is not so much because of your arguments on the merits of the...

**ADV MASUKU SC:** I understand.

**CHAIRPERSON:** It is more about the letter and maybe to some extent the fact that the certain documents were received late by your side.

**ADV MASUKU SC:** That is part of my argument Deputy Chief Justice. The letter.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** That is part of my argument. So I can snatch the bargain on that too. [laughs]

10 **CHAIRPERSON:** [laughs] No, thank you very much.

**ADV MASUKU SC:** Thank you.

**CHAIRPERSON:** So that is the decision I have made. The cross-examination will start... will come first. And then Mr Van Rooyen will give evidence later. Thank you, Mr Masuku.

**ADV MASUKU SC:** Thank you very much.

**CHAIRPERSON:** Maybe what we should do. I have eleven o'clock now. We normally take tea at quarter past eleven. I do not know whether Mr Hulley you will need some time before Mr Fuzile takes ten minutes, some adjournment or  
20 not?

**ADV HULLEY SC:** Yes, I ...[intervenes]

**CHAIRPERSON:** ...or whether we should take the tea-adjournment now?

**ADV HULLEY SC:** We would be indebted to your Mr Chairperson if you would take the adjournment now. We

need to explain to Mr Fuzile what exactly the implications of this are and just, you know, just acclimatising to the change process.

Because we had previously advised him that the proceedings would take place in a different format and in light of your present ruling it seems appropriate that I should explain what is happening at the moment and just afford him an opportunity... or just have an opportunity to engage with him.

10 **CHAIRPERSON:** Actually, if we take... we normally take a fifteen minutes break at quarter past eleven for tea. If we take thirty minutes now from eleven to half-past eleven, that might help Mr Masuku's side as well to consult with Mr Van Rooyen in regard to the documents so that maybe later they will not need any further time.

**ADV HULLEY SC:** Yes.

**CHAIRPERSON:** So let us take thirty minutes.

**ADV HULLEY SC:** Thank you, Mr Chair.

20 **CHAIRPERSON:** And then... so we will resume at half-past eleven. So we combine the tea break and some adjournments. So we make optimal use of that. I think Mr Masuku is happy with that arrangements.

**ADV MASUKU SC:** Yes, we are.

**CHAIRPERSON:** Yes, okay alright. We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Mr Mathipa, I understand you will conduct the cross-examination.

**ADV MATHIPA:** I am going to do the cross-examination, Chairperson.

**CHAIRPERSON:** Yes, no, that is fine.

**ADV MATHIPA:** I assume that you have got my names?

**CHAIRPERSON:** From last time, I think.

**ADV MATHIPA:** Yes.

10 **CHAIRPERSON:** It is M-o-t-h-i...?

**ADV MATHIPA:** Yes, it is M-a-t-h-i-p-a. Mathipa.

**CHAIRPERSON:** Yes, thank you.

**ADV MATHIPA:** Alright.

**CHAIRPERSON:** Then will you administer the oath or affirmation? Ja, okay.

**REGISTRAR:** Please state your full names for the record.

**MR LUNGISA FUZILE:** I am Lungisa Fuzile.

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

20 **MR FUZILE:** No.

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

**MR FUZILE:** Yes.

**REGISTRAR:** Do you swear that the evidence you will give will be the truth, the whole truth and nothing else but the

truth? If so, please raise your right hand and say so help me God.

**MR FUZILE:** So help me God.

**CHAIRPERSON:** Thank you. Thank you, Mr Fuzile, thank you for coming back to make yourself available to assist the Commission. You will be cross-examined.

If there is any question you do not understand feel free to ask it to be repeated. You might need to either take off your mask or move it a bit unless when you talk everybody can hear you well but at least there is social distancing, I hope it is enough, just so that we can hear what you have to say. Yes, Mr Mathipa?

**ADV MATHIPA:** Thank you, Chairperson. Mr Fuzile, I assume I can address you as Mr Fuzile, is that alright? Yes, I am just going to address you as Mr Fuzile throughout, is that okay?

**MR FUZILE:** Yes.

**ADV MATHIPA:** Alright. In this cross-examination I am going to use – there are files which I am going to use which the Commission gave us. The first one is the one that runs from page 1, I think it is.

**CHAIRPERSON:** I think you – all of them are supposed to be written something on the spine.

**ADV MATHIPA:** Yes.

**CHAIRPERSON:** Which should help identify which one.

**ADV MATHIPA:** Okay, on the side, hey?

**CHAIRPERSON:** Ja.

**ADV MATHIPA:** Yes.

**CHAIRPERSON:** Is it written EXHIBIT PA?

**ADV MATHIPA:** Ja, EXHIBIT PC.

**CHAIRPERSON:** Oh, PC, that is the...?

**ADV MATHIPA:** Ja.

**CHAIRPERSON:** Okay. Somebody must assist Mr Fuzile to identify – oh, he has found it.

10 **ADV MATHIPA:** Okay, that is the one, I think it goes from page 1 to 500.

**CHAIRPERSON:** Okay, alright.

**ADV MATHIPA:** Yes. And then in addition to that, there is another file. I notice later that this file did not contain the statements of Mr Mogajane and Ms Macanda and that has been given separately. I hope ...[intervenes]

**CHAIRPERSON:** Oh, do you want to give me that as and when you arrive when you get to that stage?

20 **ADV MATHIPA:** Ja, I think we can deal with it when ...[intervenes]

**CHAIRPERSON:** Ja, starting with the other one, let us deal with that one once we are done then we can move into the next one.

**ADV MATHIPA:** Alright.

**CHAIRPERSON:** Okay.

**ADV MATHIPA:** Mr Fuzile, I would like to take you back to your relationship with Mr van Rooyen.

**CHAIRPERSON:** I am sorry, the lever arch file that I have got now is written Advisors 1 and then below that EXHIBIT PC. Is that how your one also reads on the spine?

**ADV MATHIPA:** Ja, it is EXHIBIT PC.

**CHAIRPERSON:** Yes, okay.

**ADV MATHIPA:** (C).

**CHAIRPERSON:** But it is written Advisors 1 above that or  
10 not? On the spine?

**ADV MATHIPA:** Ja, it is, yes, exactly the [inaudible – speaking simultaneously] .

**CHAIRPERSON:** It is, ja. Mr Fuzile, you have this same file?

**MR FUZILE:** Yes. It looks that way, Deputy Chief Justice.

**CHAIRPERSON:** Yes.

**MR FUZILE:** On the spine it is written Advisor 1, EXHIBIT P(C) in inverted commas there is Van Rooyen.

**CHAIRPERSON:** Yes.

20 **MR FUZILE:** Page 001 to 427.

**CHAIRPERSON:** Ja, it is the one. Thank you.

**ADV MATHIPA:** Alright, thank you. Mr Fuzile, I am just going to – I just wanted to confirm the following things and then you can just tell me if you agree. You have already indicated that you had a very good relationship with Mr van

Rooyen which dates back for many years, am I correct?  
Before you met – before he became Minister of Finance.  
That appears – if I may just refer you to – on page 359 and  
I am using the pages at the top right corner.

**MR FUZILE:** Yes.

**ADV MATHIPA:** Ja. On page ...[intervenes]

**CHAIRPERSON:** Okay, hang on one second?

**ADV MATHIPA:** Yes.

**CHAIRPERSON:** You will find, both you, Mr Mathipa and  
10 Mr Fuzile, we find that on each page at the top there are  
two numbers. One is red the other one is black. The red  
is on the top right-hand corner and the black one is one  
top left corner. Whenever there is a black number –  
normally in the past we have been using the red numbers  
but for a certain reason whenever there is a black number  
we have to use the black number. Mr Hulley, that is still  
the case, hey?

**ADV HULLEY SC:** That is so, Mr Chair.

**CHAIRPERSON:** Yes, okay. So when you refer to page  
20 numbers use the black number but you do not have to say  
Advisors 1 – 008, for example, you just say page 8 and we  
will all know you are referring to the black numbers.

**ADV MATHIPA:** Okay. Chairperson, the only challenge  
is, I do not have black numbers. I have red, both of them.

**CHAIRPERSON:** Oh.

**ADV MATHIPA:** But what I have, the pages I am using the top right is the one on the top most right column.

**CHAIRPERSON:** Oh, well...

**ADV MATHIPA:** Even that is exactly what I have.

**CHAIRPERSON:** Mr Fuzile, do you have the black numbers/

**MR FUZILE:** Yes, I have got ...[intervenes].

**CHAIRPERSON:** You do have.

**ADV MATHIPA:** Oh, you mean the ones in the middle?

10 **MR FUZILE:** ON the top left hand corner.

**CHAIRPERSON:** Yes, yes, yes.

**MR FUZILE:** And the red one ...[intervenes]

**CHAIRPERSON:** On the top right.

**MR FUZILE:** On the top right.

**CHAIRPERSON:** Yes.

**MR FUZILE:** Which starts with PC.

**CHAIRPERSON:** The correct numbers I am talking about. That appear on your top left, you have got them.

**ADV MATHIPA:** The one starts with PC.

20 **CHAIRPERSON:** No, that is the red ones.

**ADV MATHIPA:** Okay.

**CHAIRPERSON:** Then you are supposed to have on the opposite that one, on the top left you are supposed to have a black one starting with Advisors – 1 ...[intervenes]

**ADV MATHIPA:** Oh, I see that, yes.

**CHAIRPERSON:** You see?

**ADV MATHIPA:** Okay, I have got that. Yes.

**CHAIRPERSON:** Ja, so use the black ones.

**ADV MATHIPA:** Okay.

**CHAIRPERSON:** But also, each time you refer to a page you do not have to say Advisors 1 – 008.

**ADV MATHIPA:** Oh, okay.

**CHAIRPERSON:** You just say page 8.

**ADV MATHIPA:** Alright. Okay, the only challenge is, I  
10 use my cross-examination based on the red ones, so I prepared along those, so I will have to...[intervenes]

**CHAIRPERSON:** Oh, but of course you can ...[intervenes]

**ADV MATHIPA:** I can call it first.

**CHAIRPERSON:** Ja, you can call it first or otherwise you go to the red one and then look at the black one.

**ADV MATHIPA:** Yes.

**CHAIRPERSON:** Ja, okay.

**ADV MATHIPA:** So if you go with me to that page – the one that I referred to as ...[intervenes]

20 **ADV HULLEY SC:** Mr Chairperson, sorry, if I can be of a bit of assistance over here. It must be borne in mind, of course, given the order in which things are unfolding that the present document has not been entered into evidence.

**CHAIRPERSON:** Oh, well is he not referring to an affidavit that has already been admitted?

**ADV HULLEY SC:** Yes, not that is true.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** But I just want to alert my learned friend to that so that he can address it, of course.

**CHAIRPERSON:** Ja, okay. Thank you.

**ADV MATHIPA:** I am not sure I follow.

**CHAIRPERSON:** I assume you are referring to Mr Fuzile's affidavit.

**ADV MATHIPA:** Yes, I am referring to his own affidavit.

10 **CHAIRPERSON:** Yes, that would have been admitted previously.

**ADV MATHIPA:** Yes.

**CHAIRPERSON:** Ja, I imagine.

**ADV MATHIPA:** Yes.

**CHAIRPERSON:** But if that is not so then I should be told about it but otherwise I think it would have been admitted previously.

20 **ADV MATHIPA:** Alright. So the affidavit, I am referring to, Mr Fuzile, appears on – it starts on page 357, I am talk about the black one now, the black number. 357 and where I am is page 36 ...[intervenes]

**CHAIRPERSON:** I am sorry, Mr Mathipa, maybe what you should do is, go to – because you have prepared on the basis of the red numbers.

**ADV MATHIPA:** Yes.

**CHAIRPERSON:** That you go to that page without telling us about the red numbers.

**ADV MATHIPA:** Okay.

**CHAIRPERSON:** And then you when you get there tell us about the black numbers.

**ADV MATHIPA:** Oh, I see.

**CHAIRPERSON:** Ja, ja, so that there is no confusion.

**ADV MATHIPA:** Yes. Okay.

**CHAIRPERSON:** So what is the black number on the page  
10 you are talking about?

**ADV MATHIPA:** It is 362.

**CHAIRPERSON:** 362?

**ADV MATHIPA:** Yes.

**CHAIRPERSON:** Okay, alright.

**ADV MATHIPA:** Yes, yes, 362. Just as a starting place, I am saying this that in paragraph 34 you indicated ...[intervenes]

**CHAIRPERSON:** Well, do you want to just confirm that is his signature on page 372 and that this is his affidavit  
20 before you move on?

**ADV MATHIPA:** Yes, yes, okay. Alright, can I confirm, Mr Fuzile, this is your affidavit, this document?

**MR FUZILE:** It looks like it, ja.

**ADV MATHIPA:** It is. And then it is signed on page 372. That is your affidavit, right? Thank you. Now on page

362, in paragraph 34, that is where you deal with your relationship with Mr van Rooyen. Do you see that?

**MR FUZILE:** Yes.

**ADV MATHIPA:** Right. And then you indicated in paragraph 34 that you first met him when he was a member of parliament.

**MR FUZILE:** Yes.

**ADV MATHIPA:** Right and that he was a member of the standing committee on finance and Chief Whip of the majority party, right? Now in paragraph 35 you also speak about a very good professional relationship that you had with him, am I right?

**MR FUZILE:** Yes.

**ADV MATHIPA:** And that there was mutual respect between you and him for each other's roles, right? Do you agree with that?

**MR FUZILE:** Yes.

**ADV MATHIPA:** And then 36 you actually give examples to illustrate the quality of the interactions that you had with him, right? You give two examples of positive engagements that you had with him. I do not want to - I mean, it is something that I do not think - but I just want to confirm that relationship and that interaction.

36.1 you speak to the information that he requested from you when he preparing for a debate during the State

of the Nation address, that is when the State of the Nation address. Do you see that?

**MR FUZILE:** Yes.

**ADV MATHIPA:** And then 36.2 you speak about the mediation role that he played in a meeting at National Treasury on the 9 November 2015. Am I correct with that?

**MR FUZILE:** Yes.

**ADV MATHIPA:** And then you say in the very last line of paragraph 36.2, you say – just the last three lines:

10            “In that meeting Mr van Rooyen played a role of mediator. He was very polite and constructive throughout the engagement.”

Am I correct that?

**MR FUZILE:** Yes.

**ADV MATHIPA:** Okay, now ...[intervenes]

**CHAIRPERSON:** I am sorry, Mr Fuzile, just be the recording, ja.

**MR FUZILE:** Right.

**CHAIRPERSON:** So your answers must not be too soft.

20    **MR FUZILE:** Okay.

**CHAIRPERSON:** Ja.

**MR FUZILE:** Yes.

**ADV MATHIPA:** Now in paragraph 38 on the next page you speak about the cordiality that prevailed between you and Mr van Rooyen throughout the many years of your

interactions and you say this can be attested to even by your former colleagues at National Treasury and his colleagues, other MPs. Do you confirm that?

**MR FUZILE:** Yes.

**ADV MATHIPA:** Alright. Now let me check with you. In these interactions that you have had with him, specifically at National Treasury where he played the role of a mediator where you say he was very polite and constructive throughout the engagement. Was he also  
10 polite to the other people or was he only polite and constructive to you?

**MR FUZILE:** He was polite to other people.

**ADV MATHIPA:** Okay.

**MR FUZILE:** As well.

**ADV MATHIPA:** As well, okay. And the years that you have known him where you say there was cordiality that prevailed between you and him and you say this can be attested by your own colleagues at National Treasury as well as by his other MPs. Are you aware of him not being  
20 cordial to other people and let us say – I think let us just start with your own colleagues. Was he only cordial to you, was you he also cordial to your colleagues?

**MR FUZILE:** This is prior to his arrival at Treasury as Minister, yes, he was cordial to everyone.

**ADV MATHIPA:** Okay.

**MR FUZILE:** And to be clear, prior to his arrival to the Treasury as Minister.

**ADV MATHIPA:** Definitely, yes, I just wanted to confirm that. Now I think we can now move to the events of the 9 December 2015 now that we have set the scene. First, I would like to refer you to – I want to go back to your statement. Just one second? First, I think let us look at page 044.

**CHAIRPERSON:** Okay.

10 **ADV MATHIPA:** That page ...[intervenes]

**CHAIRPERSON:** That is an index, is that right?

**ADV MATHIPA:** Ja, it is an index page.

**CHAIRPERSON:** Yes.

**ADV MATHIPA:** And then the next page is a statement. I just want us ...[intervenes]

**CHAIRPERSON:** But the next page says ...[intervenes]

**ADV MATHIPA:** It is the table of contents.

**CHAIRPERSON:** Ja, okay.

**ADV MATHIPA:** Ja and then the third page is – says  
20 Lungisa Fuzile there. Do you see that?

**MR FUZILE:** H'm.

**ADV MATHIPA:** Can you confirm that this is your statement?

**CHAIRPERSON:** This is a statement or affidavit that starts on page 46.

**ADV MATHIPA:** Yes.

**CHAIRPERSON:** And goes up to – oh it says – it looks like a statement rather than – it goes up to page 65, is that correct?

**ADV MATHIPA:** Page 65, ja, if we exclude the attachments.

**CHAIRPERSON:** Oh, okay, ja, it is just a statement and not an affidavit.

**ADV MATHIPA:** Correct.

10 **CHAIRPERSON:** It is dated 16 November 2018. Do you confirm it is your statement?

**MR FUZILE:** I confirm that it is my statement.

**CHAIRPERSON:** Yes.

**ADV MATHIPA:** Yes.

**CHAIRPERSON:** Thank you.

**MR FUZILE:** Signature on page 65 is mine.

**CHAIRPERSON:** Yes, thank you.

**ADV MATHIPA:** Alright, so I want us to look at page 048. Are you with me on page 048?

20 **MR FUZILE:** Yes.

**ADV MATHIPA:** Alright. On that page in paragraph 15 – I do not want to read the whole of it but you mention that you received a message from the then Minister of Finance, Mr Nene, telling you that the axe has fallen. Are you with me on that paragraph?

**MR FUZILE:** Yes, I am.

**ADV MATHIPA:** Okay. And then - and he explained that - so you changed direction then you went him, right? Okay?

**MR FUZILE:** Yes.

**ADV MATHIPA:** Okay. Now in paragraph 17, that is where I would like us to look at. You then say you received a call from Mr Enoch Godongwana who said you are now going to receive a Gupta Minister who will arrive  
10 with advisers. Am I right?

**MR FUZILE:** Yes.

**ADV MATHIPA:** I just want to confirm something with you here before I proceed. When you received this call from Mr Godongwana were you already aware that Mr van Rooyen was the new Minister?

**MR FUZILE:** Yes.

**ADV MATHIPA:** Okay, so you knew that he was referring to him then?

**MR FUZILE:** Yes.

20 **ADV MATHIPA:** Okay. Now let us then look at – okay, I think just before we move, in paragraph 18 you say:

“I asked him to elaborate what he meant and he said I should watch it, my new minister is likely to come with advisers he does not know. They would be given to him by the Guptas. I was perplexed to

say the least.”

Am I reading it correctly, nè?

**MR FUZILE:** Ja, you are reading it correctly.

**ADV MATHIPA:** Okay, sure, that is fine. Now I want us to look at – I think there is one question before we proceed on that, is when you say you were perplexed – and by then you knew that the Minister is Mr Des van Rooyen, did this change your view of him?

**MR FUZILE:** If you read my own statement...

10 **ADV MATHIPA:** Yes.

**MR FUZILE:** ...where on 19 I say that I never even got to speak to Dr Ramontja that he had suggested I should speak to because at that point I took the matter somewhat lightly, disturbing as it was.

**ADV MATHIPA:** I just want to confirm what you – I wanted to confirm just what you mean by I was perplexed to say the least because I am assuming that ...[intervenes]

**MR FUZILE:** The suggestion that I was going to get a Gupta minister, one. Two, that he is going to come with  
20 advisers of Indian descent, I said under cross-examination, and the suggestion that he might not know them that well even, was actually puzzling to me.

**ADV MATHIPA:** Yes.

**MR FUZILE:** Having heard what he said, I still thought could it really be? Right, because he went on, if you read

my own statement.

**ADV MATHIPA:** Yes.

**MR FUZILE:** To say that in fact if I want to confirm this, I should check with Dr Ramontja the *modus operandi* of the Gupta appointees, in his own way. And, by the way, I am saying – this is Enoch Godongwana talking to me.

**ADV MATHIPA:** Yes. No, no, I understand.

**MR FUZILE:** It is not me talking to him saying that this is – I am getting a Gupta minister. So he said you are going  
10 to get a Gupta minister, he is going to arrive with advisers, they are likely to be of Indian descent, they will be given to him and so on and I am saying then, shocked at one point, but shocked that I kind of said look, I doubt it really could be which is why even though I had Dr Ramontja's number, I knew him very well, we had very great rapport.

I had time to call him, I had airtime on my phone but I did not call him.

**ADV MATHIPA:** Yes.

**MR FUZILE:** I still let that lie.

20 **ADV MATHIPA:** Okay, that is fine. So my only question was did that change your view?

**MR FUZILE:** No at that stage, I did say to you.

**ADV MATHIPA:** Okay, that is fine. Let us move on. Then let us look at page ...[intervenes]

**CHAIRPERSON:** I am sorry, is the position that is you

were concerned about what Mr Godongwana said about your new minister but nevertheless you did not think you at that stage wanted to call Dr Ramontja and confirm what you had been told, you still wanted to see how things developed or what the – you did not form a fixed view about the situation?

**MR FUZILE:** No. Precisely, Chief Justice, I mean, I wanted – I mean, the day was going to – the night was going to pass and the morning was going to come.

10 **CHAIRPERSON:** Yes.

**MR FUZILE:** And he was going to arrive at the Treasury.

**CHAIRPERSON:** Then you could see.

**MR FUZILE:** I did not have to check it with anyone. If he arrived on his own, Enoch would have been proven wrong, first point, just getting there on his own. Needless to say, he actually arrived with advisers.

**CHAIRPERSON:** Okay.

**MR FUZILE:** So then that was the first moment – first when I got to the Union Buildings actually but you will  
20 come ...[intervenes]

**CHAIRPERSON:** Yes, okay.

**MR FUZILE:** But what I am saying, that the first time then I met the adviser, I kind of started to wonder now, oh, okay, perhaps there was truth in what was said but let us see how it unfolds.

**CHAIRPERSON:** Okay.

**ADV MATHIPA:** Mr Fuzile, let us look at page 49, 049.  
Are you on that page?

**MR FUZILE:** Yes.

**ADV MATHIPA:** Paragraph 22 on that page, you say that you remember calling Mr van Rooyen to speak to him and congratulate him. And I am reading:

10 “During the call I indicated to him that I was going to put him on speaker phone so that our head of communications, Ms Phumza Macanda, could be part of the discussion and I introduced her. I encouraged him to consider two things.”

Okay? You said:

“First to try and get to the department early, sometime before inauguration, which was at 11.00 so that he can meet Mr Nene and so that together they can address the staff for outgoing Minister Nene to say goodbyes.”

And so on. And then:

20 “Minister designate to introduce himself and essentially calm them.”

Then in 2.2 you say:

“Second, I asked him to seriously consider issuing a media statement as soon as he possibly could, possibly after the inauguration. I was suggesting

this because it was evident that the market reacting adversely to the untimely removal of Mr Nene 18 months into his first term. They now anticipated an imminent breakdown in the fiscal discipline procurement of nuclear and the weakening of Treasury.”

Do you see what I have just read there?

**MR FUZILE:** Yes.

**ADV MATHIPA:** Do you agree that I have read it  
10 correctly?

**MR FUZILE:** Yes.

**ADV MATHIPA:** Alright. Now where I am coming to is paragraph 23. You say:

“He turned down both these suggestions. On the contrary, he sternly told me that our officials of Treasury tendency to issue statements has come to an end.”

Do you confirm that that is what you said?

**MR FUZILE:** Yes.

20 **ADV MATHIPA:** Alright. Now I want us to look at paragraph 9 of what Ms Macanda said about what the Minister said and this is going to be ...[intervenes]

**CHAIRPERSON:** Do you remember where we will find that?

**ADV MATHIPA:** This is where we go to the ...[intervenes]

**CHAIRPERSON:** Ja, just tell me what is written on the spine of the file?

**ADV MATHIPA:** Okay, just one second? 9 is on page 26.

**CHAIRPERSON:** Tell me what is written on the spine of the file first, on the spine of the file, here, tell me what is written here?

**ADV MATHIPA:** You know what I have doesn't have anything like that.

**CHAIRPERSON:** It doesn't have?

10 **ADV MATHIPA:** No.

**CHAIRPERSON:** Well Mr Hulley – oh look at counsel behind you is helping you, on your left is helping you.

**ADV MATHIPA:** Thank you very much.

**CHAIRPERSON:** Ja, just tell me what is on the back, on the spine?

**ADV MATHIPA:** It is EXHIBIT P.

**CHAIRPERSON:** Is it written Advisors Two or what, on the spine, on the spine?

**ADV MATHIPA:** On the outside.

20 **CHAIRPERSON:** On the spine.

**ADV HULLEY SC:** Mr Chair if I could be of some assistance?

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** What my learned friend is referring to is a historical document, so in other words it is what Mr

Fuzile testified to which was PA, in this case it forms part of Exhibit PB so on your spine Mr Chair it should refer to PA and B.

**CHAIRPERSON:** Oh.

**ADV HULLEY SC:** I understand that is how it was compiled in the past.

**CHAIRPERSON:** Okay, so it's the file written Exhibit PA on the spine? Okay Mr Fuzile have you got that file?

**MR FUZILE:** I think I have got it Deputy Chief Justice,  
10 Exhibit BA.

**CHAIRPERSON:** Yes, ja that is the one. And what is the page number?

**ADV MATHIPA:** It is page 26.

**CHAIRPERSON:** 26?

**ADV MATHIPA:** Ja, 26. Alright are we all there?

**CHAIRPERSON:** Are you referring there to 26, the one is written with a marker and the other one is typed.

**ADV MATHIPA:** Ja, that is the bigger letters, which is – I think it is the marker one.

20 **CHAIRPERSON:** Oh, okay. Where there is a table or something, flexible remuneration package.

**ADV MATHIPA:** Oh, I don't ...[intervenes]

**MR FUZILE:** My file DCJ looks exactly like yours.

**CHAIRPERSON:** It's like mine, okay.

**ADV MATHIPA:** It's got the tables of salary scale.

**CHAIRPERSON:** Yes.

**ADV MATHIPA:** 31<sup>st</sup> March 2015.

**CHAIRPERSON:** Ja, so our page 26, written with a marker Mr Mathipa.

**MR FUZILE:** Okay just to make use of the time, I also, by the way have sent Mr van Rooyen a couple of sms's, in one of them was congratulating him in another one, and I was saying to him exactly what is contained in this statement, I'm sure you would have seen it Mr Mathipa, in which I was  
10 saying to him, I would urge him to come to ...[intervenes].

**ADV HULLEY SC:** Chair, if I can just interject briefly, it seems as if the witness' voice is not being captured on the microphone, if he can just bring it closer to his mouth.

**MR FUZILE:** Is that so?

**CHAIRPERSON:** Ja, no that's fine.

**MR FUZILE:** So I was just making the point, to make use of the time because we've got an hour to go through this but I thought it's a valuable data point, I had sent Mr van Rooyen a couple of messages, one of the them the night  
20 before, I sent him a message congratulating him at about ten or so that evening.

**CHAIRPERSON:** Ja.

**MR FUZILE:** That's material, actually and that's what I would normally do after hearing a Minister being announced.

**CHAIRPERSON:** Yes.

**MR FUZILE:** Find his telephone number and then call him or sms him. Secondly I did say to him, it would be good if he comes to the department, I think this one, I may have sent it in the morning of the swearing in day, the 10<sup>th</sup>, where I said to him, it would be good to come to the Department to say his goodbyes and Mr Mathipa has repeated this but very importantly, very important, I said to him to also just talk a couple of things that relate to  
10 unfinished business of the Treasury.

**CHAIRPERSON:** Yes.

**MR FUZILE:** Ja.

**CHAIRPERSON:** Ja, that's fine, Mr Mathipa maybe I should say this, you know sometimes it's good to look for the right page but sometimes you find that if you just ask the question the witness would answer it, even without ...[intervenes].

**ADV MATHIPA:** Oh, maybe there's no need...[intervenes].

**CHAIRPERSON:** Without looking at the page, if he wants  
20 to look at a page then he can be given that chance.

**ADV MATHIPA:** Okay.

**CHAIRPERSON:** You might find that if you ask him the question he will answer.

**MR FUZILE:** But Chairman, I know you run the show here but I would prefer that, when reference is made to

something that I wrote or said, I must be directed to it.

**CHAIRPERSON:** Okay.

**MR FUZILE:** Because I don't want it to be interpreted.

**CHAIRPERSON:** That's fair enough.

**MR FUZILE:** I wrote it, I took the trouble to write it, I said it, so there's a record of it, I will insist on that.

**CHAIRPERSON:** No, that's fine, that's why I said, you might be able to answer without needing to look but if you want to look, certainly.

10 **MR FUZILE:** That's fine. So okay at this stage...[interveners].

**CHAIRPERSON:** Well I can say we had a witness a few weeks ago, I think, Mr Nhleko the former Minister who was saying to Mr Hulley, effectively, ask the question I'll be able to answer without looking so – okay, alright continue.

**MR FUZILE:** Yes, so I'm referring page 26 of that – are we on the same page?

**ADV MATHIPA:** No we're not, but you said because you were – your page 26 is different from ours.

20 **MR FUZILE:** Okay, so none of us are on that page.

**CHAIRPERSON:** Ja, no Mr Fuzile and I are on the same page, tell us...[intervenes].

**MR FUZILE:** Okay let's look at the statement of Macanda, ja because the file that I was given by my colleague here is also the same as mine, so it's the same page.

**CHAIRPERSON:** No, page 26 on my one and I think on Mr Fuzile's one doesn't have Ms Macanda's one so it's – it can't be the right file. The file that we have is written on the spine that is at the back of the file Exhibit PA then says statement of Lungisa Fuzile then says Exhibit PB then says application for condonation re: Fuzile Lungisa and Phumza Macanda or Macanda, it might be much towards the end, Mr Hulley are you able to...[intervenes].

**ADV HULLEY SC:** Yes Chairperson, sorry if I can be of  
10 assistance. My learned friend has got to refer to the specific divider that he's dealing with, in this case it happens to be part of PB, so it's from Exhibit PB and it's on page 26 of that Bundle. The document that you're referring to, Mr Chairperson is part of PA, Exhibit PA.

**MR FUZILE:** Ja, I've now found Ms Macanda's statement...[intervenes].

**CHAIRPERSON:** Ja, and what page did you find it on?

**MR FUZILE:** There's a divider on my file which is, I think, the person was writing PC, DCJ, there's a divider in the  
20 file...[intervenes].

**CHAIRPERSON:** Well I don't have a divider written PC, I've got only PA and PB.

**MR FUZILE:** Sorry, maybe I was – the person's handwriting is quite – I think it's PB, it is PB.

**CHAIRPERSON:** PB?

**MR FUZILE:** Ja.

**CHAIRPERSON:** Okay, under PB what page have you got.

**ADV MATHIPA:** That PB yes, then that's where the statement of Ms Macanda starts actually...[intervenes].

**CHAIRPERSON:** Well I've got a notice of motion on page one...[intervenes].

**ADV MATHIPA:** Just past that then there's a statement.

**CHAIRPERSON:** Then I've got – the next affidavit I've got is that of Mr Mabunda on page 9.

10 **ADV MATHIPA:** That's right DCJ keep going you're getting there.

**ADV MATHIPA:** Yes, the page where I am is 26.

**CHAIRPERSON:** Mr Fuzile is your page also 26?

**MR FUZILE:** I do see a 26 before me but when Mr Mathipa goes to the contents, I might realise that I'm on another 26 but let's see.

**ADV MATHIPA:** Okay but let's – you just need to be the same page.

20 **CHAIRPERSON:** Oh, okay I have found it but on mine it is on page 23.

**ADV MATHIPA:** Okay, mine is 26 but the – okay where it starts is 23 I think.

**CHAIRPERSON:** This is not satisfactory I think you'll just have to refer to paragraph numbers.

**ADV MATHIPA:** Okay paragraph 9 Mr Fuzile, I want to

refer you to paragraph 9 of Ms Macanda’s message. I think, just before I go to 9 the previous paragraph, the last sentence of it says,

“The DG asked the Minister if Treasury Officials could draft a statement for the Minister’s approval then 9 says, the Minister told the DG that a statement had already been drafted and that there was no need for him to worry about that. The Minister said he would provide DG with a statement later”,

10

You see that?

**MR FUZILE:** Yes, I see that.

**ADV MATHIPA:** Okay, but you see, Mr Fuzile, that this is different from what you said was the Minister’s response, Minister van Rooyen’s response?

**MR FUZILE:** You mean, what was said when Ms Macanda is different from what was said by me?

**ADV MATHIPA:** Yes.

**MR FUZILE:** In what respect?

20 **ADV MATHIPA:** First you say the Minister rejected both suggestions and said this thing of drafting statements must come to an end, that’s what you say.

**MR FUZILE:** And I stand by that.

**ADV MATHIPA:** Yes, but do you see that it’s different, that’s what I’m asking?

**CHAIRPERSON:** I'm sorry, I am at paragraph 9, just indicate, Mr Mathipa, what is different and different from what so that I can follow the question.

**ADV MATHIPA:** Alright.

**CHAIRPERSON:** Paragraph 9 says, the Minister, that is Ms Macanda, talking, the Minister told the DG that a statement had already been drafted and that there was no need for him to worry about that.

**ADV MATHIPA:** Yes.

10 **CHAIRPERSON:** That's one, the Minister said,

“He would provide the DG with the statement later, both the DG and I were puzzled and wondered who would have drafted such a statement from where and how. This was surprising because the Treasury, under the direction of the Finance Minister was the only institution with the authority to prepare a statement on behalf of the Minister of Finance, the DG or DDG's. We did not respond to this but indicated we would meet the Minister at the swearing in ceremony”.

20

Now, do you want to specify...[intervenes].

**ADV MATHIPA:** Okay, I – let me refer back to paragraph 23 which is on page 49 – 049 of Mr Fuzile's statement.

**CHAIRPERSON:** Just read what it says.

**ADV MATHIPA:** Ja, it reads,

“He turned down both suggestions, the suggestions are contained in paragraph 22.1 and paragraph 22.2”.

**CHAIRPERSON:** Yes.

**ADV MATHIPA:** “He turned down both suggestions, on the contrary he sternly told me that (our) Officials of Treasury tender to issue statements has to come to an end. Ms Macanda was on speaker phone with Mr Fuzile when Mr van Rooyen – when they  
10 communicated with Mr van Rooyen but her response in paragraph 9 says, the Minister told the DG that a statement had already been drafted and that there was no need for him to worry about that”.

**CHAIRPERSON:** Yes, do you want to put to Mr Fuzile what your...[intervenes].

**ADV MATHIPA:** So, my question...[intervenes].

**CHAIRPERSON:** Understanding is of that and say whether...[intervenes].

**ADV MATHIPA:** Ja, I said, do you see that there’s a  
20 difference between what you said the Minister said and what she said the Minister said?

**MR FUZILE:** What’s the difference...[intervenes].

**CHAIRPERSON:** I’m sorry Mr Fuzile, I suggest, Mr Mathipa you put to Mr Fuzile that what Ms Macanda is saying is different from his evidence in respect of A and B

and let him comment on that.

**ADV MATHIPA:** Yes, do you see that there's a difference?

**MR FUZILE:** No, I don't.

**CHAIRPERSON:** Now put to him what the difference is.

**ADV MATHIPA:** Okay.

**CHAIRPERSON:** What – on your understanding of what Ms Macanda says at paragraph 9.

**MR FUZILE:** Show me the difference.

**ADV MATHIPA:** The first difference is this, you say, your  
10 suggestion, let's take one suggestion, your suggestion that  
the Minister should prepare a statement, that there was a  
need for – to prepare a statement was rejected outright,  
you said that, is that correct?

**MR FUZILE:** Yes.

**ADV MATHIPA:** Ms Macanda says, the Minister said, I've  
already prepared a statement.

**MR FUZILE:** No, I don't know why you choose to do that,  
the essence of what I was saying to the Minister was, we,  
the people, within the protocols of what we normally follow  
20 of issuing a statement as a Department for which there is a  
policy that governs it, can we do it this way and I am  
saying that he turned that down. Phumza says that he  
turned that down, he's not saying that he agreed we should  
do the statement, he even – she even says, we were  
surprised because under the direction of the Minister of

Finance we were the only ones who normally do the statement and you say this is different. Sure she's not using my own words, she is using her own words to say, Mr van Rooyen said, he did not need a statement prepared by us or with us, are you disputing that, I'm saying that these two paragraphs say exactly the same thing but they use a different language.

**ADV MATHIPA:** Mr Fuzile let's face this matter...[intervenes].

10 **CHAIRPERSON:** Hang on Mr Mathipa, I just want to say, in terms of the time we agreed upon you are left with 20 minutes.

**ADV MATHIPA:** Ja I can see that.

**CHAIRPERSON:** I will give you a little bit more – maybe another 10 minutes...[intervenes].

**ADV MATHIPA:** Please.

**CHAIRPERSON:** But I just want you to be alive to the time so that you use it optimally.

**ADV MATHIPA:** Yes.

20 **CHAIRPERSON:** Ja.

**ADV MATHIPA:** Mr Fuzile, you and Ms Macanda were on speaker phone listening to Mr van Rooyen at the same time. You wrote, in the statement and confirmed in your testimony that Mr van Rooyen rejected your suggestion for the preparation of a statement, am I correct?

**MR FUZILE:** Yes.

**ADV MATHIPA:** But Ms Macanda says he said that he had prepared a statement. Why didn't you tell the Commission that he said that he had prepared a statement?

**MR FUZILE:** I told the Commission, he turned down our offer to draft a statement for him. What – where in this paragraph is there a difference between that which I said and what is said by Ms Macanda, I don't see it, maybe you see it but further, later on in my own statement I do refer  
10 to the fact that he had his own statement that he issued so it's a moot point that he did have a statement that we had nothing to do with. So, I'm not denying that he had a statement, so I don't know the point you're trying to prove with this but you are the lawyer. I simply am telling you that, factually, we offered him to prepare statement which he would approve, by the way, he turned it down. As to the detail of these issues, and by the way there is further detail prior to this that I would say, it's important, I said to him there are pressing issues and the situation is not okay  
20 and he said, no, continue its business as usual. You would have seen that, I've sent copies of the SMS's that I sent to him, business as usual when the currency has collapsed like it did and then I'm just saying, okay fine.

**ADV MATHIPA:** Okay, Mr Fuzile, at the same time I would suggest that you only answer my questions.

**MR FUZILE:** That's fine, ask your questions.

**ADV MATHIPA:** Because a lot of the things you're saying are already in your statements. Can I refer you to paragraph 22.2 again just what you said - of your statement.

**MR FUZILE:** Okay.

**ADV MATHIPA:** It says,

10 "Second, I had asked him to seriously consider issuing a media statement as soon as he possibly could. Possibly after the inauguration, I was suggesting this because it was evident that..."

I've read the statement already, so let me not repeat it, we've seen that. You did not say, can we prepare statement for you, you are not saying that here, am I right? You said, you asked him to consider seriously issuing a media statement, am I correct or wrong, just say whether I'm correct or wrong?

**MR FUZILE:** I'm saying to you, in the Department – Departments are run on the basis of rules right, clearly Mr  
20 van Rooyen didn't know the rules of the Treasury, right because I was saying to him, in terms of the rules we follow, let us issue a statement. The issuance of a statement is not something that the Minister does on his own in a corner somewhere right and the evidence of this is borne out by two data boards. Minister Gordhan, when

he then replaced Mr van Rooyen, the first thing he did after he was appointed, he asked me to prepare a statement – no it does matter, I mean the fact that I'm saying this does not help you, he asked me to prepare a statement which I did...[intervenes].

**ADV MATHIPA:** Can I just say something, Chairperson I'm just concerned about time because Mr Fuzile, I asked him to please confine himself to my questions. I'm concerned that, instead of answering the question directly he wants to  
10 say...[intervenes].

**CHAIRPERSON:** Just remind me what was the question?

**ADV MATHIPA:** I'm saying to him, can he see that, what he asked Mr van Rooyen was to seriously consider issuing a media statement, it was not, can we prepare you a media statement it was, can you seriously consider issuing a media statement as soon as possible. I'm asking a simple thing, can you see that, that's what you're saying?

**CHAIRPERSON:** Yes, but he's explaining the context of his – of what he wrote.

20 **ADV MATHIPA:** Okay.

**CHAIRPERSON:** Ja.

**MR FUZILE:** Okay, now you may not like it but I'm explaining it, and it's the truth Mr Mathipa that...[intervenes].

**CHAIRPERSON:** Basically, he's saying ...[intervenes].

**MR FUZILE:** A Department – sorry Mr Chair.

**CHAIRPERSON:** Ja, basically, he's saying, Mr Mathipa, when he spoke about Mr van Rooyen issuing a statement he was talking about the issuing of a media statement in the way that the Department normally does, that's, in effect, as I understand him where the process is that the Department would be involved in the drafting of that statement, as I understand it, that's what he says he was talking about.

10 **ADV MATHIPA:** Okay, Mr Fuzile, do you admit that you did not tell the Commission when you testified, that Mr van Rooyen said that he had prepared a statement?

**MR FUZILE:** There are many things I did not tell the Commission.

**ADV MATHIPA:** No, no I'm only asking on that one, can you please confine yourself to my question?

**MR FUZILE:** Ja, oh sure.

**ADV MATHIPA:** You agree?

**MR FUZILE:** Ja.

20 **ADV MATHIPA:** Okay, why did you not?

**MR FUZILE:** I may have forgotten that detail.

**ADV MATHIPA:** Okay, now, I want to refer you to another – to an affidavit which you prepared and I'm going to go to that, it's page 367.

**MR FUZILE:** Which file?

**ADV MATHIPA:** 367 the same – the main file that we are working on, 367.

**CHAIRPERSON:** Is that the one that has got Ms Macanda's statement?

**ADV MATHIPA:** Ja, no, no it's the main one that we're using, 367.

**CHAIRPERSON:** Oh.

**ADV MATHIPA:** Just one second, I'll tell you what – on the black number it's 370.

10 **CHAIRPERSON:** You know, Mr Mathipa, before we go to the pages, we need to know which Bundle, that's why I keep on saying, what is written on the spine.

**ADV MATHIPA:** Sorry about that.

**CHAIRPERSON:** Because I must know I have the right Bundle.

**ADV MATHIPA:** Sure I understand ja.

**CHAIRPERSON:** Is it the one that has got Exhibit PC?

**ADV MATHIPA:** Yes.

**CHAIRPERSON:** Is that the one?

20 **ADV MATHIPA:** Ja.

**CHAIRPERSON:** Okay and what page?

**ADV MATHIPA:** The main one, the one that has got black numbers and red numbers.

**CHAIRPERSON:** Ja, what is the page you...[intervenes].

**ADV MATHIPA:** 370.

**CHAIRPERSON:** 370?

**ADV MATHIPA:** Yes.

**CHAIRPERSON:** Mr Mathipa, I just want to say that, obviously I'm not going to suggest how you run your cross-examination but you might consider focusing on important issues.

**ADV MATHIPA:** Yes.

**CHAIRPERSON:** Before your time runs out.

**ADV MATHIPA:** Definitely I'm going to do that.

10 **CHAIRPERSON:** Yes, I've got 370 – I am at 370.

**ADV MATHIPA:** Yes, before I ask a question on that 370, Mr Fuzile, you did not tell the Commission that Mr van Rooyen read out a statement and asked for your inputs, am I correct?

**MR FUZILE:** I don't even know what you're talking about.

**ADV MATHIPA:** No ...[intervenes].

**CHAIRPERSON:** The question is, did you, in your statement say that Mr van Rooyen asked for your input into his statement?

20 **MR FUZILE:** But in the – ja when we arrived at the Union Buildings and he came – I don't actually recall even seeing his statement but it's possible it happened.

**CHAIRPERSON:** But do you recall whether it happened, let's start with that, he ask for your input.

**MR FUZILE:** The material thing I remember, Deputy Chief

Justice, is that the statement he read had nothing to do with me.

**CHAIRPERSON:** Yes.

**MR FUZILE:** And the thing I cared about was that, a statement that is issued by the Minister of Finance, says something that is meant directly to deal with what the market was wondering about, what South Africans were wondering about, what investors were wondering about.

**CHAIRPERSON:** Yes.

10 **MR FUZILE:** That's what I wanted to do.

**CHAIRPERSON:** Yes.

**MR FUZILE:** I had no opportunity to do it.

**CHAIRPERSON:** Yes.

**MR FUZILE:** If I had been given a statement, I certainly would have fixed it if it was a statement that is in such a way that I can fix it. What I do recall seeing at some point, was a piece of paper, actually with some purplish things on it which was ready in a fraction of a time before Mr van Rooyen was sworn in. Remember, I had spoken to him  
20 from around 6am, now if he wanted my input on a statement, he had from 6 until the time the statement was issued. You can't tell me that five minutes before you speak, as an example, you genuinely want my view but I don't recall perfectly that happening but I'm simply saying that, logistically I am at the Union Buildings, I don't have a

computer to type anything on, I don't even think that he can read my handwriting if I write with it, just practically, what was he hoping for a few minutes before he spoke?

**CHAIRPERSON:** So is the position that, one, you say you did offer him an opportunity to have your input into whatever statement may be issued?

**MR FUZILE:** Yes Mr Chair.

**CHAIRPERSON:** And you say, he did not make use of that.

10 **MR FUZILE:** Yes.

**CHAIRPERSON:** But you say, you don't remember whether he ever asked you to make any input into the statement that he prepared, you don't remember whether he did or not?

**MR FUZILE:** No, I don't remember.

**CHAIRPERSON:** But you say, if he did ask you, it probably would have been too close to the time of addressing the media or releasing the statement for you to be able to make any contribution?

20 **MR FUZILE:** Precisely.

**CHAIRPERSON:** Is that what you are saying?

**MR FUZILE:** That is what I'm saying DCJ.

**CHAIRPERSON:** Ja.

**MR FUZILE:** And in addition to that you would recall, when I got to the Union Buildings there was Mr Bobat, he

says to me, I am going to require a statement from you. I said to him, but check with the Minister because I spoke to him earlier and he said he doesn't need the statement right and Ms Macanda confirms that and I don't understand this issue that we had time to give him the statement or to input on the statement.

**CHAIRPERSON:** Okay, no that's fine.

**MR FUZILE:** But look, if you want to make the point, feel free to make it.

10 **CHAIRPERSON:** Mr Mathipa, continue?

**ADV MATHIPA:** I'm going to conclude that matter by saying, Mr van Rooyen, as you must have seen from his statement is that he asked for your input, you made input and you agreed with the statement that he was going to deliver, is that true or not?

**MR FUZILE:** It would be interesting if he shows us the version he brought and the version he had after my input because these things have got versions, right. He must have come with a version and then I must have edited the  
20 version. There was nothing in his statement that resembles anything that concerned me which I would have included in the statement and thankfully, as fate would have it, then he gets removed and I had the opportunity to influence the statement that Minister Gordhan issued and I can read it, I can find it on the internet now quickly and

read it to you to show the congruency between what I had wanted him to consider, not to tell him just bearing in mind what was evolving and of course the experience I had, I mean, you cannot take it away, I ran the job I'm an economist, I've studied these things, so I knew what needed to be said in consultation with the Minister of course and this is exactly what we did with Minister Gordhan. This is exactly what we did with Minister Gigaba, even though, in Minister Gigaba's case, by the way, the  
 10 statement still had things that I didn't like in it right because he, too, came with people who thought they knew it all. So you can have things in the statement and wording that is really unlike the Treasury and that is what I wanted to prevent with Minister van Rooyen but I didn't have the opportunity to do that.

**ADV MATHIPA:** The only thing I'm putting to you, Mr Fuzile, is that you did not tell the Commission the truth when you suggested – when you said that your suggestion for a statement was simply rejected outright and you were  
 20 told not to issue statements anymore.

**MR FUZILE:** I am puzzled by the fact that you seem to think that, what matters, is the issuance of a statement, not its content. Sure the statement was issued, how do you think that I could deny that Mr van Rooyen issued a statement when, in fact, he stood in front of the media and

issued it...[intervenes].

**ADV MATHIPA:** You don't understand the question.

**MR FUZILE:** I'm saying the content of it, had nothing to do with me.

**ADV MATHIPA:** Yes, but I'm saying that you agreed with the content, that's what you're not telling the Commission the truth.

**MR FUZILE:** Okay, where did I agree?

**CHAIRPERSON:** What do you say to that?

10 **MR FUZILE:** Where do you prove that I agreed with it, simply because you said so?

**CHAIRPERSON:** Mr Fuzile...[intervenes].

**ADV MATHIPA:** What is your response, you can just say no.

**CHAIRPERSON:** Hang on Mr Mathipa, Mr Mathipa is telling you what Mr van Rooyen's evidence is or is going to be, he says he is going to say, you actually agreed with the content of the statement that he issued. He's giving you an opportunity to say, yes I agreed, maybe with some  
20 qualification or, no, that is not factually true I never agreed with the content, that's the opportunity he's giving you to...[intervenes].

**MR FUZILE:** That is a lie.

**CHAIRPERSON:** Yes, that's a lie?

**MR FUZILE:** Yes.

**ADV MATHIPA:** Let's pass, at the place where Mr van Rooyen was sworn in, Minister van Rooyen introduced Mr Bobat to you and told you that he identified him as the person he's going to appoint as his special advisor and asked you to expedite his appointment, do you agree with that?

**MR FUZILE:** Mr van Rooyen found Mr Bobat with me, he did not introduce us, we introduced each other.

**ADV MATHIPA:** Yes, but that's not my question, the  
10 statement I'm putting to you...[intervenes].

**MR FUZILE:** That is your question.

**ADV MATHIPA:** The statement I'm putting to  
you...[intervenes].

**CHAIRPERSON:** Okay, Mr Fuzile let Mr Mathipa put the  
question again.

**MR FUZILE:** Okay.

**ADV MATHIPA:** Mr Van Rooyen told you that – that Mr  
Bobat – Mohammed Bobat was the person that he had  
identified to be his special advisor. Do you agree?

20 **MR FUZILE:** That is untrue. That is false.

**CHAIRPERSON:** Did – did he never say to you Mr Bobat is  
going to be my special advisor?

**MR FUZILE:** No.

**CHAIRPERSON:** At any stage?

**MR FUZILE:** He said so at the Treasury.

**CHAIRPERSON:** Yes.

**MR FUZILE:** The morning – on the day at the Union Buildings.

**CHAIRPERSON:** Yes.

**MR FUZILE:** Mr Bobat I found him there. He introduced himself to me as advisor.

**CHAIRPERSON:** Yes.

**MR FUZILE:** When they met, they did not quite know each other that is the impression I got. It maybe they have not  
10 known each other for a long time. But as I say that is not true what he is saying.

**CHAIRPERSON:** So you – Mr Mathipa.

**ADV MATHIPA:** Yes.

**CHAIRPERSON:** Were you – would that be – will that be Mr Van Rooyen's evidence?

**ADV MATHIPA:** Ja but his evidence is that...

**CHAIRPERSON:** Hang on – hang on Mr Mathipa.

**ADV MATHIPA:** Yes.

**CHAIRPERSON:** Let me finish.

20 **ADV MATHIPA:** Yes.

**CHAIRPERSON:** What you say is going to be Mr Van Rooyen's evidence is that in relation to the Union Buildings or National Treasury?

**ADV MATHIPA:** National Treasury.

**CHAIRPERSON:** Oh okay alright.

**ADV MATHIPA:** Yes.

**CHAIRPERSON:** Okay so Mr Fuzile I think what – what Mr Mathipa is saying is that Mr Fuzile is going to say that when he met you at National Treasury, he told you that Mr Bobat was going to be his special advisor? You have – is that true, is that not true?

**MR FUZILE:** At the Treasury.

**CHAIRPERSON:** At some stage at the Treasury.

**MR FUZILE:** At some stage.

10 **CHAIRPERSON:** Ja.

**MR FUZILE:** When we were in the Minister's office, he is seated with the three gentlemen. He then said that this is Mohammed Bobat he is going to be the Chief of Staff. And – and the one sort of – he said no, no, no, advisor. And by the way that is not the biggest issue for me – that confusion and you asked me on the day. Right. But it was just puzzling. But he – they corrected each other and then from then on, I understood Mohammed Bobat was going to be the advisor, Ian Whitley the Chief of Staff.

20 **CHAIRPERSON:** So is the position therefore...

**MR FUZILE:** This is now on Friday the 11<sup>th</sup>.

**CHAIRPERSON:** the 11<sup>th</sup>.

**MR FUZILE:** I thought he was asking about the Union Buildings because he did mention Union Building this.

**CHAIRPERSON:** That time.

**MR FUZILE:** At the Union Buildings where we first met on the 10<sup>th</sup> Mr Bobat introduced himself for me not Mr...

**CHAIRPERSON:** Van Rooyen.

**MR FUZILE:** Mr Van Rooyen.

**CHAIRPERSON:** So – so your evidence is that Mr Van Rooyen initially said Mr Bobat was going to be his Chief of Staff.

**MR FUZILE:** Yes.

**CHAIRPERSON:** And Mr Bobat corrected him.

10 **MR FUZILE:** Yes.

**CHAIRPERSON:** And said advisor or special advisor.

**MR FUZILE:** Yes.

**CHAIRPERSON:** And Mr Van Rooyen – after that the conversation proceeded on the basis that Mr Bobat.

**MR FUZILE:** Yes.

**CHAIRPERSON:** Would be his special advisor.

**MR FUZILE:** Yes.

**CHAIRPERSON:** Okay. So he did say even though there might have been some confusion.

20 **MR FUZILE:** Ja, ja.

**CHAIRPERSON:** Ja okay.

**ADV MATHIPA:** Okay but I think just to clarify the position of my client is Mr Van Rooyen is that he told you after his inauguration at the Union Buildings that this man Mr Bobat is going to be my special advisor please expedite the process

of his appointment. That is what you deny, right?

**MR FUZILE:** I deny that.

**ADV MATHIPA:** Okay. I want us to move on.

**CHAIRPERSON:** Just one second Mr Mathipa.

**ADV MATHIPA:** Yes.

**CHAIRPERSON:** You have exhausted an hour. I will give you some more time.

**ADV MATHIPA:** Please.

**CHAIRPERSON:** I will give you fifteen minutes.

10 **ADV MATHIPA:** Okay.

**CHAIRPERSON:** Ja.

**ADV MATHIPA:** Yes.

**CHAIRPERSON:** Try and deal with the important issues for your client.

**ADV MATHIPA:** Yes.

**CHAIRPERSON:** Thank you.

**ADV MATHIPA:** In paragraph 49 of your statement Mr Fuzile it is on – let me just check the page. Let us just go back to Mr Fuzile's statement.

20 **CHAIRPERSON:** You have to remind us where that is.

**ADV MATHIPA:** Ja.

**CHAIRPERSON:** Because there are a few of them is it not?

**ADV MATHIPA:** Ja so I am just going to get –

**CHAIRPERSON:** Well there is one that is at – that starts at page 46.

**ADV MATHIPA:** Right it is page – it is – it is page – just one second. On the black number it is page 057.

**CHAIRPERSON:** Okay I have got it.

**ADV MATHIPA:** Okay. I am just looking at paragraph 49 of that.

**CHAIRPERSON:** I think Mr Fuzile is still looking for the page.

**ADV MATHIPA:** Okay. It is your statement Mr Fuzile.

**ADV MASUKU SC:** Ja.

10 **ADV MATHIPA:** Mr Fuzile in your – in this paragraph your say:

“Mr Van Rooyen instructed me to expedite the process of – of normalising – formalising the appointment of Mr Bobat and Mr Ian Whitley as Advisor and Chief of Staff respectively.”

Right – am I right?

**MR FUZILE:** Ja.

**ADV MATHIPA:** Okay but the difference though is that when you went to testify at the commission you then said:

“He confused their position.”

20 In the – in his very office. But in your statement the only time you say that Mr Van Rooyen confused the positions of the two people was at the meeting of the Executive Management.

**MR FUZILE:** The point then being?

**ADV MATHIPA:** You did not tell the commission the truth.

That is what I am saying because nothing happened. He did not confuse them.

**MR FUZILE:** No. I thought the most material thing you would have tried to deal with but thus far I can tell you it is the fact that he had not followed due process to appoint them. That is the material thing rather than he confused their names. To be honest with you.

**ADV MATHIPA:** Yes.

**MR FUZILE:** I thought the process like you say.

10 **ADV MATHIPA:** Okay but what I am saying is that you lied to the commission when you said in his office – in his office he confused their positions.

**MR FUZILE:** He may have confused them again in the place and I may not have mentioned it in my statement. Does it make it a lie simply because I do not repeat it?

**ADV MATHIPA:** I put it to you that is a lie because in paragraph 49.

**MR FUZILE:** Okay.

20 **ADV MATHIPA:** If he had confused it you would have said it in paragraph 49.

**MR FUZILE:** I deny that simply because I do not repeat it that he confused them it makes it a lie.

**ADV MATHIPA:** Okay. After Mr Van Rooyen had introduced Mr Bobat according to your version, he asked you expedite the process of the appointment, right?

**MR FUZILE:** Yes.

**ADV MATHIPA:** Okay. Now you said in your statement I do not want to waste time to refer to it that you regard yourself as the Chief Advisor to the Minister. You remember that?

**MR FUZILE:** Yes.

**ADV MATHIPA:** Okay now at no stage Mr Fuzile did you say to the Minister you are not entitled to appoint these people – you are not entitled – these people are not supposed to work until I have formalised all the processes. You never said  
10 that to him? You agree? You agree or do you not agree?

**MR FUZILE:** I did not know that the Minister does not know that people do not work without a contract.

**ADV MATHIPA:** No.

**MR FUZILE:** And I did twice I reminded them that there is a ministerial handler – twice. A minimum twice that I remember. First in the office when I met Mr Van Rooyen with the three guys and second in the board room Media Executives. And when I said that I was suggesting that – and I even went further by the way to say, please familiarise  
20 yourselves with what the ministerial handbook says and allows so that from now on our engagement would be on the route. And you do not consider that to be advice to him in your world. When I say to him the rule book for what you are wanting to do is this please read it. And Ian Whitley confirms that in his own statement. So you missed that. Are

you saying that it was not sufficient?

**ADV MATHIPA:** Minister

**MR FUZILE:** Of course, I was not there when you met them at Melrose Arch so I could not advise him not to bring them to the Treasury. They were already there now. So we had to deal with the fact that he had permitted an egregious violation of the rules in bringing people into a department and give them access to everything before they had formalised contracts. And I said to him, familiarise  
10 yourselves with the rule book if you want to do this. And you say that that is not advice?

**ADV MATHIPA:** Mr Fuzile I am going to ask you questions you do not ask me questions.

**MR FUZILE:** Okay ask, ask Chair.

**ADV MATHIPA:** Yes. I am saying – I am putting the following statements to you. First you are the Chief Advisor to the Minister.

**MR FUZILE:** Yes.

**ADV MATHIPA:** Second you agree to expedite the  
20 appointment of the Special Advisor and Chief of Staff, right?

**MR FUZILE:** Yes.

**ADV MATHIPA:** You did not say to the Minister they cannot assume duty until I have finished expediting the process. You agree?

**MR FUZILE:** What you are missing is that I referred him to

the book that sets out the rules that govern by.

**ADV MATHIPA:** Yes. No I hear that I am just asking you the question.

**MR FUZILE:** If you are asking me for something and I say to you, the Public Finance Management Act will help you understand this. Are you saying that that is not advice in your world? When I refer you to the rule book that sets out how you do what you want to do.

**ADV MATHIPA:** Mr Fuzile there is a reason...

10 **MR FUZILE:** I consider that to be advice to be direct to your question I did advise him. I said he must read the rule book and then we can proceed with the process.

**ADV MATHIPA:** Mr Fuzile.

**MR FUZILE:** And it is confirmed by the people he brought. So I am saying to you your question is misplaced.

**ADV MATHIPA:** Mr Fuzile you went on to give access cards, laptops to Mr Bobat and Mr Fuzile – sorry Mr Whitley, am I correct?

20 **MR FUZILE:** No. I never gave them. Where do you get that from?

**ADV MATHIPA:** No, no your department.

**MR FUZILE:** No I said to the people who normally do that do the process and I did not prescribe a sequence to them. They knew the sequence.

**ADV MATHIPA:** Yes.

**MR FUZILE:** They knew the sequence. I said to them, do what is normally done.

**ADV MATHIPA:** Yes. Yes.

**MR FUZILE:** Why do you have ...[intervenes]

**ADV MATHIPA:** That is all that I mean. I mean ...

**MR FUZILE:** Why do you...

**ADV MATHIPA:** You see why did you give the instruction?

**CHAIRPERSON:** Hang on Mr Fuzile just answer the questions.

10 **MR FUZILE:** Yes.

**CHAIRPERSON:** Yes Mr Mathipa.

**ADV MATHIPA:** Why did you give Mr [indistinct 00:12:03] Zulu the instruction to on-board these people while you knew that it was unlawful to do it?

**MR FUZILE:** No. There was nothing unlawful about appointing advice lest you confuse me if you are confused. That is not the contention. The contention is that he caused them to start working before they had contracts – before the processes that are prescribed in the rules had been  
20 followed. That is the contention.

**CHAIRPERSON:** So...

**MR FUZILE:** Doing it later on does not reverse it.

**CHAIRPERSON:** So you...

**MR FUZILE:** It just regularises – regularises it from that point on.

**CHAIRPERSON:** So – so you are saying it was un-procedural or it would have been un-procedural for him to let them start doing anything until there was – the process of so to speak up on boarding them had been completed. Is that what you are saying?

**MR FUZILE:** You can use many adjectives DCJ to characterise it.

**CHAIRPERSON:** Yes.

**MR FUZILE:** Un-procedural, illegal, egregious because  
10 when then see the value of going through the right process is when you go and see the specimen of the contract that I provided the commission with which then consents both parties about the relationship they are entering into.

**CHAIRPERSON:** Hm.

**MR FUZILE:** How to treat information.

**CHAIRPERSON:** Hm.

**MR FUZILE:** Mr Bobat knowing that I am not there as Director General to receive instructions from him.

**CHAIRPERSON:** Hm.

20 **MR FUZILE:** And, and, and. And I am saying getting them to start to involve themselves in the affairs of the department.

**CHAIRPERSON:** Hm.

**MR FUZILE:** Even before at the very lightest if you are in a hurry at least signing a contract with them was improper.

**CHAIRPERSON:** Hm.

**MR FUZILE:** Grossly improper in my view.

**CHAIRPERSON:** Okay.

**MR FUZILE:** That is what I am saying.

**CHAIRPERSON:** Okay.

**MR FUZILE:** I am not saying that the Minister in terms of the handbook does not have the authority to appoint advisors and he could not – was not allowed to.

**CHAIRPERSON:** Ja.

10 **MR FUZILE:** That is the contention. The contention is when he arrived with them at the department, they had no contracts.

**CHAIRPERSON:** Hm.

**MR FUZILE:** And they carried on started working without a contract.

**CHAIRPERSON:** Hm. Hm.

**MR FUZILE:** Interacted with people without a contract. You will see the contract specimen that I gave you – I gave you also deals with the issue of information, treating the  
20 information of the department. Which is quite material because these guys have already received the information.

**ADV MATHIPA:** I am going to come to that.

**MR FUZILE:** They started to distribute it. And when you do not have the contract you have got nothing against which to hold them. Why is that simple thing not so obvious to you?

**CHAIRPERSON:** No, no, no. Mr Fuzile. Just answer the questions he is going to put to you.

**ADV MATHIPA:** Mr Fuzile you were the Chief Advisor to Minister Van Rooyen.

**MR FUZILE:** I agree.

**ADV MATHIPA:** At no stage did you say to him, these people cannot work until they have signed a contract. Do you agree with that?

**MR FUZILE:** I disagree with you. I said to you I referred  
10 them to the handbook.

**ADV MATHIPA:** No. You are not answering the question. At no stage did you say to him they cannot work until they have signed a contract. Am I right or wrong?

**MR FUZILE:** When I refer him to the document that says an advisor must have a contract my hope was that he would read it and understand because it is written in simple English and understand that they need to have contracts.

**CHAIRPERSON:** Is it correct therefore that you did not say that to him – you did not say to him the – your special  
20 advisor and your Chief of Staff cannot start working until they have signed a contract. Is it correct that you did not say that at least expressly?

**MR FUZILE:** Not in those words.

**CHAIRPERSON:** Yes.

**MR FUZILE:** And if you – if you wish that I say it in your

words DCJ or his words then I did not say it.

**CHAIRPERSON:** Yes, yes.

**MR FUZILE:** But let me just say this.

**CHAIRPERSON:** But what you can say.

**MR FUZILE:** Yes.

**CHAIRPERSON:** Is whether in the discussion you had with the Minister that was – that was implied if it was implied or that – that – or he was going to get that in the handbook or whatever but it is important to make the point that you did  
10 not say it to him expressly if that is the position?

**MR FUZILE:** I did not say it to him in the way in which the two of you say it.

**CHAIRPERSON:** Yes, yes. Just repeat the way in which...

**MR FUZILE:** But I said two things.

**CHAIRPERSON:** You say you said it.

**MR FUZILE:** Two things to him.

**CHAIRPERSON:** Ja.

**MR FUZILE:** One I referred him to the book and two second time when I referred him to the book I said, please  
20 gentlemen here we do things according to the rules that is contained in my statement it is contained in Ms Masanda's statement. I do not know about Mr Mogata and if I remember it very well.

**CHAIRPERSON:** Ja.

**MR FUZILE:** Now it could be that maybe if I did not say it in

the words in which the learned people like yourselves say it it did not seem to be said.

**CHAIRPERSON:** Ja.

**MR FUZILE:** But if you read the handbook cover to cover on the appointment of advisors it states everything.

**CHAIRPERSON:** Okay.

**MR FUZILE:** And in that way I have directed them to where they must find the rules that would govern that they wanted to do which they had started to do without any reference to  
10 the rules by the way.

**CHAIRPERSON:** Okay. Alright. Mr Mathipa.

**ADV MATHIPA:** Mr Fuzile the...

**CHAIRPERSON:** The fifteen minutes is expired. I give you five minutes injury time.

**ADV MATHIPA:** Oh sorry. I am just going to deal with – just the last statement on this aspect. Mr Fuzile the – Mr Van Rooyen left before the appointment was done, you agree of these people? In other words, you were in the process of formalising the appointment and by the time he left it had not  
20 – they had not yet been appointed?

**MR FUZILE:** That is probably correct.

**ADV MATHIPA:** Okay. Now in paragraph 69 of your statement and just to save time I am not going to read it you deal with the issue of what you call leaked of classified information. And there are emails that you attach right? And

those emails show that the document called ‘Economic Outlook’ was sent by you to Mr Ian Whitley and somebody called Marlon Gasvent [indistinct 00:19:04] I think, you agree with that?

**MR FUZILE:** Ja.

**ADV MATHIPA:** And then – now are you – are you familiar with the classification of documents?

**MR FUZILE:** Yes.

**ADV MATHIPA:** You know about classifications like top  
10 secret, secret, confidential, restricted?

**MR FUZILE:** Hm.

**ADV MATHIPA:** What classification did this document have?

**MR FUZILE:** It was actually headed for cabinet and it was going to be classified as ‘Top Secret’. If you are requiring the stamping of ‘Top Secret’ but anyone who has undergone the security clearance process who works at the Ministry who has signed a contract would know that the moment you start typing the first letter on a document if it is intended for cabinet it is going to carry the ‘Top Secret’ classification. On  
20 a rare occasion that it does not. For the fact that at the time it may not have been stamped ‘Top Secret’ is neither here nor there.

**ADV MATHIPA:** But do you agree that the document was not classified?

**MR FUZILE:** Yes.

**ADV MATHIPA:** Okay. Secondly, I want to put this to you. This document was a document that was still at the level of seeking inputs on it, do you agree?

**MR FUZILE:** No. From outsiders?

**ADV MATHIPA:** From anybody?

**MR FUZILE:** No not from anybody man. Where have you seen that? Where have you seek government seeking input from the street – anyone in the street?

**ADV MATHIPA:** Mr Fuzile you yourself testified before this  
10 commission.

**MR FUZILE:** That?

**ADV MATHIPA:** That before – that the public is often engaged to seek their inputs into documents.

**MR FUZILE:** Show me where I say that?

**ADV MATHIPA:** But do you not remember saying that?

**MR FUZILE:** No I am saying show me where I said it.

**ADV MATHIPA:** No, no I am asking whether you remember or not?

**MR FUZILE:** If I remember or not.

**ADV MATHIPA:** Because I do not want to waste time. do not  
20 want to waste time.

**MR FUZILE:** I do not remember it.

**ADV MATHIPA:** Okay. Okay. Anyway, let us – let us leave that but let us go to the document itself.

**MR FUZILE:** So let us leave it on the understanding that we

never sought input from anyone. Right. We sought inputs from people who had something to do with the department not on a document that is written that is going to cabinet. You send this to outsiders. It is never done. Not at the Treasury.

**ADV MATHIPA:** Okay. Mr Fuzile.

**MR FUZILE:** This was the first.

**ADV MATHIPA:** When you testified before the commission Mr Maleka asked you to show on that document because you  
10 said if this document can get into the hands of – we use the word ‘astute business person’ they will use – they can use the opportunity as to get advantage over others right? You referred – I want to refer you just on that – on that file that we are dealing with page 093.

**MR FUZILE:** 0?

**ADV MATHIPA:** 093. 093.

**MR FUZILE:** Yes.

**ADV MATHIPA:** There is a third bullet that you dealt with on that page. Are you on that page?

20 **MR FUZILE:** Ja.

**ADV MATHIPA:** Ja. There is the third bullet that you dealt with when Mr Maleka asked you to show – to look at the document itself and to point out. You dealt with the third bullet which says:

“State owned enterprises are championing African

Infrastructure Development as a Transnet Maputo Corridor launched in September 2014.”

You remember that you referred to that?

**MR FUZILE:** Ja.

**ADV MATHIPA:** Do you see that on the paragraph you referred to refers to a project that was launched in September 2014. You see that?

**MR FUZILE:** No I do not see it.

do not see it.

10 **ADV MATHIPA:** Now it is written launched in September 2014, do you see that?

**MR FUZILE:** You are on page 0?

**ADV MATHIPA:** Page 093.

**MR FUZILE:** Okay hold on.

**ADV MATHIPA:** Sorry I think you were on the wrong page. Page 093. Do you see that?

**MR FUZILE:** Wag ‘n bietjie. Ja 093.

**ADV MATHIPA:** Ja you referred to the particular state of.

**MR FUZILE:** Yes, yes.

20 **ADV MATHIPA:** State owned enterprises are championing African Infrastructure.

**MR FUZILE:** Yes I see it.

**ADV MATHIPA:** And then it refers to Transnet and you said that a person who gets this information will have – can have an advantage of beginning to approach this for example

Transnet, right? So what I am saying to you is do you see that the document itself was launched in September – the project was launched in September 2014?

**MR FUZILE:** I see that.

**ADV MATHIPA:** Yes.

**MR FUZILE:** What is your point?

**ADV MATHIPA:** That tells you that when this document was shared in December 2015 there is no way that based on this information could give anybody an unfair advantage to  
10 anyone.

**MR FUZILE:** Are you suggesting that the document was – simply because it makes reference to a 2014 matter on that [indistinct 00:24:02] then the document was old history it was not relevant.

**ADV MATHIPA:** Mr Fuzile I am referring you to what you yourself said.

**MR FUZILE:** No the point I made and I will make it again is that this document was any other document that the people had access to or were soon to have access to are such that  
20 a person who gets them beforehand if he is a business person can position themselves in – to benefit. Right. That is the general point. Now you can take one bullet and refer to 2014 and sort of say it was old or something like that it does not matter by the way it was continuing. The reason we are referring to here it may have started in 2014 but

phases of it were continuing.

**ADV MATHIPA:** Yes. But I put it to you that that is not true because this document as it is there is nothing sensitive about it.

**CHAIRPERSON:** Well Mr Mathipa is Mr Van Rooyen going to say it was not – the document was not – is he going to say the document was meant for everybody and anybody including people who are outside of National Treasury and people who are outside of government? Is that going to be  
10 his version? Is he going to say it was proper?

**ADV MATHIPA:** Yes. Definitely yes. He has already said that in his statement.

**CHAIRPERSON:** Yes.

**ADV MATHIPA:** That this – this was a document that could be used to solicit inputs from people therefore there was nothing wrong with Mr Bobat having emailed it to anybody for their inputs.

**CHAIRPERSON:** Hm.

**MR FUZILE:** And to that I would say then thanks God that  
20 he did not stay long at the Treasury. Because we would have had a serious problem with the Minister who seeks opinions from people in the street about taxis, about what is to be done by government on a state-owned entity and stuff like that. Honestly, I would have fundamental problems. Just to illustrate DCJ the seriousness of this matter.

**CHAIRPERSON:** Hm.

**MR FUZILE:** Certain tax proposals are walked into cabinet. Even cabinet ministers do not have the luxury to receive a copy of a cabinet memorandum as per the rules before they walk into cabinet. And today I am told that a document that is going to cabinet you can solicit views from everyone. And I say God save South Africa.

**ADV MATHIPA:** Mr Fuzile it is not true that this document was a cabinet document? You have accepted yourself that  
10 this document was not classified.

**MR FUZILE:** This document was a cabinet document. It may not have been labelled with a classification that you say. There is an email attached to these documents which comes from a Yolande of our department who was guiding how we should write the document in response to Minister I do not know what you are talking about.

[several parties speaking simultaneously]

**ADV MATHIPA:** And just a last...

**CHAIRPERSON:** Okay Mr Mathipa.

20 **MR FUZILE:** The last thing to say...

**CHAIRPERSON:** We are at one o'clock so I will not allow you to go beyond that.

**ADV MATHIPA:** Okay.

**CHAIRPERSON:** I have been more than fair.

**ADV MATHIPA:** Just the last statement.

**CHAIRPERSON:** Yes.

**ADV MATHIPA:** To prove that this document was not a classified document you sent it to Mr Whitley knowing that he had not – he did not have security clearance and nowhere in your email did you say please note that this document is confidential or say anything like that. You simply sent the document as it is.

**CHAIRPERSON:** Do you want to respond to that and that will be the last.

10 **MR FUZILE:** No I mean what – the point here is made DCJ kind of confirms the awkwardness of the time we operating in. When you have got people, who do not have efficient consciousness about the rules and the responsibility that goes with the positions that they are assigned to.

**CHAIRPERSON:** Hm.

**MR FUZILE:** Here we were – we had people who had no contracts whom we barely knew, whom in our hearts of hearts we felt actually the person who brought them might not even know them that well himself but we had to work with  
20 them because he had brought them. You know. You cannot say to the Minister because you have brought dubious people here, we will not work with you. Of course, true to form why was he removed? It is partly because people realised that what had happened was egregious and it needed to be stopped on its tracks. Now time will tell

whether I am correct or not.

**CHAIRPERSON**: No thank you Mr Fuzile.

**ADV MATHIPA**: I will leave it there Chairperson.

**CHAIRPERSON**: Yes. No thank you very much.

**MR FUZILE**: Am I done now?

**CHAIRPERSON**: You are done. You are – and you are excused.

**MR FUZILE**: This means I can go home and do my work?

**CHAIRPERSON**: You can go home now and do your work.

10 **MR FUZILE**: Okay.

**CHAIRPERSON**: We are going to adjourn for lunch and then resume at two o'clock for Mr Van Rooyen to take the witness stand. We adjourn.

**REGISTRAR**: All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON**: Okay.

**ADV HULLEY SC**: To presumably to forego the need for me to lead him through the evidence.

20 **CHAIRPERSON**: Okay. Is there an indication how much he might need? Mr Van Rooyen, how much time would you ask for to make that?

**MR VAN ROOYEN**: Plus-minus ten minutes Chairperson.

**CHAIRPERSON**: Okay. No, that is fine. You may do so immediately. You may make your statement immediately.

**MR VAN ROOYEN:** [Speaking vernacular] Chairperson. Thank you very much Chairperson. Maybe let me start Chairperson by pointing out that the evidence against me was presented sometime in November 2018.

It is almost two years that I finally have an opportunity to present my side of the story and of course to answer questions that the Commission has for me.

This means that for two years Chairperson, I have not been able to present information to the Commission. Of course, information that could mitigate the adverse reports that follow to the evidence of those that implicated me in State Capture and corruption.

Chairperson, I am, however, grateful for today, not because that my name, which has been tarnished and failed, through this process will finally get reprieved.

But because I regard it as my duty to present whatever information I have to the Commission for it to hopefully find the right balance in its findings.

I also thank the Commission, Chairperson, for allow my legal representatives to cross-examine Mr Fuzile who presented his evidence implicated me in some wrongdoing albeit time was just too short.

The right to procedural fairness is an important constitutional right and shall be practised by all. The credibility, Chairperson, of the Commission depends entirely

on how its processes have complied with this important constitutional guaranteed right.

A decision to hear my story is far different from a prejudicial decision taking by the former Public Protector, Ms Thuli Madonsela when she published her report.

That report, we all know, is precursor to the establishment of this Commission. Without giving me a chance to respond to all those findings that implicated me in some wrongdoing.

10        Upon these Chairperson, was the fact that all these happened after Ms Madonsela herself assured me that... I mean Ms Madonsela herself assured me that her report made no adverse findings, did not express a point of view and did not make recommendations involving any allegations concerning me.

And that if there was such a report that implicated me, my procedural right under the Constitution, as well as the Public Protector Act, will be respected.

20        Chairperson, I am here today and I can assure to you that that assurance was never kept. Instead, she relied on a media article about a cell phone tower record on my cell number which implicates me in this serious, serious allegation of state capture and corruption without giving me a chance to respond.

Chairperson, I think it is important for me to emphasise

the above point because already the so-called court of public opinion had long concluded and issued a verdict that myself and anyone associated with His Excellence, President Zuma are corrupt and for those corrupt reasons allows private interest to capture our democratic state and its institutions to advise corrupt motives.

All this happened because of this expeditiously compiled report by a former public protector. It is interesting Chairperson, but not surprising, to note that at the centre of  
10 these court of public opinion is a political narrative that is driven by a biased white-owned media controlled by white capital.

This is the same white capital, if we are to be remembered... I mean, to... if you are to remember. This is the same white capital that acquired its control over the economic resources of our country through the cruel exploitation of the blood and sweat of the black people during the evil system of apartheid.

Chairperson, this is the same white capital in the mid-  
20 80's that smelt the coffee of the coming liberation and we have tarnished things madly down the apartheid government which they had created, nurtured and used for its exploitative and greedy to recruit and form new alliances with the new liberals within our ranks.

We should remember that time Chair, the ANC was

regarded by all as the government in waiting. All this created an opportunity for this white capital to continue shaping the public policy of our democratic state in a manner that protected and advanced their own selfish socio-economic and political interest.

Chairperson, please, please. Let South Africans not be fooled. The socio-economic and political interest of white capital is not boldly addressed in equalities, poverty and grow as they continuously claim in their own media.

10 Their interest remains and will continue to be accumulations of unjustified profits through the exploitation of our people and the nation's resources.

That is why it seize the advent of our new democracy. The gap between the rich and the poor continue to increase to dangerous levels.

Our revolutionary reconstruction in development, planned policy frame which is our policy was abandoned Chairperson to pursue new liberal policies that are not aimed at ensuring real structural changes to the racial practice of  
20 our economic ownership and control.

The gap of poverty continues to widen with the rich and privileged becoming more richer and more privileged. The poor continue to black poorer and there is currently no hope for them.

Even the revolutionary demands of our constitutions are

not met because this important legal instrument has been hijacked to largely entrenched interest of white capital instead of going down our own resolution that we took before.

We might want to downplay this Chairperson because of the strong media influence on our perceptions but the reality is that white capital which created the apartheid area was strong under aid.

It is emerged and it is channelled in our new democratic  
10 government system and works with some amongst us and works with established local financial market role-players to continue with their exploitative wealth over accumulation programme at the expense at our developmental priorities enshrined in our national development plan.

It is important to underscore the fact that this liars does not act alone. They have definitely selective opted some amongst us.

It is for this reason Chairperson that I support the call for the expulsion of this Commission's Terms of Reference  
20 because I think entirely, this... will a court... this Commission an opportunity to investigate the relationship of white capital with our new democratic state.

Accommodating this, definitely, will shed some much needed light on a plethora of questions and perceptions about our democratic state and its relationship with private

interest.

I just want to cite some few examples. Example like why out of all ministers or ministries decided out of our negotiated settlement, the National Treasury an important minister to make a deal with revenue generation and resources distribution was assigned to a certain Chris Liebenberg, a former Nedbank and Nedcor Executive.

Why at its infancy stage our government revenue was allowed to be shunt adopting unjustified economic measures  
10 like what they did the drastic or maybe what we did a drastic reduction of corporate tax rate, allowing wealthy white South Africans and their companies to move apartheid and capital to offshore site?

Why did we allow companies like LoanMean, MTN and Shanduga Fund, financial off-shoring to zero tax havens?

Government of national youth was allowed to sign general agreement on tariffs and trade on adverse attempts, leading to a drastic fall on custom tariffs and tariffs revenue that we need for our development agenda.

20 **ADV HULLEY SC:** Mr Chairperson ...[intervenes]

**MR VAN ROOYEN:** Why Chairperson ...[intervenes]

**ADV HULLEY SC:** Sorry, if I may just interrupt?

**MR VAN ROOYEN:** ...our domestically ...[intervenes]

**CHAIRPERSON:** Sorry, sorry.

**ADV HULLEY SC:** Without being rude towards Mr Van

Rooyen, it has been thirty minutes that he has been speaking. He asked for ten minutes. I am not sure how much longer he is going to be.

**CHAIRPERSON:** No, leave it to me. I will give him some more time.

**ADV HULLEY SC:** Thank you, Mr Chair.

**CHAIRPERSON:** You may continue Mr Van Rooyen.

**MR VAN ROOYEN:** Thank you very much Chairperson. Why our domestically and democratically developed policing  
10 framework of Reconstruction and Development Programme, (RDP), which was a product of extensive consultations.

I know the previous witness indicated that we do not have business of engaging our people. This is a document that was developed by the people.

Why this document was abruptly planted by something that was developed in London or in Washington, called the Growth Employment and Distribution here?

I mean, despite all these promises or when it was introduced, we were promised of growth rates, we were  
20 promised of employment, we were promised of distribution. We are still waiting. Our people are having it tough.

Why this democratic government Chairperson allow a foreigner by the name of Collin Andrews, former South African Airways CEO, who sends 61 of our airline aircraft to a private company and want then to release them from the

same company at a cost of R 1,46 billion per annum to our state?

Monies what... which was supposed to have been used to strengthen the current - the National Airline balance sheet.

As if this was not enough Chairperson, the same CEO was given a golden handshake of more R200 million after spending only two-and-a-half years at the airline.

Why Chairperson, is it possible for a minister under our  
10 current democratic government by the name of Pravin Gordhan who is the serving minister in our democratic?

And non-racial government in charge to overlook and obviously ensure that there is compliance in the department that is needed, the current department of ...[intervenes]

**CHAIRPERSON:** In five minutes time it will be doubled the time you asked for. So.

**MR VAN ROOYEN:** Correct.

**CHAIRPERSON:** Ja, I think if you try and wrap up.

**MR VAN ROOYEN:** Why this minister is allowed to – and in  
20 this regard competed a highly qualified black professional, and in most instances, replaced them with less qualified people.

Why is it possible Chairperson, so easy for former national treasury ministers and deputy ministers and senior national treasury officials to be absorbed by financial

institution just immediately? It happens automatically.

Immediately after they attended National Treasury, I mean, they are absorbed. I have coined this development what [laughs] is called a revolving door phenomena.

Why is it so possible? Why is it so obvious? And we are not asking this question. I think if the Terms of Reference of this Commission Chairperson [laughs] are extended, definitely we will get to understand why some of these things are happening.

10 Why the leading party, the ruling party, elective conference, private sector is so much in that conference - they pump in so much money in that conference just to make sure that their preferred candidate comes out of that.

Is this not the signs of State Capture? But also Chairperson, I am more worried about this development of NASREC because there is a strong allegation that there were some members of our judiciary system who are involved in this particular process because there is an embargo, embargoed ...[indistinct 00.14.08] report that we think, at  
20 some stage, we will shed some more light but I am saying it will accord us with an opportunity Chairperson to understand the relationship of private interest and our new democratic state.

Lastly, Chairperson. After all these bad and malicious publicity about myself, I want to ensure South Africans of me

continue commitment who are far from over.

Our struggle is not yet over. [Speaking vernacular]. For the full emancipation including really economic empowerment.

This is a commitment I made at an early age of my life Chairperson when it was not fashionable to do so. I gave up my youth days and academic opportunities. I led from the front as a young activist, an armed struggle operative.

In all the positions I have served, I must assure you  
10 Chairperson, as a leader, I was democratically elected or assigned by my organisation.

I never and will never sell my soul to the highest bidder or made to be elected to a leadership position and no amount of character assassination and intimidation is going to destruct me from tackling real developmental challenges facing our country and our people.

And Chair, the allegations made against me by Mr Fuzile that I was deployed as a Minister of Finance to capture National Treasury on an agenda of feeding insatiable interest  
20 of private greedy interest.

It is a political lie made by those afraid that National Treasury is a national asset which has a duty to drive our collective agenda to develop our state beyond its current democratic, not an entity in, you know, in isolation.

This is a... National Treasury is like any other ministries.

The ministry of this government of the people by the people. And I must indicate to yourself Chairperson, that I stand by what I have said in my affidavits on the many aspects relevant to the Terms of Reference.

Save on one aspect. I am relating to the date on which I made His Excellence, President Zuma, before I was sworn in as the Minister of Finance.

In my affidavit Chairperson, I said that I met the president on the 9<sup>th</sup> of December 2015. In fact, it was on the  
10 8<sup>th</sup> of December 2015.

I was assisted in this regard by cell phone records which was given to me sometime last year.

Thank you again, Chairperson. I am now available to questions from the Commission.

**CHAIRPERSON:** Thank you. Thank you very much Mr Van Rooyen. Thank you for coming to assist the Commission. And I must say that I have never had any complaints that you have not cooperated with the Commission.

So you applied for leave to cross-examine Mr Fuzile.  
20 That was dealt with. And I think in your application, you indicated. So this time has arrived. Mr Hulley, you may proceed.

**ADV HULLEY SC:** Thank you, Mr Chairperson. Just to commence with the affidavit that you filed before this Commission. There have, in fact, been three affidavits. And

I want to take you specifically to two. If you would turn with me to... it is Advisors Bundle 1 Mr Chairperson.

**CHAIRPERSON:** Just check that it is the correct one Mr Van Rooyen, whether on the spine at the back it is written Advisors 1.

**MR VAN ROOYEN:** Yes, I can confirm that Chairperson. That is correct.

**CHAIRPERSON:** Ja, okay.

**ADV HULLEY SC:** And if you would turn with me, dear sir, to  
10 page...[intervenues]

**CHAIRPERSON:** You will have to raise your voice mister...

**ADV HULLEY SC:** Pardon me, Mr Chair.

**CHAIRPERSON:** Or speak closer to the mic. Ja.

**ADV HULLEY SC:** If you would turn with me Mr Van Rooyen to page 110 of that bundle. Now, bear in mind that you have got to look at the top left numbering system.

**MR VAN ROOYEN:** Oh, alright.

**CHAIRPERSON:** The black numbers.

**ADV HULLEY SC:** Correct.

20 **CHAIRPERSON:** 110?

**ADV HULLEY SC:** That is so Mr Chairperson.

**MR VAN ROOYEN:** I found it Chair.

**ADV HULLEY SC:** Thank you. And if you would then keep that page open but turn with me to page 136 of the same document.

**MR VAN ROOYEN**: I got it Chair.

**ADV HULLEY SC**: Okay whose signature is it?

**MR VAN ROOYEN**: Yes, that is my signature.

**ADV HULLEY SC**: And this document is the statement that you provided to the Commission?

**MR VAN ROOYEN**: Yes, I have.

**ADV HULLEY SC**: Then in the statement you address the allegations that were raised by Mr Fuzile against you. Is that correct?

10 **MR VAN ROOYEN**: Correct.

**CHAIRPERSON**: Maybe you could confirm that its contents are true and correct, maybe safe in regard to the matter of the date when you met Mr Zuma if that is contained in the statement.

**MR VAN ROOYEN**: I do confirm Chair.

**CHAIRPERSON**: You do confirm?

**MR VAN ROOYEN**: [No audible reply]

**CHAIRPERSON**: Thank you.

20 **ADV HULLEY SC**: Now, if you would, for your benefit and I will take you through certain parts of your statement and you are, obviously, at liberty...

I will ask you specific questions, but you are at liberty to supply, after answering the question, you are at liberty to actually supply certain detail or explanation relevant to your answer.

My understand if... is that you... you start... you were appointed on the 10<sup>th</sup> of December of 2015 as the Minister of Finance but the announcement...

Or let me rephrase me that. The swearing in took place on the 10<sup>th</sup> of December 2015 but the announcement took place on the 9<sup>th</sup> of December 2015. Is that correct?

**MR VAN ROOYEN:** Correct.

**ADV HULLEY SC:** And if I understand correctly. Based on the change that you have indicated or the amendment that  
10 you have indicated this morning or today, you are saying that, in fact, you did not meet with the president on the 9<sup>th</sup> of December, as indicated in your statement. You, in fact, met with him the day before which will be the 8<sup>th</sup> of December.

**MR VAN ROOYEN:** Correct.

**ADV HULLEY SC:** And if you have met with the president on the day before that, that would have been the day before the announcement for the removal of Mr Nene had been given. Will that be correct?

20 **MR VAN ROOYEN:** Correct.

**ADV HULLEY SC:** So when the president spoke to you on the 8<sup>th</sup>, you are telling this tribunal that he had indicated to you his intention to remove Mr Nene as the Minister of Finance. Is that correct?

**MR VAN ROOYEN:** May you please repeat your question?

**ADV HULLEY SC:** So when the President, Mr Zuma spoke with you on the 8<sup>th</sup> of December, he would have told you at the same time that it was his intention to remove Mr Nene as the Minister of Finance. Is that correct?

**MR VAN ROOYEN:** Correct. It is so obvious.

**ADV HULLEY SC:** Now, that particular meeting that you had with the president, at what time of the day did it take place?

**MR VAN ROOYEN:** If my memory serves me right  
Chairperson, the meeting took place in the evening. I cannot  
10 remember the exact time but it was in the evening.

**ADV HULLEY SC:** Was it late evening, early evening. Do you recall?

**MR VAN ROOYEN:** Ja, maybe between eight and ten.

**ADV HULLEY SC:** Okay. Now, if we can just take a step back, a little bit, to understand how your appointment took place. If my recollection serves me correctly with regard to your statement, you had in fact been in Durban at the time when the president phoned you. Is that correct?

**MR VAN ROOYEN:** Yes.

20 **ADV HULLEY SC:** And that was to request that you come up to Johannesburg to meet with him.

**MR VAN ROOYEN:** Yes, to be around Gauteng, not necessarily Johannesburg.

**ADV HULLEY SC:** I see. And at the time you were in Durban on holiday. Do I understand that correctly?

**MR VAN ROOYEN:** Yes, I was away with my family, with them.

**ADV HULLEY SC:** With your family?

**MR VAN ROOYEN:** Yes.

**ADV HULLEY SC:** And you then flew back to Johannesburg in order to meet with the president at some stage on the 7<sup>th</sup>, 8<sup>th</sup> or 9<sup>th</sup> if I recall correctly because at that stage when the president had contacted you, he had not indicated specifically which day he would meet with you.

10 **MR VAN ROOYEN:** That is correct.

**CHAIRPERSON:** Ja, Mr Hulley. I think when you mean Gauteng you say Johannesburg and I think that is because quite a lot of people associate Gauteng with Johannesburg even when somebody is going to Pretoria. [laughs]

**ADV HULLEY SC:** No, no absolutely.

**CHAIRPERSON:** No, he emphasised that the president asked him to Gauteng ...[intervenues]

**ADV HULLEY SC:** Thank you, Mr Chair.

**CHAIRPERSON:** ...Johannesburg. So.

20 **ADV HULLEY SC:** No, no, no. Absolutely. I think in his statement he says Gauteng as well.

**CHAIRPERSON:** Yes, yes.

**ADV HULLEY SC:** So forgive me if I keep mentioning Johannesburg. What I was referring, or at least I was referring to, was the flight back to Johannesburg.

**CHAIRPERSON:** Oh, okay, okay.

**ADV HULLEY SC:** Now that flight, if I recall correctly, was on the 7<sup>th</sup> of December. Is that correct?

**MR VAN ROOYEN:** I have to check my statement but I know it was... I think it was on the 7<sup>th</sup> December. I am not sure but it was around that time. Because the request of the President was that I should be around Gauteng between the 7<sup>th</sup>. Any time from the 7<sup>th</sup>.

**ADV HULLEY SC:** Sure.

10 **MR VAN ROOYEN:** But I also know that they landed at O.R. Tambo Airport.

**ADV HULLEY SC:** Pardon me?

**MR VAN ROOYEN:** I learnt that at O.R. Tambo Airport.

**ADV HULLEY SC:** Sorry, I cannot hear what you are saying. If you could speak into the mic?

**MR VAN ROOYEN:** I was saying, I learnt that ...[intervenes]

**CHAIRPERSON:** And face this side so I can... yes.

**MR VAN ROOYEN:** Oh, yes sure.

**CHAIRPERSON:** Yes, yes.

20 **MR VAN ROOYEN:** I think that is correct Chair. I should be addressing the evidence leader through you.

**CHAIRPERSON:** [laughs]

**MR VAN ROOYEN:** Sorry for that Chair. But I was saying, I landed at O.R. Tambo Airport.

**CHAIRPERSON:** H'm.

**MR VAN ROOYEN:** Yes.

**CHAIRPERSON:** On the ...[intervenes]

**MR VAN ROOYEN:** I just wanted to emphasise that because that is on resistance in acknowledging that we have renamed that airport.

**CHAIRPERSON:** Ja, okay.

**ADV HULLEY SC:** Very well, and that was on the 7<sup>th</sup> of December of 2015?

**MR VAN ROOYEN:** Yes.

10 **ADV HULLEY SC:** Now, if you would turn with me to page 125 of the same bundle.

**MR VAN ROOYEN:** I have got it.

**ADV HULLEY SC:** Now at 33 of that bundle, you mention at the foot of the page that on the 6<sup>th</sup> of December while you were on holiday, you say:

“I received a call from the former President Zuma, informing me that he wanted to see me between the 7<sup>th</sup> and the 10<sup>th</sup> of December 2015 in Gauteng..”

You say you immediately abandoned your family holiday  
20 and you flew back to Gauteng on the 7<sup>th</sup> of December of 2015.

Now, when you arrived in Johannesburg or in Gauteng, did you then contact the president or were you expecting a call from him?

**MR VAN ROOYEN:** I did not contact the president. I

expected a call from him. I think it was enough for him that he communicated it with me on the 7<sup>th</sup>. On the 6<sup>th</sup> in fact. So I was waiting for a call from him from his office.

**ADV HULLEY SC:** Sorry, your voice keeps fading away. If you would not mind speaking into the microphone sir?

**CHAIRPERSON:** No, I think he says he was waiting for a call from the former president. That is what you are saying?

**MR VAN ROOYEN:** Yes. Yes, Chair.

**CHAIRPERSON:** After arriving in Johannesburg, you did not  
10 call the president. You waited for his call.

**MR VAN ROOYEN:** that was the instruction Chairperson.

**CHAIRPERSON:** Ja, okay.

**MR VAN ROOYEN:** That was the instruction. So I stayed to the instruction.

**CHAIRPERSON:** Okay.

**MR VAN ROOYEN:** Ja.

**ADV HULLEY SC:** Now, you say in your statement, if you continue, in the same paragraph:

20 “On the 9<sup>th</sup> of December 2015, I was called by a gentleman from the presidency, requesting me to come to Mahlamba Ndlovu Presidential Offices in Pretoria for a meeting with the ...from President Zuma...”

You say you arrived, at the following page:

“I arrived at the meeting as scheduled...”

Now if I understand you correctly. What you say that that particular meeting actually took place on the 8<sup>th</sup> of... in fact, took place on the 8<sup>th</sup> of December in the evening.

**MR VAN ROOYEN**: Correct Chairperson. Not on the 9<sup>th</sup>.

**ADV HULLEY SC**: Now this telephone call that you received from a gentleman in the presidency, what time was that call?

**MR VAN ROOYEN**: It was landline call there.

**ADV HULLEY SC**: Pardon me?

**MR VAN ROOYEN**: It was a landline call. It was not from  
10 my cell phone.

**ADV HULLEY SC**: Yes, the question is. What time was the call?

**MR VAN ROOYEN**: Oh, the time? Ah, I would be lying Chair. I do not remember. I do not remember. I mean, the fact that I was called by the high office truly speaking a lot went through my mind, so I cannot remember the specific time. I will be lying. Chair, I do not want to lie to the Commission.

**ADV HULLEY SC**: Now, the... I just want to understand.  
20 When you flew back to Johannesburg, you came back to Johannesburg on your own. You left your family in Durban. Is that correct?

**MR VAN ROOYEN**: Ja, you know it was not easy because we travel collectively with my family and we are not even flying. I think some flew but flew but I drove with my boys.

So, ja. So it was not easy.

**CHAIRPERSON:** So when you came back to Gauteng in response to the former president's call, did you drive together with some members of your family?

**MR VAN ROOYEN:** No, no, no. Chair, I flew back.

**CHAIRPERSON:** You flew?

**MR VAN ROOYEN:** Because I did not want to disturb.

**CHAIRPERSON:** Oh.

**MR VAN ROOYEN:** That is one thing that I do not want. I  
10 do not want to involve my family in some of these things.

**CHAIRPERSON:** Ja, okay.

**MR VAN ROOYEN:** So I left them to continue enjoying their holiday.

**CHAIRPERSON:** Oh, did you drive to go to Durban?

**MR VAN ROOYEN:** Some members ...[intervenes]

**CHAIRPERSON:** With the family.

**MR VAN ROOYEN:** Ja, because it is a family and an extended family.

**CHAIRPERSON:** Oh, okay, okay.

20 **MR VAN ROOYEN:** Yes, so some flew, some – and I drove with my boys.

**CHAIRPERSON:** Oh, okay.

**MR VAN ROOYEN:** And then my wife took the girls and they flew back.

**CHAIRPERSON:** Okay.

**ADV HULLEY SC:** And when you got back to Johannesburg you got to the airport, how did you travel from your airport to wherever your destination was from that point? Did you take the taxi, did you take a shuttle, did somebody pick you up? How did you get to your destination?

**MR VAN ROOYEN:** No, no, no, we left one of the cars there. Remember, those who flew, my wife had to drive and left the car there. So I used the car that we left at the  
10 airport.

**ADV HULLEY SC:** Okay, so you had a vehicle at the airport.

**MR VAN ROOYEN:** Yes, I had a vehicle at OR Tambo.

**ADV HULLEY SC:** And whose vehicle was that?

**MR VAN ROOYEN:** Sorry?

**ADV HULLEY SC:** Do you recall whose vehicle that was?

**MR VAN ROOYEN:** That is my family vehicle.

**ADV HULLEY SC:** What vehicle was it?

**MR VAN ROOYEN:** I think we left the Prado there, we  
20 drove with a bakkie.

**ADV HULLEY SC:** It was a bakkie?

**MR VAN ROOYEN:** No, I think it was a Prado.

**ADV HULLEY SC:** A which?

**MR VAN ROOYEN:** A Prado.

**ADV HULLEY SC:** A Prado?

**MR VAN ROOYEN:** Yes.

**ADV HULLEY SC:** Okay, do you recall the registration number of the Prado? Just off the top of your head.

**MR VAN ROOYEN:** I will have to check my phone, Hey, no, cars I do not memorise the registration but I have to check my – I can provide that.

**CHAIRPERSON:** Ja, you can provide it in due course.

**ADV HULLEY SC:** And then where did you travel to from that point? So you alighted from the airplane, you then go  
10 over to your bakkie that is – or sorry, your Prado, you get into the Prado and where do you go to at that point in time?

**MR VAN ROOYEN:** I think if my memory serves me well, Chairperson, because I cannot remember step-by-step what happened after I have landed but I think if my memory serves me well, I went home.

**ADV HULLEY SC:** Okay.

**CHAIRPERSON:** And home would be where?

**MR VAN ROOYEN:** In Johannesburg South, the  
20 ...[intervenes]

**CHAIRPERSON:** In Johannesburg South, oh, okay.

**MR VAN ROOYEN:** That is where my residence is, yes.

**CHAIRPERSON:** Okay.

**ADV HULLEY SC:** Now presumably, if I understand correctly from the sequence of events in your affidavit,

presumably at that stage where the President had invited you to come or asked you to come back to Gauteng in order to meet with you either the 7<sup>th</sup>, 8<sup>th</sup> or 9 December, you had some idea or some inkling of what the purpose of this discussion was.

**MR VAN ROOYEN:** To be honest – because I had meetings before, as I have indicated in my affidavit, with the President around various issues, so I knew around that time that there are some rumours about reshuffling and  
10 that. So, you know, when you are called by the high office and there is such developments taking place in the country there is no way in which you cannot think of – I may be called to be assigned or I may be called - you know, you do not know but definitely I had my own suspicions, you know?

**ADV HULLEY SC:** But when you say you had suspicions you knew that there was a possibility that you were going to be resigned but ...[intervenes]

**MR VAN ROOYEN:** Yes, that is what I have just said  
20 because around that time, Chairperson, obviously there was a rumour about cabinet reshuffling and all that. So, you know, that was one of the things that came to my mind.

**CHAIRPERSON:** Yes, okay.

**ADV HULLEY SC:** Okay. So on the 6 December when you get invited or you get asked to come back to Gauteng you

already – immediately you are aware that there is likely to be a cabinet reshuffle and the first thing – or one of the things that comes to mind, at any rate, whether it be the first or otherwise, is that you are likely to be redeployed into a cabinet position, correct?

**MR VAN ROOYEN:** No, correct.

**ADV HULLEY SC:** Not correct?

**MR VAN ROOYEN:** I never said it was the first thing. I thought I [inaudible – speaking simultaneously]

10 **ADV HULLEY SC:** Sorry, I corrected that, I said first or otherwise.

**CHAIRPERSON:** Oh, ja, he corrected himself.

**MR VAN ROOYEN:** Oh, first or otherwise.

**CHAIRPERSON:** Ja.

**MR VAN ROOYEN:** Correct, then I agree.

**ADV HULLEY SC:** And in fact, you had already given the President your CV at that stage, if I recall correctly.

20 **MR VAN ROOYEN:** Correct, in one of the meetings that happened before, but the CV, if the President say we request your CV does not mean then you are going to be deployed as a Minister, no. You might be deployed as an ambassador, you might be reassigned to do any other thing.

**CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** That is the nature of our organisation,

you know?

**CHAIRPERSON:** Yes. So I think your statement says it was on the 30 November 2015 when you were called by the Presidency and you were invited to submit your CV, is that correct?

**MR VAN ROOYEN:** That is correct then, Chair.

**CHAIRPERSON:** And you submitted your CV on that date.

**MR VAN ROOYEN:** Yes because I was in parliament.

**CHAIRPERSON:** Yes, yes.

10 **MR VAN ROOYEN:** So it was easy for me just to go to my office and print my CV.

**CHAIRPERSON:** Yes, no, no, that is fine.

**MR VAN ROOYEN:** Yes. But it happened, Chair, let me just indicated, paragraphs before that.

**CHAIRPERSON:** Ja.

**MR VAN ROOYEN:** Indicates that there were other meetings.

**CHAIRPERSON:** Yes.

20 **MR VAN ROOYEN:** That had to do with my work in parliament.

**ADV HULLEY SC:** Ja.

**MR VAN ROOYEN:** Where I was to brief the President.

**CHAIRPERSON:** Yes, ja.

**ADV HULLEY SC:** Just to get back to the conversation that you would have had with the President and some of

the things that were going through your mind. You get the call from the President requiring you or requesting you to come back to Gauteng on the 6 December, you know at that stage that you have already given the President your CV on the 30 November. What goes through your mind whether at that point or shortly after is in light of the rumours that are circulating that there is going to be a cabinet reshuffle, you anticipate that you are going to be redeployed. Do I understand that part correct thus far?

10 **MR VAN ROOYEN:** Yes, I do understand, among other things.

**ADV HULLEY SC:** And, if I understand correctly you anticipate that it may be a position in cabinet that you will be appointed.

**MR VAN ROOYEN:** Among other things I anticipated that.

**ADV HULLEY SC:** Sure. And you also understand from the telephone call with the President that you should make yourself available anywhere between these three dates, the 7<sup>th</sup>, 8<sup>th</sup> or 9<sup>th</sup> December. Do I understand that  
20 correctly?

**MR VAN ROOYEN:** I do understand.

**ADV HULLEY SC:** Now during the course of that discussion with the President does he indicate whether this particular issue is something of grave urgency, does he give you any indication of what the nature of the meeting

with him will be?

**MR VAN ROOYEN:** Over the phone?

**ADV HULLEY SC:** Over the phone, ja.

**MR VAN ROOYEN:** No, not at all. Not at all.

**ADV HULLEY SC:** On that – on the 8 December of 2015 - you have just returned now, you returned in fact on the 7<sup>th</sup>. What is the first thing you do the following day? That is now the 8 December, what is the first thing you do?

**MR VAN ROOYEN:** On the 8 December?

10 **ADV HULLEY SC:** H'm.

**MR VAN ROOYEN:** I checked with my – by my office at Luthuli House on what are the outstanding things that need to be done, I checked with my secretary. I went to Luthuli House to my office.

**ADV HULLEY SC:** Now I am just trying to understand because you are supposed to be on holiday at this stage. Why do you check in with your secretary at Luthuli House? Let me just understand that.

20 **MR VAN ROOYEN:** You know, time is of essence, I mean, I was on holiday, now I am no longer on holiday, I am waiting for a call. I cannot stand and fold my arms when I have other duties to perform. One of my tasks and which was a pressing task, especially around festive time in January, is to ensure that those members of the association that I am the Treasurer General, there are

welfare issues that I attended to. So that was a priority to me and that is exactly what I did instead of sitting and waiting for a call.

**ADV HULLEY SC:** Okay. So, if I understand correctly, you had in fact been appointed, according to your statement, you had been appointed as the Treasurer General of the MK Veterans Association as early as October – sorry, September of 2015.

**MR VAN ROOYEN:** Correct.

10 **ADV HULLEY SC:** Now going back to – and we are going to come to the events of the 8 December in a moment, going back the events after your appointment as the Treasurer General of the MK Veterans Association, according to your statement you in fact acknowledge that you would have met on several occasions after that with Mr Rajesh Tony Gupta.

**MR VAN ROOYEN:** Yes, I did and it is not only Rajesh, I met various business people as part of the - my responsibility.

20 **ADV HULLEY SC:** Yes, I am concerned specifically with Mr Gupta but since you mention that you met with various business people are you saying that you met with them at the Gupta compound or the Gupta residence?

**MR VAN ROOYEN:** No, all over, no, not at the Gupta residence, all over. That is the work of a Treasurer

General if maybe the evidence leader not understand is to, among other things, to create a relationship with businesses with the sole intention of ensuring that you attend to budgetary requirements of the association but also you attend to the welfare issues of your members and that is a very difficult task because fact of the matter is that our association is not an association that is supported by big business so you have to meet extensively with those considerate and progressive business people extensively  
10 outreach to make sure that you fulfil your mandate and that is exactly what I did. So it is not about meeting them at the Gupta's residence. No, we meet them at various places, I and my fundraising team, in some cases, but also myself and some – of course, it is apart from my members of the executive when there is a need.

**CHAIRPERSON:** You might have to bring your mic closer to you. Sometimes I do not hear. See if you can bring it or when you speak come a little closer to it.

**MR VAN ROOYEN:** Alright. Sorry for that, Chair.

20 **ADV HULLEY SC:** The meetings with Mr Tony Gupta, were those always at the Gupta residence in Saxonwold or did they take place elsewhere?

**MR VAN ROOYEN:** If my memory serves me well because there are cases where I met Rajesh or Tony Gupta at the residence, there are cases where I met them as companies

in their meetings in their offices in Sandton so the meetings did not only take place – some of the meetings that I remember did not only take place at their residence.

**ADV HULLEY SC:** And were all these meetings in your capacity as the MK Veterans Association, Treasurer General or was there any other capacity?

**MR VAN ROOYEN:** No, no, that is the only capacity.

**ADV HULLEY SC:** So can we accept then that on every occasion that you would have met with Mr Gupta, that is Mr  
10 Tony Gupta, there was no other capacity, you met with him solely for the purpose of conducting the affairs of the MK Veterans Association?

**MR VAN ROOYEN:** Correct.

**ADV HULLEY SC:** Yes. Now on each of these different occasions that you would have met with him, would you have been – insofar as the MK Veterans Association is concerned would you have been on your own or would there have been other people from the Veterans Association with you?

20 **MR VAN ROOYEN:** No, in other meetings of course I had to rope in some members of our association, more especially from the executive.

**ADV HULLEY SC:** More especially?

**MR VAN ROOYEN:** Sorry?

**CHAIRPERSON:** From the executive.

**ADV HULLEY SC:** Sorry, you said more especially?

**MR VAN ROOYEN:** More especially from the executive.

**ADV HULLEY SC:** Thank you. Thank you, Mr Chair. Now ...[intervenes]

**MR VAN ROOYEN:** Chair, you know, I am very vigilant, I hope these microphones are properly sanitised, hey? I am still too young to leave ...[intervenes]

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

**MR VAN ROOYEN:** We still have a lot of work to do in  
10 this country.

**CHAIRPERSON:** No, you are right, I do not know if they were sanitised after the – but they would normally do that – was it done, Reverent? Was it done before? It was done, just sanitised again. No, thank you for raising that, Mr van Rooyen. Yes.

**ADV HULLEY SC:** Thank you, Mr Chair. And can you give us an indication of approximately on how many occasions you met with Mr Tony Gupta before the 8<sup>th</sup>?

**MR VAN ROOYEN:** No, I would be lying, I cannot  
20 remember but as I have indicated in my affidavit, I met with them on several – I met Mr Tony Gupta and he introduced to companies that they did business with himself and other members of the Gupta family.

**CHAIRPERSON:** Would it be correct to say it was several times or would that not be correct?

**MR VAN ROOYEN:** It will be correct, Chair.

**CHAIRPERSON:** It would be correct?

**MR VAN ROOYEN:** It will be correct.

**CHAIRPERSON:** But how many times you cannot remember.

**MR VAN ROOYEN:** I cannot remember, I would be lying, Chair.

**CHAIRPERSON:** Yes. No, that is fine, that is fine.

**MR VAN ROOYEN:** Ja.

10 **CHAIRPERSON:** Are you able to remember when it was more or less when you met him for the first time? Not necessarily in the capacity of ...[intervenes]

**MR VAN ROOYEN:** The first time, to be honest, with you, Chair, let me ...[intervenes]

**CHAIRPERSON:** ...Treasurer General, but meeting him for the first time in whatever capacity?

**MR VAN ROOYEN:** Okay, let me sketch this scenario, Chair, how I came to know Mr Rajesh. They came to our offices after my election.

20 **CHAIRPERSON:** To your offices?

**MR VAN ROOYEN:** Yes, at Luthuli House.

**CHAIRPERSON:** Ja.

**MR VAN ROOYEN:** After my election.

**CHAIRPERSON:** Oh, at the ANC headquarters?

**MR VAN ROOYEN:** Yes.

**CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** And then we had a discussion but because remember, we are fresh from conference so...[intervenes]

**CHAIRPERSON:** When would that have been?

**MR VAN ROOYEN:** Around October.

**CHAIRPERSON:** Of 2015?

**MR VAN ROOYEN:** 2015, yes.

**CHAIRPERSON:** Oh, okay, alright, yes.

10 **MR VAN ROOYEN:** And they introduced themselves to us.

**CHAIRPERSON:** Yes. Was it an arranged meeting or...?

**MR VAN ROOYEN:** No, it was not an arranged meeting, you know, that is why you going to run away from Luthuli House because when you are in that office you do not time to work because people come announced, you know?

**CHAIRPERSON:** Yes, with no appointments.

**MR VAN ROOYEN:** So I do not know if maybe he was in that office because he had the meeting with other people and realised that we were in the office, I am not sure.

20 **CHAIRPERSON:** Oh, okay.

**MR VAN ROOYEN:** But it was not arranged – it was not even an appointment.

**CHAIRPERSON:** Okay.

**MR VAN ROOYEN:** If I had appointments in my office, to be honest with you, Chair ...[intervenes]

**CHAIRPERSON:** So as far as you know he was not there to meet you, as such.

**MR VAN ROOYEN:** No, no, no, no.

**CHAIRPERSON:** But he came into your office.

**MR VAN ROOYEN:** Correct.

**CHAIRPERSON:** Ja, the rest, continue?

**MR VAN ROOYEN:** Correct.

**ADV HULLEY SC:** Thank you, Mr Chair.

**CHAIRPERSON:** So that was – so October 2015 is the  
10 first time you met him?

**MR VAN ROOYEN:** That was the first time I met him.

**CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** Correct, Chair.

**CHAIRPERSON:** But you cannot remember around what date by any chance?

**MR VAN ROOYEN:** What would bring my submission to the date is the date of the conference if you looked at – because it happened immediately after the conference, so a few days after the conference.

20 **CHAIRPERSON:** Of the conference of the association of which you are ...[intervenes]

**MR VAN ROOYEN:** Of the association, ja.

**CHAIRPERSON:** Oh, okay, so what – if you remember the date then you would know when it was that he met you. Are you saying that ...[intervenes]

**MR VAN ROOYEN:** No, no, no, I am not saying I can remember but I am just saying what I remember is it happened closer.

**CHAIRPERSON:** Oh, closer to the date of the conference of ...[intervenes]

**MR VAN ROOYEN:** Our conference, ja.

**CHAIRPERSON:** Of the M ...[intervenes]

**MR VAN ROOYEN:** The conference where I was selected to come in as a Treasurer General.

10 **CHAIRPERSON:** Oh, okay, okay, alright.

**ADV HULLEY SC:** But that meeting was not intended to be with you, he was there for – in some other – or to meet with somebody else, is that correct?

**MR VAN ROOYEN:** No, no, I am not sure, I am just saying that is my ...[intervenes]

**CHAIRPERSON:** He came into your office, you did not have an appointment to meet with him, you do not know whether he had a meeting with somebody else but he came into your office at Luthuli House.

20 **MR VAN ROOYEN:** Correct, Chair.

**CHAIRPERSON:** Yes, okay.

**ADV HULLEY SC:** Thank you, Mr Chair. And that would have been in October. After that, at that particular – well, let us start off with that particular meeting, this is now in October. What exchanges take place between the two of

you at that particular – on that particular occasion. There is presumably a discussion of some sort before the two of you.

**MR VAN ROOYEN:** No, his submission in our first engagement he narrated the relationship of their business with the ANC and – but also with MK. I am saying that is our association and I think his idea was to say to me as a Treasurer General, we also work with your association so in your engagements please consider engaging us, do not  
10 maybe hesitate to engage us. So that was – it was not a long meeting.

**CHAIRPERSON:** Well, so – when he came into your office on that occasion, you were already Treasurer General or you were still be elected as Treasurer General?

**MR VAN ROOYEN:** No, I am already Treasurer General at that time.

**CHAIRPERSON:** You had already been elected?

**MR VAN ROOYEN:** Yes.

**CHAIRPERSON:** Oh, okay.

20 **MR VAN ROOYEN:** That is why he started congratulating me for being elected.

**CHAIRPERSON:** Yes, okay. So he might have come to – he might pop into your office because he knew you had been elected Treasurer General and wanted to convey the message that he conveyed?

**MR VAN ROOYEN:** Correct, correct, Chair.

**CHAIRPERSON:** Okay.

**ADV HULLEY SC:** Now your understanding, if I am interpreting your evidence correctly, your understanding was that having conveyed the message or having conveyed to you that he was aware that you had just – you had been elected as the Treasurer General, he started to explain to you that they – that the Gupta family and the businesses had had dealings with MK Veterans Association. Was it  
10 your understanding from that that he was inviting you, either expressly or impliedly to engage in business with the Gupta businesses?

**MR VAN ROOYEN:** Correct.

**ADV HULLEY SC:** And, if I understand correctly, he – you then followed up on those invitations?

**MR VAN ROOYEN:** Yes, I think at some stage we then started engaging.

**ADV HULLEY SC:** Now what stage was that when you say you started to engage with him?

20 **MR VAN ROOYEN:** No, I do not remember exactly if you want the specifics of the day and the time but it happened – because remember, it all happened in October, I am just trying to recall, and I am not sure if there were any other engagements that took place before I went to meet him again because there was some problems that I wanted to

bring to his attention that needed support of business of MK and VA. So I am not sure it was before I do that on the 8<sup>th</sup> because I know on the 8<sup>th</sup> I visited him.

**CHAIRPERSON:** Which month? 8<sup>th</sup> of which month?

**MR VAN ROOYEN:** December.

**CHAIRPERSON:** December.

**MR VAN ROOYEN:** December.

**CHAIRPERSON:** Okay.

**ADV HULLEY SC:** Okay, maybe I am losing you over  
10 here. I am trying to understand, we were in October and the meeting that takes place in your office, that takes place in October and then when you talk about the 8<sup>th</sup>, you are talking about the 8 December. The question that I was asking you is – relates to whether there was interaction between the period of October, the meeting in your office and the meeting that takes place on the 8 December.

**MR VAN ROOYEN:** No, no, I do not remember of any interaction.

**ADV HULLEY SC:** Now, if I ...[intervenes]

20 **CHAIRPERSON:** So is the position that in terms of meetings, you had a meeting, a very brief meeting when he came into your office and then the next meeting was on the 8 December. Is that the position or were there some meetings between yourself and him in between?

**MR VAN ROOYEN:** What I am saying, Chair, is that I do

not remember if there was any meeting that I had with him before the meeting of the 8<sup>th</sup>.

**CHAIRPERSON:** Yes, yes.

**MR VAN ROOYEN:** Yes.

**CHAIRPERSON:** Or but there could have been but you are not sure, [inaudible – speaking simultaneously]

**MR VAN ROOYEN:** I do not recall, because remember, Chair, in my space I engage various business people to attend to the programmes of the organisation.

10 **CHAIRPERSON:** Yes. Okay, okay.

**ADV HULLEY SC:** Now just to - after the 8 December – and I am going to come back to the period before the 8 December – after the 8 December the President tells you that it is his intention to appoint you as the Minister of Finance. On the 9 December he removes Mr Nene as the Minister of Finance and on the 10 December you are sworn in as the Minister of Finance and then from that period up until the 14 December you are the Minister of Finance, when you get removed as the Minister of Finance and then  
20 get put into the position of Minister of Cooperative Governance and Traditional Affairs, is that correct?

**MR VAN ROOYEN:** Yes, that is correct.

**ADV HULLEY SC:** Now in your position as a Minister at this stage, presumably you then have to step down as the National Treasurer or the Treasurer General of the MK

Veterans Association. Would that be fair to say?

**MR VAN ROOYEN:** No, it does not work like that, I am still the Treasurer General of MKV.

**ADV HULLEY SC:** So, in other words, you continue to occupy two separate posts. One as the Treasurer General, on the one hand, and one as a cabinet minister in two different portfolios on the other.

**MR VAN ROOYEN:** Correct, it is permissible.

**ADV HULLEY SC:** Okay. Now on the – so going back  
10 now to these meetings that you may have had with Mr Tony Gupta, you are not quite certain at this point in time how many meetings you might have had or whether you had any meetings at all. How much money do you raise during this period of time for the MK Veterans Association specifically on the Gupta family or the Gupta businesses?

**MR VAN ROOYEN:** What is on record which I can provide  
20 to the Commission, we had one of the first successful golf activity in 2016 and that they came in as one of the four main sponsors of that particular event, one of – I just want to underscore this, one of the four main sponsors of that particular event and then they followed up also with another sponsorship as one of the three main sponsors for the next golf day because it is an annual event.

So all in all, if we are looking at monetary value, we are looking at plus minus 1.2 million that they contributed

to those two events respectively.

**CHAIRPERSON:** And when did those two events take place if you are able to remember?

**MR VAN ROOYEN:** Yes, they usually take place around our month, we have 10 December MK month so they usually take place around December.

**CHAIRPERSON:** Both of them?

**MR VAN ROOYEN:** Yes, both of them.

**CHAIRPERSON:** Oh, so they took place in December  
10 2015?

**MR VAN ROOYEN:** No, no, the first one – sorry, Chair, for not being clearer, the first one happened on December 2016, the second one, December 2017.

**CHAIRPERSON:** Oh, okay.

**ADV HULLEY SC:** Now, if I understand correctly – and there was no golf day organised by, amongst others, the Gupta family or Gupta businesses in 2015 or do I misunderstand that?

**MR VAN ROOYEN:** No, they did not organise golf day, we  
20 organise our own golf day. They came in just as the main sponsor. The responsibility of organising a golf day it was the responsibility of my office.

**ADV HULLEY SC:** I see. Okay, so as a sponsor, they provided no sponsorship in 2015, is that correct?

**MR VAN ROOYEN:** 2016.

**ADV HULLEY SC:** 2015.

**MR VAN ROOYEN:** And 2017.

**ADV HULLEY SC:** No, no, listen to my question. In 2015 did they provide in sponsorship in that year for the golf day?

**MR VAN ROOYEN:** No, there was no golf day in 2015.

**ADV HULLEY SC:** Okay. So the first sponsorship insofar as golfing is concerned takes place from the Gupta's perspective, that is either their businesses or the family, at  
10 the end of 2016, is that right?

**MR VAN ROOYEN:** 2016, yes, that is correct.

**ADV HULLEY SC:** And the second sponsorship takes place in – at the end of December in 2017. Do I understand that correctly?

**MR VAN ROOYEN:** Correct.

**ADV HULLEY SC:** And outside of golfing or a golf day for the MK Veterans Association, outside of that, they provide no other sponsorship, is that correct?

**MR VAN ROOYEN:** Not really, in some – you know, the  
20 situation of military veterans, more especially those who served in what we call the former liberation armies, it is a very pathetic one in our country, they are struggling to make ends meet. So from time to time they will come to my office requesting this and that and I can tell you, I am dead sure that in one of those instances or some of those

instances the Guptas helped.

**ADV HULLEY SC:** So let me just understand. So people would come from time to time because they are struggling, these are members now – or MK veterans that would come to the offices because they need some financial assistance and on those occasions, you say you are certain that the Gupta family would have helped.

**MR VAN ROOYEN:** Not only financial assistance, there are some ...[intervenes]

10 **CHAIRPERSON:** Okay, I am sorry, I think he said on some of those occasions.

**MR VAN ROOYEN:** H'm.

**CHAIRPERSON:** H'm.

**MR VAN ROOYEN:** Not only ...[intervenes]

**ADV HULLEY SC:** [indistinct – dropping voice]

**MR VAN ROOYEN:** Okay, sorry, sorry, Chair. Not only financial assistance, Chairperson. In some cases, groceries, in some cases building materials, because some of – we had to build houses for some of the military  
20 veterans and it is on record, I am not saying something that is a thumb suck. So I will approach different businesses to assist with materials, to assist with groceries. So they definitely might have played part in some of those but they are not the only ones.

**ADV HULLEY SC:** Ja, but when you say they might have

are you saying that there is a possibility in the realm of possibilities or are you saying they might have in the sense that you cannot recall but it is a possibility?

**MR VAN ROOYEN:** I cannot recall but it is a possibility, because I know I mean that is one thing that you can take away from some of this business that associated with this association. They are very generous in terms of assisting this because they understand that South Africa is waiting because of the sacrifices that these members did.

10 Something that is very difficult for big business to understand.

**CHAIRPERSON:** I know that this may be relate to an important point Mr Hulley but I just want to remind you to keep an eye on time and the list of important issues that you may be wishing to all cover.

**ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** Now just in terms of that meeting with the Gupta family or specifically with Mr Tony Gupta on the  
20 8<sup>th</sup> of December you – if I understand correctly you telephoned the office to find out – you made a telephone call to your office to find out what the schedule was for that specific date for the 8<sup>th</sup> of December. Do I understand correctly I just want to get a sense of that?

**MR VAN ROOYEN:** There was no one at the office, the

office, the staff has already closed. So I went there on my own and I phoned the Gupta residents and I was told that Tony is there. So I went there to try my luck because I did not have a scheduled meeting with him and unfortunately that meeting could not materialise because he was busy with other meetings.

**ADV HULLEY SC:** So you telephoned Mr Tony Gupta from the offices of the MK Veterans Association?

**MR VAN ROOYEN:** Correct.

10 **ADV HULLEY SC:** And in the discussion he must have given you some sense that you should come over.

**MR VAN ROOYEN:** Chair I do not want to sound to be - what is this arrogant and all but that is not what I said. I have said I phoned that residence and the residence confirmed that he is available.

**CHAIRPERSON:** Oh, you did not speak to him on the phone?

**MR VAN ROOYEN:** No.

20 **CHAIRPERSON:** Yes, and then after somebody had confirmed that he was available...[intervenes]

**MR VAN ROOYEN:** I did not even say it Chair...[intervenes]

**CHAIRPERSON:** You then proceeded there.

**MR VAN ROOYEN:** Yes I did not even say, had the chance of confirming with him if I can see him. So I was

just trying my luck.

**CHAIRPERSON:** Ja, okay.

**ADV HULLEY SC:** Okay so I must have misunderstood you I thought it was a scheduled meeting. It was not a scheduled meeting? I mean scheduled with Mr Tony Gupta.

**MR VAN ROOYEN:** No it was not a scheduled.

**ADV HULLEY SC:** Okay.

**MR VAN ROOYEN:** That one I was supposed to be on holiday with my family so it was not a scheduled meeting.

10 **ADV HULLEY SC:** Sure. If we can go back to – because I am going to try and bring all of these different issues together at a later stage. Your relationship with Mr Mohammed Bobat, just explain to the Commission about your history and your relationship with Mr Bobat. How did that arise?

**MR VAN ROOYEN:** Thank you very much. Chair  
sometime in the – I think it was early 2019 just before I was redeployed to parliament. I was, before I went to parliament, I was the Mayor in my constituency, that is the  
20 constituency of Merafong and at that stage that constituency was falling under the North West Province.

In North West Province I was the Chairperson of the South African Local Government Association, the Provincial Chapter in North West. But also, I was the Provincial Executive Committee of the ANC in the North West but also

a member of what we call a provincial working committee in that province. So I was doing my outreach program in the region of Bojanala and if my memory serves me well I think I needed something or I needed to see some – I don't think I wanted to see someone, I needed something from the reassurance of a hotel which was in the area, in Madibeng area where I was doing my constituency work.

So I went there to grab something and that is where I met Mr Mohammed and of course I got into reassurance  
10 there and I greeted everyone as usual that is how we were brought up as Africans, we greet wherever we go. So – then on my way out I was approached by this gentleman and then he in turn introduced himself to me and then he gave me his business card and then he told me that what he was doing in the financial markets and all that and then that is when I started knowing him.

I kept the business card up until I had some challenges with my studies especially on financial areas then I started communicating with him on it but not  
20 necessarily frequently, when there was a need. And that is how I came across Mr Mohammed or Mr Bobat because Mohammed is his first name.

**CHAIRPERSON:** Which one is the surname, when I read documents sometimes, he is referred to as Mr Bobat sometimes Mr Mohammed. Which one is the surname

which one is the...[intervenes]

**MR VAN ROOYEN:** The surname is Bobat.

**CHAIRPERSON:** Bobat?

**MR VAN ROOYEN:** Yes.

**CHAIRPERSON:** Oh, okay.

**ADV HULLEY SC:** So that was some time in 2009 at the time if I understand correctly are you saying that in 2009 you were the Executive Mayor?

**MR VAN ROOYEN:** Yes, yes I have indicated yes I was  
10 the Executive Mayor of my constituency, that is my hometown it is in Carletonville, Khutsong.

**ADV HULLEY SC:** And on this occasion of the meeting was Mr Bobat provided you with his business card?

**MR VAN ROOYEN:** Correct Chair.

**ADV HULLEY SC:** Do you know why it is that he approached you or was there any indication as to why he approached you?

**MR VAN ROOYEN:** Yes he – I think he was in consultancy because he was meeting some traditional leaders or people  
20 from the royal family according to him because I never met those people. So he definitely wanted to say maybe I can start thinking. Business people are like that if they meet you here that there is a leader around, they will want to associate with that leader. I do not know how many business cards do I have in my collection because that is

how I made business network, you know.

**ADV HULLEY SC:** Now correct me if I am wrong and if I misunderstand your affidavit then of course you will correct me. My reading of your affidavit was that every subsequent interaction between the two of you, that is between you and Mr Bobat was initiated by you. Is that correct?

**MR VAN ROOYEN:** Correct.

**ADV HULLEY SC:** And on each of those occasions it  
10 would have been because you sought advice from him in relation to your studies?

**MR VAN ROOYEN:** Correct.

**ADV HULLEY SC:** Now you mentioned that you contacted him on several occasions. Was it more than once or was it more than twice?

**MR VAN ROOYEN:** No, I cannot remember but it was not that frequent.

**CHAIRPERSON:** Was it several occasions?

**MR VAN ROOYEN:** A it is this, must I quantify it?

20 **CHAIRPERSON:** A number of times.

**MR VAN ROOYEN:** Ja, a number of times...[intervenes]

**CHAIRPERSON:** But you cannot say how many times.

**MR VAN ROOYEN:** But it was not like something that I can say once in a month, no.

**CHAIRPERSON:** Ja.

**MR VAN ROOYEN:** Once in a while when I needed some assistance in my studies...[intervenes]

**CHAIRPERSON:** Like once in three months, once in six months, once...[intervenes]

**MR VAN ROOYEN:** Something of that nature once in three, maybe once in six months.

**CHAIRPERSON:** Ja.

**MR VAN ROOYEN:** Ja but it was not a frequent because it was based on my – what I was studying at that time and  
10 definitely as an expert on tax matters and as an expert –  
as an accountant. I derived from engaging with him on  
issues of taxation.

**ADV HULLEY SC:** Okay so your understanding in 2009 and based on his business card was that he was an expert in tax matters?

**MR VAN ROOYEN:** Yes, that is what he – that is how he presented himself but also in my first engagement - I meant after that meeting – in my first interaction with him about my studies definitely his knowledge was very  
20 evident.

**ADV HULLEY SC:** Now in your affidavit you will turn with me to page 135 of the same bundle that I have given you before.

**CHAIRPERSON:** Did you say 155?

**ADV HULLEY SC:** 135 Mr Chair.

**CHAIRPERSON:** 135.

**MR VAN ROOYEN:** 135.

**ADV HULLEY SC:** That's is so.

**MR VAN ROOYEN:** I am there.

**ADV HULLEY SC:** You say in paragraph 56 that Mr Bobat and I did not make regular contact but I can recall once or twice when I called him for some assistance with my academic studies in finance. So according to this affidavit you met with him or you telephoned him approximately  
10 once or twice relating to your studies.

**MR VAN ROOYEN:** Correct.

**ADV HULLEY SC:** You had no contact with him outside of that, in other words outside of your discussions about your studies.

**MR VAN ROOYEN:** No, no.

**CHAIRPERSON:** But also, if in your affidavit you said once or twice then that cannot be several times. I know that you did not want to commit yourself to about several times but if it is once or twice then that is much more  
20 limited than a number of times I would imagine. Is that right?

**MR VAN ROOYEN:** Okay yes it is very limited.

**CHAIRPERSON:** Yes, so would you say once or twice is more accurate in terms of how many times you contacted him?

**MR VAN ROOYEN:** Yes, I think let us...[intervenes]

**CHAIRPERSON:** That is more accurate.

**MR VAN ROOYEN:** It is more accurate let us stick to that  
Chair, yes.

**CHAIRPERSON:** Okay, alright.

**ADV HULLEY SC:** Then you acquired if I recall correctly  
you were at the time studying for an MSC in finance which  
ultimately you acquired in 2013. Is that correct?

**MR VAN ROOYEN:** That's is correct but it does not make  
10 – I think it was not only that because I was also doing  
something with UNISA on investment and portfolio  
management and also economy, I think I did two things  
with UNISA related to finance.

**ADV HULLEY SC:** Sure. So did – correct me if I am  
wrong but between 2013 and 2015 you had no contact with  
Mr Bobat. Is that correct?

**MR VAN ROOYEN:** 2000 and?

**ADV HULLEY SC:** Between 2013 you have now graduated  
you have got your MSC in finance and in 2015 you have no  
20 contact with Mr Bobat after that?

**MR VAN ROOYEN:** No I cannot guarantee that because  
the reality of the matter is that I started my lecturing  
sessions in parliament it was for some members of  
parliament. So I am not sure if I – was there any time  
where I needed some assistance from him. So I cannot

definitely say yes.

**ADV HULLEY SC:** So I am not sure if I am misunderstanding the response. You say that it was in that time that you started your parliamentary, I did not catch the word.

**MR VAN ROOYEN:** Look after completing my masters I took it upon myself but it is also an organisational duty to make sure that we encourage others I mean to follow the same route because you know the financial sector is one  
10 sector that is – we are not that strong on that sector as to be correct, we are not that strong as the ruling party.

So I took it upon myself to make sure that I encourage my fellow comrades I mean to do this course and I started providing for free of course some lectures to them. So I do not know during that time maybe I might have needed him because you know as you lecture when you go broad and you must go deep when you dealing with some of this matters.

**ADV HULLEY SC:** So it is possible that you might have  
20 needed him and when you say you might have needed him are you talking about coming to assist in providing lecturing or you talking about telephoning him for some advice over the phone?

**MR VAN ROOYEN:** No, no I was referring to telephonic engagement. That is why I say I am not even sure if I ever

called him you know but I know from time to time I use to engage with various experts on tax and on other economic matters you know.

**ADV HULLEY SC:** So on the 10<sup>th</sup> of December or rather let me correct that sorry on the 9<sup>th</sup> of December of 2015 if I understand correctly the announcement has been made that Mr Nene has been removed. The announcement has also been made that you have been appointed or you have been appointed as the new Minister of Finance and your  
10 swearing in ceremony is to take place on the 10<sup>th</sup> of December of 2015. If I understand correctly you do not phone Mr Bobat to invite him to the ceremony, in fact the presidency makes that arrangement. Is that correct?

**MR VAN ROOYEN:** Yes, I asked the presidency to try – in fact I tried to call him from my landline in the office and I struggled to get hold of him. Then I ultimately phoned the presidency because they wanted urgently a list of people who must come to attend my swearing in ceremony  
Chairperson but it was just a handful. And you know on  
20 the 8<sup>th</sup> one of the first things that I did after that meeting with the President – because I was obsessed about perfecting this new assignment. So...[intervenes]

**CHAIRPERSON:** You were upset?

**MR VAN ROOYEN:** I was obsessed about perfecting a new assignment.

**CHAIRPERSON:** Oh, okay.

**MR VAN ROOYEN:** So one of the first things that I thought of is whom can I bring to support me immediately. So his – on the 8<sup>th</sup> in fact I have already decided that I am going to trace this man because I really need him to come and join me.

**ADV HULLEY SC:** So just to get that right your saying that you were obsessed with perfecting this assignment and by this assignment you are referring to your new  
10 appointment...[intervenes]

**MR VAN ROOYEN:** My new appointment.

**ADV HULLEY SC:** ...as the Minister of Finance?

**MR VAN ROOYEN:** Correct Chairperson.

**ADV HULLEY SC:** And...

**CHAIRPERSON:** So in other words, you wanted to do, to excel in this portfolio?

**MR VAN ROOYEN:** That is in the nature of ANC products. When we are given a task we want to excel because – but also Chair you know being executives is not a chance play.

20 **CHAIRPERSON:** Yes.

**ADV HULLEY SC:** So you start to consider in your mind who might you get to come and assist you in your new role, in your new capacity as Minister of Finance and you come upon the name of Mr Bobat and you decide that he is the person that you would like to come and assist you. Do I

understand that correctly?

**MR VAN ROOYEN:** Yes, I do.

**ADV HULLEY SC:** And you say that you tried to get hold of him telephonically but unsuccessfully?

**MR VAN ROOYEN:** Correct.

**ADV HULLEY SC:** So you phoned him from your cell phone to his cell phone with the number that you had from the business card that you were given six years ago. Is that correct?

10 **MR VAN ROOYEN:** Yes.

**ADV HULLEY SC:** That number is now stored in your cell phone. Is that correct?

**MR VAN ROOYEN:** Yes, it is still there that is the one that I am still even using today.

**ADV HULLEY SC:** And so you phone him and you do not get through to him.

**MR VAN ROOYEN:** It was not like phoning onto my phone. I remember I phoned him from my office from Luthuli House and did not get him and then because I was  
20 under pressure of submitting the names of people who must be invited. So I send that to the presidency.

**ADV HULLEY SC:** So you phoning from Luthuli House do I understand that correctly?

**MR VAN ROOYEN:** Correct.

**ADV HULLEY SC:** You do not phone him from your cell

phone?

**MR VAN ROOYEN:** I was at the office when this request was submitted.

**CHAIRPERSON:** But you used the landline in order to...[intervenes]

**MR VAN ROOYEN:** It was the landline, yes.

**CHAIRPERSON:** Ja.

**MR VAN ROOYEN:** It was the landline, yes in fact when I am at Luthuli House, I use the landline mainly.

10 **ADV HULLEY SC:** But I am not sure if I am following you. You say you sitting in Luthuli House when you make the call from the landline in Luthuli House to try and get hold of Mr Bobat?

**MR VAN ROOYEN:** Yes.

**ADV HULLEY SC:** And at the time you trying to do so in order to invite him to do what? What is it that you are trying to invite him to do?

**MR VAN ROOYEN:** I am trying to notify him that I want to include his name on the list of people that must be invited  
20 by the presidency for my swearing in ceremony.

**ADV HULLEY SC:** Okay. So it is not your intention at that stage to invite him to join you in any capacity whether as a special advisor or otherwise?

**MR VAN ROOYEN:** No in my thinking I thought that will require a bilateral with him first so that is why I insisted

that I must meet him first. I did not think it was going to be proper for me to discuss such a matter over the phone.

**ADV HULLEY SC:** No, fair enough. You do not get hold of him so you then pass on his details to somebody at the President's office and ask them to arrange for him to be present on the 10<sup>th</sup> of December at the swearing in ceremony. Is that correct?

**MR VAN ROOYEN:** Yes, I included his name on the list that I forwarded to the presidency for invitation on – for my  
10 swearing in ceremony.

**ADV HULLEY SC:** So you provide them with his name and presumably his cell phone number as well?

**MR VAN ROOYEN:** Yes, off course.

**ADV HULLEY SC:** Okay. So in fact, it is the President's office that phones him and invites him to the swearing in ceremony on the 10<sup>th</sup>?

**MR VAN ROOYEN:** Yes, that is what he confirms with me.

**ADV HULLEY SC:** But you never have a discussion with him before that?

20 **MR VAN ROOYEN:** No, no about the invitation I never had a chance to talk to him.

**ADV HULLEY SC:** About the swearing in ceremony.

**MR VAN ROOYEN:** Yes, I am saying about the invitation to the swearing in ceremony.

**ADV HULLEY SC:** Correct.

**MR VAN ROOYEN:** No, no.

**ADV HULLEY SC:** So when he arrives on the 10<sup>th</sup> of December you offer him – at some stage and I will get into the chronology in a moment but at some stage you offer him the post of the special advisor to the Minister of Finance on that occasion on the 10<sup>th</sup> of December. Is that right?

**MR VAN ROOYEN:** Chairperson what happened is that I indicated to him that I have got an interest on him being  
10 part of my team as my advisor because a field that I was deployed to lead will require a person of his calibre in terms of his academic qualification.

It was purely on merit and I further indicated to him that as much as I have identified him we need to follow a certain a certain process because remember immediately after the meeting on the 8<sup>th</sup> with that obsessions that I have explained I had then to go and check how to do it and I went through the ministerial handbook because also the President in our meeting on the 8<sup>th</sup> that is what he  
20 emphasised go and familiarise yourself with some of this provisions.

And of course, among other things the President indicated to me that I must go through the ministerial handbook. Now I said to him according to the ministerial handbook as an executive I am allowed to appoint people

to come and work with me but then this is the process that we are going to follow.

I am going to introduce you to the DG whom by that time had get someone who is very capable. I hope Mr Bobat will remember I said to him his a very good comrade of – and he is very, very efficient. Well I was not aware that I am dealing with a hypocrite. So what happened is that I explained to him that there is a process that needs to be followed for this appointment to be finally finalised.

10 Among other things you shall be vetted because I do not even know that – you might say to me you are fit and proper because you do not have criminal records and all that but there is a due process that must be followed with DPSA and the State security to confirm that you are suitable for this assignment.

And the DG is going to help me to complete that process but you also have to – we must make sure that very soon you will sign your contract with myself, so the DG will be in a position to help with that. So I will  
20 introduce you to the DG and that is what happened and then he accepted my offer and that obviously made matters to consider at least one of my emulators has been completed.

**ADV HULLEY SC:** Now at this stage presumably when Mr Bobat arrives at this meeting he arrives without any CV;

would that be correct?

**MR VAN ROOYEN:** Yes.

**ADV HULLEY SC:** And in fact, other than the business card which you got in 2009 you have never seen his CV ever. Is that correct?

**MR VAN ROOYEN:** Yes, I have never seen his CV but I know his profile.

**ADV HULLEY SC:** You say you know his profile what exactly are you referring to?

10 **MR VAN ROOYEN:** I am referring to knowing his qualifications because he communicated those to me and through my engagement with him, I was able to verify that he is a qualified person. And I had no reason not to believe him when he told me of his qualifications.

**ADV HULLEY SC:** So when you say you know his profile based upon what he had told you, you referring now to the period prior to 2015. Is that correct – sorry 2013 is that correct?

**MR VAN ROOYEN:** Correct.

20 **ADV HULLEY SC:** So on the one or two occasions that you and he had discussions which were initiated by you and which related specifically to your studies the two of you happen to engage in a discussion about his profile. That is what you're saying?

**MR VAN ROOYEN:** That's is what I am saying, exactly.

**ADV HULLEY SC:** And on those one or two occasions when the two of you happen to engage in a discussion about his profile, he said certain things to you which satisfied you on the 10<sup>th</sup> of December 2015 that this was the right man for the job. Is that...[intervenes]

**MR VAN ROOYEN:** Correct in terms of the experience that he demonstrated to me during our engagements, definitely.

**ADV HULLEY SC:** And you had not at that stage  
10 considered anybody other than Mr Bobat. Is that correct?

**MR VAN ROOYEN:** No.

**ADV HULLEY SC:** He was the person the only person that you wanted for that job. Is that correct?

**MR VAN ROOYEN:** Look I am sitting as we speak now, I am sitting with a plethora of CV's in my office and I have to be realistic because at times you know when the duty calls more especially at a national level you will have to prioritise this issue of merit because the severity of the task required merit more than any other thing. So I went  
20 through some of the CV's of my comrades but unfortunately, I could not find a CV that came closer to what was expected of me or maybe the person to support me.

**ADV HULLEY SC:** So you sitting in your office, in which office are we referring to now we talking

about...[intervenes]

**MR VAN ROOYEN:** No, I am referring to TG's office.

**ADV HULLEY SC:** Now the people's CV's that you are sitting with presumably are people that are from the MK Veterans Association?

**MR VAN ROOYEN:** Not only MK Veterans Association I mean from the broader society - remember I am a community leader I am not only a TG of MK Military Veterans Association.

10 **ADV HULLEY SC:** So if I understand correctly your testimony is that within the ANC you are always pursuing excellence?

**MR VAN ROOYEN:** Correct.

**ADV HULLEY SC:** And in the pursuit of excellence with the name of a person who has told you that he has a certain qualifications, you have never seen his CV, you have never verified whether that the information that he has given you is correct. You then offer that person a job as a special advisor to the Minister of Finance, that is what  
20 you're saying.

**MR VAN ROOYEN:** But also, maybe to add on what you are saying as someone who has demonstrated through my engagement with him that he understands the subject matter. But also, I knew besides me trusting him not to be telling me a lie, I knew that that there was a process that I

am going to subject him to which is normally championed by DPSA.

**ADV HULLEY SC:** Okay. Now at that stage...[intervenes]

**CHAIRPERSON:** Sorry why did you not want to give yourself a wider choice of people, qualified people, experienced people from whom to choose. Why did you confine yourself to this person with whom – whom you had met only once in six years or so, very briefly, in a restaurant as I understand the position and you had talked to – to whom  
10 you had talked once or twice on the phone in six years when there must be many people some of whom within the ANC I have no doubt who would qualify, experience in relation to financial matters who – from whom you could then make your choice. Why did you confine yourself to this person that as I see it you might have a different view whose background you do not know much about?

**MR VAN ROOYEN:** Chair I had no time because remember I had to – to hit the ground running. So I had to prioritise some positions in my office so as I can hit the ground  
20 running. So in my situation I then prioritise the two positions because I knew that as I go into National Treasury it is a familiar institution there will be people who can also compliment these two that they have earmarked. So it was just a matter of prioritising on my side as to what are the – the – what are the immediate tasks that I need to do or what

are the immediate position that I needed to fill? So it was just a matter of prioritisation on my side that I needed a Chief of Staff but also needed a special advisor so that I can hit the ground running. So I prioritise him after looking into whatever CV's that I had at my disposal and I realised that – I decided that he is the – he was the best candidate for that assignment.

**CHAIRPERSON:** You see it is important for me that I should hear what you have to say on this because it is a matter that  
10 is – that concerns me in relation to your choice of Mr Bobat. We will talk about Mr Whitley later on. There must be a lot of people who may have been doing the same degree as yourself when you a MEC in finance. There must be a lot of people who are your comrades within the ANC who have financial qualifications in finance. There must be – and who have experience but also you might have given yourself time to talk to maybe Mr Nene or other Ministers and give yourself more time even if it is a few days just to make sure that not only is the person you choose somebody with  
20 academic qualifications but also that you choose somebody for example with integrity and you do not just rely on what he says to you. You talk to other people. You do some background work before you say I am identifying this person. Even if the process will involve security clearance and so on but before you say I am identifying this person just make

sure that this is not somebody who – who might have certain skeletons in his cupboard that are going to embarrass you, that are going to embarrass the government, that are going to embarrass National Treasury. First say what are you going to lose by waiting a few days just to check these things? So that is part of my concern. You want to address that?

**MR VAN ROOYEN:** Thank you Chair. Chair ideally, I will definitely take that route and I did not take that route  
10 because I felt a lot of – I am especially how the financial market reacted. So I had to think quickly on getting a team or maybe some people with the necessary knowledge on issues of financial markets. And of course, knowing him as someone that I have engaged I never had the reservation about his integrity and I still do not have that. And I never had an issue about his fit for purpose and I still do not have that. Because remember we moved – I moved with him from National Treasury we went to COPTA. In COPTA definitely I mean but that was after even DPSA has confirmed my own –  
20 I mean intuition that he is a man of integrity. So definitely I was under a lot of pressure to make sure that I play my part in terms of dealing with the turbulences more especially in the financial markets that were there at that time. So that is why I completely had to go for them because of their background both Mr Bobat and Mr Whitley.

**CHAIRPERSON:** Mr Hulley.

**ADV HULLEY SC:** Thank you Mr Chair. Now you – you were obviously aware in 2015 you were familiar with Regiments Capital at that stage, is that correct?

**MR VAN ROOYEN:** Yes that is correct.

**ADV HULLEY SC:** And at the time when you appointed Mr or rather when you made the offer to Mr Bobat you were aware that he in fact worked for Regiments Capital at the time, is that correct?

10 **MR VAN ROOYEN:** No it is not correct. He only brought it to my attention when I discussed with him at the Union Building and then I – then instructed him he must – if he accept the offer he must then resign from Regiments.

**ADV HULLEY SC:** Sorry I did not catch that bit. You said you only discussed – you were not aware of it at the time but he only brought it to your attention at what stage?

**MR VAN ROOYEN:** He brought it to my attention that he was – he had a relationship – he was working with Regiment at that – at that moment.

20 **ADV HULLEY SC:** Okay in other words this is at the swearing in ceremony?

**MR VAN ROOYEN:** At the swearing in ceremony.

**ADV HULLEY SC:** And you were familiar with Regiments Capital as – what was your knowledge and understanding of Regiments Capital at that stage?

**MR VAN ROOYEN:** It was just I did not have the details about Regiments Capital Incorporated besides that they are all the – they are also a player in the financial sector.

**ADV HULLEY SC:** Were you aware – were you aware of some of the rumours that was swirling in the media at the time?

**MR VAN ROOYEN:** Yes I was aware.

**ADV HULLEY SC:** What were the rumours?

**MR VAN ROOYEN:** I mean about some implications and  
10 certain act of malfeasance.

**ADV HULLEY SC:** Yes were those...

**MR VAN ROOYEN:** But I do not have the details but I am saying I was aware because I read business newspapers from time to time.

**ADV HULLEY SC:** So when he told you that he worked for Regiments Capital you were aware of those rumours?

**MR VAN ROOYEN:** Correct.

**ADV HULLEY SC:** And notwithstanding that fact and the fact that you were aware of the rumours of malfeasance on the  
20 part of Regiments Capital you had no concerns about his own integrity, is that correct?

**MR VAN ROOYEN:** No, no because he was not necessarily implicated in what was happening – what was said in the newspaper about Regiments Company.

**ADV HULLEY SC:** No, no that is fair – fair enough. What I

am asking you is you are aware that Regiments Capital itself had been implicated in the media and through rumours in malfeasance you were aware of that?

**MR VAN ROOYEN**: Correct.

**ADV HULLEY SC**: You were aware that he worked for them?

**MR VAN ROOYEN**: Correct.

**ADV HULLEY SC**: And you say that the rumours and the media reports did not necessarily implicate him.

**MR VAN ROOYEN**: No, no, no.

10 **ADV HULLEY SC**: And did you ask him at that stage whether he was somehow involved in any of the malfeasance that had been attributed to Regiments Capital?

**MR VAN ROOYEN**: Yes and then he confirmed to me that he is not part of what was said in the newspapers. But also remember what is said in the newspapers were allegations levelled against Regiments you know. So he also confirmed with me that – but that was not also my – for my focus and my interest then it was on him accepting my offer of including him into a team.

20 **ADV HULLEY SC**: So he says to you – you ask him pointedly and he says to you, I am not involved in that malfeasance. So does – from what I – you were saying now I understand you to be saying he confirms that there is malfeasance taking place but he is saying, I am not involved in it.

**MR VAN ROOYEN:** No, no that is not what I am saying. I am saying the reports, media reports and he is aware of them but I have never been – checked with him to say are you involved, are you not involved but he – those reports were all over the newspapers so he confirmed that he is aware of those reports.

**ADV HULLEY SC:** Did you ask him if he has somehow been implicated in any of those rumours that are swirling?

**MR VAN ROOYEN:** I asked him broadly about – because  
10 thinking of that provision of fit for purpose I ask him broadly about him having anything that might impact my obviously intention to include him to my team. Criminal records or any judgment against him that are the basic things that I ask him. And then he confirmed that he do not have such.

**ADV HULLEY SC:** Okay let us put that issue aside. That is a separate question. I am talking specifically in relation to Regiments Capital. What do you ask him about his – you know that – you know now that he is involved with Regiments Capital, he works for Regiments Capital, what do you ask  
20 him about his involvement in Regiments Capital and the allegations, the rumours, the media reports relating to malfeasance within Regiments Capital? That is my question.

**MR VAN ROOYEN:** No it was all about what is reported in the – on the media and of course he told – he confirmed that he is also aware. And of course, I meant I did not take much

interest in pursuing that discussion because he was going to resign from Regiments.

**CHAIRPERSON:** Was that – let me start by this. Were you concerned in any way about taking somebody as your special advisor as Minister of Finance who was coming from an organisation about which there were rumours of wrongdoing? Were you concerned about that at all?

**MR VAN ROOYEN:** Definitely Chair that is why I posed the question about fit for purpose. That is to make sure that we  
10 do not start the process which might backfire.

**CHAIRPERSON:** Yes but I understood you to say what you asked him related to whether there were judgments against him or whether he had a criminal record and he said no he did not have any of that, is that correct?

**MR VAN ROOYEN:** Correct.

**CHAIRPERSON:** Yes. I understood you to say – understood you to be in effect saying to me your concern was with regard to those issues and not the rumours about the Regiments.

20 **MR VAN ROOYEN:** Correct.

**CHAIRPERSON:** Did I understand you correctly? Did I understand you correctly?

**MR VAN ROOYEN:** I – that was also my concern Chair.

**CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** Because I wanted to confirm if – maybe

out of that then other things that I do not know of.

**CHAIRPERSON:** Ja.

**MR VAN ROOYEN:** He might be implicated or he might be having judgments. So when I posed that question, I was trying to obviously accommodate even what is happening at Regiments.

**CHAIRPERSON:** Yes. But you see Mr Hulley asked you directly to tell me what it is that you asked him about the rumours. If you asked him anything?

10 **MR VAN ROOYEN:** What I asked him about the rumours when he said to me he is from Regiments I said are you aware of the media publications and he said, no I am aware but these are some of the things that I levelled against my company. So then I said, no if – then you accept my offer given that you are going to resign.

**CHAIRPERSON:** And he said he would resign?

**MR VAN ROOYEN:** Yes, no he was going to resign. There was no – any choice going to...

**CHAIRPERSON:** Yes.

20 **MR VAN ROOYEN:** Continue with my advice and then it would be official, yes.

**CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** But also Chair even if he resigns – he is not going to resign because of what is reported in the newspapers.

**CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** He was going to resign because he has accepted.

**CHAIRPERSON:** Yes. No I understand that. But from what you say I get the impression that despite the existence of the rumours of wrongdoing on the part of the organisation of which he was part you were quite content to take him because he was going to resign from Regiments, number 1. Number 2 he said he had no criminal record. Number 3 he  
10 had no judgment against him. That set you at ease, is that correct?

**MR VAN ROOYEN:** That is correct Chair but also Chair you know I would not use that as a basis for determining including someone. Let us take for an example. We have ...

**CHAIRPERSON:** Well let me say I am sorry I am interrupting you. I am not suggesting at all that you were disregarding his qualifications because you have emphasised his qualifications. I am not saying you disregarded that.

**MR VAN ROOYEN:** No, no I just wanted to give an example.  
20 Because the narrative that suggests that when a company is labelled as these corrupt or bla, bla company it is just allegations. Or even a corrupt company when an employee from that corrupt company – because some companies employ many people who was not even the decision making position.

**CHAIRPERSON:** Hm.

**MR VAN ROOYEN:** Does that mean when employee want a job from that company and then having all what he takes for the new job that I am offering as an owner of another company does that mean I should not consider him because of the scandals of that company where he was employed before?

**CHAIRPERSON:** Hm.

**MR VAN ROOYEN:** I will give a typical example.

10 **CHAIRPERSON:** Huh-uh.

**MR VAN ROOYEN:** The one that comes to mind relative to the financial sector. In 2013 we had banks – big banks including Standard Bank where Mr Fuzile is currently working as an Executive the bank implicated in colluding with other banks, global banks and manipulated the exchange rate and in the process disadvantage billions of customers and of course you know they are adversely affected in that situation are the poor of the poor. Billions because this is a global – it was a global scandal. Now because Mr Fuzile after  
20 coming out of National Treasury or becoming a beneficiary of what I termed a revolving door phenomena he went to Standard Bank automatically after coming from National Treasury. Obviously if – if I use that particular analysis of corrupt companies then I will just say his integrity is also questionable. Why did he decide to go and join a company?

**CHAIRPERSON:** Huh-uh.

**MR VAN ROOYEN:** So that analysis I do not think it is – it was not going to help me to determine.

**CHAIRPERSON:** Well this is where it may be important namely that because the company from which Mr Bobat was coming or because of the company of which he was part and the fact that there were rumours of malfeasance around that company you might have needed to be more cautious and to take some time to check whether you might not bringing to  
10 National Treasury or to your Ministry somebody that should not be brought to the Ministry. You might have needed more time to investigate before you could say okay I am choosing this one. Because you do not know who in the company may be involved in that malfeasance and who may not be involved. And there may be others – other candidates who do not come from a company that might be having those types of rumours and in order to protect the Ministry you might wish to take somebody who seems to have – to be not associated with any entity about whom there are rumours of  
20 corruption and so on. That is – that is what I would like you to address.

**MR VAN ROOYEN:** Chair you know I do not think it was going to be appropriate for me just because of someone is coming from a company where there are allegations not even substantiated allegations of corruption. I do not think that is

going to be important for me to firstly deny that person an opportunity but secondly use that as my determining criteria for his appointment. Because I was under pressure and I knew for a fact that the appointment was not going to be finalised by my identification. He was still going to be subjected to a robust process of vetting to a robust process of confirming his credentials. And that anyone was going to be subjected to that even if it was not Mr Bobat that I decided to identify – anyone was going to be subjected to  
10 that.

**CHAIRPERSON:** Hm.

**MR VAN ROOYEN:** So truly speaking Chair I do not think that issue at that time was that much of concern because it was not allegations against Mr Bobat. Not if it was against Mr Bobat, I will have definitely treated it differently.

**CHAIRPERSON:** But you did not know who at Regiments may have been involved, did you in regard to those allegations?

**MR VAN ROOYEN:** No those allegations were not – were  
20 not citing him.

**CHAIRPERSON:** No but I am saying without an investigation as to whether he and other people may have been involved you would not know whether later on it will turn out that he was involved?

**MR VAN ROOYEN:** Definitely Chair and that is why I

employed the principle of trust that I had on him.

**CHAIRPERSON:** Hm.

**MR VAN ROOYEN:** And that of course considering his qualifications that I prioritise his identification.

**CHAIRPERSON:** Of course the trust that you were – you had on him was based among – was based on the fact that you had met – you were meeting this person only for the second time in your life.

**MR VAN ROOYEN:** Ja but we engaged.

10 **CHAIRPERSON:** Ja, no I will come to that.

**MR VAN ROOYEN:** Yes.

**CHAIRPERSON:** Two you had talked him once or twice on the phone. That is all.

**MR VAN ROOYEN:** Yes.

**CHAIRPERSON:** Mr Hulley.

**ADV HULLEY SC:** Thank you Mr Chairman. Now when you spoke with him he said that he would resign from Regiments Capital but you understood or presumably you understood that he held a senior position within Regiments Capital,  
20 correct?

**MR VAN ROOYEN:** Yes I did.

**ADV HULLEY SC:** So the – the fact that he was going to resign would presumably – well hopefully ought to have provided you with you some – with very little comfort because this was a person that was a very senior employee

who had been implicated or rather let me rephrase that. Whose company had been implicated on your words in malfeasance so he was a senior employee within that company if I understand correctly?

**MR VAN ROOYEN:** Yes.

**ADV HULLEY SC:** Now ...

**CHAIRPERSON:** We are five to four. One let us clear that we can go beyond four o'clock. Mr Masuku is it fine if we go beyond four o'clock?

10 **ADV MASUKU SC:** Yes it would be fine we were quite keen to have...

**CHAIRPERSON:** You would like to finish?

**ADV MASUKU SC:** Mr – Mr Van Rooyen set free after today.

**CHAIRPERSON:** Yes. Okay.

**ADV MASUKU SC:** So we can go past four.

**CHAIRPERSON:** Okay alright.

**ADV MASUKU SC:** We have no difficulties.

**CHAIRPERSON:** I have in mind that Mr Hulley you should try and finish by half past four.

20 **ADV HULLEY SC:** Thank you Mr Chairperson

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** If we can...

**ADV MASUKU SC:** Sorry Chair.

**CHAIRPERSON:** Sorry yes.

**ADV MASUKU SC:** Is it possible that ...

**CHAIRPERSON:** We take a break?

**ADV MASUKU SC:** We can finish today?

**CHAIRPERSON:** Yes. Oh because you might re-examine is that what?

**ADV MASUKU SC:** No, no I will decide whether to re-examine.

**CHAIRPERSON:** Oh just in terms of...

**ADV MASUKU SC:** But in the...

**CHAIRPERSON:** Yes, yes, no, no I think it is possible.

10 **ADV MASUKU SC:** Yes we will be happy to do that.

**CHAIRPERSON:** Ja it is possible ja.

**ADV MASUKU SC:** Thank you, thank you Chair.

**CHAIRPERSON:** Ja we will aim to try and finish here. Okay. The – I am not sure whether we should take a break but if we are going to try and finish at half past four maybe we can push up to half past four.

**ADV HULLEY SC:** Thank you. Thank you.

20 **CHAIRPERSON:** And if Mr Van Rooyen indicates that he would like a comfort break he will indicate. Okay I think let us continue.

**ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** Ja and then we will see how it – how it goes.

**ADV HULLEY SC:** Let us just move over to Mr Mabaso – oh sorry Mr Whitley. If I understand your – your affidavit or

your statement correctly you met Mr Whitley for the first time on the 11 December of 2015, is that correct?

**MR VAN ROOYEN:** Correct.

**ADV HULLEY SC:** And you met him at Melrose Arch in the Sandton area?

**MR VAN ROOYEN:** Correct.

**ADV HULLEY SC:** You were present at that meeting; Mr Whitley was obviously present at the meeting. There was a certain Mr Malcolm Mabaso that was present at the meeting  
10 and if I understand correctly Mr Bobat was also present at that meeting, is that correct?

**MR VAN ROOYEN:** What happened is that Chairperson I had a meeting earlier at Melrose Arch and then Mr Mabaso came with Mr Whitley and – well I knew Mr Mabaso because he was working with Minister Zwane but he was also frequenting our offices at Luthili House. So he then bumped – not necessarily bumped me but came to where I was in that meeting at Melrose Arch and indicated that he is aware that I might be in need of support in my office. So there is a  
20 gentleman I might want to consider to come into a team. And I said let me have an engagement with that gentleman first because I do not know him. So he then gave – allowed Mr Whitley then to meet with me. Then I proceeded with Mr Whitley and in that meeting Mr Whitley presented his CV to me and then I indicated to him that it is – I am very much

impressed of his CV because by then I was looking for someone who can come in as Chief of Staff but also with a knowledge in the financial sector in the banking sector. And that Mr Whitley had what it takes. And Mr Bobat of course came in – because I informed him on the 10<sup>th</sup> that I will be having a breakfast meeting at Melrose Arch. So he came in and then he said to me I – he just tendered his resignation and then he introduced then to me Mr Wood who was his former colleague and that is where I started knowing Mr Eric  
10 Wood.

**ADV HULLEY SC:** So Mr – if I understand correctly Mr Bobat comes to meet you at Melrose Arch because you had told him the previous day that you were going to be having breakfast.

**MR VAN ROOYEN:** Yes.

**ADV HULLEY SC:** At Melrose Arch. So you – on the 11<sup>th</sup> March – sorry the 11<sup>th</sup> December then when you have this meeting with these various people you actually having breakfast at a restaurant, is that correct?

20 **MR VAN ROOYEN:** It was not a restaurant I was hosted by a business person because that is one of the following meetings that I had to wrap up from, then came here.

**ADV HULLEY SC:** Hm.

**MR VAN ROOYEN:** So it was not a restaurant it was a meeting it was more of a – I think that is more of a meeting

boardroom it was more of a boardroom if – but they served breakfast there. There was more of a meeting boardroom.

**ADV HULLEY SC:** So you were having a meeting at a business – at some premises – business premises at Melrose Arch it is not in a restaurant?

**MR VAN ROOYEN:** No, no it is not in the restaurant.

**ADV HULLEY SC:** Okay so you – what is the name of the company that you are at?

**MR VAN ROOYEN:** No, no I was hosted by a business  
10 person.

**ADV HULLEY SC:** Yes.

**MR VAN ROOYEN:** Mr Bashir Sallo who is a business person from Libya and this was one of my outstanding meetings I mean from MK engagements.

**ADV HULLEY SC:** Just give me the name again?

**MR VAN ROOYEN:** Bashir Sallo.

**ADV HULLEY SC:** Spell that surname for us please?

**MR VAN ROOYEN:** S-a-l-e-h that is what I – I am not sure if that is the surname but I know it is Bashir Sallo.

**ADV HULLEY SC:** Okay. So you wrapping up with that  
20 meeting and when that meeting is finished you then approached by Mr – Mr Mabaso is that correct? Do I understand that correctly?

**MR VAN ROOYEN:** In that meeting I did not wrap it up it was somehow disrupted by the presence of Mr Mabaso so I

had to entertain this request by Mr Mabaso first.

**ADV HULLEY SC:** Okay. Now this meeting with Mr Bashir Sallo is it is a – is it in a boardroom? We know it is not in a restaurant. Is it in a boardroom or is it in – of a particular company or is it in the boardroom of Mr Bashir Sallo himself?

**MR VAN ROOYEN:** I did not ask those details but – because he is the one who arranged the meeting so I did not ask those details.

10 **ADV HULLEY SC:** Now Mr Mabaso approaches you in that meeting. So he – he was not aware that you were going to be in this meeting on the morning of the 11<sup>th</sup> December of 2015? Is that right?

**MR VAN ROOYEN:** In my recollection because I never informed him about that meeting. I never informed Mr Whitley because I was meeting him for the first time. The only person that I informed was Mr Bobat.

**ADV HULLEY SC:** Was Mr?

**MR VAN ROOYEN:** Mr Bobat.

20 **ADV HULLEY SC:** Bobat okay.

**MR VAN ROOYEN:** Ja.

**ADV HULLEY SC:** So Mr Mabaso arrives at this meeting in the – which is in the boardroom of a businessman. How is this businessman associated with Mr Mabaso?

**MR VAN ROOYEN:** No, no, no association at all.

**ADV HULLEY SC:** So Mr Mabaso arrives that... is this a surprised event, Mr Mabaso just pitches up out of nowhere, he slips you out of nowhere? I am just trying to understand how that happens.

**MR VAN ROOYEN:** Yes, to me because I did not inform him.

**ADV HULLEY SC:** Okay.

**MR VAN ROOYEN:** And I did not inform him.

**CHAIRPERSON:** Did... so you say you did not inform him or you did inform him?

10 **MR VAN ROOYEN:** I did not. Chairperson, I did not inform him.

**CHAIRPERSON:** You did not inform him?

**MR VAN ROOYEN:** Yes.

**ADV HULLEY SC:** So he arrives there and he has Mr Whitley with him. Is that correct?

**MR VAN ROOYEN:** Yes.

**ADV HULLEY SC:** And Mr Whitley comes there ...[intervenes]

**CHAIRPERSON:** I ...[intervenes]

20 **ADV HULLEY SC:** Sorry, Mr Chair.

**CHAIRPERSON:** And Mr Whitley has his CV with him?

**MR VAN ROOYEN:** Yes.

**CHAIRPERSON:** And ...[intervenes]

**MR VAN ROOYEN:** In fact... Chair, let me just indicate. Mr Mabaso indicated that: "I am aware that you may be as a

new president, you may be making some support in your office. So I have someone that I want you to engage with. Maybe you might consider him to be part of your team”.

**CHAIRPERSON:** This is now in a telephone conversation with you?

**MR VAN ROOYEN:** No, no, no. This is at Melrose Arch in the meeting that I had.

**CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** Yes.

10 **CHAIRPERSON:** But I think one of the points that Mr Hulley was trying to establish is how Mr Mabaso came to know that you were at this boardroom?

**MR VAN ROOYEN:** I am not sure. I would be lying Chair. I do not know how did he come to know.

**CHAIRPERSON:** So you had heard... you had spoken to Mr Mabaso when he told you that there is somebody that you might to be part of your team. Is that right? You had spoken to Mr Mabaso before he came to the boardroom. Is that right?

20 **MR VAN ROOYEN:** No, no, no. I am referring to my engagement with Mr Mabaso at that boardroom.

**CHAIRPERSON:** Oh.

**MR VAN ROOYEN:** Yes.

**CHAIRPERSON:** So prior to him coming to the boardroom, you... he had... the two of you had not spoken?

**MR VAN ROOYEN**: No, not at all. Not at all Chair. Not at all.

**CHAIRPERSON**: Not that ...[intervenes]

**MR VAN ROOYEN**: The only person that I ...[intervenes]

**CHAIRPERSON**: ...the previous day?

**MR VAN ROOYEN**: The only person that I spoke to is Mr Bobat.

**CHAIRPERSON**: Yes.

**MR VAN ROOYEN**: The previous day.

10 **CHAIRPERSON**: Yes.

**MR VAN ROOYEN**: Correct.

**CHAIRPERSON**: And you invited Mr Bobat to this meeting?

**MR VAN ROOYEN**: Yes. No, mister ...[intervenes]

**CHAIRPERSON**: For breakfast, ja.

**MR VAN ROOYEN**: I said he can come to where he was... or no, the way to the office.

**CHAIRPERSON**: Yes.

**MR VAN ROOYEN**: Because I was going to Pretoria from there.

20 **CHAIRPERSON**: Yes, yes.

**MR VAN ROOYEN**: Correct.

**CHAIRPERSON**: So at that stage, Mr Bobat knew that you might be needing somebody else when you told him ...[intervenes]

**MR VAN ROOYEN**: Yes, yes. I told Mr Bobat that there is a

need for me to have a chief of staff because he cannot run with the affairs of a junior staff.

**CHAIRPERSON:** Okay alright.

**ADV HULLEY SC:** Thank you, Mr Chair. Now, when Mr Whitley arrives there together with Mr Mabaso, if I understand correctly, Mr Mabaso says to you when he introduces Mr Whitley, he says to you that Mr Whitley is looking for work and he may be an asset to... in government. Do I understand that correctly?

10 **MR VAN ROOYEN:** Yes.

**ADV HULLEY SC:** So the way in which you introduce him, suggests that he is looking for work and may be an asset in government. It seems to imply that he is unemployed at that point in time.

**MR VAN ROOYEN:** Yes. No, that is the impression that I was left with too.

**ADV HULLEY SC:** So when he arrives there with his CV, armed with his CV and apparently down on his luck out of a job, you have a meeting with him that lasts for, if I  
20 understood correctly, you said it was a very brief meeting, which was, in fact, less than twenty minutes or so.

**MR VAN ROOYEN:** Yes, less than thirty... twenty to thirty minutes because I had to go through his CV and then also let him know... I mean, just to check his profile too. And that is what I did in that meeting.

**ADV HULLEY SC:** And at the end of that, you then appoint a person whom you understood was actually unemployed at that point in time. Do I understand that correctly?

**MR VAN ROOYEN:** Yes, but the person that I have also checked whether his profile is okay.

**ADV HULLEY SC:** Sure. These two positions... let us just consider these two positions. You have appointed a person as your special advisor, that is Mr Bobat and he reported the following day a person who happens to be your chief of staff.

10 That is Mr Whitley. What salaries do you offer them?

**MR VAN ROOYEN:** The issue of their salary Chairperson is not necessarily my... could be... is dealt with through the provision.

Because remember, there is a cabinet guidance on how these people should be remunerated and it is given effect through the process of DPSC and that process in the main, is an administrative process.

And that is why the DG will then throw his other HR streams will come and that will be determined in the contract  
20 to that was going to be finalised between myself and them.

**ADV HULLEY SC:** But you certainly understand that these positions entail or the salary that would have accompany these position would be in the excess of a million rand?

**MR VAN ROOYEN:** Yes.

**ADV HULLEY SC:** You understood that?

**MR VAN ROOYEN**: Yes, I understood that.

**CHAIRPERSON**: What does a chief of staff do?

**MR VAN ROOYEN**: He is the chief of staff in the office. He, obviously, looks at my accommodation things. He looks at HR issues within the staff of the minister.

He looks into the liaison between the minister's office and obviously stakeholders. It is a long list of things that he does.

But in the main, the chief of staff's responsibility is to  
10 make sure that... you can say you are a human capital  
related issues within the office of the executive he is taking  
care of including that of the executive.

**CHAIRPERSON**: H'm.

**ADV HULLEY SC**: Thank you, Mr Chair. Now, I want to wrap up those issues shortly. I want to just deal with one of the complaints that had been raised in relation to the appointment of the special advisor and the chief of staff and that relates to the process governed by 12A.

**CHAIRPERSON**: Maybe before you do that Mr Hulley  
20 because I think that is the procedural or issues or issue relating to process.

Again, Mr Van Rooyen, I am concerned about the minister meeting somebody that they do not know. Just having a meeting of about twenty to thirty minutes, looking at his CV only and offering that person a job as his or her chief

of staff without taking anything at all about this person.

It, to me, the speed with which you made these appointments or you offered jobs to these two people or the manner in which...

The way in which you went about it is of concern because I would have thought that with regard to Mr Bobat, that somebody that is going to be a special advisor to a minister and particularly, minister of finance.

I would have thought that it should be somebody in  
10 respect of you doing proper background checks have been made, not just in terms of knowing the job and experience but also the type of person that you are taking.

And so in regard to both of them, it is people that, it seems to me... well, certainly in regard to Mr Whitley, it is somebody that you do not know. Somebody that you do not know.

With regard to Mr Bobat, it is somebody you know slightly, I think. You met him once briefly at a restaurant six years ago. You talked to him on the phone once or twice and  
20 then you invite him to your swearing-in-ceremony and you offer him a job.

So it just seems to that that is not what one would expect a minister to do in appointing people to such important positions.

I say these things so that you know what is going on in

my mind. You have already addressed them in some way but I am just giving you a chance in relation to Mr Whitley to say whatever you might wish to say about this concern that I have.

**MR VAN ROOYEN:** Chair, your concern will... is my concern and will forever be my concern. But from where I am seated, I think I did what I could do to satisfy myself about the profile of the two individuals.

And I know, and that is why I am taking comfort from,  
10 that this process was not complete. This was just an identification process, subjecting them to a more robust process of vetting them and also verifying their qualifications.

But also, it could have been any other person because what impressed me is what was in their CV's. And usually when I am giving a chance to lead because I can use my experience when I was the executive major.

I mean, I appointed same position. My advisor and my chief of staff, these are people that I did not know but  
20 because of their... what was contained in their CV's, I gave them a chance, you know. And they never disappointed.

But I am not saying there are no risk attached to my approval. But I fully agree with you that you are concerned. It is my concern too. And that is why I did whatever that I did.

But because of limitation of capacity on my side, I might have not done it thoroughly. But also Chair, remember I was trying to also to add value into a very turbulent situation.

And I had also relied on the process that was going to follow, me just to confirm if I had the right people. So ideally, according to the section that has just been mentioned 12A.

They were going to be subjected to that particular process and definitely that was going to give me the results  
10 of my determination and it did that because when went to COGTA, I received those reasons, you know.

**CHAIRPERSON:** Mr Hulley.

**ADV HULLEY SC:** Thank you, Mr Chair. Just to move onto the 12A, the Section 12A process. My reading of your affidavit, correct me if I am wrong.

My reading of your affidavit was that as far as you were concerned, you are entitled to appoint both Mr Bobat, as well as, Mr Whitley and it was the responsibility of the Director General, who was Mr Fuzile, to ensure that the appointment  
20 was made.

So he did not have any say in it and once you had made up your mind that these were the people that have to be appointed, it simple had to be implemented. Do I understand that correctly?

**MR VAN ROOYEN:** I... understand that correctly Chair but

that is the wrong interpretation of the provision of the Public Service Act. The Public Service Act is clear. That is on my shoulder. I am the minister.

So identification is subjected to that process of the contract vetting. And who helps me in that regard? It is the DG.

I cannot be going to lower departments when I have the accounting officer who is my chief advisor. I think, now Mr Fuzile according to his role, because he is my chief advisor.

10 So in terms of giving that affect, it is not me as the minister who will run around and check but definitely, the buck stops with me.

There was no way in which he was going to affect those... the appointments or any accounting officers, even the COGTA if the findings were otherwise.

**ADV HULLEY SC:** Let us forget about COGTA for the time. Let us just focus on what happens at National Treasury or... and as in your position as the Minister of Finance. Once you decide that you are going to appoint your Special Advisor, Mr  
20 Bobat and your Chief of Staff, Mr Whitley. My reading of your affidavit is that that was final.

It had to be implemented. There was no need to go... to first seek out the security clearance. That was my reading of your affidavit but correct me if I am wrong.

**MR VAN ROOYEN:** You know English, Chair, it can be very,

very tricky at times. Where exactly in my affidavit do you read that? Because Chairperson, as I have explained. I was guided by the provisions of the Public Service Act, Section 12A.

**CHAIRPERSON:** So you say if that was his reading, you say that reading is wrong of your affidavit?

**MR VAN ROOYEN:** Extremely wrong.

**CHAIRPERSON:** H'm.

**MR VAN ROOYEN:** Extremely wrong Chair.

10 **CHAIRPERSON:** H'm.

**ADV HULLEY SC:** Thank you. Now... just... if you turn with me page to 128 of the... of your statement.

**MR VAN ROOYEN:** I found it.

**ADV HULLEY SC:** So, I want you to turn... if you look at paragraph 38 in that... on that particular page, you say there roughly... if you read from about line 12 from the bottom:

“Mr Fuzile derides with cynical contempt my decision...”

Have you got that?

20 **MR VAN ROOYEN:** I am trying to find that.

**ADV HULLEY SC:** Count about one... twelve lines from the bottom.

**MR VAN ROOYEN:** Yes.

**ADV HULLEY SC:** In fact, it is eleven lines.

**MR VAN ROOYEN:** Yes, yes.

**ADV HULLEY SC:**

“Mr Fuzile, you say, derives with cynical contempt my decision to appoint a special advisor and the chief of staff to my office, even suggestion that I had acted illegally in making these appointments because, according to him, I was not entitled to do so without his signature.

10 His understanding of the powers of the minister is to appoint the special advisor and the chief of staff is unimpressive for someone who has paraded himself as a paragon of virtue and professionalism.

Simply put, I made the appointment as I was entitled to do. His job as the accounting officer was to ensure that my decision to appoint them was implemented. I refer specifically to Section 12A of the Public Service Act 1994 which makes it clear that the power to appoint special advisors lies with the relevant executive authority.

20 And in case of a national department, the executive authority is the minister responsible for the department...”

**MR VAN ROOYEN:** What about that?

**ADV HULLEY SC:** That was my understanding.

**MR VAN ROOYEN:** Yes, that is the correct understanding.

**ADV HULLEY SC:** Now you will say that it was your job to

make the appointment and his job to ensure that he simple provided his signature to that... to ensure that the appointment was made. That is why I read it.

**ADV MATHIPA:** With respect Chair. This is not what is written here.

**MR VAN ROOYEN:** No.

**CHAIRPERSON:** Yes?

**ADV MATHIPA:** It is not what he has just read.

**CHAIRPERSON:** Yes, I think Mr Hulley, you must put to the  
10 witness what your understanding is of what you have just read or what has... depending on what point you want to make.

**ADV HULLEY SC:** Well, what I make of it is that according to Mr Van Rooyen, he was the one that was entitled to make the appointment, which he had done, and it was Mr Fuzile's job as the Accounting Officer to ensure that "my decision to appoint them was implemented..." And he... so, in order to do that, he simple had to sign off.

**ADV MATHIPA:** No, ...[indistinct] [mic not switched on].

20 **CHAIRPERSON:** I am sorry. Switch on your mic, ja.

**ADV MATHIPA:** That too is incorrect. There is nothing about simple sign.

**CHAIRPERSON:** Yes?

**ADV MATHIPA:** He never said in that affidavit that he had to simple sign.

**CHAIRPERSON:** Yes.

**ADV MATHIPA:** Why is... he must put it... put the correct version of what is in the affidavit.

**CHAIRPERSON:** Yes, Mr Hulley.

**ADV HULLEY SC:** Perhaps I misunderstand Mr Chair but “I was not entitled to do so without his signature”. That is what he says.

**CHAIRPERSON:** Sorry? Just read again Mr Hulley.

**ADV HULLEY SC:** He says, if we go back to the top where I  
10 was reading from. Mr Fuzile there writes ...[intervenes]

**CHAIRPERSON:** No, I think just reads where there is mention of signature?

**ADV HULLEY SC:** He says in the next sentence:

“I was not entitled to do so without his signature...”

That is what the... that is what is being put. Or rather, that is what he is attributing to mister... sorry, to Mr Fuzile.

He then goes on to say his understanding ...[intervenes]

**CHAIRPERSON:** Hang on one second.

20 “Mr Fuzile derides with cynical content my decision to appoint a special advisor and the chief of staff to my office, even suggesting that I had acted illegally in making these appointments because, according to him, I was not entitled to do so without his signature...”

So what is the point you make about the signature?

**ADV HULLEY SC:** So ...[intervenes]

**CHAIRPERSON:** You want to put to the witness?

**ADV HULLEY SC:** Well, let me break it up into two Mr Chairperson.

**CHAIRPERSON:** H'm?

**ADV HULLEY SC:** If I understand you correctly Mr Van Rooyen. You say that you and you alone were entitled to make the appointment. Would that be fair?

**MR VAN ROOYEN:** That is fair.

10 **ADV HULLEY SC:** And you are saying that Mr Fuzile's responsibility was simply to ensure that it had happened as the accounting officer. Is that correct?

**MR VAN ROOYEN:** No, that is not correct. You are not reading what I have written here.

**CHAIRPERSON:** Well, let me put this. Maybe it is not about the signature Mr Van Rooyen. In this... I think a few lines below that, you say:

20 "Simple put. I made the appointments as I was entitled to do so. His job as the Accounting Officer was to ensure that my decision to appoint them was implemented..."

I guess if I am to give you my understanding of what Mr Hulley is suggesting, is that you are saying, once you had made the appointment, Mr Fuzile as the Accounting Officer, his job was to make sure that that... that your decision was

implemented, in namely, they were appointed and so on.

That is my understanding of what Mr Hulley seeks to establish from you. What do you say to that?

**ADV HULLEY SC:** Chair, let me explain the process. I identify but as I identify, a process is not complete. What is going to complete the process? Is to subject, firstly, through the help of Mr Fuzile, I will sign the contract with them because it was simple administrative their part.

Through the help of Mr Fuzile, they would have to be  
10 subjected to vetting. Through the help of Mr Fuzile, their qualifications and background checks must be completed.

So that is what I meant by implementing because I was not going to do that on my own. Mine was just to identify. And then if there was going to be an issue about any of the two, then it was going to come back to me again. Identify other people. That is what I mean Chair.

**CHAIRPERSON:** Mr Hulley.

**ADV HULLEY SC:** Thank you, Mr Chair. Perhaps I am  
20 misunderstanding but what do you understand about appointment? What does that mean according to your understanding?

**MR VAN ROOYEN:** Appointment, it means the whole process that I have outlined. It means, identifying someone and obviously, taking that particular person through a certain process to confirm his suitability for the position that you

have identified him or her for.

And then the... that is the complete process of appointment. Maybe should I have explained it in that fashion in my response.

**CHAIRPERSON:** H'm. Okay.

**ADV HULLEY SC:** If we can move on then. Once again, my understanding, having read through your affidavit. I understood that you were of the view that there was no need to go through a vetting process.

10 Because, if I understood correctly, you were saying the vetting process is something that takes... and the security clearance is something that takes a long time.

And you suggested that because of the urgency of the matter, the appointment had to take place immediately but the vetting and the security clearance was something that could take place afterwards.

**ADV HULLEY SC:** That is very clear Chair that you do not appoint someone who... without the vetting. That is the aim. That provision is very clear.

20 But practically, what is happening is that people get appointed and some of them, they are not even vetted for a very long time because of challenges that at our state security agency is having.

I can just give you a recent example which is relevant also to National Treasury. Are you aware that the DG of

National Treasury now, he is a DG with a criminal record?

**CHAIRPERSON:** [No audible reply]

**MR VAN ROOYEN:** I mean, I know your obsession about the integrity and all of that. This is what is happening. The DG, Mr Mogajane, as we speak, is having a criminal record of driving... I think it was related to driving, reckless driving, something of that kind.

**CHAIRPERSON:** Well, what... what part of what you said in your affidavit is that there are other ministers who appoints  
10 special advisors, maybe other staff, I am not sure, also pending them obtaining security clearance because you said there used to be a backlog with the state security agencies.

So people were not going to wait until that process was finalised. So people would start working, pending the outcome of this state security clearance.

That is part of what I read in your papers. Well, I certainly know that when the Commission started, we experienced ourselves lots of delays with security clearance for investigators and so on.

20 Because with the state security agency, it is a matter that we dealt with publicly at the time to say the security... the state security agency was taking long to finish the process.

So that part, it is something which you have said and I did not understand Mr Fuzile to raise any issue about the

fact that there would be some delays with the state security agency.

**MR VAN ROOYEN**: No, Chair. Mr Fuzile came here and then lied of what is happening practically.

**CHAIRPERSON**: No, no, no. I am saying. I do not remember that he challenged that part of what you say, namely, there would be delays in getting security clearance from the state security agency. That part, I do not remember that he challenged that part.

10 **MR VAN ROOYEN**: No, he did Chair.

**CHAIRPERSON**: He did?

**MR VAN ROOYEN**: I think he only changed when I supplied my answering affidavit.

**CHAIRPERSON**: Okay.

**MR VAN ROOYEN**: He raised the issue of getting them doing duties ...[intervenes]

**CHAIRPERSON**: Yes.

20 **MR VAN ROOYEN**: ...without security clearance. That is why I am saying Chair. You know, it pains me to see people taking advantage of the Commission because Mr Fuzile literally did that.

He understands exactly the challenges that we are facing in government. He understands exactly that people are working there without being vetted.

But still he comes here and say people were allowed to

work without being vetted and contradicting himself in the process because he said they were not vetted, they were not entitled to have so-called restricted or confidential documents.

But he gave those documents to them, you know. So. But I am not there Chair.

**CHAIRPERSON**: Ja.

**MR VAN ROOYEN**: I think, let us focus on the question posed here.

10 **CHAIRPERSON**: Ja.

**MR VAN ROOYEN**: Of vetting, you know. That vetting is still a problem and I do not think it is solved as we speak. And of course, I know some appointments had to be reversed after people have worked in the department for some years.

Some people even exited the department without having them vetted. Their terms of office come to an end without being vetted but I am not sure since I left if that particular problem has been addressed.

**CHAIRPERSON**: Ja, okay. Mr Hulley.

20 **ADV HULLEY SC**: Thank you.

**CHAIRPERSON**: We ...[intervenes]

**ADV HULLEY SC**: The ...[intervenes]

**CHAIRPERSON**: I have gone beyond half-past four. Shall we try and finish by quarter to five?

**ADV HULLEY SC**: Thank you, Mr Chair. The... I am just

going to try and run through some of the other themes before I finalise it and wrap it up with one final proposition, pulling it all together Mr Chair.

**CHAIRPERSON:** Yes. H'm.

**ADV HULLEY SC:** There was a meeting with the staff on the 11<sup>th</sup> of December of 2015. That is with the senior staff. You will recall that meeting. It took place at approximately quarter past eleven. Is that correct?

**MR VAN ROOYEN:** I cannot recall the exact time, Chair,  
10 but definitely the day is correct.

**ADV HULLEY SC:** Now there was a question about – during the course of that meeting there was a question about whether you, according to Mr Fuzile, he had indicated it appeared to him that you did not really know Mr Bobat and you got the different roles reversed. You suggested that Mr Bobat would be the Chief of Staff and that Mr Whitley would be special adviser. Do you recall the meeting?

**MR VAN ROOYEN:** At which meeting because he seems  
20 to be confusing these meetings. At which meeting? Which meeting are you referring to, through you, Chair?

**ADV HULLEY SC:** That was a meeting where you came to introduce Mr Bobat and Mr Whitley. Do you recall the meeting? This takes place at National Treasury now.

**MR VAN ROOYEN:** I do not recall that meeting because

there was no such a meeting. Let me explain what happened. On the 10<sup>th</sup>, Chair, I invited through the Presidency Mr Bobat and then that was during my swearing in and then I helped – you know it was – I am shocked by this 360 degree about turn of Mr Fuzile's attitude. I am shocked but I am not surprised because all this political.

I explained to Mr Fuzile that look, I have identified this guy to come in and help us, my adviser, please start the process, if possible let us finalise the contract so as he  
10 can then start doing certain things but start the process with DPSC or as you know it and he agreed. That was on the 10<sup>th</sup> And then he agreed and he never questioned anything, He never even said maybe I am wrong or I am right, you know, he just agreed that I would give effect to it, but cordially, there was no – this arrogance and you know, display of disrespect.

No, there was no such, the respect was mutual and was very professional and I had all the confidence that I am having one of the best DGs, I mean to be produced by  
20 our system, unaware of this other side that I never knew, you know?

So this happened on the 10<sup>th</sup> and the 11<sup>th</sup> the Bobat came in after my engagement with him and our client meeting and that is when I introduced Mr Bobat – Mr Whitley to the DG, I have identified this other person of

coming in as 1.03.14 he can help me with the office and other things, you know, while I am still settling, you know?

So it is not true that I only introduced Mr Bobat on the 11<sup>th</sup>. Mr Bobat was introduced to the DG, the former DG on the 10<sup>th</sup>. It was only Mr Whitley who was introduced on the 11<sup>th</sup>.

**ADV HULLEY SC:** No, I think you are actually missing the point, there is a meeting with a senior management at the National Treasury which includes most of the DDGs, the  
10 Deputy Director Generals. Now the question is not whether you were introducing Mr Bobat to Mr Fuzile, you are introducing Mr Bobat and Mr Whitley to the other people that were at the meeting.

**MR VAN ROOYEN:** Oh ja, no, you are right. If that is what you wanted me to answer, I missed the point.

**ADV HULLEY SC:** Okay. Now during the course of that meeting it seems that according to – certainly according to Mr Fuzile and Mr Mogajane they both state that you did not seem to – you were uncertain of the identities of these two  
20 people. In respect of Mr Fuzile he says that you mixed up the different roles that they were going to be playing and in respect of Mr Mogajane he says that you kept saying uh, uh, uh, to use his language, you could not get the name of Mr Bobat when you tried to mention his name.

**MR VAN ROOYEN:** And God help us all. Chair, what are

you saying – maybe I should check what is the leader of evidence saying about Mrs Macanda?

**CHAIRPERSON:** Okay, do you want to repeat your question, Mr Hulley?

**ADV HULLEY SC:** The long and the short of it, Mr van Rooyen, is that you did not seem to know these two people, you did not know which role they were going to play and in some instances, you did not seem to know their names.

10 **MR VAN ROOYEN:** That is not true.

**ADV HULLEY SC:** And in fact, Mr Whitley himself says that you seemed to have mispronounced – he also remembers something to that effect, in his case he says you seemed to have mispronounced their names.

**MR VAN ROOYEN:** No, that is not true, the only time that ...[intervenes]

**CHAIRPERSON:** I am sorry ...[intervenes]

**ADV HULLEY SC:** Mr Whitley.

**CHAIRPERSON:** Does he not specify – does he not say  
20 Mr van Rooyen seems to have mispronounced Mr Bobat's name or ...[intervenes]

**ADV HULLEY SC:** Sorry, Mr Bobat's name. Sorry, I said their names.

**CHAIRPERSON:** Yes, ja.

**ADV HULLEY SC:** It is Mr Bobat's name specifically.

Pardon me, Mr Chair.

**CHAIRPERSON:** Did see that in Mr Whitley's affidavit or statement?

**MR VAN ROOYEN:** Sorry, Chair, for interjecting, no, I did see that. The reality of the matter is that, you know, I have been addressing Mr Bobat as Mo in our previous communication.

**CHAIRPERSON:** As who?

**MR VAN ROOYEN:** Mo.

10 **CHAIRPERSON:** Mo, for Mohamed?

**MR VAN ROOYEN:** Abbreviating Mohamed, yes.

**CHAIRPERSON:** Mohamed, oh, okay.

**MR VAN ROOYEN:** Yes. So I think the only time – and I think he did not even – not only in that meeting, why he want a whole name to be cited, he will – that is a Minister, my full name is Mohamed, not Mo, you know? So it is just to make sure that people do not maybe stick just to Mo without understanding that he is Mohamed. I think that is the only correction that I can – that I know he used to  
20 effect in our engagements with various stakeholders, you know? So it is not like I did not know his surname, I did not know his name, it is just that I was referring to him in our previous engagement as Mo, you know? Okay, because that is how the Mohameds that relate to me, I call them, you know?

**ADV HULLEY SC:** But is it correct that on the 10 December of 2015 at the swearing in ceremony when you met with Mr Bobat he had indicated to you that he was trying to get hold of you and he could not get through, is that correct?

**MR VAN ROOYEN:** No, that is not correct. That is not correct. Chairman, may I please – because there is something that was raised about the evidence corroborating, which is not true.

10 **CHAIRPERSON:** Yes, ja. Just deal with it.

**MR VAN ROOYEN:** If you look into the evidence of both the former DG and the current DG and the lady, Ms Macanda, on that matter, Ms Macanda does not agree with them, she does not agree with them. So it is not true that she corroborated them. It is not.

**CHAIRPERSON:** On the issue of whether ...[intervenes]

**MR VAN ROOYEN:** So you can see this is just a story that was – yes, that went wrong. You know?

20 **CHAIRPERSON:** You are now referring to Mr Fuzile's evidence and Mr – and current DG's evidence that you got the roles of the two wrong.

**MR VAN ROOYEN:** The names.

**CHAIRPERSON:** Or the names wrong. Okay.

**MR VAN ROOYEN:** But also, the evidence of Ms Macanda.

**CHAIRPERSON:** Ja, ja and you are saying Ms Macanda's evidence does not corroborate what they say?

**MR VAN ROOYEN:** Not at all.

**CHAIRPERSON:** Ja, okay, okay. Mr Hulley?

**ADV HULLEY SC:** Thank you, Mr Chairman. Then I just want to deal with you about the email that was sent to – that was sent to Mr Wood. I just want to understand the context. You were aware that that email as a fact had been sent to Mr Wood. I am talking now about the email  
10 that had been sent by Mr Bobat to Mr Wood and Mr Essa.

**MR VAN ROOYEN:** What was the email all about, if I may ask?

**ADV HULLEY SC:** Well, let us just look at the bundle. If you can just bear with me? The email is at page 33 of bundle PA, Mr Chairperson.

**CHAIRPERSON:** Do you want to say what it was about that might ...[intervenes]

**ADV HULLEY SC:** This is the email that attached the very sensitive – or according to Mr Fuzile, attached the very  
20 sensitive document that was supposed to go off to cabinet.

**CHAIRPERSON:** If you want to see it, Mr van Rooyen, we can let you see it first but if you are happy to deal with it ...[intervenes]

**MR VAN ROOYEN:** No, I am happy, I am happy.

**CHAIRPERSON:** Okay.

**MR VAN ROOYEN:** What was the specific question about the email?

**ADV HULLEY SC:** You were aware that that email had in fact gone off, if I understood correctly.

**MR VAN ROOYEN:** Yes, I must indicate, Chair, maybe I should give a background of how these things are processed. I think there was a submission that was required of me as a Minister. So I then said to the DG please share this information with us so as I can enrich.

10 **CHAIRPERSON:** With whom?

**MR VAN ROOYEN:** With myself so that I can reach ...[intervenes]

**CHAIRPERSON:** Oh, you asked the DG to share the information with you?

**MR VAN ROOYEN:** Yes.

**CHAIRPERSON:** Ja.

**MR VAN ROOYEN:** But, of course, it will be through my ...[intervenes]

**CHAIRPERSON:** Your Chief of Staff.

20 **MR VAN ROOYEN:** My Chief of Staff.

**CHAIRPERSON:** Okay.

**MR VAN ROOYEN:** You know, because they had to work on – I think it was a speech.

**CHAIRPERSON:** Ja.

**MR VAN ROOYEN:** Or my submission, a presentation to

parliament, I am not sure.

**CHAIRPERSON:** Ja.

**MR VAN ROOYEN:** So usually what happens, if documents are not classified – but that document was not classified, there is nothing that stops me or even the DG to solicit input from expert to enrich that document and it is not true what the DG said to this Commission that National Treasury does not consult stakeholders. No, it is wrong, in fact it is even wrong in terms of the legislation that are governing at National Treasury as well as other departments of government. Because we rely on inputs from stakeholders to come to determinations. We do not operate from a vacuum, you know? And I can cite example of problems that have been championed by National Treasury that clearly demonstrate that a National Treasury engage stakeholders, even the Minister. Engage stakeholders before they make submissions, even themselves. Before they come to parliament in some cases, they share information with stakeholders even before they come to us to present – when I was still in the finance committee – to present and they will tell us, this is the inputs that we have solicited, the stakeholders. So it is not correct that National Treasury does not engage stakeholders, it is a wrong impression of our democratic government.

**CHAIRPERSON:** Well, it might be a question of at what stage what process happens. I cannot imagine that in a government department or any government department the position would be. As long as a document is not marked or is not classified as top secret or is not classified you can share it with anybody. I do not imagine that that would be correct. Is that what you are suggesting? That as long as it is not classified it can be shared with anybody outside of the department?

10 **MR VAN ROOYEN:** Well, Chair, if there is an emphasis of not sharing then it will be indicated either through the communication channels or either through whatever means but ideally what is preferred in government and what is promoted, is marking this document as they originate, you know? You do not release a document where you do not have an intention of sharing it and you do not mark it, you must mark that document.

**CHAIRPERSON:** Well, what about this because this is what I would think. I would think that within a department  
20 the people who work there may have an idea that even when a document has not yet been marked or classified it must still remain within the department and then there may be certain people within the department who may have authority to say we can share it with so and so but not with so and so, specific people and then you might come to a

stage where it is classified, then at that stage you say you share it with nobody except maybe cabinet, minister, deputy minister only. So I suspect that there must be stages of any document. Would it not be like that to say the DG might decide, I can share it with the DG of another department but I am not going to share it with my brother who works in the private sector even if he is my brother because of the content of the document.

**MR VAN ROOYEN:** In that situation I think the DG will  
10 notify the other DG that this is between the two of us because it is not marked because if it is marked then it gives clear guidance on the word go from any person who lay his hands on that document that this is not for public consumption, you know? But in this case, we have a DG who did not even indicate in the email that no, this document, this information that I am sharing should not be – he should not solicit input from any other person besides internal, you know?

But also, you know, what is interesting in the  
20 submission of Mr Fuzile, he claims that people were not vetted and they were not fit and proper but he went on without being worried of sharing what he termed a confidential document. In fact, he does not even say it is confidential, he says top secret, you know? So really, Chair ...[intervenes]

**CHAIRPERSON:** But he says – he says and you would have heard him because he was here when he said this, he said the minister had arrived with these two people, special adviser and Chief of Staff and now I am paraphrasing what he said, as I understood it, whether we liked or not we had to work with them. So I had to work with them pending whatever process. That was my understanding of the point he was making.

**MR VAN ROOYEN:** Which is wrong, Chair, because a DG  
10 – well, I am not going to separate DG of National Treasury and other DGs, a DG is a DG in government. A DG is a chief adviser of the minister. There is no way – not unless he was there to set me up, you know, and something that I was not aware of because if it was any of that, he could have said to me - you know, at some stage I even called Mr Fuzile my comrade because I think he was so good in terms of deceiving me in terms of who he is, you know, because I called him my comrade, so – but that is neither here nor there, the key issue here is that as an accounting  
20 officer, you know, immediately that he has found that the minister did something wrong, I mean, you should be worried because then you did not do your work because your work is to advise the minister. You cannot come and use this thing of a political cloud as a reason for allowing the minister to do wrong thing, then National Treasury was

in trouble. That National Treasury was in trouble there, Chairperson. If really that was this attitude.

**CHAIRPERSON:** But, of course, Mr van Rooyen, Mr Hulley referred us to paragraph 38 of your statement where you make it quite clear that his job was to implement your decision. That does not seem to me to reflect an attitude of flexibility on your part in regard to this point, it appears that your position was, DG, you implement, I have made the decision, you implement. That is the impression I get.

10 **MR VAN ROOYEN:** I am sorry, Chair, you still have that impression even if I went to town to explain what I meant by implementing.

**CHAIRPERSON:** No, no, no, I accept that, you explained, but I am just saying as you make the point that you have just made namely, he should have come to you if he thought the minister had done something wrong. I am just saying let us remember that there is this point that you made but I am not forgetting the explanation you gave earlier.

20 **MR VAN ROOYEN:** Maybe I made a mistake by not indicating that in my discussions with him, this what I emphasised on, please to complete the process or implementation, take these people through this process. It is not implementation of, you know, a military command. No, it does not work like that, Chair, because if I am going

to work in a department without the support of the DG, the department will collapse and I am not thumb sucking here, Chair, I have sour relationships between ministers and DGs collapsing in departments, you know, or holding an important progress of the department at ransom, you know? So I had a clear understanding of how I should relate to this person that I looked at as my comrade, you know?

**CHAIRPERSON:** Thank you. Mr Hulley?

10 **ADV HULLEY SC:** Thank you, Mr Chair, we are almost finished. If we can just make one or two additional points just to confirm. According to Mr Whitley, you – the meeting that took place on the morning of the 11 December of 2015 when you invited him to join as the Chief of Staff, Mr Essa was present at that meeting as well as Mr Eric Woods. Now you have confirmed Mr Woods' presence. Is it correct that Mr Essa was also present on that occasion?

**MR VAN ROOYEN:** No, I do not remember Mr Essa, I remember having a quick engagement with Mr Woods as he  
20 was introduced to me by Mohamed. I do not remember seeing Mr – because, remember, I did not have a meeting with these gentlemen, I had a meeting with Mr Bashiri and then there was Malcolm coming, but the only person otherwise I was expecting to come and maybe to talk to me before we go to Pretoria it was Mr Bobat.

**ADV HULLEY SC:** Mr Chair, there is some very important question that has arisen that has been drawn to my attention. I need to take an instruction on it.

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** It is quite important.

**CHAIRPERSON:** Ja, okay.

**ADV HULLEY SC:** And I would like to chat with my junior as well as Mr Fuzile's ...[intervenes]

**CHAIRPERSON:** Well, I have some questions for Mr van  
10 Rooyen. I do not know whether while I ask him some questions ...[intervenes]

**ADV HULLEY SC:** Not at all.

**CHAIRPERSON:** Then give you that chance or not.

**ADV HULLEY SC:** If I can do it while you are busy asking questions?

**CHAIRPERSON:** Yes, yes.

**ADV HULLEY SC:** Thank you, Mr Chair.

**CHAIRPERSON:** No, that is fine. Mr van Rooyen, if I recall correctly, the Public Protector's report, that is Ms  
20 Thuli Madonsela's report, seemed to suggest that prior to your appointment as Minister of Finance you – or the cell phone records suggested that you had been in the vicinity of the Gupta residence of Saxonwold quite a number of times, is that correct?

**MR VAN ROOYEN:** That is correct, Chair.

**CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** And that is what I confirm also in my statement.

**CHAIRPERSON:** Yes, yes. No, I ask that because earlier on I understood you to say you were only able to remember that you met Mr Tony Gupta, that is Rajesh Gupta, at the office when he popped in and on the 8 December which seemed to suggest to me that you might have met with him only twice before your appointment. So you are saying  
10 yes, you were in the vicinity of the Gupta residence a number of times prior to your appointment, is that correct? Or in the residence, I just want you to clarify.

**MR VAN ROOYEN:** Yes in the residence, Chair, but what I have said is – because I think the question was any phone call.

**CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** That happened between the two dates.

**CHAIRPERSON:** Yes, oh, okay, we were talking about  
20 [inaudible – speaking simultaneously]

**MR VAN ROOYEN:** So then what I said here – what I responded to is that I do not remember of any.

**CHAIRPERSON:** Oh, okay.

**MR VAN ROOYEN:** Besides those two.

**CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** And that does not imply that there was no any phone calls but as I have responded in my statement, Chair.

**CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** It went beyond just what is recorded in the Public Protector report.

**CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** There were other meetings even beyond that.

10 **CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** Okay.

**CHAIRPERSON:** But are you talking now about the period prior to your appointment or are you including after your appointment? Are you saying ...[intervenes]

**MR VAN ROOYEN:** No, I am talking after my appointment when I say even beyond.

**CHAIRPERSON:** Oh, okay, alright.

**MR VAN ROOYEN:** Yes.

20 **CHAIRPERSON:** But before your appointment, how many times did you – would you say you may have visited the Gupta residence?

**MR VAN ROOYEN:** Chair, I will be lying, I cannot remember from the top of my head.

**CHAIRPERSON:** Would it be fair to say many times or several times? Would that be fair or would that not be

fair? I just want to get a picture.

**MR VAN ROOYEN:** You see, that qualification, Chair, is giving me a problem, but definitely it was not like a frequent thing, no.

**CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** It was not like a frequent - not unless there is something that needed me to ...[intervene]

**CHAIRPERSON:** Ja, yes.

**MR VAN ROOYEN:** ...needing their support but it was not  
10 like, you know ...[intervenes]

**CHAIRPERSON:** Maybe like five times, four times?

**MR VAN ROOYEN:** No, I really cannot remember.

**CHAIRPERSON:** You cannot say.

**MR VAN ROOYEN:** I cannot say.

**CHAIRPERSON:** But a number of times?

**MR VAN ROOYEN:** Ja, a number of times. Okay, alright. Whenever you went there did you always meet with Mr Tony Gupta or did you meet other members of the Gupta family?

20 **MR VAN ROOYEN:** No, at some stage he introduced me to some members of their companies.

**CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** Because remember, I had to work with their companies to finalise sponsorships and all that.

**CHAIRPERSON:** Yes, yes, yes.

**MR VAN ROOYEN:** Yes.

**CHAIRPERSON:** Did you ever meet Mr Ajay Gupta?

**MR VAN ROOYEN:** No, no, no.

**CHAIRPERSON:** You never met him.

**MR VAN ROOYEN:** I never met him.

**CHAIRPERSON:** And Mr Atul Gupta, did you ever meet him?

**MR VAN ROOYEN:** No, no, I have never met Atul Gupta.

**CHAIRPERSON:** Yes. So would it be fair to say the only  
10 member of the Gupta family that you met was Mr Tony  
Gupta?

**MR VAN ROOYEN:** It was Tony, yes.

**CHAIRPERSON:** Yes. Is it correct that you only met Mr  
Tony Gupta for the first time when he came into your office  
at Luthuli House as you indicated?

**MR VAN ROOYEN:** Yes, Chair.

**CHAIRPERSON:** And you said that was in October 2015.

**MR VAN ROOYEN:** Yes, October 2015.

**CHAIRPERSON:** Yes. You could not remember the date  
20 earlier on and I do not expect you necessarily to remember  
it now but are you able to say maybe towards the end of  
October or early October or mid-October?

**MR VAN ROOYEN:** No, Chair.

**CHAIRPERSON:** You cannot say.

**MR VAN ROOYEN:** I am unable to say.

**CHAIRPERSON:** No, that is fine but it was October.

**MR VAN ROOYEN:** Yes.

**CHAIRPERSON:** Yes. Now the matters that you discussed with him, were they confined to how his companies or their companies or he could assist your members or did you discuss other businesses or other issues or even political issues?

**MR VAN ROOYEN:** Chair, part of my mandate besides just looking for financial assistance or assistance in kind is  
10 also to ensure that I assist businesses of military veterans who have partnership with other businesses.

So I know one of the things that I was discussing with him was how to support some of our military veterans' companies. In fact, it went to an extent of just on the brink of sealing a deal of some of our guys in all the nine provinces, distributing, getting their companies distributing their publication. Because remember, they had a publication and of course they were going to be empowered with vehicles and all that.

20 But that will be as a start-up for them to run their own distribution entities. So we discuss also options of supporting companies of military veterans.

**CHAIRPERSON:** You know, Mr Duduzane Zuma said when he testified before me that Tony Gupta is his big friend. Was Mr Duduzane Zuma with Mr Tony Gupta at any of the

stages when you met with Mr Tony Gupta?

**MR VAN ROOYEN:** No, no, no, at no stage did I meet ...[intervenes]

**CHAIRPERSON:** He was not there.

**MR VAN ROOYEN:** I meet Duduzane not with Tony Gupta, I meet Duduzane ...[intervenes]

**CHAIRPERSON:** Yes, separately.

**MR VAN ROOYEN:** Ja, it is other platforms.

**CHAIRPERSON:** Yes.

10 **MR VAN ROOYEN:** Correct.

**CHAIRPERSON:** And on the 8 December, that is now the day on which you were to meet with the former President in the evening, as I understand your position, you said you went to the Gupta residence, is that right?

**MR VAN ROOYEN:** Yes, I wanted to have a session ...[intervenes]

**CHAIRPERSON:** You wanted to ...[intervenes]

**MR VAN ROOYEN:** If I remember well, Chair, I had a pressure from certain members ...[intervenes]

20 **CHAIRPERSON:** Sorry/

**MR VAN ROOYEN:** I had pressure from certain members of assistance.

**CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** So I wanted to check if I can be assisted – to asset, yes.

**CHAIRPERSON:** Yes. But did you say you actually did not meet him even though you did go to the residence, Gupta residence?

**MR VAN ROOYEN:** No, it never happened.

**CHAIRPERSON:** I never happened.

**MR VAN ROOYEN:** Because he was held up in a meeting. I think I waited for some time there.

**CHAIRPERSON:** Yes. Do you remember whether it was in the morning on the 8<sup>th</sup> when you went there or in the  
10 afternoon?

**MR VAN ROOYEN:** I might be midday or just after lunch.

**CHAIRPERSON:** Okay.

**MR VAN ROOYEN:** Around that time.

**CHAIRPERSON:** Yes, okay.

**MR VAN ROOYEN:** Ja.

**CHAIRPERSON:** So ultimately that whole day you did not meet him.

**MR VAN ROOYEN:** No, no.

**CHAIRPERSON:** Yes.

20 **MR VAN ROOYEN:** I mean, after that failed meeting then I ...[intervenes]

**CHAIRPERSON:** Yes and did he speak to you at some stage to say I heard that you came to see me but you had to leave without seeing me. Did he phone you to talk about that?

**MR VAN ROOYEN:** Look, Chair, I cannot remember exactly but I think it would be obvious that when – if I happened to meet him after.

**CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** I might have raised that. But I cannot clearly remember if I did it.

**CHAIRPERSON:** Yes. But you say nobody – or rather, you say he never spoke to you about your possible appointment as Minister of Finance?

10 **MR VAN ROOYEN:** No, no, not at all, Chair.

**CHAIRPERSON:** He never discussed that?

**MR VAN ROOYEN:** Not at all, he never – remember, even when I was there I was not even aware.

**CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** That I will be assigned.

**CHAIRPERSON:** Yes, yes, yes.

**MR VAN ROOYEN:** To be executive.

**CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** I was still, I mean, in that darkness.

20 **CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** Of what is exactly going to happen, you know?

**CHAIRPERSON:** Yes, yes, yes. Let me – I will come back to that, with regard to Mr Mabaso, how long had you known Mr Mabaso by the time he introduced Mr Whitley to you?

**MR VAN ROOYEN:** I think when Minister Zwane started as a Minister because I was already in Parliament, so – and I was the Whip of Economic Transformation Cluster, and the Committee of Minerals and Energy in terms of our study group and Regiment it falls even currently still like that it falls under that cluster that I was the Whip of, so of course when we engaged, but also not only that Chair, I was also in the party's strategy committee in Parliament and that's a committee that's holding executive  
10 accountable. So when we engage with Ministers that's how we get to know those who support them and then I think it started when Minister Zwane was then confirmed as a Minister, that's when I started knowing him, as we interact in Parliament or as we interact in ANC platforms or in any other way.

**CHAIRPERSON:** Would that have been in 2015? I have a suspicion that ...[intervenes]

**MR VAN ROOYEN:** No, no it is not 2015.

**ADV HULLEY SC:** ...Minister Zwane may have become  
20 Minister of Mineral Resources in 2015 but I may be mistaken, maybe 2014.

**MR VAN ROOYEN:** No maybe – was the first – I am just trying to think, no I think he became the Minister before ...[intervenes]

**CHAIRPERSON:** Well if I recall correctly ...[intervenes]

**MR VAN ROOYEN:** No I think he became the Minister before ...[intervenes]

**CHAIRPERSON:** If I recall correctly when he became Minister of Mineral Resources, he was replacing Minister Ramathodi and I think he was being minister for the first time, Minister Zwane.

**MR VAN ROOYEN:** Okay no that is possible Chair but what I am trying to narrate is that I started knowing him through his working with Minister ...[intervenes]

10 **CHAIRPERSON:** Yes, so you would have known him maybe the same year, 2015 or the year before or something like that, not for many years.

**MR VAN ROOYEN:** No, no, no not the year before, it happened ...[intervenes]

**CHAIRPERSON:** In 2015.

**MR VAN ROOYEN:** My introduction to Mr Mabaso it was it happened immediately or maybe after Minister Zwane.

**CHAIRPERSON:** Oh, okay.

**MR VAN ROOYEN:** Was confirmed as a Minister.

20 **CHAIRPERSON:** Okay.

**MR VAN ROOYEN:** Because then we had to interact, I mean to obviously get assistance from the Ministry for our work.

**CHAIRPERSON:** Yes, okay, now I think you said that on the 8<sup>th</sup>, after the President had informed you that he

intended appointing you as Minister of Finance and to remove Mr Nene, you began to think about who you would bring on board to assist you, is that right?

**MR VAN ROOYEN:** On the 8<sup>th</sup> after my engagement with the President?

**CHAIRPERSON:** Yes, and the engagement you said was in the evening, is that right?

**MR VAN ROOYEN:** Yes it was in the evening.

**CHAIRPERSON:** Yes. Now in your own mind did you  
10 decide at that stage that one of the people you should bring on board was Mr Bobat?

**MR VAN ROOYEN:** It did not happen immediately Chair I had to check ...[intervenes]

**CHAIRPERSON:** Yes, to check ja, but he was one of the people ...[intervenes]

**MR VAN ROOYEN:** That was at my disposal.

**CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** So definitely that is when I realised that I don't have anything at my disposal then that's when I  
20 thought of him.

**CHAIRPERSON:** Yes, is there anybody that you shared this information with once you had an intention to appointment Mr Bobat, is there anybody that you shared this information with before making the officer to Mr Bobat?

**MR VAN ROOYEN:** No, not at all.

**CHAIRPERSON:** You did not share it?

**MR VAN ROOYEN:** Not at all, that is why even I was hesitant even to share it with him over the phone.

**CHAIRPERSON:** Sorry?

**MR VAN ROOYEN:** I am saying that is why I was – I said it was not going to make sense for me to share. If I managed to get hold of him, I was not even going to share that with him over the phone.

**CHAIRPERSON:** Yes.

10 **MR VAN ROOYEN:** And that is why I waited for that moment at the Union Building for me to discuss with him about my intention.

**CHAIRPERSON:** Yes, is there anybody that you approached on the evening of the 8<sup>th</sup> of December and maybe in the morning of the 9<sup>th</sup>, or during the day on the 9<sup>th</sup>, is there anybody with whom you shared your – to whom you said I need people who can assist me, I need an advisor, I need a Chief of Staff, is there anybody that you spoke to and said you wanted to be assisted on this issue?

20 **MR VAN ROOYEN:** No, no it only happened up until I ...[intervenes]

**CHAIRPERSON:** After the swearing in?

**MR VAN ROOYEN:** After the swearing in.

**CHAIRPERSON:** Yes, okay.

**MR VAN ROOYEN:** That is when ja.

**CHAIRPERSON:** But after the swearing in when you made the offer to Mr Bobat you had not shared your intention with anybody had you?

**MR VAN ROOYEN:** No, no, no.

**CHAIRPERSON:** You had not?

**MR VAN ROOYEN:** Not at all.

**CHAIRPERSON:** And obviously because you had not met Mr Whitley you could not have talked to anybody about intending to appoint Mr Whitley.

10 **MR VAN ROOYEN:** Correct.

**CHAIRPERSON:** Yes. And you only met Mr Whitley the following day, namely the 11<sup>th</sup>, the following morning, Mr Whitley?

**MR VAN ROOYEN:** I met him on the 11<sup>th</sup>.

**CHAIRPERSON:** On the 11<sup>th</sup> in the morning.

**MR VAN ROOYEN:** Yes Chair.

**CHAIRPERSON:** Yes, now what I find strange, and I would like you to comment if you may, is how it is possible that Mr Enoch Godongwana already on the 9<sup>th</sup> tells Mr  
20 Fuzile that he was going to get a Minister who would come with two, no maybe he did not say two, but will come with advisors that he did not know. Now I am saying that because you did not come with one person, you can with two people, a special advisor and a chief of staff, and we know that with regard to Mr Whitley you actually did not

know him until the 11<sup>th</sup>, and with regard to Mr Bobat we know that you knew him very slightly as I understand the position, so I ask myself the question how would Mr Enoch Godongwana have known about this ahead of it happening if you were the only person who had the names of people you wanted to appoint and who knew you were going to appoint advisors and arrive with them at National Treasury. How would somebody else have known that?

Are you able to say anything about that?

10 **MR VAN ROOYEN:** Chair I am looking at Mr Godongwana's affidavit because I was expecting to hear something that I don't know, that simply suggest that I am equalling your position. I don't know how did Mr Enoch Godongwana, because what he says in here, he is speaking of speculations and rumours but also, he is speaking of the meetings of the NEC, what they were discussing there about a possible reshuffle.

So as to how that made him to be such confident that this is what happened I am still waiting to hear from  
20 him, because truly speaking I really don't know. I really don't know Chair.

**CHAIRPERSON:** Yes but you understand where you are coming from. He says upon arrival at National Treasury you are going to come with – maybe I am being inaccurate here, but I think he says, if I recall correctly, to Mr Fuzile,

according to Mr Fuzile, you are going to going to get a Gupta Minister, let's leave out the question of a Gupta Minister or not a Gupta Minister, he says you are going to get a Minister who is going to come with advisors that he does not know, and here you come to Treasury with two people, certainly Mr Whitley you do not know, you have just met, and Mr Bobat as I said you know slightly.

That suggests to me that the information about who you are going to come with, who you are going to have as your advisors was known somewhere else, other than by yourself.

**MR VAN ROOYEN:** Chair I cannot because I am not part of wherever Mr Godongwana got that information, so I really cannot answer for Mr Godongwana.

**CHAIRPERSON:** Yes, no, no, no I understand that. The reason I am putting these things to you is to get the benefit of your comment because they are in my mind to say how did he know and that of course arises because there is the suggestion that you may have been given these people by the Guptas, you see. That is the context.

But let me put – let me also put this other factor before you and you can comment if you are able to. I heard Mr Jonas's evidence last year, and he spoke about a meeting that he had at the Gupta residence and that meeting took place on the 23<sup>rd</sup> of October 2015, you

remember you said Mr Rajesh Gupta came to your office in October 2015.

Mr Jonas said he had a meeting at the Gupta residence with one of the Gupta brothers, he was not sure which one, as well as Mr Duduzane Zuma and Mr Fana Hlongwani but the investigations that have been done by the Commission suggest that only Tony Gupta may have been present in the house at the time in terms of the Gupta brothers, Mr Athul Gupta seems to have been out of the  
10 country, Mr Ajay Gupta seems to have been in the Sandton office and Mr Duduzane Zuma and Mr Hlongwani confirmed that Mr Tony Gupta, or Rajesh, was in the house, but they deny that he was part of the meeting but they say he popped into the meeting and wanted to say something to Mr Duduzane Zuma and left but Mr Jonas evidence is that his meeting actually was with the Gupta brother that was there and he says in that meeting the Gupta brother who was there told him that Minister Nene was going to be fired as Minister of Finance.

20 And we know that indeed in about six weeks time Mr Nene was fired as Minister of Finance, and one of the things that he says there he said to him, they said oh, they said to him according to Mr Jonas Mr Nene was going to be fired because he was not working with them, with the Gupta family and they wanted Mr Jonas to work with them

as Minister of Finance, they wanted him to take the position of Minister of Finance and they said to him the old man likes you and he understood that to be a reference to President Zuma, and he says they said to him when he becomes Minister of Finance they could supply him with personnel including advisors and there you come to replace Mr Nene after he has been fired and you come with advisors, a special advisor and a chief of staff. One you don't know, you have just met, the other one you know  
10 slightly and Mr Enoch Godingwana has known before you even met Mr Whitley that you are going to come with as he put it advisors that you don't know.

That seems strange and add to that Mr Themba Masego's evidence, which he gave before me, that in some time during the second half of 2010 he met with Mr Ajay Gupta at the Gupta residence and one of the things Mr Gupta told him is anyone who does not want to work with us, any Minister who does not work with us, we will get the President, I can't remember whether he said to deal with  
20 him, but basically it was we will report that person to the President and the President would act, and of course Mr Masego, he was not a Minister, he refused to cooperate with them and he was fired, not fired, he was transferred from one position out of the Government Communication Service and when I look at the evidence that has been led

so far before me his transfer seems to be very unusual. The President, Mr Zuma, says he never gave instructions that he should be fired or transferred. Mr Masego says well my Minister told me President Zuma said by the time he comes back from outside the country I must be gone from this position.

So there are all these things. I know that you did not appoint yourself okay, as Minister of Finance, but I am mentioning these things to you in order to see what I am  
10 looking at as I listen to your evidence and as I listen to Mr Fuzile's evidence, and wanting to answer the question, what are the chances that maybe without your knowledge you were appointed, maybe at least in part because of any inference from the Gupta family.

You might not be able to say anything to some of these things that I am putting to you but I am just letting you know what is going on in my mind. If you have something to say you are free to say it.

**MR VAN ROOYEN:** Chair indeed I am not that much taken  
20 aback by your perplexity on how these developments have been, but the reality of the matter is that all these things they should be as you know the appointments and dismissals or absorption of people those are procedurally processes, so if there is any deviation on those definitely I think that should be the focus of this particular

Commission, but truly speaking I am equally surprised, how did it happen because the root of the matter is that the President is the only person who is empowered to appointment Ministers so there is no way in my submission, that is something that I have put in my submission, that that could have been done by any person.

But also I am just a bit concerned that anyone can then consider such particular allegations or making such particular claims, to be claims that can be used to accuse  
10 any other person without checking the processes that was followed to give effect to certain appointments, but coming to my situation Chair as to how I appoint people that I didn't know.

Look this issue of – it might not have been even Mr Bobat or Mr Whitley, it could have been any other person. I didn't use the issue of knowing someone as my guiding principle. What is driving my decision on this matter, what drove my decision on this matter is maybe that I see in the – of course on their profiles and ultimately in their CV's.  
20 That's the only thing, and that is something, that is the very same approach that I could have used in appointing any other person.

Of course, I am fully considerate of the limitations that you have raised, but as I have said I definitely believe in the process that was going to follow to finalise those

appointments.

So I did not use the issue of knowing or not knowing, as the basis, otherwise if I am to follow that Chair because I don't – I didn't want to, usually I want to speak to the provisions of the National Development Plan, we need to capacitate the State so we cannot capacitate the State with cronies and friends, we need merits and that is what make me to take a decision on those two appointments.

10           And I can tell you now Chair if I continue to serve in National Treasury, I was definitely going to check what is happening with these other positions, because at the end of the day it is all about service delivery you know.

And that is the same thing that I did in COGTA, I arrived in COGTA, I checked and I retained, where it was not possible, I did not retain but in the main I retained because there was quality there you know.

**CHAIRPERSON:** Thank you. Mr Hulley?

**ADV HULLEY SC:** Chair there is ...[intervenes]

20           **CHAIRPERSON:** You have one question more?

**ADV HULLEY SC:** Ja, I just want to chat with you about a Mr Bashir Sallo that you met with before your meeting with Mr Whitley. Where did you meet Mr Sallo previously, how did you get to know him

**MR VAN ROOYEN:** I got to know Mr Sallo if I remember

well it was at a meeting with our office, that is how I got to know him.

**ADV HULLEY SC:** Because I am reading here about reports in the media which suggest that Mr Sallo was the ...[intervenes]

**ADV MASEGU:** Sorry Chair he is reading from the media. My client has not seen what he is reading. He cannot read from the media and putting questions that he is reading from the media to a client who has taken an oath to give  
10 evidence before this Commission.

**CHAIRPERSON:** Mr Hulley?

**ADV HULLEY SC:** Thank you Mr Chair. Mr van Rooyen has mentioned a person, insofar as reading from media reports is concerned there is no reason why the Commission should not receive media reports, obviously it will have to be made available, but I would like to find out from Mr Van Rooyen if he is aware of these media reports relating to Mr Sallo.

**CHAIRPERSON:** Mr?

20 **ADV HULLEY SC:** Mr Sallo, remember on the 11<sup>th</sup> of December he has a meeting with Mr Whitley, before that meeting according to Mr van Rooyen he actually has a meeting with a businessman, he identifies the business as Mr Bashir Sallo, so I want to ...[intervenes]

**CHAIRPERSON:** Yes what is the point about Mr Sallo?

**ADV HULLEY SC:** Well according to the media reports that we reading it seems that Mr Sallo was identified as a financial backer or the right hand man of Mr Muammar Gadaffi, were you aware of that at the time.

**CHAIRPERSON:** Yes, but why is that relevant?

**ADV HULLEY SC:** Well we want to just explore that with him, he had a meeting with him, he had a meeting ...[intervenes]

**CHAIRPERSON:** Yes but to what end, to what end, if you  
10 meet somebody who seems to have known Gadaffi and so what?

**ADV HULLEY SC:** Well want to ascertain what was the relationship between him and the – and Mr van Rooyen in his capacity as the Treasury General of the NK Veterans Association.

**CHAIRPERSON:** And how will that help us in looking at the issues we are looking at here about his own appointment and the appointment of the advisors?

**ADV HULLEY SC:** No, no, just we ought to explore it in  
20 the context of – the larger context of what we are dealing with Chair.

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** Thank you Mr Chair. Then if I could just wrap it Mr Chair, what we know what the – some of the issues that the Chairperson has raised with you in relation

to the evidence of Mr Ncebesi Jonas is that in October of ...[intervenes]

**CHAIRPERSON:** I will let you ask one question to wrap up ja.

**ADV HULLEY SC:** I am putting what our argument will be Mr Chair.

**CHAIRPERSON:** Okay.

**ADV HULLEY SC:** Mr Ncebesi Jonas says that he is offered the post of the – offered the post of Minister of Finance on the 23<sup>rd</sup> of October of 2015, we know from your 10 testimony that in October 2015 you in fact meet with the – meet with Mr Gupta, Tony Gupta. We know also that on the 8<sup>th</sup> of October, sorry, the 8<sup>th</sup> of December of 2015, you meet with the President in the evening in which the President tells you that he wants to appoint you as the Minister of Finance, on the same day you meet with Mr Tony ‘Gupta.

We know also ...[intervenes]

**CHAIRPERSON:** Sorry which same date does he meet 20 with Mr Gupta?

**ADV HULLEY SC:** Sorry on the 8<sup>th</sup> of December he goes to the Gupta residence and the last aspect of that ...[intervenes]

**CHAIRPERSON:** Well he said he wanted to meet him but did not meet him.

**ADV HULLEY SC:** He said he wanted to meet with him.

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** But we know that he goes to the Gupta residence. The last aspect relates to an issue that emanates from the Public Protector's report. I understand from my learned friend that he may have an objection to that. I just want to deal with the witness in relation to a statement that he made to the Public Protector.

**CHAIRPERSON:** Yes we have got to wrap up, just one  
10 point and just try and wrap up.

**ADV HULLEY SC:** In your letter to the Public Protector that you wrote on the 24<sup>th</sup> of March 2017 you apparently said the following to the Public Protector.

“During the period between the 4<sup>th</sup> of December 2015 to the 11<sup>th</sup> of December 2015 I was in Durban with my family. I was not a Minister at that stage, so I did not have VIP protection. On the 7<sup>th</sup> of December I flew from Durban to Johannesburg at 13:55 for MKMVA meetings where we also met with  
20 the Gupta family.”

That was what you said to the Public Protector. You said that you had also met with the Gupta family?

**MR VAN ROOYEN:** No I do not remember what you are referring to.

**CHAIRPERSON:** You don't remember whether your

statement included anything like that?

**MR VAN ROOYEN:** You see the challenge Chair is that this is one of the things that was brought last night and I have never had the chance to go through it, now I am expected to respond to it.

**CHAIRPERSON:** But the Public Protector ...[intervenes]

**ADV MASEGU:** And with respect Chair it is quite unfair. Mr Hulley knows that in order for our client to assist him, I do not think he understands his role as an evidence leader  
10 for the Commission with respect. He is not here to cross-examine the client, he is here to elicit from my client information that will assist you to get to the truth. Now these questions that are meant to trick him into some story are not fair. He should be allowed to engage with the Public Protector in full so that we know exactly what the full extent of the engagement entails. It is not just that letter that he is reading. He met with the Public Protector, he engaged with the Public Protector, who knows what was said behind it.

20 **CHAIRPERSON:** Mr Hulley?

**ADV HULLEY SC:** Mr Chair of course the witness is at liberty to tell us if there's any further aspect of that that he wishes to say. The point is that I am brazen with you, he can of course confirm or deny that he has told the Public Protector that he met with the Gupta Family, it is a simple

issue.

**CHAIRPERSON:** Did you say Mr Van Rooyen you cannot remember what you may have written in the letter to the Public Protector, or statement or letter, I am not sure what it is?

**MR VAN ROOYEN:** You know Chair I just wanted to locate more especially the issues of the dates and all that, so that is why it doesn't bother for me to be giving this information Chair, but with the Public Protector of course, I  
10 have said it, I have met the Guptas, and the issue if it is about meeting the Guptas as a Minister then that is something else, you know, but what I am saying is that Chair I will give a fair and a detailed response, but he must give me a chance to look into that.

**CHAIRPERSON:** Yes.

**MR VAN ROOYEN:** And I have never denied meeting the Guptas so it should not be an issue.

**CHAIRPERSON:** Yes, well one option is that Mr Hulley if there is anything outstanding, he could be requested to –  
20 you could put questions to him through his lawyers in writing and he could be requested to respond by way of an affidavit. That is another option. Mr Masegu would you have any problem with that?

**ADV MASEGU:** No absolutely not, I think that will be fair.

**ADV HULLEY SC:** Thank you Mr Chair, that is

...[intervenes]

**CHAIRPERSON:** That may be another option in the light of the late hour. Okay alright, Mr van Rooyen thank you very much.

**ADV MASEGU:** Sorry Chair I just have one question.

**CHAIRPERSON:** Oh in re-examination, alright.

**ADV MASEGU:** Thank you Chair. Just one question arising from the question you asked Mr Van Rooyen relating to the appointment of persons he did not know.

10 **CHAIRPERSON:** Yes.

**ADV MASEGU:** Mr van Rooyen is there anywhere in the regulations, in the practice, in the law that requires you to appoint people that you know the position of a special advisor?

**MR VAN ROOYEN:** Chair as I have elaborated well of course Chair you have raised your concern which I fully accommodate, usually what is guiding me is I mean it is a merit aspect, more than any other thing and maybe that is what is overshadowing my observations on other things,  
20 but the reality the legislation is very clear, South African, fit for purpose, relevant qualification, no criminal records, I mean those are clear guidelines. The issue of knowing in fact if we promote that I am worried we might even be bordering on nepotism of cronyism. Remember there is a serious accusation now that one has employed a niece in

one of the State-Owned Enterprises.

**ADV MASEGU:** Chair thank you.

**CHAIRPERSON:** Thank you Mr Masegu. Thank you very much Mr van Rooyen for coming to put your side of the story and to answer questions, there may be a request for you to deal with further questions by way of affidavit, I am sure that you will attend to that if such a request arrives, but thank you very much for coming to give evidence today. You are excused.

10 **MR VAN ROOYEN:** Thank you very much Chair, it has been a long wait and of course with its own consequences, but it is fine, we understand it is part of the game, but I must also indicate Chair I really want to wish you well in unearthing the truth, because I think it is a very tedious process and that is why I am assisting, I don't think we will realise any justice if it is only focusing on these short terms, on these narrow terms of reference. My wish is that you should be given an expanded mandate to dig deep, more especially on the relationship of what can be  
20 done with our democratic state.

Thank you very much.

**CHAIRPERSON:** Thank you. We are going to adjourn now and we will start at ten o'clock tomorrow.

We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO 12 AUGUST 2020**