

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

07 SEPTEMBER 2020

DAY 262



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

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, *in as far as it is audible*, the foregoing is a **VERBATIM** transcription from the soundtrack of proceedings, as was ordered to be transcribed by Gauteng Transcribers and which had been recorded by the client

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

CITY OF JOHANNESBURG OLD COUNCIL CHAMBER

158 CIVIC BOULEVARD, BRAAMFONTEIN

DATE OF HEARING:

07 SEPTEMBER 2020

TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



Gauteng Transcribers
Recording & Transcriptions

PROCEEDINGS RESUME ON 07 SEPTEMBER 2020

CHAIRPERSON: Good morning Mr Seleka, good morning everybody.

ADV SELEKA SC: Morning DCJ.

CHAIRPERSON: Are we ready?

ADV SELEKA SC: We are ready DCJ.

CHAIRPERSON: Yes.

ADV SELEKA SC: We will be dealing with Exhibit U13 Chairperson but before we get to it, we have
10 representatives of some of the parties present together with some interested groups maybe they could place themselves on record?

CHAIRPERSON: Yes let them do that.

ADV SELEKA SC: Yes.

CHAIRPERSON: They can just come to the podium and somebody will sanitise here.

ADV SELEKA SC: Yes.

ADV MCCONNACHIE: Good morning Chairperson.

CHAIRPERSON: Good morning.

20 **ADV MCCONNACHIE:** Chris McConnachie from Johannesburg Bar representing Eskom as an interested party.

CHAIRPERSON: Thank you very much.

ADV LUSENGA: Good morning Chair.

CHAIRPERSON: Good morning.

ADV LUSENGA: Hlaelwako Lusenga from the Pan African Bar on behalf of Ms Lynne Brown. For today we will be watching – we will be – [00:01:35] on record tomorrow when Mr Zola Tsotsi takes the stand.

CHAIRPERSON: Yes okay.

ADV LUSENGA: Thank you Chair.

CHAIRPERSON: Thank you.

ADV MOPELI: Morning Chair.

CHAIRPERSON: Good morning.

10 **ADV MOPELI:** Lerato Mopeli from Ledwaba Mazwai Attorneys and I am representing Mr Tshediso Matona.

CHAIRPERSON: Okay thank you.

ADV NGCEBETSHA: Morning Chairperson.

CHAIRPERSON: Good morning.

ADV NGCEBETSHA: John Ngcebetsa from Ngcebetsa Madlanga Incorporated I am representing Mr Tsotsi the former Chairperson of Eskom. We are on tomorrow but we quite interested today.

CHAIRPERSON: Thank you.

20 **ADV SELEKA SC:** Thank you – thank you Chairperson.

CHAIRPERSON: Yes.

ADV SELEKA SC: Chairperson we are dealing with matters relating to the Eskom work-stream.

CHAIRPERSON: Hm.

ADV SELEKA SC: And in particular the suspension of the four executives of Eskom.

CHAIRPERSON: Hm.

ADV SELEKA SC: We have the first witness being one of the executives who was suspended.

CHAIRPERSON: Huh-uh.

ADV SELEKA SC: Mr Tshediso Matona.

CHAIRPERSON: Huh-uh.

ADV SELEKA SC: And in respect of him we will be using
10 the bundle marked Exhibit U13 – 13.

CHAIRPERSON: That will be confusing Mr Seleka.

ADV SELEKA SC: Yes.

CHAIRPERSON: I think it is Eskom Bundle 01.

ADV SELEKA SC: Ah indeed.

CHAIRPERSON: Yes.

ADV SELEKA SC: Indeed.

CHAIRPERSON: And inside it it must be having Exhibit
U13.

ADV SELEKA SC: Indeed Mr Chairperson.

20 **CHAIRPERSON:** Ja okay alright.

ADV SELEKA SC: Indeed.

CHAIRPERSON: We must just make sure that the witness has got the right bundle as well.

ADV SELEKA SC: The – the witness...

CHAIRPERSON: Has got the right bundle?

ADV SELEKA SC: Has exactly the right bundle.

CHAIRPERSON: Okay. Okay. No that is fine please administer the oath. You might wish to move your mask as you take the oath Mr Matona. Yes.

REGISTRAR: Please keep your microphone on for the moment. Please state your full names for the record?

MR MATONA: Tshediso Matona.

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

10 **MR MATONA:** No.

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

MR MATONA: 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 MATONA: So help me God.

REGISTRAR: Thank you.

20 **CHAIRPERSON:** Thank you, you may be seated. Mr Seleka.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Depending on what is going to happen.

ADV SELEKA SC: Yes.

CHAIRPERSON: With regard to your second witness. It

may be that you might spend more time with this witness to deal with various matters properly.

ADV SELEKA SC: Okay.

CHAIRPERSON: If there is no – if the second witness will be rescheduled.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja. So I – I am just mentioning that.

ADV SELEKA SC: Correct. No I – I appreciate that Chairperson.

10 **CHAIRPERSON:** Ja.

ADV SELEKA SC: I will ask my junior to attend to that.

CHAIRPERSON: Yes.

ADV SELEKA SC: While we proceed with the first witness.

CHAIRPERSON: Ja. Okay.

ADV SELEKA SC: Chairperson I should also draw to your attention that this witness has testified in a closed session and a transcript of his testimony in the closed sessions is contained in the bundle.

CHAIRPERSON: Huh-uh.

20 **ADV SELEKA SC:** As Item 16 – 16.

CHAIRPERSON: 16?

ADV SELEKA SC: 16 Chairperson.

CHAIRPERSON: Okay.

ADV SELEKA SC: But I will get to it in due course.

CHAIRPERSON: Yes. I have a suspicion that your voice

must – might be so soft that the transcribers might not hear you clearly and somebody is nodding. So I think just try and raise your voice.

ADV SELEKA SC: I will raise it Chairperson.

CHAIRPERSON: Ja.

MR MATONA: Let me have a sip of water.

CHAIRPERSON: Is there water for the witness there? Okay.

ADV SELEKA SC: Chairperson the witness has also
10 provided the commission with an affidavit in which event
much of what is contained in the affidavit Chairperson will
be confirmed by the witness. Mr Matona if I may proceed
Chairperson?

CHAIRPERSON: Yes you may.

ADV SELEKA SC: Mr Matona thank you. You have the
bundle in front of you Eskom Bundle 01 Exhibit U13.

MR MATONA: Yes I do.

ADV SELEKA SC: Yes. That bundle has an index to it
with seventeen items to it. It is a two page index with
20 seventeen items. Can you see that?

MR MATONA: I can see that.

ADV SELEKA SC: Thank you. Now you have provided the
commission with an affidavit which is contained on page 2
of that bundle onwards. If you – and when I refer to page
2 I am referring to the paginated page in the right hand

corner which is in a red colour.

CHAIRPERSON: Um.

MR MATONA: I can see it – I can see that.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Yes Chairperson.

CHAIRPERSON: I am not sure what the arrangement is. You would see that there are two paginated numbers or numbers of pagination.

ADV SELEKA SC: Yes Chairperson.

10 **CHAIRPERSON:** There are the red numbers and the black numbers. Now for a long time we used to have only the red numbers but that changed a few weeks ago and since then there has – whenever there are two numbers.

ADV SELEKA SC: Yes.

CHAIRPERSON: Black and red there has been reliance on the black numbers for pagination. Now that came about because what the people preparing the bundles had done with regard to the red numbers is that they had paginated sections in a bundle independently of one another with the
20 result that in one bundle you could get three pages 10 – or page 10's – pages 10 and I said that the pagination should be sequential so that from the first page up to the last page in the bundle the numbers follow one another.

ADV SELEKA SC: Okay.

CHAIRPERSON: And then they started doing the black

numbers. So I am just explaining that so that if that is something you understand but there is a reason that we stick to the red numbers.

ADV SELEKA SC: There is.

CHAIRPERSON: I know that – that is – that is a special deliberate decision.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: I – I understand Mr Chairperson.

10 **CHAIRPERSON:** Hm.

ADV SELEKA SC: What was prepared for this witness?

CHAIRPERSON: Hm.

ADV SELEKA SC: Is a bundle that was used in the closed session.

CHAIRPERSON: Hm.

ADV SELEKA SC: And they prepared it without using the black numbering.

CHAIRPERSON: Hm.

20 **ADV SELEKA SC:** So for present purposes Chairperson we will follow the red numbering because that is the only – his bundle and I only have the red numbering.

CHAIRPERSON: Oh.

ADV SELEKA SC: But yours will have the two numberings.

CHAIRPERSON: Oh.

ADV SELEKA SC: Yes.

CHAIRPERSON: But the red ones are sequential.

ADV SELEKA SC: The red ones I can confirm they are sequential.

CHAIRPERSON: Oh okay. No that is fine. Because the whole point is simply that we must not have two 10 pages 10 and so on and so on.

ADV SELEKA SC: Correct. Correct.

CHAIRPERSON: Okay no that is fine. It is just that I think at the beginning of each bundle it would be important to place on record whether we are using red numbers or black numbers.

ADV SELEKA SC: Indeed Chairperson.

CHAIRPERSON: Ja okay.

ADV SELEKA SC: Thank you. Mr Matona for present purposes we will use the red numbering or pagination in the right-hand corner of your file. You follow that?

MR MATONA: I do.

ADV SELEKA SC: Ja. Just remember to speak out and not to nod so that the record can capture your communication to the Chairperson.

MR MATONA: Certainly Sir.

ADV SELEKA SC: Thank you. So are we saying the affidavit is contained on page 2 of this bundle up until to page 29 and I am referring to the red pagination?

MR MATONA: Yes.

ADV SELEKA SC: Mr Matona you have indicated or stated rather in your affidavit and we could simply confirm this on record before we get to the other issues. On page 3 that you were appointed at Eskom – you were – I will read it on record.

10 “I was appointed on 1 October 2014 as Chief Executive of Eskom Holdings a state-owned public company and as an Executive Director of its board my recruitment was conducted by the Board of Directors of Eskom during”

And you will have to explain to the Chairperson the corrections that you made during the closed sessions. As you can see there it says 1994. Do you see that?

MR MATONA: Yes I see that. It should have said 2014.

ADV SELEKA SC: It should read 2014?

MR MATONA: 2014 that is right.

ADV SELEKA SC:

20 “Through a job advertisement short listing an interview process which in turn recommended my appointment to the Minister of Public Enterprises the latter then secured the approval of the cabinet for my appointment.”

So save for that correction you confirm what is

stated there?

MR MATONA: I do.

ADV SELEKA SC: And you have also stated in your affidavit that is on – if you turn to page 9 and so you would see that I am not reading the zeros before the number.

MR MATONA: Huh-uh. I am on page 9 yes.

ADV SELEKA SC: You follow – you refer to – are you on page 9?

MR MATONA: I am at page 9 that is correct.

10 **ADV SELEKA SC:** There is a heading there 11 March 2015. Can you see that?

MR MATONA: Yes.

ADV SELEKA SC: You refer to a meeting which takes place on the 11 March 2015 convened prior to the arrival of the Minister.

MR MATONA: Huh-uh.

ADV SELEKA SC: That 11 March 2015 you go on to relate what happened during that day and I wish to – I wish you to turn to page – page 10.

20 **MR MATONA:** I am with you.

ADV SELEKA SC: Paragraph 18.13.

MR MATONA: Yes.

ADV SELEKA SC: To paragraph 19 on page 12 where you deal with the reasons for your suspension in paragraph 19. You see that?

MR MATONA: Yes.

ADV SELEKA SC: Now would you tell the Chairperson when were you suspended at Eskom?

MR MATONA: So as the affidavit indicates I was suspended on the 11th March on the evening of the 11 March that was at the end of what had been a board meeting that had commenced that morning. But as I indicate in my affidavit a board meeting from which I was requested to recuse myself together with the Financial –
10 Finance Director Ms Tsholofelo Molefe we were requested to recuse ourselves from that meeting. And we were only called at the end of the day towards the evening and were informed of what had been deliberations of – of the board which included a decision to suspend us – or at least myself because I was called alone and informed that I was – I was being suspended.

ADV SELEKA SC: Yes. Could you tell the Chairperson what reasons were you given for your suspension?

MR MATONA: Well the reason for the suspension was the
20 fact that the board has resolved that there should be an enquiry or some kind of investigation into the affairs of the company which investigation they had a view required that myself and – and of course – you know the other executives be absent from the company. So we would – we – the idea was to ensure that we are not – we are not

present whilst this enquiry was being – was being undertaken. So that was the reason. And of course, as my affidavit indicates it is a reason which I was opposed to. I could not at that stage the company required the kind of enquiry that had been proffered as the reason why I should set aside. And I might also add Chairperson that all along the way the board had insisted that there was no wrongdoing on my part. I had not done anything wrong. I had no committed any misconduct they just wanted me to
10 away whilst this enquiry was underway.

ADV SELEKA SC: So to your recollection was the word suspension used in that communication with you?

MR MATONA: The word suspension was not used. The – the suggestion was something along the lines that you know how can you help us achieve the objective of not – you not being here. You know. So we – you know – I was a bit confused about where this was going. And I explicitly asked so are you – can I come to work tomorrow which means the next day – can I come back to work the next
20 day? And at that point they said no, no you know you – we would like you not to be here. Then I said to them, well actually can I just go home and think about this? Can I go and think about how I might assist this process? At that point I was told okay we have heard you just give us about a moment. I – then I left the meeting for about half an

hour. I was then called back after half an hour at which point, I was served with a letter of suspension. So I was then informed that well listen we have heard you but we have resolved to suspend you and I was immediately handed that letter right there and then. So I left that meeting having been a suspended Chief Executive of Eskom.

ADV SELEKA SC: If you turn to page ...

CHAIRPERSON: Just before that. You had been at Eskom
10 for only about five months eleven days when you were suspended, is that right?

MR MATONA: That is right. So from the 1 October to the 11 March is just a little over five months really.

CHAIRPERSON: Yes. And who was the Chairperson of the board of Eskom at the time you served as its Chief Executive?

MR MATONA: The Chairperson of the board at the time was Mr Zola Tsotsi.

CHAIRPERSON: Yes and throughout your time?

20 **MR MATONA:** Throughout my time yes.

CHAIRPERSON: Yes. And at the meeting of 11th was he chairing that meeting?

MR MATONA: He was chairing that meeting.

CHAIRPERSON: Yes. The enquiry that you were – that was proposed had you heard about it or it is the need for

there to be such an enquiry prior to the meeting?

MR MATONA: Yes. So at about the 8th which was – I remember it was a Sunday evening we – we get a notice of a meeting that is being called – a very short notice for the next day.

CHAIRPERSON: Hm.

MR MATONA: And – and which meeting you know had a – a proposed resolution.

CHAIRPERSON: Hm.

10 **MR MATONA:** It was a bit peculiar because resolutions of the company are prepared by the Company Secretary.

CHAIRPERSON: Hm.

MR MATONA: But – but in fact the Company Secretary was drawing our attention to the fact that there is an email requesting a meeting and when I went to look at – at that email there was this resolution – proposed resolution for an enquiry into the affairs of – of the company. The long and short is that then the meeting convened.

CHAIRPERSON: So - you were saying the norm is that
20 resolutions of the board used to be prepared by the Company Secretary?

MR MATONA: That is how it should be.

CHAIRPERSON: Ja but was it like that before this particular one?

MR MATONA: It was like that before.

CHAIRPERSON: Ja.

MR MATONA: That is what – that is standard practice.

CHAIRPERSON: Invariably or there has been exceptions as far as you know/

MR MATONA: As far as I know the – there is no...

CHAIRPERSON: There had been no exceptions?

MR MATONA: There is no – there is no ...

CHAIRPERSON: Ja.

MR MATONA: Exception Chair. And the point about it is
10 to ensure that matters that serve for which the board is
going to take a decision are properly processed through
you know the administration of the company for which the
Company Secretary is responsible.

CHAIRPERSON: Yes. Did you get to know prior to the
meeting of the 11th who had drafted that proposed
resolution?

MR MATONA: I never got to know who had drafted that ...

CHAIRPERSON: Yes.

MR MATONA: That – and the issue did not arise.

20 **CHAIRPERSON:** Yes.

MR MATONA: In the meeting that happened.

CHAIRPERSON: Yes.

MR MATONA: What – what was discussed was what is the
rationale and the whole point about this enquiry.

CHAIRPERSON: Yes. Yes. And – but the notice for a

meeting who did it come from?

MR MATONA: It – so I was working for...

CHAIRPERSON: From the Chairperson or...

MR MATONA: I was notified by the Company Secretary I think it was at the request of the Chairperson.

CHAIRPERSON: Yes. Yes. And the enquiry it was said the enquiry was to look into the affairs of Eskom?

MR MATONA: That is right.

CHAIRPERSON: Is that how broad it was going to be?

10 **MR MATONA:** It was as broad – it was as broad as that.

CHAIRPERSON: Yes. Yes. And it was said that you should be – you should not be coming to work while that enquiry was going on?

MR MATONA: Right.

CHAIRPERSON: Yes. But it was said that there was no suggestion that you had done anything wrong?

MR MATONA: Absolutely.

CHAIRPERSON: Yes okay please continue Mr Seleka.

ADV SELEKA SC: Thank you Chairperson.

20 **CHAIRPERSON:** Maybe before you do that – before you were excused from the meeting of the board did you get to know who was sponsoring this resolution or pushing for this proposal for an enquiry and also for the suspension or is that something you could not tell?

MR MATONA: What the chairperson had said in that

meeting that was called a short notice on the 9th, he has said he had been requested by the minister and the president. He indicated that, in fact, that he had spoken to both the minister and the president and they suggested that such an inquiry be...[intervenes]

CHAIRPERSON: And the president is a reference to the President of the Republic?

MR MATONA: President Zuma or president of the country at the time.

10 **CHAIRPERSON:** Yes.

MR MATONA: Correct.

CHAIRPERSON: So he said he had spoken to the president and the minister about this proposal.

MR MATONA: About this... yes, correct.

CHAIRPERSON: Yes?

MR MATONA: That it be an inquiry.

CHAIRPERSON: Okay, Mr Seleka.

ADV SELEKA SC: Thank you, Chairperson. Mr Matona, then you talked about you being handed a letter of
20 suspension. Let us see on page 328.

MR MATONA: Which tab are you referring to?

ADV SELEKA SC: 6. Item 6.

MR MATONA: Item 6. Yes, I can see the letter of suspension yes.

ADV SELEKA SC: Is that the letter of suspension?

MR MATONA: That is the letter. That is the letter that I was handed.

ADV SELEKA SC: Now let me read that into the record so we can see what was stated. It is a letter on Eskom's letterhead dated the 11 March 2015. It is addressed to yourself. It says:

“Dear, Mr Matona. Notice of suspension as Eskom Chief Executive.”

It reads:

10 “I refer you to the meeting of today, 11 March 2015, wherein we discussed the company's concern regarding the serious state of the company and the board resolution to conduct an independent inquiry into the possibility that the power delivery may be compromised by either intentional or negligent conduct.

Due to the nature of this inquiry and the important of it being free of any influence from leadership within the organisation and the completion of an investigation into these matters, you should be placed on suspension without any loss, benefits and pay.

20

I confirm that you were advised of the nature and the extent of the inquiry and that you were afforded an opportunity to make representations to the board

sub-committee why you should not suspended pending the outcome of the inquiry.”

May I close there? Because I see the word suspension has been mentioned two times in the two paragraphs that I have read. Did you have the opportunity to read this letter at the time it was handed up to you?

MR MATONA: Yes, I did. As you can imagine, this – now it is coming as a bit of shock where I now sit and I see a letter. Besides me the chairperson is sitting, besides me, and I see
10 this letter and I see the subject in bold capital letters.

And I just quickly looked through the letter. And in fact, I put it on record that where it says that I have been given an opportunity to make representation that in fact I have not been given such an opportunity to make representation.

So I took exception to that. But, of course in the end, I accepted the letter. Ja. Received the letter as it were. So it was a very imperfect situation, you know, where I got that time to apply myself to the issues that are in this letter.

But I could see where the board was going already at
20 that stage. I could see where the board was going.

CHAIRPERSON: I am sorry. You could see what/

MR MATONA: I could see where the board was going. I could see ...[intervenes]

CHAIRPERSON: H'm? Where was it going.

MR MATONA: The board was headed towards suspending

me.

CHAIRPERSON: H'm.

MR MATONA: Ja. Because I, eventually, in the conversation with them where, you know, where I asked them: Should I come to work? And they said: No, no, no. We are not saying you should come to work.

You know, maybe we make a suggestion and that type of thing. And I said to them: Well, actually, if it... you... someone had used the word you can recuse yourself.

10 So I said: Well, actually, I have recused myself in the morning and a recusal is a temporary withdrawal. What you are suggesting... because the inquiry was supposed to be going for three months. It is actually that you are suspending me.

Of course, nobody kind of, you know, confirmed that they knowing people that were suspending until I came back and I was formally handed the letter but in fact, I was suspended.

CHAIRPERSON: As far as you can recall. Were all the members of the board that day or is something you have not
20 checked? You cannot remember whether it was a full board meeting?

MR MATONA: The other way was of the board that started with the meeting in the morning has since left. So it was only a few members of the board, the chairperson, the second present in that meeting where I was handed this

letter of suspension and two other board members.

I later heard that they are the sub-committee of the board for Human Resources. It was called People in Governance, the committee of the board. There was a committee that I was with.

CHAIRPERSON: Was there... that board meeting of 11 March, the second meeting of that board, because I think that board had been appointed, I may be wrong, it was the end of the previous year, or not really?

10 **MR MATONA:** You are right, Chairperson. That board was a fairly new board.

CHAIRPERSON: Yes.

ADV SELEKA SC: In fact, this inquiry – the issue of this inquiry was probably the first substantive issue that that board had to deal with. They had not taken any decision previously. They had, in fact, not actually properly met as a board. That was almost like the first meeting of a new board as it were. You are right.

MR MATONA: H'm. Okay.

20 **ADV SELEKA SC:** Thank you, Chairperson. Let us go into that, Mr Matona. We will come back to this. You appointed effective 1 October 2014 as the CEO of Eskom. When was this board appointed?

MR MATONA: This was appointed in December. December that 2014.

ADV SELEKA SC: December 2014?

MR MATONA: Ja, 2014. It was late. I recall it was late in the month of December.

ADV SELEKA SC: Now, do you... the Chairperson already asked you who was the chairperson of the board. You said it was Mr Tsotsi. Can you recall the names of the other members of this board?

MR MATONA: Ben Ngubane was on that board. And a lady called Ms Venete Klein.

10 **ADV SELEKA SC:** So it is spelt V-e-t-e?

MR MATONA: V-e-n-e-te. Klein. K-l-e-i-n. Venete Klein.

ADV SELEKA SC: Ja?

MR MATONA: As well as Romeo Khumalo. And then another lady who had in fact been carried over from a previous board, Ms T Mabuda. Those are the names I can remember at the top of my head. And it is largely because I subsequently had interactions with some of those people. But there were probably another five members of the board. We all knew that I quite remember everyone.

20 **CHAIRPERSON:** Was Mr Tsotsi not one of those who had sat in the previous board and continued?

MR MATONA: Yes, yes.

CHAIRPERSON: He was one of those?

MR MATONA: He was, yes. Yes. Ja.

CHAIRPERSON: Ja, okay.

MR MATONA: Ja, ja.

CHAIRPERSON: And he was a person ...[intervenes]

MR MATONA: He was a carryover from ...[intervenes]

CHAIRPERSON: ...previous board as well?

MR MATONA: [No audible reply]

CHAIRPERSON: The new chairperson of the previous board as well?

MR MATONA: He had been the chairperson of the previous board.

10 **CHAIRPERSON:** Yes.

MR MATONA: And he has been retained into the new board, yes.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: So I would suppose that by virtue of you being the CEO, you would have formed out of the board as an executive director?

MR MATONA: Correct.

20 **ADV SELEKA SC:** Did this board, which is appointed in December 2014, have an induction prior to – after it had been appointed?

MR MATONA: As is normal practise and a very good culture in the – at least the state owned companies that I am familiar with and Eskom included, a new board has to go through an induction and that board did go through an induction in January – at the beginning of that year, 2015,

January.

ADV SELEKA SC: Do you recall whether you attended the induction?

MR MATONA: I did. I would have because I actually took the board through, you know, the strategy of the company and some of the challenges that the company had been grabbed with up to the time of the appointment.

ADV SELEKA SC: So the induction would have taken place in February 2015, you say?

10 **MR MATONA:** Correct.

ADV SELEKA SC: Now when, according to your recollection, was the first board meeting of the board scheduled in 2015?

MR MATONA: So the regular meeting of the board would have been on the 26th of February, according to the calendar because it is a board calendar as it were. So that was a meeting scheduled on the 26th. But if I may just go ahead? Because that meeting did not happen.

20 **ADV SELEKA SC:** Well, I... yes, I was going to ask you whether, did the meeting take place?

MR MATONA: The meeting did not happen. On the eve of that evening, we got a notice from the company secretary that he had been requested by the chairperson of the board to inform us that that meeting will no longer go ahead and the reason for the cancellation of the meeting had to do with

the minister, that it was at the request of the minister. It was a request of the minister that that board meeting not proceed as it were.

ADV SELEKA SC: And were you given another date for a board meeting?

MR MATONA: We were not given another day. So we, you know, the meeting was postponed subject to notification of when it would convene as it turned out, you know, the next opportunity for the board to meet was in that instance of that
10 kind of urgent meeting that was called on the 8th.

It was about a week later, according to my calculation, for the meeting that was postponed. It was a week later that we get this notice on the Sunday evening, calling an urgent meeting.

ADV SELEKA SC: So did that meeting – you say your recollection is that it was a week later – did that meeting take place?

MR MATONA: Yes. The meeting took place on the 9th and this where the ...[intervenes]

20 **ADV SELEKA SC:** Is that the 9th of March?

MR MATONA: The 9th of March, correct ja.

CHAIRPERSON: 2015?

MR MATONA: 2015. Correct. The 9th of March 2015. So it was a very brief meeting, I might add because at that point when the suggestion of an inquiry and, you know, attributed

to the minister was raised, the board members, many of them, almost all without exception said: Well, actually, we do not understand.

We have hardly been given sufficient information why such an inquiry would be required. And if it is attributed to the minister, we suggest that minister address herself directly to the board.

And then of course, the minister then attended the meeting that was convened on the 11th from which I was
10 requested to recuse myself.

ADV SELEKA SC: Well, so that we understand. What was the purpose of that meeting of the 9th of March? What was on the agenda for that meeting?

MR MATONA: That meeting, we had one item. That was a proposed resolution to allocate an inquiry. There was only one item like that.

CHAIRPERSON: So the meeting of the 9th was intended to deal with the proposal of an inquiry?

MR MATONA: Correct, Chairperson.

20 **CHAIRPERSON:** At that stage, that is the 9th, as far as you knew, was there a contemplation by anybody that certain executives would need to be suspended?

MR MATONA: Not at that stage, no.

CHAIRPERSON: Not at that stage?

MR MATONA: Not at that stage.

CHAIRPERSON: Ja.

MR MATONA: There was no ...[intervenes]

CHAIRPERSON: Mention of that.

MR MATONA: ...no indication whatsoever that in fact that was an idea consider this part of the proposal to...

CHAIRPERSON: Okay.

ADV SELEKA SC: In respect of that meeting, Mr Matona, you say you were notified. You were given notification of that meeting?

10 **MR MATONA:** Yes. The notification is the one is spoke to earlier that came on the evening of the 8th, the Sunday, the evening of the 8th to convene a meeting on the 9th in the morning which meeting occurred but it was very brief.

ADV SELEKA SC: Yes.

MR MATONA: Because, you know, the board members at that stage, they were taken by surprise. You know, my impression was that they were taken by surprise by this suggestion of an inquiry and requested, you know, the minister to address them directly which happened two days
20 later.

ADV SELEKA SC: Prior to the meeting, were the board members, including yourself, furnished with a copy of what would be proposed at the meeting?

MR MATONA: Can you repeat that question, advocate?

ADV SELEKA SC: In the notification about the meeting of

the 9th, were you furnished with the proposal that would be made at that meeting or discussed at that meeting?

MR MATONA: Yes, as I indicated, that was attached to the email, calling for that meeting a document which was like a draft resolution of the company.

Now, the one think I recall that was strange about it, is that normally, you know, board resolutions would air the, you know, the letterhead of the company, you know, as Eskom.

So this looked like a kind of a draft that had been
10 prepared. It did not – or the kind of normal headlines, you know... sorry, letterhead and the format. The format.

There is a standard format of Eskom Board Resolutions. It did not have that. So it appeared a bit peculiar to me. But anyway. Ja.

ADV SELEKA SC: Yes. So then the chairperson asked whether the suspension of the executives – and I want to repeat that – whether it was contained, that aspect was contained, in that proposal?

MR MATONA: As I have indicated, it was not. I certainly
20 did not pick it up that part of the, you know, the contemplation of such a resolution would be that executives will be suspended.

ADV SELEKA SC: Yes. I want to... I would like you to turn to page 381.

MR MATONA: 381?

CHAIRPERSON: I am sorry.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Yes, I think you said 385.

ADV SELEKA SC: Eight, one.

CHAIRPERSON: Oh, eight one.

ADV SELEKA SC: Eight, one.

CHAIRPERSON: Oh, okay. Mr Seleka, you earlier on referred the witness to his affidavit which is at the beginning of the bundle.

10 **ADV SELEKA SC:** Yes, Chair.

CHAIRPERSON: But I do not think you have asked me to admit it as an exhibit. Should we not do that? As well as, if any other documents that are not attached to affidavits, they would need to be admitted as exhibits at the right time.

ADV SELEKA SC: Okay, Chair.

CHAIRPERSON: So I mention that because you have referred to: Is that your suspension?

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** And you were referring to other documents. I do not want us to forget the admission of his affidavit. Do you want me to that now?

ADV SELEKA SC: Ja. Shall we do that rather?

CHAIRPERSON: Yes, you meant to be ready to tell me what exhibit number it should be but as – and all the others when we get to them. The affidavit of Mr Tshediso Matona

appearing on page – starting from page 2 of Exhibit Bundle 01 will be admitted. And let me just also say, it is an affidavit deposed to on the 17th of August 2020. It will be admitted and marked as Exhibit...

ADV SELEKA SC: Should I propose to the Chairperson the exhibit number?

CHAIRPERSON: Yes.

ADV SELEKA SC: Or get ...[intervenes]

CHAIRPERSON: Yes, you need to tell me. I see there is –
10 you take him on the spine of the file. I do not know whether
– probably it should be U13 and the whatever else might
come later, might have to be ...[intervenes]

ADV SELEKA SC: So following that?

CHAIRPERSON: ...15 and so on and so on.

ADV SELEKA SC: Okay. Let me propose a different one,
Chairperson.

CHAIRPERSON: Yes, yes.

ADV SELEKA SC: Because there are files which are
already U14 and ...[intervenes]

20 **CHAIRPERSON:** Oh, okay.

ADV SELEKA SC: ...U15.

CHAIRPERSON: We could have Exhibit U13 A, B, C, D.

ADV SELEKA SC: That is actually indeed in order,
Chairperson.

CHAIRPERSON: Ja, okay. Or U Exhibit, U13.1.

ADV SELEKA SC: Point one.

CHAIRPERSON: Exhibit, ja.

ADV SELEKA SC: That is it.

CHAIRPERSON: So this affidavit will be Exhibit
U...[intervenes]

ADV SELEKA SC: U13.1.

CHAIRPERSON: U13.1.

ADV SELEKA SC: Yes.

AFFIDAVIT OF MR TSHEDISO MATONA IS ADMITTED AND

10 **MARKED AS U13.1**

CHAIRPERSON: And then as we go along... obviously, it is
going to be... it would be much more convenient if the
numbering follows the sequence of the document.

ADV SELEKA SC: That is correct.

CHAIRPERSON: Yes.

ADV SELEKA SC: Correct.

CHAIRPERSON: That might or might not cause
complication in terms for what you purpose.

20 **ADV SELEKA SC:** That is exactly what I am thinking,
Chairperson. So that – because the order of the evidence
may not be in the sequence of the index.

CHAIRPERSON: Yes, yes.

ADV SELEKA SC: So we could at the end mark them
chronologically those exhibits we have referred to and then
have them formally admitted at that stage.

CHAIRPERSON: Ja.

ADV SELEKA SC: With the correct numbering.

CHAIRPERSON: Yes.

ADV SELEKA SC: In a sequential order.

CHAIRPERSON: Yes. There are two ways of doing it.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: One is to take an adjournment and identify those that you are going to need, to refer to.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** And that is one. Two. Then, decide on the sequence. Maybe the sequence might have to be changed or maybe you might stay with it.

ADV SELEKA SC: Yes.

CHAIRPERSON: But just be certain how the numbering is going to go. Because another way might be clumsy if we mark them as we go along but you end up with Exhibit U13.2 being right at the end. [laughs]

ADV SELEKA SC: Yes.

CHAIRPERSON: Immediately after U13.1.

20 **ADV SELEKA SC:** Ja.

CHAIRPERSON: So what do you say?

ADV SELEKA SC: I think, the Chairperson's proposal, it is rather a more convenient way of doing it, Chairperson.

CHAIRPERSON: Ja.

ADV SELEKA SC: We could take a short adjournment.

CHAIRPERSON: Yes, yes.

ADV SELEKA SC: I would then mark them accordingly. All of them that I will refer to so that as and when I go through them, they get admitted into the record.

CHAIRPERSON: Ja, ja, ja. Okay. No, that is fine. I am sorry Mr Matona. We need to do some housekeeping that needs to be done just so that everything will smooth swiftly thereafter.

MR MATONA: [No audible reply]

10 **CHAIRPERSON:** Maybe 30-minutes might be enough?

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes, Chairperson.

CHAIRPERSON: Ja. Okay, let us take a 30-minutes adjournment. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: I take it the bundle has been sorted out.

20 **ADV SELEKA SC:** It has thank you DCJ for you indulgence. If we could then admit those that we have, let us start with the affidavit of Mr Matona DCJ because we have marked them, we have referred to it already and we can now accept it into the evidence as Exhibit U13.1.

CHAIRPERSON: Yes.

ADV SELEKA SC: We have marked the rest but they will

be admitted as and when we get there.

CHAIRPERSON: Yes, that is fine.

ADV SELEKA SC: Mr Matona I think we were at the meeting of the 9th of March and you said there was only one item on the agenda for that meeting.

MR MATONA: Yes, there was.

ADV SELEKA SC: You have already explained that the item was a proposed resolution to initiate an enquiry.

MR MATONA: Correct.

10 **ADV SELEKA SC:** Did you attend the meeting?

MR MATONA: I did.

ADV SELEKA SC: Do you recall what transpired in that meeting?

MR MATONA: Yes, which stuff I have already dealt with briefly earlier. It was to propose an enquiry on the back of a resolution, a draft resolution which had been sent along with the communication, the email communication you know calling for this urgent meeting and when that meeting convened it just so happen that the rest of the board
20 members were present. It did not feel ready, it did not feel informed and therefore you know could not proceed to resolve as it had been the intention of convening that meeting.

So the meeting was then adjourned on the understanding that if it is attributed to the Minister then the

Minister would have to – the board members requested the Minister to address herself directly.

ADV SELEKA SC: Yes, well do you know or did you know at the time a gentleman called Mr Nick Linnell?

MR MATONA: No, I do not know anybody by that name I did discover that there is such a name but I had never met him before. I do not even know how he looks like.

ADV SELEKA SC: I am going to refer you briefly to his affidavit because he says that he was invited to the
10 meeting of the 9th of March 2015. Would you have any idea that he was at Eskom at the time?

MR MATONA: No, to my recollection he was not present in the meeting of the 9th neither was any mention of someone like him having been kind of invited. He did not feature to the best of my recollection in the meeting on the 9th.

ADV SELEKA SC: I see, his affidavit to the Commission is on page 367.

CHAIRPERSON: Mr Seleka have you moved away
20 completely from the letter of suspension or you will come back to it?

ADV SELEKA SC: I will come back to it.

CHAIRPERSON: Oh, okay alright.

ADV SELEKA SC: Thank you.

CHAIRPERSON: Which page must we go to?

ADV SELEKA SC: 367.

CHAIRPERSON: 367.

ADV SELEKA SC: And it is under item 8. The page starts with an index which is titled scheduled documents, schedule of documents. If you turn the page which is the affidavit deposited by Mr Nicholas Q Linnell. Do you see that?

MR MATONA: Yes, I am on page 367 and I see this schedule of documents.

10 **ADV SELEKA SC:** Yes and if you turn to page 368 there is the affidavit.

MR MATONA: Correct.

ADV SELEKA SC: Of Mr Nicholas Linnell.

MR MATONA: Correct.

ADV SELEKA SC: Chairperson.

CHAIRPERSON: Your voice is going down Mr Seleka.

ADV SELEKA SC: Is it down again?

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you Chair, I beg your pardon.

20 Chair for the purposes of admitting the affidavit into the record we have marked it U13.7.

CHAIRPERSON: Is that the one starting at page 371?

ADV SELEKA SC: At page...[intervene]

CHAIRPERSON: I am sorry 368 I was looking at the black numbers.

ADV SELEKA SC: Yes, 368 but it has a cover page on page 367.

CHAIRPERSON: Yes, ja but the actual affidavit starts on page 368.

ADV SELEKA SC: Correct Chairperson.

CHAIRPERSON: Ja.

ADV SELEKA SC: So that is Exhibit U13.7.

CHAIRPERSON: Exhibit U13?

ADV SELEKA SC: Point 7.

10 **CHAIRPERSON:** You said B I think.

ADV SELEKA SC: Point 7.

CHAIRPERSON: Point 7?

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: The affidavit of Mr Nicholas Q Linnell starting at page 368 that is red numbers will be admitted and marked as Exhibit U13.7.

ADV SELEKA SC: Thank you Chair. You are there Mr Matona?

MR MATONA: Yes.

20 **ADV SELEKA SC:** Now there are certain portions of the affidavit I want to refer you to so you would see quickly just for context in paragraph 5 of that affidavit. Are you there?

MR MATONA: Yes.

ADV SELEKA SC: So Mr Linnell writes I was contacted

on 6 March 2015 from Ms Dudu Myeni and asked to travel the same day to Pretoria to attend an urgent meeting with the President. At that time, I was well known to Ms Myeni who had been a client of mine from time to time over a number of years on various projects in her representative capacity at Mhlathuze Water Board and South African Airways.

At this time, I was engaged in a major project at SAA similar but on a smaller scale to what would become
10 the subject of this deposition. On arrival at the President sometime after midday I met with Ms Myeni no one else attended that meeting. While the SAA met, I might also have been discussed in the context of this deposition Ms Myeni informed me that the President was concerned about the state of Eskom and wanted an in depth investigation into its affairs.

She had recommended to the President that I would be suitable for the role. Ms Myeni proceeded to brief me on the background for an enquiry included in this
20 discussion was reference to some documentation that Ms Myeni had. The President did not join that meeting as I understood he was unexpectedly otherwise engaged. To the best of my recollection it was then agreed that I would need to travel to Durban on Sunday the 8th March to meet with the President to complete this briefing and mandate. I

left with an understanding that I would be asked to conduct an enquiry into Eskom and I ought to be prepared for that.

Now I am going to skip some of those paragraphs and go to paragraph 15. So he says there in paragraph 15, I attended the meeting in Durban on Sunday 8 March 2015. When I arrived at the presidency Mr Tsotsi and Ms Dudu Myeni were there in attendance was also Ms Myeni's son and another person introduced as Jabu. At that time, I knew nothing of Jabu's role at large. Now he talks about
10 what transpired in the meeting but please go with me to the next page 5 of 23, page 371. Are you there?

MR MATONA: Yes, I am there.

ADV SELEKA SC: Thank you, paragraph 23 says as the matter was urgent, I would travel to Johannesburg the following day and be available to the board as and when required on the Monday 9 March 2015. That evening I drafted a proposal board memorandum, proposed resolutions and forwarded these to Mr Tsotsi.

The email also provided progress guidance notes
20 for Mr Tsotsi for the board meeting. This note emphasised the need to inform the board of the Presidents role and the key requirements of the proposed enquiry and he refers to the attachments we will come to in a short while. Let us see what happens on the 9th.

CHAIRPERSON: Just bring the mic a little closer to you

ja sorry so that you are loud enough.

ADV SELEKA SC: Thank you Chair. If you turn the page paragraph 27 on page 372. Mr Linnell carries on I went to Megawatt Park in anticipation of being called by the board. I took with me...[intervene]

CHAIRPERSON: I am sorry Mr Seleka I keep on looking at the black numbers because we have been using black numbers for a number of weeks. Okay 371 red numbers that way I know where you are...[intervene]

10 **ADV SELEKA SC:** My bundle and the witnesses bundle Chair will not have the black numbers.

CHAIRPERSON: Yes, yes.

ADV SELEKA SC: So its 372 the red number.

CHAIRPERSON: Okay, no I just I sometimes use the red ones but then I think in my own mind I go back to the black ones because for a number of weeks we have been using the black ones and my bundle has got both.

ADV SELEKA SC: Okay yes.

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** I believe so.

CHAIRPERSON: Okay.

ADV SELEKA SC: So we are on 372 red colour, paragraph 27 Mr Linnell writes I went to Megawatt Park in anticipation of being called by the board. I took with me the senior labour lawyer consultant and his associate to

deal with labour law matters if requested by the board. We were however later told the board was not in agreement and we left in part I considered that that might be the end of the matter.

Now Mr Matona that is the same date of the board meeting the 9th of March 2015 which Mr Linnell refers to in the previous passages of his affidavit. Were you aware that he was there?

MR MATONA: No, as I have indicated I was not aware of
10 this person and his involvement. I see that there is a resolution, the plain resolution shall I say you know he had authored, he had authored that resolution I am seeing that for the first time here.

ADV SELEKA SC: Well let us see because on page 371 the red number paragraph 24 he refers to attachments. He refers them by means of page numbers of his attachment. He says pages 15 to 21 for our purposes that is on page 381 of the red number. Are you on that page?

MR MATONA: I am on that page.

20 **ADV SELEKA SC:** Yes, 381 you will see just below that pagination there is a number 15.

MR MATONA: Yes.

ADV SELEKA SC: I think that is what he is referring to in his affidavit. Now the document there it is an email from Mr Nick Linnell, it is sent on Sunday 8 March 2015 at

6:37pm. It is sent to ztsotsi@liquifire.biz. Can you see that?

MR MATONA: Yes.

ADV SELEKA SC: Are you familiar with that email address of ztsotsi@liquifire.biz?

MR MATONA: Yes, I have encountered this email before I think it was the Chairperson, shall I call it private email for his businesses email.

ADV SELEKA SC: His what?

10 **MR MATONA:** His businesses email.

ADV SELEKA SC: His own business?

MR MATONA: His own business, it says there liquifirebiz, ztsotsi@liquifire.biz. I assume that it is his business email.

ADV SELEKA SC: I see, then you have the subject line board memorandum and resolutions 9 March 2015 and attachments also in the same name. And he writes, Dear Chair please find a copy of the memorandum and proposed resolutions. If you are happy I would suggest that you require the company secretary to adapt to any form
20 standards used by Eskom.

Could you also review the substance of this to ensure that you feel it makes the point adequately. This document would be circulated together with a notice of encouraging a meeting for the board to attend at 09:00am or 10:00am if you believe it will give members more time to

attend. It is critical that the company secretary communicates this notice both in email and variably confirming that he has delivered the notice to each director.

At the meeting it will be important to record the directors who are not present whether they received the notice because we need to have at least seven members present. Once you get the green light please call each director providing them with context.

10 One, the President has engaged both you as Chairman and the Minister regarding the current status of Eskom. It is his view that the effect on the economy is massively understated. He goes on to set out other things there Mr Matona but let me refer you to the attachments of this document, to this email. Please turn the page and go to page 383. Are you there?

MR MATONA: I am there, yes correct.

ADV SELEKA SC: There is a document there on which it is written Eskom SOE 9 March 2015 memorandum. It is a
20 two-page document. Please tell the Chairperson whether you recognise this document?

MR MATONA: Yes, so this document is the document that I indicated had been attached to the email calling for a meeting on the 9th of, Monday the 9th of March 2015.

ADV SELEKA SC: Then you have on page 385 because

according to the email there are two attachments went into the email. Are you on page 385?

MR MATONA: I am there.

ADV SELEKA SC: Another document on which it is written Eskom SOE decision record of the board 9 March 2015 resolution. Would you also please tell the Chairperson whether you are familiar with this document?

MR MATONA: Yes. So this one the paddled memorandum as well as the second one paddled decision record of the board. Other documents that were attached their to the email that I referred to.

ADV SELEKA SC: Thank you. So if we look at this documents let us see the contents to determine what was sort to be conveyed in this documents. I will go back to page 383 the document target memorandum.

The document reads the company has implemented rolling restricted supply to all areas for a number of months. Notwithstanding the integration of Madupi Unit 1 continued mentions and unscheduled shutdowns have and will inevitably cause ongoing planned and unplanned outages. The CEO is on public record as having forecasted that these will continue for as much as five years.

Madupi and Kusele are years behind schedule and tens of billions over budget. Lost revenue as a result of

lost sales arising from supply, not meeting demand runs into billions. Escalating funding shortfalls have increased the interest carrying cost beyond provincial limits.

Now Mr Matona as the CEO and being furnished with a document, this document at the time were this statements in this document reflective of the factual position at Eskom?

MR MATONA: Ja, so certainly these were matters that Eskom was grappling with absolutely. So they were not
10 new they had been there, they had been building up over a period of time which is – and if I may please indicate that I did not think that an enquiry was necessary because we knew the problems there. The problems had been well established.

What was required was solutions, what were the solutions to these problems not to enquire into them they had been known, they had been there for years prior to my arrival. There is just one small point.

I did say that we were focusing on that load
20 shedding for a period of time, to come I could not have said five years because I was actually optimistic that we would resolve the load shedding problem earlier than five years. So I do not know where the five years came from but certainly you know based on where I sat understanding the nature of the problem the company faced at the time

you know load shedding was going to be part of the life of the company for a while.

ADV SELEKA SC: I see, well the memorandum continues Eskom continues obliged to seek increasing funding from Treasury. The forward focus anticipates that funding shortfalls will continue. The company is also being subjected to public embarrassment relating to tender and other expenditure disputes some of which have become litigious.

10 These compound current negative perceptions of Eskom. The impact of this failings are numerous and the consequential risks extends far beyond the company to all South Africans. Economic capacity is being severely restricted across all sectors and curtailed foreign and domestic investments postponed or cancelled outright. These in turn create a spiral effect with increasing unemployment and pressure on the Fiscus.

20 The past response by Eskom has been to offer the public little insight to the causes and little guidance to the future. Public announcements are often uninformative or silent. The perception is that there has been a tendency to deny and defend. As a consequence, neither business nor the man in the street has any notion of what the future holds.

 Now may I ask you this in so far as you say what

was needed was solutions and not an enquiry and Eskom as you point out had this issues facing it at the time that the board enquire from you what solutions you contemplated to introduce or put in place.

MR MATONA: Well not in the context of this matter as it was discussed but I had as I indicated in the induction of the board because I recall we had in December as the executives had come back from a strategic planning session. Coming out of there we presented all our plans,
10 the plans were to deal with these matters as it were.

You know for example before I arrived at Eskom I had been a Director General at Department of Public Enterprises and I had been instrumental in negotiating a R23billion bail out. So we were on course, there was a War Room also dealing with these matters. So there was no shortage of if you would like hands at the problem at the time as it were.

So we were aware – I presented this thing at the induction of the board. On the morning of the 11th there is
20 a standing item on the board item which is report of the CE where I briefed the board on what I have been doing as the CE and I have updated them on various matters dealing with the solutions that are being implemented at the time.

ADV SELEKA SC: So which meeting are you referring to?

MR MATONA: The meeting that ended up with my

suspension. So I had made a report with an update on developments around various matters in relation to generation capacity and in relation to the finances of the company as well as the report back from the War Room because I participated in the War Room that had been established. The board did not participate so we participated as an executive on behalf of the company in the War Room working with government to find solutions.

ADV SELEKA SC: Are you referring now to the meeting of
10 the 11th of March?

MR MATONA: I am referring to the meeting of the 11th where again I presented to the board what is it that we as management were doing to address the challenges of the company.

ADV SELEKA SC: Yes we will come to that meeting in a moment.

CHAIRPERSON: Actually, before that just tell me more about the War Room. What was it, who took part in it, what was its purpose, what was it doing?

20 **MR MATONA:** So in about December thereabouts of 2014 the cabinet had resolved to establish what it called a War Room which would be a structure consisting of three different departments who are supposed to be role-players in the supply of electricity in the country.

You know Treasury, Department of Energy, the

shareholder Department Public Enterprises and various other departments to work with Eskom at resolving some of the challenges for Eskom because the challenges of Eskom Chairperson are of such a nature that they are not confined to the company itself.

Some of them manifests themselves in the company but they are related to you know decisions what is supposed to be happening in government and the support that is required. So it was a good initiative I thought at the
10 time you know that government is coming forward to work with the company with Eskom to resolve those challenges. So it was chaired by the Deputy President at the time so the current President was the Chairperson of that structure and it also had several Ministers as well as senior officials in government.

ADV SELEKA SC: Thank you Chair. Did you take part in the activities of the War Room?

MR MATONA: Of course, I attended every single meeting of the War Room at the time.

20 **ADV SELEKA SC:** Did you at any stage have the opportunity to report back to the board on the War Room?

MR MATONA: Exactly, so specifically the meeting of the 9th as I indicated was an item where you know I had to update the board on the CE report. The content of that report was also included of what had been happening in

the War Room where I was updating them you know what the thinking is in government at the time.

ADV SELEKA SC: Was that the first occasion that you reported to the board on the War Room or its activities?

MR MATONA: I think it was the first time because the War Room convened – you know it was established in December and there was not really too much activity seen after it was appointed. So most of this would have happened in the new year but my first opportunity to brief
10 the board was in the meeting of the 11th of March that would be my first opportunity.

ADV SELEKA SC: And well this is a new board according to your observation did the board understand the issues that you were reporting to it about?

MR MATONA: Well, you know, I could not tell, you know, if the board understood what I had – the information I had presented to them. What I recall was that, you know, there were no questions asked, you know, they accept that information was provided and I was not surprised because
20 it was – they were going through a learning curve, so to speak. So nobody asked any question or even a question of clarification, the information was just received as provided.

ADV SELEKA SC: You have mentioned two board members remained from the previous board, so I assumed

they would have had more knowledge about the activities at Eskom and the new members of the board. Did they ask you any questions?

MR MATONA: No. No, I was – to be honest with you, I expected that there would be discussion because part of the reality at the time was Eskom was in the news, you know, there were frequent bouts of load shedding, so I had really expected that there would be the more substantive discussion of the report I had presented and the matters I
10 had dealt with but there was not.

ADV SELEKA SC: Well, you say no questions were raised but were concerns raised with you about the information you presented to the board?

MR MATONA: No.

ADV SELEKA SC: Not at all?

MR MATONA: Not at all.

ADV SELEKA SC: Okay, let us ...[intervenes]

MR MATONA: And I would presume that the contents of the discussion that was had on that day would have been
20 minuted. The minutes would show that nobody asked any questions.

ADV SELEKA SC: Is this now the minutes of the 11th?

MR MATONA: The minutes of the 11th.

ADV SELEKA SC: March. Okay, let us go back to that document so we can for the sake of completeness conclude

on it, the memorandum on page 383. The purpose is to see what is it that was being proposed to the board, the inquiry on the one hand, the suspensions on the other or only one item was being proposed. So let us see what is written there further. I think I am on – in paragraph the second from the bottom:

“Until this moment...”

Can you see that?

MR MATONA: Yes.

10 **ADV SELEKA SC:** Ja.

“Until this moment the board has been entirely reliant on the executives for information pertaining to these challenges. It is abundantly clear that this in itself is part of the problem. This board has no independent and objective insight into the extent that some of our failings might be caused or exacerbated by the management failure. Given the abnormal risks facing the company and its obligations to the public, this board must know the

20 facts, as unpalatable as they might be.”

So when you read this – well, now you know at this stage that the document, as you said, originated from somebody else but at the time did you know that that this memorandum came from somebody else outside of the board.

MR MATONA: No, not at all. No, not at all, there had been no indication as to who was the author of this and it came through the communication of the Chairperson so I presumed that he would have caused the resolution to be drafted in the way that it was.

ADV SELEKA SC: Would this, what is written in that paragraph I have just read out, have surprised you at the time as coming from this new board?

MR MATONA: Of course, absolutely. I mean, you know,
10 here is a new board that is really only just starting to take off. Eskom is a complex organisation, the issues are complex, they have only had probably one or two interactions with myself and so when I saw this memorandum and the issues, it really made me wonder where was coming from and where was this going to. It was quite remarkable.

CHAIRPERSON: Had the new board been – had there been a chance for the new board to be properly and thoroughly briefed by the management about this state of
20 affairs at Eskom at the time?

MR MATONA: Yes, Chairperson, I have indicated that at their induction, so they were appointed in ...[intervenes]

CHAIRPERSON: December.

MR MATONA: In December, they get inducted in January and now we are about to get into business with the first

meeting supposedly in February which meeting, as I indicated did not happen. All indications up to then was that we were good to go, you know, as a collective charged with the oversight of the company at the time.

So this was a bit kind of odd, you know, with where I thought we were going at the time in terms of the issues that I raised here.

ADV SELEKA SC: Quite apart from your observation you can see here that what is being conveyed is a message
10 that seeks to express a board opinion on what is happening at Transnet.

MR MATONA: Yes. Yes.

ADV SELEKA SC: Which are – let me rather put it this way, concerns of the board at Eskom.

MR MATONA: Correct.

ADV SELEKA SC: Now did the board raise these concerns with you?

MR MATONA: No, not at all, not at all. Actually the opportunity that the board had to raise these matters with
20 me was the meeting of the 11th which was supposed to be, if you like, the regular meeting of the board because as opposed to the meeting or the 9th which only had the inquiry as the only item on the agenda, that the meeting of the 11th had, you know, the normal business of the company which allowed me to report to the board. But, as

I indicated, nobody said to me well, actually we disagree with the information or contradict me in any way whatsoever. I concluded my report and then the subsequent item was arrival of the Minister where I was then asked to leave the meeting.

ADV SELEKA SC: I see. Okay, this memorandum continues:

10 “The board is also in an unenviable position as it is known that the executive relationship with the shareholder can at times be more engaging than it is with the board. While this board can have no quibble with close shareholder relationship this may not be a substitute for proper and sound corporate governance.”

So you know what they are talking about there?

MR MATONA: I absolutely have no idea.

ADV SELEKA SC: But the executives have a closer relationship with the shareholder representative.

20 **MR MATONA:** It is natural in the nature of the business that there would be several interactions that are being had with the shareholder department on various matters. It does not substitute for the formal relationship, the formal relationship is that the Minister communicates with the Chairperson of the board, the CEO of the company interacts with the Director General of the company. Those

are the established formal protocols but sometimes information - if, you know, is shared freely in other interactions with the company, so I – that is my experience but I am not sure what this was supposed to be suggesting, it seems something has been suggested here but, you know, it is not so explicit.

ADV SELEKA SC: Did the board raise any concern with you regard to that?

MR MATONA: Not at all, not at all.

10 **ADV SELEKA SC:** Please turn the page, page 384.

“Given the severe risk of further outages and little independent understanding of the facts, there it is critical that the board act immediately.”

I think the word “there” is a typo or added.

20 “It is critical that the board act immediately to establish firsthand the causes of these challenges. It is recommended that the board urgently authorise a mandate and independent external inquiry to establish the facts of the current difficulties. This inquiry must be unfettered by management and the board and other policy stakeholders. It must be seen to be credible and objective, it must have a mandate to be penetrating and unhindered. The board must ensure that it creates the space and environment within the company and amongst

stakeholders for the investigators to fulfil this mandate unimpeded and without influence. The resolution before the board provides the authority for such an inquiry.”

And we will go to the resolution in a short while. Let me complete the reading of this document:

10 “In order to facilitate the urgent and independent execution of this resolution a further resolution provides the delegation of the selection mandating and contracting including terms of reference and oversight of the inquiry to a board subcommittee. While this subcommittee remains accountable to the full board, the subcommittee should have the board’s delegated authority to take all such steps and measures as the subcommittee deems necessary to ensure the fulfilment of the mandate as the board would itself have. There is, therefore, an urgent and pressing need for the board to gain firsthand and un-abridged review of the facts and
20 their impact.”

Were these points, Mr Matona, about conducting an inquiry that must be unfettered by management and a board and other policy stakeholders that must credible, objective, must be penetrating and unhindered raised with you during the suspension you have referred to – suspension meeting

you referred to?

MR MATONA: No. So this – remember this is a resolution or set of documents that would have served at the meeting of the 9th, is the first meeting that has to deal with this. These matters were not discussed, the board at the time actually said that we do not really understand where this inquiry is coming from, where it is going, we do not have sufficient information, the motivation behind this. This almost like – it caught me by surprise. So none of these
10 matters were discussed.

They may have been discussed in the meeting of the 11th, but recall that I had been requested to recuse myself from that meeting, so I am not privy to how these matters were discussed in that meeting but evidently, you know, they may have been discussed, as it were.

ADV SELEKA SC: Well, having read the document, I see that the word suspension is not mentioned anywhere in that document.

MR MATONA: Exactly.

20 **ADV SELEKA SC:** No. Now let us look at the resolution because this is what presumably the board would then have had to resolve, it is on page 385, the document with the heading just before the paragraph numbers, Resolution, do you see that?

MR MATONA: Yes.

ADV SELEKA SC: So paragraph 1 reads that:

“That this board resolves that there are exceptional circumstances demanding the necessity for an urgent meeting of the board of directors. Ordinarily, notice of at least seven days is required. Due to these exceptional circumstances recorded in the memorandum, this board resolves to accept short notice and to receive and consider the notice and resolutions of this meeting, that this board
10 resolves that an external and independent inquiry be set up to investigate and determine the facts relating to the current technical, commercial and structural status and any acts and/or omissions that have contributed to the current deficiency or generating and distributing capacity of Eskom.
That the board resolves to appoint a board subcommittee comprising Zola Tsotsi, Chairperson of the board, Ms Chwayita Mabude, Chairperson of Audit and Risk Committee and Zethembe Khosa,
20 Chairperson of People and Governance Committee mandated with delegated authority of the board to determine the terms of reference of the enquiry, the selection mandating and contracting of the independent investigators and the oversight of the inquiry. The subcommittee shall have the board’s

delegated authority to take all such steps and measures as the subcommittee deems necessary to ensure the unfettered fulfilment of this mandate as the board itself would have such power and authority. And further, without limitation to ensure that the environment within the company does not hinder or create a perception of hindering the inquiry and to take all necessary steps to ensure such. That the board authorises the Chairperson in consultation with the Minister and the Minister of Finance to approve expenditure sufficient and necessary to fund this inquiry, that this inquiry shall be required to present its final report to the board, the Minister and the President no later than the 30 June 2015. That the subcommittee shall have the authority to deviate from the requirements of Eskom's procurement policies and procedures as is necessary, given the target to complete an investigation within three months (urgency) and to appoint such persons or entities to conduct the inquiry that are independent of Eskom and free of any influence or suspicion of influence of any party that might have any effect on the inquiry save that the subcommittee shall, if required, provide reasons to the Ministry of Finance for any such deviations."

Do you see that, Mr Matona?

MR MATONA: Yes.

ADV SELEKA SC: I do not know whether were you able to identify the proposal to suspend the executives there?

MR MATONA: No.

ADV SELEKA SC: So these documents are presented to the board in the meeting of the 9 March.

MR MATONA: Yes.

ADV SELEKA SC: And you say that was a short meeting.

10 **MR MATONA:** It was a short meeting certainly.

ADV SELEKA SC: Can you recall what – how the meeting ended in terms of the way forward, the resolution going forward?

MR MATONA: So the resolution was the fact that the Chairperson would revert back to the Minister with the sentiments of the board which was that they really do not get it, they really do not understand what is this and that expect the Minister to address them directly on the matter, so the meeting ended on the understanding that the
20 Chairperson would have further conversation with the Minister.

ADV SELEKA SC: And did that happen?

MR MATONA: I presume it did because this was the Monday, the next day, Tuesday, we get another notice that the meeting is reconvening now on the 11th and that the

Minister would be present.

ADV SELEKA SC: So the meeting of the 11th is the one you have been referring to where you make a representation of your report to the board?

MR MATONA: Correct.

ADV SELEKA SC: Now that meeting of the 11th, when you make your presentation, the presentation of your report to the board, was the Minister present?

MR MATONA: No. So the meeting was in two parts. So
10 the first part was a meeting of the board without the Minister, so it would be your normal board meeting dealing with the affairs of the company but of course had been informed that the Minister was going to come, you know, to take further issues which arose in the meeting of Monday and yes, the Minister did arrive. Did arrive, so we concluded the first business – the first part of the meeting dealing with the business of the company and then the Minister arrived. It was at that point where then I was asked to recuse myself.

20 **ADV SELEKA SC:** Oh, so after the Minister arrived you were asked to recuse yourself?

MR MATONA: Yes.

ADV SELEKA SC: You alone?

MR MATONA: Well – so typically a normal board meeting would have myself as the call it executive director so I am

an *ex officio* member of the board and so is the company's financial officer. By law we are members of the board. We are directors of the board so typically we attend board meetings. Unless the board wants to meet in-committee, at which we recuse ourselves. But that would be something that is known in advance, that such and such a meeting would happen in an in-committee session at which point executives would have to be recused.

So when the suggestion was made for management
10 to recuse themselves I thought that it actually meant the other members of the executives who would normally also attend to assist the board and so I continued to sit in my place in the meeting until I was expressly informed by the Minister who said no, you, CE as well as CFO, both of you should also excuse yourselves from the meeting.

ADV SELEKA SC: Yes, I was going to ask you who asked you to excuse yourself.

MR MATONA: It was the Minister, ja.

ADV SELEKA SC: Then you duly obliged?

20 **MR MATONA:** I duly obliged, I picked up my stuff and I left the meeting.

ADV SELEKA SC: So you do not know what transpired in that meeting?

MR MATONA: I do not know what transpired in that meeting so we waited, we thought it would be short but it -

you know, we - I was waiting in my office for the entire day really. Only later in the afternoon was I informed that before I go home the board would like to have interaction with me.

ADV SELEKA SC: Yes. So who comes to inform you?

MR MATONA: The company secretary came to inform me that the board requested I not leave as yet because they would like to talk to me.

ADV SELEKA SC: And what followed next?

10 **MR MATONA:** So I then got called at which point I was informed by the Chairperson of the board on behalf of the board that they had resolved to undertake this inquiry and that they would want – that when the inquiry is underway that I am not at work, I am not at the company, so that the inquiry precedes, you know, without my interference with it and that is when we had that kind of funny conversation as to what does this mean because, you know, they are not saying I should take leave or absence or that they are suspending me, but somehow I must - you know, I need to
20 be absent from the company.

So I then said well, are you suspending me? And the answer was no, no, no, actually, not quite, you know – because of course I had informed them right there and then that I disagree with the idea of an inquiry, I do not see the need for an inquiry, there are enough hands at dealing with

Eskom's problems, there is also the war room and we have plans underway, as management, to deal with all the issues, so this inquiry I do not support. At which point then I was informed that we heard you, give us a chance and then upon on my return I was then handed a letter of suspension. That is how – those are the events of that day.

ADV SELEKA SC: Yes. So you were then given that letter of suspension I wanted to go to earlier, maybe we
10 can do so now which is on page 327 of bundle U13.

MR MATONA: Ja.

CHAIRPERSON: I am in 328, that letter of suspension.

ADV SELEKA SC: The letter starts on page 328, indeed.

CHAIRPERSON: Ja.

ADV SELEKA SC: Chairperson, may we then – I have marked this letter, Chairperson, as EXHIBIT U13.5. Mr Matona, I had read I think the first two paragraphs of the letter and we saw there that despite you saying the word suspension was not used, the letter explicitly used the
20 word suspension. Do you see that?

MR MATONA: Yes, correct.

ADV SELEKA SC: So what do you say was the concept used in regard to you in the discussion?

MR MATONA: So it was a combination of recuse yourself, step aside. I am the one who raised the suspension but

the board denied it. They said no actually, that is not what they are doing.

ADV SELEKA SC: And you say it was the Chairperson of the board Mr Tsotsi addressing you?

MR MATONA: Correct.

ADV SELEKA SC: At this point in time?

MR MATONA: Correct.

ADV SELEKA SC: Well, let us look at the letter, the last paragraphs of the letter, paragraph 3 also says:

10 “You were advised the board subcommittee was considering placing you on precautionary suspension because of concerns that might pose a risk to the influence, free requirement of the inquiry. These concerns have been discussed with you.”

Were they discussed with you?

MR MATONA: No. No because that was one of the things that made me wonder, say what kind of an inquiry is this that my presence – continued presence in the company
20 would make difficult or impede, as it were. You know, nobody said well, you know, your presence would prejudice the inquiry in this manner and therefore that is why we require you not to be present, you know, it was a general, you know, it has to be unfettered, it has to be free of influence, as it were, and that was the motivation for the

suspension presumably.

ADV SELEKA SC: Well, the letter carries on with the same concept of suspension in paragraph 5:

“I confirm that you have made various representations in respect of your possible suspension. We have considered them thoroughly.”

Is that correct?

MR MATONA: No, I deny that I had made representations. If you can imagine ...[intervenes]

10 **ADV SELEKA SC:** Well, sorry, they say in respect of your possible suspension.

MR MATONA: Yes. So imagine the events of that day, so the first time one really gets to know what might be happening, you know, where the board might be going is at the end of the day, in the evening, actually, that we had all been there the whole day.

20 So it is late in the day I get presented with this, I am shocked, I am confused, I do not know what to do, as it were. I am clear that at least my understanding of due process is that I ought to have been given an opportunity to inform the board why I think I should not be suspended. I had not been, I had not been offered that opportunity and so I took this letter and I left.

ADV SELEKA SC: Yes. So what do you do thereafter?

MR MATONA: Well, I went home, you know, I mean, here

I am suspended, I came – I left my house in the morning going to work and a normal day, I come back home having been suspended.

ADV SELEKA SC: Ja, but in relation to your employer, do you engage your employer going forward or do you simply stay silent?

MR MATONA: No, I have no – actually, I think the letter said I shall have no contact with the company whatsoever, as it were, I mean that was the understanding that this
10 means that I shall have no contact. In fact they were going to take the tools of trade, you know, from me, the laptop and cell phone, but what had been indicated was that to the extent that there was going to be this inquiry that the people conducting the inquiry will contact me. I was never contacted by anybody. I later heard that the inquiry was concluded that no wrongdoing was found on my part but nobody, nobody in relation to this inquiry had ever contacted me wanting to talk to me about the subject matter.

ADV SELEKA SC: But did you contact Eskom? Did you
20 make contact with the Board?

MR MATONA: No I did not.

ADV SELEKA SC: It has been widely reported that you took a – your matter to the Labour Court.

MR MATONA: Correct.

ADV SELEKA SC: Can you explain to the Chairperson how

did that come about?

MR MATONA: Well as I was contemplating my circumstances – I mean I had thought this was a brazen and irrational act by – by the Board. It had occurred to me actually that not only was it myself but a CFO – Chief Financial Officer of the company and two other executives that four of us had been – had been suspended which is rather extraordinary. I had never encountered anything. And kind of suspended not for having done anything wrong. That
10 was the – also the messaging from the company itself. So I was – something had told me that there might be the solution – some intervention - political intervention to – to stop this but in the end I realised that the only thing that I had was my – my legal rights and I chose to exercise my legal rights. I launched a challenge with the Labour Court on an urgent basis to have the – to have the suspension set aside.

ADV SELEKA SC: Yes and what was the outcome of that?

MR MATONA: The Labour Court found that my suspension was unfair and unlawful. The – the remedy I had required
20 was that it be set aside and that I be reinstated in my job. The Judge did not go as far as rule statement. She – she referred the matter to CCMA and so we then – myself and the – the employer of Eskom went through conciliation through CCMA.

ADV SELEKA SC: Now the judgment would that be the one

if you turn to page 30 – oh page 31 in fact.

MR MATONA: 31?

ADV SELEKA SC: Item 2.

CHAIRPERSON: I am sorry Mr Seleka. I think you have gone past that letter of suspension. You have dealt with it to your satisfaction is it not?

MR MATONA: I have.

CHAIRPERSON: Okay I think I wanted to...

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** Ask Mr Matona something.

ADV SELEKA SC: Okay thank you Chair.

CHAIRPERSON: Yes. It is at page 328 Mr Matona.

MR MATONA: Yes. Yes Chairperson.

CHAIRPERSON: Yes. Paragraph 5 of that letter reads:

“I confirm that you made various representations in respect of your possible suspension. We have considered them around [01:08:10]”

Is that – was that factually true?

20 **MR MATONA:** No I expressly took issue in – upon receipt of this letter I took an issue with that matter specifically Chairperson.

CHAIRPERSON: Yes.

MR MATONA: To the extent that under the circumstances I did not have an opportunity to make proper representation.

CHAIRPERSON: Yes.

MR MATONA: This – this was all surprises.

CHAIRPERSON: Yes.

MR MATONA: Because a surprise – one surprise after the other.

CHAIRPERSON: Yes.

MR MATONA: As it were.

CHAIRPERSON: Okay thank you. You may proceed Mr Seleka.

10 **ADV SELEKA SC:** Thank you Chair. Yes Mr Matona then you talked about taking the matter to the Labour Court. A judgment followed thereafter and I asked you to turn to page – it is 30 on the outer but you can go to 31.

MR MATONA: Ja I am right there.

ADV SELEKA SC: You are right there. Thank you. This is on the trim lines identified as an ex tempore judgment of Judge Witcher J and the applicant there is Tshediso Matona, is that yourself?

MR MATONA: Correct.

20 **ADV SELEKA SC:** The respondent is Eskom.

CHAIRPERSON: Please raise your voice again. It keeps on going down Mr Seleka.

ADV SELEKA SC: The – the Tshediso Matona the applicant, is that yourself?

MR MATONA: Correct that is myself.

ADV SELEKA SC: The respondent there is Eskom Holdings. Would this be the judgment that was handed down in your matter?

MR MATONA: That is correct.

ADV SELEKA SC: Chairperson you will mark that for the purposes of the record as Exhibit 13.3.

CHAIRPERSON: U13 or just 13? Exhibit U13?

ADV SELEKA SC: U13 indeed Chair.

CHAIRPERSON: Yes.

10 **ADV SELEKA SC:** U13.3.

CHAIRPERSON: The ex tempore judgment of the Labour Court appearing at page 31 starting at page 31 is admitted and would be marked as Exhibit U13.3.

ADV SELEKA SC: Thank you Chairperson. So Mr Matona your – your matter was not found to be urgent but you say the judgment did say you were treated unfairly. Your matter then went to the CCMA?

MR MATONA: Correct.

20 **ADV SELEKA SC:** Then he asked you before going to the CCMA what relief did you seek at the Labour Court?

MR MATONA: I – I applied for the Labour Court to find the suspension to have been unfair and unlawful and that to the extent that the Labour Court had found as such that a suspension be certified and therefore in a sense I – I was wanting – I was claiming my job back.

ADV SELEKA SC: And at the CCMA what relief were you seeking?

MR MATONA: Well the matter had been – had been sent to CCMA by the Judge and so we engaged – Eskom and myself engaged in the CCMA process until a point where the – the CCMA – the Commissioner allowed Eskom and myself to engage directly to interact directly outside of the process.

ADV SELEKA SC: Yes. But what relief were you seeking?

MR MATONA: Well I mean the – my – the relief still – I was
10 still hoping I could – I could get my job back. I was still hoping I could get my job back but the interactions that I was having with Eskom seemed to suggest that that was another opening option. They were not open to any new option of – of me getting my job back.

CHAIRPERSON: Now who were the people representing Eskom in your – at the CCMA or in the discussions or negotiations?

MR MATONA: So it was the – I think the Chairperson at the time was now Doctor Ben Ngubane.

20 **CHAIRPERSON:** Yes.

MR MATONA: And he was supported by two board members being Venete Klein who I have referred to and Mr Romeo Kumalo. That was the delegation that – of Eskom that I had been interactive with.

CHAIRPERSON: So it was Doctor Ben Ngubane, Mr Romeo

Kumalo.

MR MATONA: And Mr Romeo Kumalo and Ms Venete Klein.

CHAIRPERSON: Ms Venete Klein.

MR MATONA: Venete.

CHAIRPERSON: Venete Klein.

MR MATONA: Venete Klein. V-e-n-e.

CHAIRPERSON: Yes. The way the – those are the ones representing Eskom in the negotiations with you?

MR MATONA: Correct.

10 **CHAIRPERSON**: Okay. Mr Seleka.

ADV SELEKA SC: Thank you Chair. But the – the question Mr Matona was at the CCMA who from Eskom was present?

MR MATONA: So as I said the first appearance – our first appearance at the CCMA Eskom was represented by Mr Ben Ngubane – sorry Doctor Ben Ngubane.

ADV SELEKA SC: Were there lawyers also representing Eskom?

MR MATONA: Yes. So – so Eskom had lawyers on the matter. I think it was Bowman.

20 **ADV SELEKA SC**: No that is fine.

MR MATONA: Ja.

ADV SELEKA SC: That is fine. So Doctor Ngubane is there from Eskom?

MR MATONA: Doctor Ngubane is there from Eskom.

ADV SELEKA SC: At the CCMA?

MR MATONA: Correct.

ADV SELEKA SC: Yes. So at the CCMA what transpires?

MR MATONA: So – so the – so the proceedings did not go far because Eskom asked for a postponement. They requested the Commissioner to say they would like a postponement and the reason was because they – they needed to engage with the shareholder – the Minister – shareholder representative as to – to give them a mandate – negotiating mandate in terms of what they could offer as
10 relief or at least – ja what concession they can make in the process as it were they needed to consult. That was the reason for requesting a postponement and so the postponement was granted.

CHAIRPERSON: Was the CCMA process at that stage the conciliation process or had you gone past the conciliation process and were about to begin the arbitration process?

MR MATONA: It was still at the conciliation stage.

CHAIRPERSON: Conciliation process.

MR MATONA: Ja.

20 **CHAIRPERSON:** Okay.

ADV SELEKA SC: So did you – did they come back to you after asking for that postponement in order to meet with the shareholders?

MR MATONA: So – so they did not come back to me. So we had another date in fact as we – as we left so – so they got

a postponement, we got a date and when that date approached – I cannot remember quite what the sequence was whether we actually went for the second time at the – at the CCMA. I think we did because – because we were then – they then requested to engage directly with myself. So we requested the Commissioner to allow a direct conversation between myself and the – and Eskom and that is exactly what happened thereafter.

ADV SELEKA SC: Were you legally represented?

10 **MR MATONA:** Yes I had lawyers in my case yes.

ADV SELEKA SC: So when you say the request was to have an interaction with yourself are you referring to you and a legal team and Eskom and its legal team on the other hand?

MR MATONA: Correct.

ADV SELEKA SC: And?

MR MATONA: Ja. So – so I – so we had a meeting and – and the indication that was stated very clearly was that they – you know the option of my return to Eskom was off the table.

20 **ADV SELEKA SC:** So who is saying that?

MR MATONA: It was the – the delegation. I cannot quite be certain but I think the interlocutor at the time was Mr Romeo Kumalo. He was speaking – representing the – representing Eskom to say – to say that you know – you know let us talk but you know the idea of – of you going back to Eskom is off

the table. This is the – the explicit mandate that they got from the shareholder so they are speaking on behalf of the board and speaking on behalf of the shareholder that I you know – they can do a deal but it is not going to be going back to my job.

CHAIRPERSON: Okay I just want to hear that clearly. Just try and put the way it was put to you by whoever from the Eskom board? What you have just said I think it amounts to saying you going back to your back to your job was out of
10 the question. Just put it the way they put it as you recall?

MR MATONA: Yes so – so they said the option of you going back to Eskom is off the table. So we are not talking about any – an outcome which would include me going back to Eskom. So this – this was effectively a separation negotiation.

CHAIRPERSON: Hm.

MR MATONA: You know I had now actually entered the separation – a separation...

CHAIRPERSON: Can you recall who exactly in the Eskom
20 delegation articulated that position or is that something you cannot recall?

MR MATONA: I seem to recall that – that the person who was speaking on behalf of Eskom on the specific issue was Mr Romeo Kumalo.

CHAIRPERSON: Mr Romeo Kumalo?

MR MATONA: Hm.

CHAIRPERSON: Yes. Continue. Maybe I see we are – it is four minutes past one – but it is an important topic so maybe let us go on and see if we can for the next ten or fifteen minutes then we take the lunch break.

ADV SELEKA SC: Thank you Chair. So what is your – what was your response Mr Matona to that which had been articulated to you that is your return being off the table?

MR MATONA: So I – I now reach a point where I have to
10 determine you know how much – how much of a fight am I
still willing to put up on a matter like this? And something
had said to me that perhaps this is – you know you have to
just cut your losses, leave this thing you know. Ja just leave
this thing you know. And so I – I then accepted the – a
severance from the company with a twelve months' pay of
what a CE – CE salary was at the time. And I just – I just
left the matter I cut my losses I did the deal with – with
Eskom. I had realised that I mean it was going to cost me
financially to – to fight this matter legally. Eskom – Eskom
20 was – was financing the matter from its own coffers. I was
financing the matter from my own pocket. So you know the
odds were against me. So I – I took a separation from
Eskom.

ADV SELEKA SC: So did that happen on that occasion?

MR MATONA: So we – we had – we had the first meeting

and which is where they kind of – you know they communicated that position. I went away. I consulted with my legal people. We evaluated our options and on the second interaction I think we were now talking the terms of the separation and they – you know they offered twelve months which was consistent with – with the legal provisions. If you are not – you know you are – I was permanent employee of the company. If you are a permanent employee you know the minimum would be twelve
10 months. You can negotiate more and I did try unsuccessfully. As opposed to when you have a contract you have a five year contract then they – you know they can pay you out your five year contract. But in my instance CE's of Eskom are permanent at least at the time they were permanent.

CHAIRPERSON: Well did you say you had two meetings to discuss that is after the first postponement?

MR MATONA: Yes.

CHAIRPERSON: Of the conciliation process?

20 **MR MATONA:** Yes

CHAIRPERSON: Then there were two meetings?

MR MATONA: There were two meetings yes.

CHAIRPERSON: The second meeting is where agreement was reached, is that right?

MR MATONA: The second meeting is where they

communicated the position.

CHAIRPERSON: Is – is it – well would the – would the first meeting be where they asked for a postponement of the CCMA process? Which one do you regard as the first meeting?

MR MATONA: So – so outside of the CCMA.

CHAIRPERSON: Ja.

MR MATONA: I think we had two meetings.

CHAIRPERSON: Okay alright.

10 **MR MATONA:** Outside of the CCMA.

CHAIRPERSON: After the CCMA process had been postponed?

MR MATONA: After the CCMA process had been – had been postponed.

CHAIRPERSON: Yes. At the first meeting they articulated their position?

MR MATONA: So at that first meeting they – that is when they put their position that they – you know almost like what a mandate – whether to negotiate a mandate is.

20 **CHAIRPERSON:** They wanted your negotiating position?

MR MATONA: No. I am saying they communicated what their negotiating position was.

CHAIRPERSON: Okay.

MR MATONA: The negotiation is that look you are not going back.

CHAIRPERSON: Ja.

MR MATONA: To Eskom.

CHAIRPERSON: Was that after they had according to them – according to what they told you was it after they had consulted with the Minister or was that the position they articulated before they talked about consulting the Minister?

MR MATONA: I – I – well the consultation with the Minister was the grounds for requesting a postponement.

CHAIRPERSON: Yes.

10 **MR MATONA:** So by the time they come I presumed

CHAIRPERSON: To the first meeting.

MR MATONA: That they have – that – in the first meeting?

CHAIRPERSON: Ja.

MR MATONA: I presumed that – actually that is what they said.

CHAIRPERSON: Yes.

MR MATONA: They said this is the position we are here – this position is – is the position of a shareholder as well.

CHAIRPERSON: Yes.

20 **MR MATONA:** Yes. That is how they put it to me.

CHAIRPERSON: So this is where they said going back to your job is off the table?

MR MATONA: Correct.

CHAIRPERSON: Yes. What else did they articulate in that meeting of importance obviously?

MR MATONA: They said ja well you know they were sorry that the process – you know the matter could have been dealt differently you know. They understood that you know it had negatively impacted me in terms of my reputation and so on and you know they apologised for that to the extent that they say that it could have been dealt – dealt with differently.

CHAIRPERSON: Yes.

MR MATONA: As it were but you know we were – we were there at that point you know there was water under the
10 bridge.

CHAIRPERSON: Yes. Did they indicate at that first meeting that they were looking at giving you money for you to go away because getting your job back was out of the question? Did they indicate that already even if they did not specify the amount?

MR MATONA: You mean at the ...

CHAIRPERSON: At the first meeting.

MR MATONA: At the – well yes – well the principle – there was a principle that said that well you know we can then look
20 at how to compensate.

CHAIRPERSON: Ja.

MR MATONA: Ja.

CHAIRPERSON: Ja. Is that when you said you wanted to go and reflect on the present situation?

MR MATONA: Exactly.

CHAIRPERSON: And that is how the first meeting ended?

MR MATONA: Exactly yes.

CHAIRPERSON: And then another meeting was arranged?

MR MATONA: Another meeting was arranged and now that was a meeting, I had made a decision that look I am...

CHAIRPERSON: You are not going to fight this thing.

MR MATONA: Ja.

CHAIRPERSON: Ja. And – and at that meeting an agreement was reached in terms of which Eskom was going
10 to pay you a years' salary or remuneration – the equivalent of a years' remuneration and you would resign?

MR MATONA: Correct.

CHAIRPERSON: Yes okay. Now let us go back to the first meeting. When they told you that the – when they told you that going back to your job was out of the question bearing in mind that on the day – on the 11 March they had said to you your suspension did not indicate that you have done anything wrong. Did you confront them to say, why – why is it not on the table because you told me that I have done
20 nothing wrong?

MR MATONA: I did.

CHAIRPERSON: Hm. What – what did they say?

MR MATONA: Like I did. I – I could – the point I could – I could establish was that the – you know they did not have any confidence in me, they did not see me as part of the

future of the company as it were. So it was a bit – it was a bit strange but in the end you – you are dealing with – we are dealing with people who you can see that do not quite see you in the – in the position and I you know I actually did not know why because as you say they – they had indicated that and reassured me that it was not because of anything wrong I had done. Ja so in a sense you know I kind of concluded that there is no chemistry between myself and this board so I am better off probably not – not working with
10 them.

CHAIRPERSON: But you had not had much time to work with this board, had you?

MR MATONA: No I had not had much time. In fact, it became in December it was really two months.

CHAIRPERSON: Yes.

MR MATONA: As it were.

CHAIRPERSON: And – and after the board had been appointed the first meeting was that of the 9th that they had or was then apart of induction was there another meeting?

20 **MR MATONA:** No.

CHAIRPERSON: So apart from induction that was the first meeting?

MR MATONA: Correct.

CHAIRPERSON: And then the next – on the next meeting two days later.

MR MATONA: Correct.

CHAIRPERSON: They wanted to suspend you?

MR MATONA: Correct.

CHAIRPERSON: You – you had hardly worked with them?

MR MATONA: I had hardly worked with me absolutely
Chairperson.

CHAIRPERSON: Did you know what factual basis they may
have had not to want you to continue in your job at that
time? Did you know why they would not want you to
10 continue in your job in circumstances where they did not
know you?

MR MATONA: Yes.

CHAIRPERSON: As a board. Maybe some individuals but
as a board that had little – hardly anything to do with you?

MR MATONA: Absolutely. I could not establish – I could not
establish exactly what was the – the reason. It seemed that
between the Monday meeting.

CHAIRPERSON: Monday like the 9th?

MR MATONA: The 9th. It seemed that between the Monday
20 meeting and the 11th something had – something happened.

CHAIRPERSON: Yes.

MR MATONA: Followed the board took a complete
somersault.

CHAIRPERSON: Yes.

MR MATONA: If I may say that.

CHAIRPERSON: Yes.

MR MATONA: Because on Monday they cannot engage with – they say they do not have enough information. They cannot adopt a resolution of this nature.

CHAIRPERSON: Hm.

MR MATONA: On – on the 11th two days later they – they ...

CHAIRPERSON: They are quite clear.

MR MATONA: They accepted inquiry even decide on suspension.

10 **CHAIRPERSON:** Hm.

MR MATONA: So – so I – the only – the only conclusion I could make was that this – this was something from outside.

CHAIRPERSON: Yes.

MR MATONA: There had been – there had been some intervention.

CHAIRPERSON: Yes.

MR MATONA: From outside.

CHAIRPERSON: About which you knew nothing?

MR MATONA: Sorry.

20 **CHAIRPERSON:** About which you knew nothing?

MR MATONA: Which I – I did not know anything about yes.

CHAIRPERSON: Hm.

MR MATONA: Ja. It was a bit – it was a bit odd and...

CHAIRPERSON: So when they said the – in the first meeting that is now the representatives of the board when

they said that going back to your job was out of the question did that make it clear to you – that you were not wanted back?

MR MATONA: Absolutely. Absolutely. I still – I still maintained a little hope that sense will prevail that they could see that this was not a sustainable thing. The damage and the ramifications for the company were so – were so huge.

CHAIRPERSON: Hm.

10 **MR MATONA:** I think there was – I think there was general outcry around those events which actually led to even a downgrade of the company.

CHAIRPERSON: Hm.

MR MATONA: I – I had thought that the impact was of such a nature that it would persuade them otherwise.

CHAIRPERSON: Hm.

MR MATONA: But – but of course that was not to be in a sense that they – they still wanted to proceed with...

CHAIRPERSON: Hm.

20 **MR MATONA:** Wherever they were going to but without me being there.

CHAIRPERSON: Hm. Hm. And you had only been in the job at Eskom for five months and a few days after?

MR MATONA: Five – just a little over five months.

CHAIRPERSON: Ja. Since then have you been able to

make sense of what happened? Since then have you been able to come to some conclusion based on whatever knowledge or your analysis of the situation of what happened to you that has made you to come to a conclusion as to why you were not wanted? Or have you not been able to do that?

MR MATONA: To be honest with you the events that then followed at Eskom after my ouster from the company which was the you know where Mr Molefe was then appointed as well as other changes that happened and some of the stuff
10 which was [01:33:50] of the allegations you know around various matters.

CHAIRPERSON: Hm.

MR MATONA: Made me suspect that it is probably because you know I was – I was removed to make way for some of them.

CHAIRPERSON: Hm.

MR MATONA: Obviously you know just on the face of it I have not facts other than what I have seen being reported about the goings on at Eskom after my departure from there.

20 **CHAIRPERSON:** But during the negotiations leaving aside the fact that on the 11 March the board has said your suspension did not mean that you had done - they had thought you had done anything wrong – leaving that aside. During the negotiations did anybody from the Eskom board ever say to you, this is what you have done wrong? This is

why the – you are going back to your job is out of the question?

MR MATONA: Not at all.

CHAIRPERSON: Nobody said that?

MR MATONA: Nobody said that. You know I – Chairperson some of the individuals who were involved – people that I know...

CHAIRPERSON: You do not speak too far away from the microphone ja.

10 **MR MATONA**: Sorry. Sorry. I said some of the people who are involved are people that I – that I know that I have had professional interaction with certainly someone like Doctor Ben Ngubane. The Chairperson of Eskom at the time as well Mr Tsotsi are people that I had come to be acquainted to professionally and – and it pained me why any of them could not have said let us find – if there is any reason whatsoever that I should not be there let us find a different way you know of dealing with it. Not the drama you know that with which this thing – which as I indicated they – they said they
20 were sorry for this and well you know it could not have been done differently you know. But – so up to today I do not know precisely why.

CHAIRPERSON: And they never said to you you are not performing your job properly. They never said to you...

MR MATONA: No.

CHAIRPERSON: Actually, they never said to you they had no confidence in you or did you they say?

MR MATONA: No.

CHAIRPERSON: They never said that.

MR MATONA: They actually never said that.

CHAIRPERSON: Yes.

MR MATONA: Because if they said so I would have asked them on what grounds?

CHAIRPERSON: Yes.

10 **MR MATONA**: You know as it were. So none of that.

CHAIRPERSON: So you – you – and you were only five months into a five year contract, is that right?

MR MATONA: Five months – well I was a permanent employee.

CHAIRPERSON: Oh you were not - you were a permanent employee?

MR MATONA: I was a permanent employee.

CHAIRPERSON: Yes.

20 **MR MATONA**: But you are right in counting it a good tenure at least first tenure of a CE is five – is five years.

CHAIRPERSON: Yes. Yes.

MR MATONA: That is what I imagined you know.

CHAIRPERSON: Ja.

MR MATONA: That it is coming from government as a DG you know.

CHAIRPERSON: Ja.

MR MATONA: You work on five year terms.

CHAIRPERSON: Ja.

MR MATONA: So I was hoping that I would at least be at Eskom for five years.

CHAIRPERSON: ja.

MR MATONA: But I had only been there for five months you correct.

CHAIRPERSON: Yes. Yes. Okay. Mr Seleka. I earlier on
10 said we would take a ten minute – fifteen minutes on that point but I...

ADV SELEKA SC: It is an opportunity.

CHAIRPERSON: I realised that we may be close to finishing with his evidence but I may be wrong about that. Do we need to sit and finish so that when we adjourn, we are done or – but that would depend on how long you will take or should we adjourn for lunch and come back? How long do you think you will – we will take?

ADV SELEKA SC: I should take about...

20 **CHAIRPERSON:** You should not be – you should not be rushed.

ADV SELEKA SC: Yes.

CHAIRPERSON: We have got to do justice to the issue. But you have a better sense.

ADV SELEKA SC: Yes, no my estimation is I could take

about an hour Chairperson.

CHAIRPERSON: Oh okay so maybe let us take the lunch break then.

ADV SELEKA SC: The lunch break.

CHAIRPERSON: But I do not know if you might want to ask something before, we go or everything can wait until...

ADV SELEKA SC: It can wait until.

CHAIRPERSON: It can wait okay. We will take the lunch break. It is now twenty-three minutes past one we will
10 resume at twenty-five past two. We adjourn.

ADV SELEKA SC: Thank you Chair.

REGISTRAR: All rise.

MEETING RESUMES

CHAIRPERSON: Yes Mr Seleka.

ADV SELEKA SC: Thank you DCJ.

CHAIRPERSON: Before we proceed I just have one more question for Mr Matona with regard to what the representatives of Eskom said during the negotiations of the separation settlement. You said they said to you that the
20 position that going back to your job was not on the table. Was their position – the position of the board as well as the position of the shareholder?

MR MATONA: Correct.

CHAIRPERSON: Is that right? Now you had worked as the Director General of the Department of Public Enterprises and

therefore would have been familiar with the role of the Minister in that situation as well as the relationship between the Minister and the board and their respective roles is that not so?

MR MATONA: Correct.

CHAIRPERSON: In terms of the situation which prevailed where you had been suspended as I understand by the board whether you were reinstated or not did not the Minister have a role to play on that issue or was that supposed to be a
10 decision of the board and the board only? Or must they consult the Minister or what is the position? Or is the position that the Minister had the final say as you understood the position?

MR MATONA: The – there is a slight irregularity in as far as that is concerned. Typically, the board has the full mandate to take decisions in the interest of the company.

CHAIRPERSON: Hm.

MR MATONA: That is first and foremost their primary judiciary responsibility.

20 **CHAIRPERSON**: Hm.

MR MATONA: Of course, to the extent that the matter involved the CEO of the company. It is reasonable to expect that the board would have consulted with the Minister as it were. But that is not what they were saying. They were saying that they – the position that they are conveying to me

is their position as well as the Minister's position.

CHAIRPERSON: Yes.

MR MATONA: Ja that is the way they put it to me.

CHAIRPERSON: Yes. Do you view that as different from saying that position was their position as the board as well as the position of the Minister which they obtained through consultation with him – with her or was it him?

MR MATONA: It was her.

CHAIRPERSON: Ja Ms Brown.

10 **MR MATONA**: It was her at the time.

CHAIRPERSON: Yes.

MR MATONA: Well recall I indicated that even – even in the negotiation at CCMA in the conciliation they had requested a postponement in order that they would consult as they indicated – the shareholder with regard to you know ...

CHAIRPERSON: What they offer.

MR MATONA: What they could offer.

CHAIRPERSON: Ja.

20 **MR MATONA**: Exactly. Which again I found a bit odd but of course it was what it was that the board felt it important at all times to involve the Minister in – well to invoke the Minister's name as it were. That kept on arising at different points. So – so in the end I just took it that it was the board and the Minister united in – in a position to have me removed ja.

CHAIRPERSON: Hm. And the appointment of the Group CEO for Eskom I guess it might be the same with Transnet and so on for Eskom the power to make that appointment is it – does it lie with the board or does the board recommend and the Minister or cabinet makes the appointments?

MR MATONA: The power rests with the board.

CHAIRPERSON: The power lies with the board?

MR MATONA: The power lies with the board.

CHAIRPERSON: Yes.

10 **MR MATONA:** To make the appointment that is what would normally happen across the board in the private sector in the public sector.

CHAIRPERSON: Yes.

MR MATONA: With the exception that in the public sector because it is a state owned company the board would say to the shareholder.

Dear Shareholder we have conducted a search for a CEO. We have identified the following three names. Our preference is name X. We ask for your concurrence.

20 **CHAIRPERSON:** Oh okay.

MR MATONA: As it were. And the Minister would then take that through internal decision making in government which – which does involve cabinet.

CHAIRPERSON: Yes okay. Excuse me. So in a case such as that of a suspension of a CEO the power to settle that

matter would lie with the board but the board could consult the Minister – the shareholder representative?

MR MATONA: Yes.

CHAIRPERSON: As you understand the position?

MR MATONA: Yes. I think the reasonable – the reasonable thing would be for the board to say to the Minister, Minister we – we have come to such and such a position for these reasons as it were. We therefore want to bring you – bring – make you aware as it were that the board – that is a decision
10 of the board. That is how I would view it Chairperson.

CHAIRPERSON: By the time you were appointed as Group CEO for Eskom you had worked with Minister Lynne Brown for some time in the Department of Public Enterprises, is it not for about two years or a year and a half?

MR MATONA: No. I worked with her because I think she came in 2014.

CHAIRPERSON: Yes.

MR MATONA: Just after the elections.

CHAIRPERSON: The elections ja.

20 **MR MATONA:** Of 2014 so I had overlapped with her for about three months.

CHAIRPERSON: Hm.

MR MATONA: About three months.

CHAIRPERSON: Oh okay I am sorry.

MR MATONA: Yes.

CHAIRPERSON: Okay about three months.

MR MATONA: Yes.

CHAIRPERSON: So prior to that you did not – the two of you did not know much of each other?

MR MATONA: We knew each other because she had been a government – a public representative as it were in the Western Cape.

CHAIRPERSON: Yes but in terms of working and so on you had not worked together?

10 **MR MATONA:** No. No.

CHAIRPERSON: Yes.

MR MATONA: So she would have been my boss like.

CHAIRPERSON: Yes.

MR MATONA: Like previous Ministers.

CHAIRPERSON: Yes.

MR MATONA: Under whom I served.

20 **CHAIRPERSON:** Yes. Yes. So when she came to Public Enterprises was the process which led to your appointment at Eskom already underway or did it start after – it was underway?

MR MATONA: It was underway. She found it in its advanced stage.

CHAIRPERSON: Stage yes.

MR MATONA: As it were – correct.

CHAIRPERSON: Yes. Yes. So she also did not know you

much in terms of work? What your abilities were and so on?

MR MATONA: Not – not extensively because in the overlap – in the three months overlap.

CHAIRPERSON: Ja. She might have had some idea but she might not have been able to speak authoritatively about how you were as DG or she might have been, what do you say?

MR MATONA: No she had gained an impression.

CHAIRPERSON: Ja.

MR MATONA: Because she arrived.

10 **CHAIRPERSON**: Yes.

MR MATONA: Almost in my hands as it were.

CHAIRPERSON: Ja.

MR MATONA: You know I had briefed her. I took her through the department.

CHAIRPERSON: Yes.

MR MATONA: And so on and so forth. And I can recall the day when she – she spoke about this kind of process where she said to me that you know I am – I am busy bonding with you and now you are going to be leaving.

20 **CHAIRPERSON**: Yes.

MR MATONA: To which I said, well Minister you know it is not a reflection on you it is a process that has been underway.

CHAIRPERSON: Yes. Yes. And when you left the Department of Public Enterprises had your contract as DG

come to an end or was it cut short so that you could go to Eskom?

MR MATONA: It still had about a year so it is normally five years.

CHAIRPERSON: Ja.

MR MATONA: I had sat for four or five years.

CHAIRPERSON: Yes.

MR MATONA: So [00:09:54] everybody here.

CHAIRPERSON: So basically – well she may have got an
10 impression of how she was likely to work with you in the
three months or so but for all intents and purposes all these
people who took this position that being allowed to go back
to your job was out of the question did not know you much in
terms of work?

MR MATONA: No. Not at all – absolutely not at all. As I
indicated some like you know Doctor Ben Ngubane had
known me before.

CHAIRPERSON: Ja.

MR MATONA: I had to – dealings – professional dealings
20 with him.

CHAIRPERSON: With him.

MR MATONA: And in fact I can also still recall him saying,
oh you know we are really excited to find – you know that
you are here and we are going to work together. This is –
this was in December when they...

CHAIRPERSON: In December.

MR MATONA: When they arrived.

CHAIRPERSON: When the new board arrived?

MR MATONA: When the new board arrived you know.

CHAIRPERSON: Yes.

MR MATONA: To say you know we continue the good – the good work.

CHAIRPERSON: Where had you worked with him?

MR MATONA: So I – I was also a Director General of
10 Department of Trade and Industry.

CHAIRPERSON: Yes.

MR MATONA: Prior to being Director General Public Enterprises.

CHAIRPERSON: Yes.

MR MATONA: At the time he had been placed – posted as an Ambassador to Japan I think it is Japan.

CHAIRPERSON: Ja.

MR MATONA: And – and so trade – so I was also responsible for Trade Promotion.

20 **CHAIRPERSON:** Ja.

MR MATONA: You know. And he was going – he was doing a project that required the department's support.

CHAIRPERSON: Yes.

MR MATONA: And it was a very important project.

CHAIRPERSON: Project.

MR MATONA: I supported him.

CHAIRPERSON: Ja.

MR MATONA: And he was very pleased.

CHAIRPERSON: Yes.

MR MATONA: With that experience.

CHAIRPERSON: Yes.

MR MATONA: And that – that created a bit of a relationship.

CHAIRPERSON: Yes.

MR MATONA: You know between me and – him and I.

10 **CHAIRPERSON**: And how long had it – did you have that – did you have that interaction with him? A year, two years, three years or ...

MR MATONA: When the project was a couple months.

CHAIRPERSON: ja.

MR MATONA: It was a – it was an Expo.

CHAIRPERSON: Okay. Okay.

MR MATONA: So you know which involved displays of South African goods. So it was a bit of a big complex project.

20 **CHAIRPERSON**: Yes. So – are you able to say that your impression is that during the time that you had cause to interact with him in regard to that project while you were at the Department of Trade and Industry that he had a good impression of your abilities?

MR MATONA: Absolutely.

CHAIRPERSON: Yes.

MR MATONA: He was – there was great, goodwill.

CHAIRPERSON: Yes.

MR MATONA: On – great respect.

CHAIRPERSON: Yes.

MR MATONA: Mutually between him and I.

CHAIRPERSON: Yes.

MR MATONA: And – yes.

CHAIRPERSON: Okay. Thank you. Mr Seleka.

ADV SELEKA SC: Thank you Chairperson. Well Mr Matona
10 there is a media article I would like to refer you to they are
simply begging on the questions the truth person it has been
asking you. It is a media article on page 321 of the bundle
in front of you. 321 that is Item 5.

MR MATONA: Item 5.

ADV SELEKA SC: Ja you found it? Mr Chair we will mark
that as Exhibit U13.14 – U13.14.

CHAIRPERSON: What is the page number?

ADV SELEKA SC: Page 321.

CHAIRPERSON: 321.

20 **ADV SELEKA SC:** You are there Mr Matona?

MR MATONA: Yes.

ADV SELEKA SC: It is an article by AmaBhungani titled
New Eskom CEO Matona is weak say ex colleagues. Now
there is a mixed reaction about your appointment – the
article is dated 22 August 2014. But we need to see what

the Minister said about you or is said to have said about you at the time. Turn the page to 322. The last two paragraphs do you see that one starting announcing Matona's appointment?

MR MATONA: Yes.

ADV SELEKA SC: Yes. I want to read that.

10 “Announcing Matona's appointment Brown said that he would continue work he had started at the Department. Mr Matona has been closely involved in providing oversight to Eskom and the other state-owned companies in the Department Portfolio for the past three years. In recent months he has played a key role in the inter-departmental task team comprising of the Departments of Public Enterprises, Energy and National Treasury which have been working with Eskom to formulate a solution to the immediate challenges facing Eskom.”

20 Now if I read it excluding the other paragraphs it reads:

 “In recent months he has played a key role in the inter-departmental task team which have been working with Eskom to formulate a solution to the immediate challenges facing

Eskom.”

Were you aware of this at the time?

MR MATONA: Ja I remember seeing this article at the time.

ADV SELEKA SC: This is back on – way back in – on 22 August 2014.

MR MATONA: Ja. This was part of the media reaction to my appointment.

ADV SELEKA SC: So at the time the Minister believed that you having played a key role in the inter-departmental task
10 team which was working with Eskom you could assist in the formulation of a solution to the immediate challenges facing Eskom?

MR MATONA: Yes. And Chairperson I had already alluded to this role which I had played prior to going to Eskom which resulted in a decision to allocate – I think it was a first support on a bail out from [00:17:56] to Eskom on account of the financial challenges. So it was company that I was familiar with – familiar with some of the core challenges as it were. So it was you know Eskom was no stranger to a very
20 large extent. Obviously, there were things I did not know which I discovered when I got there. But in general terms you know I – I knew the company. I knew the issues and I think this is – this is a correct – this would be the – an accurate reflection of the sentiment of the Minister at the time. So when I saw these words it resonated with you know

the way I thought she perceived me. After all if she did not - if she did not believe what she said here she would not have taken forward the you know the recommendation for my appointment to Cabinet as it were. So she took that to Cabinet because – and I presume she had also consulted you know politically you know in terms of this appointment as it were.

CHAIRPERSON: So at the time for your appointment as CEO – Group CEO of Eskom Minister Lynne Brown had to
10 take your name to the Cabinet?

MR MATONA: Correct.

CHAIRPERSON: And say to the Cabinet she was recommending that Cabinet should approve your appointment?

MR MATONA: Correct.

CHAIRPERSON: And which would mean she thought that you would be up to the job at Eskom?

MR MATONA: Correct.

CHAIRPERSON: Yes. Now between the time you started as
20 Group CEO of Eskom I think it was said on the 1 October or November?

MR MATONA: 1 October correct Mr Chairperson.

CHAIRPERSON: 1 October between that time and the time when you were suspended on the 11 March 2015 had the Minister had occasion to express any reservations about you

having been appointed – expressing any reservation to you or had she complained about anything that she thought you were not able to do properly as Group CEO of Eskom?

MR MATONA: Not at all – not at all.

CHAIRPERSON: She had never?

MR MATONA: She had never done that. And because we had worked together before there was in a sense an open line of communication.

CHAIRPERSON: Yes. Yes.

10 **MR MATONA**: I would typically for example where load-shedding was to be – was to [00:20:52] I would call her.

CHAIRPERSON: And notify her.

MR MATONA: And say Minister please do not be surprised.

CHAIRPERSON: ja.

MR MATONA: We have reached this stage where we now have to deal with this.

CHAIRPERSON: Ja.

MR MATONA: So – so the relationship was cordial.

20 **CHAIRPERSON**: Yes. So – so as far as you knew she – you expected her to still form the same view as she had held when she took your name to Cabinet

MR MATONA: Absolutely.

CHAIRPERSON: Yes.

MR MATONA: Absolutely.

CHAIRPERSON: And the board itself I know that we said it

had hardly worked with you had it prior to the 9th expressed any concern about anything on your part prior to the 9th March?

MR MATONA: None whatsoever.

CHAIRPERSON: Yes.

MR MATONA: Chairperson.

CHAIRPERSON: And prior to the commencement of the meeting of the 11th March had the Board or the Chairperson or anybody ever expressed any dissatisfaction with your performance or reservations about your abilities?

MR MATONA: None whatsoever.

CHAIRPERSON: Yes. Okay.

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: You may continue. So Mr Matona let me – let us carry on on that line. If the board were to say, well we suspended him because he was giving unreliable information to the War Room. What would be your reaction to that?

MR MATONA: That would be absolutely incorrect as it were and I know that there is something which was put out there you know as a justification for a suspension. But up to today if you asked anybody would you indicate – what specific information inconsistency is attributable to Mr Matona I do not know. Nobody said well here you are this – you said this on such and such a day and then you came back and said - and said something else at a later stage. Nobody had done

that. To a point where I ended up concluding that it is possible that they had got understand information that there has been submitted and this is – refers to the War Room you know the information that was submitted to the War Room. The – there was a lot of complexity both in terms of the operations which is the generation and the finances of the company. They change on an on-going basis as it were. So the information naturally evolves and changes and if you wanted information today it would have to be as of the point
10 where you require it. And it will be different to the previous sort of iteration. I imagine that maybe this is what is inconsistent, unreliable information was about but again I cannot – nobody said well, as a – here is the evidence he said this today and this is what he said the next day. So I do not buy – I do not buy that argument as it were.

ADV SELEKA SC: Yes. Well there is another allegation by a member of the Board. If you go to Item 10 in...

CHAIRPERSON: What page is that?

ADV SELEKA SC: Item 10.

20 **CHAIRPERSON:** Go to divider number 10?

ADV SELEKA SC: Yes. You will submit it – submit it now Chairperson.

CHAIRPERSON: Yes.

ADV SELEKA SC: That is – are you there Mr Matona?

MR MATONA: I am.

ADV SELEKA SC: That is on page...

CHAIRPERSON: When you speak to far away from the microphone, I cannot hear you.

ADV SELEKA SC: That is on page ...

CHAIRPERSON: 469?

ADV SELEKA SC: 469. Yes and page 469 you will see it is an affidavit. It said a statement but it is commissioned of Ms Veneta Klein. For the purposes of identification Mr Chair an admission into the record as...

10 **CHAIRPERSON:** Is that the statement that starts at 469 and goes up to 518?

ADV SELEKA SC: It goes up to ...

CHAIRPERSON: Or have I combined two statements?

ADV SELEKA SC: The other one is an annexure to the first.

CHAIRPERSON: Oh okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: So this – this the first one goes up to 491?

ADV SELEKA SC: Indeed Mr Chairperson.

CHAIRPERSON: Okay that is the one that you ...

20 **ADV SELEKA SC:** For record purposes we have marked it Exhibit U13.8. Now Mr Matona you have...

CHAIRPERSON: One second Mr Seleka.

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: I seem to have no pen here. I had two pens before lunch and it looks like I did not come back with

– thank you. You are asking that this statement starting at 469 be admitted as Exhibit?

ADV SELEKA SC: U13?

CHAIRPERSON: Mm? U13?

ADV SELEKA SC: U13.8.

CHAIRPERSON: Point 8?

ADV SELEKA SC: Point 8 Mr Chair.

CHAIRPERSON: Okay. And the statement by the Venete Klein starting at page 469 is admitted and will be marked as
10 Exhibit U13.8.

ADV SELEKA SC: Thank you Chairperson. Mr Matona you have already indicated that or testified that she was one of the board members?

MR MATONA: Correct.

ADV SELEKA SC: Now if you go to page 482 I just want to draw my attention to a paragraph. All two paragraphs in her ...

MR MATONA: 482 correct?

ADV SELEKA SC: 482 it is actually her affidavit. So in
20 paragraph 4 – in paragraph 45 she says:

“Mr Matona referred his matter to the Labour Court Johannesburg for an order to set aside his suspension and allow him to return to work. This application was brought on an urgent basis and was opposed by Eskom at

the same time Mr Matona had lodged an unfair labour practice dispute with the permission for conciliation mediation and arbitration. The Labour Court found that there was no basis for urgency and dismissed the application in this regard. It nonetheless found in favour of Mr Matona in respect of procedural fairness of the suspension and referred the matter to the
10 CCMA for proper handling of the issues prior to it being heard at the Labour Court.”

Now the paragraph I want your comment on follows and she says:

“My reason for supporting...”

CHAIRPERSON: I am sorry I missed the page number now where you are reading.

ADV SELEKA SC: Paragraph 56.

CHAIRPERSON: 56. Okay alright.

ADV SELEKA SC: The same page.

20 **CHAIRPERSON:** Yes Okay.

ADV SELEKA SC: Then she says:

“My reason for supporting Mr Matona’s departure was that he did not appear to have a handle on the turnaround of the organisation which was particularly critical at

that point in time. Doctor Ngubane met with him and discussed his possible departure from Eskom. An agreement was subsequently reached with Mr Matona and he exited the services of Eskom.”

That first sentence that in her view she supports ... because he did not appear to have a handle on the turnaround of the organisation. Your reaction to that?

MR MATONA: Well you know if I had the opportunity to ask
10 Ms Klein the question would be on what basis ...[intervenes]

CHAIRPERSON: The factual basis of her statement?

MR MATONA: Exactly, exactly, she had basically only
...[intervenes]

CHAIRPERSON: Yes the bold statement.

MR MATONA: Sorry?

CHAIRPERSON: Because she makes a bold statement.

MR MATONA: She makes a bold ...[intervenes]

CHAIRPERSON: There is no motivation given for it.

MR MATONA: Absolutely you know so as I have indicated
20 by the time we had a meeting of the 11th of March which is the meeting that concluding with my suspension that would probably have been at least the second time of that time, so there's – she would not have had any basis to form any substantive impression of the nature to warrant such a bold conclusion, that's what I will say.

ADV SELEKA SC: But more importantly is the question also whether did she express that view to you?

MR MATONA: Never.

CHAIRPERSON: The turnaround structure that she is talking about – ja – or she says he didn't appear to have a handle on the turnaround of the organisation. Now how the organisation would be turned around was that set out in some document that you found in existence when you joined Eskom or would there have been a document that you put
10 together to say this is how we will handle the turnaround

MR MATONA: We had in fact as I have indicated, since I had been at Eskom from October in the five months the main thing which had preoccupied probably entirely my time is the turnaround of the company. Work had been done prior to that, so this was not a question of starting from nothing. Work had been done, good ideas had been developed, good solutions had been developed that needed to be taken forward, so we took all of these, consolidated them with the benefit of the support of government through the war room
20 and had elaborated a turnaround, a turnaround strategy which I presented to the Board on their arrival in the induction and as I indicated I spoke to the key issues of the turnaround in the meeting of 11th in my report to the Board.

Now let's say Ms Klein did not agree or find any shortcomings in what I said she – nobody commented,

nobody said anything to the information that I had submitted, so you know it is a bit disingenuous for her in this affidavit after the fact to make such an assertion as she has made here.

CHAIRPERSON: Was she part of the people at Eskom who would have had the opportunity of engaging with your proposed strategy, turnaround strategy or not?

MR MATONA: Correct, so ...[intervenes]

CHAIRPERSON: Yes, and had she participated actively in
10 that process?

MR MATONA: To my recollection she had been there throughout all of the meetings of the Board up to that point, she had been there.

CHAIRPERSON: Yes.

MR MATONA: So she would have heard me speak about the challenges of the company and what we propose to be done about that.

CHAIRPERSON: Yes, and she never raised any issues about there being anything wrong with your strategy or your
20 ability to handle it.

MR MATONA: Not at all.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Thank you Chairperson. Right let's move on then, dealing with the aspect of your settlement negotiations with them. Two Board members have submitted

affidavits to this Commission, one of which is this one we're dealing with, and in the next page, page P – page 483, paragraph 57 Ms Klein carries on to say with regards to Mr Koko I was present at a meeting with him, he was the one executive who was not interested in leaving the employ of Eskom. He indicated that he wanted his job back. With that in mind I want to take you to another affidavit which is on page 542, that's item 12, page 542. It is an affidavit of Dr Ngubane.

10 For the record Chairperson the affidavit is marked Exhibit U13.11 and we ask that it be submitted into the record.

CHAIRPERSON: Is that the one for Dr Ngubane?

ADV SELEKA SC: Correct Chairperson. Dated 4 August 2020.

CHAIRPERSON: U13?

ADV SELEKA SC: U13.11.

CHAIRPERSON: And the affidavit of Dr Baldwin Siphon Ngubane will be handed in and marked as Exhibit U13.11.

20 **ADV SELEKA SC:** Thank you Chairperson. Are you there Mr Matsona?

MR MATONA: Yes.

ADV SELEKA SC: I also want to refer you to a paragraph in Dr Ngubane's affidavit on page 555.

MR MATONA: Yes.

ADV SELEKA SC: Paragraph 4.28, I am going to read 4.28 and 4.29, it says:

“Whilst the inquiry was pending Mr Matona had filed a labour dispute with the CCMA against Eskom. Following the conclusion of the inquiry Mr Matona negotiated and settled the dispute out of court and left Eskom. This process was handled by the P & G Committee, I was not involved with it.”

In the next paragraph he says:

10 “Prior to that I have been tasked by the Board to attend the CCMA proceedings which Mr Matona had instituted against Eskom. During one of my interactions with Mr Matona at the CCMA I suggested to him at my own initiative that he should consider returning to his position. However Mr Matona was too upset with the whole saga and made it clear to me that he would not return to Eskom.”

Any reaction to paragraph 4.2.9 Mr Matona?

MR MATONA: No, that is not true ...[intervenes]

20 **ADV SELEKA SC:** For ease of reference let me take you point by point, so you have already testified that Mr Ngubane, Dr Ngubane, I beg your pardon, was one of the officials who represented Eskom at the CCMA?

MR MATONA: Correct.

ADV SELEKA SC: Now he says during his interactions with

you he requested that you consider returning to your position.

MR MATONA: No, I deny that, there is no such a thing. He never did, remember he is the – he is the one who had requested a postponement on the basis that he needed to consult with the Minister which postponement was granted, so I never had any such conversation with Mr Ngubane, I deny that.

ADV SELEKA SC: Well that's him suggesting to you that
10 you should consider returning to your position.

MR MATONA: If I may Advocate, I mean Chairperson this sounds irrational, here is the Board that has ...[indistinct] Mr Ngubane was a member, takes a decision which to my knowledge was a unanimous decision, I have no record of him having defended the decision to suspend me and then a few weeks, weeks he has changed his position, he is of the view that I should go back to work, it does not make sense. So this is – there cannot be any basis to such a claim.

ADV SELEKA SC: Well I thought as you testified you did
20 say that you had taken your dispute to the Labour Court and to the CCMA for the relief you have stated this morning which was to get your job back.

MR MATONA: Exactly. Exactly.

CHAIRPERSON: Well why – are you able to say whether in making this statement Dr Ngubane must be mistaken if he

thought he ever expressed that you should consider going back, or you think that he knows that the statement is not true but nevertheless makes it, or are you not able to say?

MR MATONA: I am unable to say Chairperson the basis upon which Mr – Dr Ngubane, sorry, has made a claim that he suggested to me. I would definitely have remembered. I would definitely have remembered if he had made such a suggestion, I would have grabbed it, because at that point I was aggrieved, I needed my job back and my dignity restored
10 so I would have grabbed that opportunity so there is no such a thing.

CHAIRPERSON: Because you have gone to court and CCMA to precisely achieve that, get your job back, that is why you had engaged lawyers for whom you were going to pay out of your own pocket to get the job back so if he had mentioned that maybe you should consider going back you are likely to have an interest in that.

MR MATONA: I would have, I would have because for a start it would have probably suggested a change of heart on
20 the part of the Board and it would have probably suggested that maybe they made a mistake so maybe I could work with them, so I would have gone. The only reason that I decided to move on was because I realised that I was never going to work well with this Board, I was never going to get the necessary support that a CE requires from a Board that had

taken the sort of action that Eskom Board did.

CHAIRPERSON: Mmm.

ADV SELEKA SC: Thank you Chair. But could it be that, Mr Matona, what you have just said is what he is saying in the last sentence of that paragraph, that Mr Matona was too upset with the whole saga and made it clear to me that he would not return to Eskom.

Now remember that sentence presupposes that he made the suggestion, which he said he did, in the previous
10 sentence.

MR MATONA: Ja, I can see this, that I was too upset. Yes, I was upset but I was not too upset to even walk away from my job if I could get it back, certainly not to that extent.

ADV SELEKA SC: So I think, you know, to go back to the Chairperson's question earlier, what one is trying to determine from your testimony and what we see here, you had said to the Chairperson Mr Romeo Kumalo said to you there is no way of you going back but we see the statement
20 by one of the persons you have said that Ngubane was present in your settlement discussions, he is saying well, the suggestion was made by him for you to consider coming back. Now we would have to be able – the Chairperson has got to be either to say you either have no recollection of him saying that or that you know he did not

say that.

MR MATONA: I know he did not say that.

CHAIRPERSON: Well, did you say he was one of the Eskom representatives present when you were told going back to your job was out of the question?

MR MATONA: Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: It is just that he – oh well – now he says
10 in the paragraph concerned that – that is 429.

“During one of my interactions with Mr Matona at the CCMA, I suggested to him at my own initiative that he should consider returning to his position.”

So there was the first meeting, there was the second meeting. It was at the second meeting that you were told going back to your job was out of the question.

MR MATONA: Correct.

CHAIRPERSON: So it cannot be that one. It cannot be that he said that – it cannot be that it would be that one
20 and it could not be the second one. So the question would be whether prior to the first meeting maybe when the conciliation process was postponed at the CCMA whether it might have been during that time.

MR MATONA: No.

CHAIRPERSON: You say at no time did he ever [inaudible

– speaking simultaneously]

MR MATONA: At no stage whatsoever, ja, Chair.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Thank you, Chair. Let us go back to paragraph 4.28, he says:

“Whilst the inquiry was pending Mr Matona had filed a labour dispute with the CCMA against Eskom. On the conclusion of the inquiry Mr Matona negotiated and settled the dispute out of court and left Eskom. This process was handled by the P & G committee. I was not involved with it.”

Now was he involved or not involved in the conclusion of your settlement at Eskom?

MR MATONA: No, he was. He was. I distinctly remember at least two of those meetings outside of the CCMA where Dr Ben Ngubane was present even though, as I indicated earlier, the person who was doing talking on behalf of Eskom was Mr Romeo Kumalo but a delegation of Dr Ngubane, Mr Kumalo and Ms Klein, those are the people that I had interactions with.

ADV SELEKA SC: Well, we have a copy of your settlement agreement with Eskom on page 330, that is item 7, for your ease of reference. It will start on page 331, Chairperson. It also has to be admitted.

CHAIRPERSON: Yes.

ADV SELEKA SC: Chairperson, we have marked it EXHIBIT U13.6.

CHAIRPERSON: EXHIBIT U13.6, the settlement agreement between Eskom Holdings SOC Limited and Mr Tshediso John Matona appearing at page 331 is admitted and marked as EXHIBIT U13.6.

SETTLEMENT AGREEMENT BETWEEN ESKOM AND MR MATONA HANDED IN AS EXHIBIT U13.6

ADV SELEKA SC: Thank you, Chairperson. I should point
10 out before going into what I need to show you, Mr Matona and Chairperson that the copy in the file is not a signed settlement agreement. However, there is a file prepared in the Commission which has a signed settlement agreement ongoing to that leaf, Chairperson, to use that one.

CHAIRPERSON: Okay. But are the same? Identical?

ADV SELEKA SC: It is used – it is contained in a bundle that will be used during the course of the week.

CHAIRPERSON: Okay.

ADV SELEKA SC: I will provide Mr Matona with it, to
20 have a look at it.

CHAIRPERSON: Okay.

ADV SELEKA SC: And compare it with the one in his file.

CHAIRPERSON: Yes.

ADV SELEKA SC: The signed was belatedly received from Eskom.

CHAIRPERSON: Okay.

ADV SELEKA SC: Hence there is nothing in his bundle. Mr Matona, what has been handed up to you is also titled settlement agreement. It indicates that it is a settlement agreement between yourself and Eskom. What I was pointing out, the last page of the copy in your bundle is unsigned, but the one I have handed up to you is signed. Please have a look whether the signed document is the settlement agreement that you have signed.

10 **MR MATONA:** I am sorry, Advocate, this is not the copy of my settlement agreement because it bears the name of Mr Ben Ngubane.

ADV SELEKA SC: Oh sorry, this one? It had an extra page which was incorrect.

MR MATONA: Ja.

ADV SELEKA SC: Oh, I see why, Mr Matona, sorry, the pages are back to back.

MR MATONA: The pages are back to back?

ADV SELEKA SC: Yes.

20 **MR MATONA:** Okay because I see this one still has the front page.

ADV SELEKA SC: Go to the front page.

MR MATONA: Okay, let us see.

ADV SELEKA SC: Where it is written settlement agreement.

MR MATONA: Okay. I see that – yes, yes, that is right. I think it is put together with Mr Marokane’s agreement.

ADV SELEKA SC: Just follow the page numbering.

CHAIRPERSON: One second? Is there a spare sanitizer that you could give to the witness so as and when he is given documents he can sanitize?

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Okay.

MR MATONA: Ja, I see a page – the signature page that
10 has my signature so this would be the copy, ja.

ADV SELEKA SC: Let us start at the beginning where the page – the covering page with Settlement Agreement on it so that once you have looked at it we can hand it up to the Chairperson. Ja, I think there is a bit of a mix-up, Chair. The flagged one, Mr Matona...

MR MATONA: Yes.

ADV SELEKA SC: The flagged one, put it aside, the flagged page.

MR MATONA: Ja.

20 **ADV SELEKA SC:** Put it aside.

MR MATONA: I am looking for the – the one I had previously did have on the cover my name.

ADV SELEKA SC: Yes.

MR MATONA: But I now have part of my agreement with my signature.

ADV SELEKA SC: Chairperson, with your permission may I ask the investigator to help him find it?

CHAIRPERSON: Yes, yes.

MR MATONA: I am missing the cover page.

ADV SELEKA SC: Ja.

MR MATONA: I am missing the cover page, I think – no, I think it is – ja, I think it is fine, I am only missing the cover page. Thank you, sir.

ADV SELEKA SC: So you have the settlement agreement
10 page?

MR MATONA: Yes.

ADV SELEKA SC: And the next page is table of contents.

MR MATONA: Yes.

ADV SELEKA SC: And then you have – now I am using the paginated – not paginated but printed page number. Page 1.

MR MATONA: Page 1 at...

ADV SELEKA SC: Below the red pagination.

MR MATONA: Okay.

20 **ADV SELEKA SC:** “Whereby the parties agree as follows.
1. Interpretation”

The next page, you do not have that?.

MR MATONA: Interpretation, correct, yes.

ADV SELEKA SC: It is paragraph 1.2.3, written Mr T J Matona.

MR MATONA: Yes.

ADV SELEKA SC: 1.2.3.

MR MATONA: Yes.

ADV SELEKA SC: “Means Mr Tshediso John Matona.”

MR MATONA: Yes.

ADV SELEKA SC: Okay, paragraph 1.2.6 reads:

“The termination date means 31 May 2015.”

MR MATONA: Correct.

ADV SELEKA SC: Then paragraph 2, recordal. It reads
10 in paragraph 2.1:

“Mr T J Matona is employed by Eskom.”

MR MATONA: Yes.

ADV SELEKA SC: Do you see that? Go to the next page,
it should be – should start with paragraph 2.2.

MR MATONA: Yes.

ADV SELEKA SC: “The parties have mutually agreed to
terminate this employment contract.”

MR MATONA: Yes.

ADV SELEKA SC: You see that?

20 **MR MATONA:** Correct..

ADV SELEKA SC: So your name again appears at 3.1:

“By mutual agreement Mr Matona...”

MR MATONA: Yes.

ADV SELEKA SC: 3.4, Mr Matona agrees that appointing
a nation of employment.

MR MATONA: 3.4?

ADV SELEKA SC: 3.4.

MR MATONA: Yes.

ADV SELEKA SC: Yes. 3.5 also Eskom will give to Mr Matona on or before 15 June.

MR MATONA: Yes.

ADV SELEKA SC: The next page, paragraph 4.3, the next page ...[intervenes]

MR MATONA: Yes.

10 **ADV SELEKA SC:** Paragraph 4.4.

MR MATONA: Yes.

ADV SELEKA SC: The next page it has clause 6 confidentiality.

MR MATONA: Yes.

ADV SELEKA SC: Clause 7 statements.

MR MATONA: Yes.

ADV SELEKA SC: And there is your name again Mr T J Matona shall not make any written or oral statements.

MR MATONA: Correct.

20 **ADV SELEKA SC:** Then paragraph 8, breach or clause 8.

MR MATONA: Yes.

ADV SELEKA SC: The next page clause 9, non-variation.

MR MATONA: Correct.

ADV SELEKA SC: The next page, clause 10 notices and *domicilium*.

MR MATONA: Correct.

ADV SELEKA SC: And 10.1 each party chooses the address set out opposite its name below as its address.

MR MATONA: Correct.

ADV SELEKA SC: You see that. Then the first address is Eskom, Megawatt Park.

MR MATONA: Correct.

ADV SELEKA SC: Then there's provision for your address Mr T J Matona. This one doesn't have your address, does
10 that one have your address?

MR MATONA: No, this one too doesn't have my address.

ADV SELEKA SC: Do you recall completing it by filling in your address?

MR MATONA: I will not recall but I signed it because it has got my signature, so ...

ADV SELEKA SC: Let's go to the next page, clause 11, do you have it?

MR MATONA: Yes.

ADV SELEKA SC: It is general and then in clause 12
20 signature.

MR MATONA: Correct.

ADV SELEKA SC: Are you on the signature page?

MR MATONA: Yes.

ADV SELEKA SC: Do you recognise this document.

MR MATONA: I do.

ADV SELEKA SC: When was it signed?

MR MATONA: When?

ADV SELEKA SC: When, date of signing.

MR MATONA: Date, I have it signed on the 15th of May, that is the date that is reflected on it here.

ADV SELEKA SC: You signed it on the 15th of May?

MR MATONA: Ja.

ADV SELEKA SC: Which year?

CHAIRPERSON: Do we now know whether ...[intervenes]

10 **MR MATONA:** 15th of May 2015.

CHAIRPERSON: Do we now know whether the unsigned copy that I have is exactly the same as the signed settlement?

ADV SELEKA SC: Chairperson ...[intervenes]

CHAIRPERSON: Or do we not know that?

ADV SELEKA SC: Well I know I have checked them.

CHAIRPERSON: Ja.

ADV SELEKA SC: But the intention is to rely on the signed copy.

20 **CHAIRPERSON:** Ja.

ADV SELEKA SC: Ultimately.

CHAIRPERSON: Okay.

ADV SELEKA SC: So what I will have to do for the Chairperson is to have copies prepared of the signed document in order to replace the unsigned.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Mr Matona who signed the document on behalf of Eskom?

MR MATONA: I beg yours?

ADV SELEKA SC: Who signed the settlement agreement on behalf of Eskom.

MR MATONA: On behalf of Eskom it is Zithembe Khosa, acting Chairperson of – Acting Chairman of the Board.

ADV SELEKA SC: Shall we hand up the document to the
10 Chairperson? I beg leave to hand up, do you need a cover page, do you need a cover?

CHAIRPERSON: Is that the signed copy?

MR MATONA: There's a page missing here, ja, this has got my name and it's got ...[indistinct].

CHAIRPERSON: Where must this fit in?

ADV SELEKA SC: We will mark it Chairperson I think we have already identified it, there's U13.6.

CHAIRPERSON: The holes on the front page are on the wrong side it seems. Does somebody have a punch so I
20 can punch it on the right side. The right side will be the left side of the page. We can move on while somebody is sorting this out.

ADV SELEKA SC: Indeed sir, thank you.

CHAIRPERSON: Once it's ready we can attend to it.

ADV SELEKA SC: Mr Matona you said you signed on the

15th of May 2015.

MR MATONA: Correct.

ADV SELEKA SC: Would you know the investigation which Dr Ngubane refers to in that paragraph we've read whether it did take place.

MR MATONA: I can't be sure for a fact because as I indicated I was supposed to have been also interviewed as part of the investigations but I was never interviewed, I had no opportunity whatsoever to make any input but I
10 believe the investigation was undertaken and concluded and a report of the investigation was published by Eskom?

ADV SELEKA SC: Well the date 15 May 2015 is the date when you signed, it was publicised in the media and I want to refer you to the media article. In April 2015, this is before you signed your settlement agreement, the media article had something to say or to report on what was said by Minister Lynne Brown.

I am going to hand it up, it is also contained in a separate bundle but not in your bundle, it will be used in
20 due course in the Commission. Chairperson I have two copies, I beg leave to hand up one to the Chairperson and to you Mr Matona.

CHAIRPERSON: Why ...[intervenes]

ADV SELEKA SC: Chairperson I ...[intervenes]

CHAIRPERSON: Okay I have just found something but I

think I found ...[intervenes]

ADV SELEKA SC: Is the back to back.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: If it is taken out of the file it confuses.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: If I may use the pagination at the top of the page, page 613, 614 and 615. 613, 614 and 615. Chairperson we could also admit it as an exhibit in this bundle of U13 or we could keep it in U16.

10 **CHAIRPERSON:** I am sorry, what is it again, it is an article?

ADV SELEKA SC: It is a media article ...[intervenes]

CHAIRPERSON: From what application, do we know?

ADV SELEKA SC: It is from Politi.org.

CHAIRPERSON: Hm?

ADV SELEKA SC: So it is publicised on the website, Politi.

CHAIRPERSON: Oh. Okay, to it is 613, 614, 615, you would like it to be admitted, does it start at 612, is that
20 where it starts, or just start at 613?

ADV SELEKA SC: 612 should be omitted.

CHAIRPERSON: 612 should be omitted.

ADV SELEKA SC: Should be omitted Chairperson.

CHAIRPERSON: Well I will draw a line across okay.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: So it should start at 613.

ADV SELEKA SC: 613, 614 and 615.

CHAIRPERSON: Okay and it is to be Exhibit?

ADV SELEKA SC: It will be Exhibit 13.15

CHAIRPERSON: The article entitled “Brown moves to stabilise Eskom leadership with appointment of Molefe as Acting CEO” dated 17th April 2015 and written by ...[intervenes]

ADV SELEKA SC: The date is 17 April 2015.

10 **CHAIRPERSON:** Ja, written by Terence Prima Media Africa.

ADV SELEKA SC: Yes.

CHAIRPERSON: This I think will be marked Exhibit U13.15.

ADV SELEKA SC: Point 15, thank you. Mr Matona you see that media article?

MR MATONA: Right.

ADV SELEKA SC: Are you familiar with it, have you seen it before?

20 **MR MATONA:** No I don't recall seeing this article before.

ADV SELEKA SC: Well the headline reads “Brown moves to stabilise Eskom leadership with appointment of Molefe as Acting CEO”, can you see that?

MR MATONA: Yes.

ADV SELEKA SC: And then there's a photo there of

Minister Brown at the time, the catch phrase below the photo says “Minister Lynn Brown in foreground with Brian Molefe far left and Deputy Minister Bulelani Magwaneshe at the Eskom announcement”, and on the right hand side of the photo is written Public Enterprises Minister Lynn Brown announced that Transnet’s Brian Molefe had been seconded as Acting CEO of Eskom with immediate effect. The article itself reads:

10 “Brown said the appointment form part of the Government’s effort to stabilise the Eskom leadership following the suspension of four senior executives, including CEO Tshediso Matona. Speaking at Megawatt Park on Friday Brown indicated that although the suspensions of Matona and the other executives were due to be lifted in less than three months she wanted Molefe to remain at Eskom for at least a year to oversee a turnaround process as he had done at both Transnet and the Public Investment Corporation.”

20 May I pause there and ask you by this time you are still on suspension?

MR MATONA: Correct.

ADV SELEKA SC: By this time your matter is still pending at the CCMA.

MR MATONA: Correct.

ADV SELEKA SC: Did you know that the Minister had made this decision at the time?

MR MATONA: I did eventually hear because it was well publicised that Mr Brian Molefe had been seconded from – well, moved, I think from Transnet to Eskom, so I knew that.

CHAIRPERSON: So this article you said was written on the 17th, it is dated 17 April 2015, does the article say on what date this announcement by Minister was made? Was
10 it made on that date, was it made on the previous day? Do we know?

ADV SELEKA SC: It does not seem to indicate that, Chairperson.

CHAIRPERSON: Yes.

ADV SELEKA SC: But you can make it out, the article is dated the 17th, it says:

“Speaking at Megawatt on Friday...”

CHAIRPERSON: Yes.

ADV SELEKA SC: So we can check ...[intervenes]

20 **CHAIRPERSON:** You would have to check what day of the week the 17th was. So probably it was a few days before the 17th, it was either the previous day or a few days before.

ADV SELEKA SC: I am told it was the same day, the 17th is a Friday.

CHAIRPERSON: Was a Friday.

ADV SELEKA SC: Of April, yes.

CHAIRPERSON: Oh.

MR MATONA: The same day.

CHAIRPERSON: Okay, okay. So – yes, continue, Mr Seleka?

ADV SELEKA SC: So looking at what is attributed to Minister Lynne Brown at the beginning of that article, namely:

10 “Speaking at Megawatt on Friday, Brown indicated that although the suspensions of Matona and the other executives were due to be lifted in less than three months she wanted Molefe to remain at Eskom for at least a year to oversee a turnaround process as he had done at both Transnet and Public Investment Corporation.”

So three candidates had been identified to replace Mr Molefe at Transnet - that is something else. Later on:

20 “Brown stressed that she had no intention of unfairly discriminating against Mr Matona, was only appointed to the position in late 2014 but she needed the skills and experience that Molefe possessed immediately. I need that support now, she said, reporting that Molefe’s secondment had been canvassed and endorsed by President Jacob

Zuma, Deputy President Cyril Ramaphosa and the Eskom and Transnet boards.”

And then:

“She did not discount Molefe and Matona working together for a period.”

But – so she says, according to the article:

10 “She also did not discount Molefe and Matona working together for a period, “I would like Molefe for the full year to actually work in turning around Eskom and if that means with Mr Matona beyond three months time, we will find another title for him.”

Would you agree that it seems that if what is attributed to her is what she said, by this time she was clear that if you were to continue at Eskom they would have to find another title for you but you would not be CEO.

MR MATONA: I think it is implied ...[intervenes]

CHAIRPERSON: It is implied.

MR MATONA: It is implied by the ...[intervenes]

20 **CHAIRPERSON:** Statement.

MR MATONA: By the statement, Chairperson.

CHAIRPERSON: Yes.

MR MATONA: And if you link it back to the position of, you know, I cannot go back to my position.

CHAIRPERSON: Yes.

MR MATONA: Ja, they will kind of tie up.

CHAIRPERSON: Yes. What is strange, however, is that – or rather, what she seems to be saying or revealing is that she believed Mr Molefe has some skills and experience that she thought Eskom needed and what is strange is, if that was the issue, why were you not approached to discuss the issue properly? Why were you suspended in circumstances where it is not clear exactly what you were suspended for unless it was some illegitimate reason.

10 **MR MATONA:** Absolutely, you know, Chairperson, and it turns out that Mr Brian Molefe is someone that I know very well.

CHAIRPERSON: Ja.

MR MATONA: Recalling the CEO of Transnet and when I was Director General. Of course, we also go back.

CHAIRPERSON: Ja.

MR MATONA: And so I know his abilities.

CHAIRPERSON: Yes.

20 **MR MATONA:** And, you know, I would not fault him, as it were.

CHAIRPERSON: Yes.

MR MATONA: For his suitability for the role.

CHAIRPERSON: Yes.

MR MATONA: I think the question was the circumstances in which he was brought as it impacted in particular. I

think it was untidy to say the least.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Thank you, Chair. Chairperson, I can confirm that the 17th was a Friday.

CHAIRPERSON: Okay.

ADV SELEKA SC: In 2015.

CHAIRPERSON: Okay.

ADV SELEKA SC: Now these pages of this article, must they go where those page numbers are supposed to go?

10 **ADV SELEKA SC:** No, they will have to change when they come into this file, Chairperson.

CHAIRPERSON: Oh, okay, okay.

ADV SELEKA SC: So we will regularise ...[intervenes]

CHAIRPERSON: You are going to put them separately so ...[intervenes]

ADV SELEKA SC: We will regularise in due course.

CHAIRPERSON: Okay, okay.

ADV SELEKA SC: And then while we are that, Chairperson ...[intervenes]

20 **CHAIRPERSON:** What will be important then, if the page numbers that we have used, namely – been talking about the article, 613 and so on.

ADV SELEKA SC: Yes.

CHAIRPERSON: If that is going to change, somebody will have to make sure that in the transcript where 613 they put

the correct...

ADV SELEKA SC: The correct, indeed, indeed.

CHAIRPERSON: Ja.

ADV SELEKA SC: And I have a copy of the settlement agreement that is signed, this is single sided, Chairperson, so it should not pose the problem of the double sided, when it is outside of the file. So I beg leave to hand it up. Let Mr Matona first look at it and you will hand it up to the Chair. Is that the correct one?

10 **MR MATONA:** Yes, this is now correct.

ADV SELEKA SC: Thank you.

MR MATONA: Can I just hand it up?

CHAIRPERSON: Can I ask this, Mr Matona, going back to the article at page 614, it says at the bottom:

20 “Brown also announced that the terms of reference of the so-called “deep dive” probe of Eskom’s finances, maintenance protocols, diesel costs and coal supply and costs had been finalised by the board., the four executives were suspended in mid-March in order for the investigation to proceed on an unfettered basis.”

So this paragraph seems to suggest that it refers to the same inquiry that was contemplated at the meeting of the 11th March.

MR MATONA: Correct.

CHAIRPERSON: And that this inquiry had been completed by the 17 April.

MR MATONA: No, actually on the contrary, Chairperson, it says that the terms of reference, only at that point.

CHAIRPERSON: Oh, oh, oh.

MR MATONA: The terms of reference.

CHAIRPERSON: Oh, is it the terms of reference that had been finalised?

MR MATONA: Yes, ja.

10 **CHAIRPERSON:** At the inquiry.

MR MATONA: Ja, it appears that it hadn't started by ...[intervenens]

CHAIRPERSON: Yes. Okay, no, no. No, that is why I was wondering how could have been finalised so quickly. Ja, okay, alright.

ADV SELEKA SC: Thank you, Chairperson. Mr Matona, there is a – you have provided the Commission with correspondence because I am talking of this terms of reference. You had provided the Commission with what
20 you and your attorneys had addressed as a letter to the – to Eskom. Can we look at that while we are dealing with the terms of reference. You see what you sought from them, meaning from Eskom, that is on page 654, item 14, for your ease of reference. Item 14.

MR MATONA: 644 you say?

ADV SELEKA SC: Page 654.

MR MATONA: 654.

ADV SELEKA SC: You are there?

MR MATONA: Yes.

ADV SELEKA SC: Can you identify the document to the Chairperson?

MR MATONA: Yes, so this is the letter that was sent to Eskom by my attorneys in the legal challenge against my suspension.

10 **ADV SELEKA SC:** So the document is on Chewable Thompson and Hansom letterhead attorneys dated 18 March 2015. So this is seven days after your suspension which was on the 11 March.

MR MATONA: Correct.

ADV SELEKA SC: The letter is addressed to Mr Zola Tsetse, Chairperson Eskom Holdings. This reads:

“Dear Sir, Mr Tshediso Matona’s Suspension. We act on behalf of Mr Tshediso Matona who is employed as Chief Executive at Eskom, our client.

20 Our client’s suspension and the letter specifying the basis on which the suspension was effected refer. We advise as follows:

Reasons for the suspension. It appears from the notice of suspension dated 11 March 2015 that our client has been suspended for the following

purpose. Due to the nature of the proposed independent inquiry and the importance of it being free from any influence from leadership in the organisation and in the completion of an investigation into these matters, your client should be without any loss of benefits and pay. Apart from this purpose, no other reasons for this suspension have been provided. In particular no allegations of misconduct on the part of our client had been made.

10 In the circumstances, our client was suspended without a fair reason. Moreover, our client's suspension has caused him irreparable harm, aggravated no doubt by the unlawful and unfair manner in which the suspension had been effected. In addition, our client's suspension has been placed in the media with confusion as to the basis for the suspension creating an atmosphere of wrongdoing when none exists. This has affected our client's personal and professional life and has caused him

20 irreparable harm and will continue to cause him further harm if it is not undone. We have no doubt that you are aware of the legal principles and the jurisprudence that govern suspensions and in the circumstances will agree with us that Eskom has clearly not met the legal threshold for substantive

fairness in relation to the suspension.”

CHAIRPERSON: Do you want to go to the real issue, you want to raise a [inaudible – speaking simultaneously]

MR MATONA: That portion was meant to do exactly that.

CHAIRPERSON: Ja.

ADV SELEKA SC: Let us go the next page, Mr Matona.

Under the heading “The Inquiry”, paragraph 4 says:

10 “Without prejudice to our client’s rights in relation to his suspension and in light of your assertion that an independent inquiry would be conducted into the possibility that the power delivery may be compromised by either intentional or negligent conduct please advise who will conduct the inquiry, what is the nature of the inquiry, is it an internal, external, professional, forensic or other type of investigation? What are the terms of reference of that inquiry, what kind of process will the investigator or the investigation team undertake in order to conduct the inquiry? When will the inquiry
20 commence and when will it be concluded?”

Now you specifically asked there, or your attorneys on your behalf, about what the terms of reference were of that inquiry. You see that on paragraph 4.3.

MR MATONA: Correct.

ADV SELEKA SC: Were you given the terms of

reference?

MR MATONA: No. The inquiry or purported inquiry itself, as I gathered at the time, got into a space of extreme uncertainty as to the terms of reference when it was going to start, whether the investigator was properly appointed, the result of which it was delayed, as it were, and frankly, Chairperson, I lost really any interest in that inquiry, it was neither here nor there for me except of course that when it was concluded, it again confirmed that no particular
10 wrongdoing had been found on my part.

ADV SELEKA SC: Well, there was a response to your attorney ...[intervenes]

CHAIRPERSON: Apart from – I am sorry, apart from finding that there had been no proper wrongdoing on your part, did it say anything about your abilities as CEO?

MR MATONA: No, not to knowledge.

CHAIRPERSON: Yes, but you were able to read it, you know what it said.

MR MATONA: I actually was never furnished a copy of
20 that.

CHAIRPERSON: Yes.

MR MATONA: In the end, because I exited Eskom.

CHAIRPERSON: Yes. Did you find a copy in one or another - in this age of technology or not?

MR MATONA: I have not been to establish that,

Chairperson.

CHAIRPERSON: To find a copy.

MR MATONA: I need to draw the Chairperson's attention to the fact that it subsequently became a form of controversy around the report.

CHAIRPERSON: The report.

MR MATONA: The report.

CHAIRPERSON: Ja.

MR MATONA: Which version, you know? In the end there
10 were several versions, you know, some which appear to have been – what is the word, redacted.

CHAIRPERSON: Ja.

MR MATONA: Certain aspects of the report removed from it, as it were. There was controversy which I am sure the Commission might be interested to look at.

CHAIRPERSON: Yes.

MR MATONA: What is important is that when it was released by Eskom in the media, one of the statements that had been made was that no wrongdoing had been
20 found and I had subsequently been contacted by the media.

CHAIRPERSON: Ja.

MR MATONA: To ask me how I felt about that.

CHAIRPERSON: Yes.

MR MATONA: Ja. And my position was that I had always

been innocent right from the word go.

CHAIRPERSON: Yes.

MR MATONA: So it did not come as surprise that nothing had been found against me.

CHAIRPERSON: Yes. So when they released it this was made clear that no wrongdoing on your part had been found.

MR MATONA: Correct.

CHAIRPERSON: And I guess if anything had been found,
10 namely whether you were not – had not performed properly,
that would have been said.

MR MATONA: They would have said so.

CHAIRPERSON: Ja.

MR MATONA: Ja.

CHAIRPERSON: Okay. Mr Seleka?

ADV SELEKA SC: Thank you, Chairperson. For the record, Chairperson, we will ask that the letter be admitted as EXHIBIT U13.9.

CHAIRPERSON: The letter from Cheadle Thomson &
20 Haysom Incorporated Attorneys addressed to Mr Zola Tsotsi, Chairperson of Eskom Holdings SOC Ltd dated 18 March 2015 is admitted and will be marked as EXHIBIT U13.9.

**LETTER FROM MR MATONA'S ATTORNEYS TO ESKOM
HANDED IN AS EXHIBIT U13.9**

ADV SELEKA SC: Thank you, Chairperson. Mr Matona, back to this media article, you were busy with U13.15. I have read the bottom – the paragraph at the foot of the page, 614:

“Brown also announced that the terms of reference of the so-called “deep dive” probe of Eskom’s finances, maintenance protocols, diesel costs and coal supply and costs had been finalised by the board.”

10 Now I have asked you whether did you become aware at the time of this media report.

MR MATONA: No, not at the time.

ADV SELEKA SC: This is now on the 17 April 2015, a month after you had requested what the terms of reference were. Now Minister Brown is said to have said they are finalised. Were you ever provided with a copy?

MR MATONA: I was never provided with a copy.

ADV SELEKA SC: The paragraph further reads:

20 “The four executives were suspended in mid- March in order for the investigation to proceed on an unfettered basis.”

You turn the page, just flip the page over to page 615, it reads:

“The delay in finalising the terms of reference that arisen as result of former Chairperson Zola Tsotsi

who resigned on March 31 having to sought to draft the terms alone. He had also not followed correct procedure in appointing Nick Linnell to oversee the investigation.”

Now I know that I have asked you about Mr Nick Linnell, now here it is alleged that a proper process was not followed in his appointment. Have you – or may I say, during your suspension, at a time immediately following your suspension, did you become aware of Mr Nick Linnell?

10 **MR MATONA:** No, not at the time. I did, however, pick up this name because it was featured in the media as a person who had been drafted in by Eskom to do various things linked to our suspension, linked to the inquiry. I eventually knew this – which is a point I was making to you, Chairperson, that there was a bit of controversy around this.

But the thing, now that we are here is, as we can see, we were suspended for a purported inquiry whose terms of reference, whose scope, probably to raise here, a
20 lot of things had not yet been decided about this inquiry, as you can see. You know, so – and yet the board saw it fit to suspend us. I find that curious, I could not help the opportunity to point that out, Chairperson.

CHAIRPERSON: Yes, you were suspended on the 11 March and on the 17 April, that is just over a month later.

Mr Molefe was announced as seconded to Eskom.

MR MATONA: Ja.

CHAIRPERSON: Mr Seleka, how far are we from finishing? We have gone past four o'clock.

ADV SELEKA SC: Well, let me – maybe 15 minutes, Chairperson.

CHAIRPERSON: Okay.

ADV SELEKA SC: Then we are done. Mr Matona, then you, as you say, signed a settlement agreement and you
10 left Eskom.

MR MATONA: Correct.

ADV SELEKA SC: Now you talk about in your affidavit an occasion where you meet with the former President, Jacob Zuma.

CHAIRPERSON: I am sorry, before you get to that because I suspect that might be the last topic.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Can we go back to his settlement agreement? Have we put it in or is it separate?

20 **ADV SELEKA SC:** Oh, yes.

CHAIRPERSON: Oh, we have not put it in. Have you got your settlement agreement, Mr Matona?

ADV SELEKA SC: That is on page 330 ...[intervenes]

MR MATONA: I do not know if ...[intervenes]

ADV SELEKA SC: Item 7.

MR MATONA: 7, it is 7, sorry.

ADV SELEKA SC: Item 7.

MR MATONA: Yes, Chairperson.

CHAIRPERSON: Yes, I am just having a look here.

ADV SELEKA SC: Page 331.

CHAIRPERSON: I note that in clause 3.5.2 of the settlement agreement – we have not admitted the settlement agreement, hey? I see I have not made any note.

10 **ADV SELEKA SC:** Yes, it is ...[intervenes]

CHAIRPERSON: Is it to be dealt with later?

ADV SELEKA SC: No, the reason is we want this one, this copy, Chairperson, to replace the unsigned.

CHAIRPERSON: Oh.

ADV SELEKA SC: The one which is already in the file.

CHAIRPERSON: Okay, no, that is fine. Ja, 3.5.2. There Eskom undertook to give you a favourable reference regarding your employment with Eskom and said they would not issue any other references to third parties
20 without your consent and agreement regarding the contents thereof. That seems to suggest to me that they had no problem with any conduct on your part and maybe also in regard to your performance. Is that how you understood that as well or not necessarily?

MR MATONA: No, precisely the point, Chairperson.

CHAIRPERSON: Yes.

MR MATONA: It says here that they would provide a favourable reference which means that they will represent me properly, as I should.

CHAIRPERSON: Ja.

MR MATONA: In terms of my competence and my integrity.

CHAIRPERSON: Yes.

MR MATONA: Because that - you know, nothing had been
10 found against me, as it were. This is what this clause –
that is how I understood it.

CHAIRPERSON: Yes.

MR MATONA: Of course, I have never had to go and request Eskom for any references.

CHAIRPERSON: Yes, yes. And 4.3 talks about some – I do not know whether it is pension benefits that you would have been entitled to if you had stayed on for a further ten months or so, is that right?

MR MATONA: Correct.

20 **CHAIRPERSON:** Just talk to that clause and tell me what that benefit was about?

MR MATONA: So I was caught up in a double jeopardy where I left the employ of government and in that sense kind of short-changed my pension but on the promise of a more rewarding role as CEO of Eskom.

CHAIRPERSON: Yes.

MR MATONA: And now that also had become almost, you know, upset, as it were. And so the minimum – in addition to the package that the top-notch package was to make good the difference – call it a penalty.

CHAIRPERSON: Ja.

MR MATONA: The pension penalty which Eskom agreed to pay.

CHAIRPERSON: Yes.

10 **MR MATONA:** To restore me to the position I would have been had I stayed – had I continued in my position as Director General.

CHAIRPERSON: Yes. So a settlement agreement was really – was made on the basis that you had done nothing wrong and, in any event, before the settlement agreement, they had also said you had done – you had not done anything wrong.

MR MATONA: Correct.

CHAIRPERSON: Ja, okay.

20 **ADV SELEKA SC:** Thank you, Chairperson. Mr Matona, if you will go to page 342.

MR MATONA: 342?

ADV SELEKA SC: Yes.

MR MATONA: Correct., I am there.

ADV SELEKA SC: Explain to the Chairperson what is that

document? It seems to be an annexure to your settlement agreement.

MR MATONA: Yes, so because the matter was a subject of public interest, media interest, I had also agreed that Eskom and myself will issue a media statement, which statement Eskom drafted and I looked at it and I was comfortable that the statement could go as drafted and hence it is attached to the agreement.

ADV SELEKA SC: So the document is marked annexure
10 A, official communication and it reads:

“Eskom and its Chief Executive, Mr M J Matona...”

Is that yourself?

MR MATONA: I think there is a typo on my initials, ja. But the correct initials are to follow. T J.

ADV SELEKA SC: T J.

CHAIRPERSON: Ja.

ADV SELEKA SC: I see the third line has T J.

20 “...have mutually agreed to part ways on an amicable basis. It is expressly noted that no misconduct is alleged by Eskom against Mr T J Matona. Mr Matona believes that the agreement to separate is in the best interests of Eskom to allow the board to pursue its plan of the company under the current leadership. Having considered his contribution at Eskom and his vast professional and

leadership experience, Eskom is of the view that Mr Matona can still play a vital role for South Africa whether he is commercial business or the public service. Eskom thanks Mr Matona for his contribution during his term at Eskom.”

That is the end of the document. So it reiterates that no misconduct is alleged against you.

MR MATONA: Correct.

CHAIRPERSON: Well, I see that last part which says:

10 “Eskom is of the view that Mr Matona can still play
a vital role for South Africa whether within
commercial business or the public service.”

That seems to express a sentiment that was expressed also in the settlement agreement between the government and Mr Pikoli when they settled his matter. You will recall that he was suspended in I think September 2008 before President Mbeki was recalled and there was an enquiry and chaired by Dr Ginwala and it made certain findings which included the finding that he was – he had integrity but I
20 think – I cannot remember whether it said he should be taken back. I think it may have said he should be taken back. Ja, I think it said he should be taken back but I think by the time it completed its work – I do not know whether President Mbeki was still there or whether it was President Motlanthe, he was not taken back, the matter – the report

was sent to parliament and parliament decided not to go along with the inquiry's outcome that he should be taken back and that was because I think – or some concern about some security-related issues I think about whether in seeking to prosecute certain people or somebody, he had appreciated, failed to appreciate the security risk and he then challenged that in court, the resolution of the National Assembly and ultimately the matter was settled but when it was settled, I think one of the clauses was that he was
10 suitable to be appointed to any senior position within public service and I think the settlement agreement that was concluded between President Zuma and Mxolisi had a similar clause as well. I just make that observation, it is interesting. You might not be able to say anything but if you want to say something you may do so.

MR MATONA: The only thing I can say, Chairperson, is that at a personal level, as well at a public level, one can never fully know the extent of the damage that something like this does to one's reputation, as it were. And so to the
20 extent that this commitment which Eskom made freely of their own volition helps to, I mean, ameliorate the situation, it is welcome. But at the end of the day, I think what matters is the fact that up to today no one has found that I have done anything wrong that warranted the sort of action taken by Eskom Board against me.

CHAIRPERSON: Of course what seems to be a common feature among all the three settlements that I have mentioned namely your settlement with the government, Mr Nxasana's settlement with the government and Mr Pikoli's settlement with the government, is that none of you appeared to have been found to have committed any misconduct, certainly with you, certainly with Mr Nxasana and I think certainly with – I think also with Mr Pikoli. There was just something that was said about whether he
10 had appreciated certain security risks in approaching certain matters the way he had approached but all of these people appeared to have been pushed out by government in circumstances where a lot of people would not be able to find what they had done wrong. Okay.

ADV SELEKA SC: Thank you, Chair. Ja. Sorry, Chair, I wanted to pursue something in your questioning. Mr Matona, I was ...[intervenues]

CHAIRPERSON: Your voice has gone down again, Mr Seleka.

20 **ADV SELEKA SC:** Ja. Mr Matona, I was about to refer you or to ask you about what you referred to as the meeting you had with the former President Jacob Zuma in your affidavit and a quick way to deal with it is to refer you to the page number which is on page 21 of your affidavit. Page 21. Now if you may please, and be brief in your

explanation to the Chairperson, how that meeting came about.

MR MATONA: So I have now settled with Eskom, I have moved on from that episode, contemplating my future, I get a call from the office of the then President Jacob Zuma, indicating that he would like to meet me. Now I might also say that I – in the aftermath of the events at Eskom I had requested to meet him, you know, as ...[intervenes]

CHAIRPERSON: You had to...?

10 **MR MATONA:** I had requested to meet the President.

CHAIRPERSON: Yes, after you had exited Eskom.

MR MATONA: Well ...[intervenes]

CHAIRPERSON: Or before?

MR MATONA: After my suspension.

CHAIRPERSON: Oh, during your suspension?

MR MATONA: During, ja, just to deal with that crisis.

CHAIRPERSON: Ja.

MR MATONA: Of my suspension. I put out a request, I had not had a response. Eventually, I did not meet the
20 President around that at that time. I got a call to say that he would like to meet me which is about June or July, I cannot be precise of the time, but I recall that it was after I had settled with Eskom and in a sense, you know, the matter had been laid to rest. I suppose could say the matter had been laid to rest, in that way. I got a call and I

subsequently went to see the President, you know, I think a few days later.

I had not been told what the purpose of the meeting was, I said to the lady when she asked me are you available, I said to her of course, if the President wants to meet me I have to be available and we had a meeting. It was just the two of us, as it were.

He asked me how I was doing and I indicated to him well, you know, that I was doing well, you know, as well
10 can be under the circumstances. I had been contemplating my future, I did not have a job at the time.

He went on to say to me that well, you know, what happened at Eskom, you know, has got absolutely nothing to do with you, it is not a reflection upon you.

CHAIRPERSON: Just repeat that? What happened at Eskom?

MR MATONA: In other words, my suspension from Eskom was not a reflection upon me, as far as the President was concerned. That is what he said to me and that – because,
20 I had - you know, I have worked with him over the years in government from when he was the Deputy President. I have had lots of interactions with him so we knew each other personally and he had said that, you know, the events at Eskom was not a reflection upon me and that he personally still held me in high regard and that the whole

of government still held me in high regard.

You know, I had served this government from day one from, you know, 1994. Probably now the longest – one of the longest serving senior public servants, as it were.

So I kind of appreciated where he was coming from. What he did say was that, you know, I got caught up in the middle of a spaghetti, those were the words he used, you know? Of course ...[intervenes]

CHAIRPERSON: Did you understand what he meant by
10 those words?

MR MATONA: I did not understand what he meant and part of the reason is because I had waited, you know, for him for quite a while and, you know, he was rushing, you know, there were other meetings prior to my appointment with him and I got a sense that he was rushing but we sat for about 20 minutes. I did not understand what he meant, you know, he kind of – caught you up in a spaghetti. I knew that there was a lot of turbulence at Eskom at the time, you know, operationally turbulence, operationally
20 load shedding, but certainly turbulence in terms of government, you know, the board was – the board at war with itself. It is the board that I found there, you know, there was a lot of infighting within the board.
So anyway, you know, he then said to me they would like me to come back to government, to come back to public

service, they did not want to lose – the government did not want to lose me to public service, as it were. I think he just wanted to establish where my headspace was and he said that he would give me a call again at a later stage, so I left the meeting, we never got an opportunity speak again over that conversation, as it were, that's the events that I've captured here.

ADV SELEKA SC: Yes, so that's – according to your affidavit that's around June/July 2015?

10 **MR MATONA:** Correct.

ADV SELEKA SC: And you say the President – and now I'm reading from your affidavit, page 22, paragraph 54, it says,

“The President further said”,

Are you there, are you there Mr Matona?

MR MATONA: Yes, I'm there.

ADV SELEKA SC: “The President further said he and Government still held me in high regard. He indicated that my exit from Eskom did not need to result in the loss of my expertise and services in the State. He encouraged me to consider returning to public service when an appropriate opportunity availed”,

20

And then you say you left the meeting, paragraph 55, the end of it, the last sentence says,

“He concluded by saying that he would contact me again in the subsequent due course but that did not happen”.

Paragraph 56,

“I did not have discussions with the President as to his involvement in my suspension or the reasons behind the suspension. Other than expressing my disappointment and disapproval in the manner in which I was treated pertaining to my suspension”,

10 May I ask you, Mr Matona, did you suspect that the President knew about your suspension or had anything to do with it?

MR MATONA: No it’s not something that I can say I suspected but it was something that was in the media space, I think, that the Chairperson, Mr Tsotsi, in one of the interviews he conducted at the time, did bring the name of the President into it and as you recall, Chairperson, even at the beginning of this inquiry, you know, the name of the President had been raised but as to the precise
20 conspiracy, I could not have known and it’s something that – I guess it’s still out there, I mean, I know other people have testified about it as it were. I personally, I wouldn’t have known that.

ADV SELEKA SC: I’m asking that question because of what you said the president said to you, that your

suspension at Eskom is not a reflection on your professional character or abilities, why would he say that?

MR MATONA: Why would he say that? I don't know, I really don't know, I mean I thought that – one thought I had was that – the whole thing was very embarrassing, it was – I mean everybody who looked at this thing and I just imagined if I were the honorary citizen viewing this thing as it unfolded would have – it really put Government in a bad light, you know, a lot of Politicians, Ministers, so they
10 were very embarrassed about this. So, I took it that it was an expression of, almost, you know, remorse at what had happened to an extent that him and I knew each other...[intervenes].

ADV SELEKA SC: Mostly on his part?

MR MATONA: Mostly on his part yes, that's how I – here's a President that calls you to say all of these things, you know, I didn't ask, I didn't know what he was going to say when I met him, only to find that, that's what he said, so...[intervenes].

20 **ADV SELEKA SC:** An expression of remorse, however, would suggest that a person did something which he now appreciates is incorrect and he shows remorse, are you – you understand that to be...[intervenes].

CHAIRPERSON: In other words, he would be saying – he would be feeling sorry that you were suspended or that he

may have had a part in your suspension, is that what you're talking about, was that your feeling of what he was expressing?

MR MATONA: No I could sense a sense of remorse about the events without any suggestion or any inkling that he could have had anything to do about it at that stage, I didn't know that he had anything to do about it.

CHAIRPERSON: Without any suggestion that he was saying suspension should not happen?

10 **MR MATONA:** Without – because what the Advocate is saying is that, it may be that he had a hand in it and now that, that happened in the manner, he felt remorseful about it. I'm saying, I can confirm the remorse, I don't know whether that reflected – the basis of the remorse was, the fact that he had been involved because I never asked him and the issue never arose.

ADV SELEKA SC: Thank you Mr Matona. Page 23, the last paragraph there, page 23.

MR MATONA: Yes.

20 **ADV SELEKA SC:** Well you do say, just before that,
“I did not discuss with the President whether he had any hand in my suspension or the reasons therefore. 57 says, I had in the meantime been looking for a job and around August 2015 I responded to an advertisement for the position of

Head Secretariat in the National Planning Commission. I was interviewed by a panel of Cabinet Ministers and subsequently recommended for appointment to Cabinet around September 2015 in accordance with the applicable process”.

Are you still in that position, Head of Secretariat?

MR MATONA: Yes, I’m still in that position.

ADV SELEKA SC: So your suspension is 11 March 2015, you separate with Eskom in May – 15 May 2015 and June, 10 July, August, September, four months later you were employed as the Head of Secretariat in the National Planning Commission, is that correct?

MR MATONA: That’s correct.

ADV SELEKA SC: You say, it’s an appointment to Cabinet.

MR MATONA: It’s an appointment that was approved by Cabinet.

ADV SELEKA SC: And this National Planning Commission, where is it located?

20 **MR MATONA:** It’s in the Presidency.

ADV SELEKA SC: So, it’s in the Presidency?

MR MATONA: Correct.

ADV SELEKA SC: And so, who was the President at the time?

MR MATONA: It was President Zuma.

ADV SELEKA SC: And do you work close with the President as the Head of the Secretariat?

MR MATONA: Yes, the Commission is an advisory body - advisory body to that – to the President.

ADV SELEKA SC: So, you got to meet with him again?

MR MATONA: Well probably once before he exited Government.

ADV SELEKA SC: Can you recall when, did he exit?

MR MATONA: 2018.

10 **ADV SELEKA SC:** 2018?

MR MATONA: I stand to be correct, time goes so quickly.

ADV SELEKA SC: So that's three years later.

MR MATONA: Ja, when the President exited, isn't it 2018, 2018 I think?

ADV SELEKA SC: Ja I can recall on that, is that when he was recalled?

MR MATONA: Yes.

ADV SELEKA SC: Thank you, Chairperson that concludes my questions to Mr Matona.

20 **CHAIRPERSON:** Yes, thank you.

ADV SELEKA SC: The rest of his evidence is contained in his affidavit.

CHAIRPERSON: Have you got him to confirm the transcript of the – the contents of the transcript when he was interviewed, as true and correct, has that been done,

then we must do it, if...[intervenes].

ADV SELEKA SC: I think we should do it now Chair.

CHAIRPERSON: Ja, what we can do is, whenever that – we have got such a transcript it can be done at the beginning when the witness starts so that we don't forget about it.

ADV SELEKA SC: Correct, thank you Chairperson. Mr Matona, that item 16, it's on page 669, I think I showed you a copy this morning.

10 **MR MATONA:** You showed me a copy and part of the issues that needed to be corrected who was in reference to Dr Ben Ngubane...[intervenes].

CHAIRPERSON: Hang on Mr Seleka, I see here, I think we should not confirm it now, I see it's got Chairperson and registrar and so on, it could cause confusion that it was done here, so I think, firstly, it should be labelled, not as a hearing but rather as an interview.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** As an interview of the witness by the relevant members of the legal team of the Commission and I think that then, don't have Chairperson in order to avoid confusion just have the name of whoever is speaking there.

ADV SELEKA SC: They have it right in the document.

CHAIRPERSON: Yes, yes.

ADV SELEKA SC: We start at the bottom of the page,

they started at ...

CHAIRPERSON: Yes, so, I think also for registrar find either the name of the person or some other title just so that there'll be no confusion between a transcript from this hearing and a transcript of the interview and then what you can do, after those corrections have been made and any other that Mr Matona wished to make after all of those had been made, you could actually have an affidavit ...[intervenes].

10 **ADV SELEKA SC:** That's exactly...[intervenes].

CHAIRPERSON: Ja an affidavit by him refer it - to which the transcript can be attached as Annexure which will say that the contents of the Annexure are true and correct to the best of his knowledge and – ja. So, let's not do it now but you can do it that way.

ADV SELEKA SC: Thank you Chairperson, that's perfectly in order.

CHAIRPERSON: Yes, counsel for Mr Matona, is there any intention to re-examine the – I thought there was or there
20 wasn't.

ADV SELEKA SC: It's an attorney Chairperson, I'll let him address you.

CHAIRPERSON: Do you intend to re-examine?

MR MOPELI: No.

CHAIRPERSON: No, okay alright. Mr Matona, thank you

very much for coming to give evidence in the Commission we appreciate it, you are now excused.

MR MATONA: Thank you Chairperson.

COUNSEL: Chairperson, just a moment, may I address you shortly, just two minutes.

CHAIRPERSON: But Mr Matona may be excused ja. You're excused, you must just wait until Mr Seleka has indicated if he's done.

ADV SELEKA SC: Thank you Chairperson. Chairperson
10 we had scheduled a second witness for today, Mr Nick Linnell who was – who is in Cape Town.

CHAIRPERSON: Ja.

ADV SELEKA SC: He had requested his testimony to be
via video link, however, he communicated with my junior
this morning that he was indisposed, so he has a medical
issue, although he had indicated to us that he is prepared
to testify with that condition I had an opportunity to speak
with him on the phone and establish whether he was fine to
proceed on that basis, in the condition he's in. My
20 assessment was that we couldn't proceed with him in the
situation he finds himself.

CHAIRPERSON: Yes so that too, make another arrangement.

ADV SELEKA SC: We will have to make another arrangement for him...[intervenes].

CHAIRPERSON: Yes, okay, not that's fine.

ADV SELEKA SC: Other than that, tomorrow we proceed as scheduled.

CHAIRPERSON: Yes okay, tomorrow we plan to have one witness?

ADV SELEKA SC: There's one witness.

CHAIRPERSON: Ja that's fine.

ADV SELEKA SC: We may have a second witness.

CHAIRPERSON: Okay, I think don't – if you can, don't
10 line up the second one.

ADV SELEKA SC: Okay.

CHAIRPERSON: Ja and we could start maybe at – maybe we could start at half past nine?

ADV SELEKA SC: Yes, nine thirty Chair.

CHAIRPERSON: Ja nine thirty tomorrow.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: There was counsel who wanted to
20 address me, yes okay but if it's brief and you are able to address me from where you are, after putting on the – switching on the...[intervenes].

COUNSEL: Yes I can.

CHAIRPERSON: Yes okay.

COUNSEL: I just ask to be seated, this chair

...[intervenes]

CHAIRPERSON: Yes, that's fine.

COUNSEL: If you stand in the chair it is probably uncomfortable for purposes of articulation.

CHAIRPERSON: Yes that is fine.

COUNSEL: Chair, I'm for Ms Lynne Brown and my presence here today is purely by chance, my schedule, I was here to listen to listen to Zola Tsotsi, as per the Rule 33 invitation. Now, being here, I listened to the evidence
10 of Mr Matona and my client is mentioned, we've not been given that Rule 33 Notice and my client, I don't think, is even listening. Now, I don't have the script to follow the evidence with insight, it just put us in a bit of a difficult position on that score, I don't know how it came about but we are where we are, at the back foot as far as evidence of Mr Matona relates to my client in particular – in light of the disclosures that came through today.

CHAIRPERSON: Yes, Mr Seleka?

ADV SELEKA SC: Thank you Chairperson. Chairperson,
20 yes indeed some reference to Mrs Lynne Brown has come up during the evidence of the witness but that arose from the explanations and testimony given by the witness in the process of his testimony. I did indicate to my learned friend that I will notify him belatedly about a witness but will give him time to prepare what he needs to do for his

client. So although a notification is belated the time for them to canvas whatever gets to be said, will still apply.

CHAIRPERSON: Well basically, to the extent that you might wish to make some or other application under the rules, the time periods would have to be computed from the time you received them, you receive the notices. If you have not received a 33 Notices, the time, I think is 14 days would have to be calculated from the time you received them but I think – but I think what you are saying is, any
10 reference to Ms Brown – Ms Lynne Brown, wasn't in the statement of the witness, it came from elaboration during the evidence?

ADV SELEKA SC: It wasn't expressly in his statement.

CHAIRPERSON: It was not expressly ja, you understand that?

COUNSEL: I do Chair, in fairness to my learned friend he did indicate he will give me notice but I honestly did not believe it related to Mr Matona's evidence for today but I must just point out that there were these two documents
20 that could not have come out today, there were two statements, one when Mr Matona was appointed in August and there was also reference to the one on 17 April, those did not arrive from the witness Chair, the spontaneity of the mentioning of Ms Brown, thank you Chair.

CHAIRPERSON: Ja can I leave it to both of you to sort

out how to address whatever there may be outside of the forum.

COUNSEL: I'm happy to do that, I'm sure we will come to a – we'll work out an agreement Chair.

CHAIRPERSON: Okay, alright.

COUNSEL: Thank you Chair.

CHAIRPERSON: Thank you, I think there was somebody else who seemed or indicated they wished to say something.

10 **ADV SELEKA SC:** For Mr Tsotsi.

CHAIRPERSON: Okay, they must sanitise first.

ADV GCEBETSHA: Thank you Chairperson.

CHAIRPERSON: Yes, Mr Gcebetsa?

ADV GCEBETSHA: ... placed on record that we – though my client only received the statement of Mr Matona this morning and so with the time that the Commission commenced with his testimony we had not had an opportunity to peruse it...[intervenes].

CHAIRPERSON: By the way, who do you represent?

20 **ADV GCEBETSHA:** Mr Tsotsi.

CHAIRPERSON: Mr Tsotsi, okay.

ADV GCEBETSHA: Who, I understand could possibly be your next witness tomorrow.

CHAIRPERSON: Yes.

ADV GCEBETSHA: Hopefully, after Mr Linnell whatever

position is adopted as far as his testimony concerned.

CHAIRPERSON: Yes.

ADV GCEBETSHA: Whatever the case may be, we have come to conclude that Mr Tsotsi could be considered in terms of your Rules as an implicated person...[intervenes].

CHAIRPERSON: I'm sorry, just raise your voice.

ADV GCEBETSHA: We have come to conclude that Mr Tsotsi, in terms of your rules, could be interpreted to be an implicated person thus we are seeking to apply to cross-
10 examine him and I think it would be fair, if at all possible that, that cross-examination occurs before Mr Tsotsi is led in his evidence in chief.

CHAIRPERSON: I just want to make sure I understand properly. As I understand it, you may apply for leave to cross-examine but you are not sure whether you will, is that correct?

ADV GCEBETSHA: No, no we are certain.

CHAIRPERSON: You will apply for leave to cross-examine who?

20 **ADV GCEBETSHA:** Mr Matona.

CHAIRPERSON: Mr Matona, oh okay, alright and you made another point.

ADV GCEBETSHA: I was simply sketching the background Chairperson, that we were not privy to the document, which is the affidavit.

CHAIRPERSON: Yes.

ADV GCEBETSHA: Otherwise we would have made the application, formally, ahead of my submission now.

CHAIRPERSON: Yes.

ADV GCEBETSHA: Now, noticing that Mr Matona is being recused and my client is likely to take the stand as soon as possible, we thought we must bring to the attention of the Chairperson. In the break – lunch break, I had mentioned or earlier on to Mr Seleka that once we have made that
10 conclusion, we would alert him, which we did, so we beg your leave. If there is a procedure to follow, we'll follow it but the timing might necessitate that we bring it at this point and leave if it pleases you then proper arrangements can be made that maybe tomorrow, we start with that cross-examination.

CHAIRPERSON: The application for leave to cross-examine Mr Matona, that will be lodged in due course, is that right?

ADV GCEBETSHA: I need your guidance Chairperson
20 there's an issue of timing.

CHAIRPERSON: Yes, well you can – I think in terms of the rules you may apply within – you should apply within 14 days from the date you receive a Rule 33 Notice, you may apply within 14 days.

ADV GCEBETSHA: Agreed.

CHAIRPERSON: Yes.

ADV GCEBETSHA: Which, in far as Mr Matona's evidence we did not receive.

CHAIRPERSON: Yes, but arrangements, if the application is granted, arrangements can be made for Mr Matona to come back.

ADV GCEBETSHA: Wonderful, thank you very much, we just thought we must place this on record.

CHAIRPERSON: Yes, okay, no that's fine. I think there's
10 nobody else who wanted to say something we are going to
adjourn for the day and tomorrow we'll hear the evidence
of Mr Tsotsi at half past nine, we start at half past nine, we
adjourn.

INQUIRY ADJOURNS TO 8 SEPTEMBER 2020