

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

10 SEPTEMBER 2020

DAY 265



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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 10 SEPTEMBER 2020

CHAIRPERSON: Good morning Mr Seleka, good morning everybody.

ADV SELEKA SC: Morning – morning DCJ.

CHAIRPERSON: I am wondering why I have all the four files at the same time so – yes are you ready?

ADV SELEKA SC: Yes Chairperson we are ready.

CHAIRPERSON: We starting a little late we will try and make up for the time.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Ja. Okay.

ADV SELEKA SC: Yes Chairperson the witness for this morning is Ms Venete Klein. She has indicated that she is comfortable taking the oath as opposed to the affirmation.

CHAIRPERSON: Yes please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record?

MS KLEIN: Venete Klein.

20 **REGISTRAR:** Any objections to taking the prescribed oath?

MS KLEIN: None at all.

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

MS KLEIN: Yes I do.

REGISTRAR: Do you swear that the evidence you will give

will be the truth; the whole truth and nothing else but the truth; if so please raise your right hand and say, so help me God.

MS KLEIN: So help me God.

CHAIRPERSON: Thank you. Mr Seleka the ...

ADV SELEKA SC: Should I explain to the DC – to the Chairperson?

CHAIRPERSON: Ja no the – the arrangements with the files does cause some confusion so I looked at Ms Klein's
10 statement in front of me in the file that was put up and I realised it was very clean.

ADV SELEKA SC: Excuse me.

CHAIRPERSON: So it could not be the one that I had read because.

ADV SELEKA SC: No.

CHAIRPERSON: The one I had read I had made some notes on it. So I had to ask them to give me the file that has got the one on which I made notes. So it turns out that that one is in Mr Tsotsi's bundle.

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

CHAIRPERSON: So – so – but it is okay. I just wanted to have the one which has got my notes.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: I beg your pardon Chair.

CHAIRPERSON: Okay you may proceed.

ADV SELEKA SC: Thank you Chair. Chairperson Ms Klein will be touching mainly on the aspect regarding the suspension of the executives, the exit negotiations with the executives. There is a portion relating to the secondment of Mr Molefe. The extension of that secondment. The permanent placement of Mr Molefe that also features the – or rather in which he also features and hopefully we will touch on that as well.

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

ADV SELEKA SC: Ms Klein thank you for assisting the commission. It is a fact finding inquiry. There are no findings of guilt or not guilt. I will ask you to please address the Chairperson when you are – answer to the questions and you have the bundle before you. Let me just confirm. Chairperson the bundles we are using to place it on record is Eskom Bundle 02. Exhibit...

CHAIRPERSON: Yes. Eskom Bundle 02.

ADV SELEKA SC: Correct Chairperson.

20 **CHAIRPERSON:** Ja that is the bundle we will be using.

ADV SELEKA SC: Exhibit

CHAIRPERSON: Okay.

ADV SELEKA SC: U14.

CHAIRPERSON: Okay.

ADV SELEKA SC: Ms Klein you have that bundle in front

of you. It will have an index that indicates the – what is contained in the file. The first of those documents is your affidavit to this commission and attached to the affidavit is your statement to the Hawks wherein you deal I believe with the secondment of Mr Molefe and permanent placement. In the interest of time Ms Klein if you may go to page 2 of the documents in the bundle with the page numbering, I will be referring to are the page numbers in red the top right hand corner. Do you confirm to the
10 Chairperson that you were one of the Board Members appointed in December 2014. Will you confirm?

MS KLEIN: Yes Chair I confirm that.

ADV SELEKA SC: Thank you. And that you were serving on Eskom Board for the first time in – in respect of that appointment?

MS KLEIN: That is correct Chair.

CHAIRPERSON: I think Ms Klein try and raise your voice please.

MS KLEIN: Alright I will do.

20 **CHAIRPERSON:** Or – ja – speak closer to the microphone.

MS KLEIN: Okay.

ADV SELEKA SC: So...

CHAIRPERSON: If you – if you speak softly Ms Klein Mr Seleka speaks very softly so I will be the only one speaking aloud in this hall.

MS KLEIN: I hear you Chair I will try. Is that better?

CHAIRPERSON: Okay.

ADV SELEKA SC: He is a gentleman Chair. Ms Klein the affidavit then deals with your – the introduction, your profession in paragraph 3. That you are – is it a profession or is it a career?

10 “I was a Chartered Director CDSA and have graduated from various international executive programs including senior executive programs at Harvard University and executive development program. Executive development program at the New York School in New York. In addition, I hold several international qualifications from MIT, INSEAD, IMD and Wits.”

MS KLEIN: That is correct Chair.

20 **ADV SELEKA SC:** Is that correct? And you have served as an executive director, a non-executive director of various boards. Until recently – well various boards including Barclays Group LTD, the Reserve Bank and Old Mutual Health. Until recently you served as Chairperson of the Institute of Directors South Africa.

MS KLEIN: Correct Chair.

ADV SELEKA SC: Is that the – you know you are one of the South African Institute of Chartered Accountants is it

the equivalent of such body?

MS KLEIN: Yes it is. Look Chair we have many directors in South Africa and the Institute of Directors does all of the training for directors in South Africa. Not everybody is a member but obviously most directors choose to become members so that they can get some form of qualification and certainly the training in order to serve.

ADV SELEKA SC: Does it deal with ethical issues relating to directors?

10 **MS KLEIN:** Very definitely that is one of the biggest things it is focused on as a director.

ADV SELEKA SC: So you would be au fait on issues relating to ethics and professionalism of directors.

MS KLEIN: Correct Sir. Correct Chairperson.

ADV SELEKA SC: That would be both in the private and the public sector?

MS KLEIN: That is correct Chair.

ADV SELEKA SC: Yes – ja you carry on on other aspects of your achievements which I will not go into. Let us deal
20 with – tell the Chairperson about how your appointment on the Eskom Board came about?

MS KLEIN: Chairperson there was an advert run in the paper for various of the departments companies. SAA I remember was one. Eskom was one etcetera. And I was then asked or nominated – I was asked whether I would

serve and I then agreed that I would serve and I know my nomination was signed off by Mr Lionel Adendorf. Ja.

CHAIRPERSON: Who asked you?

MS KLEIN: Sorry?

CHAIRPERSON: Who asked you if you would be...

MS KLEIN: Lionel Adendorf.

CHAIRPERSON: Mr?

MS KLEIN: Lionel Adendorf.

CHAIRPERSON: Okay.

10 **MS KLEIN:** Who I had known from – he was the Head of Communications for the first Minister of Women's Children and Disabled.

CHAIRPERSON: Yes.

MS KLEIN: Yes he was...

CHAIRPERSON: So he was within government.

MS KLEIN: I knew him from there. Sorry?

CHAIRPERSON: He was within government?

MS KLEIN: He was but I think at the time when he asked me he was not.

20 **CHAIRPERSON:** Oh okay.

MS KLEIN: He was not in government at that time.

CHAIRPERSON: Okay. Did you know whether he had any connections with the – with Eskom or anybody connected with Eskom? Why was he interested in...

MS KLEIN: No not to my knowledge. I remember

Chairperson that I had also seen the advert.

CHAIRPERSON: Hm.

MS KLEIN: You know and I had actually oddly enough always said in private sector because that is where I used to work.

CHAIRPERSON: Hm.

MS KLEIN: That I would never want to serve in government because of what I imagined was the complexity.

10 **CHAIRPERSON:** Hm.

MS KLEIN: And it was in a discussion that he just said to me you know is this not something because remember – I – what maybe did not come out here I had actually retired from running the Retail Bank of ABSA a couple of years prior. So I had a bit of capacity. I had time on my hands and that is when the discussion came up.

CHAIRPERSON: Hm.

MS KLEIN: And I had seen it and I had no objection at the time. I thought that may be a good idea for me to serve.

20 **CHAIRPERSON:** Hm. Okay.

MS KLEIN: Chairperson.

ADV SELEKA SC: Chairperson the name appears on page 3 paragraph 6 of Mr Lionel Ricardo Adendorf. Ms Klein if – if this – if there was an advert does the advert call for people to be nominated or for people to apply?

MS KLEIN: Chairperson to the best of my understanding it calls for people to be nominated. I think it is put out in the public space to see who are – you know who interest – who may be interested. And then I think if you are interested you got to online and get a nomination form. I think that is how it worked if I – if my recollection.

CHAIRPERSON: No it is fine.

MS KLEIN: Serves me well.

ADV SELEKA SC: So did you follow that process?

10 **MS KLEIN:** Yes.

ADV SELEKA SC: To go online.

MS KLEIN: Absolutely.

ADV SELEKA SC: And completed the nomination form?

MS KLEIN: Ja. Yes Chairperson sorry.

ADV SELEKA SC: Now you were here yesterday because you were scheduled to testify yesterday but you could not.

MS KLEIN: Correct Chairperson.

ADV SELEKA SC: We had Mr Tsotsi here yesterday. You saw the reference made to the Fundudzi Report.

20 **MS KLEIN:** Correct yes Chair.

ADV SELEKA SC: Oh Chairperson I got a note that the transcribers are unable to hear Ms Klein.

MS KLEIN: Okay I got to speak either louder or sit closer.

ADV SELEKA SC: Ja I think just drop the microphone.

MS KLEIN: Oh okay.

ADV SELEKA SC: A little bit.

CHAIRPERSON: Well I – I am surprised they cannot hear her but they do hear you. But I think I have come to accept that you have a soft voice and it is difficult. I think for the whole week I have been saying please raise your voice but I think that is just how your voice is – it is soft. You – but obviously they do hear you.

ADV SELEKA SC: It is a sign of change Chair that I have listened.

10 **CHAIRPERSON:** Okay alright. No that is fine. Let us all try to – well I guess I do not have to try to be loud enough for everybody to hear.

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: So Ms Klein you saw the reference being made to the Fundudzi Report.

MS KLEIN: I did Sir.

ADV SELEKA SC: And how an email address infoportal1 was used to circulate a list of names for people to be
20 appointed on the board and sub-committees in particular. Do you have any knowledge of your name having formed part of that list?

MS KLEIN: I would have been very surprised. I do not know who infoportal is and if you tell me my name was on it I would be surprised because that was not the process

that I understood that the department followed.

ADV SELEKA SC: What would be your response you would have been aware that the December 2014 Board of Eskom has been referred to as the Gupta Board. What would you tell the Chairperson?

MS KLEIN: Very uncomfortable to have my name there that is all I can say to you Chairperson. Can I maybe just add on something?

ADV SELEKA SC: Please do.

10 **MS KLEIN:** In fact, more uncomfortable because I think in Mr Tsotsi's response to the Chair yesterday I think Chair you gave him a little bit of latitude to express how he felt. And Mr Tsotsi then alluded to some organogram that had appeared in the paper some years ago connecting everybody to everybody else.

CHAIRPERSON: Oh ja.

MS KLEIN: You know to the Gupta.

CHAIRPERSON: Yes.

MS KLEIN: Your question.

20 **CHAIRPERSON:** Yes I think it...

MS KLEIN: So specifically you know who was connected to the Gupta's?

CHAIRPERSON: Ja.

MS KLEIN: And I think what was uncomfortable for me specifically is that on that organogram I am connected to

the then Minister of – I am not sure what Minister it was but it was Minister Van Rooyen who I had never met. I do not know him, never met Minister Van Rooyen. I think the – the closest that you want to come in terms of looking at the organogram I felt a little more insulted than anything else was that somebody who works for – who worked as an advisor for Minister Van Rooyen at the time was a gentleman by the name of Ian Whitley who worked for me at the bank a couple of levels down and here I was being
10 put down as somebody connected to Minister Van Rooyen and he has got an advisor – I was very uncomfortable by – so your question about being put in as a Gupta Board Member really did not feel good for me at the time.

CHAIRPERSON: Hm.

MS KLEIN: I am sorry to bring that in.

CHAIRPERSON: Yes. No that is fine. But are you saying that you – you are aware of the – of the report or article that Mr Tsotsi was talking about where as you say there was enough [00:18:54].

20 **MS KLEIN:** Yes.

CHAIRPERSON: You knew – you had been aware of that?

MS KLEIN: No, no absolutely and I am just expressing a discomfort.

CHAIRPERSON: Okay. Okay. Yes.

MS KLEIN: To add onto how do I feel about being – I do

not know if it is called the Gupta – did you say Gupta appointee Sir I am not sure?

CHAIRPERSON: Yes.

ADV SELEKA SC: Gupta Board.

CHAIRPERSON: Okay.

MS KLEIN: Gupta Board. Okay. Sorry I kind of went both ways with that.

CHAIRPERSON: Yes okay.

ADV SELEKA SC: So we understand the board was
10 appointed that the board on which you served in – at Eskom was appointed effective 11 December 2014.

MS KLEIN: I think that is correct yes Sir.

ADV SELEKA SC: I think you say that.

MS KLEIN: Yes.

ADV SELEKA SC: At paragraph 7 of your affidavit.

MS KLEIN: Correct.

ADV SELEKA SC: And you then go through an induction which you deal with it on page 6, paragraph 23 of your affidavit. A Board Induction Meeting held on 16 January
20 2015. You see that?

MS KLEIN: Yes Sir.

ADV SELEKA SC: That is in January 2015.

MS KLEIN: Yes.

ADV SELEKA SC: Now tell the Chairperson you would have heard the evidence about the first board meeting

scheduled for the 26 February 2015 and that that board meeting did not take place. What reasons – were you aware of that?

MS KLEIN: I was aware that it was not taking place and I think I even put into evidence my discomfort at the time but Chair if I may just – can I just step back from there?

CHAIRPERSON: Ja.

MS KLEIN: Chair I keep on hearing that this was the first board meeting in fact I heard yesterday too that there was
10 the first board meeting in – in March the 11th and I have heard quite a lot about you know we did not know the executives and how could we make decisions etcetera. Chair that is not true. The first meeting was in January and we had the board induction which was another two days and these things can be verified. In fact, you asked and Chair I was supposed to speak yesterday so I suppose it was good I was here to listen to Mr Tsotsi's evidence. Mr Tsotsi shared with me on the 16 January at the first board meeting which sub-committees we were going to be
20 on. I remember you asked him the question, so when did you – we? I found out on the 16 January at the first board meeting. Then we had the induction Chairperson.

CHAIRPERSON: Oh the – so I thought the 16th was for the induction?

MS KLEIN: No.

CHAIRPERSON: That was the first board meeting?

MS KLEIN: Ja. We need to just go and check those dates again.

CHAIRPERSON: Yes okay.

MS KLEIN: Because I actually stepped away from here Chairperson and I went to go and look at it yesterday. There was a full board meeting on the 16 January which is where Mr Tsotsi shared with me about my – you asked questions about when people were made aware.

10 **CHAIRPERSON:** Yes.

MS KLEIN: Mr Tsotsi told me at that particular meeting that I am going to be Chairperson of Social and – Social and Ethics.

CHAIRPERSON: Hm.

MS KLEIN: But I guess the point I want to make Chair is that to say that the very first meeting that this board had with management on the 11 March is not correct.

CHAIRPERSON: Hm.

20 **MS KLEIN:** Because in the meeting of the 16 January I was told I was going to chair People and Governance – not People and Governance – Social and Ethics. I was also told that I was going to be serving on People and Governance as well as Finance Investment and Finance committee. Now in that time from the 16 January until the 11 March Chairperson we can check the dates.

CHAIRPERSON: Hm

MS KLEIN: Obviously it is not in my statement because at the time I was not – you know I was responding to what questions were asked yesterday.

CHAIRPERSON: Hm.

MS KLEIN: We had at least two of each of those meetings. Two meetings of – two meetings of People and Governance.

CHAIRPERSON: Hm.

10 **MS KLEIN:** Two meetings of IFC.

CHAIRPERSON: Yes.

MS KLEIN: Investment and Finance and two meetings of – what was the third one I said. IFC, People and Governance and Sustainability.

CHAIRPERSON: Hm.

MS KLEIN: And I know that for a fact because on the 8 February was my son's birthday and I will never forget I chaired that meeting and it just – you know I just – I just was such a long meeting so I – the reason I raise this
20 Chairperson it is not true to say we had our first meeting on the 11 March.

CHAIRPERSON: Yes. Yes.

MS KLEIN: I just wanted Chair to hear that.

CHAIRPERSON: No, no it is important you should – you should clear that. It certainly put your...

MS KLEIN: Yes.

CHAIRPERSON: Your perspective and your understanding of what ...

MS KLEIN: Yes.

CHAIRPERSON: Position is. So you say that the first board meeting was on the 16 January?

MS KLEIN: On the 16 January. Correct.

CHAIRPERSON: And then the induction would have come when?

10 **MS KLEIN:** Correct. Yes.

CHAIRPERSON: The following day or when?

MS KLEIN: I think if I get the dates correct it was – I think we were 16 and then it was either 14th and 15th or a few days later.

CHAIRPERSON: Yes okay.

MS KLEIN: But it was thereabouts. We can just confirm those dates.

CHAIRPERSON: Okay. But the – it was consecutive days?

20 **MS KLEIN:** It was consecutive days.

CHAIRPERSON: Yes okay.

MS KLEIN: But this was a full board meeting Chair.

CHAIRPERSON: Yes. Yes. Now at the board meeting – at the first board meeting do you have a recollection of what types of issues were discussed or was it just a meeting for

everybody to get to know one another and so on?

MS KLEIN: I actually think that I referred to it in my affidavit. Let me just – if you do not mind Chair I just want to have a look.

CHAIRPERSON: You can look if there is something that can help refresh your memory.

MS KLEIN: I do not see it here Chairperson but I know that given your question yesterday I specifically went to go and look at when exactly was I told that I was going to be
10 Chairperson of Sustainability.

CHAIRPERSON: Yes.

MS KLEIN: And that is when I saw it was – and in that – in that board meeting Chairperson the CEO Tshediso Matona gave the board an overview of – there was a Chairperson's Report I remember seeing there and then there was the CEO's Report.

CHAIRPERSON: Hm.

MS KLEIN: But I do not have all the details on it right now.

20 **CHAIRPERSON:** At the first board meeting?

MS KLEIN: At the first board meeting.

CHAIRPERSON: Okay alright.

MS KLEIN: Sir which was as well as on the second one.

CHAIRPERSON: Yes.

MS KLEIN: Which was on the 11 January – 11 March. But

the point I was trying to make is that the meetings in-between.

CHAIRPERSON: Yes.

MS KLEIN: It is not true to say that this board never interacted with executives.

CHAIRPERSON: Yes.

MS KLEIN: Because there were a number of them.

CHAIRPERSON: So – so you have the first board meeting.

MS KLEIN: Yes.

10 **CHAIRPERSON:** You have induction.

MS KLEIN: Induction.

CHAIRPERSON: And then you – you what you – one of the points you are making is that between or rather after the induction.

MS KLEIN: Yes.

CHAIRPERSON: Between that date and the 9 March – the 11 March there were certain meetings of committees where committees – at the least the ones you served on.

MS KLEIN: Yes.

20 **CHAIRPERSON:** Where they began to do some work and also interacted with executives or not?

MS KLEIN: Absolutely Chairperson.

CHAIRPERSON: Yes.

MS KLEIN: Because remember the executives were responsible and the CEO in most cases.

CHAIRPERSON: Yes.

MS KLEIN: Would have attended those meetings.

CHAIRPERSON: Yes. Yes. And you were a member of what – two committees?

MS KLEIN: No Chairperson three. I was the Chairperson of Social and Ethics.

CHAIRPERSON: Yes.

MS KLEIN: I was on the People and Governance and then I also was on the – I find I am having a sixties moment
10 now.

ADV SELEKA SC: Is it the Investment and Finance?

MS KLEIN: Yes IFC. Sorry Chairperson that was the third one.

CHAIRPERSON: Oh okay.

MS KLEIN: Ja.

CHAIRPERSON: Who...

MS KLEIN: But we had a number of meetings in-between.

CHAIRPERSON: Do you have a recollection of about how many committee meetings you may have attended between
20 the induction and the meeting of the 9 or 11 March roughly in different committees?

MS KLEIN: In the committees including the induction and the board...

CHAIRPERSON: No excluding induction and the board.

MS KLEIN: I would – Chairperson sorry – sorry to cut in

but I think there was at least two of each.

CHAIRPERSON: Okay. Okay.

MS KLEIN: We need to confirm that.

CHAIRPERSON: We need to then make it about six at least six.

MS KLEIN: At least six.

CHAIRPERSON: Yes.

MS KLEIN: Besides induction.

CHAIRPERSON: Ja.

10 **MS KLEIN:** And two board meetings.

CHAIRPERSON: Okay alright.

MS KLEIN: Yes Chairperson.

CHAIRPERSON: Mr Seleka.

MS KLEIN: Sorry Chairperson.

CHAIRPERSON: Yes.

MS KLEIN: I wanted to answer Mr Seleka's question about the meeting of the 26 February. That was the question Chairperson?

CHAIRPERSON: Yes, ja.

20 **MS KLEIN:** Yes. There was a meeting scheduled and the night before the meeting we got given a notice I think it was – I am not even sure I think it came on mail to say that this meeting has been cancelled. And I had a big problem with that Chairperson because I remember writing to the Chairperson and saying to the Chairperson how is it even

possible that we can cancel a meeting at such short notice number 1. Also, I referred the Chairperson to Section 52 or Rule 52 of the PFMA where we needed to get the corporate plans signed off within 30 days of a certain period and we were going to be in breach of the PFMA if we did not have that meeting. If I remember correctly there was another board member, I am not sure but I think it may have been Mr Pamensky who also asked questions around governance. So I had a particular problem with
10 that. I must also say Chairperson I did not get a response to my email.

CHAIRPERSON: Is that so?

MS KLEIN: Yes that is so and I know Chairperson we have agreed that I will keep my responses short but I think it is important to point out to you that you know in listening to recordings – obviously remember these are five years ago.

CHAIRPERSON: Ja.

MS KLEIN: And some of us do not remember as well as others.

20 **CHAIRPERSON:** Yes.

MS KLEIN: So I have had to go back to listen to recordings. In the meeting of the 11 March before the Minister arrived the Chairperson took extreme umbrage with board members directly interacting with executives. And at that stage Chairperson I then asked the

Chairperson he could give me an opportunity to just address it from a governance perspective. And I said, Chairperson I understand that you would prefer for board members to work through you only the problem that I have is given the – given the complexity of the business, given – we were on a burning platform and I am sure we will talk about that more. Was that I had written to the Chairperson on numerous occasions about big matters including the 26 and I had received no response. And I actually put it to
10 the Chairperson, I said, Chairperson I do not think it is fair for you to ask us not to engage with executives if you yourself are not responding the critical matters that the board would need that I would need an answer on. And the Chairperson's response and in fairness to him you know he just said, look people understand I get more than 200 emails a day so I apologise. And between him and the – and the Company Secretary they were going to try and do better. But it was – I found it very difficult that here were
20 and even issues coming out of sub-committee meetings that I needed input from the Chair on and I was not getting any response. So I am sorry to have digressed Chairperson.

CHAIRPERSON: Yes. No, no that is fine. It is important that you – from your side be able to articulate what you

believe is important to give me a complete picture of what the situation was. So – so that is fine.

MS KLEIN: Thank you Chair. I hope I have answered the question on the 26th.

ADV SELEKA SC: The 26 February.

MS KLEIN: Which was the question, I think.

ADV SELEKA SC: Ja but now I did not get your answer clearly to the Chairperson's question because let me start with this. The affidavit in the paragraph we have referred

10 to says:

“The board induction meeting was held on 16 January 2015 and it was arranged by the Company Secretary.”

MS KLEIN: Yes Chair.

ADV SELEKA SC: You then have the agenda items specified.

MS KLEIN: Yes.

ADV SELEKA SC: From there you go to paragraph 24 – well let me carry on with paragraph 23 where you conclude

20 by saying:

“I recall having left this meeting which is the induction feeling rather concerned both by the enormity of the challenges which had correctly been highlighted by the Minister.”

That says the Minister was present in that meeting – the

induction. You see where I am? On page 7.

MS KLEIN: Yes can I just reread quickly so that I am clear
Chair.

ADV SELEKA SC: Ja.

MS KLEIN: I recall having left this meeting feeling rather
concerned – sorry.

ADV SELEKA SC: I will read it on record for you.

MS KLEIN: No, no I have got it.

ADV SELEKA SC: Oh.

10 **MS KLEIN:** I have got it.

CHAIRPERSON: What paragraph are you both on?

ADV SELEKA SC: Page 7, Chairperson.

CHAIRPERSON: I am at ...[intervenes]

ADV SELEKA SC: The top paragraph. The very top.

CHAIRPERSON: H'm? What paragraph on page 7?

ADV SELEKA SC: The very top.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: It starts from the previous batch.

CHAIRPERSON: Oh, okay. Now I see. I recall. Okay.

20 **ADV SELEKA SC:** Yes.

“I recall has he left this meeting feeling rather
concerned both by the enormity of the challenges
which had been correctly been highlighted by the
minister and by the fact he did not appear to have
concrete strategies in place to address his

concerns.”

The next paragraph is about a meeting having been called by Mr Phukubje to take place on 26 February 2015 but was later cancelled and did not take place.”

Now that would have been a board meeting. Is that correct?

MS KLEIN: Correct, Chair.

ADV SELEKA SC: Yes. What we do not see in your affidavit is reference to any board meeting prior to
10 26 February 2015 apart from the induction meeting.

MS KLEIN: Chairperson, to answer the question. Remember, I sat here yesterday and I heard various things and that obviously made me go back and look at my notes.

So if it is that part of this incorrect based on dates, then I want to acknowledge that it was incorrect. What I would like Chairperson though is, can I have a copy of that particular board meeting? We should have it on file because... Do we have a copy of that board meeting of the
16 January 2015?

20 **CHAIRPERSON:** You mean the minutes?

MS KLEIN: Sorry, I mean the minutes Chairperson.

CHAIRPERSON: Yes.

MS KLEIN: Because what I am wanting to look at Chairperson is, I do not believe the minister was at that induction. I think what I am referring to there is a meeting

with the minister previously which she highlighted all of our problems in the organisation.

But I just want to be clear that we are talking about the same thing because at the time of writing this affidavit, that is my understanding sitting here yesterday, I went back and it looks like we had two additional days of induction, not just this one.

CHAIRPERSON: H'm.

MS KLEIN: So what I would like is, if we do have it on
10 record, is the minutes of the meeting of the 16 January ,
please.

CHAIRPERSON: That... well, I do not know ...[intervenes]

MS KLEIN: Is it possible?

CHAIRPERSON: ...if it was an induction, I do not have the minutes because remember what Mr Seleka is saying, you have said you went back after hearing Mr Tsotsi's evidence to check.

MS KLEIN: Yes.

CHAIRPERSON: And you said the first board meeting on
20 the 16 January.

MS KLEIN: Correct.

CHAIRPERSON: But he is pointing out that in your statement that is reflected as having been an induction.

MS KLEIN: As an induction.

CHAIRPERSON: So I think what could be done is... well, I

do not know if Mr Seleka you do know whether you have any minutes for the 16 January or not because if you do, then they can be given but if we – if you do not, Ms Klein might need to – we have to move – go on with your evidence.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: But during the breaks or in lunch break or tea break if she is able to talk to somebody to try and obtain information that could help recall – have her remember exactly what the position is.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: That would be fine. And later on, we can come back to the point.

MS KLEIN: Yes.

CHAIRPERSON: Yes. And if she ...[intervenes]

MS KLEIN: I will do that, Chairperson.

CHAIRPERSON: ...and if she needs more time than today, she could come back later on. She could put up her supplementary affidavit to say: I have since had the opportunity to look at A, B, C, D.

20 **MS KLEIN:** Yes.

CHAIRPERSON: And I wish to correct my statement in the following way or wish to supplement it in the following way. This is the position. And if necessary, she can come back and deal with that on another day.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: That will be in order, Chair.

CHAIRPERSON: Okay alright.

MS KLEIN: Thank you, Chair. If I may just add? I would like to do that as you have said, Chair.

CHAIRPERSON: Yes.

MS KLEIN: Because I went to go and read it last night and there definitely are – there is a definitely a set of minutes for it.

10 **CHAIRPERSON:** Yes, okay.

MS KLEIN: Thank you.

CHAIRPERSON: Okay.

MS KLEIN: In fact, we may even get it for you at the tea break.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes. Thank you, Ms Klein.

CHAIRPERSON: Of course Mr Klein, it will be something that would be interesting to see how it get resolved as to whether there was a board meeting on the 16th as opposed
20 to the induction. Because as things stand, it looks like both you and Mr Tsotsi say the same thing with regard to when the induction was.

MS KLEIN: H'm.

CHAIRPERSON: And in terms of the statements, Mr Tsotsi says there was a board meeting on the 16th. But of course,

as you say, after you have heard his evidence, you went ahead and checked and you think there was...

MS KLEIN: Yes, yes.

ADV SELEKA SC: Ja.

CHAIRPERSON: So we will see how that is sorted out.

MS KLEIN: Thank you, Chair.

ADV SELEKA SC: Chair, might I add? The top executives say the same as well as Mr Tsotsi.

CHAIRPERSON: Yes, yes.

10 **ADV SELEKA SC:** That the 26th of February was the first board meeting scheduled for 2015.

CHAIRPERSON: Yes, yes. Okay alright.

ADV SELEKA SC: So Ms Klein, the – you said you – when the meeting of 26th of February 2015 was cancelled, you raised an objection.

MS KLEIN: That is correct, Chair.

ADV SELEKA SC: And your objection, was it to have the meeting take place specifically?

MS KLEIN: Chair, I was more concerned at the time, you
20 know, looking through my paperwork of the fact that we are going to be missing a deadline because that board meeting was also going to be looking at the approval of the corporate plan.

And in terms of Section 52 of the PMFA, we only had 30-days in which to get to corporate planning and I was

concerned that we would miss. That was the one thing.

But I think on a personal level from a governance perspective, you do not send a mail to people the night before the time to say the meeting is cancelled. I had a problem with that.

ADV SELEKA SC: Ja.

CHAIRPERSON: Actually, depending on what time the meeting was going to be on the 26th. If somebody was to travel from another province, they might have already arrived
10 there in Gauteng to spend the night so that they are in time for the meeting on the following day. And then they get a message saying, the meeting is not – it is cancelled.

MS KLEIN: Correct, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Ms Klein... sorry, I just want to go back to something.

CHAIRPERSON: Of course, I guess the... part of the problem with the cancellation is, you were not given any reasons.

20 **MS KLEIN:** Not at that time. There were reasons ...[intervenes]

CHAIRPERSON: Not at that time?

MS KLEIN: Ja, at that time, there were no reasons given. We heard about reasons afterwards.

CHAIRPERSON: Yes, but were you ever given reasons –

you say not at that time?

MS KLEIN: Not at that time. Afterwards, we were told that the minister cancelled it. And I mean, sitting here, listening to Mr Tsotsi, I heard that the president cancelled it. All I knew was, you know, it could not be right from a governance perspective for a cancellation to take place to a scheduled board meeting where the company was in crisis. And you know, how do you cancel this? And then we also had the corporate plan that needed signing off.

10 **CHAIRPERSON:** Yes, but my question is whether You were given reasons at any stage why the meeting off the 26 of February was cancelled because Mr Tsotsi he asked the acting DG who called what the reasons were and the acting DG said. I am not the minister, he did not give me any reasons.

MS KLEIN: Ja.

CHAIRPERSON: So when he was giving evidence, I was concerned that here is a board meeting. somebody outside of the boat, whether it is the president or the minister, 20 seemed to want it cancelled. They are not scheduled to appear and to attend this meeting. it is not the meeting. What other reasons? And then it gets cancelled even though he didn't know the reasons.

MS KLEIN: Yes.

CHAIRPERSON: You know, that was part of my concern.

So when you say that you were not given reasons at that time, I am interested to find out whether you were given reasons later as to why it was cancelled.

MS KLEIN: Yes, Chair we were told the minister cancelled it.

CHAIRPERSON: Yes, but that is not a reason. That is just to cancel it.

MS KLEIN: That I accept. I accept that but when you are told buy your cheapest in that that was the only reason, I
10 can give you.

CHAIRPERSON: Yes.

MS KLEIN: and it was after the fact. After raising the objection.

CHAIRPERSON: Yes. So what I'm saying is, that explains the origin off the idea of cancelling the meeting that it came from the minister or the president.

MS KLEIN: Yes.

CHAIRPERSON: But it doesn't explain why it was necessary to cancel the meeting. That you were never told
20 at any stage even after to say, here are the reasons why that meeting had to be cancelled. You will never be told that?

MS KLEIN: No, Chairperson We were never told.

CHAIRPERSON: Yes. Yes, okay.

ADV SELEKA SC: Thank you, Chair. Ms Klein, your – you made a statement to the Parliamentary Portfolio Committee,

submitted a written statement. Do you recall that?

MS KLEIN: That is correct, Chair. Yes, I did.

ADV SELEKA SC: Yes. A copy of that statement is contained in that bundle on page 347.

CHAIRPERSON: Mr Seleka, is there room for that mic to come closer to you?

ADV SELEKA SC: Yes. Oh.

CHAIRPERSON: Ja, okay. I am struggling more and more to hear you.

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

MS KLEIN: Yes, Chair I got that.

ADV SELEKA SC: You got that?

MS KLEIN: Yes.

ADV SELEKA SC: On page 347, it is Ms Venete Klein's statement to the Parliamentary Portfolio Committee.

CHAIRPERSON: What is the page number?

ADV SELEKA SC: Page 347, Chair.

CHAIRPERSON: Okay.

20 **ADV SELEKA SC:** Yes. Ms Klein, that statement is dated 19 October 2017 which appears on page 395.

MS KLEIN: Yes, Chair.

ADV SELEKA SC: Page 395.

MS KLEIN: Correct.

ADV SELEKA SC: Thank you. Now on paragraph 6 of that statement, which you find on page 349. You see that

paragraph deals with what you referred to:

“As the first board meeting following my appointment took place ...[intervenes]

MS KLEIN: Yes.

ADV SELEKA SC: ...on 16 January 2015.

MS KLEIN: Correct, Chair.

ADV SELEKA SC: And you deal with the agenda items included, amongst others, a War Room, updates, selective demands, financial status updates, consideration of board committee handover and so on. Do you see that?
10

MS KLEIN: Yes, I do.

ADV SELEKA SC: And then you have that paragraph – that sentence again:

“I recall having left this meeting feeling rather concerned, both by the enormity of the challenges which had correctly been highlighted by the minister and by the fact that Eskom did not appear to have concrete strategies in place to address these concerns.”

20 Which is a replica of... which is replicated ...[intervenes]

MS KLEIN: Yes, correct Chair.

ADV SELEKA SC: ... in your affidavit to this commission.

MS KLEIN: Yes.

ADV SELEKA SC: Now, if you go back to your affidavit – go back to the end of it which is page ...[intervenes]

CHAIRPERSON: I am so sorry. Ms Klein, in this statement that you made, you speak of a meeting you had with the minister on the 12th of December 2014 and you say there were – the meeting was attended by a number of new board members as well as two members of the previous board, Ms Mabude and Mr Tsotsi.

And then you indicate the important points which you noted which came out of that meeting. And then you refer to the first board meeting be on the 16 January which is
10 consisted with what you just said earlier on.

And then you talk about a report you received on the 29th of January on one performance. And let us see. You talk about what happened on the 29th of January.

Mr Seleka, I just note that Mr Tsotsi did not deal with some of these things which appear to be important.

Now I am saying that simple in this context that Ms Klein made the point earlier that prior to the 11th of March, prior to the meeting of the 11th of March, there was quite some activity that had been going on which – by which I think she
20 meant to say: Some of us as board members or members of various committees have had quite some engagement with the work, with our work and with some of the executives.

So one would have thought that Mr Tsotsi also would have also told about some of these things, particularly, when I raise the question of how the new board members would

have known what was happening at Eskom.

And also, I think I said to him: As Chairperson, I will take it that you would know if members of the board, you know, had been – were in a position or had been doing any work, you know.

So I am just surprised that he did not mention these things. But we can deal with... I think the part what I am talking about seems to address the point that Ms Klein was making, namely, between the induction and the 11th March,
10 there was a lot of activity that some of the board members were involved in in terms of the work.

And I see that she refers to some reports that they received on plant performance and so on. which may mean that they had began to do quite some work. At least in terms of familiarising themselves with what was going on at Eskom.

ADV SELEKA SC: Yes, Chair. May I put ...[intervenes]

CHAIRPERSON: You might have a better picture.

ADV SELEKA SC: Yes, let me ask Ms Klein.

CHAIRPERSON: Yes.

20 **ADV SELEKA SC:** Ms Klein, we have an affidavit by Dr Ngubane. Because of this issue, then I will have to refer you to that affidavit which is in a separate bundle. Dr Ngubane... let me read his affidavit so that...

CHAIRPERSON: Or should we take the tea adjournment now? It is quarter past eleven. And then when we come

back, you can read it Ms Klein.

ADV SELEKA SC: I have it here, Chair. If I may just...

CHAIRPERSON: Okay alright.

ADV SELEKA SC: ...just dispose of that quickly?

CHAIRPERSON: H'm.

ADV SELEKA SC: Will you please provide Ms Klein with Dr Ngubane's affidavit? Because none of the persons who have given us the affidavit, Mr Tsotsi, the executives, including Dr Ngubane, allude to... well, let me say specifically Dr
10 Ngubane as a new member similarly in your position by means to the engagement with the executives that you are referring to. The affidavit, I believe, has been placed before you.

MS KLEIN: [No audible reply]

ADV SELEKA SC: It may be contained also in – in fact in your file. Chairperson, for your purposes. That is page 593. That will be in bundle, Eskom Bundle 03.

CHAIRPERSON: H'm.

MS KLEIN: Chairperson, do I go to... do you want me to go
20 to that as well or...?

ADV SELEKA SC: Ja, they can assist you.

MS KLEIN: They will assist.

CHAIRPERSON: Go ahead even if I got it.

ADV SELEKA SC: Even if you ...[intervenes]

MS KLEIN: Okay I got it.

CHAIRPERSON: Ja, okay.

MS KLEIN: Thank you, Chair.

ADV SELEKA SC: So that is page 8 in the bundle that you have before you, Ms Klein.

MS KLEIN: 8? Is that right?

ADV SELEKA SC: Page 8, yes.

MS KLEIN: Are we talking about 8 or 51, Chairperson?

ADV SELEKA SC: Eight at the top of that page. Eight...

MS KLEIN: I have got 593.

10 **CHAIRPERSON:** Before... have you told you about the red numbers and black numbers?

ADV SELEKA SC: No, she might be having... which number does she have?

COUNSEL: [No audible reply]

ADV SELEKA SC: This one of her?

COUNSEL: [No audible reply]

CHAIRPERSON: Okay let us take the tea break. When we – you will get time to attend to it and then we can look at it after the tea break.

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

CHAIRPERSON: We take the tea break and resume at twenty-five to twelve.

ADV SELEKA SC: Thank you, Chairman.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV SELEKA SC: Thank you, DCJ. DCJ there are two aspects which I will put to Ms Klein and she can respond the DCJ. So that is, Ms Klein – well, going into those two aspects, the first one is that Mr Matona himself testified that he did not have an interaction of the board, the new board members prior to the meeting on the 9 March 2015. So we are asking specifically this question and in regard to
10 whether issues relating to the war room, which I see then you touched on that aspect, whether they were raised with him and he said no. So that is one, so you can tell the Chairperson, I will go to the other two.

MS KLEIN: Chairperson, I cannot agree with that because we have had interactions with Mr Matona hence my statement where I express a view, not on Mr Matona as a person, but my view as a business person coming onto a government board for the first time of how I felt about certain things that was being said. So, Chairperson, to
20 you, I cannot agree with that, there were various meetings held in between.

ADV SELEKA SC: The second one, Ms Klein, and you can also comment to the Chairperson and that is the audio which I would like to play, that is the board's in-committee meeting after having met with the Minister on the 11 March

2015. Time stamp – or the page reference in the transcript, you will have the transcript there with you, it is page 893. I believe you have been given that file. Chairperson, we will use, with your permission, the file of Mr Tsotsi that we used yesterday.

CHAIRPERSON: Yes, that is fine, what page in that file?

ADV SELEKA SC: It is page 893.

CHAIRPERSON: 893?

ADV SELEKA SC: Yes.

10 **ADV SELEKA SC:** Time stamp 40 – let us start at 00.

AUDIO PLAYED – INAUDIBLE

ADV SELEKA SC: Did you recognise the voice of the two persons talking?

MS KLEIN: Yes, that is Mr Tsotsi and Norman Baloyi.

CHAIRPERSON: I am sorry, what was the answer?

MS KLEIN: It was Norman Baloyi, one of the board members and the Chairperson Zola Tsotsi asking the question.

CHAIRPERSON: Okay.

20 **ADV SELEKA SC:** Thank you, Ms Klein.

AUDIO PLAYED – INAUDIBLE

ADV SELEKA SC: Do you hear what he says there?

MS KLEIN: Yes, Chair.

ADV SELEKA SC: That secondly – you can read it if you see it there. Just read it on record?

MS KLEIN: Oh, alright, it says:

“And secondly that the issues from the war room...”

Is that the one?

ADV SELEKA SC: Yes.

MS KLEIN: “...the information has never been sent to the board.”

ADV SELEKA SC: Your comment to the Chairperson?

MS KLEIN: Chairperson, yes, you want me to respond?

ADV SELEKA SC: Comment on that, yes.

10 **MS KLEIN:** Ja, no absolutely. The board had a big problem – or let me speak for myself – that there was a war room established by the President at the time. The war room is running on the one side. You have got a new board with – who has now got all the challenges, as I have outline in my affidavit and parliament, we have got a Chairperson coming and telling us that there is certain things that must happen and you have got the Minister on the other side and I talk for myself, Chairperson, it is – we never get anything that is congruent. So here what Mr
20 Baloyi is saying, we are never getting - to read it again:

“Secondly that the issue of...”

Let me just read it correct.

“I can see what is combined in that report and then secondly I said that the issues from the war room the information has never been sent to the board.”

The context of that, Chairperson, the context of that is, there is not a formal report coming to the board of what is happening in the war room but what is coming at various pieces the war room is saying – as an example, one of the things that was discussed, which is why I am so adamant that there were board meetings before, one of the things that was discussed was that we were going to be able to do some severance packages allowing people to leave. The war room in one of their minutes – so we see this in a
10 minute now – says the board cannot do that. And as a board member, I am sitting here thinking, I have a fiduciary responsibility. We are making decisions based on what we believe to be right, the war room is giving us one version, Mr Baloyi is correct, it is not in a formal report but you are forever hearing you can and you cannot from those who have been there. That is the context.

Now I want to go beyond that, Chair, if you allow me. The report that he is referring to here is the report that Mr Tsotsi told us when we were pushing back and forth
20 about the suspensions, Mr Tsotsi said a lot of work has already been done and there is a thick report that – so Mr Tsotsi was saying to us, guys, a lot of work has been done on this, do not slow us down here. And I can for the record tell you, Chairperson, I actually supported Mr Tsotsi at the time because it is a lot of work that has been done by way

of investigations, Mr Tsotsi is coming and recommending to us this is the way to move forward. I had no – I am a business person. In fact I am not sure how much of this recording we are going to play but I can tell you if you play to the end of it you will hear me, as a banker, saying that the CFO had told us earlier in this particular meeting, one of the challenges that we faced that we were running short of – we were seriously cash constrained. There was a going-concern problem that we were facing and I want to
10 understand what does that mean.

So she said typically you would have a buffer of R4 billion for Eskom. So I said what did that mean? And she then said it meant we had cover for the cost of Eskom for the running for four months.

So at the end of this recording, if you are still going to go there, I am not sure, Chair, but assuming you do, you will hear me say if I take what the CFO has told us, that we have got – we should have a buffer of 4 billion, at this stage we only have 4.9 bill which means they have not
20 even got enough in the bank to carry us for one month and then I went a step further to the board. I said board members, understand, running this operation costs of R50 million a day. We cannot – we are sitting here where the Chairperson has given us input and has asked us – the Chairperson guided us with the suspensions and we will go

through that, you have asked me, I will go through that.

And I am saying I support the Chairperson because the toing and froing about something where it is costing this amount of money and it is money we do not have.

So in a long way, the report that Mr Baloyi is referring to is a report that the Chairperson says had been done and I supported the Chairperson - if all this work has been done and you are saying that this is a way forward, I support you, Chairperson, and I have quantified it in terms
10 of numbers.

ADV SELEKA SC: Yes, thank you, Ms Klein. You see what Mr Baloyi was saying there – I see you are trying to qualify what he said, but he plainly said the information from the war room has never been shared with us and that is really – but you have given your comment. I will move on.

CHAIRPERSON: I think what Ms Klein is saying – and you must just tell me if I misunderstood what you are saying, Ms Klein. I think part of what she was saying is yes, it is
20 true that certain information was not being given to the board but clearly relating to the war room, as I understand the position, or request for information from the war room on an official basis but it could be that board members become aware unofficially of information. That is what I thought you were saying. Is that correct, is that not

correct?

MS KLEIN: Chairperson, that is exactly correct.

CHAIRPERSON: Yes.

MS KLEIN: Remember just prior to this meeting, if you go and listen to the recording, the Minister comes out and tells us what has come out of the war room which the Minister also did in the meeting the first time she met ...[intervenes]

CHAIRPERSON: Ja, ja, so ...[intervenes]

10 **MS KLEIN:** Because...[intervenes]

CHAIRPERSON: So information might be bought or different board members might be aware of certain information but it is not official or it is not formal, that is not what you are saying.

MS KLEIN: Chairperson, that is exactly what I am saying.

CHAIRPERSON: Ja.

MS KLEIN: And further along you will even find where board members are even asking is it not possible that one or two of us even become part of the war room so we can
20 somehow align what the President has put together in the form of a war room, which is being led by our current President. President Ramaphosa was leading that war room but none of the board members were there and the Minister was coming to give us information about how things are going wrong.

What Mr – my understanding of listening to the recording here is that what he is saying is we, the board, are getting bits and pieces of what is coming out of the war room and it does not help us at the board to make proper decisions, as we would understand it to be proper, if you will.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes. Thank you, Chair. So just to take further the Chair's trying to understand what you are
10 saying, Ms Klein, would what you refer to in your statement as a meeting with the Minister in I think you say 12 December 2014 and you give a list of the items there which includes the war room which has been run by the Deputy President of the Republic, would that not have been a formal information to you as opposed to hearing informally about issues pertaining to the war room?

MS KLEIN: Chairperson, we are talking about two different time streams here. We are talking about the Minister telling us on the – I think it is 14th, Chairperson,
20 14 December or 12 December.

ADV SELEKA SC: 12 December 2014.

MS KLEIN: Right. And then you are talking about the 11 March which the couple of months later where the Minister again talks about the war room. I think what the board was grappling with in that time is bits and pieces coming at us

but no formal representation of what is happening in the war room. We are constantly hearing about the problems as identified by the war room.

And I cannot talk for Mr Baloyi, I can talk for myself and at the time of sitting there, I must tell you, I am sitting then typically in board you have been given information and based on the information you would make decisions, Chairperson. That is in a typical boardroom.

Here you are sitting in a boardroom, you consider
10 all the documents in front of you, you make decisions and then you get told but the war room says that you cannot do it. So that is on the one hand.

Then you have got a Chairperson and I am sure we will get to it, the evidence leader I am sure will take us there. A Chairperson who comes at us as the board and says in a meeting with the President and then we have got to call the Minister and somehow in between all of us, as a board member, you have got to try and make sense.

So the point from Mr Baloyi is, I personally had
20 never seen a formal war room report but we were given extensive input in terms of what came out of it. And the question by the board, is it not possible that one of us can sit on the committee was discussed more than once because of the divergent pieces of input with which this board was trying to make sense and trying to move forward

in the best interest of a very complex situation.

ADV SELEKA SC: Yes. I would not want to belabour it but we can see he says it has never come to us and not to him personally. So he seems to refer to the corporate as opposed to the individual. Anyway, but your point, according to you there would have been interactions prior to the meeting of – is it 11 March or is it 9 March?

MS KLEIN: Chairperson, there were two interactions. The one interaction was on the 9 March and the second
10 interaction was on the 11th.

ADV SELEKA SC: No, I am talking prior to those meetings of 11 March, prior to the meeting of 11 March or the 9 March. Your interaction with, as you say, the executives would – it would have taken place before those dates.

MS KLEIN: Correct. Correct, Chair.

ADV SELEKA SC: Yes. Now let us see how you then respond to this aspect, again arising from the minutes of the 9 March 2015. Chairperson, it is Eskom bundle 02.
20 The minutes of the 9 March are found on page 62. Six two, Chairperson.

CHAIRPERSON: Yes.

ADV SELEKA SC: And then I will refer to the relevant page where I wish to read, I think it is page – yes, page 64. Are you there, Ms Klein?

MS KLEIN: Page 62, Chair?

ADV SELEKA SC: Yes, it is the minutes of the 9 March.

MS KLEIN: Yes, sir.

ADV SELEKA SC: 2015. Then please go to page 64. Just for you to comment on this through the Chairperson. Paragraph, from the top one, two, three, four, five, it starts with the words “Another member”.

10 “Another member stated the board should meet with the Minister of Public Enterprise as to understand what her expectations were from this inquiry. It was agreed further that ...[indistinct 19.21] she was required as to whether the board would continue with its normal duties while the inquiry was underway as to date no reason had been given as to why the board meeting of 26 February 2015 had been cancelled by the Minister of PE. Clarity was also required in respect of the board’s obligation to the war room.”

Then the next paragraph:

20 “It was reported that the audit and risk committee had emphasised that the board needed to review the sitting process of the war room as there was no alliance or alignment between the board and the war room. Members wanted to ascertain the shareholders’ view around this issue because at

present the board has still not held a board meeting and would need to understand the scope of work and how the committee would function. A concern was raised at the committee, could usurp the board's powers.”

Your comment on those two paragraphs? You can you see two issues arise there. One is that the board has not held a meeting but the other seems to be uncertainty about the war room. Your comment to the Chairperson?

10 **MS KLEIN:** Yes, Chairperson. As I said, you know, I cannot – first of all, I was not at the meeting of the 9th.

ADV SELEKA SC: Ja.

MS KLEIN: Let us start with that. My comments around it being the first meeting of the board, like I said, the 16th – in fact, Chairperson, what I did get, you know, in the break, was the full minutes of the board meeting of the 16 January.

CHAIRPERSON: Oh, you got those?

MS KLEIN: I got them. Now whether that is what then is
20 referred as to the induction.

CHAIRPERSON: Yes.

MS KLEIN: I think is probably where the – what do you call it – maybe the confusion is coming from.

CHAIRPERSON: Yes.

MS KLEIN: Because I got two packs at my home, 14th and

15th.

CHAIRPERSON: Okay.

MS KLEIN: And 16th. So it is possible, I mean, like I said I just cannot remember that far back.

CHAIRPERSON: Ja.

MS KLEIN: But I do not have a minute for the 14th and the 15th. I do have a minute for the 16th and I also have an in-committee minute for later on on that evening.

CHAIRPERSON: Yes.

10 **MS KLEIN:** And in-committee where we get told who sits on which committee, etcetera, etcetera.

CHAIRPERSON: Ja, okay.

MS KLEIN: So I hope that that clarifies maybe my own I misunderstanding of whether it was an induction then or – that is to do with the dates. Is that your first question, Chairperson?

ADV SELEKA SC: Ja.

CHAIRPERSON: Yes, I think what will be important is to look at the content.

20 **MS KLEIN:** Agreed.

CHAIRPERSON: Of the discussions because an induction meeting and an ordinary meeting should be different.

ADV SELEKA SC: Yes. No, correct, that is important, Ms Klein, because when I was also doing the comparison between your statement at the parliamentary Portfolio

Committee, there where you used the word “meeting” the first board meeting. Which is in 2017 you wrote that statement but your affidavit here was in March 2020, that is changed to induction meeting as opposed to first meeting of the board.

MS KLEIN: I see that, Chairperson, I am happy to say that I could have made a mistake as well. I am happy to concede that the dates were – so, you know... And I think I was guided by going through all my documents after I met
10 with the team from the Commission. Having gone back and having looked at all my documents, I saw 14.50 and no [indistinct 23.27]. So then I said well, but okay then it is an induction.

But listening to Mr Tsotsi yesterday made me go and read it again and then I thought but hold on, how do you at an induction take board resolutions? So I think it is something that maybe the Commission wants to explore a bit further.

CHAIRPERSON: Yes, I think it ought to be possible to
20 look at the content, talk to those who attended and see what was an induction meeting, maybe if you want to call it that, and what was an ordinary board meeting – well, maybe I should not say ordinary because of the different categories but basically a board meeting. So the content of the discussion should indicate. Okay.

ADV SELEKA SC: Ms Klein, I think that will then resolve.

MS KLEIN: Yes.

ADV SELEKA SC: We could move on.

MS KLEIN: Yes, Chairperson.

ADV SELEKA SC: You do not have that meeting of the 26th which is cancelled. The understanding there was a meeting called for the 9 March. You say you did not attend that meeting.

MS KLEIN: No, Chairperson, I could not. We got that on
10 the evening of the 8th and I unfortunately had had an
engagement for the next day but I once again questioned
the governance around how we did things. You know, you
cannot just call meetings at the eleventh hour. I mean, I
think my biggest concern always around the financial
status of Eskom.

The running cost of Eskom was around 30 million a
day and I was not convinced that if you get a resolution on
the 8th and say you must be there the 9th that everybody is
going to be there so that was my ...(intervenes)

20 **CHAIRPERSON:** But also, if there was a scheduled
meeting for the 11th you wonder why it was necessary to
have the meeting on the 9th because even though the
meeting of the 11th may have been there for certain items,
if the board thought that there was something that was not
on the agenda for the 11th but that was quite urgent they

could, you know, change their agenda to include that.

MS KLEIN: That is correct, Chairperson. I speak under correct now but I am not sure that there was a meeting scheduled for the 11th.

CHAIRPERSON: Well, Mr – I am going according to Mr Tsotsi's evidence.

MS KLEIN: Okay.

CHAIRPERSON: His evidence was that after the cancellation of the meeting of the 26 February a meeting
10 was scheduled for the 11th and my understanding of his evidence – or I may have I misunderstood him, my understanding was that by the 9th there was a meeting scheduled for the 11th but I may have I misunderstood him.

MS KLEIN: Yes.

CHAIRPERSON: And maybe it was only arranged for – it was only fixed on the 9th after the meeting. But my impression was that it had been scheduled earlier.

MS KLEIN: Okay.

CHAIRPERSON: Ja, but that might not be correct.

20 **MS KLEIN:** Chairperson, that may very well be so, I cannot confirm.

CHAIRPERSON: Yes, ja.

MS KLEIN: I just want to, if it is okay with you, I thought Mr Seleka had asked a second question around this point.

CHAIRPERSON: Ja.

MS KLEIN: About the war room. Was there a second point or did he cover that?

ADV SELEKA SC: No, I think will be clarified.

MS KLEIN: Okay.

ADV SELEKA SC: By what the Chairperson has proposed to be the way forward.

MS KLEIN: Okay, alright.

ADV SELEKA SC: Ms Klein, I want to show you your email in regard to the meeting of the 9th because I hear
10 you say to the Chairperson that again you raised concerns about issues of governance. Chairperson, that email is contained in the bundle we used yesterday from Mr Tsotsi, I think the witness will be – it is an email on page 1092, Eskom bundle 07(B).

CHAIRPERSON: Eskom bundle 02?

ADV SELEKA SC: 07(B). Okay. (B) page 1092. Chairperson could use my bundle.

CHAIRPERSON: Registrar please take the one that Mr Seleka is offering. Thank you.

20 **ADV SELEKA SC:** Ms Klein, you recognise that email?

MS KLEIN: Yes, I do, Chairperson.

ADV SELEKA SC: So that is your email sent on Sunday 8 March 2015 at 22.49, it is sent to Zola Tsotsi and Malesela Phukubje, subject Urgent Meeting 9/3.

“Dear Chairperson, please accept my apologies for

tomorrow's meeting as I will be out of town in the morning. Should you, however, not be quorate, I am back in Johannesburg at 18.00 and would be available for a meeting in the evening given the significance of this gathering. Having read the proposed discussion and resolution being sought, I would like to be included in the working committee to deal with the issues as articulated... document, the reason for this is as Chair as statutory body, sub-committee I feel that I will add value in helping the process. Kind regards."

10

I – maybe you could come in because I do not see your concern regarding governance issues.

MS KLEIN: I think you are right Chair, it is not there, I think I have sufficiently raised it at other times where I thought that I had raised it here as well.

ADV SELEKA SC: Just to put context to this so that the Chairperson could follow. This is a meeting that was called as we heard yesterday and the day before by notice sent Sunday evening that is according to Mr Tsotsi after he had a meeting in Durban at the President's residence. So he sent a meeting with a memorandum attached and a resolution attached and I think that is what you are referring to the proposed discussion and the resolution.

20

MS KLEIN: Yes.

ADV SELEKA SC: So you expressed your interest to serve on the committee, the sub-committee that according to the resolutions given to be set up. Is that correct?

MS KLEIN: Obviously after a meeting and a deliberation that was now going to take place at a particular meeting.

ADV SELEKA SC: Yes, no all I am saying is that you expressed interest here to serve on that.

MS KLEIN: Oh absolutely and may – you want me to respond that why would I have done that or not necessary

10 Chair?

ADV SELEKA SC: The Chairperson, will allow.

MS KLEIN: Okay I looked at this and I looked at the gravity of what was being proposed and at the time I felt that you know there was two people if I remember the committee that was being proposed and you can help me. It was Mr Tsotsi himself, it was Zithemba Khoza as the Chairperson of People and Governance, it was Kweita who was – I am not sure what she was Chairperson of I think Audit and Risk at the time.

20 **ADV SELEKA SC:** Yes.

MS KLEIN: And I just – I think it was audit and risk and I just felt if there was going to be any significant pieces of work done that social and ethics which I was Chair of at the time needed to be a part of. The granular detail of the enquiry was obviously not understood at that stage and

that was going to be unpacked my understanding at the meeting of the 9th. So if there was going to be a committee, I just felt that it would be significant to be part of it to understand what it was particular given some of the resolutions it sort when I looked at it that was what that was about.

ADV SELEKA SC: Thank you. Ms Klein okay that you did not – you were not able to attend the meeting of the 9th the next was the meeting of the 11th of March. So let us ask
10 you this and you could tell the Chairperson whether you were aware or not at the time prior to the meeting of the 11th of March that Mr Tsotsi had had a meeting with President Jacob Zuma and Ms Dudu Myeni at the President's residence in Durban?

MS KLEIN: Prior to the meeting of the 9th or prior to the meeting of the 11th?

ADV SELEKA SC: Prior to the meeting of – let us start with the meeting of the 9th.

MS KLEIN: Yes, I would not have had any knowledge of
20 that, I was not close to either the Chairperson at the time who was Mr Zola Tsotsi, I was not a confidant of his. I have never met Ms Myeni and I have certainly – I have met the President but that was in my role as deputy not deputy as a board member of the reserve bank. I have met the President. So the answer would be no I would not have

been aware.

ADV SELEKA SC: Would you have been aware of the meeting between Mr Tsotsi, the President and Ms Dudu Myeni before the meeting of the 11 March 2015?

MS KLEIN: Yes, Chairperson because...[intervene]

CHAIRPERSON: You had done...[intervene]

MS KLEIN: Yes, sorry Chairperson.

CHAIRPERSON: Oh you did not attend the meeting of the 9th so you might not have had.

10 **MS KLEIN:** Exactly, I was not at the meeting of the 9th but obviously you know lots of things were discussed and deliberated and obviously people gave me feedback and that is when I became aware of what had been discussed at that meeting.

ADV SELEKA SC: I see. Yes, because I have seen in your affidavit you say you did not attend and you rely, you relied solely on the minutes of that meeting.

MS KLEIN: I have to agree that that would be it Chair but if you think about it I mean people were getting very
20 excited about the meeting of the 9th and there were people who were phoning each other. If you ask me now who said what I probably would not know but I could only rely on what was being written and I mean I am not going to go as far as saying to you that nobody phoned me and nobody spoke to me I mean people were becoming very excited

about what they had heard here at the meeting.

ADV SELEKA SC: So you would have become aware - or rather let me ask you. How would you have then become aware that there was a meeting between Mr Tsotsi, the President and Ms Dudu Myeni?

MS KLEIN: If memory serves me well Chairperson that is what Mr Tsotsi had shared at the meeting of the 9th and that is where after that meeting, I would have become aware of how exactly the resolution itself found its way into
10 the Eskom board.

CHAIRPERSON: Prior to the 11th of March, prior to the meeting of the 11th of March did you receive minutes of the meeting of the 9th?

ADV SELEKA SC: Chairperson I am not sure.

CHAIRPERSON: You are not sure.

MS KLEIN: I really I am not sure.

CHAIRPERSON: But what you do say is that after that meeting you became aware of at least some of the matters that were discussed through talking to one or others, some
20 or other members of the board.

MS KLEIN: Correct.

CHAIRPERSON: Because people were phoning one another to talk about that meeting.

MS KLEIN: Correct.

CHAIRPERSON: Okay.

MS KLEIN: I mean I will go as far as saying my understanding was that at the meeting people were uncomfortable with certain things and this is why they have asked that the Minister come and represent them. In fact, if I think of my own words at the time as this is just me saying what I felt what I can remember feeling. Is why would the President have a meeting with anybody regarding Eskom. It was just these were thoughts that I had, let alone Ms Myeni because I mean she was not a part
10 of it and in my own mind and I think I may even have said it because remember in parliament Chairperson you have got your affidavit and then you have got being cross questioned. So you have got the transcripts as well. I think somewhere in between somebody actually asks the question and I remember thinking or feeling that I want to hear from my shareholder representative who as a board member I report into what she saw as the issues and what she would like us to do. I could not quite understand why a sitting President would be involved but those were my
20 thoughts.

ADV SELEKA SC: Thank you. Ja, I think you did say in parliament that you were surprised why the President was involved in trying to look for – because we have the transcript of your testimony there we will get the reference page.

MS KLEIN: Of course.

ADV SELEKA SC: But then you were able to attend the meeting of the 11th?

MS KLEIN: Correct Chairperson.

ADV SELEKA SC: And the Minister arrives at some point to address the board on that occasion. Correct?

MS KLEIN: That is correct Chairperson.

ADV SELEKA SC: So you were present when the Minister was there?

10 **MS KLEIN:** That is right Chairperson.

ADV SELEKA SC: Could you tell the Chairperson what in your recollection was the Ministers message to the board?

CHAIRPERSON: Well before that Mr Seleka do you not want her to talk about the meeting of the board that happened before the Minister came. I think so that if there is any difference between what Mr Tsotsi said what happened at that meeting and what she says we can know where the differences are...[intervene]

ADV SELEKA SC: Indeed.

20 **CHAIRPERSON:** Thereafter she can talk about the part where the Minister came and thereafter when the board met after the Minister.

MS KLEIN: Yes.

ADV SELEKA SC: Indeed Chairperson.

CHAIRPERSON: Okay, so just talk about the meeting of

the board before the Minister came on the 11th. What was discussed and so on and so on?

MS KLEIN: Thank you Chairperson. One or two of the things I remember specifically was something I addressed with you earlier. We had a set agenda that I remember Mr Tsotsi starting the meeting telling the board that he found it rather unacceptable that board members were interacting on a regular basis.

CHAIRPERSON: Were interacting?

10 **MS KLEIN:** Interacting.

CHAIRPERSON: Among themselves?

MS KLEIN: Ja, so a board member would phone let us say...[intervene]

CHAIRPERSON: Another board member?

MS KLEIN: No, no a board member would phone an executive.

CHAIRPERSON: Oh a board members interacting with the executives?

MS KLEIN: With the executives.

20 **CHAIRPERSON:** Okay, alright.

MS KLEIN: And Mr Tsotsi was saying and I think I understood why he was saying it because you know there was just you know I am loathed to say this but I am going to say what I feel and then Chair you can decide how you want to take this. There was so many stories you know

everybody you would walk into had a different story about a different issue. No board that I have ever sat on made me as tired as Eskom.

You yourself raised something yesterday about there was one meeting we had left at 12 o'clock that was a regular occasion. I mean my family never saw me so in any event one of the things I remember raising with Mr Tsotsi which I said to you earlier was the whole issue around critical matters being raised by board members and
10 I actually want to give you an example if you may I am going to step slight out of it. And I am not sure Chairperson whether you have or dealt with TNA or whether you are still going to deal with TNA, I am not sure.

CHAIRPERSON: We have dealt with TNA.

MS KLEIN: You have?

CHAIRPERSON: Yes.

MS KLEIN: If you would just indulge me just to...[intervene]

CHAIRPERSON: We have dealt with TNA but if you have
20 knowledge of some things that you would like to share with the Commission on TNA you can arrange to give us an affidavit where you can share more. But if in regard to the TNA you have something that is relevant to what you want to say you can refer to it.

MS KLEIN: Yes, Chair it is something that is relevant to

it.

CHAIRPERSON: Ja.

MS KLEIN: I remember Mr Tsotsi giving evidence and saying because the question I think you posed at the time was why do you – why did somebody, I mean what happened when the resolutions went out. I was the board member who refused to sign it very simply. I come out of corporate and if there is any wrong doing of any kind you suspend people and maybe a little bit more ruthlessly than
10 in public sector but that is how it worked. You suspend people, you do the investigation and then you have a disciplinary and you bring the people back or you dismiss them. So when I get asked in a resolution to sign something on TNA, I am the one board member who refused and I wrote to Mr Tsotsi, I got no response. That is what I was referring to, that was one example of you asked what we discussed on that day. It was issues of governance me saying Chair you do not want me to speak to the executive but you are my Chairperson these are
20 critical matters that we are talking about I need you to respond and in that meeting Mr Tsotsi I want to give him credit for that like I said earlier he apologised and he made sure with the secretary that they would in future not handle it in a particular way.

If board members had critical matters they needed it

to be dealt with that was one issue. Then I know that Mr Matona went through the DD, CEO report to the board. Now I have also then in preparation for today in listening to evidence being led by other people and one thing I know that Mr Matona said was that he had done a turnaround plan and I remember hearing your concern about how could you not have not considered the turnaround plan or how could we I mean – Chairperson I must tell you I never saw a turnaround plan or maybe let me qualify it.

10 I am a banker if you did a job for six months and you have given me a turnaround plan I expect you to say to me that it was we were standing at zero profit; I have given the board a plan which said we were going to get to R60million in one year we are now in month six so month six I am on track we got R30million banked that for me is a turnaround. But what Mr Matona did say in the particular meeting that you referring to on the 11th the minute is clear where Mr Matona says I am busy developing a turnaround plan. A turnaround plan had not been developed if you
20 read the minutes. It says I am busy developing a turnaround plan.

CHAIRPERSON: Yes, okay.

MS KLEIN: That is the first, so we spoke about it...[intervene]

CHAIRPERSON: Which suggests that it did not exist as

yet.

MS KLEIN: As yet.

CHAIRPERSON: Ja.

MS KLEIN: And in the minute it goes further of the 11th because I went to go and listen to it again in preparation for today. Mr Matona says as part of the induction I have raised issues of the turnaround with the board. So understand I think it is not that one person is lying and another person is not lying it is more a case of
10 interpretation and how people saw things.

Maybe in government the turnaround plan is good enough if I give you an update of where I am. The world I came from does not work like that. Then the next thing is at that stage Mr Zola, the Chairperson walks out of the meeting and puts me in the Chair said Ms Klein would you mind chairing. I then chair it and Mr Matona goes through granular detail you know the suspension not the suspensions the people he had moved around, the liquidity problems that they were having I have got it listed. And I
20 remember in – and I do not know that I am helping myself here Chairperson I am talking maybe more than what evidence that you wanted me to. Maybe you – let me be guided by you.

CHAIRPERSON: Well we asked you or I asked you what was discussed at the meeting so that is what you are

telling me.

MS KLEIN: Okay.

CHAIRPERSON: Obviously you are looking at important things that you can remember.

MS KLEIN: So one of the things that was very evident though is that the board apparently had not engaged on the turnaround plan and did not ask questions on it. Chairperson that is not true. I have had my sat and listened to ten questions the board asked around it. So
10 what I am saying is if the turnaround plan was the CEO update that we received there were ten questions asked on it. So and that is what happened prior to the Ministers arrival I was chairing that part of the meeting Chairperson.

CHAIRPERSON: Okay then we come to the meeting when the Minister...[intervene]

MS KLEIN: Arrived.

CHAIRPERSON: Arrived ja I think then you can tell us about that one.

MS KLEIN: And I know I am on national television so I do
20 not want to give away my age but I was about to say thank you for reminding me Chairperson. Chairperson the Minister arrived and to the best of my recollection because there was no, there was no recording of that I think we switched of the recording if remember correctly.

CHAIRPERSON: Prior to the Minister arriving what was

your understanding of what the purpose of her visit to the board was?

MS KLEIN: My understanding was that the Minister was going to give clarity on the meeting of the 9th where based on what I had heard and I do not think the minutes was out at the time.

CHAIRPERSON: About the suspensions and the enquiry.

MS KLEIN: About the enquiry which may lead to suspensions because of the problems that the company
10 had.

CHAIRPERSON: Yes, okay so she came and then what happened?

MS KLEIN: She came in and she gave us - if memory serves me correctly and I think I have got it in my affidavit some of the stuff that I remember.

CHAIRPERSON: Ja, you can have a look if you want to refresh your memory.

MS KLEIN: Can we just look at that please, Chairperson.

CHAIRPERSON: Yes Mr Seleka can...[intervene]

20 **MS KLEIN:** Look at my affidavit.

ADV SELEKA SC: In your affidavit.

MS KLEIN: Ja, where I am referring to what happened when the Minister arrived.

ADV SELEKA SC: That is on page it starts on page 8 paragraph 29.

MS KLEIN: Yes, and Chairperson if I may I think I have dealt with what was discussed at the meeting. Mr Matona took us and outlined the problems facing Eskom at the time and I list those.

ADV SELEKA SC: Yes Chair I see it you are going to answer the Chairperson but may I make a comment on this because I hope you do not forget because I am concerned that Ms Klein some of the things you mentioned about the CEO are not contained in your affidavit. You mentioned to
10 the Chairperson that he said he is developing a plan so he did not have a plan but nowhere in your affidavit do we see that as a concern on your part on what you said to the Chairperson because it becomes difficult for us to put that to him so that he can answer if we do not have that version from your side.

MS KLEIN: Chairperson and let me apologise to you.

CHAIRPERSON: Ja.

MS KLEIN: Remember as I said to you I sat here yesterday and I was listening to what Mr Tsotsi was saying
20 in exactly the same form I mean sorry Chairperson.

CHAIRPERSON: Yes, no, I think I understand your situation you deposed your affidavit at a certain time and you dealt with issues that you dealt with but you are saying that yesterday you listened to Mr Tsotsi's evidence and I think you said you also have listened to the recording of

the evidence of other witnesses relevant to Eskom I think.

And part of what you are doing is when you are aware that Mr Tsotsi also Mr Matona has said something that you do not agree with you are now responding to that which you might not have done in your affidavit. That is what you are saying.

MS KLEIN: That is exactly Chairperson you have summarised it correctly and I apologise to you if it complicates matters.

10 **CHAIRPERSON:** Yes no, no but it is fine it is important. If you are aware that somebody has said something about a certain meeting which is not true or which is not your understanding of what happened, it is right that you should say I heard so and so said this but that is not my recollection or that is certainly did not happen. So it is in order it is just that Mr Seleka was saying it is not in your affidavit but I think that – this would be your explanation.

MS KLEIN: Yes.

20 **CHAIRPERSON:** In so far as you may be responding to something that you became aware of after the affidavit.

MS KLEIN: Thanks for understanding Chairperson it is just I take the Commission very seriously which is why I am trying to shed as much light but I do understand what it creates.

CHAIRPERSON: No that is fine.

ADV SELEKA SC: Thank you Chair. So you were taking us to what the Minister said.

MS KLEIN: Okay.

ADV SELEKA SC: That will be on the next page.

MS KLEIN: Thank you Chairperson. The Minister she said she was aware that the board may have been feeling that they have been falling by the wayside because of the War Room and I think there was like I said lots of noises particularly the board is saying but we getting all this, so
10 that was the one thing.

There was concern regarding the interest rate which Eskom had negotiated and agreed in the market for some monies raised so some bonds that they had gone out and raised. Okay the inequality of cold price, price purchases with some companies being paid more than others. Mismanagement of the load shedding process, the purchasing of diesel on the roof it was a big issue for us at the time. The appointment of the board did not bring about any problems and the process ran smoothly. I must say I
20 extracted this Chairperson from the minutes so then there must have been minutes. I am just thinking now I said there was not a recording but there definitely was minutes. I have actually also listed and drafted from the draft that was there and that after may procure the services of an independent credible forensic investigator to undertake the

enquiry proposed by Mr Tsotsi and not someone who had previously dealings with Eskom.

ADV SELEKA SC: Sorry where were you reading that from?

MS KLEIN: Sorry I am reading on – still on page 9.

ADV SELEKA SC: Well 31G.

MS KLEIN: I am not sure what you call it.

ADV SELEKA SC: No, no the paragraph 31?

MS KLEIN: Oh sorry yes, yes that is correct.

10 **ADV SELEKA SC:** You said the ARC they procured the services of an independent credible forensic investigator to undertake the enquiry proposed by Mr Tsotsi and not someone who had previous dealings with Eskom of whose independence may be in doubt. So all this is what the Minister said?

MS KLEIN: My best recollection between what I said and what I have seen in minutes and what I have seen in notes but I was taking notes of my own.

20 **ADV SELEKA SC:** Ja, well let us look at paragraph 30 to start with it says the Minister also addressed the board that day. Once again expressing her concern around the board, getting a handle on the business. The Minister conceded that he had no right to instruct the board on any matter regarding the conduct of Eskom's business. Do you see that?

MS KLEIN: Yes, I do Chairperson.

ADV SELEKA SC: Did – it is a startling statement and I hope you will be able to explain it to the Chairperson why would this statement have been made by the Minister?

MS KLEIN: Obviously Chairperson I am not the Minister but this is what I am hearing and that is what I have recorded. That the Minister – my understanding at the time was that she is saying I cannot instruct you what to do. You have been given a challenge, a big challenge so you
10 need to find the best way in which to resolve this big challenge being obviously load shedding at that stage we were at stage 3, so we...[intervene]

CHAIRPERSON: But she is saying I may have views but you must make up your own minds.

MS KLEIN: I think that is what I meant.

CHAIRPERSON: Ja.

MS KLEIN: But I worded it in a particular way. I did not get the impression that she was there to instruct us on anything but more than ever remember the meeting the way
20 I understood it was based on the meeting of also of the 9th. Where from my recollection is that the board members expressed concern that they are not getting from the shareholder representative as Mr Tsotsi was outlining it. That was my understanding but I guess what I meant there is not I guess, I read is the Minister is not here to instruct

us she is here to give guidance and maybe ask questions that is my understanding.

ADV SELEKA SC: Well recall that the meeting of the 9th had one agenda item and that agenda item entailed the two documentation referred to in your email. The proposed resolution and the memorandum. So the meeting of the – and the board members at the time as you also confirmed they say to the Chairperson well why does not the shareholder representative come and address us on it.

10 Let her come and address us so that we understand what is going on. Then the meeting of the 9th is scheduled. Is that not the Minister comes to that meeting knowing that I am going to be engaged on this aspect the enquiry and the suspension of the executives. Could that be the reason why you write in there that that is what she said?

MS KLEIN: Chairperson that sounds fair.

ADV SELEKA SC: Yes, so because she will come there informed as Mr Tsotsi says about the purpose why you want to see the Minister. But you would have heard
20 yesterday that when we played the audio that portion which says we must protect our leaders Mr Tsotsi said that was Ms Mabude saying that do not mention the name of the President in this room, do not mention the name of the Minister in this room we own this decision. Seems to go contrary to what you write there about the Minister.

MS KLEIN: Chairperson understand in answering the question that I have my views on this thing, I have my views. What Ms Mabude's said there is what ...said, I mean this was not the first time that I sat on a public sector board but it certainly was the first time I sat on a board the size of Eskom. So – and I mean much as I am – I believe not necessarily a novice to governance sitting and listening to Ms Mabude remember she – Ms Mabude had been on the board before. Ms Mabude - Ms Mabude was in the second
10 term as was Mr Tsotsi.

So I would be taking guidance on how things are done on a board the size of Eskom. So yes I say the Minister also addressed the board once again expressing her concerns. The Minister conceded that she had no rights.

So if the question Chairperson is my view between what Ms Mabude said and what the Minister is doing, I do not know that I really have an opinion. Remember I knew not as a board member but new in public sector and the person making the statement who was Ms Mabude yesterday
20 when I listened to it maybe previously they had had interaction with where they had been told you know it is a board decision. Go to the Minister and do not pull the – I do not know – I cannot talk to that.

I typically the share – my view the shareholder representative is the person who would come and speak to

us which was the right thing. I hope I am making myself clear and I hope I am not – because I mean I listened to Ms Mabude and you would even hear I think your question even was so – why did nobody say anything?

The real question is, having not served on a government board this size maybe this was how it was being done. This is the – it is Ms Mabude has not come here yesterday she has been here before.

So I am not sure where she is coming from. Maybe
10 there has been challenges around that particular point before I do not know.

ADV SELEKA SC: Ja. Well Ms Klein what – what we are – the proposition if it is a proposition even but look at it this way. We – we are outside the meeting third parties, we are not in the meeting.

The board members are there in the meeting. They have just met with the Minister and after the Minister they are talking about the suspension of the executives. And Mr Tsotsi has said this was an instruction from the President.
20 The President wants this to be done. And the Minister was also here.

You heard on the audio that the Minister had given guidance. And I asked Mr Tsotsi what was the guidance. He said it was proceed with the inquiry, proceed with the suspension. In that context with the group in the board room

one of the members says, we should not. He is warning all of you. We should not use – mention the name of the President. We should not mention the name of the Minister. We must protect our leaders.

It is in that context I am saying this statement does not seem to be a correct reflection of what the Minister might have said to the board. In fact if you listened to Mr Tsotsi and read his affidavit, he says exactly the opposite of what you are saying. That the Minister did say we must initiate
10 the inquiry.

You seem to touch on that in paragraph 31.G that he goes on to further say the Minister did say we must suspend an executive and added the Financial Director. So there is a discrepancy there.

MS KLEIN: I hear that Chair but please understand from my side. Mr Tsotsi went out to meet the Minister. I am not sure if these things were discussed outside of the meeting or not. I can only talk to what I remember and what I saw in minutes or what I remember seeing. I mean when I said the Minister
20 conceded that she had no right to instruct the board. That is what I believe that I heard.

CHAIRPERSON: Yes I think what Mr Seleka is doing is to give you an opportunity to reflect on what you have said happened at the meeting or what the Minister – what you have said the Minister said. Reflect on it in the light of what

he is telling you about what Mr Tsotsi said for example. And see whether you say no, what Mr Tsotsi says insofar as it is inconsistent with what I am saying here is not true or whether you are saying well I believe that this is what was said but I am not going to say definitely what Mr Tsotsi says was said was did not happen. But on my recollection, this was said. So it is just to see where the differences are between your version of what happened and Mr Tsotsi's version and be able to say, here I have – here are the things
10 that I remember quite well. This did happen.

MS KLEIN: Yes.

CHAIRPERSON: This I think did happen but I am not sure. That did not happen. That is the kind of ..

MS KLEIN: Yes.

CHAIRPERSON: That is the opportunity – that is what he is – he wants you to do – to say. How much of this can we take as definite in terms of your recollection?

MS KLEIN: Chairperson this is how I recall it.

CHAIRPERSON: Yes. Yes.

20 **MS KLEIN:** I heard Mr Tsotsi yesterday and I am not sure that what Mr Tsotsi spoke about yesterday definitely was not discussed in my...

CHAIRPERSON: Yes okay.

MS KLEIN: That much I can say.

CHAIRPERSON: Yes.

MS KLEIN: Whether it was or actually did not happen I cannot say.

CHAIRPERSON: Yes.

MS KLEIN: But this is my recollection.

CHAIRPERSON: Yes okay.

MS KLEIN: But then just to – I do not think I have answered Chair on the point of Ms Mabude saying that we have got to protect our leaders.

CHAIRPERSON: Protect.

10 **MS KLEIN:** She did say that and I have given you my answer to how I saw it at the time. Remember I have never come into any board and said because I am new I am not going to take the position. Because you listen to all those tapes. I – my voice is heard. I had many ideas because I normally am quite vocal.

CHAIRPERSON: Hm.

MS KLEIN: But I cannot – I mean I still believe that the Minister said she is not here to instruct us. Whether there was another discussion where that was direct or whether
20 there is a recording which you can say to me, but hold on here we have got it the Minister said it. Sir I do not – I do not perceive – I do not recollect.

CHAIRPERSON: Okay. Okay.

ADV SELEKA SC: Thank you Chair. So – but you cannot say well just to be clear on it you cannot say that Mr Tsotsi

does not give a correct version of what the Minister said. Because you cannot recall exactly what the Minister said.

MS KLEIN: No. I cannot – I cannot recall but you know stood out for me yesterday when we – when we speaking. I mean when I was sitting here listening. The one thing I cannot remember and this is – so I am not sure that I am hurting anybody but this is inquisitorial you asking me. I do not remember the Minister talking about the Finance Director. That part I do not remember.

10 **CHAIRPERSON**: Hm.

MS KLEIN: Because you – you read in my affidavit which I am sure you are going to come to later.

CHAIRPERSON: Hm.

MS KLEIN: My recollection of how we got to the fore is very different to Mr Tsotsi saying that the Minister added to the list.

CHAIRPERSON: Yes. No that would be important so Mr Seleka will know whether he will invite you to tell us now your recollection or later. But we ought to hear what your
20 own recollection of how the Financial Director got added to the list.

ADV SELEKA SC: Yes thank you Chair. So but the three were mentioned.

MS KLEIN: Are you talking about is the Minister taking.

ADV SELEKA SC: Ja because you say you do not recall the

Minister mentioning the FD the Financial Director.

MS KLEIN: Chair remember the question if I understood it correctly was that is it correct that the Minister spoke about the three and added the Finance Director and I am saying to you my recollection was that the Minister said she would support whatever the board decided was necessary to do. That is how I remember it. Okay. The – my recollection of who and why is not at all as Mr Tsotsi. That is not my recollection.

10 **CHAIRPERSON:** Hm. So what is your recollection of how it came about the Financial Director was – Director's name was added?

MS KLEIN: Can I maybe talk to the suspensions in its – and then show you where for me I maybe am struggling with my own recollection.

CHAIRPERSON: Oh okay. Or maybe we leave...

MS KLEIN: We jumping.

CHAIRPERSON: We leave that you – you are going to deal with various matters when you come to that point of
20 suspension.

MS KLEIN: Okay.

CHAIRPERSON: Then you can ...

MS KLEIN: Yes Chair.

CHAIRPERSON: Deal with that.

MS KLEIN: I will do.

CHAIRPERSON: So Mr Seleka can just guide you on the aspects you need to deal with.

ADV SELEKA SC: Thank you. Thank you Chairperson. Now Ms Klein I also want to refer you to Doctor Ngubane's affidavit.

MS KLEIN: Is that here too?

ADV SELEKA SC: Yes it is in your bundle.

MS KLEIN: Oh in my bundle.

ADV SELEKA SC: Yes it is in your bundle. But [00:10:44]

10 to you earlier Bundle – Eskom Bundle 03.

MS KLEIN: Okay I have got it.

ADV SELEKA SC: Thank you. Chairperson that on page 601. Page 601. Thereto...

CHAIRPERSON: That cannot be 02?

ADV SELEKA SC: 601.

CHAIRPERSON: Ja I mean the bundle I thought you said the bundle is Eskom Bundle 02?

ADV SELEKA SC: 03.

CHAIRPERSON: 03 okay.

20 **ADV SELEKA SC:** 03 Chair.

CHAIRPERSON: Hm.

ADV SELEKA SC: You have it Ms Klein?

CHAIRPERSON: I do not have 03 here. He is going to give me 03. No, no I am sure they have got it here.

ADV SELEKA SC: Page 601.

CHAIRPERSON: Okay. Yes.

ADV SELEKA SC: Paragraph 4.16 Ms Klein. So Mr Ngubane – Doctor Ngubane also deals with the meeting of the 11 March. He writes:

“The meeting adjourned to allow the Minister to address the Board on these matters. The Minister came to address the Board on 11 March 2015. Minutes of this meeting are annexed.”

10 And you turn the page to 602.

“Although the Minister did not direct the Board to suspend the four executives she raised concerns of her own against them. The concerns related to the War Room which she suggested complained it was not receiving consistent information from management and therefore it could not develop strategies to turn around Eskom and stop load shedding. The Minister left – the
20 Minister felt at the presence of the four executives might hinder the investigation.”

Do you recall that being said by the Minister?

MS KLEIN: I remember the discussion around the War Room.

ADV SELEKA SC: Yes. Okay I will give you a chance.

MS KLEIN: Yes.

ADV SELEKA SC: But specifically about the Minister felt that the presence of the four executives might hinder the investigation.

MS KLEIN: I must say Chairperson I cannot recall that.

CHAIRPERSON: Hm.

MS KLEIN: I cannot recall that specific event.

CHAIRPERSON: Hm.

ADV SELEKA SC: We have also recently received the
10 affidavit from the Company Secretary which is not yet part of
the bundles. Chair we have copies I believe.

CHAIRPERSON: Ja.

ADV SELEKA SC: Only one copy we have.

CHAIRPERSON: Hm. That is fine but you can...

ADV SELEKA SC: Can make copies.

CHAIRPERSON: Read the relevant part or point out the
points she makes or he makes to her for her to comment.

ADV SELEKA SC: Correct Chairperson.

CHAIRPERSON: To comment on.

20 **ADV SELEKA SC:** I will hand you a copy because the
Company Secretary was also in that meeting with the
Minister.

“In the meeting the Minister – in the meeting with
the Minister the following matters were discussed.

1. The bargaining device.

2. The Minister stated that she had no right to instruct the Board on what to do and that the meeting was...”

CHAIRPERSON: Talk closer to the microphone. Ja.

ADV SELEKA SC: Sorry Chair.

CHAIRPERSON: And tell us what paragraph so that those who might wish to look at the relevant part later know which paragraph.

ADV SELEKA SC: Yes. Paragraph 13 of this affidavit.

10 **CHAIRPERSON**: Okay.

ADV SELEKA SC: She mentioned that

“She is aware that after the establishment of the War Room the Board had sought or fallen by the way side. The Minister stated that the last War Room meeting had demonstrated that even information which comes from Eskom was not reliable.”

And it goes on to the next page, paragraph 13.5 he writes?

20 “The Minister said in order not to compromise the investigation the executives who were involved must step aside for the duration of the investigation. And a report by the forensic investigators may be given in three months’ time even if it was an interim report.”

So that is the affidavit of Mr Malesela Phukubje. He says two things you can hear. The Minister instructs – said he will not instruct the Board but the Minister again also says in order not to compromise the investigation the executives who were involved must step aside for the duration of the investigation. Any recollection on – or comment on your part in regard to that?

MS KLEIN: Chairperson like I said to you I remember the Minister saying she cannot instruct us. I do not remember
10 her saying – okay I remember her talking about the four executives but the detail around it I just – I cannot remember after five years. Unless I go and listen to the recording. But if that – look Malesela was the Chair – was the secretary I do not think he would get it wrong. And he is saying it and it looks like Doctor Ben said it. So then I have got to concede that that was then being said. It is not covered in my – I did not remember it like that but then I have got to accept that that would be the right version.

ADV SELEKA SC: We not have the recordings of that
20 meeting.

MS KLEIN: Chairperson even if you do not have the recording the fact that I do not remember this – and this is the best of my recollection but I doubt that Malesela would have gotten it wrong. He was the Company Secretary and Doctor Ben clearly maybe made better notes than me I do

not know. I will concede Chairperson that that probably then was said.

ADV SELEKA SC: Did you support the establishment of the inquiry and the suspension of the executives?

MS KLEIN: I absolute supported the inquiry.

ADV SELEKA SC: The suspension?

MS KLEIN: I would be lying if I said to you I did not. I supported it – sorry Chairperson. I supported it for reasons that I have articulated in my affidavit.

10 **ADV SELEKA SC:** What are the reasons?

MS KLEIN: I remember that the Chairperson gave us reasons why he believed that the suspensions ought to happen. And he gave us reasons for the FD which is the part – remember the earlier question about the Minister and the FD? I could not remember that part. I really – and listening to that I am not sure if it was three or four because so no I do not remember it.

20 But I remember the Chairperson telling us that there are four people that needed to be – that in his view would be best if they were not there. And the one person – there was some – something the person had done which was inappropriate and that was the reason given.

The second one was the FD he actually gave us a reason for the FD by saying she was involved with some – there was some tender and apparently, she had gotten

involved with it. I do not remember – I do not remember what exactly it was about Tshediso Matona and – but it was a lot of deliberation.

There were four things the Chairperson gave us for the four people. Then there was a whole lot of debate about – Chairperson how can we just take it on your say so? You telling us these people have done what you say but we have got no evidence to prove any wrongdoing. Why would we based on what you saying just suspend people on it. We
10 cannot suspend people because you saying that there was – let us say tender rigging or not tender rigging but you spoke to somebody about procurement. I mean we do not have sufficient to suspend people based on that.

There was a lot of toing and froing. Eventually the agreement was to suspend people – I am going to take that back. Not suspend but to ask them to step aside for the tenure of the – of the investigation because we were told you have three months which ended at the end of June. This is what the Chairperson told us.

20 And his view was that if the people were there, they may slow down the investigation which by this time we told we had three months to do. So if you ask me if I was going to support it I was going to support it not because of wrongdoing but because I believed that an inquiry of this nature which we were told was what it was going to be was

for me the line in the sand that I would be able to then determine so what is real and what is not. War Room is saying one thing. Executives saying another thing. Chairperson is saying another thing.

As a Board Member brought in and charged with turning this organisation around an inquiry would help us to get to what exactly we were dealing with.

So I was left with supporting the suspensions on the basis that the people would step aside and there was even a
10 – I think there was a meeting with the – with a legal person Neil to say what does step aside mean? Can we ask people to step aside so that they do not slow down this inquiry? Because we were – the one thing that was clear Chairperson is that it had to be done by the end of June. And that was my reason. The reason I supported it was very simply the complexity, the fact that this was falling apart and we did not have money. And we needed to get a grip on this.

CHAIRPERSON: Well we are at one o'clock. Mr Seleka.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Well you said earlier on Ms Klein that the board found itself in a position where it was not receiving information on a formal or official basis with regard to among other things the War Room and so on.

But the more I think about what the picture that seems to emerge in relation to Eskom at the time it looks like

it was quite a confusing picture. Because you have the management of the entity of Eskom. They are supposed to run the day to day operations of the company and the CEO must give you know strategic direction and all of that to the entity.

You have got the board which is as I understand it the highest authority in the entity. You know you have got the shareholder represented by the Minister and then the President appointed or set up the War Room.

10 So the War Room was meant to grapple with the challenges of Eskom relating to load shedding but of course doing that might mean you look at a lot that was happening at Eskom to answer the question why can load shedding not be sorted out? What is preventing it from being sorted out? So there would be a question of who must the War Room interact with? Must it interact with the Board and the Board interacts with the management, the executives? Or must it interact with the executives; bypass the Board?

20 What if the War Room says one thing and the Board says something else or what are the executives supposed to do? And then while you are looking at that there is another meeting taking place in Durban where the Chairperson of the Eskom Board is invited.

 And it seems that the person who is nominating the discussions in that meeting or is leading the discussion is

somebody who has nothing to do with Eskom. It is somebody who is Chairperson of another SOE. The Minister who is the shareholder representative is also not there.

So now you have the War Room that side. You have got the Durban meeting. You have got the Board. It must have been tricky to know who does what? Who – who is driving in which lane? And it might – must have also been quite tough for the executives I would imagine. But anyway.

ADV SELEKA SC: Is it an opportune time Chair?

10 **CHAIRPERSON:** Yes.

ADV SELEKA SC: Is it an opportune time?

CHAIRPERSON: Yes I think it is. Let us take the lunch break. I do not know Mr Seleka I know that you announced yesterday that Doctor Ngubane would start his evidence this afternoon.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: I do not know whether we will get to him or not. I am just saying you might wish to assess the situation depending on how far you think you will go with Ms Klein.

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

CHAIRPERSON: But of course it is important to deal with all important issues properly.

ADV SELEKA SC: That is right.

CHAIRPERSON: So that if we can avoid her having to come back some or other time because some issues were not dealt

with properly we can avoid that.

ADV SELEKA SC: Yes.

CHAIRPERSON: And I do not know what Doctor Ngubane's situation is but from what you told me he appreciates that even if he started his evidence this afternoon, he will continue tomorrow

ADV SELEKA SC: Indeed Chair.

CHAIRPERSON: So – but it fine it may well be that we will start with him even if we do one hour or two hours.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: That is something on which we can add tomorrow.

ADV SELEKA SC: Yes. Chair indeed. I could approach the Chairperson as it were in chambers and then arrange with the parties.

CHAIRPERSON: Ja.

ADV SELEKA SC: After the Chair and I have considered the way forward.

CHAIRPERSON: Ja. Ja no that is fine.

20 **ADV SELEKA SC:** Then we can come and place it on record.

CHAIRPERSON: Ja no that is fine. Okay we will adjourn and we will resume at five past two.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us proceed.

ADV SELEKA SC: Thank you, DCJ, Chair. Ms Klein, are you ready?

MS KLEIN: [No audible reply]

ADV SELEKA SC: Are you?

MS KLEIN: [No audible reply]

10 **ADV SELEKA SC:** Ja, the – in your explanation to the DCJ just before the adjournment, there are a couple of things you mentioned that the Chairperson, if I recall mentioned four things about the executives. He mentioned some allegations been made against – been mentioned about some of the executives. You cannot recall whether anything was said about. Was that the CEO and Matona and...?

MS KLEIN: Mr Marokane. They were definitely. I just cannot remember what they were.

20 **ADV SELEKA SC:** Ja. Yes. So. And you were also explaining that Mr Koko... Ag, no Mr Koko. I beg your pardon. Mr Tsotsi, the chairperson, was proposing a suspension of the four executives and this after the meeting with the minister. Now how does the Commission deal with this?

Because you have the version from at least two

witnesses who say the minister said the four executives should step aside for the duration of the inquiry. Do we still say as the Commission that that is the proposal of Mr Tsotsi? Or that that was the suggestion put to us by the minister?

MS KLEIN: Chairperson, just so that I am clear. I want to make sure that I get this right. Is the question: Was it the minister's suggestion? Or is the question: Was it Mr Tsotsi's? I am just trying to understand the question. Maybe I am not clear.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Ja, you can ask her Mr Seleka to clarify what is not clear to you.

ADV SELEKA SC: Yes, yes. And I can repeat it for you, yes. Remember, now the minister following the sequence of events, the minister has left. You have had the meeting with the minister. She has left.

You say – you have the version of what the minister, you say you recall what the minister has said. I have read to you the affidavits of the two other persons including Mr Tsotsi,
20 which will be the third.

Who is saying this is what the minister said about the executives: Step aside. Let me use the lighter one. Step aside for the duration of the inquiry.

So after that, you were explaining to the Chairperson, then you went into an in-committee meeting as the board and

you were saying, as I recall and you can correct me as well, that Mr Tsotsi then proposed that the four executives should be suspended.

So are we attributing that proposal still to him at this stage? Or as the Commission – should the Chairperson find that it would be more to attribute that proposal to the shareholder representative who was there prior to the in-committee meeting?

MS KLEIN: That is a fair question. My recollection was the
10 motivation came from Mr Tsotsi. So I must say I am unsure
Chairperson how, you know, who attribute the motivation
about the people and what they did and why came from Mr
Tsotsi.

CHAIRPERSON: I think what counsel is asking, if I
understand correctly, is that we need to establish whether
this was Mr Tsotsi coming up with this suggestion or the
position was that the minister said the four executives
should step aside or whether each one was just saying their
view.

20 **MS KLEIN:** Ja.

CHAIRPERSON: That is in the context of what you say the
minister said in the meeting.

MS KLEIN: Yes, Chair. And I want to go back to, you know,
the point – I hear and I fully appreciate Mr Tsotsi's view and
I appreciate everybody else's view. Remember, I am here to

talk about what I know.

CHAIRPERSON: Ja.

MS KLEIN: And it would be wrong for me to comment on anybody else's view, alright?

CHAIRPERSON: Ja, that is fine.

MS KLEIN: My recollection was that the minister said we needed to do what we needed to do to get the inquiry done. And she would not prescribe how we did it.

Now I think I have heard Malesela saying that the
10 minister said something about the four. And I think I have
heard Chairperson something about Dr Ben saying it here as
well.

I do not remember exactly what it was. My recollection was that the minister said we should – she is not going to interfere in what we need to do but we need to go and do that which we felt was the best to get the job done.

Do I recall the minister saying he must tell the – or suspend four or three, I think was the question, plus if he... I do not recall that Chair.

20 **CHAIRPERSON:** Yes. It is possible that the minister may have said:

I have no right to instruct the board as to what it should do but that does not mean I cannot express my view as to what should happen.

But if I express my view, it does not mean the board

is bound by my view. Therefore, if you ask me so to speak, before I should step aside, but you as the board do not need to go along with my view.

I am just telling you what I think. But you must make up your own mind.

Do not later come – go around saying that I instructed you to suspend the executives. Is it possible that that is what may have emerged?

MS KLEIN: I think it is more than possible, Chair. In fact, I
10 think, if I hear you articulating it that way, what that is I think
what I meant when I said what I did in paragraph 30. I think
the minister also addressed the board that day:

“Once again expressing her concern around the board getting a handle on the business. The minister conceded to have no right to instruct the board on any matters regarding the conduct of the Eskom business.”

So it is possible, like you say, that she – but – and I
hear you and I know how difficult it must be. You have got
20 these 15 views in order to come up with one view of it. But
in coming, you know, having three or four views does not
mean that it change my recollection.

CHAIRPERSON: Ja.

MS KLEIN: Unless, I have got a minute to say this is
exactly what the minute says, you know, in which case I will

have to... but my recollection ...[intervenes]

CHAIRPERSON: Ja. No, the idea is just to see how clear you are as to what happened or what was said.

MS KLEIN: Yes.

CHAIRPERSON: Because when you have been in a meeting, when somebody afterwards - whether it is one day later, a month later, years later - ask you what was discussed at that meeting, there may be things that you are quite clear about to say: This I know very well. It was said.

10 And it was said by so and so. And this is what he or she said. Then there may be things where you say: You know, my memory on this is not so clear. I think it was said. But if somebody said: No, it was not said. I would not fight about that.

MS KLEIN: Sure.

CHAIRPERSON: And then there will be things where you say: I think that was never said. If somebody else says it was said, you will say: No, I am very clear. It was never said.

20 So we are trying to establish whereabouts in relation to those issues you might be. Those where you say: Here I am quite clear.

Those where you say: Look, I might not be so sure. And those where you say: Those were never said. So that is the idea so that we know.

MS KLEIN: Chair, but I have been labouring the point. The one thing I know is – and I think Malesela – and remember earlier I conceded that if anybody had a version who give you the truth, it would be the company secretary.

CHAIRPERSON: H'm.

MS KLEIN: So if Malesela says that the minister said... Well, I cannot remember the exactly way about the four.

ADV SELEKA SC: Step aside.

MS KLEIN: Step aside.

10 **ADV SELEKA SC:** Yes.

MS KLEIN: Then you know what, I would be if you ask ...[intervenes]

CHAIRPERSON: You with ...[indistinct] with him?

MS KLEIN: I would probably enforce the latter because he was the company secretary.

CHAIRPERSON: Yes.

MS KLEIN: He would know.

CHAIRPERSON: It had to pay attention to what was being said.

20 **MS KLEIN:** He had to pay attention to it. But if you were to say to me did I hear the minister say add the FD. I guess I would struggle with that because that I would have remembered.

CHAIRPERSON: Yes, okay.

MS KLEIN: That specifically, I am sure I would have

remembered.

CHAIRPERSON: Okay, okay.

ADV SELEKA SC: Ja, well, I suppose it is neither here nor there. Whether she said add the FD because on Mr Phukubje's affidavit, he says she said the four should step aside for the duration of the inquiry. Well, I refer to the minister's own affidavit in a short while.

CHAIRPERSON: But maybe let me ask this question in relation to the financial director. Is your recollection that
10 when the minister was talking about the executives, she was talking about four executives or three executives?

MS KLEIN: Chairperson, categorically, four.

CHAIRPERSON: She was talking about four?

MS KLEIN: I... Chairperson ...[intervenes]

CHAIRPERSON: You are quite clear about that?

MS KLEIN: Chairperson, let me put it to you... the reason I am so confident about it.

CHAIRPERSON: Ja.

MS KLEIN: I have never heard ...[intervenes]

20 **CHAIRPERSON:** Of three.

MS KLEIN: Of three.

CHAIRPERSON: Okay, okay.

MS KLEIN: There may have been... I know I was listening to recordings last night. There was a lot of deliberation around this issues.

CHAIRPERSON: Yes, yes.

MS KLEIN: But I cannot remember ever... my recollection was that we were given four names.

CHAIRPERSON: Well, what would mean, if you... what that would mean is therefore, that at least as far as you know, when she was addressing the meeting, the discussion was about four executives.

So in other words, if at some stage before that there had been only three executives that were being discussed for
10 suspension, at least when she was addressing meeting, the fourth name had been introduced already. That is what you said.

Because Mr Tsotsi's evidence is that at the Durban meeting, three names – it were three executives that were – whose names were mentioned. Now... Or Mr Seleka, did Mr Tsotsi say somebody added the – add his name at the Durban meeting? No.

ADV SELEKA SC: No.

CHAIRPERSON: No, it was not at the Durban meeting.

20 **ADV SELEKA SC:** No. At the ...[intervenes]

CHAIRPERSON: He said it was the minister.

ADV SELEKA SC: He does say it was the minister.

CHAIRPERSON: Ja.

ADV SELEKA SC: At the meeting.

CHAIRPERSON: Ja. Which would be the meeting of the

11th.

ADV SELEKA SC: Yes. Chair, we could put this to rest by via the audio.

CHAIRPERSON: Yes.

ADV SELEKA SC: Shall we do that?

CHAIRPERSON: Ja, ja. That is fine.

ADV SELEKA SC: Thank you. Ms Klein, we will play an audio. It correspond with the transcripts on... now I am using again Mr Tsotsi's bundles because our pagination of
10 the summary was modelled after his bundle. That is on page 873. Time stamp 11:17. Sorry, you have the relevant page?

MS KLEIN: Yes, Chair. Thank you.

[Audio recording being played]

ADV SELEKA SC: Do you recognise... sorry. Do you recognise that voice?

MS KLEIN: Yes, that was Mark Pamensky.

ADV SELEKA SC: Mr Mark Pamensky. Please play.

[Audio recording being played]

ADV SELEKA SC: I think it is before this one Chair. Are
20 you on the same page? Does it read the same?

MS KLEIN: Yes, Chair. I was listening.

ADV SELEKA SC: Ja. Have a look.

MS KLEIN: Okay.

[Audio recording being played]

ADV SELEKA SC: Sorry, can we make sure you are at the

right place?

[No audible reply]

[Audio recording being played]

ADV SELEKA SC: Is that still Mark Pamensky?

MS KLEIN: It is Mark Pamensky.

ADV SELEKA SC: Is it still Mr Mark Pamensky?

MS KLEIN: [No audible reply]

ADV SELEKA SC: Carry on.

[Audio recording being played]

10 **ADV SELEKA SC:** Do you... can you pick it up from the transcript there, Ms Klein?

MS KLEIN: Yes, sir. Ja, I am listening.

ADV SELEKA SC: Are you able to follow what the conversation is there?

MS KLEIN: I am ...[intervenes]

ADV SELEKA SC: You can just read it from the transcript.

MS KLEIN: Okay. So where you want – which one do you want me to read specifically?

ADV SELEKA SC: Where is ...[intervenes]

20 **MS KLEIN:** Where Mr Pamensky?

ADV SELEKA SC: That is right.

MS KLEIN: Ja. This one reads... remember, even yesterday mister ...[intervenes]

ADV SELEKA SC: Yes, but just read it. I think he is asking whether can the FD put pressure on the people. Is that

right?

MS KLEIN: Yes.

ADV SELEKA SC: Yes.

MS KLEIN: [Indistinct] she says no she has got people working for her.

ADV SELEKA SC: Yes.

MS KLEIN: Ja. Okay?

ADV SELEKA SC: And Mr Tsotsi goes on to say financial issues are quite different.

10 **MS KLEIN:** Yes.

CHAIRPERSON: The point you wanted to settle Mr Seleka ...[intervenes]

ADV SELEKA SC: Yes, Chairperson.

CHAIRPERSON: I thought it was whether the minister introduced the name of the financial director, is it not? I thought that is what you wanted to say?

ADV SELEKA SC: No, we do not... we do not have the audio for the minister. What I wanted to settle is what I understood Ms Klein saying Mr Tsotsi suggested all four
20 names, all four persons.

CHAIRPERSON: Yes.

ADV SELEKA SC: When you listen to the recording from here further he, in fact, motivates against the suspension of the FD.

CHAIRPERSON: Yes.

ADV SELEKA SC: H'm.

CHAIRPERSON: Well... or in terms of ...[intervenes]

ADV SELEKA SC: Which means, he would have given the board three names as given to him in Durban.

CHAIRPERSON: Ja. Yes.

ADV SELEKA SC: Yes.

MS KLEIN: Chairperson, may I respond?

CHAIRPERSON: What may have happened in terms of the audio. It may be that what he was saying, he was
10 expressing his opposition to the FD being suspended but that might not mean that the FD's name was not on the table at that stage.

It might be that somebody already suggest it but he was saying: Now should not suspend the FD. And then there is the question of who then would have introduced it.

ADV SELEKA SC: Yes.

CHAIRPERSON: But ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: Let me leave it to you how you deal with
20 it.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

MS KLEIN: Chairperson, may ...[intervenes]

ADV SELEKA SC: Chair ...[intervenes]

MS KLEIN: Sorry.

ADV SELEKA SC: Yes, let me just assist the Chairperson. You will have that affidavits... it appears from your affidavit Ms Klein, page 10 of your affidavit, paragraph 34. There Ms Klein writes... the preceding paragraph is:

“After the minister left, the board conveyed in a board in-committee meeting when Mr Tsotsi again presented his memorandum proposing an inquiry into corporate governance.”

At paragraph 34, she says:

10 “Mr Tsotsi proposed that those executive committee members who were heading up the divisions where the inquiry would take place, step down during such inquiry. He assured the report that he had compiled a report that supported the establishment of the inquiry.”

So what... Ms Klein, I think she is at this juncture in her explaining to you Chairperson that what Mr Tsotsi had then, at this stage was saying to the board is that the fourth should step aside.

20 **CHAIRPERSON:** Ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: Oh, I am told that we should look at paragraph 36 but that is what her testimony says.

CHAIRPERSON: Okay.

ADV SELEKA SC: What do you then... well, it comes... the board members, you come back to this question: How many are you suspending? And... I should find this... yes. Please go to in the same transcript at page 882.

MS KLEIN: [No audible reply]

ADV SELEKA SC: Yes, please. Time stamp 22:26.

[Audio recording being played]

ADV SELEKA SC: No. Ja, the one spot.

[Audio recording being played]

10 **ADV SELEKA SC:** Page 882 in the transcript, time stamp on the audio 26:26.

[Audio recording being played]

ADV SELEKA SC: Just go ...[intervenes]

CHAIRPERSON: Well, maybe Mr Seleka ...[intervenes]

ADV SELEKA SC: Is it that one?

MS KLEIN: Ja, that is that on there.

ADV SELEKA SC: Does it carry on?

MS KLEIN: It just looks like it if I am following here.

ADV SELEKA SC: If you are following. Oh, okay.

20 **MS KLEIN:** Just keep on.

ADV SELEKA SC: Just read for us Ms Klein.

MS KLEIN: Okay it says ...[intervenes]

ADV SELEKA SC: The audio people ...[intervenes]

MS KLEIN: “Executive and chief executive. While we said the FD, the situation is different...[intervenes]

ADV SELEKA SC: Yes.

MS KLEIN: ...it is not. Right?

ADV SELEKA SC: Yes.

MS KLEIN: And the chairperson... it reads: No, not necessarily.

ADV SELEKA SC: That is... yes.

MS KLEIN: And then the females voice, which I am not sure who said it now, okay.

10 “It is what you said it said. You said that the financial situation is not based on... do you understand?

 “Not based on...

 Obviously, the problem here that it is because of the turf.

 But you know some of the sub-committees that I am involved in here is just so much of budgets in millions, in billions.”

ADV SELEKA SC: Who... can you recall who said that?

MS KLEIN: I do not remember.

20 **ADV SELEKA SC:** You do not recall who is saying that?

MS KLEIN: No.

CHAIRPERSON: I wanted to say, maybe we should move on and not spend too much about who introduced the FD.

ADV SELEKA SC: Yes. And it is apparent here.

CHAIRPERSON: That?

ADV SELEKA SC: It is apparent on this very spot
Chairperson.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Yes.

[Audio recording being played]

MS KLEIN: That is correct, ja.

ADV SELEKA SC: Who is talking there?

MS KLEIN: The chairperson.

ADV SELEKA SC: That is the chairperson. Can you rewind
10 a little bit, please?

[Audio recording being played]

MS KLEIN: That is Mr Tsotsi.

ADV SELEKA SC: Yes. So he is mentioning three?

MS KLEIN: That is right.

ADV SELEKA SC: Is that correct?

MS KLEIN: Yes.

ADV SELEKA SC: Is that... are you following the
transcripts?

MS KLEIN: Yes, I do.

20 **ADV SELEKA SC:** Yes.

[Audio recording being played]

ADV SELEKA SC: So two males voices.

MS KLEIN: Yes, that is Mr Khosa.

ADV SELEKA SC: Yes?

MS KLEIN: He said not necessarily...[intervenes]

ADV SELEKA SC: He said: Not necessarily different.

MS KLEIN: Ja.

ADV SELEKA SC: And then I think there is another voice also saying not necessarily.

MS KLEIN: That was Mr Khosa.

ADV SELEKA SC: Okay. So Chair, if you follow, they are saying, Mr Tsotsi is saying: We said the FD situation is different.

MS KLEIN: Ja.

10 **ADV SELEKA SC:** There they are saying: Not necessarily ...[intervenes]

CHAIRPERSON: I am ahead of you. I have moved straight away from this point. [laughing] I think let us move on really.

ADV SELEKA SC: Let us move on Chair.

CHAIRPERSON: We will sort out some other time.

ADV SELEKA SC: [laughing]

MS KLEIN: Chair, please indulge me?

ADV SELEKA SC: Yes, you ...[intervenes]

20 **MS KLEIN:** Can I...[intervenes]

CHAIRPERSON: Ja, what do you want to say?

MS KLEIN: Chair, obviously having been here yesterday and listening to Mr Tsotsi's evidence ...[intervenes]

ADV SELEKA SC: Yes.

MS KLEIN: I went away last night and I go to listen to it.

ADV SELEKA SC: Yes.

CHAIRPERSON: Please look this side. I cannot hear you when you look at that side.

MS KLEIN: Oh, sorry. Is that better?

CHAIRPERSON: Ja, ja.

MS KLEIN: Alright.

CHAIRPERSON: You said you went away yesterday.

MS KLEIN: I went away and I go and listen to the script because I also needed to make sense of myself, you know,
10 what exactly did who. I could not follow.

ADV SELEKA SC: So do you have these audios?

MS KLEIN: Yes.

ADV SELEKA SC: These recordings?

MS KLEIN: Yes. That one I have. But I think
...[intervenes]

CHAIRPERSON: What you... you resolved this issue for you?

MS KLEIN: Let me tell what I... what was...

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** H'm.

MS KLEIN: Let me tell you what was very, very missing in this. This starts, if it is the same one and if... you may have a different version and maybe in the interest of time Chairperson, I may want to agree with you that we can move along.

But the recording I have got start with Mr Tsotsi talking, Mr Viroshini Naidoo agree with him and he is saying: Guys, we got to take a hard call. There is a big portion of that meeting that is not on these clips.

ADV SELEKA SC: Please provide us what you have.

MS KLEIN: No, no. That is not going to help you. I want to check with you if what you have got is the same as what I have got because what I am suggesting is there is a big portion of that conversation that is not on the clip.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Ja.

MS KLEIN: Which is why ...[intervenes]

CHAIRPERSON: So it may be that there is some more behind the scenes that must happen to compare?

MS KLEIN: Chair, I am sorry. I will have to agree with you on that.

CHAIRPERSON: Ja. You compare. And then when that is... when the picture is clear then come back.

MS KLEIN: With pleasure, Chair.

20 **CHAIRPERSON:** Okay, alright.

MS KLEIN: I am sorry to do that but...

CHAIRPERSON: Okay.

ADV SELEKA SC: No, no, that is alright, Ms Klein. That help us get that information.

MS KLEIN: Absolutely, ja.

ADV SELEKA SC: Because it was very difficult for the investigators to obtain.

MS KLEIN: I can imagine.

ADV SELEKA SC: So then the board – if we move on, the board, regardless of who proposed who should be suspended, the decision is of the board.

MS KLEIN: Ja.

ADV SELEKA SC: Ultimately the board makes the decision that executives should be suspended.

10 **MS KLEIN:** Correct.

ADV SELEKA SC: Correct? And you have articulated your reasons why you supported their suspension, correct? Now the reasons that you have articulated for supporting their suspensions. Were they advanced to the executives? In other words, were the executives told these are the reasons why we are suspending you? I think you – well, let me give you a chance.

MS KLEIN: Remember, I had reason, personal reasons.

ADV SELEKA SC: Yes.

20 **MS KLEIN:** Being part of a board does not mean that my personal view stands, it is the collective that then kicks in. The collective had agreed that the reasons that we are going to be dealing with it in the way that we did by accepting that they step aside and not suspend them on the basis of what was – and that is the piece of the tape

that is missing because there were reasons advanced to us as a board as to why these four should be suspended.

CHAIRPERSON: Were those reasons not simply what Mr Tsotsi said here, and you must have heard him, because he said there was a concern that if these executives continued to be at work, that might hinder the investigation, that might mean that some employees might not feel free to say what they wish to say to the investigators. He said the suspensions were not based on any accusation or
10 allegation that the executives had done wrong. That is what he said. Are you in agreement with that part of his version?

MS KLEIN: Inasmuch as that what the board had agreed after deliberating.

CHAIRPERSON: Yes.

MS KLEIN: And the board had deliberated on the fact that we were requested to charge people.

CHAIRPERSON: Yes.

MS KLEIN: And the board said we cannot charge people.

20 **CHAIRPERSON:** So what you are saying – or are you saying Mr Tsotsi, when he talked about the need to suspend the executives, the reasons he gave related to allegations of misconduct.

MS KLEIN: There were other reasons given why these four people had to be suspended. The board deliberated

long and hard, Chairperson.

CHAIRPERSON: Yes.

MS KLEIN: Which is why I am saying part of that clip is not there.

CHAIRPERSON: Is not complete.

MS KLEIN: That clip, yes, that we are going to – we are fighting for the FD and I know that because Mark definitely did that, Mark was concerned about the ...[intervenes]

CHAIRPERSON: Yes.

10 **MS KLEIN:** The reasons given and, like I said in my affidavit, I remember specifically one person was – he was improper with another person and therefore he must be suspended, the FD was involved with – not tampering but had engaged with a tender procurement which ...[intervenes]

CHAIRPERSON: Yes, yes.

MS KLEIN: So we were given four reasons. I just cannot remember the rest.

CHAIRPERSON: Yes but basically what you are saying is,
20 when Mr Tsotsi proposed that the executives be suspended, whether at that stage he was talking about four executives or three, he gave – the reasons he gave in regard to the executives related to alleged misconduct.

MS KLEIN: Correct, sir.

CHAIRPERSON: It was because the board was not happy

to rely on that, on alleged misconduct, to suspend the executives that in the end the board said this has got nothing to do with any wrongdoing on their part, it is simply to ensure that the investigations will not be hampered in any way, is that right?

MS KLEIN: Chairperson, that is exactly how I remember that happening.

CHAIRPERSON: That is quite interesting because, as you will have heard Mr Tsotsi, when he gave evidence. One, 10 when he attended the Durban meeting, Ms Myeni made it clear that the suspension of the executives was not going to be based on any wrongdoing on their part and they were to be told that they were not being suspended because of wrongdoing, it was simply to make sure that the investigation could be conducted without any hindrance and he said when he talked to the board, he talked along the same lines. Is that also your understanding of what he said to me?

MS KLEIN: What he said - yes, that is what I heard him 20 say.

CHAIRPERSON: Yes, but you are saying that is not what he said at the meeting on the 11th.

MS KLEIN: No, Chair, that was not what he said.

CHAIRPERSON: He wanted to have his reasons for proposing the suspension of the executives was based on

alleged misconduct on the part of the executives.

MS KLEIN: Yes.

CHAIRPERSON: But the board was not happy to go that route.

MS KLEIN: Yes.

CHAIRPERSON: To rely on that and they rather preferred to rely on something – on saying it is not wrongdoing but it is to allow the investigation to proceed unhindered.

MS KLEIN: Chairperson, very definitely because by this
10 time – sorry, by this time there was a level of mistrust that was now starting to rear its head and the board was saying look, first of all, is the meeting with the President telling Ms Myeni was here or was involved? We are an independent board, I mean, how come you did not tell any us that you were going to go and have this meeting in advance? That was the first concern.

Now you are coming and you are telling us that we are going to suspend four people and these are the reasons. As a board we cannot accept your version
20 because we do not know if that is true or not, he cannot just suspend people unilaterally. If we agree that we are going to have the inquiry which by this time I think there was a literal agreement, you have heard me saying, I want – I would have liked it because there is a line in the sand, we know exactly what is going on in the business.

Then we cannot suspend the people because we have not got evidence of what you are suggesting. Then we – it is going to be best for us to ask them to step aside while the inquiry continues. That is my recollection, Chair.

CHAIRPERSON: That is quite interesting because – so we – I hope one or both recordings – audios would resolve that because, you see, on the face of it, it would make sense for Mr Tsotsi to say at the meeting of the 11th that the suspension of the executives had nothing to do with
10 any wrongdoing on their part. If at the Durban meeting that is what he had been told, you see?

And, of course, he said and you would have heard him, that although he was in support of the idea that the executives should not continue to be at work while the investigation was going on, is that he was concerned about using the label of suspension because that could have – I mean, if it had a reputational effect on the executives he said he was thinking maybe they should – be said to have being recusing themselves or that kind of thing. What do
20 you say to that? To what he said?

MS KLEIN: I am sorry, Chairperson, I cannot support that version.

CHAIRPERSON: Yes.

MS KLEIN: The board were the ones who pushed back. The board were the ones who then got the legal counsel in

to see if we could not call the stepping aside something else, it was not Mr Tsotsi's concern for the staff that was a problem, it was the board's concern. So we would need to get that recording.

CHAIRPERSON: Ja, ja. Well that might be important – it might be important to know exactly who took which view when.

MS KLEIN: Yes. Yes, Chair.

CHAIRPERSON: Ja, okay. Mr Seleka?

10 **ADV SELEKA SC:** Thank you, Chairperson. Ms Klein, so when you – in which meeting does Mr Tsotsi articulate what you say he was articulating?

CHAIRPERSON: Namely that the suspensions would be based on alleged misconduct?

ADV SELEKA SC: Yes.

CHAIRPERSON: Is it at the meeting of the 11th?

MS KLEIN: It would have had to been ...[intervenes]

CHAIRPERSON: Because you were not at the 9th.

MS KLEIN: I was not there on the 9th.

20 **CHAIRPERSON:** Ja.

MS KLEIN: So my recollection is only based on what happened on the 11th.

CHAIRPERSON: Yes.

MS KLEIN: So sometime on the 11th that would have been discussed.

ADV SELEKA SC: Yes but what confuses us is that you say you supported the suspensions.

MS KLEIN: Yes.

ADV SELEKA SC: And you say you supported them for the reasons you could say something about the two but you could not recall what is the position in regard to the other two. So maybe you should tell the Chairperson why you supported the suspensions.

MS KLEIN: Without – sorry, Chairperson, without the
10 allegations, is that you are ...[intervenes]

ADV SELEKA SC: No, what were your reasons for supporting the suspensions?

MS KLEIN: Very simply put, Chair, here is a company in distress, here is load shedding at the cost of R434 million to this country per day, here is a going-concern problem which we were told there is only enough money – not even enough money to pay one month of running. I said it earlier, R30 million. If people who could potentially flow down the opportunity that I would have to get a view of
20 how to turn this company around is asked to step aside, I would support that. I believed in my heart of hearts that this country could not afford to continue the way that it was going at that point in time. Number one.

Number two, I supported the Chairperson in the inquiry because we needed, as a board, to have a

baseline. You had a war room telling you what you could and could not do, you had the Minister calling and telling us from day one – and she said it here again, you must turn this business around, you have got a Chairperson telling you that these people have done all these things wrong, we have now argued the fact that we are not going to suspend them because we cannot prove that they have done anything wrong but maybe moving them aside would give me an opportunity to have a much different view in quite a shorter space of time so we can start turning the ship. That was my motivation.

ADV SELEKA SC: Yes. Well, the inquiry aside because you could do an inquiry without suspending the executives. We understand from Mr Matona, who testified before the Commission, that when he arrived for his suspension in that meeting, you specifically said you should give us reasons why we should not take the decision we are taking. He was not given reasons for your decision, he was rather – the tables were turned around, as it were, he being asked what reasons can you advise for us not to take a decision. Do you have any recollection of that?

MS KLEIN: Chairperson, I do not have recollection but let me put into context what I believe happened and what I believe would happen in terms of labour law when you are running a big business ...[intervenes]

ADV SELEKA SC: No, but let me – because it is going to take long, all I want to know is, did you ask Mr Tshediso Matona, give us reasons why we should not take the decision we are taking?

MS KLEIN: Chairperson, I want to, but I want to answer it fully and I do not want to take long. I want to answer this by saying to you we would have said that to every single person who was suspended.

ADV SELEKA SC: Okay.

10 **MS KLEIN:** And the way that the wording would have gone, if it is on recording, would simply be this. We believe that you being present at the time of this inquiry may slow this inquiry down. We are not suspending you for any wrongdoing, give us the reason that you believe that that decision would be wrong.

CHAIRPERSON: He says you specifically said give us reasons, not anybody else but you. That is what he said.

MS KLEIN: And, Chairperson, that is what I am acceding, I would have said that. If I was saying that to Mr Matona, I
20 would said that to everyone or whoever – remember, Mr Tsotsi was chairing that part of the meeting, so it is possible that Mr Tsotsi may have said to me will you handle that part of it? I mean that is not unusual in meetings of that nature.

The purpose of calling people in when you are

going to be suspending them, asking them to step aside is very simple. You have got to give them an opportunity to tell you why you believe – why they believe differently to what you believe.

Remember the board has agreed that they – their presence would have slowed this inquiry down.

ADV SELEKA SC: Yes. Can I ask you then, insofar as that is concerned, just explain to the Chairperson did you have evidence that will impact or slow the process down?

10 **MS KLEIN:** Chairperson, I have not got a shred of evidence except to say that this is what our Chairperson told us could be a problem. That was all I was responding to.

ADV SELEKA SC: No but you articulated it as a view you held and you needed to give them the opportunity to make representation to you why they should not be suspended.

MS KLEIN: Chairperson, I think I am a little bit lost simply because it is standard practice, if you are thinking of suspending someone, you put to them why you believe
20 that they need to be separated from you at that time.

CHAIRPERSON: Yes, I think – what I think counsel is saying to you is, you believed that they should be suspended, you must have had grounds or reasons for believing they should be suspended, you have conceded that there was not a shred of evidence suggesting that if

they continue to be at work they would interfere but you say nevertheless you believed they should be suspended because the Chairperson was the one who had said their presence, continued presence could interfere with the investigation. So I think what he is saying is but do not rely on what the Chairperson says because this is your belief now, that they should be suspended, you should have your own view.

If your view is based on the same thing as the
10 Chairperson but if you are able to defend it, you defend it yourself, you cannot say the Chairperson said... I think that is what counsel is saying.

ADV SELEKA SC: That is exactly so, Chairperson. When remembering that, you are a non-executive director, you have fiduciary duties and you will recall that Mr Norman Baloyi in the recordings that we must be able to defend his decision and I think the Chairperson has articulated that position clearly.

MS KLEIN: Chairperson, I heard that but I think where we
20 are probably not agreeing is Norman Baloyi gives an opinion of how he is struggling with certain things. The collective then agrees that this is the way you are going to deal with it.

ADV SELEKA SC: Yes.

MS KLEIN: I cannot be based on my personal opinion, go

and sit and say something different when we go into a subcommittee than what the board had agreed.

CHAIRPERSON: I think Mr Seleka is saying this is not a situation where you say the board made this decision, I had a different view, this is a situation where you are saying I supported the idea that the executives should be suspended and he is saying well, if you supported it you must have had reasons. And then, of course, he has asked you was there any evidence that suggested that the
10 executives would interfere with the investigation, you say no, there was no evidence. So his next question, you know, after this one, was going to be so why did you support it because there was no evidence, you say so yourself, so you suggest that if these executives continued to work there was no evidence that they could interfere with the investigation.

MS KLEIN: Chair, ...[intervenes]

CHAIRPERSON: So now personally because you said you supported the suspension.

20 **MS KLEIN:** Yes.

CHAIRPERSON: That must mean that you can personally defend you own decision to support the suspension, that is where he is, ja.

MS KLEIN: And I absolutely support that because I had already agreed that I support the suspension.

CHAIRPERSON: Yes, yes, yes.

MS KLEIN: But, Chairperson, what I think I am hearing is that in Matona's – what Mr Matona said in his affidavit was that I – when he was called in, I was the one who said to him give me a reason why you should not be suspended. So I am responding to that by saying that when a board has taken a decision, forget about individuals, once the board has made the decision, unless using minutes that can say I do not agree, alright? Then, once the board has
10 agreed, then you go out and you execute on what the board had agreed. Whether you had agreed in there or not, that is unfortunately the way that it works.

I had agreed that I supported the suspensions for the reason I gave you but when we spoke to Mr Matona, as we did with every other executive that was suspended, they were all asked, they were all told that you will not be charged but the view of the board that your presence is going to hamper or slow down the investigation. What do you say to that? Give us your reasons why you do not
20 think that that is correct. And that ...[intervenes]

CHAIRPERSON: H'm. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. Ms Klein, let us turn to page 14 of your affidavit, paragraph 47.

MS KLEIN: 37?

ADV SELEKA SC: 47.

MS KLEIN: Sorry, page?

ADV SELEKA SC: Page one four, 14.

MS KLEIN: One four, sorry, I have got it wrong. Yes, Chair, I have got it.

ADV SELEKA SC: Yes because there you write:

“To my understanding, none of the suspended executives were given reasons for their suspensions.”

They were not given reasons, instead they were simply told
10 that they were required to step aside, in order for the inquiry to be speedily concluded and that they were not being formally charged. So there were no reasons for the suspension.

CHAIRPERSON: Well, there could be a situation where there are reasons but they are not told and there could be a situation where there are no reasons and obviously there are no reasons, no reasons can be told to them and could a situation where there are reasons and those reasons are told to them.

20 So what do you say – but what do you say about what Mr Seleka says namely no - you say in your affidavit no reasons were given to the executives as to why they were suspended. Is that true?

MS KLEIN: That is correct, Chair.

CHAIRPERSON: That is correct. Okay, Mr Seleka?

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Was there a reason why they were not told reasons?

MS KLEIN: Chair, because the board had deliberated long and hard and decided we could not charge them for what we were told they had done wrong.

CHAIRPERSON: Ja.

MS KLEIN: Which is why eventually the board agreed that we could ask them to step aside because I was convinced
10 by the Chair that their presence, which is – he told us their presence could hamper the enquiry and at that meeting with them, they were told you are not being charged but we believe that your presence here could hamper the inquiry. Give us a reason why you believe that is not the case.

CHAIRPERSON: Well, if they were told that the board believes that your continued presence or your presence in the workplace during the investigation will hamper the investigation, was that not the board's reasons for thinking that they should be suspended?

20 **MS KLEIN:** That is correct, Chairperson.

CHAIRPERSON: Yes.

MS KLEIN: But in terms of process you cannot just get somebody to go, you have got to tell them this is what we are doing.

CHAIRPERSON: Yes.

MS KLEIN: You can give us – now you have got an opportunity to tell us why you do not believe what we are doing is correct.

CHAIRPERSON: No, no, I accept that. I am just linking this up with your evidence that the board – that the executives were not given reasons.

MS KLEIN: No.

CHAIRPERSON: But certainly if what you have just said is correct, at least prior to them being told you are
10 suspended, the board did say to them as things stand, before we hear what you have to say, we think you should be suspended because we think if you are present at work during the investigation that may hamper the investigation. Is that right?

MS KLEIN: That is correct, in exactly that order.

CHAIRPERSON: Yes.

MS KLEIN: And then you give them an opportunity to say you are completely wrong.

CHAIRPERSON: Ja, but was the decision to suspend –
20 when was the decision to suspend them taken?

MS KLEIN: Prior to calling them in.

CHAIRPERSON: Yes.

MS KLEIN: Yes.

CHAIRPERSON: It was taken before they were called in?

MS KLEIN: Of course, of course.

CHAIRPERSON: So which means there was already a decision when they made the representations or said whatever they were invited to say.

MS KLEIN: Correct, Chair.

CHAIRPERSON: Yes.

MS KLEIN: You do, however, need to give the person an opportunity to say look, you have not taken these five things into account.

CHAIRPERSON: Yes.

10 **MS KLEIN:** That is all that we were trying to establish.

CHAIRPERSON: Yes. Of course, normally one would expect that opportunity would be given to them before a decision is taken.

MS KLEIN: Remember, the decision was made to suspend. You then call the person in and say this is what we are planning to do. Give them an opportunity to consider what you may not have considered before. They then come with their these are my five reasons why I think what you are saying is incorrect. The board then goes
20 back and deliberates and says is that fair or is it not fair?

If the board then finds but hold on, we did not consider these things that this person has put on the table, the board can go back and say hold on, we are not suspending this person for this reason. So the decision is made but you must still give the person opportunity first to

give their view before the final call is made to either then suspend.

So your question is a good one, the actual decision to suspend only happens after that engagement.

CHAIRPERSON: The final decision.

MS KLEIN: The final decision of the board.

CHAIRPERSON: Ja, okay. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. Ms Klein, when ...[intervenes]

10 **CHAIRPERSON:** We are at about – we are at seven minutes past three.

ADV SELEKA SC: Oh. Ms Klein, in regard to your first reason, the finances of the company and so on, we have a transcript of you at a parliamentary portfolio committee where you accepted that Eskom was downgraded, it had its first downgrade as a result of the suspensions you effected, as the board. Do you recall that?

MS KLEIN: I recall that.

20 **ADV SELEKA SC:** So that questions the validity of the reasons advanced in regard to the finances as the reasons valid to suspend the executives, as opposed to resolving the issues, if you understand what I am saying?

MS KLEIN: I hear you Chairperson. Can I comment?

ADV SELEKA SC: Yes, you may.

MS KLEIN: Ja.

ADV SELEKA SC: Certainly.

MS KLEIN: First of all I was under oath at Parliament, as I am here today. I did make the comment that we had our first downgrade as a result...[intervenes].

ADV SELEKA SC: Of the suspension.

MS KLEIN: Ja, ja, thank you Chair. The day in Parliament, obviously I was overwhelmed as well, actually that was not – so I will want to put it on record, that was not our first downgrade, our first downgrade happened in
10 November of 2014. The reason that we were having financial difficulty is because after the first Moody's downgrade in November of 2014, Eskom could no longer raise bonds. People were dumping Eskom bonds a dime a dozen...[intervenes].

ADV SELEKA SC: Sorry, if I may?

MS KLEIN: Yes.

ADV SELEKA SC: Are you saying then, as a result of the suspensions there was a second downgrade?

MS KLEIN: A second downgrade, that I'm going to
20 concede.

ADV SELEKA SC: Which was caused by the suspensions?

MS KLEIN: That is certainly something that was my view then, and it still is my view now.

ADV SELEKA SC: Thank you. You know of Mr Linnell?

MS KLEIN: Yes, I do sir.

ADV SELEKA SC: And you heard the audio clips being played yesterday.

MS KLEIN: Yes.

ADV SELEKA SC: That he was involved at the request of the President, to draft these proposals and the proposed resolutions, you are aware of that?

MS KLEIN: I'm aware of it now sir.

ADV SELEKA SC: You were not aware of it then?

10 **MS KLEIN:** At the time, we were not aware that Mr Linnell had drafted anything, it only became public knowledge after.

ADV SELEKA SC: But Mr Tsotsi did say that, that he's been instructed by the President to ask the Board to appoint Mr Linnell as the coordinator of the entire process.

MS KLEIN: Okay, Chairperson, I think where I may be a bit lost is, maybe we must just be more specific on when I became aware of what because at the time when I got the resolution or the overview on the evening of the 8th,
20 nowhere there was Mr Linnell's name mentioned.

ADV SELEKA SC: No, it's fine, let me accelerate it then...[intervenes].

MS KLEIN: Please do.

ADV SELEKA SC: On the 11th of March Mr Linnell is present in the meeting after the Minister, the meeting you

have as the Board after the Minister. He's present in your meeting as the PMG Committee where the suspensions of the executives take place, you recall that?

MS KLEIN: Yes, I do Chair.

ADV SELEKA SC: Mr Linnell was said to have already done the groundwork in regard to the reasons to motivate for the initiation of this inquiry, do you recall that?

MS KLEIN: I do.

ADV SELEKA SC: And Mr Tsotsi did say that the Board
10 has been asked to appoint Mr Linnell to coordinate the entire process. You will recall, in the clip, he said, he has drafted the statement that the Board was debating about the wording for the media release, do you recall that?

MS KLEIN: I do.

ADV SELEKA SC: I suppose that is also in your audio recordings that you had, correct?

MS KLEIN: Correct Chair.

ADV SELEKA SC: So, Mr Tsotsi made it very clear to the Board, that, call it a request, call it an instruction to do the
20 investigation to suspend executives, came from the President.

MS KLEIN: Yes at that stage, yes, with the Minister having come and, you know, given us the confirmation as well.

ADV SELEKA SC: So, this idea did not originate within

the Board, it came from outside of the Board.

MS KLEIN: Correct, I concede there.

ADV SELEKA SC: So, the executives are suspended, the executives are told the suspension will be for three months because the inquiry is envisaged to take a period of three months. Now, if they're suspended on the 11th of March 2015, you said it had been – the inquiry was required, you said earlier, it was required that it be done by the end of June.

10 **MS KLEIN:** Yes.

ADV SELEKA SC: Who required that it be done by the end of June?

MS KLEIN: This is what our Chairperson told us on that clip, if you played that clip any longer, you will hear – and I'm sure if you've got a transcript, yes, this was being put to the Board by Mr Tsotsi to say, guys we've got to move this along we do not have a lot of time and the 30th – and I understand we've already done a whole lot of work, there's a thick document of a lot of work that's been done on
20 Eskom and as a Board member that gave me comfort. So, it's not like I'm sitting here today and this is the first time this is happening. I think where I became a little bit – Chairperson, through you, a little bit disillusioned is, the Board was promised a copy of that works so that it would speed up our understanding.

ADV SELEKA SC: Yes, but Ms Klein you will know from the meeting that the Board agreed that, we don't have a document, this is going to be our decision, we're owning this decision, you will know that from that.

MS KLEIN: Chairperson, this...[intervenes].

ADV SELEKA SC: I can play the recording if you so wish.

MS KLEIN: I accept that but nowhere did I accept that I did no longer require the information that I was promised existed because as a Board member I believed in getting
10 this process started and that this information, the work that's already been done, would help us as a Board. Chair, you don't need to play it again, I heard it.

ADV SELEKA SC: Thank you, and in fact, let the Chairperson now that, that was the concern of Mr Norman Baloyi, it was only Mr Norman Baloyi who was concerned that, Mr Chairperson, referring to Mr Tsotsi, you haven't answered my question on the report, you recall that?

MS KLEIN: I do recall, I do accept.

ADV SELEKA SC: And that it was Mr – I mean not Mr but
20 Dr Ben Ngubane who said, there may be a report or document that's not Eskom's document it's Government's document, this is our decision and he proposed the resolution to which all the members agreed, do you recall that?

MS KLEIN: I do recall but that doesn't take away from my

point that we had been promised a document that the Chairperson said that we were going to get and that was going to help me understand the business. So, I accept that Dr Ben said that, I accept that Norman Baloyi said that, I was still expecting a document that, I was told, had a lot of work that had been done on Eskom, previously.

ADV SELEKA SC: But it became a Board resolution that we will forge ahead and make this our own decision without a document which was being referred to by Mr Tsotsi and
10 that's the point I'm making.

MS KLEIN: Chair, and I'm struggling to concede that a commitment made to a Board by a Chairperson, can unilaterally just move off the table because we're agreeing to have an inquiry done. There was a document that was promised to us and as Board members we followed up regularly. Dr Ben is correct, Chairperson, you know but that doesn't – nowhere in the minutes does it say, we decided we no longer require that because this Board was in a position where we were wanting to turn this company
20 around, we were wanting to help turn the company around and if there was work already done, that was also part of why we accepted Mr Linnell because we were told that Mr Linnell was involved with the whole lot of this work, that was my motivation Chair, I can't talk for anybody else but I still wanted the document. Mr Baloyi's point, at that stage

was, if you say all this work was done, can't we wait to get the report before we suspend the people and I've already given you my reason for supporting the suspension and not waiting for the document but that doesn't mean the document was never going to come.

ADV SELEKA SC: Thank you, so, the suspensions are effected and we have learnt from the evidence that they didn't last all three months, correct?

MS KLEIN: Sorry Chair, are we asking that the
10 suspensions didn't last for three months?

ADV SELEKA SC: Yes, the suspensions didn't last for three months.

MS KLEIN: No.

ADV SELEKA SC: Now, I see, in your affidavit, you say that the – some of the executives asked for separation agreements or separation – or settlement agreements of Eskom but the executives have denied that they asked for settlement, separation of Eskom, they wanted to come back and I'm talking in particular the three executives, Ms
20 Molefe, Mr Matona and Mr Dan Marokane. So, let's start with Tshediso Matona, he takes Eskom to the Labour Court, he takes Eskom to the CCMA and he has said before the Chairperson, this Commission, that what he wanted was a declaration of unfairness of his suspension and that he goes back to work, you were, obviously aware of all that?

MS KLEIN: Except for the piece that he wanted to come back to work.

ADV SELEKA SC: So, when he goes to the Labour Court, what did you understand him to be seeking?

MS KLEIN: No, I totally agree with you, any person going to the Labour Court wants their job back but what we were being given as a Board is that, you know, there are people talking to people, that's the one thing Eskom has been very, very good at Chairperson. A lot of people talking,
10 voices coming from all over that says, I received a call from this person and they actually just are tired of this, they feel their names have been besmudged by this and they just want to check out.

ADV SELEKA SC: Yes, they do say that, that's what they ultimately decided to do but that was not the position from the beginning. Mr Tsotsi said, on reflection he believes that they were – the executives were being removed to make way for other people, is that what the Board did?

MS KLEIN: That's certainly not, from my perspective,
20 what we did Chair.

ADV SELEKA SC: So if there were no allegations of wrongdoing why was the Board not allowing the executives to come back?

MS KLEIN: Chair, you would remember my answer to that was that I had been told by a number of people inside and

outside of meetings that people were wanting to not wait for the three months, they wanted to leave. So, if there are other people saying something differently Chair, I don't have any proof of that.

ADV SELEKA SC: So – just by way of example, I'm looking for the passage in your affidavit wherein you explain that – ja page 16, paragraph 57 it reads, when you have got it...[intervenes].

CHAIRPERSON: I'm sorry, did you say, 167?

10 **ADV SELEKA SC:** Page 16 paragraph 57.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: The top of the page, Chairperson.

CHAIRPERSON: This is still on Bundle 02?

ADV SELEKA SC: Eskom Bundle 02 Chair, yes, that's where Ms Klein's affidavit is. So, there it reads, if I may Chair, or should I give you a moment?

CHAIRPERSON: Okay, I'm sorry, page 15?

ADV SELEKA SC: No, 16 paragraph 57.

CHAIRPERSON: Okay, alright, I'm there.

20 **ADV SELEKA SC:** It says,

“With regards to Mr Koko, I was present at the meeting with him, he was the one executive who was not interested in leaving the employ of Eskom. He indicated that he wanted his job back. Upon objecting to this, I was mandated with the Board to

engage with a senior partner of Dentons in order to establish whether or not Mr Koko had been, by way of the inquiry found guilty of any wrongdoing”.

You see that Ms Klein?

MS KLEIN: Yes, I do Chairperson.

ADV SELEKA SC: Let me read paragraph 56 – 58,

10 “In this regard I contacted Mr Noor Kapdi of Dentons who indicated that they had not found any evidence of wrongdoing by any of the suspended executives. In order to address my discomfort, I decided to engage with Mr Jerry Kaapu of Bowman Gilfillan who advised that Eskom could not keep someone on suspension if the inquiry did not find any evidence of wrongdoing. Dentons also provided the letter confirming the above”.

So, you confirm that, that’s what you did?

MS KLEIN: Yes, I did Chair.

ADV SELEKA SC: Could you explain to the Chairperson, if Mr Koko said, I want my job back, you, as indicated here, 20 took the trouble to engage, you say a senior partner at Dentons in order to establish whether or not by Koko had been, by way of this inquiry, found guilty of any wrongdoing, why would you do that, why did you do that? Could you explain to the Chairperson, why did you go to find out whether there is a finding or not of wrongdoing in

respect of Mr Koko?

MS KLEIN: I think it's quite easy, Chairperson. After about, I'd say a month or so into the inquiry, I as a Board member, and I think at that stage I was acting Chairperson of PMG, was told of various people making calls amongst – because I didn't get any calls myself, making calls about, you know, we don't want to wait this out, we are tired of this our names are being besmudged, we want to leave and because of that there was a special PMG meeting where it
10 was discussed and a Committee was put together to meet with individuals to find out, so where are they with this. We met with, I think it was with – I wasn't part of the meeting with Mr Marokane, I was present with the meeting with Mr Matona after the CCMA meeting, after the CCMA hearing and I was present with the meeting with Mr Koko and that's where I'm coming from. Of the three people that I had been involved with in the meeting, Koko was the only one who said, I want to go back.

ADV SELEKA SC: Yes, well I was asking a different
20 question but now that you've said what you've said, Mr Matona explicitly told the Chairperson that he was told, there's no option of you returning, in the very first meeting.

MS KLEIN: Chair I cannot remember, I can't remember saying that to Mr Matona. The meeting that we had, had with the executives was to establish where they were

based on the number of calls, we were getting for people not wanting to come back. Mr Matona, I do concur had gone to the Labour Court and I think he said he met with Dr Ben and I think I was only part, Chairperson of the meeting when they started talking about settlement. So, you know, if you're saying to me, Mr Matona said, specifically that – unless you tell me I was at that meeting, I don't remember that.

CHAIRPERSON: Well you were not one of the Eskom
10 representatives who negotiated with him, or were you?

MS KLEIN: No, I was.

CHAIRPERSON: You were?

MS KLEIN: I was ja.

CHAIRPERSON: But are you saying that – or let me ask this question first. He told me about two meetings, that he had with the representatives of the Board, he told me what happened on the first meeting, he told me what happened in the second meeting, did you attend both meetings?

MS KLEIN: I don't recall Chair, I do remember meeting
20 with him and talking settlement but I ...[intervenes].

CHAIRPERSON: But you don't remember whether ...[intervenes].

MS KLEIN: Ja, no I do remember that.

CHAIRPERSON: You don't remember whether there were two meetings?

MS KLEIN: Look if he says there were two...[intervenes].

CHAIRPERSON: Whether you attended them or not?

MS KLEIN: Ja, correct, if he says it was two, it clearly was two, then I'll accept that but the point, I think, that is being made is that he was told his job is off the table.

CHAIRPERSON: Ja, no we'll come to that.

MS KLEIN: Okay.

CHAIRPERSON: So, do you remember – is your recollection that you participated only in one meeting
10 where you discussed his settlement with him, together with whoever else from the Board?

MS KLEIN: I remember one Chair, if there was a second one I'll have to go – I don't remember it.

CHAIRPERSON: You might not have attended...[intervenes].

MS KLEIN: Or it's possible that I may...[intervenes].

CHAIRPERSON: Or you may have just forgotten?

MS KLEIN: It could be either one of those.

CHAIRPERSON: Yes, I think that he said – ja he said, he
20 was told, when he said he wanted to go back to his job that, that was off the table.

MS KLEIN: Chairperson, I do not remember that.

CHAIRPERSON: You don't remember?

MS KLEIN: I do not remember that.

CHAIRPERSON: And one can understand why that may

have been his attitude because he had taken the trouble to take Eskom to Court and as I understand it, when he took Eskom to Court, he wanted his job back, isn't it, yes?

MS KLEIN: I would conclude that also.

CHAIRPERSON: Yes, so that would mean that, to the Board's knowledge, Mr Matona wanted his job back then is it not – is it not probable that when he met with the representatives of the Board would it not be probable that he would say, I want my job back? He has spent his money
10 to go to Court, precisely to achieve that objective, would you not accept that...[intervenes].

MS KLEIN: No, I do accept that Chair, I do.

CHAIRPERSON: Ja it's logical.

MS KLEIN: I do accept it.

CHAIRPERSON: Yes, obviously with the delay there might come a point where somebody who may have wanted his job back, might decide, I'm no longer interested from now on, so there is that but his evidence was clear, that he only abandoned the idea of going back to his job when – after
20 he had been told by a member of the Board representatives who were talking settlement to him – with him, that going back to his job was off the table. He said he went away to reflect and then when he came back – came to the next meeting, he had accepted that he was not going to go back to his job because he realised that Eskom was not going to

allow that. If he wanted to force Eskom to take him back to allow him back, he would have to spend a lot of money in Courts.

MS KLEIN: I accept that Chair.

CHAIRPERSON: You understand that ja?

MS KLEIN: Yes.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Thank you Chair, but my question, Ms Klein was, why did you have to go to Dentons to find out
10 whether or not their – in order for you to establish whether or not they had found Mr Koko guilty of any wrongdoing, why did you have to take that step?

MS KLEIN: I think if we were to put the date of these things into context, maybe I can answer the question more specifically. By the time we go to, I think it was July – July 1st or 2nd, I remember I wasn't Chairperson of People and Governance anymore, of the three people that I had seen which was – sorry two, I had seen – I'd been part of, like I said, sort of through deliberation or interaction even
20 though I wasn't there when final decisions was made, that was the one thing. The second thing is, I may have or may not have been part of two meetings with Mr Matona and both of those had, by now, agreed they wanted to leave. Remember, from my perspective, we were going to talk to people to find out where they were based on all these

calls, but, I want to go, I want to go so I can't even tell you exactly when that happened but regarding the Denton thing with Mr Koko, Mr Koko, when he walked in was wanting to talk about nothing else. He said something like – when I walked in, I'll never forget, he said something like, my blood is blue and I'm wanting to go back to my job, categorically.

CHAIRPERSON: But you said that the investigation was never aimed at establishing any wrongdoing on the part of
10 the executives, so why did you want to find out from Dentons if they had made any finding of wrongdoing on Mr Koko's part?

MS KLEIN: Chairperson I think that was to give me more comfort as an individual, it wasn't anybody else's idea, I was uncomfortable at that time that there was only one person coming back and I wanted to be very, very sure that this person wasn't found guilty of anything, bearing in mind as well, Chairperson, when the original names were put forward, Mr Koko's name was put forward by the Chair, as
20 having done something wrong. So, now I'm sitting here as a Board member, in front of somebody who says, I want my job back and I want to know from Dentons, so what have you found here.

CHAIRPERSON: Yes.

MS KLEIN: Has there or has there not been any findings

on this individual.

CHAIRPERSON: Yes.

MS KLEIN: I was then – because I wasn't Chairing People and Governance, Kwaito Mabude was Chairing People and Governance, she then told me, to give you comfort based on what you've just said, you phone Dentons, which I did and then Mr Noor Kapdi said there was no wrongdoing found in – in terms of any of the suspended executives. I then said, okay well, that's fine but then if this person
10 wants to come back and everybody else has left, what do we as a Board – what rights do we have or not have with something like this to help us in our decision making to bring you back or not bring you back. That's when I went to Bowman Gilfillan's to Jerry Kaapu to say, Jerry, how do I deal with this. Here's a staff member who's done nothing wrong according to the investigation, who decides he wants to come back when everybody else has said they're leaving, how do we deal with this and Jerry said, you can't keep somebody on suspension if they've done nothing
20 wrong, according to this, and your Board is saying bring him back.

CHAIRPERSON: Were you involved in the settlement negotiations relating to the financial director and Mr Marokane is it...[intervenes].

MS KLEIN: Mr Matona?

CHAIRPERSON: No, not Mr Matona.

MS KLEIN: Marokane?

CHAIRPERSON: Ja, were you involved in those...[intervenes].

MS KLEIN: No, I wasn't, I wasn't Chair, I wasn't involved in Marokane at all and the settlement agreements with Ms Molefe, I also was not. I was involved with one meeting and a discussion with her but the actual decision about what was done wasn't defined.

10 **CHAIRPERSON:** So was Mr Koko the only one of the executives who had been suspended that you discussed the way forward with?

MS KLEIN: No we had discussed the way forward according to me was all of them in terms of...

CHAIRPERSON: Sorry?

MS KLEIN: We had discussed the meetings I was part of – we had discussed the way forward with every single one of them.

20 **CHAIRPERSON:** Oh ja but that is what I was asking earlier on.

MS KLEIN: Oh okay.

CHAIRPERSON: I was saying were you involved in certain discussions in negotiations representing the Board with the Financial Director?

MS KLEIN: Yes I was.

CHAIRPERSON: And Mr Marokane

MS KLEIN: Marokane.

CHAIRPERSON: Marokane ja.

MS KLEIN: No, no I was not.

CHAIRPERSON: Ja you know you...

MS KLEIN: I was not...

CHAIRPERSON: No. So you were involved in regard to Mr Matona.

MS KLEIN: Mr Matona.

10 **CHAIRPERSON:** And the Financial Director.

MS KLEIN: And Mr Koko.

CHAIRPERSON: And Mr Koko.

MS KLEIN: Correct Sir.

CHAIRPERSON: And with regard to the Financial Director did you talk about her coming back?

MS KLEIN: I think at the time if I remember correctly by the time I was in the first meeting with her she had already decided I had heard via other Board Members she had already decided she does not want to come back.

20 **CHAIRPERSON:** Yes.

MS KLEIN: That was what I heard.

CHAIRPERSON: Yes.

MS KLEIN: Whether or not that was true you will have to ask other directors.

CHAIRPERSON: Yes.

MS KLEIN: I can – okay.

CHAIRPERSON: Yes. Mr Seleka.

ADV SELEKA SC: Thank you Chair. But Ma'am she says differently in her affidavit. In the first meeting she meets with yourself, Doctor Ngubane, Mr Romeo Kumalo, Suzanne Daniels was there and even prior to that meeting she had written letters to find out what is happening in her affidavit which I will find for you and she wanted to come back. That first meeting she says Mr Romeo Kumalo was doing most of
10 the talking and there is a point where – and it is suggested to her that can we not have an amicable separation? That is her version.

MS KLEIN: I remember those words as you correctly say.

ADV SELEKA SC: Yes.

MS KLEIN: I remember that. But Chairperson what had happened prior to that meeting specifically with Ms Molefe. I was told that she no longer wanted to be part of Eskom. That is what I was told. So when I was in the meeting where she – where she had been asked about amicable settlement
20 you would need to ask Mr Kumalo that.

Every single one of those meetings that we went to we went armed with settlement packages because that was what gave rise to a meeting where it was agreed that if people wanted to leave we have got their numbers.

But I certainly did not start the discussion by saying,

look you are going to leave. I mean I do not remember that being the intent. I at the time of the meeting had already heard that she had already asked to leave the organisation.

ADV SELEKA SC: Hm.

CHAIRPERSON: Well if – I think Mr Matona or Mr Tsotsi one of them I think told me that the settlement agreements relating to the Financial Director Ms Molefe and Mr Marikane.

MS KLEIN: Kane.

10 **CHAIRPERSON:** Ja. Were either exactly the same or substantially the same as that of Mr Matona. I would imagine save for maybe figures you know and besides their personal particulars certainly I understood what one of them said as meaning that just as Mr Matona was given a settlement of a years' salary they were given the same. That is how I understood what I was being told. Do you whether that is so?

MS KLEIN: Chair without having the numbers in front of me.

CHAIRPERSON: Ja.

20 **MS KLEIN:** I can imagine it may have been correct. The mandate that the Board gave to the committee who was going to be engaging was to say that equivalent to a years' salary.

CHAIRPERSON: Hm.

MS KLEIN: But remember Mr Matona had only been there

for a very short period and what other executives had which was due to them which was not the salary we are talking about benefits like their long term benefits, long term bonuses which was all due to them. That would have had to have been paid out because I mean that was all they had worked for that.

CHAIRPERSON: Hm.

MS KLEIN: So I can imagine if without having the numbers in front of me I think that would have been the reason for it.

10 **CHAIRPERSON:** But you see you are saying that your understanding was that Mr Marokane and Ms Molefe had expressed the wish to leave.

MS KLEIN: Yes.

CHAIRPERSON: But Mr Koko wanted his job back.

MS KLEIN: That is my understanding yes.

CHAIRPERSON: Yes. Now if indeed as I understand it to be the case Eskom paid them a years' salary just like Mr Matona. Why would Eskom pay somebody a years' salary who leaves on their own when Eskom is happy to have them
20 back?

Why does Eskom not say, well as far as we are concerned you should come back you have not been found guilty of anything. If you want to leave then you resign and get whatever benefits you get. We are not – we do not have a dispute with you.

We are not settling any dispute with you. Why would – what would be the justification for paying so much money in circumstances where somebody must still do the job that they would have done for that year?

In other words, if Eskom pays you a years' salary and you leave, they will still pay somebody else for the same months so they will be paying two people for the job of one. What would be the justification? Now I can understand if Eskom does not want them anymore.

10 **MS KLEIN:** Hm

CHAIRPERSON: Because then Eskom is buying their resignation to say if you resign this is what we will give you and you walk away – we walk away. That I can understand. But I cannot understand it if Eskom has no issue with them coming back and they are the ones who just would want to leave. That Eskom then says we will pay you a years' salary.

MS KLEIN: Ja.

CHAIRPERSON: Are you able to explain that to me?

20 **MS KLEIN:** Chairperson I think it is a very, very good point that you make. But do not forget that is why it was called settlement. It was called settlement. It was not them resigning. It was them saying we are happy to leave but we want to settle with you. We want a settlement.

CHAIRPERSON: But that is the problem. You do not settle

if there is no dispute.

MS KLEIN: Ja.

CHAIRPERSON: You settle if there is a dispute.

MS KLEIN: Ja.

CHAIRPERSON: So what dispute was there between Eskom and them? Or between the Board and them?

MS KLEIN: Chair at the time they were – at the time they called for settlement. I hear what you are saying it makes a whole lot of sense now with the benefit of everything that
10 has happened. At the time the Board felt that that was a good decision which I supported as well.

CHAIRPERSON: Yes but – but I mean one of your duties as the Board is to act in the best interest of Eskom. That is your overall duty. Now an employee who wants to leave I take it as the Eskom Board if you as the Eskom Board have no reason not to want that employee to continue you will say, well we cannot force to work for Eskom but then if you want to leave you resign and you will get whatever benefits if any that somebody gets if they resign of their own. We cannot
20 take Eskom's money for a year – I mean I think in the case of Mr Matona it was quite a few million Rands.

ADV SELEKA SC: Yes.

CHAIRPERSON: I would imagine it was the same with the other – other ones. Why pay the – why are you paying that money if you have no issue with these employees and they

have done nothing wrong. Why is it in the interest of Eskom for you to spend so much money – so much money for an employee who decides that they do not want to continue working for Eskom to go?

MS KLEIN: I agree with you today Chair. At the time that was the decision of the Board which I also agreed was the right decision.

CHAIRPERSON: Yes. You see if I look at that conduct on the part of the Board in relation to the three directors. The
10 payment of so much money to them does not make sense if I am told the Board actually had no problem with them continuing with their job. It does not make sense.

But if I am told the Board did not want these executives to continue or to come back then it makes sense. Then it makes sense. Because it means the Board said look we do not have proper grounds to dismiss these – these executives and indeed Mr Matona had already gone to court to challenge the Board, to challenge his suspension.

So in order for us to get rid of them we must give
20 them call it a golden handshake or whatever. We must effectively buy their resignation. We must say to them here is money; if you take this money you can resign and then we part ways.

So when therefore Mr Matona says I was told by the representatives of the Board that going back to my job is off

the table then that version seems very credible to me. Not the one that says no the Board you know they are the ones who said they want to leave and then we paid them a years' salary to leave when it was not what we wanted. Can you see?

MS KLEIN: I do hear you Chairperson.

CHAIRPERSON: Yes.

MS KLEIN: I see the difficulty with what you are saying. I understand the difficulty.

10 **CHAIRPERSON:** Yes.

MS KLEIN: But I am saying to you that on my part as a director I was part of the decision that agreed to settle.

CHAIRPERSON: Yes.

MS KLEIN: Now if it was a wrong decision then it was a wrong decision.

CHAIRPERSON: Yes.

MS KLEIN: I do understand what you say.

CHAIRPERSON: Yes. You see I do not know what – what conclusion I will reach when I have heard all the evidence.

20 **MS KLEIN:** Hm.

CHAIRPERSON: But it is possible that there may have been a plan that was made somewhere outside of Eskom to get rid of these executives. And this plan was sold to the Board. And it may well be that among the Board Members some knew the origin of the plan and knew a lot about the plan

than others. I do not know.

And the plan was to get rid of these executives so that other people who may have been favoured by those who made the plan would be brought into Eskom into the key positions that these executives had occupied. And it becomes quite interesting that of all these executives Mr Koko is the only one who is allowed back. And there are allegations that Mr Koko had some association with either the Gupta's or associates of the Gupta's. You understand
10 what I mean?

MS KLEIN: I hear what you saying Chairperson.

CHAIRPERSON: So in the end who was associated with the Gupta's or not associated it is a decision one that I will take when I have heard all the evidence but one – one reads these things, one hears evidence and so on. So there are those concerns.

You know you will have one of these executives Mr Matona saying I wanted my job back. I had even gone to court to try and force the Eskom board to give me my job
20 back and they came and then they said that is off the table. And I ended up realising that I did not have enough financial resources to fight a financial giant like Eskom. I had to accept that I must just take money and go.

And then you have Mr Koko seemingly just getting his job back very easily. Okay. You might be able to say

something on this but I am just giving you an indication of some of the things that one is looking at and some of the analysis.

MS KLEIN: Chairperson I think – look I cannot argue with anything that you have said. I hear you one hundred percent. I am going to give you a personal view.

CHAIRPERSON: Yes.

MS KLEIN: This is my view. This is not anybody else's view.

10 **CHAIRPERSON:** Ja.

MS KLEIN: I come from corporate South Africa where if I pay somebody R6 million I expect a certain level of performance. Now this is not a discussion that has been held and it is – I do not even know that it is in my papers. That a personal view is if I pay you R6 million or whatever the number was that a CEO was being paid I expect results. One thing I did say [00:17:42] and I still maintain it so it does not take away negate what you have just said why settle and you will hear from others who they – you know
20 who said to Matona he does not – his job is gone. I cannot comment on that.

But one thing I will say is as the CEO I expect performance. And I do not expect performance from six months from now I expect it literally you come in you study the company in advance. You come in with all the strategies

and after a month or two we start seeing a move. That on the CEO.

So I did not fight for Tshediso when – I mean nobody said to me that Tshediso wanted his job back. That was not my understanding. You asked me my question about how do I view it? The FD great person as well but everything that came out of the War Room everything that we heard and we had heard that we did not get proper reports

What we had heard from the Minister – there was
10 numerous complaints about five versions of financial numbers coming through. So I am responding myself now. Okay. In my own head are these people going to turn the business around? I do not know.

If I were the only shareholder, I can assure you I would not have kept people in a job that could not turn it around in the last six months or two years. I am giving you a personal view. And I am not negating anything that you have said Chairperson I am responding to what were my – what is going on in my head.

20 **CHAIRPERSON:** Yes. Yes.

MS KLEIN: I just want to also answer the question about – there may have been this grand scheme of get rid of people.

CHAIRPERSON: Hm.

MS KLEIN: Chairperson I was not part of that. I do not know anything about it.

CHAIRPERSON: Hm. No, no that is – I understand. Mr Seleka I – I may have stepped your plan.

ADV SELEKA SC: Not at all. Not at all Chair.

CHAIRPERSON: But I am sure I have covered something you intended covering.

ADV SELEKA SC: Yes. No, no not at all Chair. No disturbance at all. Ms Klein you have repeatedly said this thing about Minister Brown that she raised concerns about the War Room. Now I want to refer you to Mr – Ms Brown's
10 state – affidavit to this commission because she does not say that to this commission. She tells this commission about her meeting with President Jacob Zuma and that it was Mr President Jacob Zuma who raised concerns about the War Room.

MS KLEIN: About the?

ADV SELEKA SC: About the War Room.

MS KLEIN: The War Room.

ADV SELEKA SC: Not herself. I – I think we read this during Mr Tsotsi's testimony and that is the file I have ja.

20 **MS KLEIN:** Yes.

ADV SELEKA SC: She writes:

“I do recall having conversations with the then President Jacob Zuma about the dire situation of load shedding. He was concerned that the War Room was not receiving

accurate information.”

Now she does not ascribe that to herself i.e.

“The executives were feeding their will or inaccurate – they left out the word information to the War Room. He was also distressed by the impact of load shedding on the country and the economy.”

Now that part of the War Room is attributed to the then Mr President Jacob Zuma. The Minister does not say I was
10 concerned. I was part of the War Room. We were receiving inaccurate information. Mr Matona was not performing let alone the FD. So how does this commission deal with what you say were the concerns of the Minister that she herself does not say were her concerns?

MS KLEIN: Chairperson I am not too sure how to answer that. Short [00:22:05] I am not too sure how to respond to the evidence leader simply ...

CHAIRPERSON: I think – I think what it calls for on your part.

20 **MS KLEIN:** Yes.

CHAIRPERSON: Is to reflect on what the Minister said and try and make up your mind whether she mentioned these complaints about the War Room not being given correct information as her concerns or whether you – she might have said the President has expressed concern about information

being given to the War Room. I think that is what it calls for.

MS KLEIN: Yes. Yes.

CHAIRPERSON: You might say I do not know she might have said the President has expressed concern to her or you might say no I am quite clear that she said she was – this was her concern – part of her concern.

MS KLEIN: Yes. Chairperson I think that is very clear. I do not recall the Minister ever saying the State President was concerned.

10 **CHAIRPERSON:** Okay.

MS KLEIN: The Minister from what I am – from what I know because I had never been to the War Room was the representative in the War Room. Because there were a lot of different departments represented. But I do not remember the Minister ever saying in the board room – I mean she said to us on the day she met us. She said it to us on the 13 – of the 11 March and there was also an induction session with us again telling us she has got a problem with the amount of information coming out of the War Room incorrectly. I do not
20 remember the President's name being mentioned.

CHAIRPERSON: Hm okay.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Can I interrupt you – do not forget your next question.

ADV SELEKA SC: I will not Chair.

CHAIRPERSON: [00:24:00] and step back to what we were discussing earlier.

ADV SELEKA SC: Sure.

CHAIRPERSON: Are you able to tell me what the Board's attitude was to the executives before the negotiations took place? Was the Board's attitude that it did not want them back? Was the Board's attitude that it wanted them back? Was the Board's attitude that it did not matter to them whether they came back or did not come back? If they did
10 not want to come back they – it had no problem? And if they wanted to come back that would be fine as well. Individually and collectively. What was the Board's attitude towards the four executives?

MS KLEIN: Chairperson I must say it is a bit difficult to say what the Board's attitude was. Maybe it is easier to say what my attitude was.

CHAIRPERSON: Well – but I do want the Board's attitude because in the end it was – it had to be the Board's decision one way or another.

20 **MS KLEIN:** Ja.

CHAIRPERSON: And it may be that you – it was discussed; maybe that it was not – this attitude was not discussed. It may be that you know it may be that you do not know. And then you can – ja. So I just want at the Board level whether to your knowledge what its position was to your knowledge?

MS KLEIN: To my knowledge Chair when we came in there we were working with people who had been at Eskom for a long time. So obviously they – they had knowledge, they had more knowledge than any of us. I mean we were new there as well.

And I guess that had a lot to do with when you ask about the attitude of the Board why when the suspensions were first mooted the Board did not just jump up and say right just fire the lot of them. There was a whole lot pushing
10 back and forth about but we cannot discharge people.

We cannot just let people – we cannot just do these things. It was not until we got to agreement that the best way if – Chairperson if you say that they are going to hold us back – they are going to hold us back, extend us or prolong the inquiry. Okay can we agree?

I cannot remember a time where the Board sat or certainly I was in any meeting where it was agreed just let them go; we will do better if we just bring other people in. The – I think the operation was much too complex for that
20 decision to have been taken. And I certainly never got that at a Board level. That was not the attitude of the Board.

For me I had my personal views on things which I have already shared rightfully or wrongfully those were my views. But I know the complexity of the business that we were running was huge and we needed experience. However

it was a business in distress. When you look at a business in distress over a long period you cannot but look at the people who are running it. But that is not a discussion that I have ever been a part of.

CHAIRPERSON: Yes. And I guess if the position was that the Board – the Board's attitude was we do not think the executives have done anything wrong but we do not think that they are up to the job that they have been given.

One would imagine that then the Board would engage
10 them on that issue.

MS KLEIN: Hm. That ...

CHAIRPERSON: And you say that never happened?

MS KLEIN: That never happened.

CHAIRPERSON: That never happened?

MS KLEIN: No. that never happened Chair.

CHAIRPERSON: Yes okay alright. Mr Seleka I am sorry.

ADV SELEKA SC: Not at all Chair. Chair can I just refer to another point?

CHAIRPERSON: Yes.

20 **ADV SELEKA SC:** You know Ms Klein ...

CHAIRPERSON: We are at five past four let us take about – let us talk about the way forward.

ADV SELEKA SC: Very well.

CHAIRPERSON: I know that how long we are taking it is not just you it is me as well because ...

ADV SELEKA SC: It is the commission Chair. We blame the commission.

CHAIRPERSON: Subject to my own interventions how much time do you think you still need with her?

ADV SELEKA SC: If we complete the suspension which is nearly done I think about thirty minutes.

CHAIRPERSON: Hm.

ADV SELEKA SC: Then Chair we are left with the secondment.

10 **CHAIRPERSON:** Ja.

ADV SELEKA SC: And perhaps we could deal with it some other time. I will leave it up to you too.

CHAIRPERSON: Well it looks like the two of you are having some communication that I know nothing about.

MS KLEIN: Sorry Chairperson. Sorry.

CHAIRPERSON: Well what are your plans in terms of what she must cover again, cover this time around.

ADV SELEKA SC: Ja, we can ...[intervenes]

CHAIRPERSON: I am available to work, to sit longer.

20 **MS KLEIN:** H'm.

CHAIRPERSON: I just want us to ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: I want us to have a common idea of ...[intervenes]

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: ...how long we will go.

ADV SELEKA SC: Yes.

COUNSEL: Chair, if I may also with your leave? Chair, I have not yet come on record. I represent Ms Klein.

CHAIRPERSON: Yes.

COUNSEL: I do intend to re-examine. At this stage ...[intervenes]

CHAIRPERSON: Yes.

COUNSEL: At this stage quite briefly, Chair.

10 **CHAIRPERSON:** Ye

COUNSEL: I would imagine about 20-minutes or so.

CHAIRPERSON: Yes.

COUNSEL: Based on what the evidence which has ...[intervenes]

CHAIRPERSON: That is helpful to know, ja.

COUNSEL: We also found some documents which we have made available to you.

CHAIRPERSON: To the evidence leader?

COUNSEL: To the evidence leader.

20 **CHAIRPERSON:** Yes. No, that is fine. I was going to come to the question of re-examination so that we have an idea. So leaving aside re-examination, how much time do you...? I think...

I mean, from my side if she is ready to deal with the secondment, I will be happy that we deal with that as well if

the time permits.

But of course, if she needs time to prepare to deal with that, that is different. But I would like us to cover as much as we can.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Subject to time constraints.

ADV SELEKA SC: Yes. We can complete the suspensions in the 30-minutes.

CHAIRPERSON: Ja.

10 **ADV SELEKA SC:** The secondment... ja, it is a bit ...[intervenes]

CHAIRPERSON: An hour?

ADV SELEKA SC: ...winding and winding. Maybe we could allocate an hour for it?

CHAIRPERSON: Yes.

ADV SELEKA SC: Ja. So we could complete the suspensions.

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** Take a five or ten minute adjournment and then we get into the secondment.

CHAIRPERSON: Ja, okay. Ms Klein, would you be happy to ...[intervenes]

MS KLEIN: Ja, I am comfortable Chairperson.

CHAIRPERSON: Okay alright. So... well, if we go along with your assessments, that means about an hour and a

half?

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: That would take us to about... what? Half-past ten. Five, quarter to six or six o'clock. Then there may be 20-minutes re-examination. But of course what we can do.

ADV SELEKA SC: Yes, Chair.

MS KLEIN: We can go up to where we can.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** It may be that once you are done, we could look at the time then. If necessary, we could say the re-examination can happen on another day. That would not be a problem to fit in.

It could be that we could say tomorrow before the next witness, it could be that we find time next week. I think that we could look at that... also look at that.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: So I think let us take some adjournment now.

20 **ADV SELEKA SC:** Okay.

CHAIRPERSON: And then we come back, we will try and see if we can cover and finish evidence on the suspensions and then do the secondment and at the end of that, we look at the time and the situation and see where the re-examination will happen today. And see whether we arrange

for another date. Alright.

ADV SELEKA SC: That is in order Chair.

CHAIRPERSON: And I think everybody is still okay with that. Ja.

COUNSEL: Yes, Chair. Speaking from my side. Given that we have made somewhat... quite a hefty bundle of documents available. They are not yet part of the record. They will have to be photocopied.

CHAIRPERSON: Oh, okay.

10 **COUNSEL:** And that has not been done. So.

CHAIRPERSON: So adjourning to another date for re-examining might be more convenient?

COUNSEL: It is probably preferable.

CHAIRPERSON: Ja, okay. No, that is fine. That is fine. Okay let us take a short adjournment. It is ten past or eleven minutes past. We will resume at twenty-five past four.

ADV SELEKA SC: Thank you, Chairman.

CHAIRPERSON: We adjourn.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: I think that the discussion in your chambers suggest that we try and finish evidence relating to the

suspensions but the evidence relating to the secondment will have to be dealt with on another day.

ADV SELEKA SC: That is correct, Chairperson.

CHAIRPERSON: You understand, Ms Klein?

MS KLEIN: Yes, I do Chair.

CHAIRPERSON: Okay alright. Thank you.

ADV SELEKA SC: Thank you, Chairperson. Shall I proceed, Chairperson?

CHAIRPERSON: Yes, proceed.

10 **ADV SELEKA SC:** Thank you. Ms Klein, I had wanted to refer you to an aspect of what Mr Dan Marokane also said. But I want to start with this. Insofar as your concerns about the finances of the company where concerned and you were articulating the position of your background in banking.

Well, that will deal with finances as well. now if you look at what happened here, you mentioned one of these executives will give settlements.

I saw one was in the region of six million. Well, you see the... in your affidavit, you say that... page 14 paragraph 51

20 and it starts on 50. It says:

“The board considered the settlement request I'm delegating the acting chairman. Dr Ngubane and myself and Mr Khumalo to enter into negotiations with the four suspended executives around the exit from Eskom and in relation to their respective exit

packages.

The authorization provided for the acting chairman and Dr Ngubane and myself and Mr Khumalo to enter into exit negotiations with each of Mr Matona, Ms Molefe, Mr Koko and Mr Marokane.”

So we know that only three of them, you were able to achieve settlement agreements with three of the four.

10 “But any settlement should be within the four parameters. the final package to be negotiated shall not exceed a maximum amount of 12 months package.

Now you have mentioned... if somebody gets six million they must really perform their job. So that view you hold and which you had partially expressed.

The other view hold about this financial status of this company which were partially expressed.

20 And then you are confronted with this situation which as the chairperson was saying but these people wanted to come back or if we accept in the situation that you didn't want to let them go.

But there is a settlement agreement where you part with three people at the maximum amount of 12 months. If you paid each one of them - and we could look at the agreements... but you mentioned six million. Can you recall whether the others also received in that region?

MS KLEIN: I was ... Sorry, Chairperson, through you. I was actually just using a number. I do not know the numbers of hand.

ADV SELEKA SC: But coincidentally, that is the number in Mr Matona's settlement agreement.

MS KLEIN: Okay. I think I probably used it cause because I remember Mr Matona's. I do not remember the rest of it. Let us put it that way.

CHAIRPERSON: But obviously I... at the time you would
10 have wanted to know the exact figures in regard to each one.

MS KLEIN: Yes. Chairperson, remember as a board member, we would not have had access to any of what was the salary, or what the benefits that outstanding was.

We would have been given that remunerations. Executive remuneration. A gentleman by the name of Anton Minnaar would have provided all of that information to us.

CHAIRPERSON: Yes. No, no, no. I am simple saying. I take it that at the time you would have wanted to know what figures you were talking about.

20 **MS KLEIN:** Yes. Correct.

CHAIRPERSON: Ja. Because you would want to enter into settlements where you do not know how much you were paying the people.

MS KLEIN: Correct, sir.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Ja. In... this is all in Dr Ben Ngubane's file. But you know the settlement agreements. For Mr Matona it is six million which equates to one year's total annual cost to company remuneration package.

So he departed with six million there who was merely there for five months. You do not have to put somebody in his place preparing going forward. That is Ms Molefe's agreement. That is also R 6 049 417,00.

Except for, as set out in Clause 4.2, 4.4, 4.5.

10 "Separation payment is fully inclusive of any benefits, bonuses, notice day or any amount owed or that may be owing to Ms T B L Molefe."

So that is a little over 12 million. And then you have Mr Ben Marokane. His is 6.2 million. R 6 237 634.33. That takes it to a little over 18 million which Eskom parted with.

It does not strike one as a board that is really concerned about the financial status of this company. Your comment?

MS KLEIN: Chairperson, once again, I am speaking for myself. A company with a turnover of 375 million with the
20 cost to run of 30 million per day.

I do not know how we conclude that this... I am sorry, Chairperson. I have got to disagree that 18 million... I am not taking anything away from the point you raised earlier.

If they wanted to resign, let them resign. Alright. I am not certainly not denying the point. But in terms of so 18

million for a company with 375 million turnover per annum. Those are not numbers... those are not even comparative.

CHAIRPERSON: You see, the point is this, as I understand it, you want to earn the company's money properly. As I said earlier on. If the position is that the company does not want these people back, it is one thing.

But if the company in his position is: We do not mind them coming back or we actually want them back. But they are the ones who say they want to leave.

10 Then you say: Fine, leave. We will look for somebody else. We do not have to make a deal with you. Resign like everybody does when they want to leave a company.

And if there any benefits that by law you are entitled to, you will get those benefits. But you are not going to get R 6 million when you decide you are leaving.

So you keep the company money. But it is different if the position is we do not want this person back. Therefore, in order to buy their departure, we are prepared to spend so much because we are going to get them to leave and maybe
20 also it is going to mean there is no litigation there.

It is a settlement. So it is only in that context, I think that one is looking at that, to say when you can allow the person to leave, to resign without you paying anything and you say: Okay resign but I will give you this money, so much money.

It seems inexcusable if you do not have any problem with the person coming back. And of course even if you had issues to say: Look, maybe this person is not up to the job.

Maybe the proper thing would be to let them come back and then you deal with the process that is aimed at dealing with your concerns about his or her performance, you know.

Because if indeed they are not up to the job, they are not going to be entitled to that kind of money. They might be entitled to notice and notice pay or whatever. But it is not
10 going to be that kind of money.

So I think the R 18 million is as opposed to a situation where you allow them to go because it is their decision. You are not pushing them out. I think that part you understand.

MS KLEIN: I do.

CHAIRPERSON: You do not have a problem with that?

MS KLEIN: I do Chairperson.

CHAIRPERSON: Ja.

MS KLEIN: In fact, if may just... and I know we are all committed to time but if you can indulge me?

20 **CHAIRPERSON:** Ja.

MS KLEIN: I think and as you are speaking, obviously, you are giving me a chance to also just consider ...[intervenes]

CHAIRPERSON: Yes.

MS KLEIN: ...why would I even have thought ...[intervenes]

CHAIRPERSON: Yes, yes.

MS KLEIN: We were on, for me, a burning platform. The country was without electricity. We were sitting with no money. Now, I mean, I understand Chairperson.

Now you can say you: Okay, you have no money but it is R 18 million. We were sitting with... there was pandemonium. You said it earlier. Instructions from, we heard now, the president, the War Room, executives.

And there was a lot of discord there as well. The new board. So from my personal perspective, I was not going to
10 fight it.

You know, if you are saying to me that was the wrong decision, Chair. If you say it ultimately that was the wrong decision. Then you know what, I will respect you for saying that but in that context of what we were facing – what we were facing at the time which was R 434 million cost of this country a day.

Now we are sitting with a threat of total blackout. If you ask me, some of the decision that we have made, I am going to concede today, could have been better made.

20 And if this is going to be one of those where you say to me personally: You should not have made that decision. There would have been a chance for you to... then I am going to concede to that.

But if you ask: Did I pay the R 18 million because I wanted them, because I wanted somebody else in. That

was... if there was such a thing because I also heard Mr Tsotsi saying about meetings that...

Remember another thing that we must not forget. There were meetings being held outside the boardrooms that the board had no knowledge of.

I cannot account for that here. So I am going to go with you and say to... Please, Chairperson, I hope you do not think I am trivialising the point...[intervenes]

CHAIRPERSON: No, no, no.

10 **MS KLEIN:** Because you are making also what Mr Seleka is making.

CHAIRPERSON: No, no, no. I understand what you are saying. But I think your approach seems to be that you were – you seek to justify the payment of the amounts that were made on the basis that you thought these executives were not good for Eskom to come back.

I think that as I understand it, it amounts to that. You thought: Look, maybe they will fail to fix the problem over whatever years they have been around and they must go.

20 We will look for somebody else who will maybe deal with these situations better.

And when you look at it that way, you justify it by simple saying it is worthwhile because we might get people who will put Eskom in a better position, okay. Am I right?

MS KLEIN: Chairperson, you are... you are articulating

exactly what I think.

CHAIRPERSON: Yes, yes, yes.

MS KLEIN: From my personal view. But from the board's perspective the reason that we were looking at numbers, my understanding which had come to us from various quarters where people were asking to go.

CHAIRPERSON: Yes.

MS KLEIN: So it was not... so in my view, I was not going to fight to keep people who, in my own view, I would have
10 treated in a particular way in the private sector.

CHAIRPERSON: Yes, yes.

MS KLEIN: But you are right there.

CHAIRPERSON: Ja. So that is how you justified it personally.

MS KLEIN: Yes.

CHAIRPERSON: But you have said also there was no such discussion at board level in any board meeting and therefore nobody can say, I would imagine, that the way you look at it is the way the board looked at it.

20 **MS KLEIN:** Exactly.

CHAIRPERSON: Ja.

MS KLEIN: Ja.

CHAIRPERSON: So one would still want to know, why did the board do this?

MS KLEIN: H'm.

CHAIRPERSON: Ja. Mr Seleka, we might not have time to cover what you wanted to cover but... so feel free to continue.

ADV SELEKA SC: Yes. Thank you, Chairperson. Ms Klein, you will be given the file of Mr Tsotsi which we used yesterday. Chairperson, I am just going to read out to Ms Klein which is now the affidavit of Mr Dan Marokane. Just to identify the file for record purposes, it is U17, Eskom Bundle 02 U17, page 543. That is ...[intervenes]

10 **CHAIRPERSON:** Do you think I need to have a look at or I might be able to deal without it?

ADV SELEKA SC: Let me read the file, file read to you Chairperson.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: So in the interest of time. Mr Dan Marokane writes in paragraph 3 Ms Klein.

20 "I hereby confirm that following my suspension from the position of Group Executive Big Capital at Eskom on 12 March 2015, I reverted to the board via attachment...

And we will get to that letter now.

"This letter addressed to the chairman of the board, Mr Zola Tsotsi had copies to the company secretary, Mr Malesela Phukubje was never acknowledged nor responded to.

Subsequent follow up letters from my lawyers and Eskom board also suffered the same fate. As time progressed it became clear to me that the board was deliberately frustrating me.

It was well into the month of May 2015 around the 20th of the month that I called the interim chairman of the board, Dr Ben Ngubane in the evening to indicate to him that I have come to the conclusion that I could no longer trust the board and as such I wanted to discuss how to separate.

10

By the following morning, that is after waiting for over a month or nearly two months, Dr Ngubane had already assigned two board members, Mr Khumalo and Zethemba Xhosa to have separation discussion with me.

We concluded the separation discussions at the end of May 2015 and I left the employ of the company effective 1 June 2015.”

So you see again there that the initial stance of yet another executive was to come back to the board and let me ...[intervenes]

20

CHAIRPERSON: Ja, do you want to look at the letters.

ADV SELEKA SC: Let us lead the evidence...[intervenes]

CHAIRPERSON: Ja, to hear what he was saying in the letters.

ADV SELEKA SC: Yes.

CHAIRPERSON: And what they were saying.

ADV SELEKA SC: The letter is on page 505 Ms Klein.

CHAIRPERSON: Maybe give me that...

ADV SELEKA SC: Maybe I have the file, Chair. It is a fairly long letter.

CHAIRPERSON: You can just go to the relevant parts.

ADV SELEKA SC: The relevant parts, yes.

CHAIRPERSON: That they talk about going back or
10 something.

ADV SELEKA SC: Thank you, Chair. Ms Klein, that is page 545.

MS KLEIN: 545?

ADV SELEKA SC: 505.

MS KLEIN: Yes. No, I got that. I have got that.

ADV SELEKA SC: You are there.

MS KLEIN: I have got that.

ADV SELEKA SC: The portion I would like to read is on page 509. His concluding paragraph.

20 **CHAIRPERSON:** Okay I think my registrar, does not...

ADV SELEKA SC: He is gone.

CHAIRPERSON: It is something he has not had.

ADV SELEKA SC: Eskom Bundle 02.

CHAIRPERSON: 02 is here. I thought I heard U17 or something or is that the exhibit or what?

ADV SELEKA SC: It was at the time, I think so.

CHAIRPERSON: Ja, five zero?

ADV SELEKA SC: 509.

CHAIRPERSON: 509.

ADV SELEKA SC: Paragraph 26. He says there:

“If ...[intervenes]

CHAIRPERSON: No, I do not have 509 on Bundle 02. It must be the next bundle. My last page is 490.

ADV SELEKA SC: Oh, no, no. Sorry, Chairperson. Sorry.

10 That is my fault. Eskom Bundle 07(a). Page 509.

CHAIRPERSON: Just go ahead. Yes, thank you.

ADV SELEKA SC: Yes. Thank you. Paragraph 26. Mr Marokane writes:

“If the board...

May I ... Chairperson, I beg your pardon. The letter is dated 18 March 2015 on page 505.

CHAIRPERSON: Yes.

ADV SELEKA SC: It is addressed to the chairperson of the board at the time, Mr Zola Tsotsi. It is also for the attention
20 of People in Governance Committee of the board.

CHAIRPERSON: Yes.

ADV SELEKA SC: Of the company secretary.

CHAIRPERSON: Yes.

ADV SELEKA SC: Ms Klein, that would have been the sub-committee of the board you served on.

MS KLEIN: [No audible reply]

ADV SELEKA SC: If you nod, the records... I mean, ja, the record will not capture your agreement. You should verbalise it.

MS KLEIN: Sorry, Chair. Are you asking me a question?

ADV SELEKA SC: No, I am saying if – when you nod it is not being recorded.

MS KLEIN: Oh, I am so sorry.

ADV SELEKA SC: Ja.

10 **MS KLEIN:** I apologise.

ADV SELEKA SC: Ja. That was the sub-committee of the board you served on.

MS KLEIN: Correct. That is correct, Chair.

ADV SELEKA SC: Ja. Then we go to that paragraph on page 509. He says:

20 “If the board has an absolutely genuine desire to get to the heart of all Eskom’s problems, understand how those problems came about and how they were over time handled and/or is handled, then what Eskom needs to do in order to overcome its challenges.

I am willing to cooperate with the independent investigation on the basis that I will be allowed to advance and share my genuinely held open and frank views without fear of retribution or any other

adverse consequence to me, my professional integrity, my reputation in the market place and importantly my career in Eskom and my anticipated and indeed hoped for career path within Eskom.”

So this again is a man who expressed a wish to come back seven days after his suspension... well, he was suspended on the 12th of March. So that is six days after his suspension. Do you see that?

MS KLEIN: [No audible reply]

10 **ADV SELEKA SC:** Now did you become aware of this letter at the time?

MS KLEIN: Chairperson, I can categorically state, I did not. Sorry. I can ...[intervenes]

CHAIRPERSON: Sorry, just repeat it.

MS KLEIN: I can categorically state, I did not. The first time I became aware of a letter from Mr Marokane was when his lawyer, Brian Khan, wrote to us. You probably have it here as well. I picked that up when I was going through it.

CHAIRPERSON: Yes.

20 **MS KLEIN:** Preparation.

CHAIRPERSON: Okay.

MS KLEIN: I think... I mean this is just a view. I do not know. Unless you know differently. My view is letter arrived... did you say the 18th of ...[intervenes]

CHAIRPERSON: It is 18 March.

ADV SELEKA SC: 18 March.

MS KLEIN: 18 March. But do not forget. The board had its meeting on the 19th of March with Mr Tsotsi. And at that meeting, I complaint about what he responded and Mr Tsotsi, with credit to him because, you know, I think he operated almost as an executive director. He was there all the time.

He told us at that meeting that he had received 200 emails to which he had not responded. That is the first point.

10 The second point is that when Mr Tsotsi left, I am not sure what secretary did with this because it really only became... I picked it up when Brian Khan wrote to us which was after this.

And I do not know if you have that letter Chari. But it was a letter written to us by Brian Khan complaining that he is acting for Dan Marokane who written on a particular date and would not have any response.

So if I ask me do I know this came to the People in Governance. Chair, I do not know that. I do not know that.
20 But if it shows that if it was there, I cannot...

CHAIRPERSON: Of course, I would imagine that because it is quite clear from the contents of the letter that it was not written to Mr Tsotsi in his personal capacity but in his capacity as the chairperson of the board. If he left and then company secretary, I guess, would have said to make sure

that his successor was aware of the letter so that he or she could deal with it. Okay.

MS KLEIN: So Chair, if I may add? I would assume that you would maybe put it the next chair, you know, was he aware of it. Because like I said, I can only go on the fact that I knew that he had an overload of emails that I could spoke about this morning.

CHAIRPERSON: Ja.

MS KLEIN: But, no, I was not. To answer your question. I
10 was not aware of that letter.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: The minutes of the meeting you referred to which we also to a large extent referred to during Mr Tsotsi's testimony.

CHAIRPERSON: I am sorry, Mr Seleka.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Do we still need this bundle or it can go?

ADV SELEKA SC: You still need the very same bundle
Chair.

20 **CHAIRPERSON:** Oh, okay.

ADV SELEKA SC: Because... may I add as we go there. You see the company secretary is also copies.

MS KLEIN: Yes.

ADV SELEKA SC: And specifically, on behalf of the PMG, the People in Governance Committee. So you still say that

that letter did not come to your attention?

MS KLEIN: I cannot remember seeing it. That is what I am saying. Maybe you are asking me if I know about it.

ADV SELEKA SC: Yes.

MS KLEIN: I cannot remember.

ADV SELEKA SC: Yes. So this letter is dated the 18th. The next day is the meeting of the board which you... the minutes of which you found on page 679 of the same file. Chairperson. 679. And this the meeting, Ms Klein, you are
10 referring to where Mr Tsotsi gets excused and he... there is a resolution that he should be subjected to some disciplinary action.

MS KLEIN: Yes.

ADV SELEKA SC: IN that meeting or the minutes rather, there is a caption on page 680 under paragraph 8.3. The heading is Suspended Executives. And it reads... sorry, let me ...[intervenes]

MS KLEIN: 680?

ADV SELEKA SC: 680, yes. Because at the ...[intervenes]

20 **MS KLEIN:** Sorry. No, I am at 580.

ADV SELEKA SC: Oh, you ...[intervenes]

MS KLEIN: Just bear with me.

ADV SELEKA SC: 679, 680.

MS KLEIN: I am there, I am there, Chair.

ADV SELEKA SC: Thank you, paragraph 8.3:

“Suspended executives”

MS KLEIN: Yes.

ADV SELEKA SC: And it reads:

“With regard to the letters from suspended executives including the CE...”

Is it not referring to these letters one of which will be this on the Dan Marokane?

MS KLEIN: It could be. Remember at that stage I do not remember seeing letters unless it came to People in Governance where I specifically saw it. I cannot remember, I do not remember that. First letter I remember from Dan Marokane is the one from Brian – his lawyer, Brian, complaining about the fact that we had not responded.

ADV SELEKA SC: Ja.

MS KLEIN: So with regard to letters from the executives, I, at that stage, had not seen the letters, Chair.

ADV SELEKA SC: Because both – well, all three of them in their affidavits explicitly say they wrote letters to the board. Now let us see what the board here says about the letters.

20 “With regard to the letters from the 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. The legal department was authorised to send a letter that had been prepared in this regard.

So what does that mean? That means the legal department had been instructed to prepare the letter in response to the letters of the executives.

MS KLEIN: No, I do not think so, Chair.

ADV SELEKA SC: Okay.

MS KLEIN: Look, we are talking about the meeting of the 19th.

ADV SELEKA SC: Yes.

MS KLEIN: Which is a day after the actual discussions of
10 the meeting. What told me is that they had not gotten a
letter – sorry, Chair, I am looking this way - they had not
gotten a letter after the discussion. Remember, we called
them in and said to them give us a reason why you think that
your presence here will not hamper the investigation – or the
inquiry.

They then gave us their reasons, we then reconvened
and said look, sorry, that is when the final decision gets
taken to say those reasons did not hold up and we were
going to put them on suspension.

20 They were not given letters at that stage yet. That is
my understanding of those letters referred to there.

CHAIRPERSON: Well, I was under the impression that they
were given the letters of suspension at the meeting – or
rather, on the 11th because I think Mr Matona said or says in
his affidavit – or somebody says in their affidavit that as the

discussions were happening, Mr Tsotsi had those letters with him.

MS KLEIN: Ja.

CHAIRPERSON: And I think that may be correct because I think Mr Linnell may have prepared them the previous day and I saw in this letter that we just looked at now of Mr Marokane, where he says you gave me this letter of suspension and I pointed out that especially not true what is written here in the letter and I think he referred to the part
10 where he says he made various representations and he says you agreed that this was not true and we crossed it out.

MS KLEIN: Chairperson, you are one hundred percent correct. I am getting my dates confused. I am thinking this is still the 11th, so I apologise for that. Which is why I am thinking those are the letters but then I have got to concur with the evidence leader ...[intervenes]

CHAIRPERSON: The evidence leader, ja.

MS KLEIN: That that can then only refer to letters received which, like I said, I do not remember getting a copy of. That
20 I did. But I am sorry, I kind of took us on a detour.

ADV SELEKA SC: No.

MS KLEIN: But I got the dates wrong, I am thinking of the 11th, this is the 19th, I apologise for that.

ADV SELEKA SC: Yes, thank you, Ms Klein. Then I – let me go back to the point which I had asked you about, why

take a step – which is on page 16, paragraph 57. Now we are back to your own bundle.

MS KLEIN: My one.

ADV SELEKA SC: To your affidavit.

MS KLEIN: Page?

ADV SELEKA SC: Page 16, paragraph 57. You were explaining why you took the step to find out whether any wrongdoing on the part of Mr Koko had been checked and established by the investigation of Dentons. And you gave
10 the reasons why you did so. But let us determine the reasonableness of your explanation because you would know that Dentons mandate did not involve investigating wrongdoing on the part of the executives. Dentons report, which I read yesterday, explicitly says that. And this I wanted to understand. If you say you took the step, on what basis would you do that?

MS KLEIN: Ja, but Chairperson, like I said earlier, this step that I took was in the month of July after all the discussions and everybody else had asked – you know, well, my
20 understanding was, they had asked to go, I am hearing now they did not ask to go, based on different evidence.

Mr Koko – I think I said it in parliament as well, if you go and read my affidavit, I still say he is a very, very strong engineer, but as People in Governance, I got numerous complaints about Mr Koko with various individuals and you

know, it is just his leadership style. Which may be right or wrong, I mean, I never worked with Mr Koko. And based on that and the fact that there are three people of the four who have left.

I wanted to be one hundred percent sure that there was nothing in the report and I concur with evidence leader, I was here yesterday, when I heard that there was going to be no – I do not remember the exact wording, but we were not looking for to fight any wrongdoing.

10 **ADV SELEKA SC:** Yes.

MS KLEIN: But do not forget, Chairperson, that as board member, I was one of the people or the board was told about something Mr Koko had done and I wanted to be very sure that we had absolutely nothing that he had done incorrectly, before we brought the one person back. That was my reason for saying well, hold on, guys, if this is the only person and we are going to bring him back, I want to be sure. So let me make the call to – I did not ask.

CHAIRPERSON: You did not want to have a situation
20 ...[intervenes]

MS KLEIN: [inaudible – speaking simultaneously] wanted to bring him back.

CHAIRPERSON: Hang on one second, you did not want to have a situation where you allowed him back and then you were criticised that you allowed him back even though the

Denton report found something wrong that he had done.

MS KLEIN: Correct, Chairperson, specifically based on what the Chairperson had told us initially when he tried to motivate for the suspension, Koko's suspension.

CHAIRPERSON: Okay.

MS KLEIN: So that was the reason for making sure with Dentons that there was no wrongdoing. That is number one.

That still did not satisfy me, I wanted to make sure. I then contacted Jerry Cappel(?) and I asked Jerry, Jerry, give
10 me your view, what if it is me? You bring somebody back who we have now heard has done nothing wrong. Can we, as a board – is there a way that we can say we are not going to take him back and he said you have got no legal standing to do that. So that was my reason for doing that.

ADV SELEKA SC: Yes. Ja, I will quickly find that wording for you, it is Eskom bundle 03, EXHIBIT U14. That will be in your bundle.

MS KLEIN: 3, U14?

ADV SELEKA SC: Eskom bundle 03.

20 **MS KLEIN:** Oh, I have got it.

ADV SELEKA SC: Ja. Page 649.

MS KLEIN: Ja, got it. Got it, Chairperson.

ADV SELEKA SC: Yes. The first thing I want to say, Ms Klein, or draw your attention to is what Dentons itself writes on page 652, paragraph 4.7. Dentons writes:

“The minutes of the meeting of the board on 31 March 2015 authorising the investigation records as follows. The terms of reference were based on the audit. Members were generally comfortable with the terms of reference in that they adequately addressed all the issues the board wanted to be dealt with.”

Do you see that?

MS KLEIN: I see that. I see that, Chairperson.

ADV SELEKA SC: You would have seen those terms of
10 reference.

MS KLEIN: Chairperson, I was not a member of audit and risk.

ADV SELEKA SC: No, my question is, you would have seen the terms of reference.

MS KLEIN: No the final terms of reference, that was designed by audit and risk.

ADV SELEKA SC: Okay. Are you saying you did not see the terms of reference?

MS KLEIN: There was a terms of reference that was sent
20 out, a draft, which I gave input to. Audit and risk this present or fine tuned, if you will, together with Dentons and you can help me, Chairperson, but I am not sure that it came back to the board for full final. It may have, I just do not recollect, that is what I am saying to you. Audit and risk drove that process.

ADV SELEKA SC: So audit and risk would not have accounted to the board on the terms of reference?

MS KLEIN: No, no, I am not saying that, I am saying I am not aware of it. You are asking me I would have seen it, I am saying to you I am not sure that I have. That is what I am saying to the Chairperson.

ADV SELEKA SC: Yes and I am asking whether would audit and risk not have accounted to the board on the terms of reference for the appointment of Dentons?

10 **MS KLEIN:** Remember, audit and risk was tasked to do certain things as was P & G and then we had various meetings in between. I cannot tell you whether they brought this into the board or not. That is what I am saying. They may have but I do not remember seeing it.

ADV SELEKA SC: But you will recall from the audio recordings that the board explicitly said audit and risk and P & G must account to us, to the board. We are delegating the powers to them but they must account to the board.

20 **MS KLEIN:** Okay, if you go according to what was said, then the answer is yes. If you ask me if I say that, I do not remember.

ADV SELEKA SC: No, that is ...[intervenes]

MS KLEIN: I may very well have come to us, I do not remember, sir.

ADV SELEKA SC: Yes. So well that you would have seen

then the terms of reference that Dentons says, paragraph 4.9:

“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 misconduct by any specific individuals.”

Do you see that?

MS KLEIN: I see that, Chairperson.

10 **ADV SELEKA SC:** So when was this request made to Dentons enquiring whether or not there is a finding of wrongdoing against Mr Koko?

MS KLEIN: I think it would have been sometime in June, the month of June, because I remember at the meeting on the 1 July, which was chaired by Ms Mabude because she was the Chairperson of People in Governance, she actually told the meeting she had asked me to clarify with Dentons whether or not there was an issue of wrongdoing, which is what I then did because I was uncomfortable.

20 **ADV SELEKA SC:** Ja ...[intervenes]

CHAIRPERSON: Okay, at some stage we need to go back to finalising evidence relating to the different meetings. At some stage Ms Klein testified about what happened at the meeting before the Minister arrived, testified about what was discussed when the Minister addressed the board and

testified about the meeting after the Minister had left. It may be that she has said everything she is supposed to say, I just want to make sure that we do not leave anything hanging in regard to those matters. I remember that now because I do want to find out whether she would – attend the P & G meeting that afternoon that Mr Tsotsi talked about but that we can deal with that at some stage. You can continue with the issues you are still exploring.

ADV SELEKA SC: Yes. I will make – ja. Chair, there is an
10 immediate answer to your question.

CHAIRPERSON: Yes.

ADV SELEKA SC: Which is that Ms Klein has confirmed that she was in attendance.

CHAIRPERSON: She attended.

MS KLEIN: Yes.

ADV SELEKA SC: Yes.

CHAIRPERSON: Oh, okay, alright.

MS KLEIN: Are we talking about the meeting on the
...[intervenes]

20 **ADV SELEKA SC:** The P & G.

CHAIRPERSON: On the 11th.

MS KLEIN: No, no, absolutely, I did attend.

CHAIRPERSON: Okay, alright.

MS KLEIN: I was there.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay, I will ask her some questions later but you can continue.

ADV SELEKA SC: Yes. Thank you, Chair. Ms Klein, that explanation that you – what did you say? You found – you asked Ms Mabude and she specifically requested you to go find out whether there is not a finding of misconduct or wrongdoing against Mr Koko.

It is difficult to understand when the board itself already on the 11 March said we were not alleging any
10 wrongdoing against the executives even before you formulate the terms of reference. You have made that conclusion, no allegations of wrongdoing, step aside, so that you do not impede the inquiry. So I am still struggling with the basis or that step you took to try and find out whether there is wrongdoing or not against them.

MS KLEIN: Chairperson ...[intervenes]

CHAIRPERSON: I think what counsel is saying to you is, you had no basis or thinking that Dentons could have a finding of misconduct against Mr Koko because you knew
20 that that was not part of their brief. So how could you have thought that they might have made such a finding because you knew that they had been told that it is not part of your brief to make any finding of misconduct against these executives.

MS KLEIN: Chairperson, you can only answer you the best

way I remember. I was particularly uncomfortable with Mr Koko based on what the Chairperson had told us and that is not in evidence at the moment. That needs to be found and you will find it when you speak to other board members.

CHAIRPERSON: Okay.

MS KLEIN: So you asked me did I see the terms of reference and I am saying to you I do not remember seeing that. So sitting here yesterday I heard that. I heard that. I said it in parliament as well, I am uncomfortable with Mr
10 Koko for reasons of my own based on being Chairperson P & G and just great technical person but, you know, people were uncomfortable with leadership issues.

So me phoning Dentons was a way for the board to say to me go and satisfy yourself if you are uncomfortable. That is why I made the call. And beyond that, that is why I even phoned Jerry. What the board may or may not have though, I am answering for why I was uncomfortable.

ADV SELEKA SC: You see that paragraph 4.7 talks about the minutes of the meeting of the board, not the audit and
20 risk committee.

CHAIRPERSON: What do the minutes say or what is the point about the minutes?

ADV SELEKA SC: It is 4.7, that means it is the meeting of the board where the terms of reference are discussed and the members say they are generally comfortable with the

terms of reference in that they adequately addressed all the issues the board wanted to be dealt with.

CHAIRPERSON: You accept, I take it, that you were aware that the board had said it was not part of the brief of Dentons to investigate any wrongdoing on the part of the executives. That one you accept, that you were aware of that.

MS KLEIN: I accept that that is what it says, I just said I do not remember it but I have got to accept [inaudible –
10 speaking simultaneously]

CHAIRPERSON: Oh, okay, okay. But in terms of your own understanding as the investigations by Dentons was carrying on, was your understanding that their investigations would include looking into any wrongdoing on the part of the executives?

MS KLEIN: Chairperson, I think what shapes my thinking, if I were to put it you this way now. In terms of Dentons, I had very little to do with Dentons themselves but I remember the Chairperson of the board – now look, obviously this is now
20 not in my statement, I am responding to the question.

If there was no wrongdoing on the part of the executives - I remember a call from Dr Ben one night telling me that Suzanne Daniels was in an absolute state because one of the investigators had rubbed her – not really rubbed her, had really roughed her up so badly. Now do not forget

Suzanne Daniels worked for Koko. Suzanne Daniels worked for Koko. So if they roughed her up so badly based on what?

And I think that was all the things that was going through my mind at the time when I had – I was uncomfortable and even at that stage I did meet with Suzanne to say what had happened because she was – at P & G it was my job to make sure people were okay and she told me what had happened.

10 I then phoned Dentons and I said what is this, you know, how come you people are roughing people up like this? And he said it was a junior investigator and the junior investigator was probably just – like overplay. I think all of those things were in the back of my mind which created the level of discomfort that I had.

So it does not negate the fact that you were not investigating any wrongdoing but here is the assistant of one of the people who I had read from the Chairperson had just done certain things, so I wanted to be very sure before
20 agreeing to bring Mr Koko back, that there was no wrongdoing on his part. So...

CHAIRPERSON: Unless, Mr Seleka, unless there is a point that I do not – I have not appreciated, I do not know whether you still want to pursue that point, that line.

ADV SELEKA SC: Yes.

CHAIRPERSON: Unless there is something else I think we may have spent enough time on it.

ADV SELEKA SC: Yes, Chair, I can finalise it because I have only now been able to receive the minutes of the board meeting which I referred to there in paragraph 4.7 as the board sitting on the 31 March 2015.

CHAIRPERSON: You see, what I am looking for is she decided she was going to ask Dentons whether they had found any wrongdoing on the part of Mr Koko.

10 She might not have had to do that since Dentons was not mandated to investigate any wrongdoing. So unless the idea is that her going there or to Dentons to ask was connected with something else, it would seem to me that there is not much one – much more one can make of it.

ADV SELEKA SC: Yes.

CHAIRPERSON: But, of course, there might be something that you are looking at which I might not be aware of.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** But if you want to round it off, having covered that, that is fine.

ADV SELEKA SC: Indeed. Indeed, Chairperson. May I, Chairperson, with your permission, hand up a copy of those minutes of 31 March 2015, Minutes of the Eskom Holdings SOC Ltd board meeting. We will mark it accordingly for Ms Klein's bundle. Chair, perhaps it will come at the very end of

this.

CHAIRPERSON: What do you want us to look at?

ADV SELEKA SC: Chairperson, the first page reflects members who were present in the board meeting, Dr Ngubane, the Acting Chairman at the time, Mr Norman Baloyi, Ms Carrim, Mr Khoza, Ms V J Klein. That will be you, Ms Klein?

MS KLEIN: Yes, that is correct, Chair.

ADV SELEKA SC: Mr K Kumalo and Ms C Mabude, Dr P
10 Naidoo, Ms V Naidoo and Mr Pamensky. Chairperson, the specific issue here is on page 7 of that document, paragraph 7.4. The terms of reference for the board's inquiry.

CHAIRPERSON: What page?

ADV SELEKA SC: The bottom, page 7.

CHAIRPERSON: Okay.

ADV SELEKA SC: Paragraph 7.4, terms of reference for the board inquiry. There is:

20 “The draft terms of reference for the board inquiry into the affairs of Eskom were tabled for approval details of which had been distributed to members. It was noted that interviews were still being conducted to identify the service provider to conduct the inquiry.”

If you turn the page, it says:

“The terms of reference were based on the audit.”

Now you will recognise that paragraph, that is the one quoted in the Dentons report.

“The terms of reference were based on the audit, it was requested that the term “unfettered” be removed from the draft. Members were generally comfortable with the terms of reference in that they adequately addressed all the issues the board wanted to be dealt with. It was noted that the inquiry could take up to 12 months.”

10 You see familiar from Dentons report, Ms Klein?

MS KLEIN: Yes, I see it, Chairperson.

ADV SELEKA SC: Then it gets resolved at the bottom, just after the next paragraph:

“Resolved that the draft terms of reference for the board inquiry into the affairs of Eskom are approved subject to the implementation of the change requested by the board.”

MS KLEIN: I see that, Chairperson.

ADV SELEKA SC: Yes. But the point ...[intervenes]

20 **CHAIRPERSON:** Sorry, I am sorry, I have lost you.

ADV SELEKA SC: Oh, you have lost me?

CHAIRPERSON: The result parties were?

ADV SELEKA SC: If you go back to the first paragraph Chairperson on page 8.

CHAIRPERSON: On page?

ADV SELEKA SC: On page 8.

CHAIRPERSON: 8, ja.

ADV SELEKA SC: If you go to the top paragraph, skip the second paragraph, then you see the words resolved that.

CHAIRPERSON: Yes.

ADV SELEKA SC: Then point number one.

CHAIRPERSON: Yes, okay I see that, ja.

ADV SELEKA SC: Thank you Chair. So the – Ms Klein the – what this raises in one’s mind, looking at, as the
10 Chairperson was painting that – the allegation scenario of Mr Koko meeting at Melrose Arch, knowing that there will be suspensions and subsequently he being the only one coming back and the basis on which you are personally involved in his coming back in that the reason was well let me go find out whether there is any wrongdoing found against him when in fact you would have known in this board meeting which finally having looked at the draft terms of reference resolved that they be finalised, that there is no wrongdoing on his part.

20 It does not – it does not seem to be a cogent reason for having secured his return. It seems something more lurked behind the decision.

MS KLEIN: Chairperson I cannot talk to what lurked behind the decision I was asked a question – if you were to check with any board member I was the one person who

was concerned from the day that the Chairperson told us about certain allegations against Mr Koko. I was concerned about that; I was concerned about his return which is why I did what I did.

I think what we are not addressing right now which probably has got nothing to do with the terms of reference is if you were to listen to the tape of the 11th of March we said we would have a concurrent process running for those who's going to be charged. He had never been charged
10 but there was some serious allegations made.

I wanted to make very sure myself that Mr Koko according to the findings as the Evidence Leader has pointed out correctly would not have been picked up but to make very sure that there was nothing that they saw there that could possibly have alerted us to something that may have lined up was what the Chairman had said because the Chairman had made some serious allegations.

CHAIRPERSON: Ja.

MS KLEIN: So when you know when talk about a cogent
20 reason and it is not being cogent I cannot talk to that. I cannot talk to the meeting at Melrose Arch I was not there and I certainly did not have any sinister reason for doing what I did here. I did what I did in order to protect what I thought was the board to make sure that we were not bringing somebody back that ought not to have come back.

CHAIRPERSON: Yes, Mr Seleka you estimated 30 minutes.

ADV SELEKA SC: I am finished with that.

CHAIRPERSON: We have done an hour so let us try and see if we can finish...[intervene]

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: With suspensions.

ADV SELEKA SC: May I move onto the next point Chair.

CHAIRPERSON: Ja.

10 **ADV SELEKA SC:** There is something Chair which might remain because Ms Klein refers to the Chairperson having made allegations of wrongdoing against the certain executives. But Ms Klein you would know from that meeting that Mr Tsotsi – well you need to give us your report to this because somebody there says the FD and it is not Mr Tsotsi. The FD was the one involved in meeting with the bidders and Mr Tsotsi is asking was that reported in surprise. That is a question also asked by Mr Baloyi where are the facts but we can deal with that. Do you
20 recall that?

MS KLEIN: I do recall that Chair. Can I comment if I may?

ADV SELEKA SC: You may.

CHAIRPERSON: Ja.

MS KLEIN: Chair that is the same meeting I am saying to

you that recording is not complete.

ADV SELEKA SC: Yes.

MS KLEIN: Remember I am saying to you where is that recording starts and in fact let me put it this way I think before I leave can I hear where that starts so that we can be sure that the version I have got is exactly the same version you have got. Is it possible?

ADV SELEKA SC: Ja they will look for it.

MS KLEIN: So they can just to take that off the table.

10 **ADV SELEKA SC:** Yes.

MS KLEIN: Alright.

ADV SELEKA SC: Yes, for purposes of...[intervene]

CHAIRPERSON: Well let me go to my question about the P & G meeting. You would have heard Mr Tsotsi say yesterday that after lunch he went to join the P & G meeting and was like ten minutes late. But when he arrived he found that the people who attended the meeting where or they did discussing names of people who would act in the positions of the executives who were going to be
20 suspended. Now do you have any recollection of how those names or where those came from?

MS KLEIN: Chairperson I must tell you I was very surprised when I heard that yesterday. I do not remember the P & G starting without Mr Tsotsi. So once again I am talking about based on my memory of five years ago.

CHAIRPERSON: Yes.

MS KLEIN: As well as listening to a recording which I say is incomplete. I do not recall anybody talking about names. My recollection of the names that were eventually considered for suspension came from Mr Tsotsi himself. So I am a little concerned that we are not saying the same things I agree with that but I guess that is what this is about.

CHAIRPERSON: Yes, yes.

10 **MS KLEIN:** You know I do not recall the meeting starting without Mr Tsotsi because my understanding was that Mr Tsotsi was going to chair the P & G. So why would the meeting start without him.

CHAIRPERSON: Well that is interesting I was looking at Dr Ngubane's affidavit I seem to think he also says the names came from Mr Tsotsi I may be mistaken but I seem to think he says something along those lines that – where is the file that has got Mr, Dr Ngubane's affidavit. So you were at that P & G meeting from when it started you were
20 there?

MS KLEIN: Sorry Chair?

CHAIRPERSON: The P & G meeting...[intervene]

MS KLEIN: Yes.

CHAIRPERSON: When it started you were there?

MS KLEIN: I can only imagine that I was I am typically

never late for meetings so I cannot imagine that I would have been late.

CHAIRPERSON: Okay, alright and you say your recollection is that the names came from Mr Tsotsi?

MS KLEIN: Absolutely Chair.

CHAIRPERSON: As far as you know did, he come up with those names at the P & G meeting or had he already mentioned the names in any one of the previous meetings that day?

10 **MS KLEIN:** I think that is the piece that is missing.

CHAIRPERSON: That is missing.

MS KLEIN: I am not sure if it was at the end of the board meeting.

CHAIRPERSON: Yes.

MS KLEIN: I do imagine that there was a P & G and other members were asked to join as well I think even he said so yesterday.

CHAIRPERSON: Ja he said so, ja.

MS KLEIN: Ja.

20 **CHAIRPERSON:** But your memory in terms of who came with the names is it quite clear.

MS KLEIN: That I am 100% clear on.

CHAIRPERSON: That it was Mr Tsotsi?

MS KLEIN: Absolutely.

CHAIRPERSON: And is your – do you have a recollection

as to whether the P & G meeting started without Mr Tsotsi being there and he joined later or whether when it started he was there. Do you have any recollection of that?

MS KLEIN: No that is the part I cannot remember.

CHAIRPERSON: You cannot...[intervene]

MS KLEIN: But I can only say to you I find it strange that we would have started a P & G of such a critical nature without him.

CHAIRPERSON: Yes.

10 **MS KLEIN:** That is all I can say.

CHAIRPERSON: Yes.

MS KLEIN: But there may be evidence that it was true I do not know.

CHAIRPERSON: Yes of course he was not going to Chair the P & G meeting. Is it?

MS KLEIN: No, no you see that is my dilemma he was always going to Chair P & G.

CHAIRPERSON: Oh and as far as you recall did he Chair the meeting?

20 **MS KLEIN:** He chaired the P & G.

CHAIRPERSON: Oh, okay. I thought I had seen minutes that puts him as one of the people attending or members but not as Chairperson.

ADV SELEKA SC: Ja, Chair the - what we see is that the board deliberates on who is going to chair because Mr

Zithemba Khoza...[intervene]

MS KLEIN: Was the Chairperson.

ADV SELEKA SC: Who is the Chairperson is going to – has been earmarked to act in the CEO's position so he is conflicted. He cannot also hand a letter of suspension. So there is a P & G meeting then there is the suspension meetings it seems Mr Koko chaired the latter but not the former and you can check Ms Klein. So although there is some deliberation and the board does say we authorise you

10 Mr Chair we place you in that position.

MS KLEIN: Yes.

ADV SELEKA SC: To chair the P & G but he says no, ultimately I think he chairs the suspensions as opposed to the P & G meeting.

CHAIRPERSON: Ja, okay.

MS KLEIN: Ja.

ADV SELEKA SC: Ja.

20 **MS KLEIN:** But Chair I think that is a very important point that the Evidence Leader is raising because I think in the recordings that part of the board meeting where this is originally discussed seems to me what is the missing part.

CHAIRPERSON: Yes.

MS KLEIN: That part between the board meeting because remember the way we got it is that there was a board meeting. The Minister arrives, we break and we go into P

& G. There was a meeting before the P & G.

ADV SELEKA SC: No, we do have that.

MS KLEIN: Do you have that?

ADV SELEKA SC: Ja, no that audio is there.

MS KLEIN: Alright.

ADV SELEKA SC: And it flows into the P & G. What we do not have is the suspension meetings which is what Mr Tsotsi chaired.

MS KLEIN: Correct.

10 **ADV SELEKA SC:** Well you say chaired but he is really the one made responsible to speak to the executives and handover the letters of suspension but it needs to be clarified of course.

MS KLEIN: Ja.

CHAIRPERSON: Ja.

ADV SELEKA SC: In regard to the P & G.

MS KLEIN: But Chair I want to add onto what the Evidence Leader has just said.

CHAIRPERSON: Ja.

20 **MS KLEIN:** Remember at this stage according to my knowledge I do not know about anybody else's, I am talking about my knowledge. We are suspending, I do not know when the – your point about that Zithemba Khoza was going to act.

ADV SELEKA SC: Yes.

MS KLEIN: That discussion only happened afterwards so then I am – you have got to show me in the minutes because maybe I do not have it.

ADV SELEKA SC: The minutes are in your bundle.

MS KLEIN: Okay.

ADV SELEKA SC: Page 1460.

MS KLEIN: Is that the first bundle now?

ADV SELEKA SC: That is Eskom bundle 05.

CHAIRPERSON: I am sure you can read it what does it
10 say.

ADV SELEKA SC: Ja, the Chairperson there is Mr Z Khoza.

CHAIRPERSON: Mr?

ADV SELEKA SC: Mr Z Khoza.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: That is the Chairperson.

MS KLEIN: Okay.

CHAIRPERSON: Yes.

ADV SELEKA SC: Ms Carrim is there Mabude, Dr Naidoo,
20 Ms Naidoo, Mr Baloyi, Mr Tsotsi and then Ms Klein.

MS KLEIN: Yes.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: That is the members.

CHAIRPERSON: Okay.

ADV SELEKA SC: It is on page 1460.

MS KLEIN: 1460?

ADV SELEKA SC: Number 5.

MS KLEIN: Okay.

ADV SELEKA SC: Eskom bundle 5.

MS KLEIN: Ja I have got it.

ADV SELEKA SC: You have it?

MS KLEIN: 1460?

ADV SELEKA SC: 1460, yes.

MS KLEIN: So is this sorry Chairperson is this
10 the...[intervene]

ADV SELEKA SC: This is the minutes of the People and
Governance Committee on 11 March 2015 at 14:58. Now
we do not have minutes and I do not think there are
minutes where the executives are called in one by one and
there is discussions with them to be handed letters of
suspension. So this would be before that...[intervene]

MS KLEIN: Suspension meeting.

CHAIRPERSON: So if the names came from Mr Tsotsi
that is the names of the people who were going to act in
20 the positions of these four executives. If that part of your
evidence is true, then it would also mean that Mr Tsotsi's
evidence that he found or that he asked those present how
they could be discussing those names because they did not
know the people so that would be problematic to because
he would have brought the names and he would have been

the one who asked that everybody discuss those names. Is that right?

MS KLEIN: I would imagine so Chair.

CHAIRPERSON: Ja.

MS KLEIN: Yes, because remember for me the board, meaning the board myself of the view I did not know any of the people.

CHAIRPERSON: Ja.

MS KLEIN: So I mean I would not have possibly have
10 been able to come up with a list of names.

CHAIRPERSON: Ja.

MS KLEIN: Having said that though I mean there were other people who had been there before.

CHAIRPERSON: Ja.

MS KLEIN: So I am not saying that Mr Tsotsi did not find people talking about it but I did not hear that and remember we talking about the replacements the people who are going to take over.

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** Chairperson may I go and charge to the Chairperson that Mr Baloyi has also recently arrived an affidavit to the Commission. Mr Norman Baloyi which should in due course form that part of the bundle. In his affidavit dated 7 September 2020 paragraph 3.14 – Ms Klein I will provide you with a copy. He said during the

meeting, he is talking of the meeting of the 11th, Dr Ngubane was on course on several occasions with officials from the office of the Presidency wherein he confirmed the names of the officials who would act in the positions of the respective suspended executives. Dr Ngubane was referred to as the ambassador I believe the board and P & G committee meetings were recorded and they can evidence this.

CHAIRPERSON: Ja, you see Dr Ngubane says in his
10 affidavit these names came from – he says it was Mr Tsotsi who provided these names and he says Mr Tsotsi said he got these names I think either from the Minister or from the Presidency.

And Dr Ngubane then says he had to phone the Minister or the Presidency I cannot remember in order to verify that Mr Tsotsi had obtained these names from either the Minister or the Presidency that is what Dr Ngubane says. So it would therefore seem that Ms Klein and Dr
20 Tsotsi provided the names to the members of the board or the committee.

MS KLEIN: Chair I can only just state from my perspective not you know having the benefit of that but I do not believe any of the new board members were in a position to make a decision as to who would be deputised.

I mean we only had like you said there were only there three months trying to hold all the board in the air I mean how would we have known who could have done this job. I could certainly could not – let me just talk for myself I did not know anybody well enough to be able to make a call as to who we deputise and who would not. And if I remember though I have got to agree with something that the Evidence Leader just said about Norman Baloyi I remember Dr Ngubane you know going in and out of meetings about
10 that so it must have been to go and phone various people, phone the Minister I mean I cannot bet for who he did phone.

But driving home last night I was actually thinking about that why – you know what struck me as strange Chairperson is why would the Chairperson have allowed Dr Ngubane to go and make this call. I just riding home I just thought to myself I mean why would the Chairperson not be making those calls.

CHAIRPERSON: Well I – well the one explanation would
20 be and I think if I am not mistaken this seems to come out of Dr Ngubane's affidavit is that there was mistrust between Mr Tsotsi and the board or a substantial number of board members or some board members. So that if Mr Tsotsi on Dr Ngubane's version said the Minister gave me these names as the people who must act in this positions if

they did not trust on what you are saying then one could understand if someone like Dr Ngubane decided he wanted to verify that but in a situation where there was trust there would not be a need for that. Do you understand what I mean?

MS KLEIN: I hear you Chairperson.

CHAIRPERSON: But I seem to understand Dr Ngubane in his affidavit to say because of how Mr Tsotsi handled some of the matters on the 11th you know some board members
10 or the board members began not to trust him. So that is how I – that is what I think according to Dr Ngubane happened.

ADV SELEKA SC: Should I read the paragraph to you Chairperson?

CHAIRPERSON: Not really, no ja, we are at nine minutes to six.

ADV SELEKA SC: Yes.

CHAIRPERSON: We will have to stop at six.

ADV SELEKA SC: We have to stop at six.

20 **CHAIRPERSON:** Ja.

ADV SELEKA SC: Ms Klein Mr Tsotsi then gets subjected to some disciplinary action by the board. Why did the board do that?

MS KLEIN: Let me respond remember I was here yesterday so I heard a lot of what the Chairperson said and

so I also went away last night and I had to think about this very, very deeply.

ADV SELEKA SC: It is page 18 paragraph 67 it might help you expedite your answer to the Chairperson.

MS KLEIN: Thank you, page?

ADV SELEKA SC: Page 18.

MS KLEIN: Page 18

ADV SELEKA SC: Yes, paragraph 67.

MS KLEIN: 67?

10 **ADV SELEKA SC:** 67, ja.

MS KLEIN: Okay shall I quickly go through it?

ADV SELEKA SC: You can read it out loud.

MS KLEIN: Okay the board unanimously agreed that the board committee on the 19th, 2015 of March 2015 that he had lost confidence in the Chairman Mr Tsotsi and he would recommend his removal due to as a director due to: number 1 his failure to seek or obtain board approval for the appointment of the consultant Nick Linnell. His actions in terms of the suspensions and then 3, preparing and
20 distributing a media release without board approval. So let us start with the first one when – and I mean I was here yesterday I heard, I had the benefit of listening to the – sorry Chairperson.

ADV SELEKA SC: Yes, no carry on.

MS KLEIN: Chairperson I had the benefit of listening to

what was presented yesterday by Mr Tsotsi, listening to the recording as well. That the board was even though we listened to Mr Linnell, Mr Linnell was introduced as the person who was going to help us. Mr Tsotsi in fact started out by saying I am sorry I should have told you board before; he actually starts out his testimony if you listen to the recording like that. So we listened to Mr Linnell and with due respect Mr Linnell had a lot of knowledge so I mean he did bring a lot of knowledge to the table especially given that we were then told that he drafted that oval arch memorandum and that he apparently helped put the resolutions together.

What I think became very uncomfortable to the board and once again me. I think I could live with all of that but when that media release went out the one that we had helped to give input into which I think you played a part of yesterday. There were some blatant inaccuracies in that there.

Number 1, it stated that Mr Linnell was going to oversee this whole investigation that was not our understanding, he was going to support but he was never going manage this process. I am talking for myself now and maybe you have got minutes to show differently but this was my understanding.

Number 2, it spoke about the fact that the board

had agreed to appoint an acting Judge or a retired Judge and there was a third point I cannot remember what it was now. But those were not things that were discussed anywhere on that tape or with us with Mr Linnell not with Mr Linnell with Mr Tsotsi. That is why the board then in that week was up and down to say but Chairperson how could you put out a media release like this, this is number 1, inaccurate and number 2, this is not – you were supposed to get sign off from the board. The Chairperson
10 then in a later meeting apologised I think it was the 19th for the oversight but I think for me, for me that as one of the biggest problems. First of all, you bring somebody you have already engaged, we have not had a chance to, then we get told the man has done a lot of work.

You tell us you going to give us the deck you do not give it to us. You tell us there is executives who has done all these wrong things, then we all come to a point where we all have to agree that we cannot hold those charges against the people and we all now need to go with the –
20 almost the middle of the road. That they are going to impede the investigation.

I think for me Chairperson those were my reasons for accepting that we had lost confidence. There was another reason given, there was another reason. When – and that is why you know the giving of the names becomes

very – it is not very clear for me who gave what names because I know that the Chairperson himself had a list which included a gentleman by the name of Maliselle Sekasunge who he wanted to have run, I think it was Generation I may get it wrong without telling the board that Maliselle Sekasunge was on suspension. So when you put all that together when I looked at this the Chairperson was giving, he was being very economical with information and the board were expected to make huge decisions for which
10 we were trashed in the papers. So Chairperson that was my, that was my view.

ADV SELEKA SC: Yes, now I am going to finish Ms Klein because the minutes of that meeting of the 19th actually say that he did not circulate the media release that it was leaked. It says it was leaked without the board's prior approval, the minutes of the 19th.

MS KLEIN: Chairperson I think you may want to clarify that and I know this is inquisitorial but personally the office of the Chairperson at that stage was a gentleman by the
20 name of Leo Dhlamini and Chairperson I would suggest that you may be ask that particular question of Mr Dhlamini because that was not my understanding. That was – the Chairperson had sent it onto Leo my understanding was for not on sending it not to be put out to the boards. So I think inquisitorial as this is I know we giving the

Commission more work but you may need to just get that on an affidavit.

ADV SELEKA SC: Yes, that is fine you mean somebody to confirm the correctness of the minutes?

MS KLEIN: No, no the correctness of the fact that it was leaked.

ADV SELEKA SC: Oh, okay.

MS KLEIN: Ja, remember I cannot talk to that this was something that the Chairperson said.

10 **ADV SELEKA SC:** So those are your only reasons why you support it?

MS KLEIN: Remember I have given you Sekasumbi[?]

ADV SELEKA SC: Yes.

MS KLEIN: Okay I have given you the fact that I felt that the way the Chairperson had handled the suspensions.

ADV SELEKA SC: Yes.

MS KLEIN: By giving it – let me tell you how I felt the day after. I had given you Chairperson you have asked me what were my views. My views as a – somebody from private
20 sector who has run big businesses was specifically this. But on looking at it in hindsight I asked myself questions like did you get the right information to make decisions such as these? And I almost felt – I felt pressured. I felt maybe we did not get the right information. Then you have got something that goes out, something that was not discussed

with the Board and then it is leaked. I just felt there was – that together with my own experience on the earlier matter I mentioned TNA where I was very specific – you got no answer and somebody was going to talk to me as if they were going to change my mind. How can they change my mind of something I felt strongly about?

CHAIRPERSON: Well Mr Seleka it may that you or your junior could make a note of Ms Klein’s – what Ms Klein has said about that resolution relating to TNA and you pass that
10 information to Advocate Kate Hofmeyr because she dealt with TNA matters. What she says might be something that she might be interested in. Ja okay.

MS KLEIN: Thank you Chairperson.

ADV SELEKA SC: Yes. Sorry, the note actually appears in the charges itself?

MS KLEIN: Just remind me.

ADV SELEKA SC: The charges.

MS KLEIN: Yes.

ADV SELEKA SC: About – the charges levelled against Mr
20 Tsotsi.

MS KLEIN: yes.

ADV SELEKA SC: The third one is

“The Director authorised the commission 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 or consent of the Board.”

This is the first part, and we know that cannot be correct because the Board knew and the Board consented. Then there is the second part to it.

10 “The media statement consequently fell into the public domain. The media statement contained numerous inaccuracies and information which may lead – may lead to the company facing potential legal action from third parties named therein.”

I do not know – that media statement is it the one which was drafted with the Board?

MS KLEIN: No. Sorry through you Chairperson. I think that was the point that the media statement that was drafted with the Board which is what we heard on the recording yesterday was significantly different to that which as the evidence leaders indicated eventually landed whether leaked or otherwise I do not know.

20 **ADV SELEKA SC**: But Mr Linnell who is the drafter who assisted says that is the media statement that was – he sent to the company secretary that it should be released. He understands that it was never released.

MS KLEIN: Chairperson I cannot talk to that. I do not know about what he sent to the company secretary. I do not

believe I was copied on it. All I know is whatever appeared in the media was not what the Board had agreed and that was I think almost the sword that broke the camel's back.

ADV SELEKA SC: Chair that will complete the questions. I have in regard to Ms Klein on the suspensions. Ms Klein do you hold strong views about the first two charges that were brought against Mr Tsotsi involving Mr Linnell?

MS KLEIN: I actually do. Chairperson I actually do. I think the court.

10 **ADV SELEKA SC:** Ja let me ask you a follow up question. How do you do that when the Board itself made the resolution to appoint him as a coordinator?

MS KLEIN: Chairperson you asking my view now right?

ADV SELEKA SC: No, no the Board's.

MS KLEIN: No, no okay the Board.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay let – let...

ADV SELEKA SC: Yes you as a member of the Board.

20 **MS KLEIN:** I disagree that he was appointed. I know that that is how the evidence was led and I know that is what was on the recording. The Board would not have brought charges less than a week later if they had agreed. I think the Board agreed I certainly agreed – not agreed accepted Mr Linnell's presence there because supposedly of what he knew and what he brought to the table.

MS KLEIN: But why did you make use of him if you thought that he was brought in irregularly? You should have wanted to have nothing to do with him. You should have from the beginning said to Mr Tsotsi you cannot do this – cannot taint the Board's process by bringing somebody irregularly here. Why – have you gone through the processes? If you have not why you bringing somebody to the Board in breach of the processes of the company? We will not taint our processes with somebody you bring in like this here. That is what you should have done if you had a problem, is it not?

10

MS KLEIN: I agree with you completely Chairperson.

CHAIRPERSON: And you did not do that

MS KLEIN: And I did not do it and I will take whatever decision you make on it.

CHAIRPERSON: Yes.

MS KLEIN: I will tell you as a personal – my personal view?

CHAIRPERSON: Yes.

MS KLEIN: Not a Board view.

CHAIRPERSON: Yes.

20 **MS KLEIN:** I felt bullied but that is my view.

CHAIRPERSON: Yes. No, no that is important. You see what I am putting to you is just to show you another angle.

MS KLEIN: I understand.

CHAIRPERSON: To it but it is to give you an opportunity to look at it from another angle and see whether you would still

hold the same view in the light of ...

MS KLEIN: Yes.

CHAIRPERSON: Yes Okay.

MS KLEIN: And Chairperson I am not going to [00:06:42] into saying. I should have stood up in the board meeting and said no I will not accept this.

CHAIRPERSON: Yes. Yes.

MS KLEIN: I am saying you – I am saying to you today and I am not sure what other Board Members are going to say but
10 a lot of things that we experienced right upfront was an inordinate amount of bullying by Mr Tsotsi – bullying.

CHAIRPERSON: Is that so?

MS KLEIN: Absolutely. If you listen to the recordings you can pick that up. It was not a case of let us discuss this it is like this because I am telling you.

CHAIRPERSON: But how does one person bully how many members of the board?

MS KLEIN: I think it was twelve. Twelve .

CHAIRPERSON: But how does one person bully twelve
20 members of the board that he – or is it – is it ten because he and Mr – Ms Mabude came from the previous board?

MS KLEIN: Yes, yes.

CHAIRPERSON: Bully ten members of the board that he has not worked with for a long time.

MS KLEIN: Chairperson I cannot answer for others I am

telling you what my experience ...

CHAIRPERSON: But you say you felt bullied?

MS KLEIN: I felt bullied because issues that were raised were literally just shut down. And you can – you can listen to some of the recordings.

CHAIRPERSON: Yes.

MS KLEIN: Remember this was not meeting number 1 as my Counsel will...

CHAIRPERSON: Ja.

10 **MS KLEIN:** Share.

CHAIRPERSON: Ja.

MS KLEIN: And maybe it would be a good idea to listen to some of the approaches.

CHAIRPERSON: Yes.

MS KLEIN: I mean it took a lot out of me to stand up on the morning of the 19th and say because literally the meeting started with the Chairperson telling us, I have a – a particular problem that you are speaking to EXCO members and I had to literally sheepishly put up my hand and say,
20 Chairperson excuse me I have sent you significant information and I am not getting a response.

CHAIRPERSON: Hm.

MS KLEIN: So you asked me – I think the question from the evidence leader was, how strongly did I feel about it? I say very strongly

CHAIRPERSON: Hm.

MS KLEIN: Your question is, why did you not oppose it?

CHAIRPERSON: Hm.

MS KLEIN: I felt bullied in – I felt bullied into a lot of what was happening there.

CHAIRPERSON: Hm.

MS KLEIN: Okay but – like I said that is my view.

CHAIRPERSON: Ja.

MS KLEIN: I mean I cannot talk for the other Board
10 Members.

CHAIRPERSON: Hm. Okay I think we will stop for today here. Obviously, Mr Seleka you have not finished – you have not exhausted your questions on suspensions, is it not or have you?

ADV SELEKA SC: Ja well – there may be one or two Chair but ...

CHAIRPERSON: No what I was thinking is that maybe what we should do is arrange for Ms Klein to come back.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** For purposes of allowing you to finish at least the suspension part of her – of your questioning. And then of course she would still come back later for the secondment. But it may well be that we might say look when she comes back...

ADV SELEKA SC: Yes.

CHAIRPERSON: You deal with the suspension part and the secondment part.

ADV SELEKA SC: Correct.

CHAIRPERSON: It might just depend what is convenient with...

ADV SELEKA SC: The latter.

MS KLEIN: Yes.

ADV SELEKA SC: I think latter Chair.

CHAIRPERSON: The latter will ...

10 **ADV SELEKA SC:** Is more convenient.

CHAIRPERSON: Yes.

MS KLEIN: I support that.

CHAIRPERSON: Yes, ja and if we do it that way it might take – it might take some time before she comes back depending on whether – how soon you are ready to ...

ADV SELEKA SC: Yes.

CHAIRPERSON: Deal with the secondment.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

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

CHAIRPERSON: So are you able to say whether we should arrange for some time next week or not yet?

ADV SELEKA SC: I think not yet Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Let me come back to the Chairperson.

CHAIRPERSON: Ja.

ADV SELEKA SC: Next week Tuesday.

CHAIRPERSON: Ja.

ADV SELEKA SC: And we could then determine.

CHAIRPERSON: Ja.

ADV SELEKA SC: Future dates with my learned friend.

CHAIRPERSON: Ja.

ADV SELEKA SC: Subject to the Chairperson's decision on it.

10 **CHAIRPERSON:** Yes okay alright. So – so we will adjourn. You are not done giving evidence. The plan is that you will come back. The date when you will come back will be determined in due course.

MS KLEIN: Thank you.

CHAIRPERSON: And there will be communication between Mr Seleka and your Counsel. So you will come back.

ADV SELEKA SC: Yes.

MS KLEIN: Thank you Chair.

CHAIRPERSON: Okay. Alright thank you very much.

20 **ADV SELEKA SC:** Yes tomorrow Chairperson we will then commence with Doctor Ngubane's testimony.

CHAIRPERSON: Yes. Okay we will start at ten tomorrow.

ADV SELEKA SC: That is perfectly in order.

CHAIRPERSON: Ja. Okay alright. We will then adjourn for the day. We adjourn.

ADV SELEKA SC: Thank you Chair.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 11 SEPTEMBER 2020

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