

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

**09 SEPTEMBER 2020**

**DAY 264**



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 09 SEPTEMBER 2020**

**CHAIRPERSON:** Good morning Mr Seleka, good morning everybody.

**ADV SELEKA SC:** Morning Chairperson.

**CHAIRPERSON:** Mr Tsotsi the oath you took yesterday will continue to apply today.

**MR TSOTSI:** Thanks Chairman the exercise I was given yesterday had something to do with my lack of sleep so if I doze off during this please excuse me.

10 **CHAIRPERSON:** No that is alright. I am sure Mr Seleka will make sure he keeps you awake. There is one question that I did not ask you yesterday which I want to ask you before Mr Seleka proceeds. When Mr Tony Gupta said to you that they put you – they are the ones who put you into this position and they can take you out of the position. Why did you not ask him how did you put me into this position? What are you talking about? I do not know that you put me into this position.

20 **MR TSOTSI:** That is a valid question Chairman. At the time I was in the state of the mind that I was quite upset from the previous meeting I had with the Minister and I just saw a conspiracy looming and so by the time I got to him I was basically fed up and I just wanted to get away. So I did not have the presence of mind to ask him. And I really did not want to entertain any discussion with him having...

**CHAIRPERSON:** Yes.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Yes well we may get to a point where we might have more discussion about allegations that the Gupta's put up names of people that they wanted to be appointed to boards of SOE's and in certain government departments, certain strategic positions we might get to the point where we discuss that.

But I just thought that it was interesting that he said  
10 that to you because from the way you say he said it he –  
he seemed – he seemed to think that they had – they were  
responsible for you being the Chairperson. Maybe they did  
not but he wanted you to realise that maybe to think he  
had a lot of power or they had a lot of power.

But from your point – from your side your evidence  
was at least in regard to your first term you had not shown  
any interest of wanting to be a Member of the Board of  
Eskom you were just approached and to ask whether you  
would be interested and you supplied your CV and in due  
20 course you were appointed.

So – so one just wonders whether without you  
knowing it may be that you were identified as somebody  
that they would like to get onto the board in the belief on  
their part that maybe you would do whatever they might  
want you to do and maybe you were got rid of ultimately

maybe because you did not prove to be what they wanted.  
So – so you see the thinking.

**MR TSOTSI**: Yes I see.

**CHAIRPERSON**: Yes. But it is just that these allegations are there that they were influential trying to put people that they wanted in certain positions for their own purposes.

**MR TSOTSI**: In fact, Chairman you speaking about their demonstration of their power you just reminded me of something which I omitted to mention. It just occurred to  
10 me now as you were speaking.

**CHAIRPERSON**: Hm.

**MR TSOTSI**: In one of those visits when I was at Saxonwold.

**CHAIRPERSON**: Hm.

**MR TSOTSI**: At their residence what happened is that Tony Gupta produced something. He said I want you to look at something but I cannot give it to you. I said okay what is that? He showed transcripts.

**CHAIRPERSON**: Hm.

20 **MR TSOTSI**: Of I think it was a sms or messages in any case, telephone messages.

**CHAIRPERSON**: Hm.

**MR TSOTSI**: And these were conversations amongst the Board – my Board Members who at the time – this is now the previous board before the new board.

**CHAIRPERSON:** Hm.

**MR TSOTSI:** They happened to have a sms or a whatsapp group.

**CHAIRPERSON:** Hm.

**MR TSOTSI:** That they were – they used to talk about the business of the company.

**CHAIRPERSON:** Hm.

**MR TSOTSI:** I was not part of that group but he then shows me and I read this and I see that you know it is a  
10 discussion by all the various Board Members.

**CHAIRPERSON:** Hm.

**MR TSOTSI:** Well I would say maybe about half of the board maybe three quarters of the board.

**CHAIRPERSON:** Hm.

**MR TSOTSI:** And I was quite taken aback. I said, where do you get this from? He said do not worry about that Chairman that is – do not worry about it I just wanted to let you know that we have got our own sources.

**CHAIRPERSON:** Hm.

20 **MR TSOTSI:** So I took this to be kind of a power play.

**CHAIRPERSON:** Hm.

**MR TSOTSI:** He says, listen if you mess with me this is ...

**CHAIRPERSON:** Ja I will find out if you – whatever what you say some people will tell me or whatever you do.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** They will tell me.

**MR TSOTSI:** Correct.

**CHAIRPERSON:** Well that is quite an important piece of information. And you say that the whats – the members of the whatsapp group that were taking part in that conversation it was about half the board?

**MR TSOTSI:** Yes it was about half or just maybe two thirds of the board.

**CHAIRPERSON:** Yes.

10 **MR TSOTSI:** Yes.

**CHAIRPERSON:** That is quite significant. I know I have read a report of some investigation I do not know if it is the Fundudzi Report which said their investigations revealed that at a certain time and I cannot remember which year – at a certain time a number of board members at Eskom and Transnet I think and Denel were people who seemed to have some or other association with the Gupta's and in regard to some that report reflected that their CV's had gone to the Department of Public Enterprises the office of  
20 the Minister through a Gupta related email address.

And I think that – that – either that report or another one also linked at a certain time most of the members of the Denel board as associated in one way or another with the Gupta's.

So – so it is all of these things that make one think

when you hear statements like we are the ones who put you there we can take you out. You know or something like that. Ja. Okay thank you.

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

**CHAIRPERSON:** Mr Seleka.

**ADV SELEKA SC:** Thank you Chairperson. Chairperson maybe we should go into that point before we move away from it.

**CHAIRPERSON:** Yes.

10 **ADV SELEKA SC:** Because Mr Tsotsi deals with a part of it already in his affidavit. Mr Tsotsi that is on page 25 of your affidavit. It starts on page 25 under the heading Salim Essa. Although what you do there is to deal with the composition of the sub-committees. Are you there on page 25 on paragraph 20 – under paragraph 20. You see that?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Ja.

“So my first encounter with Mr Essa was at one of the TNA breakfasts.”

20 So that is the first encounter. You turn the page – page 26 paragraph 20.3 and there you say:

“The other occasion was when the new board came into being where I was required to place board members in sub-committees of the board. Salim Essa sent me his



configuration and asked that I pass it onto the Minister as my submission.”

Well this is about the sub-committees. The Chairperson was specifically asking about the board itself. So your affidavit deals with the composition of the sub-committees but maybe it is related. Let us hear how you deal with it. 20.4 then says:

10 “I quietly ignored his submission and sent mine to the Minister whereupon the Minister responded with the exact submission I had received from Salim Essa. I kept going back and forth with this process of chopping and changing the allocations with the Minister until she called me to a meeting. At the meeting was Salim Essa and Tony Gupta. She merely informed me that the board allocations will be the way she had sent to me. This she did in the presence of these two gentlemen.”

20 Then you go on to say:

“I did not know whether – I did not know if Mr Essa had any involvement in my resignation from the board. Mr Essa was never present at any of the meetings I had with Tony Gupta.”

Now I believe that this aspect did come up on the first occasion that you testified here before this commission and that the Chairperson asked you whether you have that submission – a copy of that submission given to you by Mr Essa and your submission to the Minister and the Minister's submission to you. Do you recall that?

**MR TSOTSI**: Yes I do.

**ADV SELEKA SC**: And can you recall whether you do have  
10 copies of those submissions?

**MR TSOTSI**: No I do not have them – I never had them.

**ADV SELEKA SC**: No what you mean you never had?

**MR TSOTSI**: No I am talking about...

**ADV SELEKA SC**: Did you receive them.

**MR TSOTSI**: I am talking about the last time I was here I did not – I had not had them.

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

**CHAIRPERSON**: Did you try to get them after the last time or was this – was it a situation where you could not really  
20 try – you would have no idea where to start because of the lapse of time?

**MR TSOTSI**: Chair I remember when – when I left, we had agreed I would make an attempt to try to get them or at least get some information that would corroborate what I was saying. I tried to get them through Eskom but I was

not successful.

**CHAIRPERSON:** Hm.

**MR TSOTSI:** And the people who were working with me at the time they do not have any – they did not have any of these – of the material. Nor did they have any sight of what I had done.

**CHAIRPERSON:** Hm. Would the – would you have received them those that you received from both Mr Essa and the Minister would you have received them through  
10 your personal laptop computer or it would have been an Eskom computer and those that you sent to the Minister?  
Do you know?

**MR TSOTSI:** Well my recollection is that it was an Eskom email.

**CHAIRPERSON:** An Eskom computer.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Yes. Okay. Okay. Okay. Well I do not know Mr Seleka somebody might – you might wish to talk to investigators.

20 **ADV SELEKA SC:** Yes.

**CHAIRPERSON:** You know sometimes they have ways of unearthing documents that you do not think can be found. So that should be tried.

**ADV SELEKA SC:** Indeed.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** We will certainly do so Chair.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** I – I know that...

**CHAIRPERSON:** And then maybe...

**ADV SELEKA SC:** I know that I have made the same request to Mr Tsotsi.

**CHAIRPERSON:** Oh.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Ja.

10 **ADV SELEKA SC:** To search and he came out again with a nod. But we will do further investigations.

**CHAIRPERSON:** Ja. Okay alright. It is just that if we could find those documents it would be great. But if we do not find them then we do not find them. I just want us to at least try.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** I accept that.

20 **CHAIRPERSON:** Well you know in this commission – the commission has been lucky sometimes. I said to the legal team dealing with BOSASA and the investigation team they must go to the Victoria Guest House where Mr Agrizzi had said Ms Nomvula Mokonyane's 50 birthday party had been held and I said they need to talk to the owners there try and find out whether there was such a thing and they went

there. Interestingly although the owner said no he did not hold – host the 50<sup>th</sup> birthday party for Ms Mokonyane but he said we did host the 40<sup>th</sup> which was eighteen years ago. But he was able to get invoices of eighteen years ago. So those were put up.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** I also said in relation to BOSASA legal team and investigation team because there was two different versions about whether BOSASA had done some work at the Mokonyane home. They must try and trace the people who allegedly – who had allegedly done work there and I was told one of them had immigrated to New Zealand and I said to them well follow him. He might just be able to confirm or not confirm and they found him and they said I have looked and I have actually found invoices of 2014/2015. I did work in the house here are the invoices. And he did an affidavit and that so I am saying the investigators of the commission somehow are able to get some very old documents.

20 **ADV SELEKA SC:** Yes.

**CHAIRPERSON:** And the one that Mr Tsotsi is talking about are not eighteen years old.

**ADV SELEKA SC:** Only five years ago Chairperson.

**CHAIRPERSON:** Ja. So they should try.

**ADV SELEKA SC:** Yes. Mr Tsotsi would you have

received the submission from the Minister of the list by way of email as well?

**MR TSOTSI:** Yes it came back via email because the Minister was – if I recall she was in Mozambique at that time.

**ADV SELEKA SC:** But then you say she called you.

**CHAIRPERSON:** I am sorry Mr Seleka I just want to get this out of the way in relation to these documents.

**ADV SELEKA SC:** Yes Chair.

10 **CHAIRPERSON:** In paragraph 20.1 of your affidavit you say it was in mid-2014 when you met Mr Salim Essa for the first time. But you do not say whether the rest of what you discuss under that – these documents whether that was mid-2014 or whether it was 2015. In other words, was it in relation to the new board that came in in December or was it the old – the first board that you chaired?

**MR TSOTSI:** This was actually in December Chairperson.

**CHAIRPERSON:** Oh, this was in December.

**MR TSOTSI:** December 2014.

20 **CHAIRPERSON:** Oh okay so it was in relation to the new board?

**MR TSOTSI:** To the new board yes.

**CHAIRPERSON:** Oh that is quite interesting. That – that may explain certain things. Ja okay alright. So this was in December?

**MR TSOTSI:** Yes in December.

**CHAIRPERSON:** 2014?

**MR TSOTSI:** 2014.

**CHAIRPERSON:** After the new board had been appointed?

**MR TSOTSI:** Correct yes.

**CHAIRPERSON:** Yes. Mr Seleka take it from there.

**ADV SELEKA SC:** Thank you Chair. Mr Tsotsi, we have seen yesterday that you have also used or have received documentation emailed to you from what you said was your  
10 private email address.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Could that not have been used as well on this occasion?

**MR TSOTSI:** No, no.

**ADV SELEKA SC:** Could you assist us with access to that?

**MR TSOTSI:** Ja I can give you my email address.

**ADV SELEKA SC:** Email account.

**MR TSOTSI:** But it is not the one I am using now it is a  
20 different mail. But the reason for – I am saying it could not have been is because I knew that I needed to communicate with the Minister and I could not communicate with her on a private email.

**ADV SELEKA SC:** Yes.

**MR TSOTSI:** So it was – it was an Eskom email.

**ADV SELEKA SC:** No I am talking your email – the email you received from Mr Essa?

**MR TSOTSI:** Oh I see. Okay.

**ADV SELEKA SC:** Yes.

**MR TSOTSI:** I do not recall what the email address is. I would have a hard time trying to remember what that email address was. Yes.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Mr Seleka you can continue.

10 **ADV SELEKA SC:** Thank you Chairperson. You see the Essa Report Fundudzi Report we have incorporated it into your bundle Mr Tsotsi an extract from that report addressed to finalise on this aspect. It is in the smaller bundle which is Eskom Bundle 07B on page 1093.

**CHAIRPERSON:** Page 1093?

**ADV SELEKA SC:** 1093 that is the beginning of the – the extract from the report Chairperson. I quickly want to draw your attention Mr Tsotsi from that extract of the Fundudzi Report to page 1099. It is paragraph 14.8 with the heading  
20 The Appointment of the Eskom Board. Just to give you a sense of what the Chairperson is talking about I am going to read from that report. It says:

“During our review of the DPE that is the Fundudzi emails we determined that infoportal1@zoho, - Z-o-h-o.com played a



role in the composition of various Eskom board sub-committees. We determined that on 6 March 2015 [infoportal1@zoho.com](mailto:infoportal1@zoho.com) sent an email titled Eskom Committee to Davids on email address [styledanckimwc@gmail.com](mailto:styledanckimwc@gmail.com) proposing various Eskom sub-committees. The following committees were proposed in the said email from [infoportal1@zoho.com](mailto:infoportal1@zoho.com) to Davids.”

And then they give you a list.

“For Audit and Risk number 1 is new lady CA Chair. The next is Verushni Naidoo, Nazia Kareem, Romeo Kumalo and Norman Baloyi”

You see that? The next is the Tender and Procurement.

The names are as follows:

“Ben Ngubane, Zithemba Xhosa, Nazia Kareem and Chwayita Mabude.”

20 And it carries on with the IF – what is IFC?

**MR TSOTSI:** It is a – I will give it to you now. Investment and Finance Committee.

**ADV SELEKA SC:** Investment and Finance Committee.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Thank you. And you have the names

also for IFC for People and Governance, for Social Ethics. Let me read People and Governance because that name has come up here often. You have:

“Chwayita Mabude, Ben Ngubane.”

They have Chwayita Mabude twice. First as a chair and then as a member.

“Romeo Kumalo, Venete Klein.”

You are familiar with these names Mr Tsotsi?

**MR TSOTSI:** Yes Chair.

10 **ADV SELEKA SC:** Were these members of the board?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Of December 2014?

**MR TSOTSI:** That is correct.

**ADV SELEKA SC:** And these were the according to this research report the names that were being proposed by an email coming from infoportal for the composition of the sub-committees.

**MR TSOTSI:** I see that yes.

**ADV SELEKA SC:** You see that? Now if you go back in  
20 memory can you recall whether you received a list that would have compartmentalised those names in the manner it is done here in the sense that under this sub-committee these are the names? In this sub-committee these are the names. Is that what the submission would have been to you?

**MR TSOTSI:** I do not recall Chair receiving any of this information.

**ADV SELEKA SC:** No please you not understanding me sorry. I am saying the email from Mr Essa.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** That you say you had received from him.

**MR TSOTSI:** Okay.

**ADV SELEKA SC:** Or the submission you received from  
10 him would it have done what is happening here?

**MR TSOTSI:** Precisely.

**CHAIRPERSON:** And is the position I mean you have already said that you sent your list to the Minister.

**MR TSOTSI:** Correct.

**CHAIRPERSON:** Which was different from the list that Mr Essa had sent to you.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** And the Minister's response was to send you her list that was exactly the same as Mr Essa's list, is  
20 that right?

**MR TSOTSI:** Correct.

**CHAIRPERSON:** And you have said that if I – I do not know whether you said it or I read it somewhere but understand that ultimately the Minister said to you the composition of the various committees would be as set out

in her list.

**MR TSOTSI**: Correct.

**CHAIRPERSON**: Is that correct?

**MR TSOTSI**: Yes Chair.

**CHAIRPERSON**: And is that what happened? Was her list implemented in the composition of the different committee or sub-committees of the board?

**MR TSOTSI**: That is exactly how the first composition of the board was done yes.

10 **CHAIRPERSON**: Yes. So – so which would mean that the composition of the various committees of the board for the December 2014 board were in accordance with the wishes of Mr Essa?

**MR TSOTSI**: Correct.

**CHAIRPERSON**: Which may have happened to be the same as those of the Minister?

**MR TSOTSI**: They were the same Chair.

20 **CHAIRPERSON**: Yes. Okay. Would you be able when you look at this composition of these committees – it might be difficult. Would you be able to remember whether this composition is in accordance with exactly the various committees that were established – oh at least maybe in regard to the chairs that might be easier to remember than every member. But if you cannot remember I will understand it has been a few years.

**MR TSOTSI:** No I – I am more likely to remember the committees that I was involved in.

**CHAIRPERSON:** Ja okay.

**MR TSOTSI:** I certainly remember that Chwayita Mabude was the Chairperson of the People and Governance.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** Because I remember that one.

**CHAIRPERSON:** And Doctor Ngubane and Tender and Procurement, do you remember or not really?

10 **MR TSOTSI:** I – and I remember that Mark Pamensky was a Chairperson of the IFC that I remember.

**CHAIRPERSON:** That you remember.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Yes. So at least two you can remember. Tender and Procurement, you cannot remember whether Dr Ngubane was the chairperson.

**MR TSOTSI:** I do not quite remember that.

**CHAIRPERSON:** Yes, you are not sure about that.

**MR TSOTSI:** I do not remember that.

20 **CHAIRPERSON:** Yes.

**MR TSOTSI:** I think it was Venete. I think... I seem to recall Venete was first. I think she was also... she changed, I think, at some point, if I can recall, to go People in Governance or one of those but I think, I do recall that she was initially the chairperson of the Social and Ethics

Committee.

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

**ADV SELEKA SC:** If it might help you, Mr Tsotsi and Chairperson. If you turn to page 1102, the report actually shows you what was proposed in a table format. What was proposed on the left-hand side what the board actually approved, on the right-hand side.

**CHAIRPERSON:** Oh, yes.

**ADV SELEKA SC:** So you will see Audit and Risk. What is  
10 proposed from the email info portal. You got the names. Who is New Lady CA?

**MR TSOTSI:** [No audible reply]

**ADV SELEKA SC:** Mr Tsotsi, the first table there.

**MR TSOTSI:** New Lady CA? Oh. No, I... the only CA that I remember was Mr Bob Pamensky.

**CHAIRPERSON:** H'm.

**MR TSOTSI:** I do not remember any of the ladies being CA's.

**ADV SELEKA SC:** But ...[intervenes]

20 **CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Okay look at the table. You will see essentially all the names that are proposed are the ones approved for this Audit and Risk. So, Viroshini Naidoo. V Naidoo. I see a Karen, N Karen, on the right. On the left, Romeo Khumalo. R Khumalo on the left, sorry.

And then on the right it is the same person. So the only difference there seems to be Mr Norman Baloyi. It was proposed that somebody else was appointed, Ms Mabude.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** And it goes on like that with the other sub-committees.

**CHAIRPERSON:** What was... how did you feel about the fact that the minister, Miss Brown, insisted that the committees of the board, the Eskom committees of the board  
10 be composed in the manner indicated in her list which was the same as the manner indicated in Mr Salim Essa's list?

And that your list of how the committee should be – your proposal of how the committees should be composed was ignored? How do you feel about that?

**MR TSOTSI:** Chairman, I was very surprised.

**CHAIRPERSON:** H'm.

**MR TSOTSI:** And at that point in time, it was very early in the new board's term. I mean, it was probably about a week and a half or so after the board had been appointed. And I  
20 was very infringed by the whole thing and I could not quite put my finger on what was going on.

And it was not until I was then called by the minister to this meeting where I saw Tony Gupta and Salim Essa. There I said to myself: Well, clearly the minister is operating under the, if you like, the persuasion of these people. That was

the view I held.

And the subsequent things that happened, kind of confirmed that view for me. And I guess also, what grow to me, because remember, the minister came in 2014 and I had...

Before the new board came along, we had something like maybe three months or so, I cannot quite remember, overlap with the new minister after the departure of Minister Gigaba or it could be more than three months.

10 And you will recall I have been saying that I was having difficulty establishing a working relationship with her. And then I was having these issues with Tony Gupta even before the incident we have just discussed earlier on.

And I was then having difficulty with really getting the minister to work with me in a way that I would have preferred. And so when I put these things together, I began to think to myself: Is there something that is driving her?

And when I saw this and then to someone, then I said to myself I think this is what is driving her. And this is what is  
20 determining whether I have a relationship with her or not. That is how I rationalised it at the time.

**CHAIRPERSON:** At the time that Mr Salim Essa sent you his list of how the various committees of the board should be composed. Did you understand him to be associated in any way with the Guptas or did you not know that at that time?



**MR TSOTSI:** Salim Essa – I mean, as I said, I was introduced to him by Tony Gupta. So right from the get-go, I mean, I knew ...[intervenes]

**CHAIRPERSON:** Oh, in mid-2014?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Oh, so when he sent you the list in December 2014, you could associate him at least with Tony Gupta?

**MR TSOTSI:** Absolutely.

10 **CHAIRPERSON:** Okay, okay.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Yes. Thank you, Chairperson. Mr Tsotsi, you might ask but who is the person communicating from Info Portal 1. Turn to page 1108 in the same report under paragraph 14.12. Are you there?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** So I am going to read to you. It says:

“Appointment. Notices of Board Members at Exco.”

It says:

20 “We determined that on 16 July 2015, Davids sent an email to Infor Port 1 at zorbo.com from her private email address...”

Start and then they give the email address.

“The title of the email was Trevor CV.”

In the email, David stated the following:

“Dear Salim, herewith CV for Exco Board as discussed.”

And he carried on to say:

“We noted that Trevor Marais Haasbroek’s CV and a motivation letter purportedly been prepared by Trevor and dated 25 July 2015 where attached to the said email.

The email above is an indication that Davids was communicating to a certain Salim/Businessman.”

10 **MR TSOTSI:** I see.

**ADV SELEKA SC:** Do you see that?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** It seems to corroborate your receipt of a submission along the same lines from current Mr Salim Essa.

**MR TSOTSI:** [No audible reply]

**ADV SELEKA SC:** Thank you, Chair. That is the end of the part from my side.

**CHAIRPERSON:** Yes, yes. So it may well be Mr Tsotsi that either a substantial number or a substantial percentage of  
20 the members of your 2015 board had some association or some or other association with the Gupta’s?

**MR TSOTSI:** Chair, there was an expose about Ngubane at some point. I cannot remember exactly when.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** and they had some kind of a diagrammatic

representation of the linkages between some of the board members, the new board with the associated functionaries of the Guptas. And so, if one is to accept the veracity of that work, one has to conclude that that must have been the case.

**CHAIRPERSON:** H'm. H'm.

**MR TSOTSI:** I... at the time I, unfortunately, was more focussed... I was more focussed on what was to be done in the company at the time. And so I did not for a minute  
10 associated the board members in that manner, you know, any of them in that manner at that time.

**CHAIRPERSON:** H'm. H'm.

**MR TSOTSI:** But I certainly started to understand shortly after I left, particularly with what happened with the Tegeta incident with the coal mine and what reported to have happened and Eskom's involvement in supposedly funding the mine, Tegeta and all the other things that came out of that.

So I was rather taken aback by that. But the one  
20 overriding thing Chairman which I would not want to leave this Commission without mentioning is my view that I held at the about the time when I was being pursued by the board for the fact that I was not fit to be a director which unfortunately we have not had the opportunity to look at here but, nonetheless.

**CHAIRPERSON:** Ja.

**MR TSOTSI:** The impression I ...[intervenes]

**CHAIRPERSON:** I know we are going back but you can say what you want to say.

**MR TSOTSI:** Oh, maybe to reserve or ...[intervenes]

**CHAIRPERSON:** Ja, we will get there. But I think, go ahead and say what you want to say.

**MR TSOTSI:** Yes. IN the manner in which things were turning out, I had a distinct impression and knowing that the  
10 Guptas were having some kind of hand in things that are going on at Eskom, I had this distinct impression that there could be an orchestration of some exercise here to replace the top layer of Eskom with other people who associated with the Guptas.

**CHAIRPERSON:** H'm. H'm.

**MR TSOTSI:** And you know, one does not have the concrete proof and evidence of these things but one can associated events as they occur and be able to, as they say, to connect the dots as incidences occur to be able to come to these  
20 kind of conclusions but that my strongly felt feeling at the time.

**CHAIRPERSON:** Well, we will get to the points where the board tempt on you. I certainly have the feeling based on reading how the events happened the way they did on the – starting from the 8<sup>th</sup> of March, 9<sup>th</sup> and 11<sup>th</sup>. But of course,

they need to be viewed against your encounter with the minister and what Mr Tony Gupta said to you.

But when I see how the board that seemed to be going along with you when you came from the Durban meeting and you introduced the idea of an inquiry and so on, how they seem to later turn against you.

Certainly, in my mind is the question mark as to what happened between the time when they seem to be on your side when you came to test this idea and at a certain stage,  
10 they seem to completely turn against you.

It seems unnatural. It seems – it makes me think that there may have been some discussion outside of the board meetings which may have happened which led to the board turning against you the way they did.

But one or more members of the board will come here and testify and we will hear what they have to say. I will put this to them as well.

You made the point yesterday that after lunch on the 11<sup>th</sup>, you joined the People and People in Governance  
20 Committee and found them already discussing names of persons who would act in the positions of the executives.

And you said to them: But I am the only one who knows these people. So here is a new board. They are discussing names but they do not know these people. So what have they done to inform themselves about these people?

Are the suspicion that when you came to that meeting there were no CV's of these people?

**MR TSOTSI:** Now ...[intervenes]

**CHAIRPERSON:** They were not CV's, they were just names?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** So that all seems very strange. And then of course when you talk about having been given a list by Mr Salim Essa of how the board committees should be  
10 composed, you wonder how that list of names of people to act in those positions where it came from.

You wonder where it came from and why the board or committee members might not have thought it necessary to get more information about these people

And one would have thought that your presence as a board member who had been on the previous board and therefore knew the people around much better, why they would not wait for you and hear what you had to say.

So it raises various questions that need to be asked and  
20 one needs to see what answers one gets. Yes, Mr Seleka.

**ADV SELEKA SC:** Thank you, Chairperson. Mr Tsotsi, let us go into this because it is – it may be significant. When you go back to page – or if you could please go back to page 21 of your affidavit. In paragraph... I will give you a moment, sorry.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** To page 21, paragraph 17. And we will come back to the disciplinary, purported disciplinary action the board then took against you. Paragraph 17 says:

“I had already left Eskom at the time the decision to appoint Dentons was under discussion.”

They are referring to Dentons investigation. Now we know from Mr Matona and from your testimony yesterday that the executives were being suspended on the ground that the  
10 inquiry was to initiated should be an impeded investigation.

**MR TSOTSI:** Correct.

**ADV SELEKA SC:** You recall that. Before you were – before you resigned, let me use that word, who was the service provider appointed to conduct that inquiry?

**MR TSOTSI:** The way things were at that point Chair before I left. The board had made the decision on the 11<sup>th</sup> that it would like Nick Linnell to assist it in coordinating the work that needed to be done before the service provider comes onboard, namely, that he would deal with the matter of the  
20 suspensions and also assist the Audit and Risk Committee to formulate the terms of reference for the inquiry.

So there was preliminary work that needed to be done, obviously, before you could have a service provider in place and that is the assignment that the board asked Nick Linnell to undertake.

**ADV SELEKA SC:** So you are saying mister – you are saying to the Chairpersons, the board had to resolve to appointed Mr Nick Linnell?

**MR TSOTSI:** Correct.

**ADV SELEKA SC:** That resolution, was it on the 9<sup>th</sup>, at the meeting of the 9<sup>th</sup> or at the meeting of the 11<sup>th</sup>?

**MR TSOTSI:** It was on the 11<sup>th</sup>, Chair.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** Yes.

10 **CHAIRPERSON:** And then you – the circumstances under which you introduced Mr Linnell to the board.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** And how you got to have – how he got to be at the meeting or how you brought – where you got him from?

**MR TSOTSI:** Yes, Chair. Because Linnell was introduced to the board. On that same day... and this is probably something you may come to that, but I just thought it is worthwhile mentioning that.

20 Not only was it Nick Linnell who was asked to assist the board. One of the board members suggested that there is a gentleman who has expertise in communication and we needed to put and communicate to the public about what was – about the undertaking, namely the inquiry.

And the name of a particular individual was proposed



and this sub-committee who responsible at the time, which was People in Governance, then acceded to the fact that let us have this individual also support. And he did do the work. It was a man called Happy Ntshinga.

**CHAIRPERSON:** H'm. H'm.

**MR TSOTSI:** So the experience of... yes, I want to use the word engaging, these individuals was clearly demonstrated in the actions of the board.

**ADV SELEKA SC:** Thank you, Mr Tsotsi. And let us quickly  
10 see what Mr Nick Linnell says before we turn to the board – come back to the board itself. Now he has ...[intervenes]

**CHAIRPERSON:** Mr Seleka, I have just remembered. If you can, we ought to look at what Miss Lynne Brown has to say about Mr Tsotsi's evidence about the list. We need to cover that if we have not.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** To say, does she deny that the list that she gave to Mr Tsotsi was the same as the list that Mr Tsotsi had got from Mr Essa.

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

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Chair, can we put that version to Mr Tsotsi right away?

**CHAIRPERSON:** At whichever you prefer. I am happy.

**ADV SELEKA SC:** Okay. Let us get it off the way.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** That... Mr Tsotsi, that is... the former minister's affidavit is on page 334.

**CHAIRPERSON:** I do not want to forget this question, Mr Tsotsi.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** After you have done with that question, I would like you to address the question of why the minister was getting involved in how committees of the board were  
10 proposed. I just do not want to you... Let us deal with this and then after that you address that.

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

**CHAIRPERSON:** What page did you say?

**ADV SELEKA SC:** That is the minister, the former minister's affidavit. It is on page 434.

**CHAIRPERSON:** Okay.

**MR TSOTSI:** 434?

**CHAIRPERSON:** 434.

**ADV SELEKA SC:** Yes, 434.

20 **CHAIRPERSON:** Okay.

**ADV SELEKA SC:** You should then find the passage where she specifically deals with the encounter you say you had with her. I believe it is on page 440, paragraph 56 under the heading General. Are you there, Mr Tsotsi?

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

**ADV SELEKA SC:** It reads:

“I cannot comment on a list that allegedly was sent by Mr Essa to Mr Tsotsi as I have never seen it.

Mr Tsotsi never specified it at any stage, the composition of list, nor did he ever indicate what his own drawn up list look like.

10 It is inexplicable to me that in the execution of the board’s task of appointing members of board committees, Mr Tsotsi would not generate his own list but would rather work from a list allegedly compiled by a strange to Eskom.”

Then there is... ja, it carries on. Paragraph 58:

“I persist in denying that a Mr Tony Gupta and a Mr Salim Essa were not together or individually visited my official residence in Pretoria.

I have explained the process that guided me in the appointment of members of the Risk and Audit Committee and Social Ethics Committee.

20 I have also explained how I communicated my decision to the Eskom Chairperson.

When there is an unexplained delay in the implementation with my decision, there is nothing remiss in assisting that the Eskom Chairperson must implement my decision.”

The next page:

“There are a few things that are strange to me on this issue. It is for me curious that Mr Tsotsi upon his alleged receipt of the list from Mr Essa, never on its own as a conscientious chairperson reported his alleged surprise to anyone.

He never protested it to me. He never raised his concerns with the Eskom Board as one would expect a conscientious chairperson to do.

10 That he never volunteered this allegedly important information to the former Public Protector when she was conducting her investigations into Eskom, having been appointed in December 2014, new directors had to be inducted. To Eskom, this is an intensive programme in which I play a limited role.”

We should go back to paragraph 57, Mr Tsotsi. The suggestion that seems to be made there that, not only did you show the minister the list given to you by Mr Salim Essa but that even your own list does not seem to have been given to the minister. That not only did you show the  
20 Minister, the list given to you by Mr Salim Essa but that even your own list has not seemed to have been given to the Minister. It is inexplicable to me that in the execution of the board’s task of appointing members of the board committees, Mr Tsotsi would not generate his own list but would rather work from the list allegedly compiled by a

stranger to Eskom.

Do you see that?

**MR TSOTSI:** Yes, I see that, Chair.

**ADV SELEKA SC:** Any comment?

**MR TSOTSI:** Well, I cannot really say much, Chair, except to say I think one day the truth will come out.

**CHAIRPERSON:** I am sorry, just repeat that? I did not hear.

**MR TSOTSI:** I am saying, Chair, I cannot really comment  
10 much but I think and hope that one day the truth will come out as to what actually happened but clearly, she is denying that she ever communicated with me about this list whereas I got it.

**CHAIRPERSON:** Yes. Well, the way to deal with what she says, her version, when the evidence leader gives you this opportunity, is that if you are sure that you did send him your list and if you are sure that she sent you a list that is – was the same as the list you got from Mr Essa and that actually you did have a discussion with her about your list  
20 and her list, the way to respond is to say what you said happened happened, you did speak about it and if she says that did not happen, that what she is saying is not true. If you are not sure, you indicate that you think there was a discussion, but you are not sure.

So, in other words, you need to be clear. If you are

quite clear in your own mind, that is what must come out but if you are not clear about it, you think maybe we did talk, maybe I am mistaken, we did not talk, then you reflect it as that. So what is the position?

**MR TSOTSI:** Chairman, I am perfectly clear that I did communicate with the Minister.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** The Minister was on vacation in Mozambique.

10 **CHAIRPERSON:** Yes.

**MR TSOTSI:** It was mid-December.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** And how I got to learn she was on a vacation in Mozambique is because Salim Essa told me that.

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

**MR TSOTSI:** So I am very clear.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** That I did communicate with her, there is no doubt in my mind whatsoever.

20 **CHAIRPERSON:** So there is no doubt, she received – she was aware of your list.

**MR TSOTSI:** Absolutely.

**CHAIRPERSON:** And she sent you a different list.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** And that list she sent you was the same

as the list you got from Mr Essa.

**MR TSOTSI:** Correct.

**CHAIRPERSON:** And she had occasion to speak to you and say you must implement her list.

**MR TSOTSI:** Correct.

**CHAIRPERSON:** And not yours.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** So about that you are quite clear?

**MR TSOTSI:** Absolutely, Chairperson.

10 **CHAIRPERSON:** Yes. What will need to be done, Mr Seleka, if it has not been done is to check whether she was not in Mozambique around mid-December, the Minister.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Because Mr Tsotsi says he can remember quite well that they had that discussion and that she was in Mozambique. Okay.

**ADV SELEKA SC:** Thank you, Chair.

**CHAIRPERSON:** Thank you.

20 **ADV SELEKA SC:** Will certainly do that, Chairperson.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** And then, Mr Tsotsi, the Chairperson's question was why – or I will paraphrase.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Why Minister Lynne Brown was getting

involved in the appointments for the subcommittees.

**CHAIRPERSON:** Because I would have thought that what committees – or who says in what committee should be a matter for the board. Am I mistaken in that regard?

**MR TSOTSI:** Chairman, it is a matter for the board, it has always been.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** The only committee that the Minister has a responsibility for putting together is a statutory committee  
10 which is the audit and risk committee.

**CHAIRPERSON:** Audit and risk committee.

**MR TSOTSI:** Correct. Then she has a responsibility of the board.

**CHAIRPERSON:** On that one she has a role to play.

**MR TSOTSI:** That is correct.

**CHAIRPERSON:** But is her role – does her role include indicating who should serve on the committee or is her role to make sure that there is a risk and audit committee, how it is composed should be left to the board.

20 **MR TSOTSI:** My recollection, Chair, I may be wrong here, but my recollection is that she has prerogative to appoint the Chairperson of that committee.

**CHAIRPERSON:** Yes, okay, okay. That is your recollection.

**MR TSOTSI:** Yes.



**CHAIRPERSON:** But your – that is the only committee where to your knowledge the Minister has some role to play.

**MR TSOTSI:** Correct.

**CHAIRPERSON:** Yes. So why was she then getting involved in how various other committees were composed and why were you allowing her to be involved in that to the extent that she was – that you were going to implement her list when you had your own list that you believed was the  
10 right list?

**MR TSOTSI:** Yes, the list, ordinarily the board extends a courtesy to the Minister to say Minister, this is the selection of and the board subcommittees just so she is aware of who was in which committee.

**CHAIRPERSON:** Ja.

**MR TSOTSI:** And in this instance that was the intention and hence when I changed the list and sent it to her it was precisely for that reason.

**MR TSOTSI:** Now it again occurred to me that she  
20 seemed to be fulfilling other interests and so I took it that she was acting at the behest of someone else and I certainly took it that at the end of the day she is imposing this list on the board and I did not want to resist that at the time because I just felt that perhaps this is not going to be a good thing to do because it is important to keep relations

with the shareholder for the smooth running of the business. So at that point in time because I really felt had to renew in terms of the board, I knew they were struggling with creating a relationship with her so I had made up my mind that maybe if I let this go it would be a way to try and do some kind of level of – or improve the level of relationship between myself and her.

**CHAIRPERSON:** Okay. Did the board ever see your list that you had proposed or either before you sent it to the  
10 Minister or after?

**MR TSOTSI:** I doubt it, Chairman, I do not think so.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** Oh, hang on, I might be wrong here. When we know what to do when we make these suggestions about who to act were based, by the way, on the CVs of the individuals. We know when you communicate especially the people who would like to Chair the committees, we normally communicate with them to say look, I have a suggestion, I think this is the committee that you should  
20 Chair, etcetera, and then, you know, try to fill in and then you try to rationalise why you have put different people in the different committee.

Now I really do not recall whether that exercise there was time for me to clean all of this back and forth. Whether in fact that actually happened, I really do not

remember. Maybe some of the board members may be able to attest to that. But I do not remember myself.

**CHAIRPERSON:** I take it that ultimately or at some stage you circulated the Minister's list of how the various committees should be composed and circulated back to all the board members.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Do you remember when it was that you did that? Would it have been prior to the meeting of the 9<sup>th</sup> and 11<sup>th</sup> or did it happen either on the 9<sup>th</sup> or the 11 March?  
10

**MR TSOTSI:** No, it would have happened long before that.

**CHAIRPERSON:** Long before that, ja. When you circulated that list do you remember whether you circulated – whether you disclosed to the members that it was the Minister's list of how the committees should be composed or whether you did not disclose that, you just said here is a proposal of how various committees of the board should be composed, let me have your views of something like that?  
20

**MR TSOTSI:** No, I did not disclose that this is the list that the Minister has imposed on us.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** I just simply informed the board members of, you know, of the listing.

**CHAIRPERSON:** But did you just inform them on the

basis that that was the list, that is how the committees would be composed or did you circulate to them on the basis that there should be a discussion to see whether this list of how various committees should be composed was acceptable?

**MR TSOTSI:** Well, I actually, you know, should not use the word informed in the sense that I gave the board members copies of the list with the intention of them assessing for themselves.

10 **CHAIRPERSON:** Yes.

**MR TSOTSI:** You know, the suitability of themselves in those particular committees.

**CHAIRPERSON:** Yes, so any member could say, no, I do not think I fit into this committee.

**MR TSOTSI:** Correct.

**CHAIRPERSON:** I would prefer to be in another committee and so on.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** They could say that.

20 **MR TSOTSI:** Yes.

**CHAIRPERSON:** Was the idea that they would say that ahead of the first meeting or was it something that would be finalised at the first meeting of the board, the question of the committees. In other words, was the idea that the issue of the composition of the various committees should

be finalised ahead of the first meeting or was the idea that they could give their views but ultimately the final decision as to how the committees of the board were to be composed would be made at the first meeting of the board?

**MR TSOTSI:** Well, the way it works, Chair, because of the fact that the board meeting was a bit distant, like – and there was work to be done, the committees began working immediately once they settled into the compositions that they were in.

10 **CHAIRPERSON:** Yes.

**MR TSOTSI:** And if there was any feeling of an individual that they would rather be in another committee than that would have come up in the board.

**CHAIRPERSON:** That would have been sorted out ahead of the first meeting [inaudible – speaking simultaneously]

**MR TSOTSI:** Ja, ahead of the first meeting, yes.

**CHAIRPERSON:** It would not wait for the first meeting.

**MR TSOTSI:** No.

20 **CHAIRPERSON:** Yes. Would it be fair to say that the members of the committee unless they had other information from somebody else, would have thought that this list represented your proposal, your idea of how the committees of the board should be composed.

**MR TSOTSI:** That would be the case, yes.

**CHAIRPERSON:** That would be fair to say that.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Of course, if they had information from somewhere else, they might know that – where the list came from.

**MR TSOTSI:** That is correct.

**CHAIRPERSON:** That you would not know. Ja, okay. Mr Seleka?

**MR TSOTSI:** I think in hindsight, I think that is the case, but I cannot vouch for that.

10 **CHAIRPERSON:** Yes, yes, ja.

**ADV SELEKA SC:** Thank you, Chair. Mr Tsotsi earlier you were articulating the view to the Chairperson that actually coming to think about it, you think the executives were being removed to make way for other people.

**MR TSOTSI:** That is correct.

**CHAIRPERSON:** Now given what has been said was the reason for step aside or suspension of the executives not influence the inquiry, did the board have any evidence or previous interference by these executives in any  
20 investigation within Eskom?

**MR TSOTSI:** No, the board did not have any formal information that was presented to it about any of that. However, it seems during the processes that we were undertaking that specific board members had specific information about specific board members or rather,

executives and I think the reason why that attitude did not prevail, did not get any currency in the discussions was because the whole purpose was that the executives had done nothing wrong and that there is no intention of accusing them of anything wrong and hence subjecting them to suspension on that basis.

So whatever was mentioned in regard to specific executives in any of their discussions did not really get any currency for that reason but the board *per se* did not  
10 express itself on that, it did not take that position.

**CHAIRPERSON:** Ja, it is just strange how a new board that has hardly done any work in an entity in its first meeting, that is, an idea that definitely came from outside of the entity and they just run with it the way this board seems to have done so, you remove so many executives who I think are critical to the entity just like that and then, of course, you remove the Chairperson of the board who has been around for quite some time all within two, three days it is all done. It is just very strange to me. I would  
20 have thought that for something like this a board would really need to reflect, need some time, they are new in the entity but it seems they just ran with this idea that came from outside. Yes, Mr Seleka?

**ADV SELEKA SC:** Thank you, Chairperson. And so, Mr Tsotsi, that is, you say, the board does not make any

allegation of wrongdoing against them and that is not the basis why they were suspended, is that correct?

**MR TSOTSI:** No, that is correct [inaudible – speaking simultaneously]

**ADV SELEKA SC:** That is not the basis on which they were – and I can see from your affidavit you ultimately separate or resign from Eskom on 30 March 2015?

**MR TSOTSI:** Correct.

**ADV SELEKA SC:** And you say by the time Dentons was  
10 appointed – or, in fact you say:

“I had already left Eskom at the time the decision to appoint Dentons was under discussion.”

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** So Dentons would have been appointed after you had left Eskom.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Dentons was not appointed in the meeting of the 11 March 2015.

**MR TSOTSI:** No.

20 **ADV SELEKA SC:** Now let us see, we have the report of Dentons and I want us to look at what was the mandate to Dentons when it ultimately gets appointed and that report is contained on page 918 to 994, it is an extract of the report.

**CHAIRPERSON:** What page?



**ADV SELEKA SC:** Page 918, Chairperson.

**CHAIRPERSON:** Is that in the smaller...?

**ADV SELEKA SC:** In the bigger.

**CHAIRPERSON:** In the bigger one?

**ADV SELEKA SC:** In the bigger.

**CHAIRPERSON:** 918?

**ADV SELEKA SC:** Yes. 118 will be the cover page, see the report followed by the Table of Contents and the introduction starts on page 922. I will read only certain  
10 paragraphs of the report. 1.1 – are you there, Mr Tsotsi?,

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

**ADV SELEKA SC:** Under Background it says:

“This document constitutes the report of Dentons South Africa in respect of the investigation commissioned by Eskom. Pursuant to a request for proposals issued on 8 April 2015 under...”

A number they refer to there.

“...in terms of a resolution adopted by the board of directors of Eskom on 11 March 2015.”

20 Now I do not know which resolution they are referring to there but they say in 1.2 that:

“The investigation commenced on 20 April 2015.”

Then we turn the page, Mr Tsotsi, of significance to what I wish to refer you to, paragraph 4, page 924. Paragraph 4:

“Purpose of the investigation.”

Can you see that?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** 4.1 says:

“The institution of the investigation took place shortly after the highly publicised suspension of four of Eskom’s executives. (Suspended executives)

4.2: “The TOR...”

Which is terms of reference.

10 “...refers to the abovementioned suspensions only obliquely stating in respect of the investigation that it is important for the information to be tested by an independent party without Exco’s involvement, (particularly those members of Exco whose areas would be directly impacted by the inquiry) to as to lend credence to the reports that the independent party will produce.”

4.3 The written material setting out scope of the investigation never contemplated investigation as being:

20 (i) That was directed specifically at the conduct of the suspended executives. The timing of the investigation led to speculation in certain circles that it was the conduct of the suspended executives that was being investigated. On the meetings with the

board an audit and risk committee of the board, it was confirmed that the investigation was not directed in the suspended executives and that the board was dealing with the suspended executives in accordance with a separate methodology.

4.9 So, as the TOR, the terms of reference, do not require investigation of misconduct of any specific individuals. Accordingly, no recommendations are made in respect of action to be taken to deal with  
10 misconduct by any specific individuals.”

Do you see all that?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** So it appears clearly from this report and it is also be consistent with the board’s position that we are not suspending them for misconduct, that even misconduct or wrongdoing was not within the scope of Dentons’ investigation.

**MR TSOTSI:** Correct.

20 **ADV SELEKA SC:** Do you see that?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Now the question is – and maybe it touches on the view you expressed to the Chairperson – there is no allegation of wrongdoing against the executives. As you testified, Mr Matona said no concerns

about the war room were raised with him. You told the Chairperson you cannot recall raising concerns directly with him. Do you recall that?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** You told the Chairperson that the Deputy President, who was heading the war room, did not raise concerns with you about information the war room was receiving from the executives, is that correct?

**CHAIRPERSON:** Just articulate your response?

10 **MR TSOTSI:** Yes.

**CHAIRPERSON:** Ja, okay.

**ADV SELEKA SC:** Dentons' scope of investigation does not include investigating wrong doing on the part of the executives or any individual there, sir.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** There is – and I am talking about interference - there is no evidence you say the board had about previous interference in an inquiry about these things, evidence.

20 **MR TSOTSI:** Yes.

**ADV SELEKA SC:** Then the question remains – and that is exactly what the Commission is trying to determine, what then were the real reasons for the suspensions of these executives? And we know from Mr Matona, they never came back, there were separation agreements in the end.

And, as you say, it was moving people out of the way to make way for others.

Let me then – what would you say then were the real reasons?

**MR TSOTSI:** Chairman, as I think more about this issue and as I also reflect seriously on a number of things that have been happening, not just at Eskom, and knowing the appetite of the Guptas for acquisition of whatever assets they can lay their hands on.

10 And, you know, having seen that also at Eskom itself, I came to the conclusion that they wanted to have people in the organisation who would serve their direct interest and that it would be easier for them to basically capture Eskom. That was – and it still is – the analysis that I ended up with on looking at what is going on.

**CHAIRPERSON:** Of course about a month after the executives had been suspended, Minister Lynne Brown announced the secondment of Mr Brian Molefe to Eskom as Group CEO or Acting Group CEO and I think not long after  
20 that, if I am not mistaken, I do not know how many months, Mr Anoj Singh – I do not know whether he – I do not remember whether he was also initially seconded, I think he was seconded but ultimately both of those two men were two key positions at Eskom. Now there are all kinds of allegations and there is evidence that has been led in

this Commission as to certain roles that they – that it is said they played at Transnet relating to various transactions and if I find in the end that they were – they cooperated with the Gupta's or the associates of the Gupta's at Transnet then there may well be a possibility that the Gupta's had dealt with Transnet to their satisfaction.

And now wanted to move onto Eskom that wanted people that they could trust, who would work with them and  
10 did not wanted people that they did not know whether they would go along or not, there is that possibility. And when all evidence is in it is one of the things that I must look at and see whether there is proper evidence to make a finding. So that it is a possibility and it may well be that it's the Gupta's and their associates who were responsible for this whole idea of an enquiry that Ms Myeni mentioned at the Durban meeting that you took to the board.

You did say that independently of Ms Myeni, you had a view about the need for an enquiry for yourself and  
20 that the suspension of the executives may have been part of that plan. Remove them so that you can then bring in people that the Gupta's or their associates trusted would cooperate in whatever they wanted to do at Eskom. And it may be that they had worked there plan well that in order to achieve that you need to first capture the board or

capture the majority of the board so that when decisions have to be made by the board they would know that the majority in the board would be people who would cooperate with them.

**MR TSOTSI:** That is the first summary Chair.

**CHAIRPERSON:** Ja, Mr Seleka well I want to raise on the same page that Mr Seleka was asking you on namely 925 this entrance report at paragraph 4.6. It says ATOR that is terms of reference and pass order 1. State expressly that  
10 the purpose of the investigation was to obtain an independent view on the credibility and correctness of the reports of Eskom's executive committee as to the board.

Now that sounds strange to me because it suggests that the entire purpose of this enquiry that was being talked about on the 11<sup>th</sup> as it turned out later was to obtain an independent view or was about the credibility or correctness of the reports that the executives were giving to the board. Is that how you understand that part as well about what you might have thought at that time but if you  
20 read this sentence is that what you understand as well?

**MR TSOTSI:** Yes, that is my understanding Chairman.

**CHAIRPERSON:** Yes, now if that is correct then the question is what information had the executives really sent to the board before the 11<sup>th</sup> when the board had hardly had meetings? Now of course there may be – I mean the

committees had been established and may be the committees had started working, I do not know before the first meeting. But it is strange that the board had not had any meetings. So when had the executives given information to the board whose credibility was being put in question?

**MR TSOTSI:** It is exactly correct.

**CHAIRPERSON:** Do you understand what I mean?

**MR TSOTSI:** I understand exactly Chair because the  
10 board would not have known before information between the old board and the executive.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** So that is not reference quite right.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** The board can only make judgments about information that it receives from the executives.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** So what exactly did the board receive from the executives.

20 **CHAIRPERSON:** And in so far as they may be talk about information given to the previous board one would think that it would reflect that they are talking about the previous board.

**MR TSOTSI:** Correct.

**CHAIRPERSON:** This does not say that.



**MR TSOTSI:** Yes.

**CHAIRPERSON:** And obviously you are able to confirm because you were the Chairperson of this board until the 13<sup>th</sup> of March. You are able to confirm whether or not the executives had by the 9<sup>th</sup> of March or the 11<sup>th</sup> of March supplied this new board with any information whose credibility was in question.

**MR TSOTSI:** Yes, I would Chair.

**CHAIRPERSON:** Ja, and was there?

10 **MR TSOTSI:** Especially because Chair prior to board meetings the chief executive and I sat down and look at the agenda.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** And we actually discuss those points from my perspective obviously because I am aware of Eskom's business and the extend that I can perhaps look at the technicalities.

**CHAIRPERSON:** Yes.

20 **MR TSOTSI:** So we discuss in detail precisely what is being given, information that has been given to the board.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** So I pretty much know ahead of the board meeting what the board is going to discuss and the credibility of that information.

**CHAIRPERSON:** So as you sit there what is your reaction

to this when you here that according to 4.6 the sentence says the terms of reference and pass order stated expressly that the purpose of the investigation was to obtain an independent view on the credibility and correctness of the reports of Eskom's executive committee to the board.

**MR TSOTSI:** What it says to me Chair is that if they come up with a position which says the executives have not been providing the board with information that is credible and  
10 correct then the board is in a position to attribute that to these executives that they have been suspended.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** So they are then able to point a finger and say you people are guilty of misinforming the board to that effect.

**CHAIRPERSON:** Yes, but you are able to say from December when this new board was appointed on the 11<sup>th</sup> of March there were no reports of any significance that the executives have given to this new board whose credibility  
20 was in question. Are you able to say that?

**MR TSOTSI:** I am able to say that Chairman and I am also able to say that it would have been unlikely that the executives would have been able to assess the information in any case. I mean the board members because they knew it would have taken them a long time to really

understand Eskom's business.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** To the extent that there is accountable information that is not credible.

**CHAIRPERSON:** And of course, if the executives had given this new board before the 9<sup>th</sup> of March or before the 11<sup>th</sup> of March the reports that were questionable, I would imagine that the new board would have sort to first meet and say what does everybody think about this reports.

10 There would be a discussion of these reports to see whether the majority of the reports that they were questionable thought that they had no credibility and then they would then take a view as to what they should do about that. Is it not?

**MR TSOTSI:** Correct.

**CHAIRPERSON:** Did that happen?

**MR TSOTSI:** No, it did not happen Chair.

**CHAIRPERSON:** It did not happen?

**MR TSOTSI:** No.

20 **CHAIRPERSON:** Okay. Mr Seleka, I think we should take the tea adjournment unless you want to follow up with some of the questions.

**ADV SELEKA SC:** It can wait I thought that when we adjourn, I would have finished with Mr Tsotsi.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** But I also appreciate that the Chairperson might have questions arising from my questions.

**CHAIRPERSON:** Yes, yes.

**ADV SELEKA SC:** So maybe then we could take the tea adjournment I would agree.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** On my return the Chairperson can then...[intervene]

10 **CHAIRPERSON:** No, no that is fine as long as from your side to when you stopped you are satisfied that you have covered all these questions.

**ADV SELEKA SC:** Indeed Chair, thank you.

**CHAIRPERSON:** Okay we take the tea adjournment it is about twenty-nine minutes to twelve we will resume at quarter to twelve.

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

**CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNS**

20 **INQUIRY RESUMES**

**CHAIRPERSON:** Okay let us continue.

**ADV SELEKA SC:** Yes. May I proceed Chairperson or you are still...

**CHAIRPERSON:** You can continue.

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

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Yes Mr Tsotsi as I indicated we would before the adjournment that we would come to the disciplinary action the board then sought to take against you. And you deal with that on page 21 – from page 21 of your affidavit. And I want us to consider that – sorry I will give you a moment to get there.

**MR TSOTSI:** Okay I am there Chair.

**ADV SELEKA SC:** Yes. I want us to consider this together  
10 with the minutes of the meeting at which the board made this resolution to institute charges against you. That minute it is on page 679. It is a minute and you will get to it of the meeting of 19 March 2015. Page 679.

**MR TSOTSI:** Sorry Chair should I...

**CHAIRPERSON:** I am contemplating whether to wait with this question until you are done with your question.

**ADV SELEKA SC:** Chair the floor is yours. I will not forget my question.

**CHAIRPERSON:** Well looking at that page that we are  
20 looking at before the tea break of the [00:02:45] Report and in particular I think paragraph 4.9 that Mr Seleka referred you to where they said that the Terms of Reference made it clear that the investigation was – did not include investigating any misconduct or allegations of misconduct on the part of the executives. My mind goes back to the

question. Remember you said yesterday the motivation as to why the executives should not be there while the investigation was going on whether you call it suspension or special leave or whatever or recusal was that employees might fear giving certain information to the investigators. Is that right? You remember that?

**MR TSOTSI:** I remember Chair correct.

**CHAIRPERSON:** Now if the position is that whatever the investigation was doing had nothing to do with any  
10 allegations of misconduct on the part of executives. Why would – why would it be thought that employees might not want to say – give certain information to the investigators when whatever information they may be asked about would not reflect on any allegations of misconduct on the part of the executives.

**MR TSOTSI:** It is a good question Chair. I cannot specifically say why. One would just have to try to put oneself in the mind of the employees themselves and I suppose the reactive instinct of an employee will be to  
20 safeguard their own position, make sure that they are not prejudiced by any [00:05:13] inquiry that is taking place and that if they have knowledge of anything they might feel that there is an opportunity for them to express whatever knowledge they have concerning the business. Now whether the knowledge itself ends up being the information rather

that they give out ends up being prejudicial to the person who is suspended one would not say. I do not know whether from ultimately out of the Benton's Report there was such a thing that in fact employees expressed reservations or in fact direct accusations of inappropriateness by the individuals who were under suspension I do not know whether that happened or not but I thought maybe there could be a potential for that sort of thing to happen. But like you are saying there the intention was not to find fault with

10 them in terms of the Terms of Reference in which case if the contractor really understood their responsibility then they would not be dealing with that kind of information. That would be irrelevant in their Terms of Reference. And so this should not and would not have come up and if it did come up I would be surprised.

**CHAIRPERSON:** Because one can understand a situation where it might be thought since the investigations in a particular case if the investigation – if an investigation in a particular case relates to allegations of misconduct on the

20 part of the executives one might understand the – the fear that employees might not feel free to talk to the investigators about the allegations of misconduct on the part of the executives, their bosses. But once you take misconduct out of the equation it just seems to me that there might be very little to support the fear that employees might not be able to

give information to the investigators that they may be asked to give which has got nothing to do with allegations of misconduct.

**MR TSOTSI:** Correct yes.

**CHAIRPERSON:** Ja. Okay alright. Mr Seleka.

**ADV SELEKA SC:** Thank you Chairperson. So Mr Tsotsi I was referring you to the minutes of the meeting of the 19 March 2015.

**MR TSOTSI:** Yes I have them.

10 **CHAIRPERSON:** And you said we must go to what page?

**ADV SELEKA SC:** To page 680.

**CHAIRPERSON:** 680?

**ADV SELEKA SC:** Correct Chair. The minutes start on page 679.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Page 680 are you there Mr Tsotsi? Relevant to my point is paragraph 8.3. Suspended Executives. You see that?

**MR TSOTSI:** Yes I do.

20 **ADV SELEKA SC:** Well let us see who was present in this meeting. I see the members on page 679. You are also there as the Chairperson.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** So you were in attendance of this meeting?



**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Doctor Ngubane is there. Ms Mabude, Ms Klein, Ms Naidoo, Ms Karrim, Mr Kumalo and Mr Baloyi.

Paragraph 8.3 reads:

“Suspended Executives. With regard to the letters from suspended executives including the CE it was agreed that the position was clear that no charges would be preferred against the suspended executives at this stage.”

So that was still reiterated.

10 **MR TSOTSI:** Yes.

**ADV SELEKA SC:** No charges against the executives. Well they say at this stage but we know that ultimately no charges were brought against them.

**MR TSOTSI:** Correct.

**ADV SELEKA SC:**

“The legal department was authorised to send the letter that had been prepared in this regard. The Chairman explained the background as to which Nick Linnell was and that he the Chairman had been introduced to him in a meeting with  
20 President. Mr Linnell had offered to coordinate the work that was supposed to be done. The Chairman stated that he did not offer the board an opportunity to agree to appoint Mr Linnell and that this had been mistake on his part and Mr Linnell had probably believed that the proper processes had been complied with and he then proceeded to undertake the

work.”

Now Mr Tsotsi let me draw this to your attention. These minutes of the meeting of 19 March 2015 the minutes are signed if you go to page 682 – page 682 are you there?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Do you see the date on which the minutes were signed?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Can you tell the Chairperson?

10 **MR TSOTSI:** They are signed on the 18 November 2016.

**CHAIRPERSON:** 19 March must be a mistake. It should be 9 March or not?

**CHAIRPERSON:** On the...

**CHAIRPERSON:** Do you see at the – on 679 it says it is the minutes of a meeting held on 19 March 2015. You had resigned with effect from the 13 March is it not?

**MR TSOTSI:** 13 March.

**CHAIRPERSON:** 13 March or 30?

**MR TSOTSI:** Yes.

20 **CHAIRPERSON:** Oh I thought it was 13?

**MR TSOTSI:** No 30.

**CHAIRPERSON:** Oh okay. Oh okay no, no then I am terribly sorry. I thought it was 13. Okay. Okay no then there must nothing wrong with that date ja.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Indeed Chairperson.

**CHAIRPERSON:** Okay. Yes continue. I think you have put a question. Yes you can – may continue.

**ADV SELEKA SC:** Yes it is [00:12:25] Mr Tsotsi you say the date of the minutes...

**MR TSOTSI:** Chair the date on these minutes of the 19 March 2015 they were signed on the 18 November 2016.

**CHAIRPERSON:** So that is – that is a long time ago.

**MR TSOTSI:** More than a year – more than a year later.

10 **CHAIRPERSON:** About a year and a half.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Yes.

**MR TSOTSI:** In fact a year and a half.

**ADV SELEKA SC:** Well it is nearly two years.

**CHAIRPERSON:** Nearly two years.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** And who signed the minutes?

**MR TSOTSI:** It looks like Doctor Ngubane's signature.

20 **ADV SELEKA SC:** Well there is an inscription there. Signed by Doctor Ngubane.

**MR TSOTSI:** It is correct.

**ADV SELEKA SC:** For the purposes of the record. You see that?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** And it says Chairperson.

**MR TSOTSI:** It says Chairperson.

**CHAIRPERSON:** He was the Chairperson – he was your successor as Chairperson of the board.

**MR TSOTSI:** Yes Chairman.

**CHAIRPERSON:** Ja okay.

**ADV SELEKA SC:** And now let us go back. So by the time these minutes were signed most probably signifying the approval of the minutes you had long left the employment of Eskom. – I mean not – [00:13:42] to your position is he  
10 chairman of the board.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Did you have the opportunity to look at these minutes before your resignation on 30 March 2015?

**MR TSOTSI:** No. Not at all Chair.

**ADV SELEKA SC:** Was a draft of this minutes presented to you for consideration?

**MR TSOTSI:** No.

**ADV SELEKA SC:** Now I have read that – if you go back to page 680 I have read the paragraph which says that: The  
20 Chairman explained and I suppose they are referring to yourself at the time as the Chairman.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** And explaining the background the meeting with the President and that you did not give the board the opportunity to agree to appoint Mr Linnell.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Well they are writing about you, is that a correct recordal of what transpired in that meeting?

**MR TSOTSI:** The aspect which says the quote the Chairman stated that he did not offer the board an opportunity to agree to appoint Mr Linnell and that is simply a mistake on his part. I do not believe this. Correct.

**CHAIRPERSON:** That did not happen?

**MR TSOTSI:** No Chair it could not have happened.

10 **CHAIRPERSON:** And you – you could not have said that?

**MR TSOTSI:** No

**CHAIRPERSON:** Or could you have said that?

**MR TSOTSI:** No I could not have said that Chair.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** Because the minutes of the either the I think it is the end committee meeting of the board clearly state that Mr Linnell was requested by the board to assist.

**CHAIRPERSON:** Yes.

20 **MR TSOTSI:** Both these committees that were working on this project.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** And it was not with purpose and the brief of the Chairman to appoint any individual. And it is that of the committee the People and Governance Committee. So there was no question of my affording or otherwise the board the

opportunity to appoint Nick. It was for the board or sub-committee of the board to do the appointment. So I think this minute is clearly not correct.

**CHAIRPERSON**: Hm.

**MR TSOTSI**: I do not subscribe to this.

**CHAIRPERSON**: Yes. Do you think it factually not true?

**MR TSOTSI**: I believe it is factually it is not true.

**CHAIRPERSON**: Hm.

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

10 **CHAIRPERSON**: Yes I do not know whether Mr Seleka you want to contrast that with the minutes of the board that Mr Tsotsi talked about before you exhaust other aspects that he might say are not true or whether you want to first exhaust that and then compare. But I leave it to you whichever is convenient.

**MR TSOTSI**: No Chair that is correct because there is a problem there as well so I want to take him back there before I go to that one.

**CHAIRPERSON**: Okay. That is fine. That is fine.

20 **ADV SELEKA SC**: And this Mr Tsotsi relates to the audio recordings that you have had the opportunity to look at overnight – apology for that and the clip I would like to play to you is found on – the transcript on page 692 of the transcript Chairperson. The corresponding audio will be played once you are on that page. 692. Now this as an

introduction will be a meeting be back on the 11 March 2015.  
And it is a meeting in which you introduce Mr Linnell.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** If you are ready Chair we ...

**[AUDIO PLAYING][INAUDIBLE]**

Chairperson for your purposes if the Chair does not hear I  
think we can stop and Mr Tsotsi can relate what he is saying.  
Mr Tsotsi you – you use the name Nick. Maybe you could tell  
the Chairperson who you are referring to there or talking

10 **MR TSOTSI:** It is Nick Linnell.

**CHAIRPERSON:** Yes well maybe the first thing is just for  
him to confirm that the voice we have heard is his voice.

**MR TSOTSI:** It is my voice Chair.

**CHAIRPERSON:** Ja it is your voice.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Okay. Then the – answer the question that  
Mr Seleka has put to you?

**MR TSOTSI:** Yes I do confirm that Nick refers to Nick  
Linnell.

20 **CHAIRPERSON:** Yes. Okay.

**ADV SELEKA SC:** So at this – at this stage in the meeting  
you are addressing Mr Linnell?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Ja.

**[AUDIO PLAYING][INAUDIBLE]**

**ADV SELEKA SC:** Mr Tsotsi you say to him that you have explained to the board although he has already explained to the board.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** So by that time the board knew.

**MR TSOTSI:** Correct.

**ADV SELEKA SC:** About what the purpose of Mr Linnell was

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

**CHAIRPERSON:** And you are speaking to Mr Linnell inside  
10 the meeting of the board. The other members of the board  
are listening they can hear you, is that right?

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

**CHAIRPERSON:** So if you say I have already explained to  
the board if they think that is not true, they have the chance  
to say no, no, what are you talking about?

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

**CHAIRPERSON:** You are not speaking to Mr Linnell in some  
other room just the two of you?

**MR TSOTSI:** Yes, no I was speaking to the board.

20 **CHAIRPERSON:** Yes okay.

**MR TSOTSI:** Because what happened is this that this  
meeting takes place immediately after the meeting with  
Minister Brown.

**CHAIRPERSON:** Hm.

**MR TSOTSI:** The board sits and deliberates on what the



Minister's input was and in the course of that deliberation the board is informed of the availability of Nick Linnell to support and assist the board. And the board makes a conscious decision that it would be interested in Nick Linnell assisting it.

**CHAIRPERSON:** Ja.

**MR TSOTSI:** In this aspect.

**CHAIRPERSON:** Ja.

**MR TSOTSI:** It is at that point when then I decided then well  
10 or the board was agreeable to them saying, let us then invite  
Nick into the meeting so that he can tell us who he is and  
what he does and what he is proposing etcetera. Which is  
basically the substance of this entire recording on this  
matter.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** It is about him and what he is able to offer.

**CHAIRPERSON:** hm.

**ADV SELEKA SC:** Yes.

**MR TSOTSI:** So this is the beginning part where I now  
20 introduce Nick.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** Into the board meeting.

**CHAIRPERSON:** Yes okay.

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

**[AUDIO PLAYING][INAUDIBLE]**

**ADV SELEKA SC:** Mr Tsotsi is that – was it – does it correspond with the transcript?

**MR TSOTSI:** Yes it does.

**ADV SELEKA SC:** Who is – what is the question being asked?

**MR TSOTSI:** The question is, so Chair is it Executive of Finance included as well.

**ADV SELEKA SC:** And who is asking that question?

**MR TSOTSI:** I actually could not identify that particular  
10 voice. I am not sure whether it was Vinete Klein or it was ...

**ADV SELEKA SC:** It is a male voice.

**MR TSOTSI:** If it is Naidoo. I am not sure.

**CHAIRPERSON:** But the voice that was doing most of the talking in what we have just listened to now is still your voice?

**MR TSOTSI:** It is still me yes.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** Correct Sir.

**CHAIRPERSON:** So I think each time we have listened you  
20 must just say that is still my voice so that whoever reads the transcript can know ja.

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

**[AUDIO PLAYING][INAUDIBLE]**

**MR TSOTSI:** That is now Nick Linnell coming in.

**ADV SELEKA SC:** That is who coming in now?

**MR TSOTSI:** That is Nick Linnell is now the speaker I just finished.

**ADV SELEKA SC:** But all this time you confirm that

**MR TSOTSI:** This is me who was speaking here.

**ADV SELEKA SC:** It was you speaking. Thank you Chair.  
Shall we go to time stamp 3:58.

**MR TSOTSI:** Page?

**ADV SELEKA SC:** No I want them to go to time stamp 3:58.

**[AUDIO PLAYING][INAUDIBLE]**

10 **ADV SELEKA SC:** Whose voice was that Mr Tsotsi?

**MR TSOTSI:** That was still Mr Linnell – Nick Linnell.

**[AUDIO PLAYING][INAUDIBLE]**

**CHAIRPERSON:** Now who is that?

**MR TSOTSI:** That is Doctor Ngubane.

**CHAIRPERSON:** Yes okay.

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

**MR TSOTSI:** And then he goes on to introduce himself.

**CHAIRPERSON:** Yes okay.

20 **ADV SELEKA SC:** Thank you Mr Tsotsi. Then I want to skip  
that part and please go to time stamp 23. That is on page  
707 of the transcript Mr Tsotsi.

**CHAIRPERSON:** I am sorry where do we go?

**ADV SELEKA SC:** Page 707.

**CHAIRPERSON:** 707.

**ADV SELEKA SC:** Time stamp 23.

**[AUDIO PLAYING][INAUDIBLE]**

**CHAIRPERSON:** Ja I am sorry who is speaking?

**MR TSOTSI:** That was Nick Linnell speaking.

**CHAIRPERSON:** That is still Mr Linnell speaking?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Okay can you just go back to where he starts just where he started just now. Not right at the back.

**[AUDIO PLAYING][INAUDIBLE]**

**MR TSOTSI:** That was Doctor Ngubani saying sorry about  
10 who we are contracting with you and not with ENS.

**ADV SELEKA SC:** And he is speaking to Mr?

**MR TSOTSI:** Mr Linnell yes.

**ADV SELEKA SC:** Thank you, Chair. Then there is the last question on this. Time spent, 1hour 07 and.23 seconds. Give me the page reference? It is on page 743 of the transcript, timestamp 1.07.23.

**AUDIO PLAYED INTO THE RECORD – INAUDIBLE**

**ADV SELEKA SC:** Confirm this was ...[intervenes]

**MR TSOTSI:** That is now myself.

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

**AUDIO PLAYED INTO THE RECORD – INAUDIBLE**

**ADV SELEKA SC:** Are you on that page?

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

**ADV SELEKA SC:** The corresponding page, Mr Tsotsi.

**MR TSOTSI:** Yes, I am on that page.

**ADV SELEKA SC:** So when you say we, the mandate we would like to give. Who are you referring to as the we?

**MR TSOTSI:** I am referring to the board.

**ADV SELEKA SC:** And the members of the board are still present.

**MR TSOTSI:** Yes, they are present and listening and discussing.

**ADV SELEKA SC:** And is there any objection to that statement?

10 **MR TSOTSI:** None at all.

**CHAIRPERSON:** And you know that he said Chair, speak for yourself when you said to the mandate, we want to give you, nobody said think for yourself, it is not what we want to do.

**MR TSOTSI:** That is correct, Chair.

**CHAIRPERSON:** Yes, okay.

**ADV SELEKA SC:** In fact, we heard earlier the voice you identified as that of Dr Ngubane saying Nick, we are contracting with you, not with ENS. Correct?

20 Now let us see, because we have a copy of the minutes of the meeting, of this meeting. Let us see who was present according to the minutes of that meeting, in this meeting. That minute is on page 675.

**MR TSOTSI:** Got it.

**ADV SELEKA SC:** You have it. Page 675, it is a minute

of Eskom, minutes of the Eskom Holdings People in Governance Committee. It says:

“Minutes of the People in Governance Committee meeting.”

The number is given and the date is 11 March 2015 at 15.48.

Present, members, is Mr Z Khoza, Ms N Carrim, who is indicated as having left early, Ms C Mabunde, Ms P Naidoo, Dr P Naidoo, beg your pardon, Ms D Naidoo, Mr M  
10 Baloyi, Mr Z Tsotsi and Ms V Klein. Do you see that?

**MR TSOTSI:** Yes, Chair and I would like to add something, is this, when we finished the board meeting to go into this session of the People in Governance Committee, we, as a board invited any member who was interested other than a member of this committee was welcome to come into the meeting and participate hence you hear the voice of Dr Ngubane who name, it does not appear here. So ...[intervenes]

**ADV SELEKA SC:** Sorry, Mr Tsotsi, we have got two  
20 minutes and that makes planning the dilemma you are trying to resolve to the Chairperson. Let us see, there are also minutes on page 667. Sorry, I apologise, 667. You are there?

**MR TSOTSI:** 667. Okay.

**ADV SELEKA SC:** Minutes of the Eskom Holdings.

**MR TSOTSI:** Okay, that is not board meeting, in-committee.

**ADV SELEKA SC:** Yes.

**MR TSOTSI:** No, that is correct, that is correct.

**ADV SELEKA SC:** So would be the correct minutes?

**MR TSOTSI:** Yes, relative to this audio we have just listen.

**ADV SELEKA SC:** Yes.

**MR TSOTSI:** That is correct, yes.

10 **ADV SELEKA SC:** It is also on the 11 March but this board in-committee meeting.

**MR TSOTSI:** That is right.

**ADV SELEKA SC:** 11 March 2015 at 12.00.

**MR TSOTSI:** That is right.

**ADV SELEKA SC:** So this would have preceded the P & G Meeting of the minutes we referred to earlier.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** So present in this meeting is yourself, Mr Tsotsi, the Chairman of the Board, Dr Ngubane, Ms V  
20 Naidoo, Ms N Carrim, Ms V Klein, Ms C Mabude. Ms Carrim was also indicated has left early. Mr Z Khosa and Mr M Baloyi. Then there is people in attendance as well, Mr N Phukubje, the company secretary, Mr N Tsholanku, GM: Eagle and Regulatory and Mr N Linnell, external consultant. And who is that last person?

**MR TSOTSI:** The last person is the same Nick Linnell whose voice we heard not long ago.

**ADV SELEKA SC:** So all these persons were present during that discussion.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Now these minutes, if you turn to page 670, where supposed to have signed and please, you could indicate to the Chairperson who signed and which date.

**MR TSOTSI:** Chair, the minutes were signed by Dr  
10 Ngubane on the 18 November 2016.

**ADV SELEKA SC:** Again, nearly two years after the actual meeting.

**MR TSOTSI:** Correct.

**ADV SELEKA SC:** Of 11 March 2015. Now if we look at the charge, the first charge levelled against you ...[intervenes]

**CHAIRPERSON:** Before you proceed, Mr Seleka?

**ADV SELEKA SC:** Thank you, Chair.

**CHAIRPERSON:** Mr Tsotsi, have you had an opportunity  
20 of reading these minutes and are you able to say whether, although it has been quite some time, whether they seem to reflect the discussions and decisions in that meeting because you chaired the meeting or are there any areas in the minutes that cause you concern?

**MR TSOTSI:** Chair, I think having had the benefit of the



audio it helped in, you know, jogging the memory very well and insofar as the substance of the minutes, I am fine, I do not have any...

**CHAIRPERSON:** You do not have any issues.

**MR TSOTSI:** Any issues.

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

**ADV SELEKA SC:** Chair, perhaps I could read ...[intervenes]

**CHAIRPERSON:** I just wanted to clear that out of the way  
10 because there were those other minutes where you had an issue about.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Which were also signed close to two years after the date of the meeting. Mr Seleka?

**ADV SELEKA SC:** Thank you, Chairperson. Well, Mr Tsotsi, perhaps one could quickly take you through the minutes. You are still on page – you will have to be on page 668, under paragraph 7.1. Are you there?

**MR TSOTSI:** Yes.

20 **ADV SELEKA SC:** Yes, there are bullet points there, I will read – let us see, “it was proposed”, the first one:

“A number of issues were raised in the in-committee session being as follows:

It was proposed that the P & G committee indicate a process and that audit and risk committee be

responsible for the ultimate forensic element of the inquiry. It was agreed.

Confirmed the [indistinct] 11.26 of that, the audit and risk committee be the custodian of the process and to engage with other committees where it was necessary to do so. The Chairman highlighted the view that it may be necessary for employees whose 11.38 are implicated .39 be requested to step aside. Whilst the inquiry was proceeding a question was asked about what effect this would have on the operations of the business. Members also discussed the possible impact on continuity this approach would have on the company's business activities. It was noted that there had been a trust deficit and that people may be to blame but not want the truth to be found and findings to be made. The Chairman outlined a number of misdemeanours allegedly committed by some executives."

10

20

Is that correct, Mr Tsotsi, that you outlined a number of misdemeanours?

**MR TSOTSI:** No, I did not outline the misdemeanours, what happened was, these were statements that I made by people during the meeting and I then indicated in the summary that these are the things that people are saying. I did not outline any misdemeanours, I do not recall doing

that.

**ADV SELEKA SC:** Yes. We will find a portion for me relative to this aspect in the recording. So you deny that you outlined misdemeanours?

**MR TSOTSI:** No, I did not outline any misdemeanours that relates to the individuals. I do not recall that.

**ADV SELEKA SC:** Yes, no that is alright. There is an allegation about a trust deficit.

10            “It was noted that there had been trust deficit and  
              that people may be to blame but not want the truth  
              to be found and findings to be made.”

You know what they are referring to here?

**MR TSOTSI:** I suspect that in the discussion – because what this is doing, is recording what different people were saying and what - you know, what views they are expressing. I rather suspect that on the basis of allegations of wrongdoing by some of the people that would be a trust deficit in that regard. I am not sure what the reference this is making in terms of any board is saying or  
20 any board concurrence about any of this. There is no concurrence on the board that was given in terms of a trust deficit because, I mean, the board did not know the individuals. The board had not worked with the individuals.

**ADV SELEKA SC:** And the individuals you are referring to are the executives in this case?

**MR TSOTSI:** The executives, yes.

**ADV SELEKA SC:** So – and then it carries on:

“It was pointed out that these issues needed to be investigated forensically but that the executives were responsible for those areas not be around during the inquiry.”

One could carry on but I need to ask you whether – again the same question. I mean, the minutes are signed many months later after this meeting. The question is whether  
10 did you – were you furnished with a copy of these microscope for approval before the 30 March 2015?

**MR TSOTSI:** No, I was not, Chair.

**ADV SELEKA SC:** I have gone through the minutes but I could not find these – what you were indicating to the Chairperson earlier, a resolution that would indicate that Mr Nick Linnell was appointed.

**MR TSOTSI:** No, there was no resolution, what happened was that the committee, the board accepted the fact that Nick should assist the two committees. There was  
20 no resolution as such that was signed or provided by the board to that effect.

**ADV SELEKA SC:** So was Nick Mr Linnell?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Formally appointed or not by the board?

**MR TSOTSI:** Well, there was no formal appointment of Nick because there was no documentation to the effect that he was appointed but the board were quite happy to use his service and so implicitly he was engaged by the board because the board continued to have him assist in different roles and different aspects for the preparation of this inquiry.

**ADV SELEKA SC:** Chair, I am going to move on unless there is a question.

10 **CHAIRPERSON:** Ja, we can move on.

**ADV SELEKA SC:** Thank you. Then if you turn to your affidavit where you are dealing with the first charge levelled against you, that is on page 21. Page 21 paragraph 18, one eight, it says:

“Board meeting of 30 March 2015 charges laid by the Board against me. Charge 1, the director procured the services ...”

The director is that – who are they referring to?

**MR TSOTSI:** They are referring to me.

20 **ADV SELEKA SC:** ...”procure the services of an external consultant Mr Nick Linnell to provide consulting services to the company without following the company’s prescribed procurement processes or informing the Board – or informing the Board of his actions, in so doing the Director crossed the line from being a non-Executive Director to exercising

executive power without the requisite authority.”

Now your comment on that, did you procure the services yourself of Mr Linnell?

**MR TSOTSI:** No I did not.

**ADV SELEKA SC:** Did you fail to inform the Board about your actions to procure the services – well to have Mr Linnell engaged as a consultant?

**MR TSOTSI:** No I had no reason to inform the Board about something that did not happen, the Board knew what Linnell  
10 had been doing and what his role was, the Board welcomed that role.

**ADV SELEKA SC:** So how did you react to this charge, because we hear in the clip that you are there with the Board members talking to Mr Nick Linnell and agreeing to him being contracted by the Board, how did you react to this?

**MR TSOTSI:** Chair if I can just read my response, I mean there's nothing ...[indistinct] my reaction. I placed the history of Nick Linnell's activities, from the time of the 9<sup>th</sup> March Board meeting, the support he gave to both the Board  
20 and ...[indistinct] and the P & G sub-committees. P & G declined to deal with the matter of Linnell's appointment, at least they preferred that the Board handle it. Mr Linnell could only be considered employed by the Board if he had a written letter or contract signed by the Chairman, or had received some remuneration or compensation for the work he

had done for the Board. That was my response.

**ADV SELEKA SC:** Charge 2 on page 22 I think that's where you are, paragraph 18.3 reads:

10           “The consultant commenced with his work to the knowledge of the director and without the Board of Directors being informed that the work had commenced within the company. The director was aware that no contract of engagement for the consultant had been concluded, thus exposing the company to non-compliance with the FICA statutes and procedures.”

And how I see your responses there how did you deal with this allegation?

**MR TSOTSI:** Like I said Nick was merely assisting the Board on a *pro bono* basis at that point, and if he had to commence work this would only have been possible and triggered by some action of engagement by either myself or the Board and incidentally I also indicated to the Board that by the same token Mr Khumalo was a board member  
20   organised a media specialist, Mr ...[indistinct] Ntshingela, to review a media statement that had been produced by the & G on precisely the same basis that Nick had been assisting the P & G.

**CHAIRPERSON:** Mr Tsotsi we are dealing with the charges but unless I missed something I think we may have skipped

the part that reflects how the Board appeared to turn on Mr Tsotsi on its own ...[indistinct] just tell me how we got to the charges, in other words I think there was a meeting, there was a lot of discussion and people said certain things before you got to the stage where charges were formulated. I think that part is important to see how you moved – the meeting moved from a certain point where it seemed to be going fine, no problems with the Chairperson and how later on it changed.

10           So if we haven't covered that I think we – it's important to cover that development.

**ADV SELEKA SC:** Correct Chair, yes and indeed that is not apparent on the documentation Mr Tsotsi so you will have to give the Chairperson some insight.

**CHAIRPERSON:** Oh, I may have read it somewhere, Mr Tsotsi do you know what I am talking about?

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

20           **CHAIRPERSON:** There is a part how the whole thing seemed to develop so it might or might or not be in this statement but as you read you wonder how is this happening, what is happening, what has changed. So you say you know what I am talking about.

**MR TSOTSI:** Yes Chair I do.

**CHAIRPERSON:** Yes, you want to tell us about what that – you know you must have felt at a certain stage since the 9<sup>th</sup>



of March, since that meeting, how the Board maybe seemed to be with you and maybe at a certain stage on the 11<sup>th</sup> of March and the exactly when you began to see a change of attitude ultimately how everything then went up to charges being formulated, that is the impression I have from what I have read, that there is that development you know, but you must tell me if you don't know what I am talking about.

**MR TSOTSI:** Yes Chair, what happened is that after the conclusion of the suspensions I then agreed – the Board  
10 agreed that there should be a press conference to announce the suspensions and ...[intervenes]

**CHAIRPERSON:** Or maybe before you do that, at the meeting of the 9<sup>th</sup> of March you did – I mean that meeting you said was very brief.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Okay, because the Board decided they would like to have the Minister address them.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Now at that meeting did you sense any  
20 attitude, any negative attitude towards you on the part of any members of the Board?

**MR TSOTSI:** Chairman I can comfortably say no, there wasn't any attitude, yes.

**CHAIRPERSON:** Yes. During the – then you go to the 11<sup>th</sup> of March.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** You said there was a meeting of the Board before the Minister arrived, is that right?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** At that part of the meeting – that meeting of the Board before the Minister arrived did everything go smoothly?

**MR TSOTSI:** Yes Chair everything went well, to the extent that the Board was insistent that I should Chair the P & G  
10 meeting which would then be dealing with the issue of suspensions.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** Obviously as Chairman I would not ordinarily chair ...[intervenens]

**CHAIRPERSON:** Yes ...[indistinct]

**MR TSOTSI:** Yes, but because the Board acceded and this is very interesting.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** The Board acceded that they really didn't  
20 know much about the organisation, the people involved and so on, so it ...[indistinct] that they were more comfortable if I was leading the process.

**CHAIRPERSON:** Yes, yes.

**MR TSOTSI:** Which is what then happened.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** And this happened also within production of Nick Linnell as we heard on the tape and as I say the conclusion of the suspensions up to that point there was no indication of any discomfort with me or anything remotely related to it.

**CHAIRPERSON:** And just remind me what were the important decisions that were taken by the Board at that meeting, before the meeting with the Minister if there were decisions that were taken or was it just a briefing?

10 **MR TSOTSI:** The meeting before the Minister had – this is now the in-committee meeting, because there were two meetings.

**CHAIRPERSON:** Ja, ja.

**MR TSOTSI:** So I will not – I will only deal with the one, with the in-committee meeting.

**CHAIRPERSON:** Yes, okay.

**MR TSOTSI:** That meeting deliberated quite extensively on how to deal with the issue of suspension and what the impact of this might be and so on, so there was quite a  
20 robust discussion.

**CHAIRPERSON:** Also the issue of the inquiry, I guess.

**MR TSOTSI:** On the issue of the inquiry yes.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** And I recall maybe the ...[indistinct] will correct me here on the basis of the sequence of events, but

by the time the Minister was due to speak to the Board, by the time she had arrived the Board had taken the position that it would like to explore what – rather entertain what the Minister report is going to be on the specific issue of the inquiry and that it would then wait for the Minister's inputs before it takes – makes a determination as to which way to go.

**CHAIRPERSON:** So the meeting did not make any final decision on the – and on the suspensions of the Executives,  
10 I am now talking about the meeting before the Minister arrived, but there was a discussion on these issues and the meeting said we would like to hear the Minister's input on these issues before we make, we take a final decision.

**MR TSOTSI:** That is the position Chair ...[indistinct]

**CHAIRPERSON:** And at that meeting everything was going smoothly.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** There seemed to be no animosity towards you on the part of anybody in the meeting?

20 **MR TSOTSI** Yes Chair.

**CHAIRPERSON:** Yes, you wanted to emphasize earlier on that the point about when the – when that meeting was concluded, you wanted to say something about the Executives and I think I interrupted you. I think there was something you wanted to say as to what the meeting was

saying about the suspension of executives.

**MR TSOTSI:** Okay if I remember well there was no set feeling about suspensions, there was no conclusive thinking that the executives should be actually suspended.

**CHAIRPERSON:** Ja, okay.

**MR TSOTSI:** So the affirmation of suspensions happened after the meeting with the Minister.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** And I think that is an important observation  
10 from my perspective.

**CHAIRPERSON:** Would it be correct to say that that meeting before the Minister arrived was used to inform the members of the Board as much as possible about this issue of the inquiry and the suspensions without them being asked to make any decisions because the Minister was still coming to a point to address them.

**MR TSOTSI:** That is the case Chair.

**CHAIRPERSON:** That would be correct ja.

**MR TSOTSI:** And then there was the next meeting was the  
20 meeting between the Board and the Minister, is that right?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** It is a board meeting at which the Minister was invited?

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

**CHAIRPERSON:** Yes.

**MR TSOTSI:** And when the Minister came in, she addressed the Board and she pronounced herself on the suspensions and on the inquiry.

**CHAIRPERSON:** Ja, yes.

**MR TSOTSI:** And gave the Board what would be a leeway of nine days to proceed.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** With both the inquiry and the requisite suspension.

10 **CHAIRPERSON:** Ja. And during the time when the Minister was there the members of the Board participated in a discussion and there was discussion on these issues or they just allowed the Minister to address them with a view that they will have their own deliberations after the Minister had left.

**MR TSOTSI:** No, the Board members engaged with the Minister.

**CHAIRPERSON:** They engaged with her.

**MR TSOTSI:** They asked various questions and even other  
20 issues outside of the inquiry issue, you know ...[intervenes]

**CHAIRPERSON:** Yes, and you chaired that meeting.

**MR TSOTSI:** Yes. The Minister had committed at the induction that she would like to be able to see the Board on a reasonably regular basis.

**CHAIRPERSON:** Ja.

**MR TSOTSI:** Touch base on how the Board is doing and how things are.

**CHAIRPERSON:** Yes, yes.

**MR TSOTSI:** She is pretty much in touch with the business of the company.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** So this was one of those occasions where the Minister used that opportunity just to talk a bit about some of her thoughts about what situations are facing her and from  
10 her perspective.

**CHAIRPERSON:** Mmm, now by the time the Minister had to leave I take it no decisions were taken while the Minister was there?

**MR TSOTSI:** No Chair.

**CHAIRPERSON:** Ja, but was it pretty clear which way the Board seemed to be going in regard to suspensions and the inquiry?

**MR TSOTSI:** It was clear Chair because nobody on the Board either countermanded what the Minister was saying or  
20 gave a different view from hers, so one you know had the distinct feeling that the Board is going along with the thinking on this issue of the inquiry and the suspensions.

**CHAIRPERSON:** Yes, now the Minister then left.

**MR TSOTSI:** Yes indeed.

**CHAIRPERSON:** And then the Board continued on their

own, is that right?

**MR TSOTSI:** Correct the Board continued and the engagement was quite robust.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** And at the end of it there was a decision that the Board then made and the Board said that they would entertain the setting aside of the three executives.

**CHAIRPERSON:** Which was basically suspensions?

**MR TSOTSI:** Suspensions yes.

10 **CHAIRPERSON:** You say of the three executives?

**MR TSOTSI:** If I recall well yes Chair.

**CHAIRPERSON:** Yes, and when is there four?

**MR TSOTSI:** The fourth came into the picture in the early afternoon.

**CHAIRPERSON:** Oh, is that so, oh, I thought the Minister added the fourth one earlier.

**MR TSOTSI:** The Minister might have – I stand to be corrected here, the Minister might have made reference to four executives, but what I seem to recall was that there was  
20 a push-back, certainly from me there was a push-back against having the Financial Director included in that. I would have to confirm Chair ...[intervenes]

**CHAIRPERSON:** Oh, unless I am confusing, was the Financial Director's name added at the Durban meeting?

**MR TSOTSI:** No, Chair.



**CHAIRPERSON:** Ja. Because I think I have heard evidence or I have read somewhere where I think it was – I think it was either Mr Matona or yourself, said the minister added the financial director's name which had not been included ...[intervenes]

**MR TSOTSI:** That could be possible my affidavit, yes.

**CHAIRPERSON:** Mr Seleka, you wanted to assist?

**ADV SELEKA SC:** Yes, it is in Mr Tsotsi's affidavit.

**CHAIRPERSON:** Tsotsi's. Oh, okay.

10 **ADV SELEKA SC:** Where he says that we – the minister joined the meeting, mandated the board to carry out the suspensions of the executives. She even added of the name of the financial director who was not part of the original three executives.

**CHAIRPERSON:** Yes. And that is at the time when she was the minister attending this meeting of the board?

**MR TSOTSI:** [Indistinct]

**CHAIRPERSON:** Ja, okay. So it was four executives that were being discussed after that minister added that name?

20 **MR TSOTSI:** Okay alright. Now after the minister had left, the discussion continued and the atmosphere, did you detect any negative or hostile attitude towards you on the part of any members of the board at that stage?

**MR TSOTSI:** Chair, there was – during this meeting it was pushed back against the director of – the financial director

being part of the executives. I think, if I recall well Pamensky was also there and uncomfortable.

**CHAIRPERSON:** Uncomfortable about that?

**MR TSOTSI:** Yes, about having the FD ...[intervenes]

**CHAIRPERSON:** [Indistinct]

**MR TSOTSI:** And for reasons which I agreed with him.

**CHAIRPERSON:** Ja.

**MR TSOTSI:** Ja.

**CHAIRPERSON:** Ja.

10 **MR TSOTSI:** I.e. as the custodian of the company's finances. The FD had the financial position of Eskom, it was very precarious at the time. And this would in fact reflect negatively, as well as, the fact, you know, the finance division is the one that dispenses funds to the others for operational reasons and, you know, it does not merit the inclusion into the inquiry to the extent there could be a need to do it. So the discussion kept going back and forth regarding that.

**CHAIRPERSON:** Ja.

20 **MR TSOTSI:** And I recall speaking to David. I think I raised the issue of speaking to the minister on the phone.

**CHAIRPERSON:** H'm.

**MR TSOTSI:** And seriously questioning why we should be adding the finance director. And the minister retorted it that maybe we should do as, you know, as we have been guided

in terms of who the executives should be suspended. So ...[intervenes]

**CHAIRPERSON:** When she was at the meeting of the board and she added the name of the financial director. Before she left the meeting, did anybody say what has the financial director done? Why are you – why must we add her? Did anybody say that? And if there was, how was – how did the minister respond?

**MR TSOTSI:** No, there was nobody who raised that.

10 **CHAIRPERSON:** Nobody who raised that?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** But you raised it telephonically afterwards, later with the minister?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** On the same day?

**MR TSOTSI:** On the same day, yes.

**CHAIRPERSON:** Ja. And effectively, you were questioning why the financial director should be included in the suspensions.

20 **MR TSOTSI:** Yes.

**CHAIRPERSON:** And did she give you reasons why the financial director should be included?

**MR TSOTSI:** She did not give me concrete reasons. All she said to me is that we should proceed as in the manner that we have been advised to proceed.

**CHAIRPERSON:** Advised by her?

**MR TSOTSI:** By her, yes.

**CHAIRPERSON:** So she comes to the board. The board has got three names of executives to be suspended. She adds another name. When you ask her why, she does not give you reasons but she says, in effect, the board must do as I have said it should do.

**MR TSOTSI:** In effect, yes.

**CHAIRPERSON:** Ja. But going back to the atmosphere  
10 towards you ...[intervenes]

**MR TSOTSI:** Yes.

**CHAIRPERSON:** ...at that point now. They were talking about the meeting of the board after the minister had left. Was there anything that suggested that there was a negative or hostile or unfriendly attitude towards you by members of the board?

**MR TSOTSI:** Chair, I think when I began to sense something when the push back happened against the suspensions of the FD.

20 **CHAIRPERSON:** Ja. So ...[intervenes]

**MR TSOTSI:** Some board members who had decidedly firm about no we cannot exclude. Should not.

**CHAIRPERSON:** Okay now you were against – you are against the inclusion of the financial director. Is that right?

**MR TSOTSI:** Correct.

**CHAIRPERSON:** But are you saying, you are not the only one. There were a number of other members of the board?

**MR TSOTSI:** This was the spectrum if people were to be removed from their offices.

**CHAIRPERSON:** H'm. H'm.

**MR TSOTSI:** Or should not be at their offices for the duration of the inquiry.

**CHAIRPERSON:** H'm. H'm.

**MR TSOTSI:** As I am saying, notwithstanding that, there  
10 was still quite some discussion about – let us not forget the  
intend. The intend is not to punish these people. The intend  
is not to prejudice them and so on.

**CHAIRPERSON:** H'm. H'm.

**MR TSOTSI:** And there question, you know, that were  
asked by one or two different members as there to, really, is  
there no really no way to avoid using the suspension route.

**CHAIRPERSON:** H'm. H'm.

**MR TSOTSI:** Ja. This happened especially when Nick was  
now part of the meeting.

20 **CHAIRPERSON:** H'm. H'm.

**MR TSOTSI:** So...

**CHAIRPERSON:** Okay so at the end of that meeting,  
namely the one which came after the minister had left, at the  
end of that meeting, you were sensing something but nothing  
concrete or...?

**MR TSOTSI:** Yes, Chair I was sensing. There is something else that happened in that meeting which incidentally is not recorded ...[intervenes]

**CHAIRPERSON:** Ja.

**MR TSOTSI:** ...which gave me quite a bit of apprehension.

**CHAIRPERSON:** H'm.

**MR TSOTSI:** Which kind of clouded my mood all together.

**CHAIRPERSON:** H'm.

**MR TSOTSI:** And I do not understand why. And this is  
10 important Chair in my view. I see no reason why this particular conversation is not part of the recordal.

**CHAIRPERSON:** H'm.

**MR TSOTSI:** Because the recordal system was there.

**CHAIRPERSON:** H'm.

**MR TSOTSI:** They were in the same room.

**CHAIRPERSON:** H'm.

**MR TSOTSI:** And if there were audio problems, the technicians are there to take care of that.

**CHAIRPERSON:** H'm.

20 **MR TSOTSI:** Now the issue I am talking about is the discussion about the people who were supposed to act.

**CHAIRPERSON:** Who were?

**MR TSOTSI:** Supposed to act.

**CHAIRPERSON:** To act, ja.

**MR TSOTSI:** Yes. That discussion took a strange turn in

my view. First of all, the purpose, amongst others, of the PNG Committee was to come up with the names of the people who were supposed to act in the places of this executives to be suspended.

**CHAIRPERSON:** H'm. H'm.

**MR TSOTSI:** What happened was, I came across names that had been produced from somewhere.

**CHAIRPERSON:** H'm.

**MR TSOTSI:** And the first question I asked is: Where on  
10 earth do these names come from because none of you in this meeting know anything about the executives at Eskom to the extent that you can say that this was a disqualified worth.

**CHAIRPERSON:** H'm.

**MR TSOTSI:** And the response I got was that these names came from the minister.

**CHAIRPERSON:** H'm.

**MR TSOTSI:** And specifically, this was a response that I got from Dr Ngubane.

**CHAIRPERSON:** H'm. H'm.

20 **MR TSOTSI:** Now I was taken aback because the minister does not know anything about who is – got the capacity or the capability of acting. She would not know.

**CHAIRPERSON:** H'm.

**MR TSOTSI:** So immediately I had the sense that there is some hand here, external hand that is driving this particular

process.

**CHAIRPERSON:** H'm. H'm.

**MR TSOTSI:** This applied to the three of the executives. That is Finance, that is Group Capital and that was Commercial and Technology. Now when it came to the chief executive, the suggestion was that Zethemba Xhosa should act.

Now I have a very clear recollection of the fact that Zethemba said immediately that he does not feel he is up to  
10 it.

And Zethemba just came from, I mean, at that time, I think he was involved with Telkom somewhere, in Telkom's business.

And there was a dismissal of his concern that: No, go ahead. You will be fine. You should do it. And I was uncomfortable with that.

**CHAIRPERSON:** H'm.

**MR TSOTSI:** And quite frankly, I felt that he was out of his debts. Admittedly, I did not know him but I did not have a  
20 comfort level and I have engaged with him for the brief time that I did but, you know, this would be something he could deal with.

**CHAIRPERSON:** H'm. H'm.

**MR TSOTSI:** I will not cast any aspersions on his performance as acting CE. I mean, that what I used to do.



But I am just saying that was my feeling at the time.

**CHAIRPERSON:** H'm.

**MR TSOTSI:** So I am saying Chairman that that exercise and the way it was pushed made me begin to wonder what actually is going on. For the first time I had a sense that something was afoot. So that is when I felt that there are things beginning to go in a direction which I – is not a positive direction.

**CHAIRPERSON:** H'm. But that is now, you say, at the  
10 meeting of the People in Governance Committee?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** That is not the same, or is it that meeting that happened after the minister had gone?

**MR TSOTSI:** That is the meeting ...[intervenes]

**CHAIRPERSON:** That is the meeting.

**MR TSOTSI:** That is an extension of that meeting because the board had a discussion after the Minister left and then in the afternoon went into the People in Governance meeting, I think it started at – what was it, half past two or something  
20 like that.

**CHAIRPERSON:** Yes, well I think earlier on you may have said that the board decided that the board at the meeting immediately after the minister had left, the board decided that certain issues should be dealt with by the People in Governance Committee. Is that right?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** The suspensions. Is that right?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** And that is now the execution. Was that going to be the execution in ...[intervenes]

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Ja, the decision had been made?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Ja. And then the question of who were  
10 going to act in the position of the executives to be  
suspended that that was one of the issues that the board  
said should go to the People in Governance Committee.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Yes, okay. And the People in Governance  
Committee, did it happen after lunch?

**MR TSOTSI:** It happened after lunch, yes.

**CHAIRPERSON:** Because yesterday you said you went to  
lunch and when you came back you were ten minutes late to  
that meeting. Is that right?

20 **MR TSOTSI:** Yes.

**CHAIRPERSON:** Yes, okay. So but by the end of the  
meeting by the board that happened after the minister had  
left, the position is that you had sensed something but  
nothing concrete as yet about the board's attitude towards  
you or some members of the board, their attitude towards

you or not really?

**MR TSOTSI:** Not really. Not by the end of the board meeting.

**CHAIRPERSON:** Oh, okay.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** It was only at the People in Governance Committee that you began to sense that there was some other hand?

**MR TSOTSI:** Before that.

10 **CHAIRPERSON:** Before that?

**MR TSOTSI:** Yes, because the board... I am trying to remember now Chair at what point the push back... No, I think you are correct. I have got the...

**CHAIRPERSON:** Ja.

**MR TSOTSI:** ...the sequence wrong. Yes, the push back against the FD, I think occurred after the meeting with the minister.

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

**MR TSOTSI:** Because it was a full board.

20 **CHAIRPERSON:** Yes, okay.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** That gave you ...[intervenes]

**MR TSOTSI:** So that is when... yes, you are correct. That is when I began to ...[intervenes]

**CHAIRPERSON:** You started sensing ...[intervenes]

**MR TSOTSI:** ...to sense that something is not right.

**CHAIRPERSON:** Yes, yes. But nothing concrete. But just a sense?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Then at the People in Governance Committee meeting, did you begin to have any – feel anything concrete or did you – was your sense did it become stronger that there was something and was it just about something or also the attitude towards to you? Did it begin  
10 to change or not really?

**MR TSOTSI:** Well, Chair as I have said, you know, the way the acting roles were dealt with simply heightened the apprehension now that I started to develop. It really pushed it to a point where I now said to myself surely there is something afoot here.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** Because I was convinced without any reasonable doubt that there was no way anybody in the entire board other than myself, except of course for the  
20 executives ...[indistinct] directors on the board. The executive directors, there was no one else who knew ...[indistinct] better than I did, and I knew who would be suitable for that role. So that straight away just pushed me into the apprehension mode and started to wonder what on earth is going on.

**CHAIRPERSON:** Yes but at that stage you were just sensing that there was something and some outside hand outside of the committee or the board but you were not sensing anything towards you as chairperson in a negative way.

**MR TSOTSI:** Yes, that I think is fair to say.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** I was not sensing anything towards me specifically but that there was something on the go ...[intervenes]

10 **CHAIRPERSON:** Yes, yes.

**MR TSOTSI:** ...which I could not really fathom.

**CHAIRPERSON:** Yes. That meeting of the People in Governance Committee, it ended with an endorsement of the names that you were told had been given by the minister as the people who would act in the positions of the executives?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** That was confirmed?

**MR TSOTSI:** Yes.

20 **CHAIRPERSON:** Ja. And were you given no answer with regard to: But you people do not know these people. The only answer you were given was that the minister gave these names.

**MR TSOTSI:** That is right.

**CHAIRPERSON:** And when you said but the minister would not know those people themselves, nobody said anything

when you said that?

**MR TSOTSI:** No.

**CHAIRPERSON:** Okay alright. Now this part that I am talking about where it seemed that the board was turning on you, it may be that you did give evidence about it previously and that is where I am getting it from. Did you cover that when you gave evidence previously about how you were kicked out?

**MR TSOTSI:** I probably referred to my own suspension  
10 ...[intervenes]

**CHAIRPERSON:** Yes.

**MR TSOTSI:** ...as an indication Chair that the board has turned against me.

**CHAIRPERSON:** Mr Seleka, have you had the chance to look at the previous evidence? Do you know whether it was covered? Because I do not want us to cover something that we have covered?

**ADV SELEKA SC:** Ja, I think I have read his testimony at the Parliamentary Portfolio Committee Chair.

20 **CHAIRPERSON:** Yes, yes. You are not sure about it.

**ADV SELEKA SC:** But it doesn't ring a bell.

**CHAIRPERSON:** It doesn't ring a bell?

**ADV SELEKA SC:** Immediately ja.

**CHAIRPERSON:** Yes. You remember there is a meeting where you came with a lawyer to the board meeting?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** And there were discussions.

**ADV SELEKA SC:** That is when he is already in the suspension.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** So did you – do you think you have covered that last time when you gave evidence? I just want to make sure that we do not leave out something important.

10 **ADV SELEKA SC:** Yes.

**MR TSOTSI:** I don't recall Chair.

**CHAIRPERSON:** But you know what I am talking about.

**CHAIRPERSON:** You cannot remember?

**MR TSOTSI:** I do not recall Chair.

**CHAIRPERSON:** But you know what I am talking about?

**MR TSOTSI:** Yes, I know what you are talking about.

**CHAIRPERSON:** The meeting was in the evening and I think your counsel was Advocate Kassiem if I am not mistaken.

20 **MR TSOTSI:** Yes, that is correct.

**CHAIRPERSON:** Yes, Nazeer Cassim.

**MR TSOTSI:** Okay. Okay I know where you are.

**CHAIRPERSON:** You know... ja.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** So basically, I just want you to cover. At

what stage the board began to accuse you of doing this or that or not doing that and that and beginning to say you brought in somebody without authority or without procurement, it talks about Mr Linnell, and then when then they started to basically put you in the dock and then up to the end?

**ADV SELEKA SC:** Let me just quickly cover that Chair if I may?

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

10 **ADV SELEKA SC:** Just so we can bridge that gap.

**CHAIRPERSON:** Yes. Ja.

**MR TSOTSI:** Following the day of the suspensions and then there was – they said there was a press conference the following day. That would have been around the... what is it, the 12<sup>th</sup>, 13<sup>th</sup>, maybe? But there was a time then when Linnell was focussing his attention now with assisting the ARC.

**CHAIRPERSON:** From the Audit and Risk Committee.

20 **MR TSOTSI:** Audit and Risk Committee. Now Nick reported to me that on the morning of the 17<sup>th</sup>, that was now at about 04:20 a.m. We received an email from the secretariat who said to him: Look, your scheduled meeting with the committee of Audit and Risk has been – you are no longer required to attend that meeting.

**CHAIRPERSON:** H'm.



**MR TSOTSI:** And essentially, the people that he was due to interact with that day, everybody seemed to stand off and there was a point where he had an arrangement to meet with Ms Mabude as part of the work that he was doing. I think that meeting also got cancelled or something to that effect. And he does say in his evidence, I do not know where it is.

**ADV SELEKA SC:** Should I assist, Chair?

**CHAIRPERSON:** Yes, please. Ja, ja.

**ADV SELEKA SC:** With page references?

10 **CHAIRPERSON:** Ja.

**ADV SELEKA SC:** That is on – from page 152 Chairperson.

**CHAIRPERSON:** I just realise now that we have gone past one o'clock.

**ADV SELEKA SC:** Let us eat. [laughs]

**CHAIRPERSON:** But let us quickly, you know, just cover this part.

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

**CHAIRPERSON:** Ja.

20 **MR TSOTSI:** The evidence leader has promised to buy me lunch Chair because I did not want to bring my lunch today.

**CHAIRPERSON:** [laughs]

**ADV SELEKA SC:** I offered to do that, Chair.

**CHAIRPERSON:** [laughs] Yes, 157.

**ADV SELEKA SC:** His affidavit Chairperson, the relevant section that Mr Tsotsi is referring to are on page 152 and

153.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** At page 151, gives you the context.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** So if you look at page 152 ...[intervenes]

**CHAIRPERSON:** Oh, this is the earlier affidavit?

**ADV SELEKA SC:** That is Mr Nick Linnell's affidavit to this Commission.

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

10 **ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Okay. Yes.

**ADV SELEKA SC:** He says at paragraph 34 – so he is explaining 151. He comes out of the meeting. There is a press conference.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** The press conference, Mr Tsotsi announces the suspensions. Announces him being appointed as the coordinator.

**CHAIRPERSON:** Yes, yes.

20 **ADV SELEKA SC:** And then he deals with what happens thereafter.

**CHAIRPERSON:** Yes, yes.

**ADV SELEKA SC:** He then, because he is appointed as the coordinator, he receives...

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Paragraph 34:

“Following that, I received a number of communications from Eskom including an invitation from Mr Naidoo...”

I think that should be Dr Naidoo.

10 “...a director to join the board, recovery and build programme review committee, workshop the following week. His communication with that committee included reference to the board’s intention to commit a deep dive investigation. This is relevant to the recognition that the inquiry was underway.”

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Then he receives some invitation to attend the Audit and Risk Sub-committee, 19 and 23<sup>rd</sup>.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:**

20 “On the 12 of March, Minister Brown releases a media statement dealing with the suspension of the – rather the inquiry. And I was about that time required to provide my proposed draft terms of reference.”

Now that is all around the 12<sup>th</sup> of March.

**CHAIRPERSON:** H’m.

**ADV SELEKA SC:** Then you go to page 153.

**CHAIRPERSON:** H'm.

**ADV SELEKA SC:** Paragraph 40. He says then:

“I then emailed the first draft of the terms of reference to Ms Mabude. Then the company secretary on Sunday, 15 March 2015.”

Paragraph 41:

10 “On the evening of Monday, the 16<sup>th</sup>, I had a discussion Ms Mabude regarding the terms of reference which I had submitted. That discussion was brief, I was concerned that Ms Mabude now refused to allow me access to the input received from the executives. There was a notable cooling of enthusiasm. That conversation ended with an agreement that I would meet Ms Mabude the following morning at around midday, 17 March.”

Then this is what Mr Tsotsi is talking about:

20 “At 04:50 am on the 17<sup>th</sup> of March, I received an email from Mr Thulo Selele copied to the company secretary reporting to inform me that the Board Audit and Risk and Compliance Committee would now be handling the forensic FIT finding inquiry. I assumed it to be referring to an inquiry I was preparing for. I was informed that I was no longer required to attend the meeting previously arranged.”

**CHAIRPERSON:** Ja, so maybe I got a lot of information

from this affidavit because you can see that there seems to be a change in attitude towards Mr Linnell as well. And I think either simultaneously or soon thereafter, there seems to be negative or hostile attitude on the part of the board towards Mr Tsotsi.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Is that right, Mr Tsotsi.

**ADV SELEKA SC:** Well, answer the Chair ...[intervenes]

**MR TSOTSI:** Yes. Yes, Chair that is correct.

10 **CHAIRPERSON:** Yes.

**MR TSOTSI:** By what you want to say Evidence Leader. But I was going to say it is then three days later, essentially two days later on the 19<sup>th</sup> that the committee then first indicated that I was going to be charged for whatever the reason they gave at the time.

**CHAIRPERSON:** Ja, ja.

**MR TSOTSI:** That was now patently clear that something had been happening and that between the 16<sup>th</sup> and the 19<sup>th</sup>, something very specific happened.

20 **CHAIRPERSON:** Yes, yes. Okay.

**MR TSOTSI:** Now I do not know if this appears in this affidavit but Mr Linnell has its own view of what had happened on the night of the 16<sup>th</sup>.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** Which he... well, he shared this with me at

some point.

**CHAIRPERSON:** Ja.

**MR TSOTSI:** What is the reference there of that specific... I just want to make sure I am...

**ADV SELEKA SC:** Sorry, what do you ...[intervenes]

**CHAIRPERSON:** Where he gave his taking of what happened.

**MR TSOTSI:** Yes. I think it is somewhere... is it in this affidavit? I have seen it in one of his documents.

10 **CHAIRPERSON:** Well, if you tell Mr Seleka what it is ...[intervenes]

**MR TSOTSI:** Yes, yes.

**CHAIRPERSON:** ...he might know where to find it.

**MR TSOTSI:** Okay. Chair, what Nick said was that he heard that there was a secret meeting that night with some of the board members were in attendance together with... well, it says the suspended executives.

**CHAIRPERSON:** H'm.

20 **MR TSOTSI:** And Salim Essa is said to have been at that meeting together with Tony Gupta.

**CHAIRPERSON:** H'm.

**MR TSOTSI:** There is no indication of what was discussed.

**CHAIRPERSON:** H'm. H'm.

**MR TSOTSI:** But there is a clear indication of what transpired. It seems to be the impact ...[intervenes]

**CHAIRPERSON:** Ja.

**MR TSOTSI:** ...of whatever was discussed at that meeting.

**CHAIRPERSON:** H'm. H'm.

**MR TSOTSI:** It certainly had a direct impact on what Nic Linnell was supposed to be doing.

**CHAIRPERSON:** Yes, yes.

**MR TSOTSI:** And ultimately, I think, on what I... my own position.

**CHAIRPERSON:** Yes.

10 **MR TSOTSI:** Because it was on the 19<sup>th</sup> that... of the board, the 19<sup>th</sup> board meeting, that the whole issue of accusations against me began.

**CHAIRPERSON:** Ja, ja. Okay alright.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Mr Seleka, we... if it is here on affidavit one would look at it but you can highlight what you think you have not highlighted in relation to your removal if... whatever you think you might not have highlighted that you would like to highlight to say out of the process, out of my removal  
20 here, the important things that I would like to highlight.

So but maybe we could take the lunch break and then when you come back, then you can quickly deal with that and then we moved towards what Mr Seleka wanted to cover.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** But during the lunch break would give you

a chance to reflect on what you think is it that you think is quite important in relation to your removal that you would like to highlight.

**MR TSOTSI:** Yes, thank you.

**CHAIRPERSON:** Is that alright?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Okay alright. Let take the lunch break now. We will resume at half-past two. We adjourn.

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

10 **INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay, you may proceed. We have taken much longer than you anticipated, Mr Seleka, yesterday with Mr Tsotsi.

**ADV SELEKA SC:** Indeed, yes, Chair.

**CHAIRPERSON:** But I believe that the issues that we have canvassed were important issues that needed to be covered.

**ADV SELEKA SC:** Yes.

20 **CHAIRPERSON:** But probably we should be able to finish within an hour from now.

**ADV SELEKA SC:** Yes, Chairperson.

**CHAIRPERSON:** Before we took the break, I said, Mr Tsotsi, there may be some important features of the journey to our ultimate removal that happened that you



might wish to emphasise. If you would like to emphasise some features of that episode, this is your chance.

**MR TSOTSI:** Thank you, Chair, I will try to be as expedient as possible. I want to focus from the 19<sup>th</sup> which is the time when – or the date when the issue of the suspensions came.

First of all, I was extremely surprised when I was asked to recuse myself from that meeting, this in-committee meeting ...[intervenes]

10 **CHAIRPERSON:** That was a meeting of the board or the audit and risk committee or some other committee?

**MR TSOTSI:** It was an in-committee of the board.

**CHAIRPERSON:** Oh, okay. Whereupon my supposed suspension or my supposed charges were going to be discussed and ...[intervenes]

**ADV SELEKA SC:** Sorry, Mr Tsotsi, are you referring to the meeting of the 19<sup>th</sup>?

**MR TSOTSI:** That is correct, Chair, meeting of the 19 March.

20 **ADV SELEKA SC:** Of March 2015?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Thank you.

**CHAIRPERSON:** 19 March 2015?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** And by this time my state of mind, Chairman, was that the only thing I really have to do is to focus on defending myself in this situation. So I was effectively a rudderless Chairman from that point onwards because the board was making decisions in my absence.

**CHAIRPERSON:** Now when was the last time you chaired a meeting of the board? Which meeting was the last one that you chaired?

**MR TSOTSI:** It was on the same day but it was an  
10 ordinary board meeting.

**CHAIRPERSON:** Ja, on the 19<sup>th</sup>.

**MR TSOTSI:** On the 19<sup>th</sup>, yes.

**CHAIRPERSON:** In the morning.

**MR TSOTSI:** In the morning, yes.

**CHAIRPERSON:** Yes, okay and then that went well while you were chairing or that is where things began to unfold that led to your ultimate ...[intervenes]

**MR TSOTSI:** Well, there was not much that was being  
20 shown but I already had a sense that there was beginnings of disconnect. In fact, I was – I should say this, before – before then, I was receiving emails from one or two of the board members which were demanding me to answer to different things which they thought that I am not – I did not do or did not accomplish. I unfortunately do not recall any of these emails nor do I have copies of them but I do recall

that there were to some degree somewhat hostile. Yes.

**CHAIRPERSON:** Are you able to remember from which members of the board they came from?

**MR TSOTSI:** I remember from Mark Pamensky in particular.

**CHAIRPERSON:** Yes, yes.

**MR TSOTSI:** Ja, he was particularly the one who was vociferous about whatever it was that was concerning him or concerning me at the time.

10 **CHAIRPERSON:** Yes.

**MR TSOTSI:** unfortunately, as I say, I just do not recall exactly.

**CHAIRPERSON:** Ja, okay.

**MR TSOTSI:** But I remember the sentiment for sure. So it was clear that there was something that was afoot. So by the time they came along with the charges I pretty much knew that I was up against something.

**CHAIRPERSON:** So you say it was clear that there was something, you mean at that meeting of the in-committee –  
20 at that in-committee meeting on the morning of the 19<sup>th</sup>?

**MR TSOTSI:** No, I think the in-committee took place in the afternoon, I think. The ordinary board meeting was in the morning.

**CHAIRPERSON:** Oh, ordinary board meeting was on the 19<sup>th</sup>?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** That is the meeting where you say it became clear that there was something? Is that the one?

**MR TSOTSI:** No, it did not become clear, the clarify came when they actually preferred the charges against me.

**CHAIRPERSON:** Yes, okay.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Just tell the story.

**MR TSOTSI:** Ja, so ...[intervenes]

10 **CHAIRPERSON:** Let me not interrupt you.

**MR TSOTSI:** Yes. Following then, the issue where I was asked to recuse myself because they wanted to discuss me, I did not resist or put up any - you know, any struggle of any kind and I simply said fine, let us go ahead.

And when they reverted back to me – I have to now recall precisely, maybe the minutes may say so, they then issued out this document with – or informed me that they were going to put some charges against me and I think I recall that I actually got the formal document on a Sunday  
20 by email or, no, it was not by email it was actually hand delivered but I did not get a corresponding email.

Then the next thing that I recall happening was that they then made a decision to go and brief the Minister about their intent to ask me to step aside as a director and they once again, I was not invited to that meeting, I was

not even informed about it, I just heard from the company secretary that they have gone to Cape Town to go and meet with the Minister. I have yet to see the minutes of that meeting, I do not know whether in fact we have copies of that meeting but I really do not know, that meeting happened possibly between the 19<sup>th</sup> and maybe the 22<sup>nd</sup>, something like that, somewhere there.

So at this point, Chair, I am simply just floating, not being engaged in the business, I tried to do what I thought  
10 I should be doing but there was no response really from the board, they were having their own interactions among themselves. I do not recall when next they had a board meeting but that we can establish somehow. But, as was the previous case, I was now essentially not invited to – rather, let me put it this way, board meetings were not being convened by myself.

**CHAIRPERSON:** Now on the 19<sup>th</sup>, that ordinary board meeting, you say they asked you to leave the meeting because they wanted to discuss you?

20 **MR TSOTSI:** Yes.

**CHAIRPERSON:** At that time, you were charging the meeting?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** When they asked you to excuse yourself.

**MR TSOTSI:** Correct.

**CHAIRPERSON:** And was there a Deputy of Vice-Chairperson of the board or there was no Deputy of Vice-Chairperson of the board?

**MR TSOTSI:** No, there was no such position.

**CHAIRPERSON:** Yes, so in the absence of the Chairperson, what would happen, would the board members elect a Chairperson for the time being?

**MR TSOTSI:** Yes, they would not really elect but they would decide ...[intervenes]

10 **CHAIRPERSON:** They would just decide, ja.

**MR TSOTSI:** That a particular individual can chair the meeting.

**CHAIRPERSON:** Yes. Okay, alright. Did you get to hear at any stage who was chairing their meetings in your absence? At that time did you get to hear from one source or another?

**MR TSOTSI:** I heard the name of Ben Ngubane mentioned, Dr Ngubane.

**CHAIRPERSON:** Yes.

20 **MR TSOTSI:** And really, I cannot say ...[intervenes]

**CHAIRPERSON:** You cannot say for sure.

**MR TSOTSI:** For sure.

**CHAIRPERSON:** Ja.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** So you stepped out of the meeting, they

had their discussion, did they call you back at some stage on the same day?

**MR TSOTSI:** I think so, I do not know the in-committee meetings what they say.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Chairperson, thank you, the answers you are asking – I mean, the questions you are asking may be answered by the document itself.

**CHAIRPERSON:** Yes, yes.

10 **ADV SELEKA SC:** The minute of the meeting which is found on page 679.

**CHAIRPERSON:** 679.

**ADV SELEKA SC:** Yes, we did refer to parts of the minutes and aspects the Chairperson is dealing with appear further down in those minutes. So at page 679, Mr Tsotsi, of the bundle, is a copy of Eskom – now it says here Minutes of the Eskom Holdings Special Board In-Committee Meeting of 19 March 2015. Now it does not specify the time but you will see later on that this is late at  
20 night. The members present are there, we went through that list. You must be on page 679. On which page are you, Mr Tsotsi?

**MR TSOTSI:** I am on – sorry, on page 679, yes.

**ADV SELEKA SC:** Okay, so the list of the members are present there, you are the Chairperson, as indicated. Can

you see that?

**MR TSOTSI:** Correct.

**ADV SELEKA SC:** Dr Ngubane is also present, we have gone through that list. The questions the Chairperson is asking you, turn the page to 681. At the middle of the page ...[intervenes]

**CHAIRPERSON:** Oh, yes, I can see.

**ADV SELEKA SC:** Yes. At the middle of the page you have Mr Kumalo joined the meeting, resolution by the  
10 board. Do you see that?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Then break and resumed at 23.40. That is twenty to twelve, before midnight. The Chairman was excused from the meeting, Dr Ngubane was elected to chair the meeting. You see that?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Then I think you come back on the next page, page 682. The Chairman then came back to the meeting at 12.37. Mr Tsotsi, that is...?

20 **MR TSOTSI:** Correct, yes, I see that.

**ADV SELEKA SC:** You see that?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Is that twenty-three minutes before one o'clock?

**MR TSOTSI:** Yes.



**ADV SELEKA SC:** After midnight.

**CHAIRPERSON:** That looks like you were out of the meeting for about an hour or so?

**MR TSOTSI:** That is correct, just short of an hour.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Okay and it does appear from the minutes that Dr Ngubane was elected Chairperson after you had left.

10 **MR TSOTSI:** Yes.

**CHAIRPERSON:** And yet you did come back but the minutes do not appear to indicate what you were told when you came back.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Do you remember what – whether you were told anything?

**MR TSOTSI:** My recollection, Chairman, is that I was told that the charges that have been – that are going to be brought against me.

20 **CHAIRPERSON:** Yes. At that stage you were not given any particulars as to what the charges were?

**MR TSOTSI:** No.

**CHAIRPERSON:** Okay.

**MR TSOTSI:** I was not.

**CHAIRPERSON:** And when you came back you were not

allowed to take the chair.

**MR TSOTSI:** I did not take the Chair.

**CHAIRPERSON:** Yes. Okay, alright.

**ADV SELEKA SC:** If I may, Chair? Mr Tsotsi, why did you have to recuse yourself from the meeting?

**MR TSOTSI:** Well, I did not literally recuse myself but they asked me...[intervenes]

**ADV SELEKA SC:** Well, why were you excused? I beg your pardon, they used the word excused from the meeting.

10 "Chairman was excused from the meeting."

Why were you excused?

**MR TSOTSI:** They said to me that the board wants to discuss me and for that reason they would prefer that I not be present when they discuss me.

**CHAIRPERSON:** Do you remember who in the board said that? Among the board members, do you remember who came up with that or do you not remember?

**MR TSOTSI:** Chair, I honestly do not recall.

**CHAIRPERSON:** Yes.

20 **MR TSOTSI:** The probability – oh, wait a minute, wait a minute, this was also every interesting. Now that I see that Mr Kumalo joined the meeting. Chairman, there was something very strange about the way this thing went about. We were sitting in this meeting having this meeting, as indicated here, and the Romeo Kumalo walked into the

meeting.

The moment he walked into the meeting I was then asked to excuse myself because he came from somewhere, I do not know where he came from, it is as though he came and brought some message because he shared a private conversation with one or two of the board members and I seems to recall it was Dr Ngubane, maybe he can tell us if that was him but I seem to think that he did share something.

10 But what I do specifically remember, I even commented about this afterwards, that Romeo Kumalo seems to have brought something which triggered this reaction from them to say right, Chairman, we would like you to excuse us.

**CHAIRPERSON:** Yes. Okay, but you do not know what it is, a message or whatever?

**MR TSOTSI:** I have no idea, Chairman, I do not know.

**CHAIRPERSON:** Yes, but your being asked to leave the meeting happened soon after Mr Romeo Kumalo had come  
20 in?

**MR TSOTSI:** Precisely.

**CHAIRPERSON:** Ja and had come in and talked to one or two members of the board.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Yes, okay. Until that point what was

your assessment of the board towards you?

**MR TSOTSI:** Chairman, I did feel that there was no sense of comfort from the board.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** There was not.

**CHAIRPERSON:** There was some uneasiness.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Yes, okay.

**MR TSOTSI:** Yes.

10 **CHAIRPERSON:** Alright, we focused on this because I asked you certain questions, you were just telling the story about your removal or resignation. You were highlighting what you wanted to highlight.

**MR TSOTSI:** Yes. Chair, if you pardon me, there is something also very important which I forget to mention.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** In relation to all of this.

**CHAIRPERSON:** Ja.

20 **MR TSOTSI:** What happened the day after the suspensions were effected, I then went and had a press conference where I announced this to South Africa basically. By middle of the day – and this press conference was something in the morning, maybe around nine, ten o'clock in the morning.

**CHAIRPERSON:** And that would have been the 11<sup>th</sup> or the

12 March?

**MR TSOTSI:** It was on the 12 March.

**CHAIRPERSON:** It was on the 12 March.

**MR TSOTSI:** I think so.

**ADV SELEKA SC:** The press conference, Mr Nick Linnell talks about in his affidavit. According to him it was after your – the suspensions took place.

**MR TSOTSI:** The following morning because the suspensions finished at about midnight or something like  
10 that.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Yes. Yes, so again, Mr Dan Marokane, which is one of the suspended executives I think confirms that position.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Because he was suspended the next day.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** And then the press conference came  
20 after his suspension.

**MR TSOTSI:** That is correct, yes.

**CHAIRPERSON:** So the announcement of the suspension of the executives happened after you yourself had been suspended?

**ADV SELEKA SC:** No, no. No, he is back to the 11<sup>th</sup> and

12<sup>th</sup>.

**CHAIRPERSON:** Oh.

**MR TSOTSI:** No, I am back to the 11<sup>th</sup> now.

**CHAIRPERSON:** Oh, okay, because the decision to suspend the executives was taken on the 11<sup>th</sup>.

**MR TSOTSI:** That is correct.

**CHAIRPERSON:** So the announcement of those suspension to the public, did it take place on the 11<sup>th</sup> or on the 12<sup>th</sup> or whatever other day?

10 **MR TSOTSI:** It was on the 12<sup>th</sup>.

**CHAIRPERSON:** It happened on the 12<sup>th</sup>.

**MR TSOTSI:** It was my son's birthday that day, I remember very well.

**CHAIRPERSON:** Okay, alright.

**MR TSOTSI:** It was on the 12<sup>th</sup>, Chair, during the morning hours and the issue that I wanted to highlight on that day was that something – let me put it this way, the event that happened after that, you know, turned out that that was probably the worst day I had at Eskom, as an Eskom  
20 Chairman.

**CHAIRPERSON:** What happened?

**MR TSOTSI:** I was informed by the head of Treasury at Eskom that there was a series of phone calls that I was to entertain from our investors. It turns out there were some 52 investors who had organised, you know, a

teleconference, anything from Hawaii to Japan. I mean, that is right across the globe, who wanted to find out what is going on.

And the focus of their interest was what is happening with the financial director in the company? The financial director is the only executive that is mentioned in the main by the people by these investors and they were all asking the same question, what is going on, what is the problem?

10 And, Chair, as I said in my submission at the parliamentary portfolio committee, I felt like it was defending the indefensible. That is how I felt, I was completely drained at the end of that experience because in all conscience I could not really say that there is plausible reason for us to have done what we have done.

So that was the first real feeling of betrayal coming out of that notwithstanding the fact that I had been part of the process myself but, you know, I had to deal with these things on my own and so when that passed, you know, the  
20 feeling settled quite well that I am now in a very uncomfortable position and anything could happen.

So when the 19<sup>th</sup> happened, you know, it was as though it was in the making because of the events that had been taking place prior to that, some of which I have already mentioned.

**CHAIRPERSON:** Now on the 12<sup>th</sup>, when you addressed the press conference, did you address it on your own without any of the board members?

**MR TSOTSI:** No, the board members were present. There was a – I think - it does say, I think in one of the documents, which board members were asked to attend.

**CHAIRPERSON:** Oh, so but you were not alone?

**MR TSOTSI:** No, I was not alone.

**CHAIRPERSON:** Yes.

10 **MR TSOTSI:** Yes.

**CHAIRPERSON:** And did they participate in terms of dealing with questions of you dealt with all the questions yourself and they were just there I guess to support?

**MR TSOTSI:** Chair, it was the only thing that happened, they were just there to support.

**CHAIRPERSON:** Yes, yes.

**MR TSOTSI:** They did not say anything.

**CHAIRPERSON:** Okay. Now – so you dealt with these queries and questions from investors all over the world but  
20 you felt that you were defending the indefensible?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Yes. When you had to deal with those investors, I guess the board members were not there, these were just phone calls that you were answering.

**MR TSOTSI:** Yes, I was all alone.



**CHAIRPERSON:** Yes, yes. Why did you feel you were on your own when you were answering those questions from the investors? Was it simply because you were feeling that you were defending the indefensible but you thought that everybody else in the board thought this was defensible or what was the situation? Why did you feel you were on your own?

**MR TSOTSI:** I felt I was on my own, Chairman, because I did not believe that any of the board members would be  
10 able to substantiate the action in any credible way at all. Apart from the fact that it would look very strange to some investors talking to someone who has been in a business for a month and a half, two months, three months, who would be expected to have the requisite understanding of, you know, Eskom's relationship with its investors.

As you are aware, we discussed in one of those board meetings the road shows and so on, so those kinds of questions they would not have been able to deal with in terms of the expectation of our investors in the  
20 circumstances where things like this are happening.

**CHAIRPERSON:** And you say the investors who called focused simply on the financial director, their questions related to the financial director and what is happening at Eskom but they were not asking about the other executives?

**MR TSOTSI:** Well, they were not – they did mention that they are hearing that some executives have been suspended.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** Some did also question the suspension of the Chief Executive, I must confess, but the majority of them had a concern about, you know, the custodianship of the investment.

**CHAIRPERSON:** Yes, okay.

10 **MR TSOTSI:** Through the - you know the management of the FD.

**CHAIRPERSON:** Yes, yes.

**MR TSOTSI:** So that was really their focus.

**CHAIRPERSON:** Given that it had been said and you said that the suspension of the executives was not based on any accusation of wrongdoing on their part. Why does it seem like it was more difficult to defend the suspension of the financial director than it was to defend the decision to suspend the other executives because all of them were not  
20 said to have – the suspensions were not based on any allegations of wrongdoing?

**MR TSOTSI:** I think, Chair, is because the perception is that if the custodianship of the finances of the because has in a way being placed in jeopardy from their perspective then they should be worried about this company's capacity

to protect their investments because Eskom has got loans and they have been money into the Eskom bonds, etcetera. So I understand pretty well why they were concerned about focusing their thinking and their expression on the financial side of the business, you know, through the enquiries they were making about the financial director.

**CHAIRPERSON:** But in terms of conduct, would you agree that there may have been no basis to distinguish between the FD and the other executives because their  
10 suspensions, all of them, was based on saying there is no allegation of wrongdoing?

**MR TSOTSI:** Absolutely.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** No, there is certainly no differentiation.

**CHAIRPERSON:** Yes, the only difference with regard to the financial director may simple be that certainly in the eyes of the investors her role may have been seen as quite critical for their purposes.

**MR TSOTSI:** That is correct, yes.

20 **CHAIRPERSON:** Ja the basis of defending her suspension would be the same as the basis for defending the others, namely we are not saying that the FD has committed any misconduct.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** All we are doing is there is going to be

an investigation and we think that it would be better if the FD and the other executives are not there when the investigations happen so that employees feel freer to say whatever they might wish to say to the investigators. That is the same story with everybody, is it not?

**MR TSOTSI:** That is right, Chair.

**CHAIRPERSON:** Yes, so that it is not like there is a separate explanation for her, her suspension, different from the explanation for the suspension of the other  
10 executives.

**MR TSOTSI:** That is right.

**CHAIRPERSON:** Ja, okay, alright. If you had not finished what you wanted to highlight you can continue and finalise.

**MR TSOTSI:** Ja, let me just wrap up here, Chairman.

**CHAIRPERSON:** Yes, okay.

**MR TSOTSI:** As I said, the team that went to Cape Town to meet the Minister, and of course I was excluded from that meeting as well. I think it was a Friday the day they went.

20 And the following week, sometime in the middle of the week I then received an invitation to appear before the board to answer to these charges and I went to hear and obviously I organised my legal support and we were given a very tight timeline within which to respond and we requested a postponement and we requested a

postponement and eventually we then had the this meeting on the 30 March.

Now this meeting I think is in the ...[intervenes]

**CHAIRPERSON:** Yes.

**MR TSOTSI:** There should be some record of it, it is in the bundle...

**ADV SELEKA SC:** Page 683.

**MR TSOTSI:** 683.

**CHAIRPERSON:** Yes, that is 30 March.

10 **ADV SELEKA SC:** Correct, Chairperson.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** Yes. Chair, this meeting then was constituted by the board, including myself, and then the board had its legal advisers and I also brought in my own legal advisers and the substance of it really is that the board then asked that there are the charges that have been given and how do I plead in terms of those charges?

I then went on to deal with them – obviously we had prepared in advance with my team and I went on to defend  
20 myself and at the end of my presentation there were one or two interventions by my lawyers and their lawyers on their side and then following that I was asked to recuse myself, which I did, and in essence I was pleading my innocence and that I – there is no reason for me to be pursued in this manner because the essential charges was that I am not fit

to be a director. Yes. Now after a while the board  
...[intervenes]

**CHAIRPERSON:** And the factual basis for that allegations  
that you are not fit to be a director, being what?

**MR TSOTSI:** The four charges that we ...[intervenes]

**CHAIRPERSON:** The four charges that we have looked  
at?

**MR TSOTSI:** That will be – yes, that is right. So at the  
end at some point in the evening the board sent a  
10 delegation to come and talk to me consisting of Dr  
Ngubane and Romeo Kumalo. And they then made a  
proposition to me that if I agree to resign, they would then  
drop the charges against me because they did not want  
there to be a long messy engagement between us.

Now in the interim I had been assured by my  
counsel that the basis upon which these charges were  
founded is quite flimsy and in essence they were easily  
dismissible before a court of law but I had reasoned in my  
own mind that this sort of thing can impugn the reputation  
20 of the business, not least of all mine, and so I thought it is  
in the best interest – my best interest and that of the  
company to step out, accept the offer of resignation and  
then, you know, move away from the company.

So what then happened was, I said fine, I will  
accept but we need to go back to the board so I can tell

the board my response. So I went into the board meeting and of course I told them in some respects something of an earful in terms of what I thought they were doing and at the end of it all I made my request to the board about certain issues pertaining to me personally which were, first of all, that my belief is that I am entitled to my legal defence by the company to which the board readily agreed.

And secondly that I was left with three months or so of my term for the first year because my contract was such  
10 that it was a three year contract renewable every year. So there was about three months left before expiry of the first year and I asked that I should be compensated for balance of the time left. The board responded to say they thought they could do – that they agree to that but that matter is in the hands of the Minister because the Minister is responsible for the remuneration of directors.

And then the third aspect, I think had to do with my request to retain my tablet, I think, and my phone at my own cost. So that the board granted me as well.

20 Then I of course requested time to clear my office, which time I was given.

Then, Chairman, what happened shortly thereafter – of course the media was all over the place and we are talking about 1 a.m. I think by the time we got out of the building but certainly the next day I was inundated by

media. There was a particular interview that I had, I think it was a day after, where I was asked a very specific question and the question had to do with what do I think, how it is that I was in the situation that I was in? And specifically, has the Minister anything to do with it? I responded in the affirmative to say I believe that the Minister has something to do with my removal or had a hand in it.

Shortly thereafter, I think about two days thereafter,  
10 I was informed by Dr Ngubane that the Minister objected strenuously to the statement I made in the media and if I do not retract that statement I will not receive any remuneration and sure enough, almost a week later, I received a letter from the Minister turning down my request for the balance of my term.

That, Chairman, is the essence, the substance of what happened up to the time I literally stepped out of the company.

But one unfortunate fallout also is the fact that  
20 despite numerous attempts to collect my legal fees from Eskom, Eskom has consistently denied paying my legal fees and up to now my fees have not been paid. So that is the essence of what happened.

**CHAIRPERSON:** Well – no, thank you, Mr Tsotsi. It seems the method seems not dissimilar to some of the



methods I have heard evidence about where people, officials in either state owned entities or in government departments or organs of state who were perceived as people who would not cooperate with those who wanted to do wrong would be put on suspension, they would be told that they would face a disciplinary hearing, that it would take long before any charges were put together or sometimes they were not put together and the people were then offered settlements to go away.

10           It happened to Dr Dower(2) at SAA. There has been evidence about how Mr Nxasana, who used to be National Director of Public Prosecutions was removed. His settlement agreement with the government said he is fit to be employed in any senior position, if I recall correctly, but he was removed.

          There may be something similar with regard Mr Vusi Pikoli but you also have – there was Ms Mpshe at SAA as well. There was a CEO at Denel who was put through quite a process and ultimately had to leave.

20           There is a big number of people who were treated like that about whom I have been given evidence. Of course, it also seems that what happened to you is also not very different from what happened to Mr Matona.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** You get suspended and before there

could be a full ventilation of what the issues are, then there is discussion of a settlement. And he gave evidence, I believe you were here, to say in the negotiations those who represented the board said going back to your job is out of the question and he was given 12 months' salary.

So it is very worrying. Ja, okay. Mr Seleka?

**ADV SELEKA SC:** Thank you, Chairperson. Mr Tsotsi, just to emphasise the point the Chairperson is making with you is that when you look at these charges against the  
10 backdrop of the decisions that are taken on 11 March 2015 meeting, the video recordings of which we have played parts of it where we hear that one of the board members saying Mr Nick, we are contracting with you and not ENS.

And you look at subsequent engagements made with him, Mr Nick Linnell, you have seen in his affidavit he says he receives the invitation to attend some of the subcommittee meetings exactly for the purposes of assisting the P & G committee, People in Governance, and the Audit and Risk committee and there is also the board  
20 programme workshop he refers to, all that emanating from the board itself. It puzzles one to thereafter – this is happening of the 11<sup>th</sup> and there is further engagement with him on the 12<sup>th</sup>, on the 13<sup>th</sup> and so on.

So on the 19<sup>th</sup> you have a meeting eight days later, maybe even shorter because Mr Linnell said the email that

cancels his invitation was only received on the 17<sup>th</sup>.

You get a board that resolves to charge you for engaging Mr Linnell. You get a board that resolves to charge you for allegedly Mr Linnell starting to work without board approval. That is charge 2.

And I was asking you how do you deal with those charges but I think you have now provided an answer during your explanation to the Chairperson that your lawyers said these charges will be dismissible, is that  
10 correct?

**MR TSOTSI:** That is correct, Chair.

**CHAIRPERSON:** What was going on in your mind, if you could just give me a picture, as you were sitting there defending yourself to a board that, as far as you knew, had endorsed all of these things with you about Mr Linnell, that board turning on you and charging you with contracting Mr Linnell without following procedures or without them getting involved. What was going on? What were you thinking was happening? Could you believe what you were  
20 seeing?

**MR TSOTSI:** Chairman, I certainly was, with possible description, flabbergasted. I was - you know, one of the questions I asked the board members, I asked them if having appreciation of the gravity of the situation, not only that they placed me in, but they are placing the company in

and I said – and this is occurring at the time when literally only one of you has any knowledge of this company's business. The rest of the board did not have the knowledge of the company's business and I said you then have the temerity to take action of this nature. I think there is something that is seriously wrong with the thinking that has taken you to where we are now. You have not applied your minds to what you have now placed the company in. And so I do not think that you merit to be  
10 where you are.

So I think hopefully they had time to reflect on what I had to say and probably did some introspection to understand at the end of the day the gravity of what they had done. So I hoped that that would happen.

And on a somewhat lighter note, Chairman, in a grave situation, I said to them that one of the things I learnt when I was living in the United States is an old expression that I learnt from my American friends which goes, what goes around comes around. And when I think  
20 of what has happened since I left Eskom, I reflect and say indeed, what goes around does come around because if you look at what has happened to the very people who were orchestrating my departure from Eskom, what has happened.

**CHAIRPERSON:** Also, I have never heard of the

Chairperson of a board being charged by the board and all of that, I had never heard of anything like that before I heard about your being charged.

You have sat in many boards, is that something that does happen reasonably....

**MR TSOTSI:** I have never encountered it, Chair, it is the first time.

**CHAIRPERSON:** Yes. Did they have power to bring charges against you, do you know? Could they bring  
10 charges against or if they did not have confidence in you, they just needed to vote and say they have no confidence in you, that is all or is that something you do not know?

**MR TSOTSI:** I would have to consult my legal adviser, Chair.

**CHAIRPERSON:** Ja, that is something you never applied your mind to.

**MR TSOTSI:** No.

**CHAIRPERSON:** Ja. Okay, alright. Mr Seleka?

**ADV SELEKA SC:** Thank you, Chair. And then charge 3  
20 deals with some media statement.

**CHAIRPERSON:** I am sorry. You know, part of the reason why I ask is because they did not appoint you to the board.

**MR TSOTSI:** Correct.

**CHAIRPERSON:** They did not appoint you as Chairperson.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** So I wonder where they would get the power to dismiss something they did not appoint. Maybe they do but I am saying that is part of the reason why I was asking.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Thank you, Chair. There is – the matter is taken further in charge 3:

10 “The director authorised a commissioning of a media statement in relation to an inquiry into the affairs of the company with the assistance of the consultant without the knowledge and the consent of the board.”

But, Mr Tsotsi, you have gone through the transcripts. There is a point there where Mr Linnell says, I have prepared a draft and they are all excited, want to see the draft he has prepared and one of the board members in fact goes further to say Mr Linnell should work with – I think they say Mr Mark Pamensky or is it Dr Naidoo – on  
20 the draft. Do you recall that?

**MR TSOTSI:** Yes, I do.

**ADV SELEKA SC:** And I will get that portion for the benefit of the Chairperson. And then the remaining charges deal with the integrity of the company and that you have failed to meet the minimum requirements of the

standard of care expected of yourself.

Now it seems to me that if the board was accusing you of all these aspects, pointing a finger at you, the other fingers were pointing at the board itself.

**MR TSOTSI:** Correct.

**ADV SELEKA SC:** That means the board itself would have had to similarly step aside for the very reasons that they were charging you with.

**MR TSOTSI:** That is right.

10 **CHAIRPERSON:** And not a single person, not a single member of this board stood up at any time and faced the rest of the board members and say you people, what are you talking about? We all agreed to this. Not a single person said that when you were being charged with these charges or was there?

**MR TSOTSI:** Chairman, I understood later on that the board had an issue with Norman Baloyi and Norman actually left the board. I think he was also dealt with by the board and he had to leave and he was questioning the  
20 actions of the board. There have been times when Mr Baloyi has made – remember when I made the example of those people who were - at least the spectrum I spoke of, on the liberal said where people are saying we are rushing into this thing, let us think about it, we might get into a situation that we would regret we have gotten into as

against those who wanted things to get done and get done immediately. Now Norman Baloyi was the one person who raised flags continuously and he was very much ignored.

So I heard – I think the people who will come to testify should be able to say because I was not in the meeting.

**CHAIRPERSON:** But at no stage during the time that you were at the meeting with the board either responding to the charges or being told the charges, at no stage did  
10 somebody did say in your presence I want my position to be clear that I do not go along with this because we all went along with this together as a board. Nobody said that in your presence.

**MR TSOTSI:** No, Chair.

**CHAIRPERSON:** Ja.

**MR TSOTSI:** No.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Thank you, Chair, with your permission, the transcript, the relevant part is page 799,  
20 Mr Tsotsi. And Chair, while we go there, I can have it played, please.

**CHAIRPERSON:** Yes, that is fine.

**ADV SELEKA SC:** Thank you, Chair. Timestamp 1.50.50.  
That will be audio 9.1.2.

**MR TSOTSI:** 799?



**ADV SELEKA SC:** Page 799, yes.

**AUDIO PLAYED:**

“You can come to that point so that we get the message across correctly.

Okay, you can do all that in writing. So the messaging is simply saying the board has decided...”

**ADV SELEKA SC:** Sorry, Mr Tsotsi, whose voice?

**MR TSOTSI:** That is the [indistinct] 56.55 Chair.

10 **ADV SELEKA SC:** No, the first one.

**MR TSOTSI:** That is Pat Naidoo, the one before that, I think.

**ADV SELEKA SC:** Okay, let us carry on.

**MR TSOTSI:** Just, you know, what – you said page 799?

**ADV SELEKA SC:** 799, yes of the transcript.

**MR TSOTSI:** Does not reflect what is being said there.

**ADV SELEKA SC:** Does not look like? Let us hear the audio.

**AUDIO PLAYED**

20 “It is just to capture. Captured that correctly.”

**ADV SELEKA SC:** Oh, my junior says I am starting a page early in the recording.

**MR TSOTSI:** Oh, I see.

**ADV SELEKA SC:** Yes.

**MR TSOTSI:** Okay.

**CHAIRPERSON:** So ultimately what is the page number?

**ADV SELEKA SC:** The page number, Chair. Let us start at 793.

**CHAIRPERSON:** 790?

**ADV SELEKA SC:** 793.

**CHAIRPERSON:** Well, 799 which you told us about earlier does have – or does seem to me to have part of what we hear.

**ADV SELEKA SC:** Correct.

10 **CHAIRPERSON:** Where it says:

“Capture all that. Did you capture all that?”

I thought that is what they are saying.

**ADV SELEKA SC:** Correct, Chair, that is – ja, let us play where the Chairperson is.

**AUDIO PLAYED**

“So that we get the message [inaudible – speaking simultaneously”

**CHAIRPERSON:** Yes, I heard that capture, all of that.

That is towards the – that is at the bottom of page 799

20 where it says “capture all that.”

**ADV SELEKA SC:** Let us pick it up there.

**AUDIO PLAYED**

“Do all that in writing. So the messaging is simply saying the board has decided that it is to carry out...”

“Fact finding”

“A fact finding exercise to fix the business, an independent fact gathering exercise. An independent fact gathering exercise. That is all”

**ADV SELEKA SC:** Whose voice is that, Mr Tsotsi.

**MR TSOTSI:** That was Pat Naidoo, “a fact finding exercise.”

**ADV SELEKA SC:** Thank you.

**AUDIO PLAYED**

10 “To fix the business.”

**MR TSOTSI:** Yes, Pat.

**AUDIO PLAYED**

“Right, continue and do, in view of that you have requested these particular ...[intervenes]”

(Speaking simultaneously)

**ADV SELEKA SC:** No, I just stopped it there.

**AUDIO PLAYED**

20 “So the communique will say the board has decided that it will institute a fact-finding inquiry, right, to fix the business.

I think fix implies [inaudible – speaking simultaneously].

To establish the status.

To establish the status of the business.

The true state of the business, to establish the true

state of the business.

That is in capability.

Ja, that is right.

And the word “to” might be a problem because it implies it, it is currently not to.

Okay.

So it is an [indistinct] adjective.

To establish an accurate status of the business.

10 Ja, but Chair, you know what? I am going to go back to what the ambassador said. I think we are getting busy with stuff, we are not wordsmiths.”

**CHAIRPERSON:** That is 793, ja.

**AUDIO PLAYED**

“Can we get somebody who does this...”

**CHAIRPERSON:** That seems to be on page 793 on mine.

**ADV SELEKA SC:** Where they are now? I think my junior is confirming that, Chairperson.

**CHAIRPERSON:** Where they are – where the Chairperson says:

20 “To establish an accurate status of the business”

And then Ms Naidoo says:

“Ja. But, Chair, you know what, I am going to go back to what the ambassador said.”

I think that is where they were just now.

**ADV SELEKA SC:** Correct, Chair.

**CHAIRPERSON:** That is at page 793. Is that where everyone is?

**MR TSOTSI:** For some reason – which – is it the red numbers, Chair, or is the black numbers?

**CHAIRPERSON:** The red ones.

**MR TSOTSI:** The red ones?

**CHAIRPERSON:** 793, red ones.

**MR TSOTSI:** 793?

**CHAIRPERSON:** Ja, towards the bottom.

10 "To establish an accurate status of the business."

**MR TSOTSI:** Correct, yes.

**CHAIRPERSON:** I heard you saying that on the audio.

**MR TSOTSI:** Yes, that is right.

**CHAIRPERSON:** Ja, I think that's where we are, okay alright, then Mr Seleka you guide us from now, at least we know now where we are.

**ADV SELEKA SC:** Where we are Chair, thank you Chair. I want to expedite it.

**CHAIRPERSON:** Ja.

20 **ADV SELEKA SC:** Please take it to 1.50.50 – is it going back – 155.15, 155.15 Transnet.

**AUDIO PLAYED:**

"I would think by now" ...[intervenes]

**CHAIRPERSON:** Hang on we must first know on what page that is.

**ADV SELEKA SC:** That's 797 Chairperson.

**CHAIRPERSON:** 797 okay.

**ADV SELEKA SC:** Against Mr Tsotsi's name.

**CHAIRPERSON:** Yes.

**AUDIO PLAYED:**

10 "Through you Chair or the Minister she has informed her boss, which is the President, so we have to watch out when are they making statements. I would imagine this can have such a positive effect on the public that you would find your Minister and the President will make a statement to this effect. Now we all know he is talking in Parliament today and so if your Minister has told him about it he might also make a statement in Parliament today. Who knows, but you have to anticipate that your announcement might not be the first announcement because if the Minister sprang up and said, President, we're doing this he's going to – politically, he should tell the

20 public, he's the leader of the country, he should stand up and say, guys the Board is doing this and I support it."

Okay now, I think I would obviously have to call the Minister and tell her about the outcome of this, of the meeting, right and I would also indicate to her

that...”

**CHAIRPERSON:** That is your voice Mr Tsotsi?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Yes, you confirm Mr Tsotsi, that’s your voice.

**MR TSOTSI:** Yes, I do Chair.

**CHAIRPERSON:** Ja okay, continue.

**AUDIO PLAYED:**

10 “We intend to send ...[indistinct 1.03.40] statement tonight just about the decision of the Board to do this fact-finding inquiry, just so she knows that is coming out in the media. Now she may have whatever responses she has but, certainly it’s ...[intervenes].

It’s good protocol.

She may want us to have that emailed to her.

Ja, listen to this Chairman, Board”.

**ADV SELEKA SC:** Who’s voice is that Mr Tsotsi?

**MR TSOTSI:** It’s Pat Naidoo.

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

**AUDIO PLAYED:**

“In its pursuit to, can I say it, Board of pursuit in its pursuit of making Eskom world-class, something like that has resolved the Commission an independent fact gathering exercise on the health

and condition of Eskom. To this end the Board has requested four of the top Executives of the company to be relieved of their duties during the period of the fact gathering exercise.

I wouldn't do that, that's premature. I think ...[intervenes]

We still need to have that meeting with them.

10 Ja, I think adjectives like world-class organisation are superlatives which are not necessary because you are business people, that's marketing tool – I agree what you want to do is say, we, as a Board have taken a decision to do this. The reason is, we want to better understand the status – the condition of our capacity and capability and make adjustments as are necessary in the circumstances and then reassure the public that there's no immediate risk that you're concerned about that, they haven't been previously told about. So it's a positive statement with countering negative  
20 ...[indistinct].

**ADV SELEKA SC:** Mr Tsotsi, please confirm, whose voice is that?

**MR TSOTSI:** That was Nick Linnell, who is the last one.

**ADV SELEKA SC:** So, members of the Board are engaging with him?



**MR TSOTSI:** Yes, Chair.

**ADV SELEKA SC:** On what I gather he is formulating a wording for a media statement that Eskom will release after they've suspended Executives.

**MR TSOTSI:** Exactly.

**ADV SELEKA SC:** Continue.

**AUDIO PLAYED:**

"You're going to have to put something together.

To capture all that.

10 Did you capture all that?

But you can work with Nick.

Ja.

And Andrew ...[indistinct 1.06.07] where does he fit in here?

**ADV SELEKA SC:** Let's just go back, there was a female voice at 1.58.11.

**AUDIO PLAYED:**

"But you can work with Nick".

20 **ADV SELEKA SC:** Isn't that – just stop there, whose voice is that, Mr Tsotsi, we hear but you can work with Nick.

**MR TSOTSI:** You can work with Nick, that's Ms Naidoo or Venita, I can't tell it was too short.

**ADV SELEKA SC:** It was either Ms Naidoo or Ms Venita Klein.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Continue.

**AUDIO PLAYED:**

“And Andrew...[indistinct 1.07.02] where does he fit in here”.

**MR TSOTSI:** That was Twaita [?].

**ADV SELEKA SC:** Ms Mabude?

**MR TSOTSI:** Yes, Mabude yes.

**ADV SELEKA SC:** Thank you.

10 **AUDIO PLAYED:**

“Let me just get my...[intervenes].

I did draft something.

Did you draft something?

Ja.

**ADV SELEKA SC:** Pause there. That is Mr ...[intervenes]

**MR TSOTSI:** I did draft something, that was Nick Linnell, did you draft something, that was me asking him, Nick came back and said yes, then I said, so let us have a listen then.

20 **ADV SELEKA SC:** Thank you. So then, that’s charge 3, charge 3,

“The Director authorised a commission with a media statement in relation to an inquiry into the affairs of the company with the assistance of the consultant, without the knowledge and/or consent of the Board”.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** And he's there, he's saying to them, I did draft something and they further engaged with him on that. You see that?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Mr Tsotsi the audios that we have been hearing here are of what was being said in a Board meeting, is that right?

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

10 **ADV SELEKA SC:** Board members are taking part in discussions about what should go into a media statement that is going to be sent out or read out, is that right?

**MR TSOTSI:** That's correct.

**CHAIRPERSON:** And this is happening in a Board meeting?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** You are there, they are there?

**MR TSOTSI:** Absolutely.

20 **CHAIRPERSON:** But later they charge you with saying, you authorised a media statement without their knowledge.

**MR TSOTSI:** That's right Chairman.

**CHAIRPERSON:** How does that happen?

**MR TSOTSI:** I – it beats me, I – that's why I said I was...[intervenes].

**CHAIRPERSON:** What was going on, really here?

**MR TSOTSI:** Chairman there was...[intervenes].

**CHAIRPERSON:** Because people have been appointed to be a Board of a very important state-owned entity but on the face of it, what one is hearing here, is just something unbelievable.

**MR TSOTSI:** Correct.

**CHAIRPERSON:** Well maybe somebody – one of them or more will explain and maybe we don't understand now because they've not explained, maybe when they explain,  
10 we will understand.

**MR TSOTSI:** Correct.

**CHAIRPERSON:** Yes, Mr Seleka.

**ADV SELEKA SC:** Thank you Chair. Let's listen on further Mr Tsotsi, just a little bit more.

**AUDIO PLAYED:**

“But again, it's your decision, I mean, I just – because obviously I've been thinking about.”

Ja, you all need to go ahead and do that.

They're going to leave the offices.

20 Can I just test an understanding...”

**MR TSOTSI:** That's the first time you hear the voice of Zetembe Xhosa.

**ADV SELEKA SC:** Yes and what is he saying?

**MR TSOTSI:** He's saying we are delaying the process in telling the people that they are gone, they are going to go,

presumably talking about the Executives.

**ADV SELEKA SC:** The Executives yes.

**MR TSOTSI:** The executives and they're going to leave the offices.

**ADV SELEKA SC:** I see, thank you.

**MR TSOTSI:** Oh no, my mistake, he's referring to people who would be receiving this information in the organisation, he wanted ...[intervenes].

**CHAIRPERSON:** The Executives, is he referring to the  
10 Executives?

**MR TSOTSI:** I think he is referring to the staff at Eskom, I think.

**CHAIRPERSON:** Which staff?

**MR TSOTSI:** That the organisation should know that – this intent to carry out the inquiry.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** So, the media statement, the idea was, it should go out before the staff leave the organisation.

**CHAIRPERSON:** Oh okay.

20 **MR TSOTSI:** I think that's what he's talking about here, I think.

**CHAIRPERSON:** I got the impression – maybe wrongly, that the discussion is the Executives who are to be suspended should get the information as soon as possible because they are going to go, but I may have completely

misunderstood.

**ADV SELEKA SC:** That was my impression as well Chair.

**MR TSOTSI:** No.

**ADV SELEKA SC:** Well Mr Tsotsi you were there, you would know better.

**CHAIRPERSON:** Ja, he would know better.

**ADV SELEKA SC:** Please continue.

**AUDIO PLAYED:**

10                   “Would you – as I understand it, I might not be right  
but”...[intervenes].

**ADV SELEKA SC:** Can you please just go to where he starts, Mr Linnell, I believe that’s him, Mr Tsotsi?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** And what page are we going to be on now?

**ADV SELEKA SC:** It’s page 801 Chair.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** At the top of 801.

**CHAIRPERSON:** Okay.

20                   **AUDIO PLAYED:**

“...table decision to do this, the reason is, we want to better understand the status of the – the condition of our capacity and capability and make adjustments ...[intervenes].

**ADV SELEKA SC:** No, no stop there, no that’s way back.

**CHAIRPERSON:** 799.

**ADV SELEKA SC:** You are on the wrong place. Okay, start at 158.39.

**AUDIO PLAYED:**

“...Ja you all need to go ahead and do that.

They're going to leave the offices.

Ja, Can I just test an understanding with you? As I understand it, I might not be right, but did the Minister inform any of the individuals that they could, well be, suspended.

10

No, the Minister is not involved.

The Minister is not involved.

This is a Board...[intervenes].

This is a Board discussion.

Okay”.

**ADV SELEKA SC:** Stop there.

**MR TSOTSI:** Okay so, these various members of the Board was making the statement that, in response to the question by Nick Linnell as to whether the Minister has informed any of the individuals that could well be suspended, and all of them were saying no the Minister is not involved.

20

**CHAIRPERSON:** So they don't – I don't understand that the Minister wouldn't be the person to tell the Executives, you are suspended.

**MR TSOTSI:** Well, Chair, I think the idea here, if I understand it, is that the decision to suspend is made by the Board so it's the Board's responsibility to inform the Executives that they are suspended. I think that's what Nick was referring to here, I presume, as against informing the Minister about the suspension of the Executives.

**CHAIRPERSON:** Well, I thought that Mr Linnell was asking whether the Minister had informed the Executives who were going to be suspended, that, that was his  
10 question.

**MR TSOTSI:** That's right yes.

**CHAIRPERSON:** And then somebody says, no the Minister is not involved another one says, no our Minister is not involved and then another, the one says, this is a Board decision. So I'm just saying, maybe it goes back to the point you made yesterday and today, that this Board hasn't even begun to understand the business of Eskom and to – they don't know the Executives that they are making decisions about but somebody, one or more of them  
20 seems to – or maybe that was Mr Linnell, maybe I'm being unfair to them. Mr Linnell might have thought that the Minister would be the one to tell the Executives.

**MR TSOTSI:** Yes, that's right.

**CHAIRPERSON:** Not the Board members, okay ja, maybe I was being unfair to them, okay.



**ADV SELEKA SC:** Chairperson, he makes his point clearer later on, Mr Linnell himself.

**CHAIRPERSON:** Yes, okay.

**ADV SELEKA SC:** Let's listen on.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Because it might answer the very question you have in mind.

**CHAIRPERSON:** Yes, okay.

**ADV SELEKA SC:** So, because – let me explain it after  
10 that.

**CHAIRPERSON:** Okay.

**AUDIO PLAYED:**

“...but did the Minister inform any of the individuals that they could well be suspended?

No, the Minister is not involved.

Our Minister is not involved.

This is a Board discussion.

This is a Board discussion.

Okay”.

20 **ADV SELEKA SC:** So – pause there. You see the answer to that question, Mr Tsotsi?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** It's not an answer to that question, it's a response to the question but it's not an answer to the question. The question is whether, did the Minister inform

any of the Executives whether they could be suspended.

**MR TSOTSI:** Right.

**ADV SELEKA SC:** The Board members answer, they say, no this is a Board decision.

**MR TSOTSI:** I suppose – well sitting in the meeting and listening to Nick saying what he said, Chair, it says to me that the suspension of Executives, probably should be announced or the said Executives should be informed by the Minister as against the Board, that's how I interpreted  
10 what Nick was saying. So, what the Board members are responding to is that, no, it is the responsibility of the Board to do that and not of the Minister, that is why they are saying the Minister is not involved ...[intervenes].

**CHAIRPERSON:** Because it is a Board decision.

**MR TSOTSI:** Yes, it is a Board decision. So, the idea of communicating the suspensions to the Executives should not involve the Minister.

**ADV SELEKA SC:** Let me put a different proposition to you, because you'll see what Mr Linnell says thereafter.  
20 Mr Linnell seems to suggest that one of the Executives has prior knowledge that they are going to be suspended. Could that be what Mr Linnell is saying? Just read further what his response ...[intervenes].

**MR TSOTSI:** Yes, I see that yes.

**ADV SELEKA SC:** Yes, just read it.

**MR TSOTSI:** He says,

“Okay, it might not be so, in which case they already know”.

**ADV SELEKA SC:** In other words, so they could have been informed by the Minister. So he’s not asking a question of authority to make the decision, he’s asking whether there is prior communication, which then makes one of the Executives to have prior knowledge of the decision before it is made, that’s exactly his point.

10 **MR TSOTSI:** Okay, I see.

**ADV SELEKA SC:** So what – the impression one – it’s not even an impression, because what you see from the deliberations or discussions in this meeting, and you see that right at the beginning – and I hope the technician will help me, very quickly, I’m going to refer you to the second of the audio recordings, time stamp 22.45, Chairperson I’ll give you the page reference number, I think it’s page 879.

**CHAIRPERSON:** Page?

**ADV SELEKA SC:** 879.

20 **CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Because it’s a long piece Chairperson, let’s start on page 880, time stamp 22.47, and 245

**AUDIO PLAYED:**

“...the right way.

Correct, I agree.

...[indistinct] I want to compare Mr ...”

**ADV SELEKA SC:** Whose voice is that Mr Tsotsi?

**MR TSOTSI:** That’s Gwaita Mabuda.

**ADV SELEKA:** Thank you.

**AUDIO PLAYED**

10 “We are in South Africa in case we ...[indistinct]  
forgotten. We are in South Africa and the problem  
in South Africa is that most things are discussed on  
these and I don’t want us to leave this meeting  
forgetting that in as much as we have the  
responsibility to take care of Eskom we have a  
responsibility to protect our leaders. The point that  
we have said here ...[indistinct] here to say means I  
must be excused on ...[indistinct] that we talked  
together about. It is something that we need to  
take very seriously. The mention of the President in  
these ...[indistinct] is something that we need to  
know that it is wrong. If it is mentioned to  
emphasize something we must not, even one person  
20 must leave with the ...[indistinct] because we know  
...[indistinct] and for him to or for us to open an  
attack as well at our level that could be – that  
would result in him being attacked further than he is  
now is not right, and for us to as ...[indistinct]  
...[intervenes]

Of its process.

...[Indistinct] the Minister might have given us guidance but she cannot own this business, we need to own it and the mention that ...”

**ADV SELEKA SC** Do you see that Mr Tsotsi.

**MR TSOTSI**: Yes.

**ADV SELEKA SC**: We can't hear her properly, but you could read ...[intervenes]

**CHAIRPERSON**: Remember to raise your voice.

10 **ADV SELEKA SC**: Thank you Chairperson. We can't hear her properly on the audio but the transcription could assist us and if you could read that last part. There is a part where she says we must protect our leaders, did you see that?

**MR TSOTSI**: Yes I saw that.

**ADV SELEKA**: The next page, can you start from there.

**MR TSOTSI**: It says ...[intervenes]

**CHAIRPERSON**: Is that on 879 ...[intervenes]

**MR TSOTSI**: 880.

20 **CHAIRPERSON**: 880 okay.

**ADV SELEKA**: Thank you Chair, thank you Mr Tsotsi.

**MR TSOTSI**: It says – she says herein as much as we have responsibility to take – I don't know what this is – we have a responsibility to protect our leaders, the point that we had said here was when the Minister was here to say

the Minister must be excused on some of the decisions that we need to report to her about it is a good – it is something that we need to take very seriously. The mention of the President in this boardroom is something that we need to know that it is wrong, it is – if it is mentioned to emphasize something we must not, not even one person must leave with the word President because we know the attack against government through our President and for him and for us to open an attack as well at our  
10 level that will result in him being attacked further than he is now. It is not right and for us to, as the doctor says we need to take ownership of this process. He might have been shady, the Minister might have given us guidance but she cannot own this process. We need to own it and remember that the newspaper is going to outline that she arrived after this inspired her. So it means therefore that we can't – we need to defend we need to always make sure that we prevent our leaders and we fail to do that, we have failed Eskom as well, and we have failed the country if we  
20 are part of people that are sabotaging effectively our leaders we have failed.

**ADV SELEKA SC:** Thank you Mr Tsotsi. Right, you may – well you could explain to the Chairperson the context in which that statement was made.

**MR TSOTSI:** Okay.

**ADV SELEKA SC:** Because we understand from you that you had met with the President.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** We understand from your evidence but you had told about the President is the one who asked you to test the proposal.

**MR TSOTSI:** Correct. Chair the – this sentiment came through in the meeting of the 9<sup>th</sup>, the very first time we dealt with this matter to the extent that there was it is said  
10 as a set of minutes that mentions the President and there is another set of minutes that doesn't mention the President, because some members felt that we shouldn't invoke the name of the President in our discussions or minutes so this sentiment is once again coming across when the deliberation as we had said earlier, remember earlier when Nick made the suggestion that if we don't move quickly we might find that the President may want to put out a statement about what is happening at Eskom, so there is a certain or there was a certain reluctance on the  
20 part of one or two of the board members to mention the name of the President and they were very uncomfortable when I specifically spoke about the fact that I had been summoned to the President's residence and had a meeting with him, there was some level of discomfort about that, so this is reflective of the same sort of discomfort once the

President's name is mentioned in a board meeting.

**ADV SELEKA SC:** And we see there too also that Ms Mabude says the Minister might have given us guidance but we must own this process. Right, what was that guidance?

**MR TSOTSI:** When the Minister came to speak of course the Minister declared her position regarding not only the inquiry itself but the suspensions and as I said earlier so I am presuming that she is referring to the fact that the  
10 Minister gave her support to the Board for the carrying out of the inquiry and as well as effecting the suspensions, so I am presuming that she is referring to that aspect.

**ADV SELEKA SC:** So it appears to be a clear acquiescence by the Board in a proposal made from outside of the Board to initiate an inquiry and suspend executives. Is that a fair assessment of what is happening?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** As I said to you yesterday the Board is  
20 succeeding, and I will say this time around not a demand, but a request/proposal which originates outside of the board.

**MR TSOTSI:** That's correct.

**ADV SELEKA SC:** And it is taking a conscious decision to own this process.



**MR TSOTSI:** Yes.

**ADV SELEKA SC:** It may have originated outside but they are deciding let's own it to protect our leaders. Correct, is that a fair assessment?

**MR TSOTSI:** That is a fair assessment yes.

**ADV SELEKA SC:** And so your charges must be understood in the context of this meeting.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** So we can't divorce your charges from  
10 this meeting, is that correct?

**MR TSOTSI:** Yes absolutely.

**ADV SELEKA SC:** Thank you. Chairperson I have got one last question, Mr Tsotsi you – the issue of Sumitomo came up yesterday and you talked about it in the context of Mr Koko.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** In his statement to the Parliamentary Portfolio Committee and in his affidavit to this Commission he outlines that aspect in regard to the suspension of Mr  
20 Malesela, what's the surname, help me with the surname again?

**MR TSOTSI:** Sekhasimbe.

**ADV SELEKA SC:** Sekhasimbe, that he had been suspended and you wanted that suspension to be reversed. You, according to him, sends Mr Matona to him to reverse

the suspension otherwise he says, him and Mr Matona would be suspended and according to him he says their suspension on the 11<sup>th</sup> of March 2015, he believes, was orchestrated by you in relation to that aspect of his refusal to un-suspend, the word he's used, Mr Malesela Sekhasimbe, you response to that?

**MR TSOTSI:** Chair, what...[intervenes].

**ADV SELEKA SC:** Sorry, what I would like you to tell the Chairperson, is whether the underlying reason for the  
10 suspension of Mr Koko and Mr Matona had to do with the failure by him to reverse or withdraw the suspension of Mr Malesela Sekhasimbe?

**MR TSOTSI:** Chair, that is incorrect, that is without a doubt, incorrect. Mr Malesela, when I saw his affidavit, speaks of this incident as having occurred on the 8<sup>th</sup> – Sunday the 8<sup>th</sup>, the same day I was at the Presidency and that I asked Mr Matona to instruct him to un-suspend this gentleman that he had suspended in his division. No, I was here when Mr Matona was giving his evidence, he  
20 clearly indicated – and sorry before I get there, to say then if I don't – if he does not suspend this gentleman in his division then – or un-suspend him I'm sorry, if he does not un-suspend him, I will then suspend Mr Matona and himself, hence, that is the reason why he has been suspended. So, I'm saying that, because he claims that

this communication with Mr Matona took place on Sunday, for me that leaves much to be desired because, Mr Matona, when he was here clearly made a statement to the effect that the first time he encountered this idea of suspension was on the afternoon when he was called by the Committee to be addressed on the issue of suspension. I would have expected Mr Matona, if that were the case, to have indicated clearly that he'd heard of the suspensions of himself and he heard about it as early as Sunday when I, 10 purportedly phoned him. So, I reject what Mr Malesela is saying, he is a good Engineer Chairman but he has a great imagination as well, which two things don't seem to go together. So, I think – I certainly do not agree with this statement.

**ADV SELEKA SC:** Thank you, Chairperson, that wraps my questions to Mr Tsotsi, Chair.

**CHAIRPERSON:** Thank you very much Mr Tsotsi, if, later on, because the Commission's investigations continue, if later on there is something we wish you to come in to 20 clarify, we will ask you to please come back but we will try and make sure that we don't ask you to come back unless it's really necessary. Your legal representative may be wishing to re-examine you, I'm going to ask him whether he wishes to do so, would you like to re-examine or you have no re-examination?

**ADV NGCEBETSHA:** Thank you Chairperson, I will have re-examination. During the lunch break, I engaged my colleague, Mr Seleka and intimated to him that perhaps you'll give guidance whether you wish us to do that now or you have other witnesses and we can deal with it in the morning?

**CHAIRPERSON:** Do you have an idea of how long you might be with – if you were to re-examine now?

**ADV NGCEBETSHA:** I'd imagine about half an hour,  
10 maximum 45 minutes.

**CHAIRPERSON:** About half an hour, what is the time now?

**ADV NGCEBETSHA:** I'm mindful of the timeframes of yesterday.

**CHAIRPERSON:** Yes, well before we start with another witness it would be better to finish with Mr Tsotsi, it may be that – I see it's twenty past four, it may be that we should take a short adjournment. The witnesses who were supposed to have testified today, let's talk about that, how  
20 long would the next witness be, you think Mr Seleka, do you have an idea?

**ADV SELEKA SC:** Chairperson they said one Judge said any estimation of time that a legal practitioner give you multiply it by two. Let me try to give the Chairperson an answer during the adjournment.

**CHAIRPERSON:** Yes, you know what I am thinking is that next week I think there is room for hearing some witnesses next week, now it may well be that if some of the days next week are available and all concerned are available it may well be that we have to choose whether we move everybody by one day so those who were to testify today testify tomorrow, those who were to testify tomorrow testify on Friday and then we find a day next week when we can complete or whether we take today's witnesses and put  
10 them next week on one of the days and then tomorrow continue with the witnesses who were going to give evidence tomorrow and Friday, so maybe if we take this adjournment you can apply your mind to that as well as discuss with whoever you might be able to discuss with, who may be affected.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** With that arrangement.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** And that might affect how far we go  
20 today but I think we should if possible try and get Mr Tsotsi to be re-examined so that if possible he is done.

**ADV SELEKA SC:** That is a sensible approach.

**CHAIRPERSON:** Ja, ja, so let's take an adjournment  
...[intervenes]

**ADV SELEKA SC:** Each of the remaining witnesses will

not be – each of the remaining witnesses Chair will not be less than three hours.

**CHAIRPERSON:** Will not be less than three hours.

**ADV SELEKE SC:** Will not be less than three hours.

**CHAIRPERSON:** Yes, yes, okay alright, let us take this adjournment and it is nearly twenty five past, shall we say we resume at quarter to, just to give a little bit more time to discuss.

**ADV SELEKE SC:** Indeed, yes thank you Chair.

10 **CHAIRPERSON:** Okay, so we will resume at quarter to five. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** He will be asking you questions aimed at giving you a chance to clarify whatever he thinks might need clarification. Okay.

**MR TSOTSI:** Thank you.

**CHAIRPERSON:** Yes Mr Ngcebetsa.

20 **ADV NGCEBETSHA:** Thank you Chairperson. Just a few points Mr Tsotsi that I would like you to clarify. You were asked by the Chairperson earlier in your evidence that to the extent that you did not apply for the first term as a director and the fact that Mr Tony Gupta if I recall well would have intimated to you that we put you in we could take you out

whether you knew how it came about that you were appointed. Now in your evidence you mentioned that Mr Siyabonga Mahlangu approached you. Do you want to tell the Chairperson what the nature of your relationship with Mr Mahlangu was that would have led him to approach you?

**MR TSOTSI:** Chair Mr Mahlangu and I got to know one another with the work that we were doing in the ANC. And I had...

**CHAIRPERSON:** I am sorry that you were doing?

10 **MR TSOTSI:** In the ANC the African National Congress.

**CHAIRPERSON:** Oh you knew him from the ANC?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Okay alright.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** That is prior to your taking your first term as Chairperson of the Eskom board?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** You knew him already?

20 **MR TSOTSI:** Yes. I used to lead some discussions within the workshops and the work that we were doing inside the ANC and at times I would see him attending some of these and having had the experience I had when I was working for Eskom there were certain aspects which I was charged with to – to assist in growing the consciousness of you know part of the political school it will – work we were doing. So

Mahlangu got to know me then and I think out of that grew the interest once he was now senior enough and was now the advisor to the Minister.

**CHAIRPERSON**: Hm.

**MR TSOTSI**: It seems as though he latched onto those things.

**CHAIRPERSON**: Hm.

**MR TSOTSI**: That experience he and I had at that time.

**CHAIRPERSON**: Hm.

10 **ADV NGCEBETSHA**: Did I understand you correctly that you said you used to work for Eskom?

**MR TSOTSI**: Yes of course I mean I think I – he also was aware that I worked for Eskom for what nine years in a senior capacity.

**CHAIRPERSON**: Ja that is previously before you became Chairperson of the board?

**MR TSOTSI**: Yes correct Chairperson.

**CHAIRPERSON**: So he knew you had experience of working at Eskom?

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

**CHAIRPERSON**: Okay.

**ADV NGCEBETSHA**: Thank you very much. If I may move to the next point then. Mention was also made of the meeting that was initiated by Ms Dudu Myeni former Chairperson of the SAA and the fact that she facilitated this



meeting according to your evidence which occurred as I recall on the 8<sup>th</sup>.

**CHAIRPERSON**: Just raise your voice Mr Ngcebetsha.

**ADV NGCEBETSHA**: Thank you. That occurred as I recall on the 8 March in Durban at the President's residence. Now please clarify in your own mind and knowledge why a member of another state owned entity unrelated to Eskom business would be in a position to facilitate a meeting between you as the current Chairperson and the President of  
10 the Republic?

**MR TSOTSI**: Chair apart from having been colleagues with Dudu because we were both in the SOE space we knew one another in that fashion but I think in this instance the fact that I was aware that she had a close relationship with President Zuma and she chaired his foundation so – and besides that I do recall at some time in my communication with President Zuma that he did say to me that should I need to see him urgently I should feel free to ask Dudu to make arrangements for such a meeting. So at the time then when  
20 Dudu came forth and said this ...

**CHAIRPERSON**: Ms Myeni

**MR TSOTSI**: Ms Myeni.

**CHAIRPERSON**: Ms Myeni ja.

**MR TSOTSI**: Said this...

**CHAIRPERSON**: I just want to make sure that we – we stick

to ...

**MR TSOTSI:** Yes.

**CHAIRPERSON:** What is acceptable of course her name is Dudu but let us refer to her as Ms Myeni.

**MR TSOTSI:** So at the time when Ms Myeni made the call to me and the request I understood that indeed this is a plausible communication coming from the President.

**CHAIRPERSON:** Hm.

**MR TSOTSI:** So I had no qualms about the fact that I am  
10 being called by somebody who is not related to the Eskom business.

**CHAIRPERSON:** Hm.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Are you able to remember when it was that President Zuma said to you should you need to see him urgently or speak to him urgently you should free to connect Ms Myeni who would then make all the arrangements. Are you able to remember around about when would – that would have been in terms of the year obviously. I am not looking  
20 for the exact date.

**MR TSOTSI:** Chair it could possibly have been maybe in 2013.

**CHAIRPERSON:** 2013?

**MR TSOTSI:** Yes. It could have been 2013.

**CHAIRPERSON:** Okay.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Would that have arisen out of any meeting that the Chairpersons of the boards of different SOE's might have had with Mr Zuma? Or you – you were having a meeting with him and he mentioned this. It is not like you had a meeting with him and Ms Myeni and he mentioned this.

**MR TSOTSI:** Yes I – it was – I was having a discussion with him at the time.

**CHAIRPERSON:** Yes.

10 **MR TSOTSI:** In [00:08:08]

**CHAIRPERSON:** Just the two of you?

**MR TSOTSI:** Yes just the two of us.

**CHAIRPERSON:** Okay and then he said should you need to see him urgently or talk to him urgently the person to contact would be Ms Myeni?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Yes. At that time did that surprise you or not really?

**MR TSOTSI:** No Chair.

20 **CHAIRPERSON:** In terms of what you knew?

**MR TSOTSI:** It did not surprise me because as I said I knew that she had been at the time the Chairperson of the Jacob Zuma Foundation.

**CHAIRPERSON:** Hm.

**MR TSOTSI:** And so her closeness with the President was

you know a matter of public knowledge.

**CHAIRPERSON:** Do you recall whether this meeting between you and him was at the Presidency or the Presidential residence Mahlamba Ndlovu or elsewhere?

**MR TSOTSI:** No Chair it was definitely not. I – it could have been in Cape Town I just have a sense that there – something was happening in Cape Town.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** And I was there.

10 **CHAIRPERSON:** Ja. In his residence in the office or maybe at some function?

**MR TSOTSI:** No it should have been at some function.

**CHAIRPERSON:** Oh okay.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Okay.

**CHAIRPERSON:** Yes.

**CHAIRPERSON:** It is just that it sounds strange to me because I would have thought that you – your discussion would have been that if you needed to talk to him about  
20 Eskom work, I am assuming it was during the time that you were Chairperson of Eskom?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** And I would have thought that he would say and maybe he would not need to say this should you need to see me you can phone – you can phone my office

and arrangements can be made. So I am – it just seems strange to me that he would say if you need to see me urgently just contact Ms Myeni and he does not ask you to contact his office. As I say he would not need to say that because you would know if you need to see him you contact his office.

**MR TSOTSI**: Chair I – I hear what you saying.

**CHAIRPERSON**: Ja.

**MR TSOTSI**: But I did not put too much credence in it.

10 **CHAIRPERSON**: Yes.

**MR TSOTSI**: Into that.

**CHAIRPERSON**: No, no that is fine. It is just that it is a piece of information that you have just mentioned now and it is – yes Mr Ngcebetsha.

**ADV NGCEBETSHA**: Thank you Chairperson. If we may move to the point regarding the donation or support or put differently attendance to the ANC January AIDS dinner – business dinner as it was discussed in Nelspruit on the 2014 – 2015 January if I understood well. Question was and  
20 correctly so why would Eskom being a state owned enterprise be seen to be partisan in donation a political party? Now your response obviously was what it was. Did you perhaps try and follow through on this by any chance to verify what the true state of facts may be?

**MR TSOTSI**: Yes Chair I certainly was concerned about the

– your concern on this matter and I thought to myself maybe it might be useful if I could find and get some information on this. And I spoke to a gentleman who at the time I was – at the time of this particular event was the Director of – or was the – yes the Director of Communications at Eskom. And I sent him a message to say look I am at the commission and this matter has come up can you shed any light on whether actually Eskom actually paid money to the ANC or the ANC benefited financially from Eskom at the event. And he sent  
10 me a message back to say as far as he recalls there were no payments that were made to the ANC at that particular event.

**ADV NGCEBETSHA:** How was this communication received or sent by you?

**MR TSOTSI:** It was a whatsapp message yes.

**ADV NGCEBETSHA:** But with your permission Chairperson it appears as a very short exchange if I may ask you to just read it to number 2.

**CHAIRPERSON:** I wonder whether – because I think it is something important. Maybe the person could be asked to  
20 depose to an affidavit rather

**ADV NGCEBETSHA:** Ja.

**CHAIRPERSON:** To depose to an affidavit and I think the commission can just investigate further also. So maybe he might not need to read it but.

**ADV NGCEBETSHA:** That should suffice.

**CHAIRPERSON:** Ja that should suffice. Ja.

**ADV NGCEBETSHA:** Ja. But certainly what is more important is what your understanding of why you had to honour the appearance at the ANC Gardena – what was your state of understanding?

**MR TSOTSI:** Yes as I said I took it that there was an opportunity to state the support that Eskom is giving to its customers and to the public in general through the 49M Campaign and that there was an opportunity. Apart from that  
10 to speak to a large customer base of Eskom both present in the room in the form of the business people that were there and others who were there and especially those who were accessible by via the television of the South African Broadcasting Corporation. So I took advantage of that and that is really the essential reason why I was there.

**CHAIRPERSON:** Hm.

**ADV NGCEBETSHA:** Put differently were you aware at the time of appearance there that Eskom as was suggested would have paid a fee to – for you to sit at the table?

20 **MR TSOTSI:** No I was not aware at all. That thought never crossed my mind at all.

**CHAIRPERSON:** Hm.

**MR TSOTSI:** Ja I just was not aware Chair.

**CHAIRPERSON:** Hm.

**ADV NGCEBETSHA:** If I may move on I think this probably

is my last point.

**CHAIRPERSON:** Hm.

**ADV NGCEBETSHA:** You mentioned that prior to the suggestion proposal instruction depending on who is listening and how they receive it about the inquiry into the affairs of Eskom that you yourself at some point harboured a view which you expressed to some of your board members perhaps in an informal session the previous year about an independent assessment as you put it. Could you clarify  
10 what you meant by that?

**MR TSOTSI:** Okay Chair what was in my mind at the time I was thinking about an independent assessment of Eskom's situation was we needed to engage an inquiry that would illicit where the difficulties Eskom is experiencing are and as I said in my testimony by the time I was invited to the Presidency – to the President's residence to talk about this the idea was not new to me at all. I had canvassed the idea with a few individuals.

At the time my thinking was that I would like with the  
20 permission of the stakeholders who would be interested or impacted by this to put together a high – very high level think tank or an expert advisory body to deal with the Eskom situation.

And the reason why I felt I needed to do this is because increasingly I was becoming aware of the fact that



Eskom is reaching a point where it cannot solve its own problem by its own. And one reason for that Chairman is the tremendous amount of shall I say interest in Eskom from a variety of stakeholders.

There are so many entities and bodies and individuals and so on that have a stake in the company that as you want to drive the business in one direction you run into a situation where a certain stakeholder is not happy with that direction and you try something else you think will work.

10 The same thing happens.

So I felt there was a need for a very high level group of experts and I started to speak to some people primarily in the private sector at the time just to test the ground with certain people that I felt could be role players there. Some from overseas.

And so my idea was then coupling that with doing an inquiry on Eskom would then result in a situation where there is an independent understanding of where Eskom's problems lie. And so it would give the opportunity to an independent  
20 group of – or a group to see to what extent they can infuse their own thinking and support of this to ensure that Eskom is able to get out of the situation that it is now relatively I am inhibited or encumbered by a lot of self-interest that exists already.

So that is one of the reasons why I had an interest let

alone the fact that obviously the company was bleeding and it needed to get some independent way of assessing what its problems are. And obviously in such a process there was no contemplation of anything about suspensions and this sort of thing.

So I just feel Chairman that unfortunately that process pretty much was hijacked and it defeated the whole intent that I in my mind had had to the extent that even I was removed from the situation.

10 So there was – what I would call fairly noble reasons why I had an interest in the whole question of an inquiry at Eskom. It had very specific intents. So I just thought that because I really did not elaborate on that I needed just to mention that and – there are people out there who know about this intention that I had.

**ADV NGCEBETSHA:** Is there following through on this very point an organisation of a similar to Eskom anywhere else that perhaps strives and is a model you have wished to consider in that process?

20 **MR TSOTSI:** Yes Chair Eskom as being a member of an international organisation consisting of other utilities and so one has had the opportunity to be exposed to very successful Eskom's all over the world.

And incidentally that you should ask that because I then even had the thought that is now down the line that with

the difficulties that we are experiencing now one could contemplate some sort of partnership with a company that does exactly the same thing that Eskom does which practically mirrors Eskom and one of those companies is a company called CAPCO who is very successful Korean electricity company in South Korea. It is a little – about one and a half times the size of Eskom but with the same vertically integrated setup as Eskom with the same energy mix as Eskom and even more.

10           So I said to myself even in the current environment where there is a lot of speculation out there about how to improve Eskom's current performance where there are thoughts about private sector investments and this type of thing. I just feel that had I had the opportunity I think we would have had a good chance to have good go at what we can do with Eskom given that there are other likeminded and like-structured entities such as the ones I am talking about.

**CHAIRPERSON:** Of course, when you talk about other Eskom's of the world it is said that there was a time when  
20   our Eskom was the envy of the world. That is how respected it was once upon a time.

**MR TSOTSI:** Absolutely.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** Absolutely Chair. Founded on very free, very basic principles.

**CHAIRPERSON:** Hm.

**MR TSOTSI:** Produce and supply electricity at an affordable and reliable way. Create employment with the purpose of creating expertise along with it and make sure that you are self-sustaining. Those are the only three things Eskom is required to do. That is the mandate Eskom had at its inception.

**CHAIRPERSON:** Hm.

**MR TSOTSI:** And that is exactly the same mandate Eskom  
10 has today. So all you are doing – all we were striving for is to bring Eskom back to that basic mandate of those three requirements that is all. And I think the support Eskom can get exists out there without the concerns of privatisation and over corporatisation and all of those concerns that a lot of stakeholders at Eskom had.

**CHAIRPERSON:** Hm.

**MR TSOTSI:** And obviously you are talking about a government owned entity having a negotiated arrangement with another government owned entity.

20 **CHAIRPERSON:** Hm.

**MR TSOTSI:** So I think there are ways we just need to be willing imaginative.

**CHAIRPERSON:** Ja.

**ADV NGCEBETSHA:** Thank you Chairperson I must indicate that Mr Tsotsi is quite passionate about this aspect and

within the constraints of re-examination I will not take it further.

**CHAIRPERSON:** Ja. No, no that is alright.

**ADV NGCEBETSHA:** But I thought it was important to.

**CHAIRPERSON:** Ja.

**ADV NGCEBETSHA:** To link as it were his concept of an assessment independent and what that would contemplate.

**CHAIRPERSON:** Yes, Yes.

**ADV NGCEBETSHA:** And the coincidence of an inquiry.

10 **CHAIRPERSON:** Yes.

**ADV NGCEBETSHA:** That in his evidence he says was hijacked.

**CHAIRPERSON:** Ja.

**ADV NGCEBETSHA:** Now just to complete this point Mr Tsotsi. You have said in your view this noble initiative of an inquiry standard to suspensions as you testified and others did appears to have been hijacked. Now my intentions is not for us elaborate so much into that I am sure the Chairperson will make his own determination on the facts as he receives  
20 them. However of interest I just want to understand if you did take note and my apologies Chairperson, I may not be able to refer you to the exact pages.

**CHAIRPERSON:** No that is fine.

**ADV NGCEBETSHA:** Because I do not have the bundle.

**CHAIRPERSON:** That is fine.

**ADV NGCEBETSHA:** But certainly, my recollection of Doctor Ngubane's affidavit amongst other things discloses that he has an erstwhile partner of Mr Salim Essa in a private business of their own which according to him says it never really took off. Were you aware of this at the time that he joined the board?

**MR TSOTSI:** No Chairman absolutely not.

**ADV NGCEBETSHA:** Was this more importantly ever disclosed at any point under the declaration of interest if it  
10 so happened that there would be such?

**MR TSOTSI:** I would have known if that was the case and I do not recall that it happened.

**ADV NGCEBETSHA:** Secondly and I am trying to rush. Mr Romeo Kumalo public knowledge that he resigned fourteen months after appointment, you aware of that?

**MR TSOTSI:** Yes I became aware of that.

**ADV NGCEBETSHA:** Were you aware that he and Mr Pamensky were also co-directors of a company at some stage before appointment to Eskom board?

20 **MR TSOTSI:** No.

**ADV NGCEBETSHA:** As per the articles that were published in the newspapers.

**MR TSOTSI:** No Chair I was not aware.

**ADV NGCEBETSHA:** Now post your removal from Eskom certain developments occurred that included replacement of

executives. And certain business dealings occurred. Are you aware of any that occurred that appeared to have been aligned with Gupta interest or Gupta company interest?

**CHAIRPERSON:** Sorry. What is this noise? You switch off cell phones. Okay.

**MR TSOTSI:** Yes Chair in answer to the question. Yes I am certainly became aware of the controversy that came about a few months after I had left Eskom and the change that occurred at Eskom of the executives that those – some of  
10 those executives got embroiled in an issue that had to do with the purchase of Optimum Mine by the company Tegeta which company was owned purportedly by the Gupta family where in fact Eskom was said to have financed that purchase. So yes I – from that perspective I became aware of that and – and subsequently other things that came to the fore.

**ADV NGCEBETSHA:** Right and a very last one. I believe it is again now this time I think it is Ms Brown the former Minister's statement which inter alia intimated that she could  
20 not comprehend how as Chairman who merely had to deal with four meetings a year a non-executive role and a staff of eleven. Of course and a driver – full time driver.

Of course you responded to this by saying that you only had two that were supporting you over and above access to the Chief Executive's office whenever there was expertise

required to support you. But I am interested for you to clarify for the attention of the Chairperson the nature of your job

- a. What in your view and understanding was your key areas of performance as Chairperson? And to expedite the thing two would be
- b. How often would you need to attend to Eskom business as it were in terms of your diary per week or per month?

10 **MR TSOTSI:** Yes Chair it is true that there are six formal board meetings per year but you know the complexity of Eskom is testimony to the fact that though you may be a non-executive director you will not get away with less than two board meetings a month. Sometimes more.

So the whole response to the Eskom environment is driven by the fact that the company is extremely complex. So the efforts that is required to keep abreast of what is going on in the business of Eskom is quite big. It is – it requires for a non-executive director to be able to avail at least 60%, 70%

20 of their time. I am talking about a person who is in the role of a chairman. Now if you consider the key role in the organisation that a director has to undertake.

Obviously, there is the control of the business and there is oversight of the business and then there is the strategic interest that Eskom has with stakeholders outside of the



organisation which are a multiplicity of stakeholders.

You know, there is parliament, there are the customers and there are all, this government itself a shareholder and the external stakeholder even outside of the country, institutions that Eskom belongs to.

And you expected to be able to be visible as a business so that the concerns of the company has, are addressed and is seen to address adequately and that applies to non-executive directors as well.

10 So I think, I would say if one really truly understood the role that the chairman of a company, such as Eskom, had to undertake, one would appreciate that the complexity of the business mandates that person be busy at least 67% of the time.

**ADV NGCEBETSHA:** So the proposition that you only had to attend to four board meetings a year, would that be accurate?

**MR TSOTSI:** No, of course not. That is totally inaccurate.

**ADV NGCEBETSHA:** Thank you.

20 **MR TSOTSI:** Because as I have said, it is not attainable.

**CHAIRPERSON:** So based on what you have just about how many meetings you had to attend, it seems that it would be fair to say you may have had to attend, certainly, more than double than what the four or six that were mentioned. Actually, the meetings you had could be as high, as what, 16

per year, in a year?

**MR TSOTSI:** Very easily.

**CHAIRPERSON:** Actually, depending it could go to 20, even 24 if it is two per month.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** And sometimes more. So it could easily go to over 20.

**MR TSOTSI:** That is correct, Chairman.

**CHAIRPERSON:** Now if you look at the number of meetings  
10 that your board had during your first term as chairperson at that first board that you led. Would the number of meetings that you are talking about based on what happened during the term when you say about two meetings a month, is it very much based on that experience of that first term?

**MR TSOTSI:** Absolutely, yes.

**CHAIRPERSON:** Yes. Because after all, in the second term you were not there much. You were removed quite early.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Yes. Okay. And, so that is quite a lot of  
20 meetings. So. Ja, okay.

**ADV NGCEBETSHA:** Did you occupy an office at Eskom's head office.

**MR TSOTSI:** Yes, I am chairman. Normally there is an office at Eskom and as I say a PA. And the driver is not a full-time individual. The driver will do work for the chairman

for business of Eskom. And once that is done with, then the driver is available to the organisation. He is not dedicated to the chairman. He drives whoever. And there is always some need for that in the organisation.

**ADV NGCEBETSHA:** Of more interest Mr Tsotsi. Were you in a position to accept any other job at the time as a result of this appointment.

**MR TSOTSI:** That is the point, Chairman. It would have been virtually important to do another job. It is actually not possible. You cannot.

**CHAIRPERSON:** H'm. H'm.

**MR TSOTSI:** I was offered a job and I had to turn it down. So there was no way I could do it.

**CHAIRPERSON:** H'm. H'm.

**MR TSOTSI:** Yes. You just cannot. Even the non-executive directors who are just directors in the company were experiencing some difficulties with their own jobs and having to attend to Eskom business. So I knew that because at times people were unable to attend meetings because of commitments of work and so on.

**CHAIRPERSON:** So during your first term as chairperson of the Eskom board, you did not have any other full time job or you did not have a full time job because I guess the Eskom one was also not full time but it nevertheless took a lot of your time.

**MR TSOTSI:** No, I could not hold on another job, Chairperson.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** And did you say something along the lines that it took about 60% of your time, that is now being chairperson of Eskom.

**MR TSOTSI:** Yes, at least... I would estimate about 60% to 70%.

10 **CHAIRPERSON:** Yes. Did you spend a lot of time in the office or most of the time you worked from home or from whatever office and only went to the Eskom office when there were to be meetings of the board or of committees that you had to attend or your meetings with some of the executives?

**MR TSOTSI:** Chair, I did not go to the office every day. I had an arrangement where I had an executive office who essentially looked after the office because she was there on a daily basis.

20 **CHAIRPERSON:** Ja.

**MR TSOTSI:** Often times, they would send documents to my house that I will have to deal with one way or another.

**CHAIRPERSON:** Ja.

**MR TSOTSI:** Because I resisted the temptation of spending everyday at the office because I had other things that I

wanted to do.

**CHAIRPERSON:** H'm. H'm. Okay.

**MR TSOTSI:** Yes.

**ADV NGCEBETSHA:** Thank you very much. And if... I beg your pardon. I know I said last time but I just need to make reference to this statement. I think it is in page 224 of the Eskom Bundle 07A.

**CHAIRPERSON:** Page 224?

**ADV NGCEBETSHA:** 224.

10 **MR TSOTSI:** 024?

**ADV NGCEBETSHA:** It is 224.

**MR TSOTSI:** Oh.

**ADV NGCEBETSHA:** Page number. Eskom Bundle 07A. Statement by Nicholas Linnell.

**CHAIRPERSON:** Okay that is the statement of Mr Linnell?

**ADV NGCEBETSHA:** That is correct. Did you find it Mr Tsotsi?

**MR TSOTSI:** Yes, 224. I have it.

20 **ADV NGCEBETSHA:** Now I just want to zoom into the matter of interest here which is on the last page, paragraph 53.

**MR TSOTSI:** Yes.

**ADV NGCEBETSHA:** It reads:

“Given the nature of the work that I was anticipating being engaged to do, I have since the 11<sup>th</sup> been

receiving information from anonymous sources that might be relevant to an inquiry of this nature, amongst others, if the people would want, that the CEO had been given advanced warning of his possible suspension prior to the 11<sup>th</sup>.”

At 53.2.:

“That the minister met privately with some of the board members prior to the formal meeting of the 11<sup>th</sup>.”

10 At 53.3.

“That the minister had previously cancelled a scheduled board meeting on the 29<sup>th</sup> of February...”

I suppose he means the 26<sup>th</sup>, but any way.

“...as is it had come to her knowledge that the board used to raise the issue of no-confidence to the chairman. This was presumable well before the inquiry was ever made.”

Now are you aware of this? Are you aware of any of these allegations contained in Mr Linnell’s statement?

20 **MR TSOTSI**: I am only aware of I think J1. That was the one which relates to the probable reason for the cancellation or postponement of the meeting of the 29<sup>th</sup>. I am sorry, the 26<sup>th</sup> actually. That there was an attempt to affect a notion of no-confidence in the chairman. That I have heard prior to seeing this here.

**CHAIRPERSON:** So ...[intervenes]

**ADV NGCEBETSHA:** Let us clarify. Did you hear prior to seeing it here or you had not heard prior to seeing it here?

**MR TSOTSI:** No, I heard about it. Nick had told me about it. We spoke about it.

**CHAIRPERSON:** But was that prior to the 11<sup>th</sup> of March 2015?

**MR TSOTSI:** Ja, that would have been ...[intervenes]

**CHAIRPERSON:** Did you hear about it before the meeting  
10 of the 11<sup>th</sup> of March 2015 or did you hear about it only later?

**MR TSOTSI:** It probably would have been shortly thereafter Chairman.

**CHAIRPERSON:** Okay.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Shortly after the 11<sup>th</sup> of March.

**MR TSOTSI:** I think so. The environment was such that Nick himself was unhappy about what was going on.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** Subsequently so. I think we were talking what  
20 could be the goings-on, if you like ...[intervenes]

**CHAIRPERSON:** Ja.

**MR TSOTSI:** ...round the, you know, Eskom engagements.

**CHAIRPERSON:** H'm. H'm. Okay.

**ADV NGCEBETSHA:** Paragraph 53.4:

“That the board, in fact, informed the minister on the

20<sup>th</sup> of their determination to remove the chairman.”

Were you aware of this?

**MR TSOTSI:** Now, the 20<sup>th</sup>... I am trying to understand in relation to... yes, this I was aware of. I mentioned this in my testimony.

**ADV NGCEBETSHA:** You say the 20<sup>th</sup>. The 20<sup>th</sup> of which month if I may just confirm?

**MR TSOTSI:** Okay the 20<sup>th</sup> of March.

**ADV NGCEBETSHA:** 20 March?

10 **MR TSOTSI:** Yes. You recall Chairman I say ...[intervenes]

**ADV NGCEBETSHA:** Let us go onto the next one.

**MR TSOTSI:** Okay.

**ADV NGCEBETSHA:** Paragraph 53.5:

“That the minister was reported having told the portfolio committee on the 26<sup>th</sup> or thereabouts that she was expecting a formal letter with regard to the board’s intention to remove the chairman.”

That you were also aware of or not?

20 **MR TSOTSI:** No, I am not aware. I presume they are talking about the 26<sup>th</sup> of March.

**ADV NGCEBETSHA:** Of interest to me is that Mr Nick Linnell in this statement that you say it was said to you, appears to suggest very clearly that prior to the first ordinary meeting of the board that was scheduled that ultimately was cancelled at the eleventh hour, there was already the view



that you must be – notion of no-confidence.

**MR TSOTSI:** Yes, I think in simple terms Chair – I even think it may be laughable because there would have been no basis for anything like that. It would have been the first board meeting. I think it would have... I do not know what to say.

**CHAIRPERSON:** Well, you gave evidence that Minister Brown had told you early in 2015 that if you did not stop interfering in certain matters, she would find somebody else  
10 to do your job. And you have said that you were told by Mr Tony Gupta early in 2015 that they had put you into this position and they could take you out.

Were there any other people who ever spoke to you about you being out of this position as chairperson of the board other than those two?

**MR TSOTSI:** Not ...[intervenes]

**CHAIRPERSON:** Prior to the 11<sup>th</sup> of March.

**MR TSOTSI:** After?

**CHAIRPERSON:** Prior to the 11<sup>th</sup> of March. Because my  
20 recollection is that these two spoke to you prior to the 11<sup>th</sup> off March. Actually, either January or February. The one was around the SONA time, is it not?

**MR TSOTSI:** Both were around the SONA time.

**CHAIRPERSON:** Both of them around. On the same day, by the way?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Ja, and SONA would have been either bee in January or early February. Do you remember whether it was in January or February, the SONA

**MR TSOTSI:** The SONA would have been most likely early February.

**CHAIRPERSON:** Early February.

**MR TSOTSI:** Early February, ja.

**CHAIRPERSON:** So early February 2015, you are told by  
10 these two people, different times but same day, they – each  
tell you something about you possible no longer being in this  
position.

And about a month later you start sensing certain things within the board but two months do not – you do not last more than two months after that because you would then end up resigning on the 30<sup>th</sup> of March.

So it takes two months after you are told, about two months after you are told these things by the two people and you are out of Eskom, you are out of this position.

20 **MR TSOTSI:** Okay. Chair, I am trying to think. I cannot recall other than those two occasions ...[intervenes]

**CHAIRPERSON:** Ys.

**MR TSOTSI:** ...if I had been told or had heard that I would be facing a notion of no-confidence. On the basis of the rational you are raising now, it seem to me that had that

been the intend of it, that would have been the genesis of it because there would be nothing else that the board members would have had.

**CHAIRPERSON:** But members - as you said when you spoke to the minister when she said there are complaints from some board members and from the executives about you interfering.

You said: Board members hardly know how I look like. So they did not know much about you. There was not  
10 enough time for them to come to any conclusion about whether you should be chairperson or not in terms of your performance.

**MR TSOTSI:** Yes, and thus make of some external influence, really.

**CHAIRPERSON:** H'm. H'm.

**MR TSOTSI:** Should it have been, I should have come to pass, it would clearly would have been external influence.

**CHAIRPERSON:** Ja. Okay.

**ADV NGCEBETSHA:** Thank you, Chairperson. Before I  
20 formally conclude. Is there anything on your side that you feel perhaps needed clarity that we may not have covered?

**MR TSOTSI:** The only thing that I think I have mentioned in my affidavit Chair. It has to do with what transpired out of the Gupta email leaks.

**CHAIRPERSON:** H'm.

**MR TSOTSI:** I mention there that ...[intervenes]

**CHAIRPERSON:** To the Gupta leaks?

**MR TSOTSI:** Yes.

**ADV NGCEBETSHA:** Ja.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** I mention there Chairman that the – a certain gentleman named Mr Goha who worked in the Gupta companies. Apparently ...[intervenes]

**ADV NGCEBETSHA:** Was he the TMA Editor?

10 **MR TSOTSI:** I am not sure whether he was the actual editor but he was involved in ...[intervenes]

**ADV NGCEBETSHA:** Yes, proceed. Gupta business.

**MR TSOTSI:** And there is an email which is attributed to Mr Goha which is addressed to Dr Ngubane.

**CHAIRPERSON:** H'm.

**MR TSOTSI:** And this email deals with an offer of assistance by Mr Goha to Dr Ngubane in the drafting of a letter resignation of myself. And this communication occurs approximately ten days before I resigned.

20 **CHAIRPERSON:** So that would be around 20 March?

**MR TSOTSI:** Yes, around there.

**CHAIRPERSON:** H'm. H'm.

**MR TSOTSI:** Unfortunately, I do not have the requisite documents but ...[intervenes]

**CHAIRPERSON:** Ja-no, the Commission has got a hard

drive that is helpful in this regard. The... it might be that one or other work stream of the Commission has got that. I think they – the legal team investigators will find that. They will find that and they will communicate with you so that you can have a copy that would be brought to the hearing as well so that it forms part of this.

**MR TSOTSI:** Yes, Chair I would happy because I think it reinforces my proposition that there has been an external hand in all of this.

10 **CHAIRPERSON:** Yes.

**MR TSOTSI:** And that invariable it seems to point to the Gupta Family.

**CHAIRPERSON:** Ja.

**MR TSOTSI:** And it has come as no surprise.

**CHAIRPERSON:** H'm.

**MR TSOTSI:** Considering the threat that I have received from Tony Gupta some month or so before that.

**CHAIRPERSON:** Yes.

20 **MR TSOTSI:** So I just thought, it also obviously reflects on the what would be collusion between that family and members of the board, who were board members along with me.

**CHAIRPERSON:** H'm. H'm.

**MR TSOTSI:** If indeed the veracity of that email is confirmed. It would certainly clarify some aspect which has

got to do with this relationship with the board members with the Gupta Family.

**CHAIRPERSON:** Ja. Of course, I think you have said that Mr Tony Gupta had accused you at some stage of not assisting them. Is that correct?

**MR TSOTSI:** Correct, Chairman.

**CHAIRPERSON:** You see, I have had a lot of evidence in this Commission since August 2018 when the Commission started hearing evidence.

10 I have heard evidence from Mr Themba Maseko who said Mr R J Gupta said to him in effect, you know, anybody that does not want to cooperate with us, in talking about ministers and I assume DG's, you know, we report to the president, President Zuma.

And as I recall, Mr Themba Maseko said Mr J R Gupta said to them that person would be dealt with.

But ultimately, either on that occasion or another occasion, according to Mr Maseko, R J Gupta said: Well... he said to him... No, it was another occasion. He said:  
20 Well, you are not cooperating with us. So I will report you to your seniors and they will replace you.

So if that evidence of Mr Maseko is true, and at this stage it stands unchallenged, then it would mean that Mr R J Gupta may have reflected on how they operated. Mr Maseko is subsequently moved from his position at UCIS.

And in circumstances where, about six weeks or so before that, his minister was part of a panel that assessed his performance at UCIS and gave him more than 100% points to show how happy they were with his performance in his job. He was moved. And ultimately had to get out of the public service.

Mr Jonas gave evidence before me and said that he had a meeting at the Gupta residence on the 23<sup>rd</sup> of October 2015. That is the same year we are talking  
10 about.

He said one of the Gupta brothers – and it does appear that it would have been Tony Gupta because it is common cause that he was in the house and he was the only Gupta brother in the house on that day.

So if Mr Jonas' evidence is correct, is true and I know that Mr Duduzane Zuma denies it. Mr Shongwane denies it. So I will still assess and see which version is true.

But if Mr Jonas' evidence – version is true, then the position would be that, according to him, Mr Tony Gupta told  
20 him Mr Nene was going to be fired by President Zuma because he was not working with them and they wanted Mr Jonas to work with them and take the job of the Minister of Finance.

And six weeks or some weeks later, Mr Nene was fired. He was fired in circumstances that seemed very strange as

well. Tony Gupta was allegedly involved there.

Mr Kona was Chairpersons of the SAA Board. I cannot remember the year. Maybe 2011. I am not sure or thereabout. And he was made acting CEO. He has given evidence and said he was called to a meeting at the Gupta residence where Mr Tony Gupta was there and I think Mr Duduzane Zuma was there as well.

He effectively was asked to facilitate some job for the Guptas or something, a contract and he was offered initially, 10 I think, R 100 00,00. And when he did not take that, I think he said it was increased to R 500 00,00. He did not take it. It did not take long before he was removed from that position.

Mr Dukwana has given evidence before. Mr Dukwana was an MEC in the Free State Government. He gave evidence that he was taken by Mr Magashule to the Gupta residence.

Ja, I think he went there on two occasions but to one of the occasion, Mr Tony Gupta – or on both occasions, Mr 20 Gupta – I think it was – he met with him and Mr Duduzane Zuma was there too.

He says Mr Tony Gupta wanted him to sign a certain document which would have given the Gupta's some contracts in his Department of Agriculture if I remember correctly. He refused. He offered him a lot of money.



He said he did not know how much but he said it was full in a briefcase similar to a briefcase that lawyers carry. He said it was open, it was full of notes there. He turned it down.

Of course, he was later removed from the position of Being an MEC but he says he was told by Mr Magashule that he was being removed in order to make space for a woman so that there will be more women in the executive council. I am sure there are other stories.

10 So you had interactions with Mr Tony Gupta who threatened you with taking you out of this position? And Mr Jonas - one of the things that Mr Jonas said was that the Gupta brother who was in the meeting with him on the 23rd of October, told him that there were a number of people who worked with them, worked with the Gupta's and he mentioned some.

And amongst those that you mentioned was Miss Lynn Brown and Brian Molefe. And Mr Jonas - this Gupta brother told him that these ones that worked with them the careers  
20 were fine. They will be well- looked after.

So when I look at your evidence and what you say happened to you, I have to look at the totality of the evidence I have been hearing and I am just mentioning some parts of evidence that I have that info of Mr Tony Gupta and the other people.

You might not need to comment or anything. I just thought you might appreciate having that picture.

**MR TSOTSI:** Thank you, Chairperson.

**ADV NGCEBETSHA:** You are done. Thank you very much. We are indebted to the court. I mean, to the chairperson for the indulgence granted.

**CHAIRPERSON:** Yes. Thank you. I will excuse you now Mr Tsotsi. thank you very much for coming to give evidence. as I have indicated, should the need arise for us to ask you to  
10 come back, we will ask you to come back. But we hope that will not be necessary. You are excused.

**MR TSOTSI:** Thank you.

**CHAIRPERSON:** Mr Seleka.

**ADV SELEKA SC:** Thank you, Chairperson. I mentioned that we will proceed tomorrow with one of the witnesses who was scheduled for today, Mr Venete Klein. We envisage completing her evidence in the morning and hopefully starting with Dr Ngubane in the afternoon.

**CHAIRPERSON:** Okay.

20 **ADV SELEKA SC:** Thursday afternoon... If we are not finished Thursday evening, then with your permission chair, we might continue in the morning on Friday.

**CHAIRPERSON:** Yes, yes. Ja-no, that is fine. We will do that. But there were two witnesses who were meant for today, is not it?

**ADV SELEKA SC:** Yes. Then there is Ms Suzanne Daniels.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** And we have conveyed – rather conferred with you in regard to that position during the adjournment.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** And we have indicated your immediate position to her and her attorneys that an announcement will be made either during the course of tomorrow or Friday  
10 about when next week she will testify.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Okay. No, that is fine.

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

**CHAIRPERSON:** Tomorrow should we start... maybe we could start at ten?

**ADV SELEKA SC:** That is in order with us.

**CHAIRPERSON:** Or did you think we should try half-past nine?

20 **ADV SELEKA SC:** We could try half-past nine, Chair

**CHAIRPERSON:** But in terms of if we are going to into Friday anyway, is there a need to... and now that we now that one of the witnesses will testify next week, is there a need to start earlier than ten tomorrow or what do you think?

**ADV SELEKA SC:** No, let us start ten. Ten is fine.

**CHAIRPERSON:** Ten is fine.

**ADV SELEKA SC:** Ten is fine, Chair.

**CHAIRPERSON:** Yes, okay.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Okay so we will start at ten then tomorrow. We adjourn.

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

**INQUIRY ADJOURNS TO 10 SEPTEMBER 2020**