

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

08 SEPTEMBER 2020

DAY 263



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Recording & Transcriptions

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

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 08 SEPTEMBER 2020

CHAIRPERSON: Good morning Mr Seleka, good morning everybody.

ADV SELEKA SC: Good morning DCJ.

CHAIRPERSON: Are you ready?

ADV SELEKA SC: Yes Sir.

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you. Chairperson just housekeeping matters.

10 **CHAIRPERSON:** Ja.

ADV SELEKA SC: Today we will be using Eskom Bundle 07 Exhibit U17.

CHAIRPERSON: Yes.

ADV SELEKA SC: Marked for A Z Tsotsi.

CHAIRPERSON: Yes.

ADV SELEKA SC: That bundle Chairperson has been divided into two. I understand that they have attended to regularising the Chairperson's bundle as well.

20 **CHAIRPERSON:** Oh. Well it looks fine – the – at least one.

ADV SELEKA SC: yes.

CHAIRPERSON: So we will see if there is a problem.

ADV SELEKA SC: There is a mini file.

CHAIRPERSON: Ja.

ADV SELEKA SC: Which is marked Eskom Bundle 07.1.

CHAIRPERSON: Yes.

ADV SELEKA SC: It is a continuation of the first.

CHAIRPERSON: Of – of this one.

ADV SELEKA SC: Of the bigger one.

CHAIRPERSON: Okay no that is fine.

ADV SELEKA SC: We will mainly be using the bigger one.

CHAIRPERSON: Okay.

ADV SELEKA SC: Mr Chairperson we are continuing with the second witness in this week that is Mr Zola Tsotsi.

10 **CHAIRPERSON:** Yes you will have to raise your voice again.

ADV SELEKA SC: Do I?

CHAIRPERSON: Ja.

ADV SELEKA SC: Oh yes.

CHAIRPERSON: Or bring the microphone closer.

ADV SELEKA SC: I will.

CHAIRPERSON: Yes.

ADV SELEKA SC: Indeed thank you Chairperson.

20 **CHAIRPERSON:** Hm. Yes please administer the oath or affirmation. I am not sure whether Mr Tsotsi is not too far from his microphone. The microphone that works is that one Mr Tsotsi. I do not whether you are not too far from if you sit on that chair.

REGISTRAR: Please state your full names for the record.

MR TSOTSI: Zola Andile Tsotsi.

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

MR TSOTSI: No.

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

MR TSOTSI: Yes I do.

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
10 me God.

MR TSOTSI: So help me God.

CHAIRPERSON: Thank you; you may be seated.

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: Yes you may proceed Mr Seleka.

ADV SELEKA SC: Thank you Chairperson.

ADV SELEKA SC: Mr Tsotsi welcome. When – you agree with me please speak out do not nod your head for the purposes of the record and you will be addressing the DCJ – the Chairperson of the inquiry. You have before you two
20 bundles. There is the thicker bundle marked Eskom Bundle 07. Can you see that?

MR TSOTSI: Yes.

ADV SELEKA SC: Exhibit U17.

MR TSOTSI: Yes I do.

ADV SELEKA SC: You can see that? Then you have as

you heard earlier explaining to the Chairperson the thinner bundle Eskom Bundle 07.1 which is a continuation of the first one.

MR TSOTSI: Yes.

ADV SELEKA SC: Thank you Mr Tsotsi. Mr Tsotsi you have provided the commission with your affidavit and that is found on page 1 of the bigger file – U17. Go to page 1. Chairperson the – this – this bundle is paginated as you have indicated yesterday. There is the black pagination
10 and the red pagination.

CHAIRPERSON: Yes. Are we going to follow the red or black today – Pagination?

ADV SELEKA SC: We can follow the red Chairperson still.

CHAIRPERSON: Okay. Okay that is fine.

ADV SELEKA SC: Ja.

CHAIRPERSON: Yes.

ADV SELEKA SC: I have asked them not to have pages duplicated.

CHAIRPERSON: Yes.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Okay. Can you see the red – the numbers Mr Tsotsi and the black numbers on each page at the top left and right?

MR TSOTSI: Yes I do.

CHAIRPERSON: Yes when Mr Seleka refers to a page he

will be referring to the red numbers so you can disregard the black numbers. He will only – he will not call the zero before for example if you go to the beginning of your affidavit he will – we will not say page 001 he will just say page 1 and on and so on and so on. Okay?

MR TSOTSI: Yes.

CHAIRPERSON: Thank you.

ADV SELEKA SC: Yes.

CHAIRPERSON: Welcome back you are coming to the
10 commission for the second time.

MR TSOTSI: Yes.

CHAIRPERSON: Ja okay thank you.

MR TSOTSI: Thank you.

ADV SELEKA SC: Thank you Chairperson. Mr Tsotsi are
you on page 1?

MR TSOTSI: Yes I am.

ADV SELEKA SC: Yes. Aspects of your affidavit – certain
aspects will be – will be admitted and I wish to focus my
questions on some of the aspects arising from your
20 affidavit. So paragraph 2 of your affidavit deals with your
qualifications and your degrees.

CHAIRPERSON: Are you going to get him to just confirm
his signature and confirm that it is his affidavit and letters?

ADV SELEKA SC: Oh yes.

CHAIRPERSON: Ask me to admit it and then mark it

Exhibit whatever.

ADV SELEKA SC: Let me do exactly that Chairperson. Mr Tsotsi the affidavit starts on paginated page 1 and it runs up to paginated page 28 and please concentrate on the red numbers at the top of – right hand top of the page.

MR TSOTSI: That is correct.

ADV SELEKA SC: Yes you see the last page there?

MR TSOTSI: Yes.

ADV SELEKA SC: You confirm that this is – this is your
10 signature in the middle of the page?

MR TSOTSI: Yes I do.

ADV SELEKA SC: And that the affidavit is dated 13
February 2020?

MR TSOTSI: Yes.

ADV SELEKA SC: And you confirm that this is the affidavit
you have submitted to the commission?

MR TSOTSI: Yes I do.

ADV SELEKA SC: Thank you Mr Tsotsi. So we go back to
that page.

20 **CHAIRPERSON:** You ask me to admit it? Mr Seleka.

ADV SELEKA SC: Oh yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Indeed Chairperson. I beg your
pardon.

CHAIRPERSON: You ask me to admit and have it marked

exhibit what? Eskom U7 – U17?

ADV SELEKA SC: U17 or now we have the file which is Point 1.

CHAIRPERSON: Well you can change that file maybe to

ADV SELEKA SC: 17.

CHAIRPERSON: 17A.

ADV SELEKA SC: A. Indeed Chairperson.

CHAIRPERSON: Ja and then we can have – so let us say the smaller file which is a continuation of Eskom Bundle
10 017 or was it 7. The smaller file will be Bundle Eskom – Eskom Bundle 07.8.

ADV SELEKA SC: Point 8. Alternatively – alternatively Chairperson we can mark the bigger one A and this one – the smaller one B.

CHAIRPERSON: That is another way. Okay. So the bigger bundle will be Eskom Bundle 07.A and the smaller one will be Eskom Bundle 07.B.

ADV SELEKA SC: Yes.

CHAIRPERSON: And Mr Tsotsi's affidavit appearing at
20 page 6 – starting at page 6 of Eskom Bundle 07.A will be – is admitted and will be marked as Exhibit U17. Do you see – do you want us to say U17 or U17.1 on his affidavit or Point 1 will be the following ones?

ADV SELEKA SC: U17.1 Chairperson.

CHAIRPERSON: Okay. It will be marked as Exhibit U17.1

ADV SELEKA SC: 17.1.

CHAIRPERSON: Okay.

ADV SELEKA SC: I think they might have made an error in the – in the smaller bundle.

CHAIRPERSON: Hm.

ADV SELEKA SC: As opposed to 07 it should have been 17. Is that correct? Yes I gather that...

CHAIRPERSON: Well the – now 0 something is for the name of the bundle.

10 **ADV SELEKA SC:** Oh I see.

CHAIRPERSON: Ja.

ADV SELEKA SC: I got you.

CHAIRPERSON: Ja.

ADV SELEKA SC: So – Chairperson.

CHAIRPERSON: Ja.

ADV SELEKA SC: Okay so that labelling is correct. Thank you Chairperson. So the affidavit of Mr Tsotsi dated 13 February 2020 has been admitted as Exhibit U17.1.

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** Thank you.

CHAIRPERSON: Somebody should make the necessary markings on Mr Tsotsi's bundles so that he has something that is similar to what we have.

ADV SELEKA SC: Yes. Thank you. Thank you Mr Tsotsi may we proceed? So in paragraph – if you go back to page

1 Mr Tsotsi of the affidavit.

MR TSOTSI: Yes.

ADV SELEKA SC: So paragraph you set out your details with the ID number. Paragraph 2 you set out your qualifications and where you obtained them. Paragraph 3 you deal with your career. You turn the page. And 3.3 likewise you deal with your service on various board as Chairperson. I will read that:

10 “I started serving on the Board of my own
company as Executive Chairman in 1983.
During my stint with the Lesotho
government I was appointed Chairman of
Lesotho Electricity Corporation Water and
Sewerage Authority and Lesotho Highlands
Development Authority. In 2004 the
Lesotho government set up the electricity
regulator called Lesotho Electricity
Authority and I was invited to become its
first chairman. On completion of this role I
20 was appointed Chairman of the Eskom
Holdings in 2011.”

Is that the Eskom in Lesotho or in South Africa Mr Tsotsi?

MR TSOTSI: Eskom South Africa.

ADV SELEKA SC: Eskom South Africa. And then you

carry on to say:

“All the chairmanship appointments in the state-owned entities were non-executive.”

Now in 2011 was that your first time being appointed on the – on the – as a Chairman of the Board of Eskom?

MR TSOTSI: Yes.

ADV SELEKA SC: And how long did you stay in that position as a Chairman of the Board of Eskom?

10 **MR TSOTSI**: I was appointed around August 2011 until the Board’s term completed on the 8th I think of December 2014 when the new board was appointed.

ADV SELEKA SC: December 2014?

MR TSOTSI: That is right.

ADV SELEKA SC: When the new board was appointed?

MR TSOTSI: Yes.

ADV SELEKA SC: Did you get to be reappointed on the new board?

MR TSOTSI: Yes I did. I was reappointed.

20 **ADV SELEKA SC**: In what capacity this time?

MR TSOTSI: Once again as Chairman.

ADV SELEKA SC: As Chairman of the Board?

MR TSOTSI: Yes.

ADV SELEKA SC: Non-executive?

CHAIRPERSON: I am sorry Mr Seleka. Can I go back to

when you were ...

ADV SELEKA SC: Yes Chairman.

CHAIRPERSON: Appointed for your first term. I see that you say in your affidavit that you were approached by Mr Siyabonga Mahlangu who was then the advisor to the Minister. That is Minister Gigaba, is that right?

MR TSOTSI: Correct.

CHAIRPERSON: And he enquired if you would be interested in serving on the Board of Eskom. You
10 responded in the affirmative and ultimately you were appointed, you provided your CV?

MR TSOTSI: Yes.

CHAIRPERSON: So the second term Mr Seleka will deal with it but I see that for the second term you applied
[00:16:15] saw an advert. The first time you did not apply you were approached?

MR TSOTSI: Correct.

CHAIRPERSON: Is that right?

MR TSOTSI: Yes.

20 **CHAIRPERSON:** Did you ever try to find out how it came about that they showed interest in you out of the blue?

MR TSOTSI: No I did not specifically find out.

CHAIRPERSON: Find out.

MR TSOTSI: From them.

CHAIRPERSON: Yes. Yes.

MR TSOTSI: But I had an understanding of where probably they – their mind was living at the time.

CHAIRPERSON: Yes. Well it just occurred to me that later on you know that you were told by somebody that they put you in this position they could take you out. So I wondered whether that is connected with how you were approached. Is that something you have reflected on and you think along the same lines or not?

MR TSOTSI: No Chair I do not connect my...

10 **CHAIRPERSON**: First appointment.

MR TSOTSI: First appointment with that statement.

CHAIRPERSON: Yes oh.

MR TSOTSI: You must remember that statement has other connotations but not in reference to my first appointment.

CHAIRPERSON: Yes. Yes okay no that is fine.

MR TSOTSI: Yes.

CHAIRPERSON: Thank you. Continue Mr Seleka.

ADV SELEKA SC: Thank you Chairperson. Yes Mr Tsotsi you were dealing with the – your second appointment as
20 the Chairman of the Board and I wanted to know from you whether in that capacity were you an executive or a non-executive Chairperson?

MR TSOTSI: I was non-executive.

ADV SELEKA SC: Now the Chairperson has asked you the other questions relating to how you became appointed. As

you say in your statement that you applied the second time around following a publication of an advert that the application be followed by interviews.

MR TSOTSI: In my case no I was not interviewed. The – I suppose the Minister just took the decision that she did not need to interview me – I do not know. But I was not asked to be interviewed.

ADV SELEKA SC: Could you tell the Chairperson when you say in your case are you aware that in other – in the
10 case of other Board Members whether or not they were interviewed?

MR TSOTSI: Chair no I do not. I have not asked any of the Board Members if they were ever interviewed.

ADV SELEKA SC: Now that is in December 2024 you say. We learnt yesterday from the witness of Mr Matona and you at present here as well, you confirm that – that you were present here as well yesterday?

MR TSOTSI: Yes I was present here yesterday. Yes.

ADV SELEKA SC: That the Board went through an
20 induction, recall that?

MR TSOTSI: Correct yes.

ADV SELEKA SC: Well we did not – we did not get an indication of whether or not you attended that induction so I would like you to tell the Chairperson whether did you or did you not attend the induction?

MR TSOTSI: Chair I did attend the induction. I was present.

ADV SELEKA SC: And can you recall when in terms of date and month did the induction take place?

MR TSOTSI: The formal induction – there was an informal meeting of the new Board Members with the Minister in her office in – sometime in December. Shortly after the Board Members were appointed whereupon the Minister indicated that she would like there to be an induction of the new board and that this would be taking place sometime in 10 January. Because we were at the end of very much of the year and so there was very little going on and people were going on leave and holiday and so on. So the induction was then arranged for January. If I recall I think it was somewhere around the – if not the 16th January.

CHAIRPERSON: That is January 2015?

MR TSOTSI: 2015 yes.

ADV SELEKA SC: 2015.

CHAIRPERSON: Yes ja.

20 **ADV SELEKA SC:** Yes. So you attended the induction you say?

MR TSOTSI: Yes I did.

ADV SELEKA SC: So that is January 2015 does the Board then have a timetable for its meetings for the year of 2015?

MR TSOTSI: Yes what normally happens Chair is that at the end of the previous year I normally sit down with the Company Secretary and work out dates for Board Meetings for the following year and this is done in consultation with the Board Members to make sure that they will be available for those days and once that is completed then this is published in the company roster. So the dates are fixed at the end of the previous year for the following year.

CHAIRPERSON: Hm.

10 **ADV SELEKA SC:** So in that case what was the first date on which the Board would have its first meeting in 2015?

MR TSOTSI: The first Board Meeting in 2015 was scheduled for the 26 February 2015.

ADV SELEKA SC: Could you tell the Chairperson whether that meeting took place?

MR TSOTSI: The meeting did not take place.

ADV SELEKA SC: And what – what were the reasons why the meeting did not take place?

20 **MR TSOTSI:** What happened is that on the evening of the eve of the meeting 25th.

CHAIRPERSON: That will be 25 February?

MR TSOTSI: That is right. At about eight, eight thirty in the evening I received a phone call from the then President of the country President Jacob Zuma and the President asked if I had – well first of all he stated that he had been

trying to get in touch with the Minister – my Minister at the time being Minister Lynne Brown and he was not successful and he tried to find the Deputy Minister and he did not find the Deputy Minister either. And ultimately, he found the acting DG at the time was Matsietsi Mokholo. And he then said to me that he has asked that the meeting tomorrow not take place.

CHAIRPERSON: On the 26th?

MR TSOTSI: On the 26th yes. Then he said I will be
10 contacted by the acting DG in regard to that. But he is just giving me like a – a forewarning if you like that the meeting is not going to take place. So I simply thanked him for the call and waited for the phone call from the acting DG who then did call. So I was told by the acting DG that the Minister had asked that the meeting be postponed. And that is how the meeting got postponed.

ADV SELEKA SC: So were you given the reasons for the postponement or for that request to postpone?

MR TSOTSI: I did ask the acting DG what the reasons
20 were for the postponement of the meeting because I would need to give those reasons to the Board Members and she then responded to say that the Minister did not give her any reasons for the postponement of the meeting. So she did not have any reasons for it.

ADV SELEKA SC: Did you ask the former President Jacob

Zuma for the reasons why he asked – he wanted the meeting to be postponed?

MR TSOTSI: No Chair I did not ask him.

CHAIRPERSON: Why not?

MR TSOTSI: The reason I did not ask the former President was because as Chairman of Eskom I really do not have any formal business with the President.

CHAIRPERSON: Sorry?

MR TSOTSI: I do not have any formal business
10 relationship with the President.

CHAIRPERSON: But was that not all the more reason why you should have asked him?

MR TSOTSI: Well the way I saw it Chair was that my fiduciary responsibility rested with the Minister and I – I felt that I needed to ask the Minister if she does not give me any reasons.

CHAIRPERSON: But the Minister was not available and he did not phone you – or she did not phone you. The President called you. Was that not on its own strange that
20 you have a plan for a Board Meeting? The President is not part of the Board. The Board is coming – is going to have a meeting to discuss – to discuss its own business. Why should you get a call from the President saying the meeting of the Board should not take place? This is not a meeting of the Cabinet. This is a meeting of the Board.

MR TSOTSI: I would agree with you entirely Chair. I did not understand the reason why I got a message from the President to this effect and my position I felt that I needed to raise that issue with the Minister.

CHAIRPERSON: Yes but sitting there today do you see – do you concede that you should have asked the President, Mr President this is a meeting of the Board that has been planned why must it be postponed?

MR TSOTSI: I do concede Chair that I could have asked
10 him.

CHAIRPERSON: Yes.

MR TSOTSI: Why the meeting – why he wanted the meeting postponed but I – I clearly would still have felt that in terms of my communication to the Board I would have had to have consulted with the Minister so that she can then show me exactly.

CHAIRPERSON: But of course, even if the Minister call – were to have called you after the President had called after you had spoken to the President it would have – you would
20 have known that the real person who wants the meeting postponed was the President not the Minister. Because from what you have told me the President had – was the one who was looking for the Minister in order to convey the message that the meeting of the Board should be postponed. So the person who knew the reasons would be

the President. That is the person you should have asked.

MR TSOTSI: From my perspective Chair at the time I was dealing with the issue. I wanted to be certain that I follow what I understood to be my fiduciary responsibility.

CHAIRPERSON: Sorry.

MR TSOTSI: I wanted to follow what I understood to be my fiduciary responsibility.

CHAIRPERSON: Yes.

MR TSOTSI: With the Minister.

10 **CHAIRPERSON:** Yes but here is somebody who is not part of your Board. You are the Chairperson and you do not deal with this person. You deal with the Minister. He is calling you. He is not scheduled to be part of this meeting. So it does not have to suit his calendar or his availability. He is calling you and saying the board meeting must not take place. But it is not his business. It is the board's business that will be discussed. So was it not strange in itself?

MR TSOTSI: It was strange, Chairman. Let me put it to you in another way. If, for instance, I had not communication
20 with the DG who purportedly spoke on behalf of the minister, I would have authorised – I would not have postponed the meeting. Let me put it that way.

CHAIRPERSON: You would not have?

MR TSOTSI: Postpone the meeting

CHAIRPERSON: If you did not get a call from the acting

DG?

MR TSOTSI: Yes.

CHAIRPERSON: Yes. But ...[intervenes]

MR TSOTSI: Because my view would be that the president does not have any jurisdiction in terms of that determination.

CHAIRPERSON: Yes.

MR TSOTSI: So my asking me, for me was neither here nor there, if only to learn perhaps what reasons he had. But because I felt that he had no jurisdiction in my responsibility,
10 if I had not heard from, as I say the DG, I would not have cancelled the meeting.

CHAIRPERSON: The acting DG phoned you.

MR TSOTSI: Yes.

CHAIRPERSON: And did she say the minister wanted you to postpone the meeting or did she say the president wanted you to postpone the meeting?

MR TSOTSI: No, she said the minister asked that the meeting should be postponed.

CHAIRPERSON: Yes. And you asked her for the reasons?

20 **MR TSOTSI:** For the reasons, for it, yes.

CHAIRPERSON: And she did not give you any?

MR TSOTSI: No, she did not give me any reasons.

CHAIRPERSON: Yes.

MR TSOTSI: Saying to me that she was not given any reasons why the minister has stopped this.

CHAIRPERSON: Yes. Did you not consider necessarily to say: Well, I will phone the minister and find out what the reasons are because I cannot just postpone the meeting of the board without reasons.

MR TSOTSI: I did ask her if I can get in touch with the minister. The whereabouts... the minister's whereabouts. She said she did not know. She tried the minister herself and she could not find her.

CHAIRPERSON: H'm. Was the minister scheduled to
10 depart of this meeting of the 26th of February?

MR TSOTSI: No.

CHAIRPERSON: I take it, she would not normally attend meetings of the board because she is not a member of the board?

MR TSOTSI: No, she was not part of the... she would not attend meetings.

CHAIRPERSON: So she would attend by implication?

MR TSOTSI: That is correct.

CHAIRPERSON: Yes. And on this occasion, the board had
20 not invited her to be part of that meeting?

MR TSOTSI: No, she was not invited.

CHAIRPERSON: So she actually did not have the power, did she, to instruct you to postpone your meeting of the meeting?

MR TSOTSI: [No audible reply]

CHAIRPERSON: What is your understanding? Did you understand that she had the power?

MR TSOTSI: My understanding is that Chair, the MOI of Eskom does authorise the minister to request board meetings to be either postponed or changed or cancelled.

CHAIRPERSON: But how she could she have the power to postpone a meeting of a board that she is not going to be attending? And if she is going to be attending, could she have anything other than a right to request, not a right to
10 instruct the chairperson for a postponement.

If she is meant to attend and it is an important issue that she must discuss with the board but she has other commitments, then she makes a request for a postponement. But ultimately, the power to say yes or no, would lie with the chairperson of the board.

MR TSOTSI: Well, Chair I am not certain in terms of whether she can only request a postponement on the basis that she was going to attend the meeting.

CHAIRPERSON: H'm. But she is certainly not part of the
20 board, is that right?

MR TSOTSI: No.

CHAIRPERSON: Yes, yes. So simple on the principle that she is not part of the board, I do not think she can power to instruct that the board should not sit because the board, as I understand it, is a body on its own.

MR TSOTSI: Yes, I do not have the capacity Chairman to make that analyses.

CHAIRPERSON: No, no, no. I understand. You know, you might be able to say: Look, I have never reflected on this. I am not sure. I am just giving you the benefit of what is going on in my mind.

And you may or may not be able to comment on it. I may be right. I may be wrong. But I am just thinking, if you are a body...

10 Unless there is some specific legal provision that allows somebody, who is not part of the body to dictate what you can discuss to just stand in your own meetings to dictate when you can have meetings or when you cannot have meetings.

Unless you have that situation, normally it would be that body who decides when do we sit. When do we not sit. What business do we discuss. When do we discuss that business. That the body that plans its own problems, you know.

20 **MR TSOTSI:** Yes, Chair.

CHAIRPERSON: And somebody outside might be able to say at some stage I request that you discuss this issue. And then the body can decide this is when it is going to be necessary for us to discuss that issue. We will discuss that on that day. But the idea that somebody from outside can

instruct, just seems odd to me.

MR TSOTSI: I understand the point.

CHAIRPERSON: You understand?

MR TSOTSI: Yes.

CHAIRPERSON: Ja. Yes. No, thank you. Mr Seleka, you may proceed.

ADV SELEKA SC: Thank you, Chairperson. Mr Tsotsi, please let us go a little bit into that. If you turn to page 10 of your affidavits.

10 **CHAIRPERSON:** I am sorry. For the sake of completeness, let me make this point Mr Tsotsi. The only reason I can think why somebody who is not a member of the board would have wanted the board to postpone its meeting when he or she is not part of the board and was not going to attend that meeting, is that she or she might not be wanting the board to discuss certain matters on that day.

It is not convenient for whatever reasons for him or her to have the board take decisions on certain issues on that day. That is the only thing I can think of.

20 Otherwise, if the board is going to discuss matters in which that person has no interest, why would they be wanting the board to postpone its meeting because they have no interest in the issues that would be discussed?

But if they have certain interest in some of the issues, then I can understand. But it does not make it proper

necessarily but I can understand that.

Or they do not want the board to make a decision at this stage on this issue and that issue. That is why they want the board to postponed.

Or if there is something that they are working on for the board from outside - again, you might not be able to comment.

I am just giving you the benefit of what is going on in my mind as I hear this evidence about people outside of the
10 board asking or instructing.

Because it looks like they were not asking that the meeting be postponed of the board and not caring to even give reasons.

So it looks like they did not think the board would say: Well, we cannot just postpone. We want reasons. We need to verify that they are valid reasons for a postponement.

It looks like they expected the board to just fall in line. They say: Please, postpone. The board would just postpone it without questioning.

20 Because if otherwise they expected that the board would want to know reasons, they would have had given the reasons to the... well, the president would have told you the reasons when he spoke to you.

Or the minister would have given the acting DG reasons to tell: Tell the chairperson that these are the reasons. But

they... it looks like they did not bother. They did not think the board would insist on the reasons. Rightly or wrongly.

MR TSOTSI: Ja. I understand.

CHAIRPERSON: Okay, Mr Seleka.

ADV SELEKA SC: Thank you, Chairperson. Mr Tsotsi, page 10 of your affidavit. If may consider this a little further. Because there you write in paragraph 11.4 of page 10... Are you there, Mr Tsotsi?

MR TSOTSI: Yes, I am there.

10 **ADV SELEKA SC:** You say:

“Board meetings have different categories. There are the ordinary board meetings which are scheduled throughout the year.”

To this meeting of the 26th of February had been one such meeting.

MR TSOTSI: Yes, it was.

ADV SELEKA SC:

20 “The draft schedule for these meetings is circulated to board members towards the end of the proceedings here for their comment.

Once dates are confirmed up, the final schedule is signed off by the chairman and published in the formal meeting roster of the company.

None of these meetings may be cancelled because each one is designed to deal with specific aspects

of the business which have to be addressed at specific times.

Examples would be shareholder contact, corporate plan, integrated report, auditing of financial statements, planning of general meeting, MRPD tariff application, et cetera.

These meetings can, however, be postponed on the understanding that they will be rescheduled.

10 This postponement can either be canvassed amongst board members for good reason or maybe affected by the chairman under plausible circumstances or may be requested by the minister.”

Now I see that you use the word postponement in this paragraph. Do you see that?

MR TSOTSI: Yes.

ADV SELEKA SC: And this is not the same concept you used when you referred to your telephone call made by the former president to you. You said the request was for you to cancel the meeting.

20 **MR TSOTSI:** Yes, essentially, what I was trying to convey there was that the meeting should not take place but obviously I knew at the time that the only thing that will happen is a postponement because this one of the ordinary board meetings which has a specific purpose at that time of year and has to take place. So needed that this meeting

needed to be rescheduled.

CHAIRPERSON: In your first term at the Board of Eskom, had Minister Gigaba ever requested or instructed that a board meeting be postponed or cancelled?

MR TSOTSI: No.

CHAIRPERSON: He had never done that?

MR TSOTSI: No, not at all.

CHAIRPERSON: Had the former President, Mr Zuma, called you or reaching to you to ask or to instruct that a board
10 meeting be postponed or cancelled during your first term?

MR TSOTSI: No, sir.

CHAIRPERSON: It did not happen?

MR TSOTSI: Not at all.

CHAIRPERSON: So this was a new thing...[intervenes]

MR TSOTSI: Yes, Chair.

CHAIRPERSON: ...when you got this call from the former president and when you got a call from the acting DG, saying the minister effectively wanted the meeting postponed or cancelled?

20 **MR TSOTSI:** That is correct.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Thank you, Chairperson. Yes, Mr Tsotsi, so you were explaining that you, by your own understanding, when this request is made to you, you need that the meeting would have to be postponed?

MR TSOTSI: Correct.

ADV SELEKA SC: But the request to you is that the meeting should not take place?

MR TSOTSI: Yes.

CHAIRPERSON: Do you recall what was to be discussed at this meeting of the 26th of February or at least some of the matters?

MR TSOTSI: Yes, Chair. At that time of the year, we would have just dealt with the mid-term results of the company and
10 ...[intervenes]

CHAIRPERSON: The what?

MR TSOTSI: At the mid-term financial results.

CHAIRPERSON: Yes.

MR TSOTSI: And the auditors would be preparing the financial statements for the company ...[intervenes]

CHAIRPERSON: Yes.

MR TSOTSI: Because the financial was about to end at the end, in fact, the end of the following month of March. So the board would have to discuss the financial result and it would
20 be presented by the auditors.

CHAIRPERSON: H'm.

MR TSOTSI: Ja. That is one of the key aspects. The other thing was. What Mr Matona had discussed yesterday. There was a process which we started to engage the management to look at the strategic outlook for Eskom for the next

several years. And that occurred between the time of the resignation of the previous chief executive and the incoming, namely, Mr Matona.

CHAIRPERSON: H'm.

MR TSOTSI: So he then arrived with some groundwork which have not been done and he then went on to work further on that exercise and he was going to present that to the board. So that was to happen. So some of the more important issues.

10 There could have been also a discussion planned for the tariff application. I am not sure whether that year was the year for tariff application but there could have been.

 If indeed it was, that issue would have had to been talked about around that time as a continuation of what was determined in the previous year.

CHAIRPERSON: Out of the issues that were going to be discussed at that meeting, are there any issues that you though the president and the minister may have a particular interest in?

20 **MR TSOTSI:** Chair, to be quite frank. No, I do not think so.

CHAIRPERSON: Yes.

MR TSOTSI: No.

CHAIRPERSON: As far as you are concerned, the board could have met and discussed those issues and made whatever decisions they wanted to make?

MR TSOTSI: Yes.

CHAIRPERSON: Ja. That you could not see no reason why the minister or the president would not want the board to have its own meeting and discuss those issues?

MR TSOTSI: Yes, to the extent that I felt the idea for postponing the meeting was rather strange and rather sinister.

CHAIRPERSON: Ja. Mr Seleka.

ADV SELEKA SC: Thank you, Chairperson. Yes, Mr Tsotsi,
10 you say when was the financial year-end for Eskom?

MR TSOTSI: The financial year-end would be the 31st of March.

ADV SELEKA SC: 31 March?

MR TSOTSI: Ja.

ADV SELEKA SC: And would you, in your explanation to the Chairperson, said one important – one of the important issues to be discussed there in the meeting of the 26th of February, were the financials?

MR TSOTSI: Yes.

20 **ADV SELEKA SC:** And indeed, your FD at the time agrees with you in that regard. If you turn to page 117 of the bundle before you. So the FD that is Ms Tsholofele Molefe to her, submitted an affidavit to the Commission. Chairperson, that affidavit ...[intervenes]

CHAIRPERSON: When you say FD, do you mean Financial

Director?

ADV SELEKA SC: Correct, Chairperson.

CHAIRPERSON: Yes.

ADV SELEKA SC: The Financial Director.

CHAIRPERSON: Ja. If someone reads out the transcript, they might not know what you are talking about.

ADV SELEKA SC: Correct, Chairperson.

CHAIRPERSON: Ja.

ADV SELEKA SC: Having met with so many Eskom officials
10 using the initials, you become accustom to their language,
Chair. [laughs]

CHAIRPERSON: [laughs]

ADV SELEKA SC: The affidavit, Mr Tsotsi starts on page
109. Chairperson, we will have to mark it.

CHAIRPERSON: That is the affidavit of Ms Tsholofele
Molefe, is that right?

ADV SELEKA SC: That is correct, Chairperson.

CHAIRPERSON: Okay.

ADV SELEKA SC: That is...

20 **CHAIRPERSON:** Did you say we must go to page 117?

ADV SELEKA SC: Page 117 of that affidavit.

CHAIRPERSON: Yes.

ADV SELEKA SC: Mr Tsotsi, are you there?

MR TSOTSI: Yes.

ADV SELEKA SC: Now paragraphs 21 and 22. And I will

read 21 just to give context to what she says in paragraph 22.

“The G Forensic report highlighted that there was wrongdoing on the part of Mr Matjila, in that he did not have the delegation of authority to commit the company for a contract of this size without following the company’s governance process.

10 The board then started to seek legal advice on the actions to take action against Mr Matjila who by then has stepped down as interim CEO.

And the new CEO Mr Tshediso Matona had taken office effective from 1 October 2014.

As a result of this transgression of the interim CEO at the time, the auditors indicated that they would qualify their review opinion for the interim financial statements with an emphasis of matter paragraph regarding a report of an irregularity, I an executive authority.”

Then paragraph 22:

20 “What was important about these financial statements was that we were preparing to go on a deal road show to raise an international point.

Therefore, it was very important that the board approved the financial statements.

However, what happened on the day that the board

was meant to sign the financial statements which was a few days before the results announcement, Mr Tsotsi called me to say that he is going to cancel the meeting as he was receiving pressure from outside to cancel the meeting.”

Let me pause there. Do you have any recollection of what I have just read there in paragraph 22, Mr Tsotsi?

MR TSOTSI: Yes, I do recall that there was an attempt for a road show which was typical around that time.

10 **ADV SELEKA SC:** Yes.

MR TSOTSI: And I know that the FD was very keen to make sure that we make progress on the situation regarding the statements and I did speak to her.

CHAIRPERSON: Please raise your voice a little bit Mr Tsotsi.

MR TSOTSI: Yes. I was saying Chair that I did speak to the FD. And I think, if I remember well, I was trying to ensure that we will find time to go back and have the statements presented to the board for the board’s approval
20 but because of this intend to cancel this meeting, this was not going to happen on the 26th.

And she says here that that I was receiving pressure from outside. I probably said to this specifically what had actually happened. And she is maybe not putting it the way I put it to her.

I think she was being, I guess, modest in putting it this way. And I understand that. But at the end of the day, what happened was that the company secretary sent out a notification to all the board members indicating, you know, the formality.

ADV SELEKA SC: Ja. Just before that. Would you not tell the Chairperson what words you used?

MR TSOTSI: Chair, I do not mean to be disparaging in any way but I did tell to Molefe that I felt that the president
10 sounded like he was pressuring the board to take this decision.

CHAIRPERSON: You say, you told her that the president sounded like he was under pressure?

MR TSOTSI: He was pressurising ...[intervenes]

CHAIRPERSON: Pressurising you?

MR TSOTSI: Yes.

CHAIRPERSON: Okay alright.

MR TSOTSI: In other words – yes, in a kind of a bleak way.

CHAIRPERSON: Yes.

20 **MR TSOTSI:** That is the conversation that I had with her.

CHAIRPERSON: Ja. Okay.

MR TSOTSI: That is where the pressure came from.

CHAIRPERSON: Yes, okay.

MR TSOTSI: But I am sure I told her that I finally got, you know, the contact from the Deputy DG, saying that the

minister had asked that the minute meeting would be postponed.

CHAIRPERSON: That is from the acting DG?

MR TSOTSI: From the acting DG, yes.

CHAIRPERSON: Ja. So when the acting DG spoke to you and told you that the minister had not given reasons for the request, if it was a request, for the meeting to be postponed. Did you say to her whether you would have the meeting postponed or you would talk to the members of the board? It
10 would depend what their attitude is. Or what did you say to her?

MR TSOTSI: Well, I told her Chair that in view of my understanding of the authority that the minister had, as I said previously, then we would go ahead and postpone the meeting.

CHAIRPERSON: Okay, yes. Okay. H'm.

ADV SELEKA SC: Yes. Thank you, Chair. I did not get that last part of your answer to the Chairperson. The minister has what?

20 **MR TSOTSI:** I said in view of the – my understanding of the authority that was rested with the minister ...[intervenes]

ADV SELEKA SC: Yes?

MR TSOTSI: ...to be able to ask that the meeting be postponed or cancelled, I exceeded to that request by her.

ADV SELEKA SC: Yes. And you did mention earlier but let

me ask you this. Where would that authority come from?
Will we find it in a document such authority of the minister?

MR TSOTSI: I think it is in the MOI of the company. I think so. I stand to be corrected.

ADV SELEKA SC: Yes. We... as ...[intervenes]

CHAIRPERSON: Sorry, you think it is in?

MR TSOTSI: The Memorandum of Incorporation of the company.

CHAIRPERSON: Yes, that the minister can request that
10 meetings be postponed?

MR TSOTSI: Yes, I think that is where it is stated.

CHAIRPERSON: Yes, okay. Could you recall whether it is put as a request that she has power to request or whether she can effectively instruct the meeting be postponed? Or is it something you might not recall?

ADV SELEKA SC: I do not recall precisely but my inclination it to say, it probably speak of a request.

MR TSOTSI: H'm. H'm.

CHAIRPERSON: Ja. It would be interesting to know what
20 the provision is. Maybe a junior could look for that in the meantime. Or if you have got it, you can take it from there.

ADV SELEKA SC: Yes, indeed Chairperson. Mr Tsotsi, the Commission has been provided with a copy of the Memorandum of Incorporation of Eskom. It is in the smaller bundle.

CHAIRPERSON: Remember to raise your voice Mr Seleka.

ADV SELEKA SC: It is in the smaller bundle. Thank you, Chair. Page 953. You have it?

MR TSOTSI: [No audible reply]

ADV SELEKA SC: You found it Mr Tsotsi?

MR TSOTSI: Yes.

ADV SELEKA SC: Well, let us look at this document. It is the Eskom Memorandum of Incorporation. Authorisation date. Can you see that block at the top of the page?

10 **MR TSOTSI:** Yes.

ADV SELEKA SC: 9/20/14. Do you see that? On page 953.

CHAIRPERSON: 953?

ADV SELEKA SC: 953, Chairperson.

CHAIRPERSON: Yes. Oh, I have gone much beyond that, Mr Seleka.

ADV SELEKA SC: Chairperson?

CHAIRPERSON: I say I have gone much beyond that.

ADV SELEKA SC: Oh.

20 **CHAIRPERSON:** Ja, I am right in the document inside looking for anything about calling of meetings and postponements, so I have long found it.

ADV SELEKA SC: You have not found it?

CHAIRPERSON: I have long found it.

ADV SELEKA SC: Oh, you have long found it?

CHAIRPERSON: Ja, so I am busy trying to see were we...

ADV SELEKA SC: I see.

CHAIRPERSON: Ja.

ADV SELEKA SC: We will do exactly that, Chairperson.

Mr Tsotsi, you are – I wanted you to look at the document, look at the index, the table of contents just to refresh your memory that you are familiar with this document.

MR TSOTSI: Yes.

ADV SELEKA SC: And let us see the part dealing with
10 meetings of directors and you could assist us in that regard, but I will go to the relevant paragraph for present purposes. If you turn to page 972.

MR TSOTSI: Yes.

ADV SELEKA SC: If you could please. So we see there paragraph 12 deals with shareholders' meetings. Would you know offhand which paragraph will with the directors' meetings?

MR TSOTSI: No.

CHAIRPERSON: Well, directors is 13 at page 980.

20 **ADV SELEKA SC:** Or turn to page 980. Thank you, Chairperson.

CHAIRPERSON: Ja. I am already at 982, Chairperson of the board.

ADV SELEKA SC: So you see paragraph 13 deals with directors.

CHAIRPERSON: And then page 985 deals with proceedings at meetings.

ADV SELEKA SC: Do you see that, Mr Tsotsi?

MR TSOTSI: 985?

CHAIRPERSON: I was trying to look for a provision that talks about the calling of meetings and postponements but they might not be specific provisions for postponements that would be incidental to the calling of a meeting.

ADV SELEKA SC: Go to page 985?

10 **MR TSOTSI:** Yes.

ADV SELEKA SC: See whether you cannot find anything there under paragraph 13.9 dealing with proceedings at meetings of directors. Well, let me say this to you, Mr Tsotsi, I have gone through this and maybe you can correct me. I have gone through this and I could not find a provision that empowers the Minister to call for the cancellation of a meeting.

CHAIRPERSON: Well, I can say that clause 18.9.1 at page 985 seems to give the power to adjourn meetings to
20 the directors. It reads:

“The directors may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.”

That seems conclusive, that seems it includes adjourning. Now of course if you adjourn a meeting to another date it

means you would discuss the business that you otherwise were going to discuss the business that you otherwise were going to discuss today to that fact, you will discuss it on that date. Now if you like you can say we are cancelling today's meeting but we will fix another date to meet and discuss the same business. So whether you use adjourn or cancel, if the cancellation is not on the basis that the business that was going to be discussed will never be discussed.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: It is not on that basis but on the basis that the meeting will discuss the same business on another date, you know, then it means the same as adjourn, you know? So but here in clause 13.9.1, the memorandum of incorporation is clear that it gives the directors the power to meet or the right to meet and dispatch business of their business, adjourn and otherwise regulate their meetings. Regulate their meetings would certainly include a cancel, adjourn or whatever.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: So unless you are able to point to something else, it seems to me that the power – that the Minister had no power to instruct that a meeting of the board be cancelled or postponed, nor did the President have that power.

MR TSOTSI: Yes, it is evident that it is not explicitly stated here in the MOI, Chair.

CHAIRPERSON: Yes, you are not in a position to say you definitely had seen a provision that gave the Minister that power but you thought there was a provision along those lines but you might now be realising that no, it is not there.

MR TSOTSI: Yes, I have always understood that there was such a provision.

CHAIRPERSON: Yes.

10 **MR TSOTSI:** Whether it is in the Eskom internal documents.

CHAIRPERSON: Yes.

MR TSOTSI: That could be the case.

CHAIRPERSON: Yes, I think ...[intervenes]

MR TSOTSI: I have always understood that that was the prerogative the Minister had.

CHAIRPERSON: Yes.

MR TSOTSI: Yes.

20 **CHAIRPERSON:** I think what you should do in due course is check any other instruments that you think might have something.

MR TSOTSI: Yes.

CHAIRPERSON: But I would have thought that the Memorandum of Incorporation would be the right instrument to have such a provision.

MR TSOTSI: Yes, alright.

ADV SELEKA SC: Thank you, Chairperson. Mr Tsotsi may I also refer you to page 983, paragraph 13.7 of the same Memorandum of Incorporation. Are you there?

MR TSOTSI: Yes, sir.

ADV SELEKA SC: With the heading Powers of Directors and it reads, 13.7.1:

10 “The management and control of the company shall be vested in the board which in addition to the powers and authorities expressly conferred upon it by this MOI and the enabling legislation may exercise all such powers...”

And I emphasise all such powers.

 “...and do all such acts and things as may be exercised or done by the company and are not, in terms of this MOI or by the enabling legislation, expressly directed or required to be exercised or done by the company in general meeting or with the prior written consent of the shareholder.”

20 So that last part:

 “...and are not, in terms of this MOI or legislation, expressly directed or required to be exercised or done by the company in general meeting or with the prior written consent of the shareholder.”

It seems to me that if the shareholder interferes in your

functions, for lack of a better word, or encroaches in your functions, it would have to be done in writing.

MR TSOTSI: Yes, sir.

ADV SELEKA SC: Do you see that?

MR TSOTSI: That is what it says, yes.

ADV SELEKA SC: Otherwise all the powers in terms of this provision to manage and control Eskom vested solely in the board. Do you see that?

MR TSOTSI: Yes.

10 **CHAIRPERSON:** And that seems to suggest to me that the board would need to jealously guard against the usurpation of any of its control or powers by anybody. It has got to realise that we are in control of this entity, we have to make decisions that have to be made provided we act lawfully and exercising our best judgment for what is in the interest of the company. We should be left alone to run the company, the affairs of the company.

MR TSOTSI: Yes.

20 **CHAIRPERSON:** You would feel – you would have the same sentiments of what it means for the board to be in control.

MR TSOTSI: Yes, Chair.

CHAIRPERSON: Ja, okay. Mr Seleka?

ADV SELEKA SC: Thank you, Chairperson. Well, on this occasion of the request you did not say anything in your

affidavit about a request having been done in writing to you prior written notice to you by the Minister.

MR TSOTSI: Yes.

ADV SELEKA SC: There was not such.

MR TSOTSI: No.

ADV SELEKA SC: Now this meeting that gets to be cancelled on the eve of the board having to deal with some of the important issues, as you say, one of them are your financials because you are nearing the financial year end, 10 how do you - and the financial director is also, in your case, about wanting the financials to be approved, how do you deal with that, as a Chairman of the board?

MR TSOTSI: Well, the right thing would be to find the earliest opportunity to do just that.

ADV SELEKA SC: To find what?

MR TSOTSI: To find the earliest opportunity, Chair.

CHAIRPERSON: Yes – ja, look this side, I cannot hear you. Ja. Yes.

MR TSOTSI: I am saying that the thing to do then in that 20 situation is to find the next earliest opportunity to do what was meant to have been done at that particular meeting that got cancelled bearing I mind the requirements, the timing, you know, of particular decisions..

ADV SELEKA SC: If possible, Mr Seleka, I would like us to wrap up on this meeting of the 26th and move on to other

matters.

ADV SELEKA SC: Thank you.

CHAIRPERSON: Ja. But, Mr Tsotsi, it appears to me that your evidence is in effect that you agreed to postpone the meeting without knowing what the reasons were, is that right?

MR TSOTSI: Yes.

CHAIRPERSON: Why did you agree to postpone the meeting when you were not given reasons why it should be
10 postponed?

MR TSOTSI: Chair, like I have indicated, it was my understanding at the time that the Minister did have that authority and that the Minister provide the reasons at some date, at some later date.

CHAIRPERSON: Yes.

MR TSOTSI: So the board can have an understanding of what was happening.

CHAIRPERSON: Yes. Did you the approach other members of the board and relay to them – now I must just
20 understand, did you understand this to be a request from the Minister or did you understand it as an instruction?

MR TSOTSI: I understood to be a request from the Minister.

CHAIRPERSON: Request. Ja, okay, alright.

MR TSOTSI: Yes.

CHAIRPERSON: Which the board could say yes or no to, I take it, if it was a request.

MR TSOTSI: Yes, the board could have said yes or no.

CHAIRPERSON: Yes. And so you approached members of the board and said I have received a call from the Acting DG who says the Minister requested we postpone this meeting, I have asked the reasons, the Acting DG said the Minister did not provide reasons but I suggest that we postpone the meeting. Is that the sum total what you said
10 to the members of the board?

MR TSOTSI: Not to the same degree of detail, yes, but in essence that is what I said.

CHAIRPERSON: Yes, okay. And what was their response?

MR TSOTSI: Chair, I ...(intervenes)

CHAIRPERSON: Or the response of the majority.

MR TSOTSI: The majority response was yes, accept that the meeting should be postponed.

CHAIRPERSON: Yes, yes. Were there dissenting voices?
20 Were there those who were not in favour or you cannot remember?

MR TSOTSI: I would be hard-pressed to remember if there were dissenting voices.

CHAIRPERSON: You cannot remember.

MR TSOTSI: They would probably have responded back

to the company secretary.

CHAIRPERSON: Yes, yes. But the message you got ultimately was that the majority were agreeable?

MR TSOTSI: Yes. What I did get, Chair, was at the next time the board sat, there were some board members who expressed dissatisfaction with the fact that that meeting was postponed.

CHAIRPERSON: Postponed at the last minute.

MR TSOTSI: Being given, yes.

10 **CHAIRPERSON:** Yes, yes. Yes, continue, Mr Seleka?

ADV SELEKA SC: Thank you, Chairperson. Mr Tsotsi, let me, just to wind up on this aspect, I will read to you further about Ms Molefe writes in her affidavit, turn the page please to page 118, paragraph 23, which reads:

“Events leading to my suspension.”

She says:

I was suspended on the 11 March 2015 alongside three other executives. Before we were suspended the newly appointed board had held two meetings.

20 The first meeting was on the 9 March, the board that had been deliberating on matters that I have stated above were replaced.”

CHAIRPERSON: I am sorry, I am sorry, Mr Seleka. Terribly sorry to interrupt you, maybe I did miss this, if you dealt with it. Mr Tsotsi, Ms Molefe, if she is talking about

the meeting of the 26th here – and you must tell me, maybe she is talking about another meeting.

She seems to be talking about her being opposed to the postponement of the meeting and canvassing the views of other board members, the board members going along with her recommendation and the board members seeking to approve the financials.

Is that another meeting, it is not the 26th? Mr Seleka, you might be able to tell me.

10 **ADV SELEKA SC:** Ja, let me assist. Mr Tsotsi, that is in the preceding paragraph. The Chairperson is reading the preceding paragraph.

MR TSOTSI: Yes, I see that.

ADV SELEKA SC: Yes, okay.

CHAIRPERSON: So that is another meeting, not the 26th?

MR TSOTSI: No, it is not the 26th meeting.

CHAIRPERSON: 26th, that one, the majority at least agreed that it be postponed.

MR TSOTSI: Yes.

20 **CHAIRPERSON:** It was postponed and then at the next meeting some members of the board expressed concern.

MR TSOTSI: Yes.

CHAIRPERSON: About the fact that it was postponed at the last minute.

MR TSOTSI: Yes.

CHAIRPERSON: Okay, alright. Thank you.

ADV SELEKA SC: Thank you, Chairperson. Going back
...[intervenes]

CHAIRPERSON: I interrupted you while you were dealing
with something else.

ADV SELEKA SC: Not a problem, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: That paragraph 23.

MR TSOTSI: Yes.

10 **ADV SELEKA SC:** “The board that had been deliberating
on the matters that I have stated above were
replaced in or around June 2014 with the exception
of Tsotsi and Mabude. The board meeting...”

Well, I suppose June 2014 should be an error there, an
obvious error.

MR TSOTSI: I am not so sure, what is the question?

ADV SELEKA SC: She is saying:

20 “The board that had been deliberating on the
matters that I have stated above were replaced in
or around June 2014 with the exception of Tsotsi
and Mabude.”

So the previous board is replaced by a new board but she
says it is in or around June 2014.

MR TSOTSI: No.

CHAIRPERSON: That may be right, she may be talking

about the board that – the first board that you chaired.

MR TSOTSI: Yes.

CHAIRPERSON: Maybe talk about that board and it was then replaced – she made the meaning it was replaced, that first board, in June 2014 – or that must be wrong because the next board was appointed in December, is that right?

ADV SELEKA SC: That is correct, yes.

CHAIRPERSON: So she might have got the month wrong.

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

CHAIRPERSON: Ja, ja.

ADV SELEKA SC: Is that correct, Mr Tsotsi? I think she must have gotten the dates wrong, instead of June it is December.

ADV SELEKA SC: There was not a gap between the new board and the old board.

MR TSOTSI: No.

ADV SELEKA SC: Was there an intervening period?

MR TSOTSI: No.

20 **ADV SELEKA SC:** Oh, okay. Then she carries on:

“The board meeting of the 26 February which was on the annual board calendar had been cancelled. The importance of this cancellation meeting was to approve the business plan for the next cycle and recommend a funding plan and building programme

to the shareholder for approval in terms of the PFMA. Notice of a board meeting was sent to all board members by the company secretary via text message, SMS, on 8 March.”

Now what I wanted to draw to your attention, and I am not reading the balance of that, was what she conveys to have been the importance of the meeting of the 26 February. Does that resonate with what you explained to the Chairperson earlier were the important issues to be
10 considered in this meeting?

MR TSOTSI: Correct, yes.

ADV SELEKA SC: Now this is an important meeting. It gets cancelled and you said earlier then you would look for the next available date to discuss these important issues. Did you in fact do that?

MR TSOTSI: Yes, we did.

ADV SELEKA SC: And what as the next available date?

MR TSOTSI: It was the 9 March.

ADV SELEKA SC: Well ...[intervenes]

20 **CHAIRPERSON**: How as the date of the 9th selected?

MR TSOTSI: Okay, the meeting of the – you know, with the 9 March, I stand to be corrected, Chairman, I think it was [inaudible – speaking simultaneously]

CHAIRPERSON: The cancelled meeting was supposed to have been on the 26 February.

MR TSOTSI: Yes.

CHAIRPERSON: That one got cancelled.

MR TSOTSI: It was the 11th, not the 9th. So two meetings, one after the other, the one that is in fact referring to the issues that Ms Molefe was talking about would have been the 11 March not the 9th. Yes.

CHAIRPERSON: So was that date of the 11th fixed by yourself as Chairperson or fixed that date?

MR TSOTSI: Yes, it was, it was, it was fixed by me
10 because it was a request once again to deal with the issues that were not dealt with as a result of the postponement.

CHAIRPERSON: On the 26th.

MR TSOTSI: Of the 26th, yes.

CHAIRPERSON: Yes. Was the Minister asked whether it would be fine with her if the meeting that was to have sat on the 26 February sat on the 11 March?

MR TSOTSI: Minister was not consulted, Chair.

CHAIRPERSON: Was not asked?

20 **MR TSOTSI:** No.

CHAIRPERSON: Yes, okay. So it was just your decision the next meeting will sit on the 11th?

MR TSOTSI: Yes.

CHAIRPERSON: Yes, okay. Mr Seleka?

ADV SELEKA SC: Thank you, Chairperson. Mr Tsotsi,

you mentioned the meeting of the 9th whether it was – in a statement in relation to a response to my question or not but let me ask you about – I mean, ask you a question in relation to that. Was there a meeting on the 9 March 2015?

MR TSOTSI: Yes, there was.

ADV SELEKA SC: How did that meeting come about?

MR TSOTSI: Okay. Chair, that meeting came about as a result of my visit to the residence of President Zuma on the
10 – I think the 8th, 7th or the 8th.

CHAIRPERSON: Well, I guess let us go back. You tell me about that meeting at – or your visit to Mr Zuma's residence so that we can follow the sequence properly.

MR TSOTSI: Yes.

CHAIRPERSON: Is that fine, Mr Seleka?

ADV SELEKA SC: That is absolutely – thank you, Chair.

CHAIRPERSON: Yes, maybe let us go back to his affidavit.

ADV SELEKA SC: Yes, Chair.

20 **CHAIRPERSON:** Is that fine? Let us see. Well, in paragraph – page 3 of your affidavit, paragraph 5, you deal with the relationship with the Ministers. You do say that you seem to have had a good relationship with Minister Gigaba, is that right?

MR TSOTSI: Correct, Chair.

CHAIRPERSON: Yes and you had scheduled meetings with him, regular meetings.

MR TSOTSI: Yes.

CHAIRPERSON: Yes and then I seem to remember that you say somewhere that you struggled to have a same arrangement with Minister Brown to have regular meetings, to schedule meetings, is that right?

MR TSOTSI: Yes, that is correct, Chair.

CHAIRPERSON: Yes, you tried but you did not succeed to
10 have that arrangement with her.

MR TSOTSI: Yes, that is correct.

CHAIRPERSON: Yes and then you talk about your relationship with the Guptas in paragraph 6 of your affidavit. If it is fine with Mr Seleka can you tell me about that relationship?

MR TSOTSI: With Minister...?

CHAIRPERSON: Ja, with the Guptas. Or does that precede the meeting or is after the meeting at Mr Zuma's residence that I want you to tell me about.

20 **MR TSOTSI:** No, the issues that I raise ...[intervenes]

CHAIRPERSON: Mr Seleka, if you want to intervene you please feel free. Ja, okay, alright.

MR TSOTSI: The issues that I am raising, Chair, in relation to my relationship with the Guptas, are varied on that I simply point out where I met them, where the

interactions took place and so on.

CHAIRPERSON: Yes.

MR TSOTSI: So ...[intervenes]

CHAIRPERSON: You want to quickly deal with that?

MR TSOTSI: Yes, I can certainly do that.

CHAIRPERSON: Ja, just do that.

MR TSOTSI: My first encounter with the Guptas I seem to recall was at the ANC January 8th statement which took place – or function, which took place in Nelspruit. I see to
10 recall it was 2014. Maybe I stand to be corrected, I am not sure hundred percent that it was 2014, but...

CHAIRPERSON: Yes.

MR TSOTSI: In any case, at that function I happened to be seated – I was requested to sit at a table where the ANC's top six were seated together with two of the Gupta Brothers, myself and Chairperson of the SABC because we were – we had provided some sponsorship to – or some support to the ...[intervenes]

CHAIRPERSON: To the meeting?

20 **MR TSOTSI:** Yes, to that one, Chair.

CHAIRPERSON: Yes.

MR TSOTSI: And that is the first time I got introduced to two of the Gupta brothers, two of the older brothers.

CHAIRPERSON: Okay, let us just get that clear. This was the ANC January 8 Rally.

MR TSOTSI: It was a dinner.

CHAIRPERSON: It was a dinner?

MR TSOTSI: Yes, a fundraising ...[intervenes]

CHAIRPERSON: Which preceded the January 8 rally.

MR TSOTSI: Yes.

CHAIRPERSON: Okay, already. So the top six of the ANC were sitting at the main table, I guess.

MR TSOTSI: Yes.

CHAIRPERSON: And you were invited to go and sit with
10 them.

MR TSOTSI: Yes.

CHAIRPERSON: And you say there were two Gupta brothers who were also sitting at the main table with the top six.

MR TSOTSI: Correct.

CHAIRPERSON: Do you remember which ones those are, those two Gupta brothers, or do you not remember?

MR TSOTSI: Yes, I do, it was Ajay Gupta and Atul Gupta.

CHAIRPERSON: Atul, ja. Now apart from the top six,
20 yourself and the two Gupta brothers, who else was sitting at the main table if you are able to remember?

MR TSOTSI: It was just us. There were 10 sets and there 10 people.

CHAIRPERSON: So the main table consisted of the top six of the ANC, then two Gupta brothers and then yourself?

MR TSOTSI: And the Chairperson of the SABC.

CHAIRPERSON: And the Chairperson of the SABC?

MR TSOTSI: Ja.

CHAIRPERSON: Who was the Chairperson of the SABC at the time?

MR TSOTSI: It was Ms Tshabalala.

CHAIRPERSON: Ms Tshabalala?

MR TSOTSI: Yes.

CHAIRPERSON: But do you know whether the SABC was
10 also sponsoring the event or do you not know?

MR TSOTSI: I think so, Chair, because she spoke briefly, she had some brief words during that function.

CHAIRPERSON: Yes, yes. Now – okay, so you took your seat in the main table and what happened, continue?

MR TSOTSI: Well, we were introduced to one another because everybody had a name tag so whoever who you did not know you introduced yourself to that person. So that represented the first time that I had a face to face encounter with them.

20 **CHAIRPERSON:** Yes.

MR TSOTSI: Yes.

CHAIRPERSON: Now I want to divert it but maybe you can answer this after the tea break. I know that it happens regularly, frequently, that state owned entities sponsor events of the ANC. I want to know why it is proper for a

state-owned entity to sponsor a political party's event.

So now that you have said that Eskom was sponsoring or was one of the sponsors of that dinner, I want to know why it is proper that that should happen. But we will take the break. You can tell me when you come back. Let us take the tea break, it is quarter past, we will resume at half past eleven.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: We adjourn.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Let us continue. Yes, Mr Tsotsi, what is the answer?

MR TSOTSI: Short sharp and quick. Chair let me just reflect back Chair, you may recall in previous testimonies that were given here by myself and others when we talked about the TNA matter at this time Eskom had added into one of those TNA contracts.

CHAIRPERSON: Yes.

20 **MR TSOTSI:** So what happened was this – and this normally happens when the – in the course of these TNA contracts; Eskom took an opportunity in consultation with the TNA people who were running the contract to showcase the 49M program and other Eskom issues at this particular gathering.

Now you may be aware Chair that at some of these gatherings what happens is that the ANC invites business people to take up spaces, to take up tables in an organised business environment where business people are then able to interact with government officials who attends these functions including members of the executive where there is this networking that goes on.

So essentially because the ANC is the governing party it is assumed that it is a networking opportunity for
10 business people to network with the African National Congress Ministers and other senior members of the organisation. So it was from the perspective of the TNA contract and the opportunity to expose Eskom as part of the program that Eskom had including the M49 program. With that management asked me to attend and speak on behalf of Eskom at this function and in fact I address the function dealing with specific issues that were problematic at the time particularly the load shedding issues.

So though it would appear as if this contract was
20 targeting support for the ANC the idea that we were advancing and my understanding of what management was wanting to do was to give Eskom the opportunity through my presentation at this meeting, at this dinner and to profile the company and give the opportunity for us to reach our customers through the media that was provided

by the SABC.

CHAIRPERSON: You say this particular dinner of January I guess it must have been January 7, I do not know.

MR TSOTSI: Yes.

CHAIRPERSON: 2014, you say Eskom got onto the – got to participate through you in the dinner because of TNA or it got to participate in its own right without TNA the new age and you have referred to the breakfast and that in the breakfast were connected with the new age.

10 **MR TSOTSI:** What I understood at the time was that Eskom was in fact and I say carrying out the contractual relationship between itself and TNA and this particular platform was one of this platforms that the TNA contract was addressing. Whether it is a forum where someone from Eskom is able to participate and give a profile.

CHAIRPERSON: But this was an ANC dinner that is one thing sure, is it not?

MR TSOTSI: It was an ANC dinner, yes.

CHAIRPERSON: Yes, as I understand it other TNA or TNA
20 breakfast because that is my understanding and I maybe wrong but I never understood that those TNA arrangements that Eskom had, SABC had with TNA they were dinners. I understood them to have been breakfast.

I maybe wrong but I do not remember hearing about dinners I just heard about breakfast. Now you understood

that in terms of the agreement between the new agent Eskom this was one of the forums, this was one of the functions which you needed to attend as Eskom.

MR TSOTSI: Yes.

CHAIRPERSON: Yes, but do you know for sure whether that was actually so because as I say I understood all the others to have been breakfast I may be wrong as opposed to dinners this was a dinner and the other ones if I recall correctly it is those about with which I have had evidence
10 here have never been ANC functions. They were basically Gupta functions but business functions.

MR TSOTSI: Chair this might have been a breakfast itself I might be wrong myself.

CHAIRPERSON: Yes, well I can simply say from my own general knowledge I seem to have an understanding that it is usual for the ANC to have a dinner the evening before the January 8 statement...[intervene]

MR TSOTSI: Yes.

CHAIRPERSON: Or January 8 rally. So if you say it was
20 a dinner that seems to resonate with what I have been observing in the media over the years about the ANC.

MR TSOTSI: Yes.

CHAIRPERSON: So it is likely to have been a dinner.

MR TSOTSI: Okay that is fine.

CHAIRPERSON: Yes.

MR TSOTSI: So Chair I think if you view it from the perspective of how the TNA breakfast themselves were being conducted it would seem to me that this was a similar format because the people who were predominantly present in this particular function were not necessarily ANC members. In fact, there were a lot of business people who...[intervene]

CHAIRPERSON: Well it would be ANC members and supporters mainly, yes.

10 **MR TSOTSI:** So the idea then was this was another forum where the TNA and – or the 49M contract then had an opportunity to express itself in the same way that it was doing so at the breakfast meetings you know that you are aware of. So that was the essence of it.

CHAIRPERSON: But there would have been during your term I take it there would have been other ANC functions that Eskom may have sponsored which might not necessarily have been connected with the TNA, is it not? Like what is called buying tables or that functions or
20 dinners or whatever.

MR TSOTSI: I cannot really say for sure Chair.

CHAIRPERSON: You cannot remember that is the only one that you can remember.

MR TSOTSI: That is the one that I can remember, yes.

CHAIRPERSON: But even that I can understand private

companies because some of them maybe wanting to have access to the executive to Ministers and so on and so on for good or bad reasons for their business. But I cannot understand why Eskom would do that because they are a State-owned entity.

There is a Minister that represents you know government that they liaise with and there is nothing they want from government other than a lawful contributions if any for funding and so on and so on. So when it comes to
10 a private company I can understand somebody saying you know I am going to buy table at that dinner because I want to meet the DG's, I want to meet the Ministers you know for whatever purpose. You have as Eskom access to the Minister you know all the time to a Minister who represents the government you are a State owned entity. So why do you want to spend money in order to be at that dinner?

MR TSOTSI: Chair it is not about, it was not about the networking with business in our case.

CHAIRPERSON: Ja.

20 **MR TSOTSI:** We were leveraging you know the communication opportunity that we had with our customers via the SABC network to be able to put across whatever messages we wanted to put across because of the availability.

CHAIRPERSON: But my difficulty for present purposes it

is just doing it in a manner that quite clearly supports a political party. Did you ever do any such things in DA meetings, in UDM meetings, in Inkatha meetings, in Freedom Front meetings. Did you ever do any such - did Eskom ever do that?

MR TSOTSI: I do not know Chair; I would not - I have not heard of it. I have not heard of any...[intervene]

CHAIRPERSON: It may be that there is justification that I just do not know because it seems to be something that
10 happens and nobody seems to make issue of not just Eskom I think other State owned entities where they seem to spend money on political parties' functions like the ANC but I do not think they do the same with any other political party.

MR TSOTSI: Chair I do not believe that there was any specific benefit to the ANC in this process.

CHAIRPERSON: Yes.

MR TSOTSI: There certainly was not.

CHAIRPERSON: Well of course if you bought tables you
20 know I am using bought in the way that they are used, that term is used. If you bought tables you made the function possible without the ANC spending its own money as I see it, I may be wrong.

MR TSOTSI: Yes, I do not recall that there was anybody other than me from Eskom who was present but I do not

know.

CHAIRPERSON: Was the function not on the basis of buying so called buying a table? I mean from what one reads sometimes these tables are bought for very large sums of money which always gives me the impression that the food that you are going to eat and everything that you are going to eat is going to be much less than the money you pay. So the balance of the money goes to the ANC.

MR TSOTSI: Yes, that is a common practice, yes.

10 **CHAIRPERSON:** Because as I recall I am sorry I am interrupting you, as I recall even the ANC leaders or some of them at least in the past when they give out these invitations or talk about them you as a company and I am talking now private sector your benefit that you derive for paying such a large amount of money when it is that you are buying a table is that you are going to network with the Ministers with people high ranking officials of a political party who happen to be also in government who are Ministers.

20 That to me that always sounds not right. Why should people buy, spend money if they want to talk to a Minister about something why should they not ask for a meeting to meet with the Minister and talk about it without paying money. This is not a Minister acting as Minister this is now a Minister acting as a leader in a political party.

MR TSOTSI: Yes, from our perspective Chairman what we saw was a platform for us to reach our customers which was...[intervene]

CHAIRPERSON: But why can you not reach your customers in another way without a political party.

MR TSOTSI: We do and we did.

CHAIRPERSON: Yes.

MR TSOTSI: But on this occasion I think the presence of the SABC was an advantage that we saw because we
10 would ordinarily be charged by the SABC for them to give us a platform. So there was that benefit that we recognised.

CHAIRPERSON: Ja.

MR TSOTSI: But I say that was the thinking at the time.

CHAIRPERSON: Ja, Mr Seleka this was just a detour.

ADV SELEKA SC: No it is fine Chair thank you. Yes, I thought I had left it to the end but you brought it forth.

CHAIRPERSON: Oh then I am terribly sorry well it just shows we did not exchange notes; we are not exchanging
20 notes.

ADV SELEKA SC: No not at all. Yes, well Mr Tsotsi this was indeed as you write in that affidavit a usual fundraising gala dinner and this is for the ANC. You say that in paragraph 6.1.

MR TSOTSI: Yes.

ADV SELEKA SC: The ANC had its usual fundraising gala dinner. So the funds are being raised for non-other but the ANC.

CHAIRPERSON: The point being you as Eskom were helping the ANC raise funds.

MR TSOTSI: That is not correct Chair.

CHAIRPERSON: What is not correct?

MR TSOTSI: I think the interpretation of what is written here is not correct. Let me correct it.

10 **CHAIRPERSON:** Ja, what is the correct interpretation?

MR TSOTSI: As I said Eskom was not there for any purpose other than to exploit the platform that the SABC provided for us to reach our customers. That was the basis upon which I was asked to go and present at that function. As far as I am aware there was no tables that the company had bought but I stand to be corrected. I did not know of any such nor was I told that we had bought any tables but what I knew was that we had this TNA contract and the purpose of the contract was to be able to facilitate
20 the use of and create an understanding in our customer base of the use of electricity through the 49M program. So...[intervene]

CHAIRPERSON: Mr Tsotsi that cannot be, it cannot be, what you are saying cannot be true. You have to accept that such events are fundraising events for the ANC. Are

you not going to accept that proposition?

MR TSOTSI: It is a fundraising event for the ANC that is true.

CHAIRPERSON: Yes, so now the ANC is not going to allow you to come and sit at the main table with the top six as part of Eskom if you are not going to be helping them to raise funds. Why should they do that?

MR TSOTSI: What is possible Chair, what is possible is that the ANC could have received funding from the contractor who is TNA themselves. It could well be that the TNA could have contributed some money as its own contribution and then in the process we then get involved as a partner of the TNA. But I am not denying the fact that it could be that Eskom could have paid something.

CHAIRPERSON: Yes.

MR TSOTSI: But I did not go there with the intention of supporting...[intervene]

CHAIRPERSON: Well I do not know about that Mr Tsotsi. It is a fundraising function of the ANC. It is publically known to be such, you are brought in to sit at the table, at the main table with the top six of the ANC. There are only what four people who are not in the top six of the ANC you are one of them.

It just seems improbable that the ANC is going to allow you to sit there if you are not adding to the purpose

of the function which is raise funds and probably if they allow you to sit there it is because you have made a serious contribution to the purpose of the function.

Others who may have made some smaller contributions are sitting right there at the back you are right at the top. You must have as Eskom contributed significantly to the purpose of the function. What do you say to that?

MR TSOTSI: What I say to that chairman I am not aware
10 of that I was never made aware of that.

CHAIRPERSON: Yes.

MR TSOTSI: I was never told that there was such a contribution.

CHAIRPERSON: Yes, okay.

MR TSOTSI: And I think it's possible that one can – this can be discovered in fact did it happen or not.

CHAIRPERSON: Yes, yes.

MR TSOTSI: But my thinking at the time was that the likelihood would have been that TNA themselves would
20 have used the Eskom contract to contribute.

CHAIRPERSON: Well I have a suspicion that if the Gupta's used their own money they would not be wanting to let you benefit from their own contribution. They would want you to make your own contribution and they would be happy that they were at the main table themselves only

because the money that they got was their money out of the TNA is it not.

It was not I say it – once you have paid what you paid it was their money it was not Eskom's money anymore. Ja, okay Mr Seleka if I have encroached on what you were going to do, I am terribly sorry it is just that some of these issues are quite important.

ADV SELEKA SC: No certainly Chairperson not to be sorry at all. Chairperson I think we should explore that
10 aspect to its limits and then we can go to where I wanted to go earlier. Mr Tsotsi well you write further there in paragraph 6.1 after you mentioned the tops, you said the ANC top 6 and two other.

All the Gupta brothers the table had name tags. So those who did not know one another were able to introduce themselves. This was the first and the only encounter I had with these Gupta brothers. I never got to see or talk to them thereafter. Now this is January 2014. Is that correct?

20 **MR TSOTSI:** Yes.

CHAIRPERSON: Ja, that could be January 2014.

ADV SELEKA SC: January 2014. The next paragraph and I am trying to understand that concluding statement in paragraph 6.1 visa vie the next statement you make in 6.2. You say I was requested by Mr Tony Gupta to meet with

him at their Saxonwold residence on some of three occasions and once at their Sahara Computers offices in Midrand. Now my question is was Mr Tony Gupta one of the brothers you referred to in paragraph 6.1?

CHAIRPERSON: No he said those two were Mr Ajay Gupta and Mr Atul Gupta they are the two other brothers.

ADV SELEKA SC: The two older brothers.

CHAIRPERSON: Tony Gupta is another one. So it seems that what he means is on the occasion of that dinner he
10 met the two namely Atul Gupta and Ajay Gupta but subsequently the person that he had interactions with was Tony Gupta.

ADV SELEKA SC: I see, thank you Chairperson. You confirm that Mr Tsotsi?

MR TSOTSI: Yes.

ADV SELEKA SC: So okay 6.2 refers to a different person a different occasion?

MR TSOTSI: Yes, a different person yes.

ADV SELEKA SC: Different person different occasion.
20 And having been requested as such did you attend at their residence in Saxonwold?

MR TSOTSI: Yes.

ADV SELEKA SC: And what gets to be discussed in a nutshell on this – I see you say some three occasions.

MR TSOTSI: Yes.

CHAIRPERSON: Let us take the first occasion then go to the second and then go to the third.

MR TSOTSI: Okay the one occasion...[intervene]

ADV SELEKA SC: Sorry can you recall when was that?

MR TSOTSI: On this particular occasion it was sometime in 2014 it could have been around sometime in the middle of the year.

ADV SELEKA SC: 2014?

MR TSOTSI: 2014, yes it was sometime in the middle of
10 the year.

ADV SELEKA SC: Okay then you may proceed about what gets to be discussed in that meeting.

MR TSOTSI: What had transpired is that there was a request from our company that wanted to supply gas to the Eskom open cycle turbines which – are based in the Western Cape and the idea would be once Eskom has converted those units which were now firing with diesel into what they should be gas firing.

Then the idea will be to bring in gas into the
20 Western Cape, get a contract with Eskom for the two units to supply gas and use that as an anchor tenant to then get into the Western Cape's business, gas business. Now the evidence is here that Tony Gupta had that there was such an opportunity and I said to him look I do not know anything about that.

CHAIRPERSON: Did he call you or you met or?

MR TSOTSI: Yes, we were talking face to face I met him at the Saxonwold residence.

CHAIRPERSON: Yes did he call you to set up the meeting?

MR TSOTSI: Yes.

CHAIRPERSON: And what was the venue of the meeting?

MR TSOTSI: It was at Saxonwold.

CHAIRPERSON: Oh at their place.

10 **MR TSOTSI:** Yes.

CHAIRPERSON: Yes, okay and you say that would have been around mid-year 2014?

MR TSOTSI: Yes, Chair.

CHAIRPERSON: Yes, okay so he asked you to come and see him for a meeting and you came and so he talked about this issue?

MR TSOTSI: Yes, he wanted to find out if we can assist him with facilitating a contract with Eskom.

CHAIRPERSON: Yes.

20 **MR TSOTSI:** So that they can supply gas to them.

CHAIRPERSON: Yes.

MR TSOTSI: So when I then found out what was happening, I reverted back to him and...[intervene]

CHAIRPERSON: Well before you found out just tell about the discussion you are at the meeting now.

MR TSOTSI: Yes.

CHAIRPERSON: He puts this request tell me the discussion how the discussions, how the meeting – how you responded and how the meeting ended?

MR TSOTSI: Okay as I said he asked for the assistance for the supply of gas to the OCGT's like I said and I said look I do not know anything about that and he in fact is the one who said that there is an opportunity for that business. So I said look I am not aware of that I can find out from
10 Eskom what is happening in that regard and it was a very brief discussion really to say look I do not know anything about it I can come and find out and get back to him.

I subsequently then enquired at Eskom and what I was told was that there was a company which had raised the same discussion at Eskom and they were then directed to speak to the Department of Energy because the way that process is done is through an MOU which MOU is signed with not with Eskom but with the Department of Energy. That I conveyed to him that that is the, as far as what
20 Eskom gave me. So it is not only that it is out of Eskom's hands it is a matter that he would have to raise with the Department of Energy, let alone the fact that it looks as though someone had beaten them to that. So that was the one encounter which I had with it.

CHAIRPERSON: When you had to go back to him was that

by way of a telephone call or was there nothing...

MR TSOTSI: I think I called him yes I think I called him
Chairman.

CHAIRPERSON: Yes.

MR TSOTSI: I do not recall going back to – to that.

CHAIRPERSON: Yes.

MR TSOTSI: I think I just phoned.

CHAIRPERSON: Yes was there any special reason why
when he wanted to meet with you you agreed to go to his
10 house or home as opposed to him coming to you? He
wanted a meeting with you. Why does he not come to you?

MR TSOTSI: Chairman I cannot specifically say why he – I
did not ask him.

CHAIRPERSON: Hm.

MR TSOTSI: To come to my office. I do not recall that I had
asked him to come to my office.

CHAIRPERSON: Yes. Well it is just – just strange that from
the evidence I heard over the past two years in terms of
people who met with them that mostly they got people to
20 come to – to them rather than them going to people.
General Nyanda gave evidence here and said that when they
sent messages wanting a meeting with him, he insisted that
they should do like everybody come to his office. They must
go through the normal processes and come and have a
meeting in the department – and no meeting ever happened.

It seems they – that they did not want to do that and he said well he was dropped from Cabinet. That it looks like everybody just went to them whenever they wanted a meeting and nobody said well you want to have a meeting with me you come to my office. So that is why I am asking you whether there was any reason why you went to him rather than him coming to you?

MR TSOTSI: Yes.

CHAIRPERSON: Hm. You cannot remember any particular
10 discussion around – around the issue of where you – the two
of you should meet?

MR TSOTSI: Well Chair there was no discussion in the sense that there was no debate as to whether he should come to my office or me go to his – his place.

CHAIRPERSON: Yes.

MR TSOTSI: Because I knew that they – the tendency for them is to ask I know that the tendency for them is to ask that the meetings be held at their place.

CHAIRPERSON: Yes. Well Mr Themba Maseko gave
20 evidence to the effect that he had a meeting with Mr Ajay Gupta in the second half of 2010 and effectively Mr Ajay Gupta was saying something along the lines, we called the Ministers. We – if they do not cooperate then we tell the – we report them to the President and he deals with them. So – so I am wondering whether this whole idea that whenever

they need to meet with people they do not go to those people's places. They – the other people must come to them – they must come to their home. You know.

MR TSOTSI: Chair it was – it was common knowledge amongst the government officials and people who had reason to interact with them that they certainly have the occasion of the President and were close enough to the President to threaten people with – with Baba as they call him. They did the same to me.

10 **CHAIRPERSON:** Ja.

MR TSOTSI: At some point. So I suppose they felt that if they had that kind of leverage with the President, they could demand whatever they wanted to be done and that be done or else there might be consequences.

CHAIRPERSON: Yes. Yes.

MR TSOTSI: That was common knowledge.

CHAIRPERSON: Yes. Thank you. Mr Seleka.

20 **ADV SELEKA SC:** Thank you Chairperson. Now Mr Tsotsi a follow up question to that is – is given that he was making a business proposition to Eskom why did he seek a meeting with you a Chairperson of the Board non-executive and not anybody else in operations at Eskom?

MR TSOTSI: Chair I got a very distinct impression that the – this guy specifically Tony Gupta not only had no understanding of processes but he had no appreciation and I

think could not really care less. All he is interested in is the person who he perceives to be in a position of authority and a position of power to deliver whatever details that they – he wanted delivered was the person he would focus on. And the processes of approaching the organisation through the operational and correct channels he was not interested in that. So it did not surprise me because he certainly had no regard for processes. Especially when we talk about the way they responded when in fact I was unable to assist them in specific instances.

ADV SELEKA SC: Yes. Well one has in mind for instance if you talking about persons in authority you have a CEO there he certainly one person in authority. He is the face of the company. So why not him but you? Do you – did you ever ask yourself that question?

MR TSOTSI: Well I did not really engage myself with that issue because I understood that they have this notion that they can operate with impunity at levels of government. And so engaging them in process-oriented discussion about who they should approach and who they should not approach was a useless exercise because they did not believe in that. They did not understand that and they were not interested in dealing in that way. Of course, in my response to issues that they – for example I will give you another example just to deal with your question. Chair there was a time when the

same person Tony Gupta had wanted a particular individual to be employed by Eskom in a position in procurement. There was a position on the establishment list of Eskom of a Chief Procurement Officer. And he wanted me to assist him to get – well that person to get that position in the company.

CHAIRPERSON: Yes. Around about when was this? Was this still 2014?

MR TSOTSI: This is 2014 yes.

CHAIRPERSON: Yes. So there was a vacancy for the
10 position of Chief Procurement Officer at Eskom?

MR TSOTSI: So he thought.

CHAIRPERSON: So he thought yes.

MR TSOTSI: Yes.

CHAIRPERSON: Okay.

MR TSOTSI: In fact he did not refer to it as a vacancy he said there is a position.

CHAIRPERSON: Yes.

MR TSOTSI: And he wanted that position for his – for his candidate.

20 **CHAIRPERSON:** Yes.

MR TSOTSI: So when I discovered ...

CHAIRPERSON: Was he talking to you in a meeting or over a phone?

MR TSOTSI: It was once again one of those visits I had at...

CHAIRPERSON: Okay was that the second meeting?

MR TSOTSI: Yes.

CHAIRPERSON: Okay alright. And if you estimate around about which month in 2014 would that second meeting have taken place?

MR TSOTSI: Well I know that it was....

CHAIRPERSON: Sometime during the second half of the year?

MR TSOTSI: Probably the second half of the year yes.

CHAIRPERSON: Ja okay alright. Even if you cannot
10 remember the date that is fine.

MR TSOTSI: Yes.

CHAIRPERSON: So he – this time how did that meeting take – come about? Did he call you and arrange another meeting for you to come and see him?

MR TSOTSI: Yes Chairman. He called me to arrange another meeting to come and see him.

CHAIRPERSON: Yes. Okay. Then you went there.

MR TSOTSI: Yes.

CHAIRPERSON: And the meeting took place at Saxonwold?

20 **MR TSOTSI:** Yes.

CHAIRPERSON: And he said there is this position I would like you to facilitate the appointment of this person to that position?

MR TSOTSI: That is correct.

CHAIRPERSON: Yes. Are you able to tell the person's

name that he wanted to be appointed to that position?

MR TSOTSI: I do not recall the name but I know that he mentioned that the person was at the time working for MTN.

CHAIRPERSON: That person was working for MTN?

MR TSOTSI: Yes.

CHAIRPERSON: Yes okay. What was your response to this request?

MR TSOTSI: I said to him, look I know nothing about that. I mean I am not in operations so I would have to ask the
10 people in operations if they can assist you. And I said to him ordinarily there would be an advert for that position and that your candidate would have to apply like everybody else. I thought he was essentially looking for – what shall I call it? – some sort of support at the process where the candidate is now – has applied and is being considered – is being evaluated. I thought that he was interested in that sort of support. Well I discovered ...

CHAIRPERSON: Oh so you – what was his reaction to what you said namely I would have to find out but whether you can
20 be assisted but ordinarily there would have to have been an advert that went out and your candidate would have to apply like everybody. What was his reaction to that?

MR TSOTSI: I do not remember specifically Chairman.

CHAIRPERSON: Yes.

MR TSOTSI: But I was convinced that he was looking for me

to pull strings for him so to speak.

CHAIRPERSON: Yes.

MR TSOTSI: But I suppose not knowing what was actually the situation he maybe did not know what to say because I said, look I do not know the situation I would have to find out what is going on.

CHAIRPERSON: Hm. So the meeting ended on the basis that you would find out about this position he was talking about and revert to him?

10 **MR TSOTSI:** Yes correct.

CHAIRPERSON: Yes and then you went to find out?

MR TSOTSI: Yes and what I established was that not only was the position on the establishment list of the company but the position was in fact not advertised.

CHAIRPERSON: But was it vacant?

MR TSOTSI: It was not advertised.

CHAIRPERSON: It was vacant?

MR TSOTSI: It was vacant yes.

CHAIRPERSON: Oh okay but it had not been advertised.

20 **MR TSOTSI:** It had not been advertised.

CHAIRPERSON: Yes okay.

MR TSOTSI: And that is what I told him. I said to him well the position not been advertised and so there is no issue. You would have to wait until the position gets advertised.

CHAIRPERSON: Hm.

MR TSOTSI: I stand to be corrected here Chairman but I think I subsequently heard much later after I had left Eskom that that individual did in fact go and work for Eskom.

CHAIRPERSON: Oh is that so?

MR TSOTSI: That is what I understood.

CHAIRPERSON: Yes.

MR TSOTSI: Yes.

CHAIRPERSON: Yes. But you have no party – you have no – do not remember the particulars of his name and what
10 position he ultimately occupied at Eskom?

MR TSOTSI: The position would have been Chief Commercial Officer.

CHAIRPERSON: Oh he – from what you heard he ultimately got that position?

MR TSOTSI: That is what I ultimately heard yes.

CHAIRPERSON: Yes. Well it would be interesting to establish as a matter of certainty whether it is the same person that you had been told about by Mr Gupta.

MR TSOTSI: Yes.

20 **CHAIRPERSON:** And that is one and two whether he actually it is true he got this position that Mr Gupta wanted him for. So I think if the legal team does not have that information please something must be done to just establish for sure what the position is and I assume that you might not remember the name but if you are told that it looks like that

position was occupied – was filled by so and so you might recall whether that was the name that you have been told. And whether that person came from MTN that would link up with your thinking.

MR TSOTSI: Yes.

CHAIRPERSON: Is that right?

MR TSOTSI: Yes.

CHAIRPERSON: Okay. Mr Seleka.

ADV SELEKA SC: Thank you Chairperson. Yes Mr Tsotsi he
10 – writing in...

CHAIRPERSON: He was to tell us about the third meeting with Mr Tony Gupta. He has told us – you have told us about two meetings.

MR TSOTSI: That is correct.

CHAIRPERSON: Is that right?

MR TSOTSI: Yes.

CHAIRPERSON: Yes. Tell us about the third one.

ADV SELEKA SC: Yes.

MR TSOTSI: Chair the third one has to do with the TNA
20 contract. You will recall Chair the last time I was here that we raised the issue of the irregular expenditure which occurred at the instance of Colin Matjila who was at the time the acting Chief Executive of Eskom. This was now I would say around October – no it was a little bit before October. Just before Mr Matona came into the ...

CHAIRPERSON: Ja Mr Matjila preceded Mr Matona I think.

MR TSOTSI: That is right yes. And on this occasion, I met – remember I met him at his Saxonwold office – I mean sorry his Sahara offices.

CHAIRPERSON: At the Sahara offices?

MR TSOTSI: Yes. I was on my way to a meeting in Pretoria. And ...

CHAIRPERSON: So each time you met you were the one to go to him?

10 **MR TSOTSI:** Correct.

CHAIRPERSON: Hm Okay.

MR TSOTSI: Then at this meeting he asked me what was the problem with the contract that Eskom had signed with them – with TNA? He hears that there is a – some problem to do with this contract. So I told him I said, the contract has been entered into irregularly and that there is an inquiry in fact a forensic audit to establish precisely what had happened and how to remedy that situation. So he said to me, look you are the boss why – you can make thing go
20 away. And so once again it reinforces the mind-set that I spoke about earlier that they have in terms of the structure of the organisation and how it works and processes and all of that stuff. So I told him that in response that first of all I am not in operations and secondly even more importantly this particular incident irregularity that has been picked up of

its own triggers a series of events which I would have no jurisdiction over such as you will be aware the audit trail and also the formality of reporting this incident not only in the financials of the company but also reporting it to the audit authorities. So the essence I told him then that there is nothing I could do or anybody else for that matter could do to assist in this regard. This issue has got to take its course. And as I reported in the last time, I was here Chair that for the first time I noticed that he was visibly angry or
10 upset.

CHAIRPERSON: Upset.

MR TSOTSI: Upset with me – with my response. So that was one of the ...

CHAIRPERSON: Yes okay.

MR TSOTSI: Occasions.

CHAIRPERSON: You may continue Mr Seleka.

ADV SELEKA SC: Thank you Chair. Thank you Chair. Mr Tsotsi you have mentioned that they used the name Baba's enemies – the concept of Baba's enemies. Let us look at
20 paragraph 6.9 of your affidavit on page 6. You say there:

“Tony Gupta made no secret of their intention to influence public servants to assist them with their business interests. He easily spoke disparagingly of those who did not want to assist them and rendered them as

Baba's enemies. A reference to the President – to President Jacob Zuma.”

I pause there Mr Tsotsi to go back to my question to you which is why were you the person approached being an executive Chairman of this entity Eskom? And you said it is because you think they perceived you as being a person in authority – in a position of authority. Correct?

MR TSOTSI: Yes.

ADV SELEKA SC: And you have explained that you had this
10 meeting with Tony Gupta on three occasions at their residence in Saxonwold and their offices at Sahara Computers. Why did you agree to going back the second time, the third time? Why did you not rebuff them?

MR TSOTSI: Chairman this is an interesting question because you know the – as I said earlier that there was a well-known situation regarding them insofar as their relationship with the President. And there were – I had heard of instances where people were supposedly threatened by them if they were not able to at least give
20 them whatever assistance they felt that they needed and that they would report them to the President whom they referred to UBaba. And they seemed to have this authority about them. And I think it is – I suppose something that if one looks at what influence they are capable of exerting then it is clear to me that responding to their requests and their needs

whatever it is that they want to have done is something that would cause them to feel that a lack of such of response would be in a way once again disrespecting UBaba. So the one operated with the thought that you were at the – the behest of people who if you are not able to assist them you are in fact going against the wishes if I may put it that way.

CHAIRPERSON: You are going against the wishes of?

MR TSOTSI: Of the President.

CHAIRPERSON: The President okay.

10 **MR TSOTSI:** Yes. Because of their...

CHAIRPERSON: Yes if you – if you do anything that displeases them you would feel that you are displeasing the President?

MR TSOTSI: Essentially that is what it is.

CHAIRPERSON: Yes.

MR TSOTSI: So I felt that meeting them was not a critical issue. What was critical for me was whether I was in a position to subscribe to what it is that they wanted to do and whether in fact it was within my purview or my authority to
20 do so. That to me was really the critical issue.

ADV SELEKA SC: Ja. Well I do not follow the reasoning but is that how you thought about it at the time?

MR TSOTSI: Yes.

ADV SELEKA SC: Because in fact you do have another meeting according to you on page 7 of the affidavit –

paragraph 7.3. And again, on this occasion as the Chairperson has emphasised it is not them coming to you it is them calling you to come to themselves. And you right if you go to page 7 please paragraph 7.3. Just to put context to that. It flows from your two preceding paragraphs which above which you say a day or two before the State of the Nation Address of February of 2015 – 5 February 2015 that is in paragraph 7.1. You have an encounter with Minister Brown which you tell about there and paragraph 7.3 you say:

10 “On the same day a day or two before the
SONA – State of the Nation Address in Cape
Town Tony Gupta called and requested that
we meet. He suggested that the meeting be
at their residence in Constantia to which I
agree.”

And this again goes back to my question that you seem amenable to attending – I mean to complying with their requests. May I ask you this? Did you – will it be a correct rather observation of your response given to the Chairperson
20 that you felt intimidated by them?

MR TSOTSI: There is an element of intimidation yes that is true. There is an element of intimidation considering the fact that they have the relationship they had with the President.

ADV SELEKA SC: I see.

CHAIRPERSON: What was the fear of what could happen to

you if you displeased them and therefore displeased the President? Why did you have to fear anything about displeasing them if you said, you want a meeting come and see me in my office? And that is the one point. The second point is, maybe after the first meeting you say well, I met you at your venue the first time now you come to me. Let us have a meeting in my office. What could have – what fear could you have had of what would happen to you if you said that and he did not like that?

10 **MR TSOTSI**: Chairman I think it will be – it will be correct for me to think considering what subsequently happened to think that I would have incurred the displeasure of the President if I had did not respond to them in the manner that I did. And I think what might have happened is that I might have either been reprimanded by the President or might have been asked to assist them when they want assistance.

CHAIRPERSON: Ja.

MR TSOTSI: Which I know had happened with – or supposedly it happened with one of the colleagues in
20 government.

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you Chairperson. Mr Tsotsi let us seek could – could the answer not lie in what you say Mr Tony Gupta told you? Let us go back to that paragraph 7.3 which is the question the Chairperson is asking. What did

you fear would happen to you if you did not comply? So you arrive there.

“He suggested that the meeting be at the residence in Constantia to which I agreed.”

Then you go on:

10 “It turned out that the meeting was intended to tell me that I am not supportive of their business endeavours. He went on to say: Chairman, we are the ones who put you in this position and we are the ones who can take you out.”

Did the answer to the Chairperson’s question to you did not lay there, the fear of what could happen to you?

MR TSOTSI: Well, that was partly one of the things that, you know, rested in my mind because I heard of instances of people who supposedly because they did not cooperate, if you like, with them.

They seemed to have had some difficulties. And we have heard of stories of members of executive who had suffered their faith, supposedly.

20 And, you know, people talk and the mill goes around and they raise these issues. So in a way, they had themselves a reputation of being able to use their position to jeopardise people’s positions in government to the extent where people may have – to be dismissed from their positions because they were reluctant to interact with them.

ADV SELEKA SC: Yes. You do say in paragraph 7.4, you remark there that:

“What was ironical about this incident is that it occurred a mere few hours after my encounter with the minister who for all intents and purposes said the same to me.”

What did she say to you?

MR TSOTSI: Okay. At that meeting... Okay, let me just step aside and say. Chair, this was about the time of the
10 SONA in February of 2015. And I was in Cape Town attending the SONA. It could have been a day or two before then.

And sometime in the later morning or towards the middle of the day, I got a phone call from Minister Brown who asked me to come and see her in her office of which I did.

And when I got to her office, she was in fact preparing to go into parliament or something or to another meeting. And I did not even get a chance to sit down because we spoke and she was already about to leave.

20 **CHAIRPERSON:** This was at her house, at her office?

MR TSOTSI: At her office.

CHAIRPERSON: Ja. In Cape Town?

MR TSOTSI: In Cape Town.

CHAIRPERSON: Ja.

MR TSOTSI: Then the minister then says to me: Chairman,

the reason I am calling you is I have received complaints. I have received complaints about your conduct from the board members. I have also received complaints from executives.

And the nature of the complaints is that you are interfering in management. So I was taken aback by this and I did not agree with the minister nor did I fully understand what she was saying.

And I responded to her by saying that insofar as board members are concerned, they hardly know me because they
10 are new to the board. We had not really had a meeting and we had not had a first board meeting.

So I thought it would be unreasonable for them to accuse me of interfering with management. And I said to her also, as far as management is concerned, from their standpoint, if trying to get them to be accountable to the board, constitutes interference in management, then I will continue to interfere with my... that is my position.

Then when I said that, the minister then said to me: Chairman, I think there is no reason for you and I to have
20 any meetings or any contact. So I will go on to do what I are going to do and you just carry on doing what you are doing.

So I said: That is fine, Minister. I will carry on doing what I was doing. So I got the impression that not only was she expressing her unhappiness with me but also that she was basically writing me off. That is the impression I had.

CHAIRPERSON: This is January 2015?

MR TSOTSI: Yes.

CHAIRPERSON: The new board at that stage had had its induction or you cannot remember?

MR TSOTSI: Yes, the board had its induction.

CHAIRPERSON: But it did not have its first meeting?

MR TSOTSI: Yes.

CHAIRPERSON: And would it be correct to say therefore that as at the time that the minister she had received
10 complaints from board members that there would not have been any grounds for the board members to have any complaints against you because you have not started working with them?

MR TSOTSI: That is precisely my view, Chair. There was no basis for them to have that attitude.

CHAIRPERSON: Yes, yes.

MR TSOTSI: Because I have not started working with them.

CHAIRPERSON: Ja. In terms of the management of the –
of Eskom. Would the CEO ordinarily communicate with the
20 minister or would he communicate with you and you would then communicate with the minister?

MR TSOTSI: The way the communication was set up is the DG and the chief executive would be the ones who would communicate. And then I as chairman would communicate with the minister.

CHAIRPERSON: H'm.

MR TSOTSI: That was the setup.

CHAIRPERSON: So it would ordinarily be out of order for the CEO to communicate directly with the minister on Eskom matters as opposed to communicating through you or is that not correct?

MR TSOTSI: That is correct, Chair.

CHAIRPERSON: Ja, there would have to be some exceptional situation ...[intervenes]

10 **MR TSOTSI:** Yes.

CHAIRPERSON: ...for the CEO to communicate directly.

MR TSOTSI: That would be under exceptional circumstances. That is correct.

CHAIRPERSON: Yes, yes.

MR TSOTSI: Yes.

CHAIRPERSON: Of course, if the CEO wanted to complain about you to the minister, one would understand not going through you. Is that right?

MR TSOTSI: Yes.

20 **CHAIRPERSON:** Yes. But at that stage the Eskom had a new CEO that was Mr Matona who had started on the 1st of October.

MR TSOTSI: Yes.

CHAIRPERSON: And if the position is that Mr Matona had not conveyed to the minister any complaints about you, then

if the minister got complaints from anybody else from management, that would be even strange because ordinarily anybody below the CEO, I imagine, has no business communicating directly with the minister?

MR TSOTSI: Chair ...[intervenes]

CHAIRPERSON: The CEO has got to go through but we understand that if he has complaints about you that he was going to convey to the minister, that he might not go through you in that case.

10 **MR TSOTSI:** Chair, as it turns out, at the time when the minister called me to come and see her, I was in fact with Mr Matona in a meeting of the portfolio committee.

CHAIRPERSON: Yes.

MR TSOTSI: Numbers. We were having sort of a workshop.

CHAIRPERSON: So you left that meeting to go and see the minister?

MR TSOTSI: I left that meeting to go and see the minister.

CHAIRPERSON: Yes and left him in the meeting, Mr
20 Matona?

MR TSOTSI: That is correct.

CHAIRPERSON: H'm.

MR TSOTSI: I then went back to that meeting.

CHAIRPERSON: Yes.

MR TSOTSI: And of course, I then seized the opportunity to

ask Mr Matona what is going on.

CHAIRPERSON: Ja.

MR TSOTSI: And he knew nothing about that.

CHAIRPERSON: He had never complaint to the minister?

MR TSOTSI: He had never complaint to the minister.

CHAIRPERSON: Ja. Yes. Okay.

ADV SELEKA SC: Thank you, Chairperson. Mr Tsotsi, let us go to... I think what you were relating in regard to your encounter with the minister, can be found in paragraph 7.1 of
10 you affidavit, page 6.

MR TSOTSI: Yes.

ADV SELEKA SC: And you said you had a conversation. She had summoned you to her office. And the second sentence is:

“The substance of our conversation was as follows. Chairman, I have received complaints from management and board members that you are interfering in management. Please refrain from doing so because if you do not, I shall have to find
20 someone else to do your job.”

MR TSOTSI: Yes.

ADV SELEKA SC: Is that what she told you?

MR TSOTSI: That is precisely what she said to me. That is pretty much what happened, Chair.

CHAIRPERSON: Yes. So you have the minister telling you

that you might lose your job ...[intervenes]

MR TSOTSI: Yes.

CHAIRPERSON: ..if you do not stop what she was saying you must stop.

MR TSOTSI: Yes.

CHAIRPERSON: Then a few hours later, you have Mr Tony Gupta saying they put you into this position, they can take you out.

MR TSOTSI: Correct.

10 **CHAIRPERSON:** And that is what you say you found very strange?

MR TSOTSI: Yes.

CHAIRPERSON: Ja.

MR TSOTSI: Exactly.

CHAIRPERSON: H'm.

ADV SELEKA SC: Thank you, Chairperson.

CHAIRPERSON: Now just to go back. Did you have any idea of what it is she might have talking about that she referred to as interfering in management? I guess, the
20 meant in the management of the company operational matters.

Is that something that you had been dealing with the management that you could link this to?

MR TSOTSI: Chairman, I will have to preface my response to you by saying that I do not have any concrete evidence

that I can that this is what happened but deductively I can piece together where this came from.

CHAIRPERSON: Do that. Just piece it together.

MR TSOTSI: Okay. The way I reasoned this is that ...[intervenes]

CHAIRPERSON: Just switch on your mic. Your mic is off, ja.

MR TSOTSI: Sorry.

CHAIRPERSON: Ja?

10 **MR TSOTSI:** There is a time when I had received a letter from a company called Sumitomo when I was chairman to Eskom.

CHAIRPERSON: A company called?

MR TSOTSI: Sumitomo.

CHAIRPERSON: Yes, Sumitomo. Ja.

MR TSOTSI: Sumitomo, yes. And this would have been around the beginning of Ms Brown's term, I think.

CHAIRPERSON: That would have been around the second half of 2014 ...[intervenes]

20 **MR TSOTSI:** June/July. Somewhere around there.

CHAIRPERSON: 2014?

MR TSOTSI: 2014.

CHAIRPERSON: Yes.

MR TSOTSI: And Sumitomo had – what they were – they addressed the letter to me as chairman, requesting my

assistance in dealing with the matter with Eskom which they were at a point they felt they are not making progress with Eskom in the matter. That is a matter to do with the reconstruction of transformers.

CHAIRPERSON: Reconstruction of?

MR TSOTSI: Of transformers.

CHAIRPERSON: Oh, transformers. Yes.

MR TSOTSI: Yes. This is a Japanese company.

CHAIRPERSON: Yes.

10 **MR TSOTSI:** And as usual, when something like this happens, I ...[intervenes]

CHAIRPERSON: Sumitomo wanted to get a job in – relating to the transformation – construction of transformers?

MR TSOTSI: What essentially was happening was that Eskom had asked Sumitomo to construct or to build transformers for them for a specific purpose and that they would then give Sumitomo a permission to go ahead at a certain point and this was not happening, apparently.

20 So in the interactions with Eskom, Eskom was not able to come to an agreement with them about proceeding with the contract or proceeding with the construction of these transformers.

Then when they wrote to me, they asked for my assistance in trying to resolve the issue with Eskom. So as normal, I then spoke to the chief executive and I said there

is this letter from Sumitomo and the person who is ...[intervenes]

CHAIRPERSON: It was Mr Matjila at that time, the CEO.

MR TSOTSI: It was ...[intervenes]

CHAIRPERSON: Or was it Mr Matona already?

MR TSOTSI: I cannot remember where it was Brian Dumas or it was Mr Matona.

CHAIRPERSON: Yes. Whoever was the CEO or acting CEO at the time.

10 **MR TSOTSI:** Yes. Then I asked the legal people who were in my office. I told them that this is what had transpired. I have asked the organisation through the chief executive to give me a response.

So I then had a conversation around that issue with Engineer, Matshela Koko. And then it was him who was taking responsibility to respond to this matter.

Now in the course of this whole programme and the time to respond, there was some delay that was occurring and I did not understand what the delay was all about.

20 Eventually, I received a response from Mr Matshela Koko which response I then gave to the legal department and asked them: Can I sign this letter? Would this letter not create a particular difficulty for the organisation if I sign it?

They took it, they had looked at it and they said: No, Chairman this letter does not commit or create a situation

where Eskom would have difficulty with.

CHAIRPERSON: This was now – this would have been your response to ...[intervenes]

MR TSOTSI: Sumitomo.

CHAIRPERSON: Ja, Sumitomo. Ja.

MR TSOTSI: And then I responded, signed the letter and the letter went off. Subsequent to that ...[intervenes]

CHAIRPERSON: And in effect, the gist of your response was what in the letter?

10 **MR TSOTSI:** The gist of my response was that the - if I recall well now, is that Eskom would have reviewed the Sumitomo situation and would be getting in touch with them in terms of what the next steps will be including the possibility of sending someone there to go and see what is actually going on.

Now what then happened subsequent to that was that one of the individuals who was involved in this matter – and I got to understand this simple because of the incident that took place – was a man called **Mayisela(?) Sekasindi(?)**

20 **[00:20:37].**

He got suspended. He was suspended by his then boss, his name – by the name of Matjila, of course, for reasons which purportedly are that he irregularly assisted and drafted a letter for me to sign which he should not have done. That was the essence of that.

CHAIRPERSON: Yes.

MR TSOTSI: Now this process took some time and by the time letter gone off, I think by that Mr Matona was in the office.

CHAIRPERSON: Who was the CEO?

MR TSOTSI: Yes. So I then subsequently heard that I was being blamed for this matter and that I had a hand in it and there was a complaint which was raised with the minister. Now the minister did not specifically addressed this particular issue with me.

CHAIRPERSON: She did not give you particular ...[intervenes]

MR TSOTSI: No.

CHAIRPERSON: ...as to which interference, what interference she was talking about?

MR TSOTSI: No, she did not.

CHAIRPERSON: H'm.

MR TSOTSI: So when I tried to piece everything together because I have been told that this complaint was raised by Matshela with her. It is at this point when I realised that the possibility is that the source of this particular issue is Matshela Koko.

CHAIRPERSON: Yes. And there was no other transaction or matter in which you had interacted with the management where you could think the minister – which the minister you

thought was talking about, in saying you had been interfering with management. This was the only one you could think of?

MR TSOTSI: It was the only one I could think of, Chairman.

CHAIRPERSON: Yes.

MR TSOTSI: Yes.

CHAIRPERSON: Okay. Alright.

MR TSOTSI: Yes. So as I say, that is my piecing of what could have transpired.

CHAIRPERSON: Yes. Of course, there is something a little
10 strange with what the minister said to you, namely, she was
objecting to you interfering in management.

MR TSOTSI: Yes.

CHAIRPERSON: There is something strange about the fact that both she and Mr Tony Gupta were effectively threatening you with dismissal if you did not do what they wanted you to do.

And what is strange is that on the one hand, Tony Gupta effectively wanted you to interfere in management and operations.

20 But the minister was saying: I am told you are interfering in management. And on the face of it, one would think she does not want interference. You interfering in management. Is that right?

MR TSOTSI: Yes.

CHAIRPERSON: So the threat is the same but the reason

for the threat seemed to be different. That is on the face of it. Unless saying you must not interfere with management did not mean what one would think it means.

MR TSOTSI: Yes.

CHAIRPERSON: You understand what I am saying?

MR TSOTSI: Yes, I do.

CHAIRPERSON: Ja, you appreciate it?

MR TSOTSI: Yes, I do Chair.

CHAIRPERSON: Yes, okay. Mr Seleka.

10 **ADV SELEKA SC:** Thank you, Chairperson.

CHAIRPERSON: I see we are two minutes to one but you might want to ...[intervenes]

ADV SELEKA SC: Let me just canvas this point with Mr Tsotsi.

CHAIRPERSON: Ja.

ADV SELEKA SC: Mr Tsotsi, the minister or former Minister, Lynne Brown, has provided the Commission with an affidavit after being furnished with your affidavit and she speaks specifically about this issue in a paragraph in her –
20 or certain paragraphs in her affidavit. It is in your bundle and that is on page – the paragraphs that I want to refer to, they are on page 445.

CHAIRPERSON: Is that 445?

ADV SELEKA SC: 445. Correct, Chairperson. You will see that ...[intervenes]

MR TSOTSI: Yes.

ADV SELEKA SC: ...the beginning of... the beginning of this affidavit is on page 434 and it is titled Supplementary affidavit of Miss Lynette Brown. And if you go to page 445, starting at paragraph 100, she writes. The heading is: “*My exchange with Zola Tsotsi in his interference with management matters.*”

“Question seeks of Annexure SA2, reproduces (*I think it should read an extract*) attributed to Mr Zola Tsotsi about a conversation I allegedly had with him. For ease of reference I restate the passage.”

10

And she does which is what we have read a day or two before the SONA of February 2015. So I will not read that passage. We have seen it from your affidavit.

Then paragraph 101, she says:

“The only related conversation I remember having with Mr Zola Tsotsi related to his interference with management or operational issues as opposed to directorate issues.

20

In his oral testimony before the Commission, he confirms this, referring to me, he says where upon the minister had well in this instance, she was not happy about the fact that I was said to be interfering with management.”

Now you will deal with that in your response Mr Tsotsi.

Paragraph 102:

“There had been complaints about Mr Zola Tsotsi, both from the executives and the directory. What comes to mind in particular was that one of the executives came to see me in person, complaining about Mr Tsotsi’s interference with the operational issues, producing a letter allegedly by Mr Tsotsi to a Japanese company about buying oil or some other fuel. I decided I had to intervene.”

10 She says:

“This is why I invited Mr Tsotsi, reprimanded him and directed him to refrain from interfering with management. As to the verbatim exchange, I cannot recall. I do recall that the meeting was tense. The exchange could have been interpreted.”

Now I am pointing you to this because you were saying she did not give you the specifics in regard to the alleged interferences.

20 Is it not your recollection - is it not a natural fact that she did not tell you any specifics or could you have forgotten that she might have told you this specific incident she is referring to?

MR TSOTSI: Chairman, I am absolutely certain she did not tell me the incident. But deep down I knew what was going on.

CHAIRPERSON: Yes.

MR TSOTSI: Because of what I described just now.

CHAIRPERSON: Yes.

MR TSOTSI: And the irony of it is that, the person who raised the complaint to her is the very author of that letter which I was then cleared to sent to Sumitomo. So I am just baffled.

CHAIRPERSON: Ja.

ADV SELEKA SC: The last question before we take the
10 adjournment. Who did you say was the author of this?

MR TSOTSI: It is Matshela Koko who in his capacity as the Executive for Commercial and Technology, he was at the time the Executive for Commercial and Technology, so it was in his area that this matter was fixed.

ADV SELEKA SC: Chairperson it might be an opportune time, I suppose the other, we could finalise the point after the adjournment.

CHAIRPERSON: Yes, on that is fine, we will have to take the lunch adjournment, we will resume at five past two.

20 **ADV SELEKA SC:** Thank you Chairman.

CHAIRPERSON: We adjourn.

REGISTRAR All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV SELEKA SC: Thank you, Chairperson. Mr Tsotsi, when we adjourned, we were dealing with certain paragraphs arising from Ms Lynne Brown's affidavit in regard to your meeting with her two or three days before the State of the Nation address in February 2015. I think we have exhausted that aspect insofar as it is relevant. Do you have anything to add to it?

MR TSOTSI: To this?

ADV SELEKA SC: Ja, to that exchange or the Minister's
10 response to you.

MR TSOTSI: Chair, I think that I stand very firmly by what I had said in terms of the engagement with the Minister though I see in her affidavit she says that she cannot recall the – what the exchange was about and I also must immediately correct what I see here in her statement on 102 where she says ...[intervenes]

CHAIRPERSON: Paragraph 102, you say?

MR TSOTSI: Paragraph 102, yes.

CHAIRPERSON: Ja?

20 **MR TSOTSI:** Where in the middle of the sentence it says:
“Complaining about Mr Tsotsi's independence of operational issues producing a letter allegedly penned by Mr Tsotsi, the Japanese company about buying oil or some other fuel.”

Now this has got nothing to do with buying oil or some

other fuel. This has got to do with purchasing equipment for Eskom.

CHAIRPERSON: Yes.

MR TSOTSI: In the form of transformers. So I think ...[intervenes]

CHAIRPERSON: So she may have got confused?

MR TSOTSI: That might have some other connotations, other [inaudible – speaking simultaneously]

CHAIRPERSON: Ja, okay.

10 **ADV SELEKA SC:** Thank you, Mr Tsotsi. Ja, you will see, for what it is worth, we could complete this, paragraph 104, still on that page, the Minister – former Minister writes:

“I must also say that I did not have the best of relationships with Mr Tsotsi, we did not really get on well with each other. I let know that I abhorred his excesses in particular the fact that as an Executive Chairman who probably would have meetings four times a year, a staff complement of 11 and a fulltime driver were unjustified excesses.”

20 I am going to quickly read through.

“The relationship became even more rancid after he had resigned. In public platforms, especially in the media, he would tarnish my name. In the beginning I would respond as the media houses and radio stations would ask for comments from me. In the

end it became an exhausting an emotionally draining exercise so I let it go and stopped commenting in the media.”

Any comment on that, Mr Tsotsi?

MR TSOTSI: Let me go back to 104, Chair.

ADV SELEKA SC: Yes.

MR TSOTSI: And state very categorically that the Minister is uninformed in respect of the staff complement in my office. I had one individual who I brought into my office as
10 a senior general manager, I had a PA and those were the only people who were directly reporting to me. I had the entire organisation at my disposal, so I could have had – I could have been accused of having the entire management and my behest.

But the fact of the matter is, all those people had their own reporting lines but I had access to them because I was Chairman of the company. So I did not have 11 people, I had two people in my office. The rest of the people were people who were availed to me through the
20 office of the Chief Executive because that is who, in the main, the people I dealt with reported to and so whenever I needed something, the Chief Executive would make it easy and at times would simply – I would simply contact them directly and, of course, just later inform the Chief Executive what conversations I have had with these

people. So this is not correct.

ADV SELEKA SC: Thank you, Mr Tsotsi.

MR TSOTSI: I was not even an Executive Chairman, for that matter.

ADV SELEKA SC: I was about to ask that question.

MR TSOTSI: The other one, Chair, in 105 in regard to the media. Well, I think the less said about that, the better because I expressed my opinion in a media interview and I would like to refer to that particular matter when we come
10 to it, Chair, because we will come to it.

CHAIRPERSON: Yes, no, that is fine.

MR TSOTSI: Because it has a bearing on my removal from Eskom.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: But just please make note of it, Mr Tsotsi.

MR TSOTSI: Yes, I will certainly remember.

ADV SELEKA SC: Now we touched on this aspect this morning about the cancellation of the meeting of the 26
20 February 2015 and that on your version it was on the minutes does request or at least that is how you conveyed it to the board. Correct?

MR TSOTSI: Correct.

ADV SELEKA SC: The Minister has – or former Minister has touched on that in her affidavit, the very one in front of

you. If you go to page 442, for context we could start at 441 at the bottom half, page 441. On what page are you, Mr Tsotsi?

MR TSOTSI: I am page – 441, sorry?

ADV SELEKA SC: 441.

MR TSOTSI: Sorry. Yes, 441.

ADV SELEKA SC: At the bottom of the page, paragraph 65.

MR TSOTSI: Yes.

10 **ADV SELEKA SC:** It reads:

“Questions 8 and 9 of annexure LBSA probe the cancellation of the Eskom meeting that was scheduled for 26 February 2015. I share what I can remember about the cancellation.”

If you turn the page?

MR TSOTSI: Yes.

ADV SELEKA SC: She says:

“I do recall having...”

Oh no, 66:

20 “Above I have discussed the country’s load shedding woes during late 2014. These woes spilled over to 2015 and I remember distinctly that we had load shedding even on the day of the Opening of Parliament in January that years.”

67:

“I do recall having conversations with the then President, President Zuma, about the dire situation of load shedding. He was concerned that the war room was not receiving accurate information, i.e. the executives were feeding the wrong or inaccurate to the war room. He was also distressed by the impact of load shedding on the country and the economy. We were facing a threat of downgrade because of Eskom’s illiquidity problems.”

10 Then she goes on on other matters. Paragraph 68, what specifically we are dealing with, what is contained in your affidavit in regard to the cancellation of the meeting. Says:

“I do not know why this meeting was cancelled. I remembered that I got to know that it was no longer proceeding. I do not recall specifically having a conversation with the then President, President Zuma, about the cancellation of this meeting. It may have happened, I simply cannot recall. I
20 cannot imagine that the then Acting Director General of the DPE...”

That is Department of Public Enterprises.

“...Ms Matsietsi Mokholo, would speak about me having requested her to inform the Chairperson, Mr Zola Tsotsi, that the meeting must be cancelled.

This may have happened. This meeting was rescheduled for and held on 11 March 2015. I would not know the process that was followed to reschedule this meeting to 11 March 2015. Eskom is better placed to explain that process.”

Paragraph 71:

“In the meeting the board members asked me why the meeting of 26 February 2015 cancelled, I in turn relayed the question to the Chairman, Mr Zola
10 Tsotsi, he replied that he had sent a memo to me. I do not recall ever receiving such a memo.”

Do you have any comment, Mr Tsotsi, briefly on that?

MR TSOTSI: Yes. Chair, the assertion by Minister Brown in item 67 where she says she does not have a recollection of a conversation with the then President Zuma – or was it
68? I am sorry, about the cancellation of this meeting. I cannot really speak for that but what I am certain about is that I was called by Ms Matsietsi Mokholo, speaking on behalf of the Minister. So I think ...[intervenes]

20 **CHAIRPERSON:** And that was after the President himself had called you?

MR TSOTSI: Yes, correct.

CHAIRPERSON: And said he had been looking for the Minister and the Deputy Minister.

MR TSOTSI: Yes.

CHAIRPERSON: And could not find them that is why he was phoning you directly.

MR TSOTSI: Correct, yes.

CHAIRPERSON: And he said that it was about – well effectively he talked about the meeting being postponed or cancelled.

MR TSOTSI: Yes.

CHAIRPERSON: So both what the President said to you and what Ms Koko – not Ms Koko – the Acting DG said to
10 you, seemed to connect?

MR TSOTSI: Correct.

CHAIRPERSON: And the Acting DG said it was the Minister who sent her to call you.

MR TSOTSI: That is correct.

CHAIRPERSON: Yes.

MR TSOTSI: So I think the onus is one former Minister Brown to check up on the communication between herself and Ms Mokholo. That it is really I can say in that regard.

ADV SELEKA SC: Then she mentions ...[intervenes]

20 **CHAIRPERSON:** Unless, of course, the President ended up speaking to the Acting DG after speaking to you and then – but the strange thing is that the Acting DG did not say it is the President who asked her. She said it is the Minister.

ADV SELEKA SC: Yes, absolutely.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes. The other thing which I just want to make a comment about is this statement she makes about when she turned up at the meeting, the board meeting, when the board invited her.

MR TSOTSI: Yes.

ADV SELEKA SC: Yes.

MR TSOTSI: Yes, we will deal with that. The memo that I sent to her is in fact dealing with the whole question of
10 formality that I would – I had requested her to put it down in writing that she had in fact asked that the meeting should be postponed. That is what this memo is about. I just – it reminds me actually now that I remember that is what I had written to her about and asked her to formalise the postponement of the meeting.

ADV SELEKA SC: I see.

MR TSOTSI: This was specifically on the advice of my own team that that is what would be required to do. I suppose then that would be addressing what is in the MOU
20 there.

ADV SELEKA SC: Have you shared that memo with the investigation team?

MR TSOTSI: Oh, their lawyer, so they must have known, I mean, they look after this.

ADV SELEKA SC: No, sorry, I am saying the

Commission's investigation team.

MR TSOTSI: Oh, I do not know, I would not know what it is.

ADV SELEKA SC: Oh, okay.

MR TSOTSI: I would gladly share it but I would not know what it is.

ADV SELEKA SC: Yes.

CHAIRPERSON: Do you recall when in relation to the 26 February you would have sent that memo to the Minister?
10 Would that have been soon after the 26 February or would that have been just before the meeting of the – just before the 11 March or would it have been after the 11 March?

MR TSOTSI: Chairman, the possibility is that I would have been advised by my team to immediately write to the Minister.

CHAIRPERSON: Ja, okay.

MR TSOTSI: You know, to confirm that she had said I should postpone the meeting.

CHAIRPERSON: Okay.

20 **MR TSOTSI:** So in all likelihood it could have been on the very same day of the meeting, that same Friday when the meeting was supposed to have taken place or whatever the date was.

ADV SELEKA SC: Yes. So that is the cancellation of the meeting of the 29 February and then you mentioned the

meeting on the 9 March. I would like you to tell the Chairperson whether the meeting of the 9 March, was it a normal scheduled board meeting or not?

MR TSOTSI: Can I ask, are we back to my affidavit now or will we stay with this one?

ADV SELEKA SC: We will be going back to your affidavit.

MR TSOTSI: Oh, okay. Chair, the meeting of the 9th has a particular history.

ADV SELEKA SC: Yes.

10 **MR TSOTSI:** Now I would have to detail how the meeting came about.

CHAIRPERSON: Ja, do so.

ADV SELEKA SC: But before [inaudible – speaking simultaneously] The Chairperson say also, that is correct.

CHAIRPERSON: Okay, ja, if he says...[intervenes]

MR TSOTSI: To answer your question as to what is the nature of the meeting.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** I am sorry, I am sorry, if there is something you would like him to deal with before he does so, you can ask him to do it.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you, Chair.

MR TSOTSI: Okay, so the answer to the question was it –

what kind of meeting was it, it ...[intervenes]

ADV SELEKA SC: Whether it was a scheduled board meeting.

MR TSOTSI: No, it was not a scheduled board meeting, most definitely.

ADV SELEKA SC: Thank you.

MR TSOTSI: Yes.

CHAIRPERSON: Okay, tell us how it came about now.

MR TSOTSI: Chairman, what happened was that on or
10 about the 7th or so of March 2015, I received a phone call
from Dudu Myeni and Dudu Myeni said to me that the
President, Jacob Zuma, requests an audience with me and
that audience is to be immediately at his residence in
Durban. I recall very distinctly because I was due to travel
out of the country to – some invitation I had the very next
day and unfortunately, I had to cancel those plans in order
to attend this meeting.

I would like to say right from the onset that I
understood Dudu's communication with me as that of
20 someone who has been sent to ask me to appear at the
President's residence for an audience with the President.

I then asked her what is this about? She then
declines to discuss it over the phone and said I would hear
about it when I get there. Then I – it was fixed for – I am
assuming the 8th, it was a Sunday. The 8th was a Sunday, I

am not sure. It must have been a Sunday.

ADV SELEKA SC: Chairperson, if I may, for your convenience and the witness's convenience, I have copies of the calendar for the relevant month for 2015.

CHAIRPERSON: Oh yes, ja. Yes.

ADV SELEKA SC: I will beg leave to hand them up, not as exhibits but simply to facilitate the witness's testimony.

CHAIRPERSON: Yes. When you received Ms Dudu Myeni's call, Mr Tsotsi, at that stage on the 7th, there was
10 no meeting of the board scheduled for the 9th, is that right?

MR TSOTSI: No.

CHAIRPERSON: Okay, alright. Yes.

MR TSOTSI: Okay, so that then – I then made my way to Durban on the 8th and I arrived at the Presidency.

CHAIRPERSON: What time was the meeting schedule for on the 8th?

MR TSOTSI: It was for around – it was in the early afternoon, very early afternoon.

CHAIRPERSON: Yes.

20 **MR TSOTSI:** Could have been around one o'clock or so. I arrived there and I found Ms Myeni there together with her son, a young man named Talent.

CHAIRPERSON: Talent, ja, something.

MR TSOTSI: Yes, it was her son and Nick, a gentleman named Nick Linnell and we then were briefed by Dudu

Myeni as to what the purpose of the meeting was.

CHAIRPERSON: When you arrived were they there – or everybody that you have mentioned was already there? Mr Linnell and Dudu Myeni?

MR TSOTSI: To my recollection, Chairman, I am saying I found Nick there but I see his affidavit, he says that he found me there. So I...

CHAIRPERSON: Ja, it does not matter, I just wanted to...

MR TSOTSI: Ja.

10 **CHAIRPERSON:** Ja, anyway ...[intervenes]

MR TSOTSI: Yes, but certainly the other two were there when I arrived.

CHAIRPERSON: Yes, okay, alright.

MR TSOTSI: Yes.

CHAIRPERSON: So you met and the meeting started?

MR TSOTSI: Yes. Well, she then made the statement to the effect that there is a concern about the performance of Eskom, the technical performance and the financial performance of the company and that there needs to be an
20 inquiry into these problems at Eskom and further to that, that there are complaints from the war room that Eskom is not providing accurate information and data to the war room, that information is chopping and changing and in the process it is advisable that certain executives within the company be suspended in order for this inquiry to proceed

unencumbered by their presence.

I was hearing this for the very first time, I was just totally shocked and I expressed my concern to her that ...[intervenes]

CHAIRPERSON: And this was now after the meeting? The meeting had started now or was she just still briefing all of you ahead of the official start of the meeting?

MR TSOTSI: The meeting had not started.

CHAIRPERSON: Had not started.

10 **MR TSOTSI:** She was just briefing us ahead of the – it had not started yet.

CHAIRPERSON: Yes, okay, okay.

MR TSOTSI: So I was quite taken aback by this and I protested about the idea of the suspension of executives and that really was my – centre of my concern. The idea of an inquiry was not new to me for the simple reason that I myself had at some point in the previous year mentioned it to some of my colleagues, the board. I did not really discuss it as a board issue but we were – I think we were
20 at some breakaway somewhere, I cannot remember, where we were sitting as board members in a social environment after the board meeting where I was saying, you know, it could be something to think about, that we need perhaps an independent assessment of what is actually going on at Eskom just so we have, you know, the benefit of someone

who is not involved in the business to tell us what it is that they think is happening.

So it then says that I was not opposed to the inquiry but I was taken aback by the way the whole thing came about. Okay, Nick made some statements, comments as well, to the effect that, if I can recall, Chairman, that – in fact it is Dudu who mentioned that Nick had supported at SAA, as she was then Chairman of – Chairperson of SAA, and he is available to do the same thing for Eskom. So I
10 was then at this point anxious that we should have this meeting that we were called for just so I can get a sense of really where are we, what is going on.

We then went into the meeting, the President joined us as we sat there waiting for him and then the meeting commenced. Again Ms Myeni introduced the subject and the discussion was primarily led by her as to what are the issues that are causing the concern with the performance of Eskom. She seemed to have some knowledge of what was transpiring at the company at the time. Nick also
20 came in, in terms of his experience, what he could offer in the situation and I was concerned, and I raised the concern again of the impact of having to take the drastic action of suspending the executives in a situation like this because you want them not to impede the process or at least that is the rationale.

The President was not very engaging in the meeting, he asked a few things, why the call – one of the things he asked and hopefully Nick, when he comes here, will also be able to assist with the recall. What I do recall was that the President asked if I knew who the people were or are who are to be suspended? So I said well, the names of the people were mentioned by Dudu Myeni and she mentioned the names of three people.

At that point she mentioned the name of Tshediso
10 Matona the Chief Executive of Eskom, who was here yesterday. She mentioned the name of Dan Marokane. Marokane who was the executive responsible for what we call Group Capital, that is a new-build programme and the name of Matshela Koko who, as I said, was the executive for Technology and Engineering –Commercial and engineering, sorry. Or commercial and technology it was called at the time.

Then I then interceded at some point to say I would rather that we explore some methodology within the HR system of
20 Eskom of recusal rather than outright suspension, because suspensions have other consequences, and perceptual issues about them, the reputational issues about them and so on, so I was very concerned that in the light of no apparent wrongdoing even at that point on the part of the people whose names were mentioned that there could be a

reputational problem occurring.

So, the meeting concluded with the President saying that they would like me to go and test this proposal with the Board as soon as possible and that he would inform the Minister about this and that. So that was really the sum total of the meeting that took place at the presidency.

CHAIRPERSON: Well just go back to when the President entered the meeting or came to the meeting, now I don't
10 know whether it's what I read in your affidavit or whether it's what I read in Mr Linnell's affidavit, but one of you seems to say, after he came into the room where the meeting was held that he said something to – along the lines of, what are we meeting about or something like that and then it was Mr Dumiyeni who explained – who then explained, is that your recollection or...[intervenes].

MR TSOTSI: Chairman that comes from me.

CHAIRPERSON: Because that gives the impression of somebody who didn't know what the meeting was about and
20 that's strange if he had asked Ms Myeni to call you to the meeting, the meeting was being held in his residence, if he's like he doesn't know what the meeting's about.

MR TSOTSI: Chairman there is something that I observed in the way the President style of communication it was not the first time that I noticed this, I noticed this in some

other occasion, I think, when I was in his presence, I think, in a meeting. He normally goes through some pleasantries at the beginning, he's a very affable person as you might know and then in this instance for example, after that, he then asked [African language].

CHAIRPERSON: Yes, just say that in English as well.

MR TSOTSI: Which say, what are we going to be talking about today...[intervenes].

CHAIRPERSON: I think I must have got it from your
10 affidavit, ja.

MR TSOTSI: Yes, which I have observed is a manner of communication that the President engages in, for whatever reason, I don't know but it's a style issue, I think, that I've noticed with him that it would be as if he does not know what it is that we are going to be discussing and I would want to think that he would not accede to a meeting unless he knows what it is that's going to be talked about.

CHAIRPERSON: But in this case, according to Ms
20 Myeni's call to you, he was the one who was inviting you to come and see him.

MR TSOTSI: Correct.

CHAIRPERSON: Yes.

MR TSOTSI: Correct.

CHAIRPERSON: Okay, alright, now for the rest of the discussions, apart from saying, what are we going to talk

about today at the beginning and then that was explained by Mr Dumiyeni, apart from that, up to the end of the meeting what was his contribution to the discussion, as far as you are able to remember?

MR TSOTSI: As far as I can recall Chair, as I said, he did ask, certainly if I know who the people are and as I said towards the end of the meeting he intimated that he would inform the Minister and he would request that I go and deal with this and that or test the Board's interest in doing this
10 exercise. I don't recall very much, it's been such a long time, I don't recall very much else of what he said, I'm hoping that the next affidavit or when he comes to present, he'll be able to assist.

CHAIRPERSON: Who was Chairing this meeting, or was there no Chairperson, nobody was Chairing this meeting?

MR TSOTSI: I would say – it's not that, that meeting was an obvious Chairperson, you know, the President came in and he sat down and he did more listening than anything else.

20 **CHAIRPERSON:** Yes.

MR TSOTSI: And Dudu spoke most of the time.

CHAIRPERSON: Most of the time?

MR TSOTSI: Yes.

CHAIRPERSON: Yes.

MR TSOTSI: So, I can't really say there was a specific

person Chairing.

CHAIRPERSON: Yes, would there be a basis, in your view, for somebody to say, it was like Ms Myeni, this idea of an inquiry was Ms Myeni's idea in terms of the discussion of the people who were in the meeting or did it seem like it was from the President it was his idea because obviously Mr Dumiyeni knew before the meeting, before you came that the idea was that there should be an enquiry and the idea was that there should be Executives to be
10 suspended. So she, either had that idea in her own mind or she must have discussed the idea with somebody and maybe with the President because otherwise how would she call you and say the President wants you to come to a meeting to discuss these matters if she had not discussed them with the President?

MR TSOTSI: Chairman, first of all, I am inclined to think, and I don't know what makes you reach there maybe, that the President must have been privy to this.

CHAIRPERSON: Yes.

20 **MR TSOTSI:** There's no doubt in my mind really, that he must have been, it's unlikely that he would sit in such a meeting not having been privy to this.

CHAIRPERSON: Ja and this idea that he didn't know what the meeting was about is not reconcilable with what Mr Dumiyeni told you on the phone?

MR TSOTSI: No certainly not and also, I think from Ms Myeni's perspective I was very surprised that she didn't know much about what was happening at Eskom and that – proposing, making such a radical proposition is something that she could have come up with, I don't believe that – it originated with her, definitely, I don't believe so.

CHAIRPERSON: Prior to Ms Myeni giving you a call about this meeting, had you had any interactions with her in your capacity as Chairperson of the Eskom Board?

10 **MR TSOTSI:** With Ms Myeni?

CHAIRPERSON: Yes.

MR TSOTSI: No – well let me put it this way, the only interactions we had were the exercises that were organised by the previous Minister, Minister Gigaba, where on, once every sort of quarter or so he would call all the heads of – the Chairpersons of the and the Chief Executives of the parastatals under his, what have you, that's the only real interaction we've had.

CHAIRPERSON: Ja.

20 **MR TSOTSI:** But otherwise, no, we didn't normally have any interaction.

CHAIRPERSON: Yes, Mr Seleka?

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: So that's about the meeting at the President's residence.

MR TSOTSI: Yes.

CHAIRPERSON: And you said the meeting was concluded on the basis that the President asked you to test this proposal of an inquiry with your Board.

MR TSOTSI: Correct.

CHAIRPERSON: As well as the idea of the suspension of Executives.

MR TSOTSI: Yes.

CHAIRPERSON: Yes, so that's – and then he said he
10 would inform the Minister?

MR TSOTSI: Correct.

CHAIRPERSON: That's how the meeting ended.

MR TSOTSI: Yes.

CHAIRPERSON: Okay, take it from there.

ADV SELEKA SC: Thank you Chair. Mr Tsotsi, what did you then do with what is asked of you by the President?

MR TSOTSI: When we left I had a conversation - we were out of the meeting, I had a conversation – I must indicate also, something else that has just come to mind
20 now. Nick, amongst the things he was saying in the meeting was that he has the experience of having worked – assisted at SAA and that he would be ready to put together a motivation for the inquiry and that it will also contain – he would also do a resolution for the Board to resolve to carry out this inquiry. So, I then said, look I will try the

best I can to see if we can have a meeting as early as the following day which was Monday the 9th and when I got back, Nick had prepared these two documents we're talking about and I then communicated with the company secretary to say, look, I'd like to invite Board members to a special meeting of the Board to deal with this matter and then he then circulated the invitation to the different Board members for the meeting the following day. So that's how the meeting of the 9th came about.

10 **CHAIRPERSON:** What was so urgent about these two proposals that this could not wait for the meeting of the 11th which had already been fixed?

MR TSOTSI: Actually Chair, I had thought of using that meeting of the 11th but then I realised that it will be good to at least get the Board – because my intention was, when I left the meeting in Durban was to make certain that the Minister's, views are heard on this matter because this is something that will impact on the shareholder. So, I wanted to test to make sure that the Board is onboard with
20 this so that we can get the shareholder to come and address the Board as soon as possible and possibly on that meeting of the 11th. So, I thought, let me fast track and let's meet on the 9th to sound the Board out and then find out if we can get the Minister to come on the 11th.

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you Chair. Mr Tsotsi, a couple of things arises from what you are saying because what we understood from Mr Matona yesterday was that the meeting on the 9th with the one agenda item was actually short-lived because Board members expressed displeasure with what had been proposed to them, which is slightly different from – maybe you can correct, you having the intention to arrange that meeting in order to prepare for the meeting of the 11th. What will be your explanation to the
10 Chairperson?

MR TSOTSI: Chair, I think you – he's a bit ahead of me there.

CHAIRPERSON: Okay you can go back sir.

MR TSOTSI: Remember that on the 8th, this was now the Sunday, that is the day that we circulated the documents and the invitation to this Board meeting on the 9th which is the Monday. Now, what Mr Matona was talking about was what he observed had transpired in the meeting itself. Now I have not addressed, personally, what I saw in the meeting
20 what actually transpired from my perspective, which is what I'm doing now to say, Board members came for that meeting and they were not – let me just say the overall impression Board members had was that they'd been asked to do something that is very big and very, shall I say...[intervenes].

CHAIRPERSON: That could have far-reaching consequences.

MR TSOTSI: Might have far-reaching consequences without really having adequate time to think about it and investigate it and equally importantly for them, they need to have the shareholders' views on this matter. Now, I was very sympathetic Chair, in respect of those views and I was one of the people who did say that when I thought about this after I'd been to that meeting in Durban, I was of the
10 view that the first port of call should be a meeting with the shareholder to share this because this is something that was important for consideration, even by the shareholder. So, yes indeed, there was a lot of discomfort about making any kind of decision on this matter and I accepted that because I thought it was the right thing to do so that people have more clarity and get a feel for what this may entail given the fact that they only heard about it that very morning. So, that's then what happened, hence the meeting of the 9th, was a short-lived meeting like Mr
20 Matona said, and I agree with him entirely that, that was the sentiment.

CHAIRPERSON: I want to just go back to the meeting of the 8th. Did you, at any stage, query Ms Myeni's involvement in Eskom affairs?

MR TSOTSI: Chairman this is a question which I did not

address at that meeting but it's something that preoccupied me for some time, to the extent that I actually decided to call her, to ask her – well actually what's going on, where is this coming from, how do you come into this picture, what's the deal and Dudu did not avail herself for us to talk about it. So, I just said to myself, well I take the view that even though she was the messenger in this instance, it's still material as to how it is because she's not conducting herself as a messenger in the actual meeting itself. Though
10 at the time she, purportedly, was speaking on behalf of the President to say we should come to the meeting. Her conduct in the meeting was someone who had more of an involvement.

CHAIRPERSON: I mean based on what you have said in terms of – or the discussion at that meeting of the 8th it seems to me that if it could be said that the initiator of the idea for the inquiry and the suspension of the Executives was in that meeting, it seems that one would say it's Ms Myeni but maybe she was not but because the President
20 comes there and says [African language] what are we talking about and she is briefed by Ms Myeni, she's the one who called you the previous day, she's the one who briefs you when you arrive and she is the one who does most of the talking throughout the meeting from what you have told me.

MR TSOTSI: Yes, that logical sequence does make a lot of sense Chair.

CHAIRPERSON: Yes.

MR TSOTSI: I mean there's a lot of credence in what you're saying because just analysing it that way, leads one to the conclusion that she's the architect of this.

CHAIRPERSON: Yes.

MR TSOTSI: Though I still do not believe that she is in my own...[intervenes].

10 **CHAIRPERSON:** Well it might be somebody outside the meeting, it might have been somebody who was not in that meeting.

MR TSOTSI: Yes.

CHAIRPERSON: That's one possibility another is that the initiator was inside that meeting and that she was the initiator, another theory might be, it was the President. Of course, it would just be strange that if he initiated the idea and he called the meeting that he should come to the meeting and say, what are we talking about, what is this
20 meeting about.

MR TSOTSI: Yes.

CHAIRPERSON: So – ja, okay.

MR TSOTSI: No, I'm with you there.

CHAIRPERSON: Ja, Mr Seleka.

ADV SELEKA SC: Thank you Chairperson. Mr Tsotsi you

relate at that meeting, in your affidavit on page 12 and page 13 of the affidavit, I could refer you to the paragraph but the purposes of the wording that the DCJ, I mean the Chairperson is postulating there. Page 13 paragraph 12.8.

MR TSOTSI: Yes.

ADV SELEKA SC: If you could read that first line.

MR TSOTSI: “After some pleasantries, the President

enquired what was up for discussion, which I translated from Zulu, whereupon Ms Myeni began by saying that the performance of Eskom financial and technically is deteriorating to the extent that there is a serious concern that the company could fail to meet its obligations to supply electricity to the nation”.

ADV SELEKA SC: May I just stop you there. I mean is that – that enquiry by the President that you say it is an enquiry what was up for discussion, I mean, in your assessment of your further engagement in the meeting, I know you tried to explain that he’s mannerism – is that a rhetorical question or is it a question to find information?

MR TSOTSI: My assessment is – it’s not a rhetorical question, I mean the President knew what the discussion was about.

ADV SELEKA SC: So rhetorical, I mean, it’s not a question that requires an answer, I know what the answer

is.

MR TSOTSI: Oh, from that perspective yes, I hear you okay, yes.

CHAIRPERSON: Well, why would he ask a rhetorical question at the start of that meeting, why would he ask a rhetorical question? He's asking what is the meeting about or what are we going to be discussing, now that's – anybody who asks that question at the beginning of the meeting wants to know what the agenda is or what the
10 issues are.

MR TSOTSI: Chair, that is why I was saying that, I did not believe that the President did not know what was to be discussed.

CHAIRPERSON: Yes, that's one thing, whether you believe him or not but certainly I would think that he wants those that hear his question to tell him what the meeting's about because otherwise why is he asking, what are we going to be talking about here?

MR TSOTSI: I can't say. I can't really say Chair, because
20 as I said that is the way I've observed his manner of dealing with situations.

CHAIRPERSON: I mean, you can't have a situation where a meeting takes place in your residence, obviously this meeting takes place with your blessing it involves people that don't live in your residence, they come to your

residence. So before you gave the blessing, you must know what the meeting's about, either you called the meeting or somebody made the request, they made the request to you and you approved and you would have wanted to find out, why do you want a meeting in my place, in my residence and you would have been told and you must have been satisfied that whatever needed to be discussed was something that, you know, justified having the meeting in your residence at the time it speaks for.

10 **MR TSOTSI:** Yes, I hear what you're saying. If I put myself in the President's shoes, maybe if you came along and asked me, did I know about what was to be discussed, I turn around and say, well I asked what the discussion was about, so I did not know. I don't know, I'm just playing it back in my mind to say, maybe that could be the approach, I don't know.

CHAIRPERSON: Well maybe you should have responded and said, but Mr President, Ms Myeni told me that you wanted to see me, so I expect that you know what you
20 wanted to talk to me about.

MR TSOTSI: Yes, I hear you.

CHAIRPERSON: Okay, Mr Seleka?

ADV SELEKA SC: Thank you. Mr Tsotsi, given what we've read from the memorandum of incorporation this morning and what you would have known about the position

of the Board, that the management and control of the company vests in the Board, how did you find the President's instruction to you, to go test this with the Board, that there should be an inquiry, that three people - three Executives should be suspended, how did that sit with you?

MR TSOTSI: Chair I was, as I said very uncomfortable with the idea of suspending the Executives and secondly I felt that it's one thing for me to listen to what the President
10 has to say in this regard but it's another for me to exercise my fiduciary duty as a Board – as a Director of the company and that's exactly what I elected to do. I decided that this matter has got to pass the test of reason by the Board and if the Board had decided flat out that, we're not going to have anything to do with this, that's the end of the story, that would have been the end of the story because that's where my fiduciary duties reside, irrespective of what someone else, including the President might have asked, to be done.

20 **CHAIRPERSON:** I'm sorry Mr Seleka and Mr Tsotsi, that I'm kind of taking you back to this meeting on the 8th, actually in your affidavit Mr Tsotsi, paragraph 12.10 – well 12.9 you say, Ms Myeni said – pointed to discussions that she said were going on in the war room on the company's poor performance and said that even the war room was

very dissatisfied with the company's performance, at that time you obviously knew what the war room was?

MR TSOTSI: Yes.

CHAIRPERSON: Did you know the people who were involved in the war room?

MR TSOTSI: From our Executives, yes.

CHAIRPERSON: Yes, and other people, other than from the Executives.

MR TSOTSI: Yes, I did, most of them.

10 **CHAIRPERSON:** Did you know whether Ms Myeni was one of the people who were part of the war room?

MR TSOTSI: No, not at all.

CHAIRPERSON: She was not?

MR TSOTSI: No.

CHAIRPERSON: But you see, she seems to – from what you say here, she seems to know what discussions were going on in the war room, that's what you say, she said at the meeting, 12.9, she pointed to the discussion that are going on, on the company poor performance saying that
20 even the War Room is very dissatisfied with its performance.

Then 12.10:

“She then arrived at the conclusion that there needs to be an external inquiry into the performance of the company.”

That line suggests that the idea of an inquiry came to

– came from her in terms of what she said at the meeting. Is that – am I right?

MR TSOTSI: Certainly.

CHAIRPERSON: Am I right?

MR TSOTSI: Expels the idea.

CHAIRPERSON: Ja am I right to say what you say here means that what you heard from her is that she is the one who concluded that there should be an external inquiry.

MR TSOTSI: She drew that conclusion yes.

10 Yes. Yes. So that looks like she initiated this idea of an inquiry that she was now presenting at the meeting on the 8th. Am I right?

MR TSOTSI: Chairperson – yes. She presented the idea I am not exactly certain whether she – well maybe I do not understand quite the – your interpretation of initiating.

CHAIRPERSON: Let me assist you.

MR TSOTSI: Yes.

CHAIRPERSON: And again, it is what you have written here and you must tell me if I am misunderstanding what you say
20 here. You are relating here what Mr Myeni said at the meeting on the 8th okay?

MR TSOTSI: Yes.

CHAIRPERSON: You say after the President had enquired what was up for discussion Ms Myeni began by saying that the performance of Eskom financially and technically was

deteriorating to the extent that there was a serious concern that the company could fail to meet its obligations to supply electricity to the nation. 12.9 you then continue and say:

“She pointed to the discussions that were going on in the War Room on the company’s poor performance saying that even the War Room was dissatisfied with the company’s performance.”

12.10 you then say:

10 “She then arrived at the conclusion that there needs to be an external inquiry into the performance of the company. She then proposed that three executives be suspended to make sure they do not impede this inquiry.”

So I am saying that what you are telling the reader of your affidavit is that she said I looked at the discussions that were going on in the War Room. I looked at the dissatisfaction of the War Room with the performance of the
20 company and I concluded what is needed is an external inquiry. So if that is what she said I am saying she presented to the meeting the idea of an external inquiry as her idea.

MR TSOTSI: I hear you Chair and...

CHAIRPERSON: If what you say is correct that is how I

interpret it. Is that the same how you understood the position or [00:03:24] [Mr Tsotsi talking over Chair]

MR TSOTSI: My interpretation Chair is the following. Whilst Ms Myeni is not the architect of this idea.

CHAIRPERSON: Yes.

MR TSOTSI: She is now the exponent of the idea.

CHAIRPERSON: Exponent ja of the idea.

MR TSOTSI: And she is communicating the idea which has been given...

10 **CHAIRPERSON:** Ja to her.

MR TSOTSI: To her.

CHAIRPERSON: Yes.

MR TSOTSI: So from that perspective.

CHAIRPERSON: Yes.

MR TSOTSI: She can be seen to be the person who initiated the proposals.

CHAIRPERSON: Yes.

MR TSOTSI: After all we have not heard from the original architect of this in my view.

20 **CHAIRPERSON:** Yes. Of course, from the paragraphs that I have read and you might be dealing with that elsewhere you have not said about any – you have not said anything about anybody except what she is telling you.

MR TSOTSI: Yes.

CHAIRPERSON: At this meeting. Okay no I just wanted to

go back to that point because earlier on I talked about who the initiator was.

MR TSOTSI: yes.

CHAIRPERSON: And then I picked this up. Ja. Okay.

ADV SELEKA SC: Thank you Chair. Mr Tsotsi quickly still on that meeting and you have seen Mr Nicholas Linnell's affidavit which you have referred to earlier. It is also contained in your bundle. It is on the relevant pages I want to refer you to. It is on the first bundle – the bigger one page
10 148 and 149. Okay. Okay now as you turn there because Mr Linnell places another person in that meeting one called Jabu and he further explains later Maswanganyi. So Chair from paragraph 14. Could you tell the Chairperson whether you have any recollection of that person because I did not hear you mention him.

MR TSOTSI: Chair I have – I saw this and I have been wracking my brain as to why it is that I do not recall that Jabu was at this meeting. Because I know Jabu. I would have known if I walked in here obviously, I would know him.
20 But for some reason...

CHAIRPERSON: Which Jabu are they talking about do you know?

MR TSOTSI: Maswanganyi.

CHAIRPERSON: Oh okay. Oh you know him?

MR TSOTSI: Yes I know him yes.

CHAIRPERSON: And he was not in the meeting or you are not sure?

MR TSOTSI: Chair I...

CHAIRPERSON: Well if you know him you would be sure?

MR TSOTSI: I do not recall seeing him in the meeting.

CHAIRPERSON: Hm.

MR TSOTSI: For some strange reason I just do not recall. When I saw this from Nicks affidavit I was taken aback and I would have – I would certainly have – have noticed him. I do
10 not recall. I do not even know whether he had anything to say according to Nick. I do not know. I have not scrutinised the affidavit just now but I do not recall that he was actually in the meeting.

CHAIRPERSON: Hm. Okay.

ADV SELEKA SC: Ja because if you look at paragraph – on page 149 paragraph 15.

MR TSOTSI: Yes.

ADV SELEKA SC: Mr Linnell writes:

20 “I attended a meeting in Durban on Sunday 8 March 2015.”

So I presume that is the meeting you were referring to in the President’s residence?

“Yes when I arrived at the President’s 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 about Jabu's role at large. While Ms Myeni's son played no active role in the meeting Jabu provided information about the state of Eskom including allegations of wrongdoing and reasons for business failure some of which was in the public domain."

And he goes on to say:

10 "To the best of my recollection Jabu had a number of documents that dealt with alleged events at Eskom. These were largely from unidentified sources and unverified content. These were things that an investigation would identify and where background in context but in part some of the allegations did provide some value in scoping an approach to the investigation."

20 So he seems not to have been a passive person in that meeting.

MR TSOTSI: Quite. Chair I can – looking at this I cannot – it just mystifies me that I do not remember his involvement in the meeting. You know there could have been a situation where he was not in the meeting with the President. He might have been in the meeting we had with Dudu – the

briefing meeting outside. So I do not know what – which of these two meetings Nick is referring to.

CHAIRPERSON: But you would remember that – that as well.

MR TSOTSI: That I do not remember either.

CHAIRPERSON: If you saw him at the President's residence that day whether at the pre-meeting briefing or at the meeting you would remember that he...

MR TSOTSI: I would remember yes.

10 **CHAIRPERSON:** That he – if it is somebody that you know quite well.

MR TSOTSI: Yes. That is what vexes me I just do not understand why. I do not. Especially if he happened to have documents from Eskom. I mean I would have been very curious to find out how he got hold of them.

CHAIRPERSON: Hm.

MR TSOTSI: But certainly I just do not remember.

CHAIRPERSON: Hm.

20 **ADV SELEKA SC:** Ja. Anyway, then the following paragraphs Mr Linnell gives certain details about how he came to know that a gentleman called Jabu was Jabu Maswanganyi.

MR TSOTSI: Yes.

ADV SELEKA SC: Paragraph 18. Then he specifies again in paragraph 18.2. Then he goes on to paragraph 19 to say:

“That the group at the meeting referred to above discussed their intended inquiry. How it would take place and what it would seek to achieve. After a period, we – we joined the President sorry – after a period we joined the President. The President was clearly familiar with the purpose of the meeting and we provided a summary of what was proposed arising from the earlier discussions referred to above. These included a number of key principles.”

And then he sets them out. You see that?

MR TSOTSI: Yes.

ADV SELEKA SC: Well how do you reconcile that statement that Mr Nick Linnell says the President was clearly familiar. Now you say the President entered and enquired what was – what was up for discussion.

MR TSOTSI: Chair there is no reconciliation. I said the same thing that I am certain that the President knew what was to be discussed.

ADV SELEKA SC: I see.

MR TSOTSI: But...

CHAIRPERSON: Well what you say the President said namely what was up for discussion is not indicative of somebody who knew what the meeting was about. That of

course might not mean that he did not know. It just depends what explanation he would give for making a statement that suggested he did not know what the meeting was about if indeed he were to say no I knew what the meeting was about. And still admit that he made the statement and maybe there would be an explanation. But you – you say your belief was that he knew what the meeting was about. Is that right?

MR TSOTSI: Yes Chairperson.

10 **CHAIRPERSON**: Ja, ja.

MR TSOTSI: That is my belief.

CHAIRPERSON: But he made the statement or put this question which suggested that he did not know what the meeting was about which was strange.

MR TSOTSI: Correct.

CHAIRPERSON: Yes. Well I see that Mr Linnell in the affidavit Mr Linnell actually indicates that Ms Myeni was at the Presidency in Pretoria on the 6th. So – and that is where they met – well Mr Linnell it seems was invited by Ms Myeni
20 to the President – to come to the Presidency on the 6th and he travelled to Pretoria. And he was called by Ms Myeni and they had a prior working relationship at SAA. She says – he says on paragraph 5:

“I was contacted on the 6 March 2015 by Ms
Dudu Myeni and asked to travel the same

day to Pretoria to attend an urgent meeting with the President.”

That is at page 148. Ja and then she says on paragraph 6.

“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 this time I was engaged in a merger project.”

10 Paragraph 7.

“On arrival at the Presidency sometime after midday that is on the 6th I met with Ms Myeni. No-one else attended the meeting.”

Paragraph 8.

20 “While the SAA matter 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 that role.”

9.

“Ms Myeni proceeded to brief me on the background for an inquiry. Included in this

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.”

11.

“To the best of my recollection it was then agreed that I would need to travel to Durban on Sunday the 8 March to meet with the President to complete this briefing and mandate.”

10 So – so Ms Dudu Myeni was according to this at the Presidency in Pretoria on the 6th and was concerned with Eskom matters calling Mr Linnell to come to Pretoria for a meeting with the President same day. So it means saying leave now come and be here this afternoon or something like that. And in connection with Eskom matters. Then there was some discussion. If Mr Linnell’s evidence is correct there had been prior discussion between Ms Myeni and the President about Eskom matters where the President had expressed some unhappiness about certain matters relating to Eskom. So it is strange that if the President has issues he is discussing them with the Chairperson of SAA of the SA Board. He is not discussing them with the Chairperson of the Eskom Board is it not?

MR TSOTSI: Indeed Chair it is – it is strange.

CHAIRPERSON: And is the Chairperson of the SAA Board who is busy coordinating a meeting to discuss Eskom issues with various people and the President. He calls Mr Linnell on the 7th he calls you and on the 8th you all meet in Durban at the President's residence. And at the meeting she is one doing the talking most of the time.

MR TSOTSI: Indeed.

CHAIRPERSON: And yet you are the Chairperson of the
10 Eskom Board but she seems to be you know discussing these and making all arrangements, exchanging views with the President about what should happen at Eskom.

MR TSOTSI: Exactly.

CHAIRPERSON: Ja. Mr Seleka.

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: Hm.

ADV SELEKA SC: Mr Tsotsi who headed the War Room?

MR TSOTSI: The War Room was headed by the then Deputy President who was the current President.

20 **ADV SELEKA SC:** So did he at any stage call you to raise concerns of the War Room with you?

MR TSOTSI: No he did not Chair.

CHAIRPERSON: Were there some – would the Minister of Public Enterprises have been part of the War Room?

MR TSOTSI: Yes definitely.

CHAIRPERSON: Yes.

MR TSOTSI: Yes.

CHAIRPERSON: Yes. But the Minister as at the 7th March when you got this call from Ms Dudu Myeni had never spoken to you about any inquiry at Eskom or had she?

MR TSOTSI: No.

CHAIRPERSON: She had never spoken to you about any inquiry at Eskom?

MR TSOTSI: Not at all.

10 **CHAIRPERSON:** Ja.

ADV SELEKA SC: Thank you Chair. Just to complete the paragraphs that the Chairperson...

CHAIRPERSON: I am sorry. You said there was Mr Talent and Myeni at the meeting of the 8th. Did he make any contribution to the meeting? Do you know why his presence was necessary at that meeting?

MR TSOTSI: I do not know why he was – he was at the meeting. No he did not make any contributions.

CHAIRPERSON: He did not make any contribution?

20 **MR TSOTSI:** No.

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you Chairperson. To complete those paragraphs the Chairperson was reading out to you Mr Tsotsi paragraph 14 says:

“During the following day Saturday 7 March

Mr – 2015 it would be – Mr Tsotsi either called me or I was provided his contact number but I requested from him company documents and policies which will be required for proposing the inquiry and its terms. During that exchange it was evident he would also be at the meeting in Durban on Saturday 8 March 2015.”

Your comment on that Mr Tsotsi?

10 **MR TSOTSI:** I think Nick must have gotten my number from Dudu because I did not have a number of his. And I do not know about this business of – I do not recall him asking me for documents nor would I have given him in any case. So I am not sure where he is going with the idea that – I do not recall him asking me for documents.

CHAIRPERSON: Do you recall that – do you recall whether when you met him at the President’s residence in Durban on the 8th you were meeting somebody with whom you had discussions before or not? Or you were meeting somebody
20 that you really did not know?

MR TSOTSI: No as far as I was concerned I was meeting him for the first time. I do not recall having had any discussions with him.

CHAIRPERSON: Yes. Okay.

MR TSOTSI: I do not recall him even calling me because I

did not have his number.

CHAIRPERSON: Yes. Okay. Well I see that he also says that Mr Talent Myeni did not play any active role in paragraph 16. He says:

“While Ms Myeni’s son played no active role in the meeting Jabu provided information about the state of Eskom bla, bla, bla.”

So I think the two of you are agreed that Mr Talent Myeni played no active role in the meeting?

10 **MR TSOTSI:** Yes.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Yes Mr Seleka.

MR TSOTSI: Thank you Chair. Mr Tsotsi Mr Linnell has provided also a statement to the...

CHAIRPERSON: Please raise your voice Mr Seleka.

ADV SELEKA SC: Has provided also a statement to the Parliamentary Portfolio Committee along the lines of his affidavit that statement is also contained in this bundle. It is on page 123. Yes. And there is just two paragraphs I want –

20 I want to refer you to on page 125. Oh page 125.

MR TSOTSI: 125?

ADV SELEKA SC: 125 yes.

MR TSOTSI: Yes.

ADV SELEKA SC: So he says in paragraph 7.

“The President listened to these views and

asked one or two questions then he agreed.

He undertook to speak with the Minister and Mr Tsotsi would speak with the Board.”

That is in regard to what had been proposed the inquiry and the suspension.

CHAIRPERSON: And I see that it does appear that what Mr Linnell says about the role played by the President at the meeting seems to be consistent with your version. On your version there is not much that he said at the meeting. He
10 listened most of the time but he did ask you whether you knew the executives who were to be suspended. And at the end of the meeting he asked you to test this proposal of an inquiry with your Board and you would talk to the Minister.

MR TSOTSI: Yes.

CHAIRPERSON: So – and Mr Linnell says in paragraph 7 the statement.

“The President listened to these views and asked one or two questions then he agreed.”

MR TSOTSI: Yes.

20 **CHAIRPERSON:** Okay.

ADV SELEKA SC: And your...

CHAIRPERSON: How long – I am sorry. How long did you – do you think that meeting lasted at the President’s residence in Durban?

MR TSOTSI: The actual meeting with the President could

have been about forty minutes or so.

CHAIRPERSON: About forty minutes?

MR TSOTSI: Something like that.

CHAIRPERSON: Oh okay.

MR TSOTSI: Not more than an hour.

CHAIRPERSON: Yes. And most of the time was taken by Ms Myeni doing the talking.

MR TSOTSI: Ms Myeni – yes.

CHAIRPERSON: Okay.

10 **ADV SELEKA SC:** Thank you Chair.

CHAIRPERSON: It must have been strange to be in that meeting as Chairperson of the Eskom Board. You sitting here with the – with people and the President but the person who was doing the talking – most of the talking about your – the company which you chair is somebody else and like you know saying well this is what – that needs to be done and so like she knows what needs to be done and she needs to – to just sell the idea to you to say, here is an idea.

20 **MR TSOTSI:** Chair I was in a state of semi-shock most of the time.

CHAIRPERSON: Yes.

MR TSOTSI: Because I just could not believe what I was hearing. So I – I was just flabbergasted.

CHAIRPERSON: Ja.

MR TSOTSI: To say the least.

CHAIRPERSON: Ja.

MR TSOTSI: Yes.

ADV SELEKA SC: Thank you Chairperson. So do you also recall Mr Tsotsi the President ending or concluding the meeting by saying he will speak to the Minister?

MR TSOTSI: Yes certainly.

ADV SELEKA SC: That is correct.

MR TSOTSI: Yes.

ADV SELEKA SC: So then Mr Linnell says:

10 “As a matter of urge – as the matter was urgent, I would travel to Johannesburg the following day and be available to the Board as and when required.”

Now we know the following day would have been the Monday 9 March 2015.

MR TSOTSI: Correct.

ADV SELEKA SC: So you would have then Mr Tsotsi called a meeting of the 9 March after this meeting of the 8th?

MR TSOTSI: Correct.

20 **ADV SELEKA SC:** Now have you ever had to call a meeting at such short notice before?

MR TSOTSI: Yes certainly the first time Chair.

ADV SELEKA SC: So Mr Linnell then says:

“Overnight I drafted the proposed Board Memorandum proposed resolutions and an –

a memoire on suspensions. I forwarded these to Mr Tsotsi attached. I assume this was subsequently circulated to the Board. This included ...”

And he gives the details there. Now can you recall him forwarding all that to you Mr Tsotsi?

MR TSOTSI: Yes I do recall Chair which is how I got to forward the documents to the Secretariat for them to circulate to the Board Members.

10 **ADV SELEKA SC:** Yes. He has attached those to his affidavit and that is on page 165 of the bundle before you – we are busy with. See whether you recognise this email?

CHAIRPERSON: Did you say 155?

ADV SELEKA SC: 160 I beg your pardon Chairperson.

CHAIRPERSON: Oh.

ADV SELEKA SC: Page 160 Mr Tsotsi. It is an email from Mr Nick Linnell sent on Sunday 8 March 2015 at 6:37 pm. It is sent to an email ztsotsi@liquifier.biz. The subject line is The Board Memorandum and Resolutions. Attachments

20 Board Memorandum and Resolutions.

“I recall this email being referred to yesterday to Mr Matona.”

Do you recognise the email?

MR TSOTSI: Yes.

ADV SELEKA SC: Is this then what Mr Linnell would have

sent to you?

MR TSOTSI: Yes.

ADV SELEKA SC: Now that email address Ztsotsi@liquifier.biz is that an Eskom email address?

MR TSOTSI: No, no this is not an Eskom email address.

ADV SELEKA SC: Ja can you explain to the Chairperson if it is not Eskom?

MR TSOTSI: No that was my own private email address not Eskom's.

10 **ADV SELEKA SC:** Does anything turn on the fact that an Eskom email address was not used by your private?

MR TSOTSI: I did not get the beginning of your question.

ADV SELEKA SC: Does anything turn on the fact that Eskom in their address was used to forward these documents about your own private email address.

CHAIRPERSON: Is there anything of that?

MR TSOTSI: No, I did not make anything of it. What was important for me was the formal communication that I needed to make to the board. That is what was important to me. At
20 this point in time, Nick was merely telling what he is thinking he ought to do.

So there was no significance in using Eskom email here because he was really addressing himself to me and you know, I then would have escalated to the communication to Eskom once I was satisfied that that is what we are going to

do.

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you, Mr Tsotsi. Now the following pages, page 162. You may turn there. And page 164. Starting with page 162. I presume that is the memorandum referred to in Mr Linnell's email to you. Do you see that?

MR TSOTSI: Yes.

ADV SELEKA SC: And on page 164, it is a resolution.

MR TSOTSI: Yes.

10 **ADV SELEKA SC:** This would have also been a document attached to Ms Myeni's...

MR TSOTSI: Yes.

ADV SELEKA SC: So these documents, you then circulate... or shall I ask you rather? You said earlier you forwarded then to the company secretary. Correct/

MR TSOTSI: Correct, yes.

ADV SELEKA SC: And the company secretary at the time, is who?

MR TSOTSI: It is Phukubje Malesela. Malesela Phukubje.

20 **ADV SELEKA SC:** And your request to him is to call for the meeting on the 9th of March?

MR TSOTSI: Yes.

ADV SELEKA SC: 2015. So when would you have because Mr Linnell's email to you is 06:37 p.m. When in time or date would you have forwarded it, the information to Mr Phukubje

to call the board meeting on the 9th of March?

MR TSOTSI: It would have been – maybe there is a receipt of this docket.

ADV SELEKA SC: I beg your pardon?

MR TSOTSI: I would have been Chair on - upon receipt of these documents.

ADV SELEKA SC: So that will be on the same date, 8 March? On Sunday, 8 March?

MR TSOTSI: Yes, same day.

10 **ADV SELEKA SC:** So take us into the meeting of the 9th of March. Well, you have and the meeting was short-lived, or rather, let us expedite the process. The meeting is short-lived, the resolution is that you as the board wanted to meet with the minister.

MR TSOTSI: Correct?

ADV SELEKA SC: Is that what was decided?

MR TSOTSI: Yes.

ADV SELEKA SC: Was the meeting on the 11th a scheduled board meeting?

20 **MR TSOTSI:** It was a rescheduling of the meeting of the 26th of March. So in that sense ...[intervenes]

CHAIRPERSON: 26 February?

MR TSOTSI: The 26th of February, yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Okay. Now in that meeting of the

11th of March or before then. If it is rescheduled. So you were in the board meeting resolving to have the minister invited to the meeting. Do you make contact with the minister for that purpose?

MR TSOTSI: Yes, I made contact with the minister. Whether it was on the 9th or the 10th, I cannot exactly recall but I made contact.

ADV SELEKA SC: Regarding the meeting on the 11th?

MR TSOTSI: Yes, regarding the meeting of the 11th.

10 **ADV SELEKA SC:** And did the minister... ja, the minister. Was the minister ...[intervenes]

MR TSOTSI: Lynne Brown.

ADV SELEKA SC: Yes.

CHAIRPERSON: Was the... why did the board wanted the minister want to meet with the minister before they could consider this proposal of an inquiry?

MR TSOTSI: The reason Chair was that the board surmised that the action that are being contemplated in this resolution would have had far reaching effects on the organisation and
20 would impact on the shareholder's role in different ways. Primarily because the War Room was a government initiative.

So in order for us to not to conflict with the work of the War Room, we knew to be certain that the shareholder will support us doing what – not quite essentially what the War

Room was doing.

But certainly not of contradicting or undermining the work of the War Room but that, this was a separate but terrible exercise that Eskom wanted to undertake.

So there were those sort of, if you like, policy issues. If I may use that word. Or let me rather, protocol issues which we needed to...

ADV SELEKA SC: Yes. Thank you, Chairperson. Mr Tsotsi, it has just been drawn to my attention. If you please
10 quickly in the smaller bundle, page 1086.

CHAIRPERSON: Ten...?

ADV SELEKA SC: 86.

CHAIRPERSON: Okay. The smaller bundle.

ADV SELEKA SC: The smaller bundle.

CHAIRPERSON: Eskom Bundle 07.B.

ADV SELEKA SC: Thank you, Chairperson. 1086.

MR TSOTSI: Yes.

ADV SELEKA SC: On that page is an email Mr Tsotsi from Malesela Phukubje.

20 **MR TSOTSI:** Yes.

ADV SELEKA SC: On Sunday, 8 March 2015 one minutes after eight, 20:01. The email is addressed to a number of people. There you are CC'd in it.

MR TSOTSI: Yes.

ADV SELEKA SC: The subject is: Board to Memorandum

and Resolutions, 9 March 20156. You are familiar with this email?

MR TSOTSI: Yes, I am familiar with the email.

ADV SELEKA SC: It says:

“Good evening, board members. The shareholder has, seeing that you are a person of the board, requested that we convene an urgent board meeting to consider and make a decision on the issues contained in the attached documents.

10 Urgent meetings are catered for under Clause 19.4 of the Eskom’s Memorandum of Incorporation. It is proposed that the meeting commence at 10:00 in the boardroom at Megawatt Park.

Board members who are unable to attend in person, may participate by either video or telephone.

Kindly revert with an indication of your availability for purposes of confirming whether there is a quorum or not.”

20 So is this the email that would have been sent out in your instructions to the members?

MR TSOTSI: Correct.

ADV SELEKA SC: When you call or made contact with the minister, is it by telephone in regard to now the meeting of the 11th?

MR TSOTSI: It is probably... I think it would have been a

letter, I think. That would have been the cause of action, we want the minister come to the meeting. We would ordinarily write. I would have – I cannot exactly remember but that would have been the position.

ADV SELEKA SC: Yes. And to your recollection, was the minister surprised by the invite or was she expecting the invite?

MR TSOTSI: I think the minister was expecting the invite. The reason I say so Chair is because, when the minister was
10 leaving the meeting, I accompanied her out of the building as I ordinarily do.

And she said to me: Look, I know that this is a difficult exercise that you people are embarking upon and I will be available to you right through the day should you need to talk to me on this subject.

So I think the minister has decided - because she knew this was coming – decided to avail herself just so that she is available.

ADV SELEKA SC: Yes. So when the minister arrives at the
20 meeting on the 11th of March 2015, what does she and the board talk about?

MR TSOTSI: Chair, there are two things that I recall that the minister herself would wanted to talk about with the board. She took the opportunity to raise them. And I remember very well, one of them was the security of board

meetings.

Look, as our board meetings were being typed and so she made some queries around this. I cannot remember exactly what else but the minister would tell us. But there was one or two other issues that she dealt with before going into this particular matter.

CHAIRPERSON: Did the board or was the agenda of the meeting of the 11th amended to include the latest of the issues the board wanted to discuss with the minister, given
10 that the meeting of the 11th had to be meant to have discuss matters that should have been discussed on the 26th of February?

In other words, did you then intend at that meeting of the 11th would deal with both the issues that you needed to deal with the minister and the issues that you had intended to deal with in any event before there was this meeting of the 8th, for instance?

Or did the board just say let us start with issues that require the minister's presence and then they discussed that
20 and later they postponed the other issues to another date?

MR TSOTSI: Chair, what happened then – what was trying for that the board meeting to discuss the company matters would be the first order of the day from the morning and we anticipated that we could complete Eskom's business by the time the minister arrives.

So we planned to have the minister come into the meeting close to lunch time. And I if I recall well, substantive issues were dealt with before the minister arrived. And of course, it is an in-committee meeting that the board had with the minister.

CHAIRPERSON: Okay. Mr Seleka.

ADV SELEKA SC: Thank you, Chairperson. Mr Tsotsi, we have been provided with the minutes of that board meeting. If this will assist your recollection. On page 671 of the
10 smaller bundle, Eskom Bundle 07.B.

CHAIRPERSON: 07...?

ADV SELEKA SC: Point B.

CHAIRPERSON: Oh, by the way we changed to... ja, 07.B.

ADV SELEKA SC: Point B.

CHAIRPERSON: I may have said point 1 earlier on. Okay so what is the page?

ADV SELEKA SC: Page 671.

CHAIRPERSON: Okay.

MR TSOTSI: The small bundle starts at 900 and something,

20 **CHAIRPERSON:** I think you are right, Mr Tsotsi.

ADV SELEKA SC: It starts at?

CHAIRPERSON: Ja, six something must be the in the other – in the bigger bundle.

ADV SELEKA SC: In the other, in the first one.

CHAIRPERSON: 671?

ADV SELEKA SC: Yes, 671.

CHAIRPERSON: H'm. So we have on the big bundle.

ADV SELEKA SC: So that is... Mr Tsotsi, let us see if that will assist your recollection. It is the minutes of the Eskom board meeting with the Minister of Public Enterprises held on the 11th of March 2015 that the board room is mentioned, 10:00 is the time. Stent, strictly confidential. Present, the Chairman is yourself Mr Tsotsi.

MR TSOTSI: Yes.

10 **ADV SELEKA SC:** And the list of other members there.

“Mr Matona, Ms Mabuda and Ms Naidoo, Ms Klein, Ms Carrim, Mr Naidoo, Mr Pamenski, Ms Molefe and Mr Baloy, Dr Ngubane and Mr Xhosa and Mr Khumalo. Also, in attendance is Miss L Brown, the Minister of Public Enterprises, Ms M Mokolo, Director General DPE (acting) and Mr Phukubje, Company Secretary.

20 Board In-Committee Session. After introductions and formalities, the minister raised the issue of the location of a bugging device which was found in the board room at the Eskom Megawatt Park.

She also noted that the fact that no investigation into the matter had been initiated and pointed out that it is a very serious matter over which action should have been taken.

The CE responded by explaining that the matter was being dealt with and that a number of new procedures had been introduced in order to stem the possible repetition of a similar matter.

It was standard procedure that the board room is swept for the existence for recording and transmitting devices a day before the meeting, as well as the day after the meeting.

10 He, thereafter, reported that he is still awaiting a report by the service providers about the origins and the exact nature of the device.

The minister stated that the matter needed to be investigated urgently and that it should be recorded as necessary urgency which she is not detecting from the actions taken thus far.

At this point, the CE and the FD...

That is the Chief Executive Officer and the Financial Director. Correct, Mr Tsotsi?

MR TSOTSI: Correct.

20 **ADV SELEKA SC:**

“...were excused from the meeting at 10:34.”

Now you heard Mr Matona yesterday, his recollection that it was the minister who asked... well, firstly that the managers were said they should be excused. And he said, he sat, he remained behind because he thought he is not

part of the managers to be excluded - to be excused from the meeting.

And then he said the minister said: You should also be excused. Does that accord with your recollection?

MR TSOTSI: Yes.

ADV SELEKA SC: Then you were trying to recall and relating to the chairperson what the board and the minister discussed on that day. If you could give us the points or you could look into the meeting to assist you in your recollection.

10 I see there are certain points made at the bottom of page 672.

But let us see, if I may just quickly? The paragraph just below where the CE and the FD are excused. It says:

“The minister continued and stated that she has no right to instruct the board on any matter regarding the conduct of Eskom’s business.

She stated further that meeting is an informal one and then proceeded to note a number of negative developments.”

20 Now that statement is a curious one and I would like you to explain to the Chairperson why do you think it was made, if it was made at all?

MR TSOTSI: You are talking about ...[intervenes]

ADV SELEKA SC: That I have no right to instruct the board on any matter.

MR TSOTSI: Chair, I am the understanding the minister to say that in accordance with the way she understands her relationship with the board, it does not permit her to give the board an instruction.

I am not so – I do not know. I think that is what it meant. I cannot imagine that she would say that without trying to emphasise the fact that she does not have the authority to instruct the board.

ADV SELEKA SC: Yes. It is because, if we suppose, prior
10 knowledge of something she might have – she might have been told the board would engage her on, if her starting point was, I have no right to instruct the board.

MR TSOTSI: In other words, as a prelude to what she is likely to say in relation to say this matter that she is aware of?

ADV SELEKA SC: [No audible reply]

MR TSOTSI: It could be. I cannot really say, Chair. It could be. It does not give me any specific thinking that that could be the case.

20 **ADV SELEKA SC:** Could it be that in your communication to her to invite her to this meeting, you would have indicated what the board requested her to come and deal with the board about?

MR TSOTSI: Yes. Oh, yes certainly. She knew what the meeting was about. No question.

ADV SELEKA SC: So that is why I am saying, the statement made there, proposes prior knowledge of what was going to be discussed. You understand what I am trying to say?

MR TSOTSI: Yes, I understand where you are coming from. Yes, definitely.

ADV SELEKA SC: Did the minister discuss the inquiry, the establishment of the inquiry with the board?

MR TSOTSI: The minister did discuss the establishment of
10 an inquiry with the board, yes.

ADV SELEKA SC: Did the minister support the establishment of the inquiry?

MR TSOTSI: Yes, Chair the minister supported the establishment of the inquiry.

ADV SELEKA SC: Did the minister discuss the suspension of the executives with the board?

MR TSOTSI: Yes, the minister did discuss the suspension of the executives with the board.

ADV SELEKA SC: Did she support the suspension of the
20 executives?

MR TSOTSI: She supported the suspension of the executives. In fact, more than just that. She added one more executive to the list which ...[intervenes]

CHAIRPERSON: Was it the financial director?

MR TSOTSI: Yes.

CHAIRPERSON: OH, and that was a name that was not included in the names that were discussed at the meeting of the 8th.

MR TSOTSI: That is correct.

CHAIRPERSON: Yes.

MR TSOTSI: Yes.

ADV SELEKA SC: Thank you, Chairperson. Did they change the position you articulated to the Chairperson, Mr Tsotsi and in your affidavit that you were in fact before the
10 president and Ms Dudu Myeni opposed to the suspension of the executives even though you were amenable to the inquiry?

MR TSOTSI: Yes, it did not change my thinking. I was definitely opposed to the suspensions to the extent that, I recall I wrote a summary of the discussions in the board because there no minutes that have been taken.

I asked one of my staff to make a summary of what was being discussed. And throughout that time, we were making reference.

20 And this was now to circulate to the board members. This was – we emphasised the fact that the idea is for these board members to step aside.

And in fact, the meeting that followed the minister's meeting was really the crucial meeting in respect of the matter of suspensions which I will certainly get into if you

will allow me.

ADV SELEKA SC: Yes, certainly. Are these board meetings recorded?

MR TSOTSI: The normal board meetings are recorded, yes. But in-committee meetings are not recorded. That has been the practise in the company. But minutes or notes are normally taken by someone who we asked in the meeting to take notes because the normal recording infrastructure is not available for recording because people are excused from the
10 meeting.

ADV SELEKA SC: Could you tell the Chairperson whether the meeting with the minister was recorded?

MR TSOTSI: Chair, I am... that meeting was not recorded to the extent of the – when I say recording, we are talking about the audio recording.

ADV SELEKA SC: A digital recording, yes.

MR TSOTSI: A digital recording. No, it was not. There were just notes which I also say, as I say, I also produced of the meeting.

20 **ADV SELEKA SC:** So the minutes we have read out from would have been produced from handwritten notes ...[intervenes]

MR TSOTSI: Absolutely.

ADV SELEKA SC: ...of somebody who took the minutes at the time?

MR TSOTSI: Yes.

ADV SELEKA SC: Then the meeting, you said it commenced before the minister arrived, you had your schedules meeting with the board?

MR TSOTSI: Correct.

ADV SELEKA SC: Was that meeting recorded?

MR TSOTSI: Yes, that meeting was recorded.

ADV SELEKA SC: The meeting then after the minister had left, are you aware that that meeting was also recorded?

10 **MR TSOTSI:** Hold on. The meeting after the minister had left?

ADV SELEKA SC: Yes.

MR TSOTSI: That would have been the people in the governance meeting in the afternoon.

ADV SELEKA SC: Well, I would not know but you were saying you could go to a meeting where the suspension of the executives was decided upon.

MR TSOTSI: Yes, yes.

ADV SELEKA SC: Which meeting was that?

20 **MR TSOTSI:** Okay that was the people in governance meeting and that was not recorded.

ADV SELEKA SC: That was not recorded?

MR TSOTSI: No.

ADV SELEKA SC: We have the recording. As you would know, this is a Commission of Inquiry.

MR TSOTSI: Yes.

ADV SELEKA SC: So the Commission has done, in the process of its investigation, obtained information. It has a recording of the minutes before the minister arrived.

MR TSOTSI: Yes.

ADV SELEKA SC: And a recording of the meeting... sorry, I said the minutes. Of the meeting before the minister arrived and of the meeting immediately after the minister arrived.

MR TSOTSI: Oh, so there is a recording of the people in
10 governance meeting?

ADV SELEKA SC: Even of that as well.

MR TSOTSI: Oh, I was not aware.

ADV SELEKA SC: Now I asked the question - just before I go to those audios and I will take you to the transcriptions of those audios. I asked you a question, whether did the minister show of support of the inquiry and of the suspension of the executives, even as you say adding the fourth executive on the list of those to be suspended, changed your view that you were opposed to the suspension of the
20 executives?

MR TSOTSI: Oh, I understand the question now.

ADV SELEKA SC: Yes.

MR TSOTSI: I did not understand it at the beginning. You are asking me if the meeting with the Minister changed my view about whether we should suspend executives or not.

ADV SELEKA SC: Correct, yes.

MR TSOTSI: No, it did not change my view in my recollection. All that happened, Chairman, was I insisted on some methodology of recusal.

CHAIRPERSON: You insisted on...?

MR TSOTSI: On some other methodology or some other process of recusal of the executives rather than suspension because I felt suspensions were not a good idea.

10 **CHAIRPERSON:** Yes, so that had been view also at the meeting of the 8th?

MR TSOTSI: Yes.

CHAIRPERSON: At the President's residence.

MR TSOTSI: Yes.

CHAIRPERSON: Okay, ja.

MR TSOTSI: And it turns out that there is not – there was not the process at Eskom which would ensure that the executives do not have the normal access they would have to the offices other than precautionary suspension.

20 **CHAIRPERSON:** Why was it thought the continued presence of the executives would be problematic or would interfere in any way with the inquiry or its investigation? What was the factual basis for thinking that they would interfere, indeed that they would not be helpful?

MR TSOTSI: Chair, I think the feeling amongst board

members was that there is no way of knowing whether in fact interference would have happened.

CHAIRPERSON: Yes but is that not a problem? Based on what Mr Matona said yesterday in his evidence, he was told that the basis of the suspension was not that there was any wrongdoing on his part.

MR TSOTSI: Yes.

CHAIRPERSON: So why was it thought that somebody who had not done – who was accepted as not having done
10 anything wrong would not cooperate and actually assist this investigation or if he remained present?

MR TSOTSI: As far as I know, the executives would expect to assist with the inquiry.

CHAIRPERSON: Yes but why would – how could they assist if they were suspended?

MR TSOTSI: The idea was that they would be subject to some interview on specific issues that come out in the process of the inquiry. That was the idea.

CHAIRPERSON: But what was the basis for thinking if
20 they continued and the investigation continued and whenever they are needed to answer anything or handover information that they would not cooperate.

MR TSOTSI: Well, it is difficult to say, Chair, what was living in people's minds about that but there was a general acceptance that it is easier and more justifiable that they

not be present at the time of the inquiry so that you do not attribute anything that you may find to them or to their having interfered. There is a possibility that – or this is what would have been in people’s minds, I would have thought, that they could have either prevented access to certain information or they might have interfered with their staff in terms of what the staff can and cannot say or that the staff would have felt inhibited to express themselves about what they know about the business if their bosses
10 were there. This is the kind of thinking I believe must have motivated that approach.

CHAIRPERSON: Mr Seleka, we are at nearly quarter past four.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Let us talk about how long we...

ADV SELEKA SC: We [indistinct] 5.13.

CHAIRPERSON: H’m? Ja, how long, how much more do you need to conclude Mr Tsotsi’s evidence?

ADV SELEKA SC: Thank you, Chairperson, I
20 ...[intervenes]

CHAIRPERSON: I know that the issue of the meeting, the activities of the 11th and subsequently there is a lot to be ...[intervenes]

ADV SELEKA SC: To cover.

CHAIRPERSON: That I accept.

ADV SELEKA SC: Yes.

CHAIRPERSON: But how long was your estimate?

ADV SELEKA SC: Yes. Chair, we could take a five minute adjournment with your leave.

CHAIRPERSON: Yes.

ADV SELEKA SC: And I could make a judgment call.

CHAIRPERSON: Ja. No, that is fine, I take it that, Mr Tsotsi, you are still available to continue?

MR TSOTSI: Yes.

10 **CHAIRPERSON:** Yes, yes and all legal representatives, I am sure there are no problem? Yes, okay, alright. We will take an adjournment, let us make it 15 minutes adjournment.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: And depending on what you say we could continue from half past four. Maybe if we take an hour we should finished but you will reflect and you will tell me when you come back.

20 **ADV SELEKA SC:** Yes, I will consider my notes, Chairperson.

CHAIRPERSON: Ja, ja.

ADV SELEKA SC: And indicate to the Chairperson before we resume.

CHAIRPERSON: Ja, that is fine.

ADV SELEKA SC: So that the Chairperson knows prior to

that on the time.

CHAIRPERSON: Ja. No that is fine. We will adjourn then and resume at half past four.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Let's get going.

ADV SELEKA SC: Thank you Chairperson. Mr Tsotsi we
10 were on the meeting of the 11th of March 2015, the Minister has left and you were saying you could take us into the meeting after the Minister has left.

CHAIRPERSON: Just to conclude on the meeting between the Board and the Minister, what were the decisions taken in that meeting, if there were any decisions?

MR TSOTSI: Chair the decisions ...[intervenes]

CHAIRPERSON: Or conclusions.

MR TSOTSI: The decision pertaining to the matter at
hand were that SMS does support the inquiry to proceed
20 and that we should seek an independent company or contractor and that she agrees with the suspension of the executives concerned.

CHAIRPERSON: And she added one more name?

MR TSOTSI: Yes she mentioned, she also added the name of the FD.

CHAIRPERSON: Yes.

MR TSOTSI: She mentioned the name of the FD.

CHAIRPERSON: Now in the discussion with the Minister or between or from the 8th to the commencement of that meeting between the Board and the Minister, had you had any discussion with the Minister as Chairperson of the Board? In other words, prior to her arriving at the meeting on the 11th, between the meeting in Durban and the commencement of the meeting on the 11th had you had any
10 discussion with the Minister?

MR TSOTSI: Chair no I did not have any discussion with the Minister.

CHAIRPERSON: Yes, did you write anything to her?

MR TSOTSI: Oh, okay in terms of requesting her to come we did make a memo to her.

CHAIRPERSON: Yes. Did that memo tell her about this proposal of an inquiry and the suspension of the executives and give motivation for the inquiry, and the suspension of the executives?

20 **MR TSOTSI:** Chair I know there was talk about the inquiry but I can't recall exactly whether there was mention of the suspension of the executives.

CHAIRPERSON: Yes, okay.

MR TSOTSI: I don't really.

CHAIRPERSON: But in any event the President had

indicated that he was going to speak to the Minister, you were going to speak to the Board and he was going to speak to the Minister?

MR TSOTSI: Correct.

CHAIRPERSON: Yes.

MR TSOTSI: Yes.

CHAIRPERSON: So when the Minister came to the meeting did she appear to have a good understanding of the proposal and reasons for the proposal

10 **MR TSOTSI:** Yes, to me she definitely appeared to understand.

CHAIRPERSON: Yes.

MR TSOTSI: Everything yes.

CHAIRPERSON: Okay, no that is fine. Then you may continue in regard to the meeting after that.

ADV SELEKA SC: Thank you Chairperson. Yes Mr Tsotsi you were saying you could take us into that meeting but I would like to go ahead of you if I may, because as I said the Commission has obtained the audio recordings of that
20 meeting, the transcript of that audio is contained in the bundle before you. I believe you have already opened to it, you can help me with the page number there at the top of the page.

MR TSOTSI: It is 692.

ADV SELEKA SC: 692, thank you Mr Tsotsi. There are –

there's four different recordings the Commission has obtained and I am going to focus on two of those recordings, I will take you there now, let me just explain to you, the one, the first recording in the transcript is the meeting of the Board before the Minister arrives. Chairperson I am going to give the page numbers, which can be written down, that is on page 811 to 8 ...[intervenes]

CHAIRPERSON: Okay I am sorry, you said we must go to
10 692 and I went there, are you still there?

ADV SELEKA SC: I am there Chairperson.

CHAIRPERSON: Yes, okay the page numbers you have given us are for what?

ADV SELEKA SC: Are the – there's four meetings, recordings in respect of four meetings.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: So I am going to give you the bigger picture before I go into the detail.

CHAIRPERSON: Yes, that is fine, yes.

20 **ADV SELEKA SC:** So you will have the first meeting without the Minister.

CHAIRPERSON: Yes.

ADV SELEKA SC: The transcript thereof is on page 811.

CHAIRPERSON: Okay.

ADV SELEKA SC: If you jot it down Chairperson for

present purposes.

CHAIRPERSON: But do I need to note that down now because aren't you going to give it to me when we go there anyway?

ADV SELEKA SC: Yes, because I want to confine myself only to two of those recordings.

CHAIRPERSON: Oh, okay, yes, alright.

ADV SELEKA SC: So it is 811 to 865

CHAIRPERSON: 811 to 865, okay that is the first
10 ...[intervenes]

ADV SELEKA SC: That is the first meeting before the Minister arrives.

CHAIRPERSON: Okay that is the meeting of the Board without the Minister.

ADV SELEKA SC: Without the Minister.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Then the Minister arrives and we don't have a recording of that as Mr Tsotsi has correctly indicated but then there is a recording of the meeting after
20 the Minister has left and the transcription of that is on page 866 to 906.

CHAIRPERSON: What are the page numbers again, 8?

ADV SELEKA SC: 866 to 906, nine zero six.

CHAIRPERSON: I am sorry, that first meeting that the recording is 811 to what?

ADV SELEKA SC: 865.

CHAIRPERSON: Okay, so this one is 866 to?

ADV SELEKA SC: 906.

CHAIRPERSON: 906, that is now the recording
...[intervenes]

ADV SELEKA SC: After the Minister.

CHAIRPERSON: ...of the Board meeting after the Minister.

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes.

10 **ADV SELEKA SC:** Then there is a board meeting where
Mr Nic Linnell is introduced, the transcription of that is on
page 692 to 787.

CHAIRPERSON: Page 692?

ADV SELEKA SC: 692 to 787.

CHAIRPERSON: And that is – these are all on the same
day?

ADV SELEKA SC: This is all on the same day
Chairperson.

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** All on the same day.

CHAIRPERSON: Ja, okay, but they are regarded as
separate meetings?

ADV SELEKA SC: They are indeed separate meetings,
one after other.

CHAIRPERSON: Okay, so this last one is the meeting of

the Board ...[intervenes]

ADV SELEKA SC: With Mr Nick Linnell.

CHAIRPERSON: Where Mr Linnell is introduced?

ADV SELEKA SC: Is introduced.

CHAIRPERSON: Okay.

ADV SELEKA SC: And then the last one Mr Tsotsi referred to as the P & G meeting is page 787 to 808.

CHAIRPERSON: 787 to 808. What meeting is that?

ADV SELEKA SC: That's P & G meeting, People &
10 Governance committee.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: So I want to start at the meeting after the Minister which is on page 866.

CHAIRPERSON: Okay, yes.

ADV SELEKA SC: I have arranged with the IT technician to assist us in that regard Chairperson.

CHAIRPERSON: Your voice.

ADV SELEKA SC: I have arranged with the IT technician to assist us in that regard Chairperson.

20 **CHAIRPERSON:** Yes okay.

ADV SELEKA SC: Mr Tsotsi the audio will be played and during the course of that I would ask you to identify to the Chairperson the speaker at each given moment. Audio clip 911.

CHAIRPERSON: And the transcript starting at page 866 is

a transcript of the recording that we are going to listen to now?

ADV SELEKA SC: Correct Chairperson.

CHAIRPERSON: Okay.

ADV SELEKA SC: Chairperson my – the legal representative for Mr Tsotsi says he wishes to address you.

CHAIRPERSON: Yes, okay. Maybe he can address me from where he is if it is going to be quick.

COUNSEL: It is rather short, thank you Chairperson.

10 **CHAIRPERSON:** Yes.

COUNSEL: I have been at pains to try and avoid what I have no choice but to do now.

CHAIRPERSON: Yes?

COUNSEL: Firstly, we just want to place on record that Minister Lynne Brown's statement was not provided or at least had not been received by either Mr Tsotsi, the witness, before he started his testimony, nor us.

CHAIRPERSON: Yes.

20 **COUNSEL:** Secondly consistent with Mr Tsotsi's evidence so far ...[intervenes]

CHAIRPERSON: Yes, yes.

COUNSEL: He is not, he was not aware that there is a transcript of recording for some of these meetings that now we are going to get into.

CHAIRPERSON: Yes.

COUNSEL: Let alone that neither he or I are aware that there will be a recording that is going to be played invariably where he would be asked to comment.

CHAIRPERSON: Yes.

COUNSEL: Now there is no issue from where I am sitting of that happening.

CHAIRPERSON: Yes.

COUNSEL: The only problem is that we expected that he would at least be given an opportunity to go through
10 statements and recordings that he would be expected to comment on.

CHAIRPERSON: Yes.

COUNSEL: So that he does not run into the temptation on responding to an issue out of context if he had the benefit of reading the entirety of the document.

CHAIRPERSON: Yes.

COUNSEL: And therefore, jerk his memory properly.

CHAIRPERSON: Yes.

COUNSEL: So hence I am rising at this stage to say in all
20 fairness my submission would be that he be granted that opportunity to go through and then this exercise that is intended can then be proceeded with at least with the benefit of having looked at the statements.

CHAIRPERSON: Well what if we do this, let's run it, if he is asked any questions and there's a problem, he says so

and we take it from there, in case whatever he is asked he has no problem with?

COUNSEL: I am happy Chairperson for ...[intervenes]

CHAIRPERSON: So in other words, we deal with each problem on its merits as it arises, if any problem arises at all.

COUNSEL: I am happy with that approach, the only challenge I anticipate, which I am trying very hard to avoid, for me to feel the need to have to jump up and object, I
10 hate that when it is done to me, I don't want to do it.

CHAIRPERSON: Yes, no, no, no I understand.

COUNSEL: I must make this point, whilst you took the 15 or so adjournment I was at pains to try and rush through the recording which my client clearly indicates not only was he not aware that it was recorded, he sees this for the first time, I could not myself finish it in that period, let alone that he had to go to the bathroom, so where I am sitting and I will be guided by the Chairperson, it could assist the Commission's work much swifter if he simply was given
20 chance to read and then prepare himself and help my colleague as he leads the evidence by being just on point on the issues.

CHAIRPERSON: Ja, no, no I understand what you mean. Do you want to say anything Mr Seleka?

ADV SELEKA SC: Chairperson my response would be

that the best evidence in this case is the audio itself.

CHAIRPERSON: Ja.

ADV SELEKA SC: It is a recording of the Board's meeting where Mr Tsotsi was the Chairperson, he will hear himself and nobody else speaking, he will hear his colleagues at a time speaking, I am not sure what will be surprising to Mr Tsotsi in the audios, so he will have, if there is any correction to be made in the transcription make the correction by reference to the audio.

10 **CHAIRPERSON:** Yes. Okay I think what we will do let's go ahead and when Mr Tsotsi is asked to comment or ask any question if there is a problem he will raise it and we will look at it at that stage, and if his counsel thinks there is a problem we can look at it at that stage. It may well be that there will be no problem and we go, everything will go smoothly.

ADV SELEKA SC: That is also my anticipation Chairman.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Thank you Chairperson. So we are on
20 page 866, audio file 9.1.1.

CHAIRPERSON: Are the technicians not ready? Should we – if they are going to take long should we deal with other matters and they indicate to you when they are ready so that we don't waste time?

ADV SELEKA SC: Chair may I proceed?

CHAIRPERSON: I thought you said they were ready from the morning?

ADV SELEKA SC: Ja, that's what they assured me yesterday already.

CHAIRPERSON: Ja.

ADV SELEKA SC: Well Chair I am going to leave them to sort it out.

CHAIRPERSON: Ja, they must indicate to you when they are ready. Well, maybe your junior should be there to
10 make sure that she can see when they are ready so that we don't waste time.

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: Ja.

ADV SELEKA SC: Now Mr Tsotsi despite your opposition to the suspension of the executives, we know from Mr Matona's testimony yesterday that four executives were ultimately suspended. I think you have switched off the mic.

MR TSOTSI: Yes.

20 **CHAIRPERSON:** Were you the only one in the meeting who was concerned that they should not be suspended but some other form of absence be agreed upon? There may have been ...[intervenes]

MR TSOTSI: Chair I honestly I cannot recall ...[intervenes]

CHAIRPERSON: ...a few others ja.

MR TSOTSI: I don't recall ...[intervenes]

CHAIRPERSON: But was your concern the label suspension what effect it would have when it is conveyed to the outside world of the executives but you also had the same thing in mind in terms of substance, namely they should not be at work for a certain period of time?

MR TSOTSI: I was very concerned Chair about their own personal reputations.

CHAIRPERSON: Yes.

10 **MR TSOTSI:** And the damage it might do to their careers and a lot of things around perception.

CHAIRPERSON: Ja.

MR TSOTSI: And even though we readily said that they are not being accused of having done any wrong but perceptions are perceptions and individuals suspended people will always attribute that to something even though there is no ...[intervenes]

CHAIRPERSON: Yes you know sometimes people say somebody is on special leave, that is saying on
20 suspension, is that what you had in mind?

MR TSOTSI: That is the sort of thing that I had in mind.

CHAIRPERSON: Which would be a label because when somebody says you are on special leave and somebody is on suspension they are both absent from work for a certain period of time, but one label has certain implications,

another one has different implications, so in other words in substance you also had in mind that they should be absent from work for a certain period.

MR TSOTSI: Yes on the basis of something like special leave, but the impression I got was that Eskom does not have that sort of ...[intervenes]

CHAIRPERSON: That kind of a label, ja, okay, alright.

MR TSOTSI: So I mean I related then and it is important for me to state Chair that I relented because I had the
10 absolute confidence that for as long as I am there, I will make sure that they return, that they are not prejudiced in any kind of way. That was the sort of back-stop for me in my mind to say that I will make sure that nothing untoward happens to them.

CHAIRPERSON: Yes.

MR TSOTSI: Because I was convinced that – and by the way another thing that is important to note at the time when we were dealing with this matter there was no intention of even investigating the executives themselves.
20 This was – I don't know exactly where this was made clear but I recall that we had the understanding that at no point is there an intention to investigate them in the course of this inquiry to stick to the terms of reference which deal with the objective condition of Eskom in terms of the issues that are problematic, and not individuals

themselves.

CHAIRPERSON: Well I got the impression, or ja I got the impression in terms of Mr Matona's evidence yesterday and maybe reading some of the affidavits and documents that while they might not have been accused of any misconduct but what was being investigated included how they were managing the company, in other words their performance, were they managing the company properly, to meet with the challenges, to deal with the challenges that the company
10 was facing, that is the impression I got, but if you say the idea was not to investigate them that seems to be inconsistent with my understanding because my understanding seems to be that while the Board might not have been saying they have done anything wrong, but it seems that it wanted to investigate whether the way in which they had been running the company, or managing the company was the right one.

Of course there was this allegation that the war room was being fed with wrong information, inadequate
20 information, obviously that must relate to the executives.

MR TSOTSI: Yes.

CHAIRPERSON: So what do you say to that.

MR TSOTSI: Well Chair in that respect let's not forget that ultimately after I left Eskom, as a matter of fact at the time I was dealing with my departure at Eskom already the

terms of reference, and Nick was out of the picture and so they then put a set of terms of reference I knew which I was not involved in at all.

CHAIRPERSON: Mmm, mmm.

MR TSOTSI: So the possibility for me is that some of these issues could have then been brought in at the time when I was not involved in the consideration of the terms of reference, I never attended a single meeting because these things happened after I left.

10 **CHAIRPERSON:** Well except that Mr Matona was also not there after you had left, so he was talking very much about what was conveyed at the meeting, was conveyed to him on the 11th and I am saying that based on what he was saying it seem to me that your Board was saying this inquiry would – what it would look into included how the management – how the executives, maybe not just these but how the management of Eskom was dealing with the challenges that the company was facing and then there was this issue that the war room was being fed wrong
20 information and I would imagine that the person to approve any information that was being sent to the war room would be the CEO I would imagine.

MR TSOTSI: So the discussion was about the performance of the Executives, as against any misdemeanours so to speak.

CHAIRPERSON: No, no what I – effectively what I am saying is you can't – it is difficult to say you can speak about the performance of the company without talking about the performance of the executives who are running the company.

MR TSOTSI: Yes.

CHAIRPERSON: Because they are the ones who make certain decisions which either enhance the performance or you know make decisions that end up with poor
10 performance by the company, but I am just testing your idea that before you left the idea was not to investigate these executives and I am just saying but how could this inquiry not include investigating these executives because the inquiry was alleged to be about the performance of the company and they were the top people running the company.

MR TSOTSI: Okay so we – I would have made the differentiation personally between their management style in terms of what they are able – for example the decision
20 making typically for example the head of Generation or the Chief Executive decided okay we are not going to do the maintenance for three months because there is a requirement that we must analyse on under any circumstances.

Now that decision was their decision, would the one

that would reflect on its capacity to handle the job.

CHAIRPERSON: Ja.

MR TSOTSI: Whereas I was talking myself and in my mind was the thought that there is no malfeasance *per se* in that it is just a question of not making the correct decisions.

CHAIRPERSON: Yes, no, no, if you – if what you meant was that there was no - that the inquiry would look into whether they had misconducted themselves.

10 **MR TSOTSI:** Yes.

CHAIRPERSON: That – that I can accept.

MR TSOTSI: Otherwise I do agree with you.

CHAIRPERSON: Ja. But otherwise in terms of how they did their job.

MR TSOTSI: Yes.

CHAIRPERSON: Whether they made the right decisions and they appreciated the challenges of the company that would be part of the inquiry.

MR TSOTSI: That would be part of it yes.

20 **CHAIRPERSON:** Okay. Yes alright.

ADV SELEKA SC: Thank you.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Thank you Chairperson. Yes Mr Tsotsi a couple of things. Let me start with the first one and it is just about the War Room and the allegation of apparently

inaccurate or inadequate information being provided to the War Room. Were you aware of that being a concern?

MR TSOTSI: Yes I was aware of that.

ADV SELEKA SC: Where did the Board raise that as a concern with the Executives such as Mr Matona in this case?

MR TSOTSI: The Board would have raised that I cannot exactly precisely say at which sitting of the Board.

ADV SELEKA SC: You heard him say yesterday that that was never raised with him.

10 **MR TSOTSI**: Probably I just say I do not know which sitting it would have been. Maybe it was not at the sittings that Mr Matona was ...

CHAIRPERSON: At the ...

MR TSOTSI: I cannot remember right now.

CHAIRPERSON: But remember Mr Tsotsi the 11th March was the first sitting.

MR TSOTSI: Yes.

CHAIRPERSON: Of this Board for all intents and purposes to deal with the business of Eskom because the meeting of
20 the 26 February was postponed to the 11th.

MR TSOTSI: Yes.

CHAIRPERSON: And then on the 9th they met briefly about something else. So it seems to that there would not have been any meeting prior to the 11th at which the Board would have raised such an issue with – with Mr Matona.

MR TSOTSI: That will be correct Chair yes.

CHAIRPERSON: Yes. And if – if the matter was raised with him it may have been – it could only have been maybe by you as an – as Chairperson if this had come to your attention and you raised it with him outside of the Board Meeting. Do you remember whether you did raise it outside of a Board Meeting? He said yesterday that...

MR TSOTSI: I do not recall – I really do not recall having raised it with him.

10 **CHAIRPERSON:** Yes.

MR TSOTSI: But certainly, I agree with you the fact that the only substantive Board Meeting dealing with Eskom's facts and issues.

CHAIRPERSON: Yes.

MR TSOTSI: Was one on the 11 March and that did not come across.

CHAIRPERSON: Yes and the concern about inadequate information exactly what is it if you are able to articulate it? Was it that the executives were being asked a certain
20 amount of information and they provided the right information but not enough? Was it that they were providing poor information – bad information? What was the exact nature of the concern?

MR TSOTSI: From what I understood the War Room was interested in as current information as possible. And a lot of

the stuff had to do with what is going on with the load shedding.

Now I do not know if you recall just to give you an example of the kind of complexity that they were dealing with. The incident that occurred where the previous – most recent previous Chairman of the Board Jabu Mabuza supposedly gave information about load shedding to the Deputy President or President I am not sure and things changed and he was said to have misled the President or
10 Deputy President. Now it is that sort of things.

There were so many changes occurring in the organisation that when executives present information which they believe represents the true situation then something else comes along and changes so they have to go back and change the information.

So for them to explain I guess or rather for the War Room to understand which is part of the problem with War Rooms. The understanding of the complexities of the operation of Eskom. It was difficult – the engagement was
20 very difficult because the majority of the people in the War Room were government officials.

There were DG's and of course Ministers. So there was that gap in my – in my view until they started to bring in people who were technically conversant to support the War Room.

Things got better at that point because you know the technical people began to understand what the difficulties were. But at the beginning those were the gaps understanding the complexities and the – you know the sudden changes that occur in operations in the organisation.

CHAIRPERSON: Hm.

MR TSOTSI: But I think that – that I understood where the problem was.

CHAIRPERSON: Yes.

10 **MR TSOTSI:** Yes.

CHAIRPERSON: It is – I mean I can understand a concern that may have emanated from the War Room that would say we are concerned that the current management is not up to the job because these are the difficulties we are having and we have been having these difficulties for a certain period of time.

20 Maybe it is like they do not appreciate exactly what is needed to be – what we need to be given to us in order for us to try and find a solution. But then I would expect that that would be put to them save to say you have a – there is a problem.

You are not able to satisfy us in this way so therefore we are going to have this inquiry and we ask you to take leave or you will be suspended because we want to look into this. But this idea there will be an inquiry.

But this thing about inadequate information seems to be just a peripheral issue it is – you know it does not come to the fore in the manner that one would have thought it would. You understand what I am saying?

MR TSOTSI: Yes I understand what you saying.

CHAIRPERSON: Yes. Because then if it had been presented like that they would know also okay – there is a concern that are we able to really assist in finding a solution if we are not able to provide information adequately bla, bla, 10 bla. But you know it seemed like an inquiry and then this thing about information being provided to the War Room is like a peripheral issue. Ja.

MR TSOTSI: Ja I understand what you say.

CHAIRPERSON: Ja okay. Mr Seleka.

ADV SELEKA SC: Thank you Chairperson. So Mr Tsotsi just for a quick reference in your affidavit on page 17 to page 21 the bottom of page 17. Paragraph 15. Under the heading Board Meeting of 11 March 2015. Yes?

MR TSOTSI: Yes.

20 **ADV SELEKA SC:** So you do say that the Board Meeting of the 11th was twofold.

“The first papers was intended to make up for the 26 February meeting that got postponed. Secondly the Minister had indicated that she was available to attend on

this day.” Turn the page you carry on on page 18.

“Mr Linnell spoke on the resolutions which stemmed from the memorandum he had developed. The resolutions were circulated to Board Members in the meeting of 9 March.”

You carry on. 15.5 says:

10 “The Minister joined the Board Meeting of 11 March by invitation from the Board. She was already aware of the idea of an inquiry and she supported it. She gave the board the authorisation to proceed with it.”

That is as you have already testified. You say the minutes of this meeting are missing. In fact, I referred to what seems to be the minutes earlier of that very meeting. What we do not have is the audio of those minutes of that meeting. You recall that?

20 **MR TSOTSI:** Yes I – I prepared this in February so at the time I was [00:10:34].

ADV SELEKA SC: I appreciate that. And 15.6 says:

“The Minister mandated the board to carry out suspensions of the executive even had the name of the financial director who was not part of the original executives identified

in the meeting at the President's residence. She further mandated the board to carry out the inquiry. The board deliberated on how the inquiry should proceed. It gathered on the need – it agreed on the need to have the executives whose area of responsibility would be inquired into and be set aside for the duration of the inquiry with a limitation of Human Resources, Rules demand that the executives would have to be under precautionary suspension as there was no other method of recusal available.”

10

Now is this paragraph 15.7 and 15.8 are those deliberations after the Minister had left?

MR TSOTSI: Let us just see. It would be after. This would be the pre-MG meeting.

ADV SELEKA SC: Yes. Now I have read the minutes and affidavits of various witnesses. I grapple with the understanding of knowing and I would like you to explain this to the Chairperson if you can because you were in this meeting. What did the Board resolve to do in respect of this executives? What is the concept that was applied and ultimately effected to have them stay away from work? What did the Board resolve?

MR TSOTSI: Chair the Board deliberated on the issue of

whether the executives should not or should be away from their offices during the course of the inquiry. And if I remember well the idea of them not being present resonated with most of the Board Members.

ADV SELEKA SC: Did it resonate with you Mr Tsotsi?

MR TSOTSI: The idea of them not being present in their offices resonated with me but under conditions which were I think reasonable that would not prejudice them in their positions or in their work.

10 **ADV SELEKA SC:** What did the Board con – what was given as the reasons that resonated with the Board for them not to be present?

MR TSOTSI: The Board as I said earlier Board Members were concerned that there could be influence. There could be influence brought to bear by the executives when they are in their offices on the issues that are being inquired into.

ADV SELEKA SC: Could you tell the Chairperson whether was that a concern of the Board? A very concern of the Board.

20 **MR TSOTSI:** In my view it was a concern of the Board. Hence the Board a decision that they should not be available at their offices.

ADV SELEKA SC: Yes now how do you say that with conviction when the Board has not even had a meeting with the executives prior to 11 March 2015? This is a new Board.

MR TSOTSI: I – I cannot speak for them because they have made their views clear in the meeting. So I – the question you are asking me I really cannot answer because they engaged the meeting and they gave their views. I can only assume that they have had experience elsewhere where they have been of this sort of thing. So I am not assuming that knowing the Board Members and person or maybe knowing how they work was a consideration on their part. I do not necessarily think that could have been the case because
10 they expressed themselves quite clearly.

ADV SELEKA SC: So what would be the answer in regard to yourself because you also say there is reasons resonated with you?

MR TSOTSI: Yes as I said I personally felt that I do not want to see a situation at the end of the inquiry or in the course of the inquiry where there are questions that have been raised that certain information was not available because individuals were not in a position to provide that information as a result of some influence that is brought on
20 brought to bear on them by their bosses. So you know when we said precautionary suspension, I understood literally that we are being precautionous in terms of ensuring that nothing would be impeding the work of this – of this exercise. The work of the inquiry. That is – that was my understanding – my view.

ADV SELEKA SC: Yes.

MR TSOTSI: At the same time I was comfortable that the executives have nothing to lose because not in terms of what may occur when they are not in their offices and that – as I said Chair that this was a temporary situation where I felt that they would be able to come back and after that and sure that they come back to their offices at the end of the inquiry.

ADV SELEKA SC: Yes. So how does – how does the commission ascribe – how does it understand the idea that
10 the Board was the one saying the executives should be suspended for these and the other reason the inquiry should not be impeded when the commission and the information you yourself has provided is shown that Mr Linnell is the one who drafted this resolution and it did not originate from within the Board.

MR TSOTSI: The resolution was discussed and Board Members had very specific views about it to the extent that in the meeting the Board agreed to have Mr Linnell assist the two different committees. The PNG committee in working on
20 the suspensions and on the Audit and Risk committee on the Terms of Reference.

CHAIRPERSON: It is a very strange thing that the Board that is supposed to be in control – have exercise control over the entity – it is a new Board. The only thing that has happened before this meeting where they – they seem to be

so much in favour of an idea that comes from outside the Board of an inquiry and suspension. It is their first meeting really.

I know about the meeting of the 9th but it is their first meeting. An idea comes from people outside of the Board and not from management either they run with it and somebody that has been obtained or provided by somebody from outside of the Board namely Ms Myeni providing Mr Linnell is now allowed to get quite involved in the affairs of the Board [00:20:43] resolutions and this Board just lets that – that – allows that to just happen.

It is very strange to me. I would have thought that if I joined a body like a board of a company you know that is not the kind of thing I would do at the first meeting because I still want to make my own assessment of the situation before I can engage in decisions that could have far reaching consequences for the entity. It is just very strange.

I mean we know that this idea did not come from within the Board and did not come from within management I think from what I have heard. It comes from outside. You get called to Durban as Chairperson of the Eskom Board. You meet at the President's residence. You meet with the Chairperson of another – the board of another SOE. You are surprised what she had to do with Eskom's affairs but she is here. She seems to run the show even when the President

is here in the meeting. The President is listening to her. She talks most of the time.

There is somebody that is said to have assisted her somewhere else he has provided to you to say he can assist. He gets involved. He is drafting resolutions. And the Board does not even say hang on if we go along with this idea, we will look for our own advisor or whoever to assist us. They just run with the idea.

It makes you wonder where – whether the information
10 they have is limited to the information that they got at the meeting. Or whether they have got other information from other sources or other people about this inquiry and the suspension of the executives. It just seems quite strange to me.

MR TSOTSI: Chair I found myself in exactly the same situation that you were addressing now at one point – from a certain point onwards.

CHAIRPERSON: Hm.

MR TSOTSI: I can just – Chair if I may just quickly deal with
20 that?

CHAIRPERSON: Ja.

MR TSOTSI: I do not know whether in this recordal there is a discussion of what happened when we – at the beginning of this meeting.

CHAIRPERSON: Hm.

MR TSOTSI: If what I saw – the little I saw reflects the beginning of the meeting then in terms of the recordal that was not the actual beginning of the meeting.

CHAIRPERSON: Hm.

MR TSOTSI: But to the best of my recollection Chairman when I arrived – what happened was this. I took the Minister out. She left. I came back. I went to have lunch and I was behind because most of the people had had lunch already. And the meeting started about half past two and I came to
10 the meeting a little bit late maybe about ten or so minutes late.

CHAIRPERSON: Hm.

MR TSOTSI: When I came into the meeting the meeting was chaired by it is either Chwayita Mabude or Xhosa one of the two I cannot exactly remember but in my affidavit I thought it was ...

CHAIRPERSON: That is now the people in governance meeting?

MR TSOTSI: Sorry.

20 **CHAIRPERSON:** That is now the people in governance committee meeting.

MR TSOTSI: People in governance yes.

CHAIRPERSON: Ja.

MR TSOTSI: I thought it was chaired by Chwayita or it could have been chaired by Mr Xhosa. When I arrived at the

meeting the discussion that I found was about the executives who were supposed to act.

CHAIRPERSON: Yes.

MR TSOTSI: Now I discovered that there was a list of executives that had been produced from somewhere and these were the people who said it was said would be acting. The first thing I did was I asked where do those names come from. And I was told by Ben Ngubane that these names came from the Minister. Now I protested because I said
10 none of you people know who these people are. I am the only person in the room who knows who the people –

CHAIRPERSON: [not audible].

MR TSOTSI: Who would be in a position to act. And I said clearly wherever these names come from the Minister would not know either. They can only come from within the executives ranks. So somebody in the executive must have given these names to whomever and they have ended up in this meeting. So there was this predetermination except for the acting Chief Executive there the suggestion was that
20 Xhosa should act as Chief Executive.

CHAIRPERSON: Yes.

MR TSOTSI: He admitted that he felt that this was – he could not handle that responsibility. So I – I said look there is no reason why you should if you feel that you cannot do it. But at the end he did become the acting Chief Executive.

CHAIRPERSON: How did that come about in circumstances where he himself said he thought this was too big a job of something like that?

MR TSOTSI: Because the committee decided that no he will be – he will take the position that he needs to and he must take it. So I think he relented on the insistence of Members in the committee.

CHAIRPERSON: Now just to clarify. This meeting we are talking about now which was discussing the names of people
10 to act in the positions of the suspended executives was a peoples in governance committee?

MR TSOTSI: Yes.

CHAIRPERSON: Now the – the other sessions which up to now were being calling board meetings were they also peoples in governance committee meetings we just wrongly called them board meetings?

MR TSOTSI: No Chair this is a board sub-committee meeting. The meeting on the ...

CHAIRPERSON: With the Minister was with the Board?

20 **MR TSOTSI:** Was with a full board.

CHAIRPERSON: Ja and the meeting that took place before the meeting with the Minister was a board meeting?

MR TSOTSI: It was a full board meeting as well.

CHAIRPERSON: But the meeting after the Minister had left was not a meeting of the full board but a governance and

peoples and governance committee.

MR TSOTSI: That is correct.

CHAIRPERSON: Is that right?

MR TSOTSI: Yes.

CHAIRPERSON: Okay so was there after the meeting of the peoples and governance committee meeting after that meeting was there another board meeting on the day or had the board meeting end when – before the peoples and governance committee started?

10 **MR TSOTSI:** The board meeting had ended with...

CHAIRPERSON: The suspension.

MR TSOTSI: No. Was recommending suspensions.

CHAIRPERSON: Yes recommending suspensions.

MR TSOTSI: Yes and also mandating the people in governance committee to carry out the suspension process.

CHAIRPERSON: Okay. And...

MR TSOTSI: Which is what the meeting was about.

CHAIRPERSON: And also to decide on the people to act.

MR TSOTSI: That is correct.

20 **CHAIRPERSON:** So – so the board meeting ended before the peoples and governance committee meeting started?

MR TSOTSI: Yes.

CHAIRPERSON: And then the governance and people – the peoples and governance committee meeting started but it had the mandate to get and to appoint or to recommend

whatever the position was on who should act in the positions of the executives?

MR TSOTSI: Yes.

CHAIRPERSON: And for the rest of the day, it is only the people in governance committee meetings that we are looking at from that time on for that day?

MR TSOTSI: That is right.

CHAIRPERSON: There was no further board meeting?

MR TSOTSI: No.

10 **CHAIRPERSON:** Okay alright. So after lunch, you joined this people governance committee meeting?

MR TSOTSI: Yes.

CHAIRPERSON: And you found them already dealing with names of people to act in the positions of the executives?

MR TSOTSI: Yes.

CHAIRPERSON: You say to them, amongst other things, none of you know these people.

MR TSOTSI: Yes.

20 **CHAIRPERSON:** I am the only that was... And that was because you have been around.

MR TSOTSI: Yes.

CHAIRPERSON: You know, for quite some time. What do they say to you when you say that, these people in the meeting?

MR TSOTSI: Well, they told me, as I said, Mr Ngubane

indicated Chair to me that these are names that were provided by the minister.

CHAIRPERSON: Ja, and they were just going along effectively.

MR TSOTSI: Yes.

CHAIRPERSON: They do not know the people because the minister gave the names. They seem to want to rubberstamp, it seems from.

MR TSOTSI: That is correct.

10 **CHAIRPERSON:** That is correct, ja.

MR TSOTSI: Ja.

CHAIRPERSON: Okay. Mr Seleka.

ADV SELEKA SC: Thank you, Chairperson. So should the Commission ...[intervenes]

CHAIRPERSON: I see I have twenty-five to six. Shall we just go on and see where we are at six o'clock? I think nobody has a problem. Let us review the situation at six.

ADV SELEKA SC: Thank you, Chairperson. Should the Commission Mr Tsotsi then accept that this board ultimately
20 succeeded through the demands of the then president or Ms Dudu Myeni, and/or?

CHAIRPERSON: Demand/request or proposal.

ADV SELEKA SC: Correct. Thank you, Chairperson.

CHAIRPERSON: Or instruction.

ADV SELEKA SC: Or instructions.

ADV SELEKA SC: Effectively, yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes.

ADV SELEKA SC: So this Commission should... yes, understand that to be the position. Thank you, Chairperson. You see we are talking about the new board and when we take it from yourself.

What you say was your response to Minister Brown on the 15th of February 2015, when she says to your
10 management and board members are complaining that you are interfering with management.

And remember, your response was: Most board members hardly know what I look like. Let alone, not having worked with me yet. Do you recall that?

MR TSOTSI: Yes, I do.

ADV SELEKA SC: Does that not similarly apply to the executives?

MR TSOTSI: Quite certainly. That the board members would not know the executives. They did not know it at the
20 time.

ADV SELEKA SC: Thank you, Mr Tsotsi. Chair, I believe the recording is ready.

CHAIRPERSON: Okay, that is fine.

ADV SELEKA SC: I hope we get to play. We were ...[intervenes]

CHAIRPERSON: They must just be able to get on with it so that we do not waste time.

ADV SELEKA SC: Correct. I want to – because Mr Tsotsi says he went on lunch and came back to find that the PMG meeting had started. Or I could start with that but maybe I will put the point on it Mr Tsotsi. Let us go back to that page I had given, page 866. And that is audio 9.1.1.

[Audio 9.1.1. play on record]

CHAIRPERSON: I am sorry.

10 **ADV SELEKA SC:** Okay, can he pause it?

CHAIRPERSON: Rewind. Could you please rewind to the beginning?

ADV SELEKA SC: To the beginning.

CHAIRPERSON: Page 866.

ADV SELEKA SC: Are you fine, Chair?

CHAIRPERSON: [No audible reply]

[Audio 9.1.1. play on record]

CHAIRPERSON: You said we are going to page 866?

ADV SELEKA SC: 866.

20 **CHAIRPERSON:** Okay alright. Okay.

ADV SELEKA SC: 866.

CHAIRPERSON: Ja, I have got it. Have you got it Mr Tsotsi?

MR TSOTSI: Yes. Thank you, Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: YOU found it, Chairperson?

CHAIRPERSON: Ja, you can go ahead.

ADV SELEKA SC: Thank you, Chairperson.

[Audio 9.1.1. play on record]

ADV SELEKA SC: Please pause. Mr Tsotsi, please identify to the Chairperson whose male voice was the first?

MR TSOTSI: That is my voice.

ADV SELEKA SC: It is your voice?

MR TSOTSI: Yes.

10 **ADV SELEKA SC:** We hear a female voice coming on. Can you play it, please?

[Audio 9.1.1. play on record]

ADV SELEKA SC: Have you been able to identify her?

MR TSOTSI: That is Ms Carrim.

ADV SELEKA SC: Sorry, just come again?

MR TSOTSI: [No audible reply]

ADV SELEKA SC: What is the first name?

MR TSOTSI: [sigh] I...

ADV SELEKA SC: We showed you the minutes earlier.

20 **MR TSOTSI:** Oh, it is in the minutes.

CHAIRPERSON: I am sure there is page which has got a list of the names of the board members. If you tell him where that page is, he will see the...

ADV SELEKA SC: [No audible reply]

CHAIRPERSON: Even if he does not remember the first

name.

MR TSOTSI: It is an N Carrim. I do not know whether it is...

CHAIRPERSON: What is the name?

MR TSOTSI: The initial is N.

CHAIRPERSON: And the surname?

MR TSOTSI: It is Carrim. C-a-r-r-i-m.

CHAIRPERSON: C-a-r-r-i-m?

MR TSOTSI: I think so, yes.

10 **CHAIRPERSON:** Okay. Are you confident that this is the person?

MR TSOTSI: Chair, yes.

CHAIRPERSON: Okay.

MR TSOTSI: Because the other ladies, I would... yes, there were only three ladies in the meeting.

CHAIRPERSON: There were only two ladies in the meeting?

MR TSOTSI: Three.

CHAIRPERSON: Three?

20 **MR TSOTSI:** Yes.

CHAIRPERSON: Okay alright. Yes?

ADV SELEKA SC: Thank you. Can you...?

[Audio 9.1.1. play on record]

MR TSOTSI: That is Norman?

ADV SELEKA SC: Mr Norman Baloyi?

MR TSOTSI: Yes.

ADV SELEKA SC: Thank you, Mr Tsotsi.

[Audio 9.1.1. play on record]

ADV SELEKA SC: So is that your voice, Mr Tsotsi?

MR TSOTSI: Yes.

ADV SELEKA SC: Thank you.

[Audio 9.1.1. play on record]

ADV SELEKA SC: No, ,no, no. Just so far. Pause. Sorry,
I think that was your voice and then somebody else
10 interrupted.

MR TSOTSI: Yes.

ADV SELEKA SC: Whose voice was that? Let us play it
again.

[Audio 9.1.1. play on record]

ADV SELEKA SC: Carry on.

[Audio 9.1.1. play on record]

ADV SELEKA SC: What I hear Mr Tsotsi is your voice
saying Mr Ambassador.

MR TSOTSI: It sounds like Dr Ngubane, yes.

20 **ADV SELEKA SC:** Sorry, is.. was Dr Ngubane being
referred to as the Ambassador?

MR TSOTSI: No, I just call him the Ambassador.

ADV SELEKA SC: Oh.

MR TSOTSI: A lot of people referred to him as the
Ambassador but... I called him that.

CHAIRPERSON: I cannot hear.

MR TSOTSI: Sorry, Chair.

CHAIRPERSON: Who was referred to as Ambassador?

MR TSOTSI: Dr Ngubane.

CHAIRPERSON: Oh, okay.

MR TSOTSI: Yes.

CHAIRPERSON: Alright. Okay. Because had been an ambassador at some stage before?

MR TSOTSI: Yes.

10 **CHAIRPERSON:** Ja, okay.

MR TSOTSI: So he... that is the next voice, Chairperson.

CHAIRPERSON: Okay.

[Audio 9.1.1. play on record]

MR TSOTSI: That is Mabuda.

ADV SELEKA SC: That is who?

MR TSOTSI: Ms Mabuda.

ADV SELEKA SC: Yes. Mr Tsotsi, just before we carry on. You heard, what you say, is Mr Norman Baloyi speaking there.

20 **MR TSOTSI:** Yes.

ADV SELEKA SC: He sounds or have sounded to have expressed reservations about forging ahead with the decision propose particularly in regard to the suspension of the executives. How did you as the board deal with his reservations?

MR TSOTSI: [Indistinct]

ADV SELEKA SC: Oh, your microphone sir.

MR TSOTSI: Sorry. As the board, I would not know because I do not believe that the board dealt with his particular ...[intervenes]

CHAIRPERSON: I guess is supposed to have sent – supposed to have said the people in governance committee ...[intervenes]

MR TSOTSI: Oh.

10 **CHAIRPERSON:** Because is it not what we... is not where we are?

ADV SELEKA SC: [No audible reply]

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Not yet, Chair.

CHAIRPERSON: Oh, not yet?

ADV SELEKA SC: Not yet.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: But I think the question is relevant to the board because they make the decision.

20 **CHAIRPERSON:** Yes. No, I understand that I thought that we were already at the governance and the people governance committee?

ADV SELEKA SC: No, Chair.

CHAIRPERSON: We are at the meeting immediate after the minister had left?

ADV SELEKA SC: Correct.

CHAIRPERSON: That is where we are?

ADV SELEKA SC: Correct.

CHAIRPERSON: Okay alright. And that is the board meeting?

ADV SELEKA SC: [No audible reply]

CHAIRPERSON: Okay alright.

MR TSOTSI: This is a people governance committee meeting and Mr Baloyi's objection were not raised. He did
10 not raise any objections during the board meeting when the issue of suspension was discussed. I think it is the first time that anyone is hearing from him about whatever reservations he may have. He is expressing them in this meeting.

CHAIRPERSON: Well, let us sort that out Mr Seleka. Are we at the people and governance meeting this recording or is it at the board meeting after the minister has left? Because I hear Mr Tsotsi says this is at the people and governance ...[intervenes]

MR TSOTSI: Oh, I am sorry, Chair. So this recording is of
20 the board in-committee meeting. Okay, no that is fine.

CHAIRPERSON: Oh, okay alright.

MR TSOTSI: I did not realise that ...[intervenes]

CHAIRPERSON: No, okay. Alright. Alright.

ADV SELEKA SC: It is correct, Chairperson.

CHAIRPERSON: Yes, it is correct.

MR TSOTSI: It is correct.

ADV SELEKA SC: So that is the board meeting.

MR TSOTSI: I cannot say specifically Chair whether the board had any – took any particular – maybe it will come out as we go ahead with this. But I do not recall there be any particular focus on his views about what should happen. I think he was expressing his views like anybody else.

ADV SELEKA SC: Yes. No, correct. But what I am asking is. Based on your recollection, having been part of the
10 meeting and hearing one of the board members expressing reservations in regard to the decisions that are about to be taken by the board, because this is at the moment of deliberations, the word used in your affidavit. How did the board deal with his reservations?

MR TSOTSI: The board did not deal with his reservations. The board just expressed... Norman must just express his own view.

CHAIRPERSON: The discussion continued.

MR TSOTSI: The discussion continued.

20 **CHAIRPERSON:** And ...[intervenes]

MR TSOTSI: As they were saying different things.

CHAIRPERSON: Yes.

MR TSOTSI: And he was one of the people who had a view.

CHAIRPERSON: Ja.

MR TSOTSI: Which was expressed to the board.

CHAIRPERSON: And he did insist on somebody answering his concerns?

MR TSOTSI: I do not recall that. And we will find out as we go ahead what happens.

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you, Chairperson. You may proceed.

[Audio 9.1.1. play on record]

CHAIRPERSON: Mr Seleka, I do not want us to listen to the
10 recording on everything.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: Because there is a transcript.

ADV SELEKA SC: Yes.

CHAIRPERSON: I want us to only listen to parts of the record in regard to parts that you regard as important.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: So that we must not go through everything. And if those have not been identified by way making sure that really listen to what you regard as quite
20 important, then maybe that can be done after we have adjourned so that when we get to it is much quicker.

ADV SELEKA SC: Ys.

CHAIRPERSON: We get to – so we know if there is a discrepancy on the version even by any witness as to what was discussed or decided and the recording does bring that

up, then we can just go there and you zoom in. We listen to that. We stop. We move on.

ADV SELEKA SC: Yes.

CHAIRPERSON: And we listen only when there is something quite important.

ADV SELEKA SC: Indeed, Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: Let me go to the section where it goes into the PMG Committee, Chairperson.

10 **CHAIRPERSON:** Yes, we are at five to six. Where are we? How much more time we need?

ADV SELEKA SC: [No audible reply]

CHAIRPERSON: Maybe what we should do to the extent that Mr Tsotsi has not... I do not know whether the transcript, you had a chance to read?

MR TSOTSI: No, Chair.

CHAIRPERSON: You have not had a chance to read?

MR TSOTSI: [No audible reply]

20 **CHAIRPERSON:** Maybe what you should do Mr Seleka is we should adjourn now. That is point one. Point two. Mr Tsotsi should get the opportunity to go through the transcripts and listen to the audio and make notes that will help with the identification of the people who are talking in the audio. He will be looking at the transcript as he listens and he can make notes. Where it says female voice or

something like that.

ADV SELEKA SC: That is correct.

CHAIRPERSON: He can write who that is and so on. And that will assist because when he comes back you will know in advance – you will have spoken to him – where the – who the speakers are and the transcript can appropriately be amended.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: To reflect the names of the people who
10 will speak at different parts of the transcript. And one, they can indicate whether he substantially agrees that the transcript reflects the discussions at least for the time that he was at the meeting.

And where – then after that we can just focus on the important things. And if there is something to listen to on the recording, we just go straight to that. We listen to that.

ADV SELEKA SC: Yes.

CHAIRPERSON: How is that? Is that fine?

ADV SELEKA SC: That is perfectly fine, Chairperson.

20 **CHAIRPERSON:** It is fine, yes.

ADV SELEKA SC: That is the way to do it.

CHAIRPERSON: Yes. Now, if we adjourn now, preferable we should be finished with him before we move to the next witness.

ADV SELEKA SC: I would say so.

CHAIRPERSON: And would you be available to continue tomorrow morning, Mr Tsotsi?

MR TSOTSI: Yes, Chair.

CHAIRPERSON: You would be available?

MR TSOTSI: Yes.

CHAIRPERSON: And counsel, you are available?

ADV SELEKA SC: [No audible reply]

CHAIRPERSON: So think that is what we should do. If he can be given the audio to listen to it in the evening. I am
10 sure tomorrow when he comes back then the whole job can be much easier.

ADV SELEKA SC: Yes. Chair, I could not agree more.

CHAIRPERSON: Ja.

ADV SELEKA SC: I think the latest development most of the audio required.

CHAIRPERSON: Yes.

ADV SELEKA SC: So it was intended to be played in respect of Mr Tsotsi.

CHAIRPERSON: Yes.

20 **ADV SELEKA SC:** Ja. So we should be very brief on that, Chair.

CHAIRPERSON: Ja, okay. So bearing that in mind, what is your estimate of how much time you might need with him tomorrow morning?

ADV SELEKA SC: I think I would need 45-minutes, Chair.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: So let us... should we start at ten or half-past nine?

ADV SELEKA SC: Or 09:30 if it suits the Chair?

CHAIRPERSON: The witness who will come after him, how long is he or she supposed to be?

ADV SELEKA SC: We were scheduling her for the morning.

CHAIRPERSON: Ja and then there will be another one.

10 **ADV SELEKA SC:** Then there will be another one at two, Chairperson.

CHAIRPERSON: Yes. And the other one at tow, likely take how much?

ADV SELEKA SC: Again, until the beginning of the next day.

CHAIRPERSON: Ja. Oh, so maybe let us start at half-past nine.

ADV SELEKA SC: Yes.

CHAIRPERSON: Is that fine?

20 **COUNSEL:** It is fine, Chairperson. I just need to indicate, I intimated to my learned colleague that I will require with your permission to re-examine Mr Tsotsi.

CHAIRPERSON: Ja. No, that is fine.

COUNSEL: And secondly that to the extent, if possible, that these statements that we have not had sight of

...[intervenes]

CHAIRPERSON: You can be given those?

COUNSEL: So that when we come tomorrow, at least he is ready.

CHAIRPERSON: Yes. Ja. No, just arrange with Mr Seleka. Those can be given.

ADV SELEKA SC: Indeed, Chair.

CHAIRPERSON: Okay so ...[intervenes]

ADV SELEKA SC: Now... ja. It is fine. Because my
10 understanding was that Miss Lynne Brown's statement had
been emailed to Mr Tsotsi together with the statement of Ms
Dudu Myeni.

CHAIRPERSON: Yes.

ADV SELEKA SC: Because if... they confirm they have the one but not the other.

CHAIRPERSON: Yes.

ADV SELEKA SC: Because I understood they were in one email but we will provide them with ...[intervenes]

CHAIRPERSON: Okay. No, that is fine. Okay then we are
20 going to adjourn and then tomorrow we start at half-past
nine.

ADV SELEKA SC: Thank you, Chairperson.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS UNTIL 10 SEPTEMBER 2020