

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

**11 SEPTEMBER 2020**

**DAY 266**



**Gauteng Transcribers**  
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 11 SEPTEMBER 2020**

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

**ADV SELEKA SC:** Morning Chairperson.

**CHAIRPERSON:** Thank you. Good morning Dr Ngubane. Thank you. Are we ready?

**ADV SELEKA SC:** We are ready Chairperson.

**CHAIRPERSON:** yes.

**ADV SELEKA SC:** Thank you Chair. Chairperson today we  
10 have Dr Ngubane our only witness for today.

**CHAIRPERSON:** Hm.

**ADV SELEKA SC:** And he may be sworn in.

**CHAIRPERSON:** Yes. Please administer the oath or affirmation.

**REGISTRAR:** Please keep your microphone on. Turn it on. It is still off. No the microphone

**DR NGUBANE:** Yes.

**REGISTRAR:** Turn it on.

**CHAIRPERSON:** Okay.

20 **CHAIRPERSON:** Just switch it on for him.

**DR NGUBANE:** Okay.

**CHAIRPERSON:** Yes.

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

**DR NGUBANE:** Baldwin Siphon Ngubane.

**CHAIRPERSON:** Do you have any objections to taking the

prescribed oath?

**DR NGUBANE:** No.

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

**DR NGUBANE:** 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.

10 **DR NGUBANE:** So help me God.

**CHAIRPERSON:** Thank you; you may be seated. Yes Mr Seleka.

**ADV SELEKA SC:** Thank you Chairperson. Chairperson just for clarity.

**CHAIRPERSON:** Hm.

**DR NGUBANE:** Dr Ngubane will deal with certain issues before you or testify on certain issues. The – they are matters of suspension of the executives; the position regarding Mr Tsotsi and Mr Ngubane's relations with –  
20 relations or otherwise with the Gupta's. The matters relating to Tegeta and Trillian will not be addressed in this – in this hearing. They may be addressed in due course Mr Chairperson.

**CHAIRPERSON:** He will deal with those some other time?

**ADV SELEKA SC:** He will deal with those some other

time.

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

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** That is fine.

**ADV SELEKA SC:** Thank you Mr – Dr Ngubane. Thank you for assisting the commission. You will please be addressing the Chairperson as I ask you questions and please speak to the microphone when – when you agree or disagree do not nod or – or wave your head. You follow?

10 When you agree nodding please speak to the microphone.

**DR NGUBANE:** Okay.

**ADV SELEKA SC:** Yes thank you. Dr Ngubane you were here yesterday when we were dealing with matters relating to the suspension of the executives.

**DR NGUBANE:** I was yes. Not for the whole time of course.

**ADV SELEKA SC:** It is alright. Chairperson may I place on record thee bundle that we will be referring to that relates to ...

20 **CHAIRPERSON:** Of course Dr Ngubane was supposed to start his evidence yesterday and it did not happen because we took long with the other witness is it not? Dr Ngubane you – you were ready to give your evidence yesterday is it not or not really?

**DR NGUBANE:** Sorry can you just ...

**CHAIRPERSON:** You were ready to give your evidence yesterday is it not?

**DR NGUBANE:** That is correct.

**CHAIRPERSON:** And it did not happen because we took long with the other witness.

**DR NGUBANE:** That is correct.

**CHAIRPERSON:** Ja we apologise for that but we are thankful – we are thankful that you are here today to continue.

10 **DR NGUBANE:** Ngiyabonga [African language]

**CHAIRPERSON:** Thank you. Alright.

**ADV SELEKA SC:** Thank you Chairperson. Placing on record Chair is Eskom Bundle 09[A] and 09[B]. Exhibit U19.

**CHAIRPERSON:** Oh yes ja. Eskom Bundle 09[A] and Eskom Bundle 09[B].

**ADV SELEKA SC:** Yes Chairperson.

**CHAIRPERSON:** And they both deal with Exhibit U19.

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

20 **CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Indeed. Dr Ngubane I believe you also have the same bundle of files in front of you.

**DR NGUBANE:** I see. Yes. Am I still [00:04:54] with this?

**CHAIRPERSON:** There is one written on the spine Eskom

Bundle 09 on the spine here – here on the spine.

**DR NGUBANE:** Sure.

**CHAIRPERSON:** There is one written Eskom Bundle 09[A]

**DR NGUBANE:** Alright.

**CHAIRPERSON:** And then the other one is Eskom Bundle 09[B].

**DR NGUBANE:** Alright.

**CHAIRPERSON:** So when he refers you to these he will say 09[A] or 09[B] and then you know which one.

10 **DR NGUBANE:** Thank you.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Thank you. Dr Ngubane the bundle Eskom Bundle 09[A] if you open it it has on page 1 thereof your affidavit to the commission – to this commission.

**DR NGUBANE:** Yes. That is correct.

**ADV SELEKA SC:** Yes go to page 1.

**DR NGUBANE:** Yes I have got it.

**ADV SELEKA SC:** Yes. And that affidavit it is 51 pages so if you go to page 51 that is the last page of the affidavit.

20 The top right-hand page 51 – top right hand corner. I think that is – that is the one you are at? The one you had now.

**DR NGUBANE:** Yes. Yes. Except to say that I had an addendum to the affidavit.

**ADV SELEKA SC:** Exactly with some annexures to it. But go to the last page. Page 51.

**CHAIRPERSON:** You have explained to him about the red and black numbers?

**ADV SELEKA SC:** Oh yes I have referred him to the top right hand corner which – they are red.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Red pagination Dr Ngubane.

**CHAIRPERSON:** There are two numbers at the top of each page. One is red; the other one is black. When he refers to page numbers he will be referring only to the red  
10 numbers.

**DR NGUBANE:** That is correct Chair.

**CHAIRPERSON:** Ja okay.

**ADV SELEKA SC:** So I was saying – I was asking you Dr Ngubane to go to page 51 which is the last page of your affidavit. Anyway...

**CHAIRPERSON:** The number will appear as 0051 but he will just say 51 he will not mention 00.

**DR NGUBANE:** Okay.

**CHAIRPERSON:** Yes have you got page 51?

20 **DR NGUBANE:** Page?

**CHAIRPERSON:** 51 red numbers.

**DR NGUBANE:** I have found it.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Yes so there appears a signature – the signature and the date 4 August 2020 do you confirm that



is your signature?

**DR NGUBANE:** That is correct.

**ADV SELEKA SC:** Thank you. So Dr Ngubane then you can go to the first page of the affidavit. Now you set out in your affidavit your qualifications in paragraph 2 and then the next page paragraph 3 you deal with your appointment to the Eskom Board. Now could you tell the Chairperson how you became appointed to the Eskom Board which as we have heard the evidence was the board of December  
10 2014.

**DR NGUBANE:** Well there was what I would call a request for proposals issued by the Department of Public Enterprises in the public press. And at one discussion with my nephew Sibosiso Sibisi he was interested if I would not want to contribute because of my experience in the Department of Science and Technology where I had been a Minister from 1994 to 2002. And obviously I should have a good understanding of technology and physics and so on. So I said I was interested and then he – he submitted the  
20 nomination.

**ADV SELEKA SC:** Yes. Dr Ngubane you would know that this Board is one that has been allegedly referred to as the Gupta board.

**DR NGUBANE:** Well that was referred by Mr Tsotsi which I find absolutely disgusting. You know it was an open

process run by the department who had no contact or connection or telephone conversation that from anyone of the Gupta people to say we want you to be on the board. And I presume this would go as well for all my other board members.

Now to be described as a Gupta board I think it is very, very unfortunate particularly coming from a public figure like Mr Zola Tsotsi. Mr Zola Tsotsi himself had been accused in the press – it was the Sunday Times publication  
10 around probably 15/16 or 18 April which said he had leaned on the management in the procurement sector to grant Tegeta two mining contracts.

One at R400 million a year another one at R500 million a year. One of them was Klipfontein I cannot remember exactly the other one and one of these mines did not even have a proper water licence from the Department of Water and Sanitation.

But on top of that at the beginning of this year a coal contract worth R3.7 billion was set aside by the  
20 Gauteng North High Court. That was signed in Mr Tsotsi's time. Brian Molefe, Koko Molefe, myself were hardly - when I was at Eskom in December but Molefe only came in April. So it could not have been him who dealt with that contract.

So those are questions that Mr Tsotsi must ask who

did favours to the Gupta's? We worked very hard with my board. We found Eskom in a shambles. The reports that Mr Matona gave us at the first board meeting on the 11<sup>th</sup> March stated that whereas Eskom should have a buffer of R20 billion in order to service debt, pay for services etcetera it had been reduced to find R4 billion of which dependent on loans that were still going to come in. The net effect was that Eskom was in the red by R3 billion.

**ADV SELEKA SC:** May I – please. If I may? We will come  
10 to that.

**DR NGUBANE:** Alright.

**ADV SELEKA SC:** Just give me the – the date of the media article you refer to about Mr Tsotsi?

**DR NGUBANE:** Sorry?

**ADV SELEKA SC:** You mentioned a media article or media report.

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** About Mr Tsotsi.

**DR NGUBANE:** We did not ask Mr Tsotsi about that.

20 **ADV SELEKA SC:** Yes but you just mentioned it.

**DR NGUBANE:** Yes I do. I am just saying for a man who can come to the commission and say that we are a Gupta board is very offensive particularly knowing what appeared in the media.

**ADV SELEKA SC:** Yes what was the date of the article you

mentioned?

**DR NGUBANE**: Somewhere in April. I think between 16 or 18 somewhere there.

**CHAIRPERSON**: April this year?

**DR NGUBANE**: You know in that region.

**ADV SELEKA SC**: Of which year?

**DR NGUBANE**: This – 2015.

**ADV SELEKA SC**: 2015?

**DR NGUBANE**: Yes.

10 **ADV SELEKA SC**: Now you yourself Dr Ngubane have been linked to Mr Salim Essa.

**DR NGUBANE**: Yes.

**ADV SELEKA SC**: Who is related to the Gupta's.

**DR NGUBANE**: Yes.

**ADV SELEKA SC**: And would you explain to the Chairperson what was or is your relationship with Mr Salim Essa?

20 **DR NGUBANE**: You know I – it was not a special relationship let me put it there. You know there were more than twenty companies where I have been invited to come in as a partner, a director and they are recorded in the commission – I mean the company Intellectual Property Commission.

I had known Salim from about 2011 when I was Chairman of the SABC Board. We used to attend the same

meetings on digital migration. He was on the Board of the Broadband Infraco South Africa which is on the – a state owned company. And we were preparing for migration to digital television at SABC.

You know I got to know a lot of people on that Board because at those meetings and I came to know Mr Salim. You know it was sort of a relationship like any other of the people I know.

Then it happened that in 2013 at that time I was in  
10 a company called Global Collieries Fuel Distribution which was a company populated by British Oil people and that some South Africans as well and they had established a subsidiary in South Africa. We were at JP's in Melrose meeting these guests when Salim appeared in the same restaurant and came over to me and I started introducing my partners to him and he said well he himself was in the oil business can he be part of this.

So after a fair amount of discussion my colleagues said well, we will give it a thought. But the fact that some  
20 of them were in Mali in West Africa on oil business and railway business. They then suggested that if we formed another company for exploration in West Africa for oil wells they will be happy with that.

And we then met with Salim subsequent to that and ultimately came up with Garda Oil and Gas which would be

almost a service level provider to Global Collieries Fuel Distribution. Then we agreed that Salim was going to arrange for travelled to CAR which was a Southern African Republic which had just – had just announced that they were auctioning oil blocks.

I was going to use my connections with African ambassadors to gain access to whatever was needed in that exploration trip. Of course arranging these things takes time. In that year there was an outbreak of violence  
10 in CAR and our soldiers were placed there for maintaining peace and order. There was a fight and some of our soldiers were killed.

Then I went back to Salim and to my other colleagues at Global Collieries I said, we cannot go there anymore because South African soldiers were killed there. There is instability and that is how that whole venture fell down; did not go through. And Global – I mean Garda called Oil and Gas never then did any business in oil exploration.

20 Later on Mr Essa resigned you know and – but I did not bother to actually delist Garda Oil and Gas because you know you just did not occur to me it was dormant, it was not doing any trading.

Now Salim Essa as I say was not a special friend. I knew him when decided to work with. Later on he

appeared at Eskom with McKenzie. McKenzie had I think in 2015 early had been given a contract at Eskom to manage several things.

One of them was Majuba Power Station. One of them was Optimizing our corporate plan. One of the other duties was to create a consultancy of young engineers at Eskom in order to cut down the expenses that we spent on consultants. So he was a familiar face at Eskom. But that did not justify any influence in terms of the work that we  
10 were doing at Eskom. So I think Chairperson that sums up my association with Salim Essa.

**ADV SELEKA SC:** Thank you Mr Ngubane. But you will also know Mr Ngubane that Ms Daniels; Suzanne Daniels who worked in your office was charged with exchanging emails with an email address infoportal and that that email address according to the Chairperson of the Disciplinary Hearing it most probably belonged to Mr Salim Essa. The exchange of emails came from your office.

**DR NGUBANE:** Well I think I have in the file a copy of that  
20 email. I am not sure if you have it. I can quickly look for it here.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** That is just one of the emails.

**DR NGUBANE:** Sorry.

**ADV SELEKA SC:** That will be just one of the emails.

**DR NGUBANE:** Well the first email that came ...

**CHAIRPERSON:** Yes we can – you can look for it.

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

**CHAIRPERSON:** Mr Seleka might assist in locating where it is but if you are able to look that is fine. Mr Seleka you know where it is?

**DR NGUBANE:** Let me ask Dr Ngubane. Which one are you referring to Dr Ngubane.

**CHAIRPERSON:** He says the first one. Does it help  
10 saying the first or it does not.

**DR NGUBANE:** Does not.

**CHAIRPERSON:** Okay. He will find it in his file and then he will give the date and then we can look.

**ADV SELEKA SC:** Thank you Chair. Alternatively I can give you the one I have Dr Ngubane.

**DR NGUBANE:** It should be here.

**ADV SELEKA SC:** Thank you.

**DR NGUBANE:** Sorry I am taking up time for this one. But I think it is important to contextualise [00:23:13].

20 **CHAIRPERSON:** Ja no that is fine just look for it if you have got it there. Then once you have got it you tell us the date and the evidence leader can look for that one in the – in his file.

**DR NGUBANE:** Let me assist Mr Ngubane if you turn to page 51.147.



**DR NGUBANE:** Point.

**ADV SELEKA SC:** 51.147 I think it starts at 51.146.

**CHAIRPERSON:** 51.17?

**ADV SELEKA SC:** 51.147.

**CHAIRPERSON:** Oh.

**ADV SELEKA SC:** Yes. Eskom Bundle 9 – 09[A]. Ja that is the correct bundle.

**CHAIRPERSON:** Okay I have got 51.147.

**ADV SELEKA SC:** Yes Chair. It would appear that you  
10 have to read it with point 146.

**CHAIRPERSON:** Oh.

**ADV SELEKA SC:** Yes.

**DR NGUBANE:** You said it is 17?

**CHAIRPERSON:** Ja 51.147. 51.147.

**ADV SELEKA SC:** Yes.

**DR NGUBANE:** No I think I am lost.

**ADV SELEKA SC:** Chairperson.

**CHAIRPERSON:** Can – junior counsel can assist.

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

20 **CHAIRPERSON:** The witness ja.

**DR NGUBANE:** Anyway Chairperson.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** The first email that came from  
Businessman.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** Was...

**CHAIRPERSON:** Just pull the microphone closer to you.  
Yes.

**DR NGUBANE:** The first email that came from  
Businessman.

**CHAIRPERSON:** Ja.

**DR NGUBANE:** Was addressed to Ms Suzanne Daniels  
and copied to me. The caption went like this. Comments  
on the Chairman's media statement. At the bottom of that  
10 was the media office of Eskom.

**CHAIRPERSON:** Oh media office of Eskom ja.

**DR NGUBANE:** Of Eskom. And he said I want to make  
comments on the statement. And then there were  
comments given.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** When I asked Ms Daniels who was making  
these comments she said it was the DG of Public  
Enterprises.

**CHAIRPERSON:** Hm.

20 **DR NGUBANE:** So I said this was this email? She said  
yes.

**CHAIRPERSON:** Hm.

**DR NGUBANE:** Because I knew I was going to make a  
public statement then I assume someone had passed it –  
passed the draft to the Director General for comments.

Because you know there had been complaints from DPE that we publish statements and they see them for the first time in the media. So it made sense that probably it was passed to them. So there was to and fro exchange of emails between myself and Ms Daniels about the corrections. Ultimately the last final correction I just said it was alright with me. That was the essence of the email exchanges.

**ADV SELEKA SC:** Thank you.

10 **DR NGUBANE:** On that subject.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** You did not succeed in locating the email in your file? That first email that you wanted to look at you did not...

**DR NGUBANE:** I have – I have done so Sir.

**CHAIRPERSON:** Oh you have. Okay. Have you got the page – the dates?

**ADV SELEKA SC:** Do not take it out of the file.

20 **CHAIRPERSON:** I guess that is just to – so that you can identify it otherwise we return it to him. Mr Seleka did you identify do you have it?

**ADV SELEKA SC:** I have the – I have opened the page we were looking for.

**CHAIRPERSON:** Ja but the one that he is talking about? He wanted you to see it so that you know whether you have

got it.

**ADV SELEKA SC:** Or whether it is the same as mine.

**CHAIRPERSON:** Well whether it is – whether it is an email you have got – you said there are one of many that you wanted to refer him to. We must just know whether we have got that email or not.

**ADV SELEKA SC:** Yes.

**DR NGUBANE:** And [00:29:04] I can add.

**ADV SELEKA SC:** Sorry.

10 **CHAIRPERSON:** Oh just one second.

**ADV SELEKA SC:** Sorry Dr Ngubane. Yes, no this is – I will take him to the other one Chairperson.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** He – this page is pulled out from the bundle before the commission so it is exactly the same as my bundle.

**CHAIRPERSON:** Oh I thought he pulled it from his own private file?

**DR NGUBANE:** No.

20 **CHAIRPERSON:** I am sorry. Okay no that is alright.

**DR NGUBANE:** Well it is the same as I have in my files.

**ADV SELEKA SC:** Is it the same?

**DR NGUBANE:** [00:29:30] they found it.

**CHAIRPERSON:** Yes okay no look. The idea was just so that we know whether the email you are referring to is an

email that we have got. So that if it was an email that we did not have then copies could be made. So if we have got that is fine.

**DR NGUBANE:** Okay.

**CHAIRPERSON:** But you wanted to add something Dr Ngubane before Mr Seleka continues?

**DR NGUBANE:** Well I would say – I was going to say the Director General was very supportive of Eskom and its management. I think it is prior to this email where it is  
10 written to the CEO, Brian Molefe, who was having uncomfortable conversations with the chief procurement officer at Treasury. He wrote to Brian and said: Before you answer any question on the office of the chief procurement officer, you send it to me.

**CHAIRPERSON:** Who was that?

**DR NGUBANE:** The DG. Or was it Seleke?

**CHAIRPERSON:** Oh, was that Mr Richard Seleke?

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** Okay.

20 **DR NGUBANE:** I mean ...[intervenes]

**ADV SELEKA SC:** [Indistinct] Chairperson, showing support. [laughing]

**CHAIRPERSON:** [laughing] I am sorry, Dr Ngubane.

[laughing]

**CHAIRPERSON:** He is emphasising that that one ends with

an E.

**ADV SELEKA SC:** That is right. [laughing]

**CHAIRPERSON:** As his ends with an A.

**DR NGUBANE:** Oh, okay.

**ADV SELEKA SC:** There is a material difference, Chair.  
[laughing]

**CHAIRPERSON:** [laughing] I suspects it is the same as  
Zondo and Zonde. [laughing]

**ADV SELEKA SC:** Ja, that is right. [laughing]

10 **CHAIRPERSON:** Yes.

**DR NGUBANE:** So I was familiar with his approach to  
Eskom.

**CHAIRPERSON:** H'm.

**DR NGUBANE:** He wanted to give us support. I just  
wanted to add that.

**CHAIRPERSON:** Okay. No, that is fine. Mr Seleka.

**ADV SELEKA SC:** Thank you, Chair. Dr Ngubane, the...  
against that background you have given, one wonders why  
this very strange email address was used to then  
20 communicate official documentation with an official in the  
department. Why not use his official department email  
address?

**CHAIRPERSON:** Well, Mr Seleka I wonder whether we  
should not first hear what the email says and so on.

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

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Thank you.

**CHAIRPERSON:** Ja, before we talk about what its contents was and so on.

**ADV SELEKA SC:** Yes. Dr Ngubane, if you go back. You have closed your file.

**CHAIRPERSON:** Page 1... Page 51.146, sir. Page 51... please assist him. Page 51.146.

**DR NGUBANE:** Oh. Okay. Thank you.

10 **ADV SELEKA SC:** You are on the page?

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** So that is... should we consider the emails from page 51.1.46?

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** Gmail. That appears at the top of that page. And your name there Baldwin Ngubane. baldwindoctorngubane@gmail.com. Below the line it reads:

“I am sharing draft positioned statement forward payment to Tegeta, 19 June 2016 .bock with you.”

20 And below that it is businessman, info portal...[intervenes]

**CHAIRPERSON:** Before that Mr Seleka.

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

**CHAIRPERSON:** Dr Ngubane, do you confirm whether that is your email address, baldwindoctorngubane@gmail.com?

**DR NGUBANE**: That is correct, Chairperson.

**ADV SELEKA SC**: Yes, it is a personal email? address

**DR NGUBANE**: Personal email, yes.

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

**ADV SELEKA SC**: Thank you, Chairperson. Dr Ngubane, did you have an Eskom email address when you were at Eskom?

**DR NGUBANE**: I am...?

**ADV SELEKA SC**: Did you have an Eskom email address  
10 when you were at Eskom?

**DR NGUBANE**: I did.

**ADV SELEKA SC**: You did?

**DR NGUBANE**: Ja.

**ADV SELEKA SC**: Thank you. Is there a reason why the communication here appears to be from your private email address as opposed to your Eskom email address?

**DR NGUBANE**: Well, when I used to come... when I came to Eskom, I will plug my computer into a converter at Eskom@ which converted this email to Eskom email. So I  
20 was not so concerned because I could access my Eskom email when I was in the office.

So some of the emails came directly to my private email. Some when to the official Eskom when I accessed them through the Eskom system. I mean, and every month, the IT people at Eskom changed the password on the Eskom



system.

So where it was probably official business, they would keep on changing the password every month. But then at home, I could access my personal email if people send whatever to the Gmail address.

**ADV SELEKA SC:** Yes. My question is. In respect of this document by ensuring draft positioned statement forward payment to Tegeta, 19 June 2016. Why was this draft positioned statement not forwarded from your Eskom email  
10 address?

**DR NGUBANE:** I am sure I could access it through the Eskom email once I plugged in my computer to their system. So I never thought about that because a lot of times, documentation came through my private address.

**ADV SELEKA SC:** And just to clarify. So this communication is in June 2016?

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** By this ...[intervenes]

**CHAIRPERSON:** May you can be precise? 19 June 2016.

20 **ADV SELEKA SC:** Yes, thank you Chairperson. We will go into the dates of the emails. I think it ranges from 10 June 2016, 11 June 2016 and the document itself seems to be dated 19 June 2016. Do you confirm that Dr Ngubane?

**DR NGUBANE:** [No audible reply]

**ADV SELEKA SC:** Do you follow?

**DR NGUBANE:** [No audible reply]

**ADV SELEKA SC:** The email... the dates of the emails/

**DR NGUBANE:** Yes?

**ADV SELEKA SC:** It is 10 June 2016.

**DR NGUBANE:** Right?

**ADV SELEKA SC:** And there is three on the 10<sup>th</sup> of June 2016. I shall take you step by step. And there are two on the 11<sup>th</sup> of June 2016.

**DR NGUBANE:** [No audible reply]

10 **ADV SELEKA SC:** Let me take you step by step.

**CHAIRPERSON:** Ja, maybe let us do that. Go to the earliest one if you can.

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

**CHAIRPERSON:** Say who it was from, who it was addressed to.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** And then either you or the witness can read what the email said and then so that we have a full picture.

20 **CHAIRPERSON:** Thank you, Chair.

**DR NGUBANE:** Can you...

**ADV SELEKA SC:** Yes, the witness is looking for the current... And generally, they are in a reversed order when they are printed out. So we will have to start from the bottom and go to the top. But you will see the dates, it will

guide us.

**DR NGUBANE:** Is it?

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** And junior counsel can assist him. You know this thing of starting with...

**DR NGUBANE:** [laughing]

**CHAIRPERSON:** It can be confusing.

**DR NGUBANE:** Well, I do not understand this technical arrangement.

10 **CHAIRPERSON:** You need to be assisted. You are not the only one who does not understand some of these things.

**DR NGUBANE:** [laughing]

**CHAIRPERSON:** I think what should happen is. Mr Seleka.

**ADV SELEKA SC:** Yes, Chair?

**CHAIRPERSON:** Are you refer him to each email ...[intervenes]

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** ...your junior counsel must approach him and I think show him which each you are talking about.

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

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Yes. So Dr Ngubane, I am going to follow the chronology of... the chronological of the emails. I am starting at the page 51.146. This is on the Friday. So what you read there is on Friday, 30 June 2016. The time

stamp is 21:36:58. Then you read Suzanne Daniels. suzannedaniels584@gmail.com. And then it says, wrote:

“This is what came back from Comms Team. Going to read through it now. At home office now.”

Shared from Word for Android. Do you see that?

**DR NGUBANE**: Yes.

**ADV SELEKA SC**: And you have Ms Suzanne Daniels’ details at that bottom end.

**CHAIRPERSON**: And who is sending that one to whom?

10 **ADV SELEKA SC**: Yes, it is... is it apparent from there Dr Ngubane who is Ms Suzanne Daniels writing to?

**DR NGUBANE**: Well, I presume he must have got the... this comment from earlier. It must have. That is the only explanation I have.

**ADV SELEKA SC**: Yes. Who do you think it came from?

**DR NGUBANE**: Well ...[intervenes]

**ADV SELEKA SC**: From info portal?

**DR NGUBANE**: Businessman. Ja.

**ADV SELEKA SC**: Businessman?

20 **DR NGUBANE**: Ja, because he said that was the person commenting.

**ADV SELEKA SC**: Yes. And you say who is this businessman.

**DR NGUBANE**: Seleke.

**ADV SELEKA SC**: Richard Seleke?

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** And not Salim Essa?

**DR NGUBANE:** Sorry?

**ADV SELEKA SC:** Not Salim Essa?

**DR NGUBANE:** No. In fact, I do not think Salim Essa would use... send emails because he was there at Eskom. They were already working with McKinsey and ...[indistinct] at Eskom.

**CHAIRPERSON:** Well, let us ...[intervenes]

10 **ADV SELEKA SC:** Let us carry on.

**CHAIRPERSON:** Well, let us do it this way with each email. One, we identify who it is from, who it was addressed to, what the date was, what the subject matter was if that is made clear. And then we will read it and then we can comment on it so that it gives us a proper picture.

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

**CHAIRPERSON:** So let us start with this one. What I think... Mr Seleka, you... the first one is the one at the bottom, right?

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

**CHAIRPERSON:** It says on Friday, 10 June 2016, 21:36 suzannedaniels584@gmail.com wrote:

“This is what came back from Comms Team. Going to read through it now. At home office now. Chat from Word for Android.”

Now who is she writing to? Can anyone tell? Or is that we cannot tell? Are you able to tell, Dr Ngubane? I am not good with technology. So, I rely on people. Are you able to tell who she was writing to?

**DR NGUBANE:** Well, I assumed Chairperson it was the same person who was completing comments on the previous statement.

**CHAIRPERSON:** Businessman.

**DR NGUBANE:** Businessman.

10 **CHAIRPERSON:** Yes. Mr Seleka, is that your understanding as well?

**ADV SELEKA SC:** That is my understanding, Chair. And I think the answer lies in the email above.

**CHAIRPERSON:** Yes, but that one was a response to...[intervenes]

**ADV SELEKA SC:** The one above. If you look at the time stamp.

**CHAIRPERSON:** Yes, it was a response.

20 **ADV SELEKA SC:** Ja. The one immediately above is at 20:14 and Ms Daniels is at 21:46.

**CHAIRPERSON:** Oh, so that one came first?

**ADV SELEKA SC:** It did indeed Chair.

**CHAIRPERSON:** Okay I think that is what is confusing me because I was looking at the boardroom email as what it would arrived... been sent first.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** So you probably all of you understand it better than I do. [laughing] So the first one is on Friday, 10 June 2016. No, that is not the first.

**ADV SELEKA SC:** No, it is at 20:14.

**CHAIRPERSON:** Oh, ja. The 10 June 2016 at 20:14. The businessmaninfoportal1@zogo.com, wrote.

10 “It is too long. It needs to be half page in total without too much detail and highlight the rand saving achieved as opposed to buying form Exxaro please.”

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Now that is an email from Businessman to Ms Daniels?

**ADV SELEKA SC:** It would seem to be the case Chairperson.

**CHAIRPERSON:** Because then she responds on the same evening.

**ADV SELEKA SC:** Yes. That is right.

20 **CHAIRPERSON:** At 21:36.

**ADV SELEKA SC:** 36, yes.

**CHAIRPERSON:** 10, Friday, June. She writes:

“This is what came back from Comms Team. Going to read though it now. At home office now.”

Okay. Dr Ngubane, do we know what the two of them

were talking about here? Businessman say it is too long. Needs to be half-pager. Do you know what that, what he was talking about?

**DR NGUBANE:** Well, Chairperson I assumed it was what was the title of the email.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** That unfair draft positioned statement.

**CHAIRPERSON:** Yes ...[intervenes]

**DR NGUBANE:** [Indistinct] to Tegeta.

10 **CHAIRPERSON:** Yes. Okay. And that draft positioned statement, do you know what draft positioned statement they are talking about? Was it a draft statement that you had prepared?

**DR NGUBANE:** It was what they were going to issue.

**CHAIRPERSON:** It was a media statement, draft media statement?

**DR NGUBANE:** Draft media statement.

**CHAIRPERSON:** So it was before you issued it?

**DR NGUBANE:** That is correct.

20 **CHAIRPERSON:** So it looks like... does it look like Businessman got hold of that statement or was given that draft statement.

**DR NGUBANE:** That is correct.

**CHAIRPERSON:** And he was commenting, saying:

“It is too long. It needs to be half page in total



without too much detail and highlight the rand savings achieved as opposed to buying from Exxaro, please.”

Those are his comments, is that right?

**DR NGUBANE**: That is correct.

**CHAIRPERSON**: And then Ms Daniels says this is what came back from Comms Team. What is Comms Team. Do you know?

**DR NGUBANE**: The Communication Team of Eskom.

10 **CHAIRPERSON**: Oh, the Communications Team of Eskom. Going to read it through. Okay Mr Seleka, continue. What email came after that and let us just follow.

**ADV SELEKA SC**: Correct, Chair. Then Dr Ngubane if you go one more up. It is on Friday again, 10 June 2016. The time now is 23:20. That is twenty past eleven at night. Ms Suzanne Daniels.

From the emails [suzannedaniels584@gmail.com](mailto:suzannedaniels584@gmail.com), wrote: “My first attempt at editing.” So she [No audible reply]

20 **CHAIRPERSON**: I am sorry. I can see my... oh, ja. I can see where you are.

**ADV SELEKA SC**: You see that? Right.

**CHAIRPERSON**: Okay.

**ADV SELEKA SC**: Thank you. It is the Gmail account Chairperson. That is the one that is confusing us.

**CHAIRPERSON**: Yes. Is she still writing to Businessman?

**ADV SELEKA SC:** She is responding to “too long”. So she says: My first attempt at editing.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** You see that Dr Ngubane?

**CHAIRPERSON:** Somewhere in the middle.

**DR NGUBANE:** You see the Gmail changed.

**ADV SELEKA SC:** Now... please assist Dr Ngubane.

**DR NGUBANE:** So Businessman says it needs to be half a page.

10 **ADV SELEKA SC:** That is right.

**DR NGUBANE:** In total.

**ADV SELEKA SC:** Yes.

**DR NGUBANE:** [Indistinct]

**ADV SELEKA SC:** Yes. And she responds at twenty past eleven p.m. She says: My first attempt at editing.

**DR NGUBANE:** Sure.

**ADV SELEKA SC:** And then one more up. You see that one? One more up.

**DR NGUBANE:** Yes.

20 **ADV SELEKA SC:** At 21:23. So three minutes later, the same night on 10 June 2016 Businessman from Info Portal 1 at Zorbo.com writes:

“We ,must add the point that Exxaro wanted 1 300 for 2016 supply and the times bough elsewhere has therefore saved Eskom XXX billions.”

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** You see that?

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** So this Businessman asking for an item to be added what would be ultimately be your media statement.

**DR NGUBANE:** Well, there is a technicality there because I think this figure must come from Primary Energy Department.

**ADV SELEKA SC:** Yes.

10 **CHAIRPERSON:** Ja, well he does not have the figure but what he is saying is the right figure must be added.

**DR NGUBANE:** That is correct.

**CHAIRPERSON:** It must be settled. Ja, ja.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** But I think that the point that Mr Seleka is making is, can you see that Businessman or whoever this person is, is making suggestions on what points to add to what would ultimately be your media statement.

**DR NGUBANE:** That is correct.

20 **CHAIRPERSON:** Yes. You accept that? That is what he is doing?

**DR NGUBANE:** Yes, Chair.

**CHAIRPERSON:** Ja, okay. Mr Seleka.

**ADV SELEKA SC:** Yes. Thank you, Chair. Then you have... now it is the next day. The email above, it is on a

Saturday. Saturday, 11 June 2016 at 13:54:59. Suzanne Daniels, the email address [suzannedaniels584@gmail.com](mailto:suzannedaniels584@gmail.com) wrote...

**DR NGUBANE**: Yes.

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

**DR NGUBANE**: Yes. "Let me know what you think."

**ADV SELEKA SC**: That is right.

**CHAIRPERSON**: Yes, yes.

**ADV SELEKA SC**: "We do not have Exxaro volumes for  
10 2016 as the contract ended in 2015." Do you see that?

**DR NGUBANE**: Sorry.

**CHAIRPERSON**: I do not why I thought these emails were  
2015 emails. We can just make it clear that they are 2016.

**ADV SELEKA SC**: They are 2016 emails, Chair.

**CHAIRPERSON**: Yes, ja. I think the reason why I thought  
2015 is because we were at the beginning of Dr Ngubane's  
evidence and 2015 was the first year at Eskom.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: Ja, okay. Yes, continue Mr Seleka.

20 **ADV SELEKA SC**: Thank you, Chair. Can you see that Dr  
Ngubane?

**DR NGUBANE**: Yes.

**ADV SELEKA SC**: "Let me know what you think. We do not  
Exxaro volumes for 2016 as the contract ended in 2015." Do  
you see that?

**DR NGUBANE:** I see that.

**ADV SELEKA SC:** You appreciate the significance of that statement?

**DR NGUBANE:** No.

**ADV SELEKA SC:** You do not?

**DR NGUBANE:** No. I thought it was just a statement of fact.

**ADV SELEKA SC:** Yes, but do you appreciate the significance?

10 **DR NGUBANE:** [No audible reply]

**ADV SELEKA SC:** Businessman said: Add something about Exxaro.

**DR NGUBANE:** Right.

**ADV SELEKA SC:** The volumes for 2016.

**DR NGUBANE:** Right.

**ADV SELEKA SC:** So Businessman clearly has no knowledge that Exxaro's contract ended in 2015 and that Eskom will not have volumes for Exxaro for 2016.

**DR NGUBANE:** Okay alright.

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

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** But you knew that at the time, is it not?

**DR NGUBANE:** Well, as I say, Eskom will have all the figures in terms of supply volume, supply agreements, you know.

**ADV SELEKA SC:** Yes, but what I am saying is, you knew that at the time.

**DR NGUBANE:** Did I know it?

**ADV SELEKA SC:** You knew at the time what Ms Suzanne Daniels is conveying to Businessman. That you would not have volume figures for Exxaro for 2016.

**DR NGUBANE:** Well, the problem Chairperson. You know, these are very specialised things. As I say, the Primary Energy Department deals with coal contract, when they  
10 begin, when they end, the volumes, the qualities. So one takes for granted that what people say they know what they say.

**CHAIRPERSON:** So would your answer as at the time of this email you did not personally know whether the Exxaro contract had ended in 2015 or is the position that you were aware of it at the time of these emails?

**DR NGUBANE:** No, I was not aware.

**CHAIRPERSON:** You were not aware?

**DR NGUBANE:** No.

20 **CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Yes. When... or let me ask you the question, otherwise I will lose the point. Dr Ngubane, would... can you tell the Chairperson, would you have satisfied yourself prior to the release, you releasing the media statement of the correctness of what is contained in

that statement?

**DR NGUBANE:** It is a very difficult issue Chairperson because I have produced a whole lot of speeches, held a whole lot of media statements, relying on the knowledge of the people who drafted the statement.

When you are running a big organisation like Eskom which is about 36 to 40 000,00 employees and many, many divisions, it is very difficult to know the precise facts about everything.

10 **ADV SELEKA SC:** But in this case, you have a person...[intervenes]

**CHAIRPERSON:** But maybe let us... before you continue Mr Seleka.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Would it be correct to say before you issued the media statement or any statement, you would at least take steps to do what you can to make sure what it says is correct?

20 And that includes maybe if there are, if it has got parts that are technical, that includes talking to the technical people to say is this correct, is this fine.

So if they say to you this is fine, then you take their advice. Otherwise, other matters that you can check yourself which do not need technical knowledge, you would check that yourself?

**DR NGUBANE**: Well, Chairperson one of Ms Daniels' rules was linkages ordination and essentially... I mean, paper came from Treasury to buy X, Y bonds and I would not sign that without Ms Daniels saying ...[intervenes]

**CHAIRPERSON**: It is fine.

**DR NGUBANE**: ...sign it.

**CHAIRPERSON**: H'm.

**DR NGUBANE**: So a lot or reliance was placed on her very extensive knowledge of Eskom.

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

**DR NGUBANE**: In fact, this is why she was brought in my office to assist me. Because there were a lot of pitfalls and snags and... You know this is a very bad terrain and they there were a lot of cases that ended up in court like Westinghouse and Ariva about the boot back steam generator.

You know, a chairman cannot know that. I mean, so one relies that her professionals who have had the statements and if they say it is fine, then one goes ahead.

20 **CHAIRPERSON**: Okay. Mr Seleka.

**DR NGUBANE**: I mean, even documentation from senior management invariable came through her and there was a big fight at Eskom where she filed all these documents from different senior managers, exports. And one took it that if she says it is okay, it is okay.



**ADV SELEKA SC:** Thank you, Chair. Dr Ngubane, obviously it could be... anybody other than Ms Suzanne Daniels could have been assigned to assist you within Eskom?

**DR NGUBANE:** I did not interact with officials at Eskom directly except the CE. So all these other people, when they wanted me to know something or ask something or intervene, it always came through Ms Daniels.

**CHAIRPERSON:** Well, what was her position in your office?

10 What was her title or what was she called?

**DR NGUBANE:** She was the Head of the Office of the Chief, I mean, of the Chairperson.

**CHAIRPERSON:** Oh.

**DR NGUBANE:** Later because of her skill, when Malesela Phukubje retired or resigned she was made company secretary as well and everybody was happy with this because we knew her skill.

**CHAIRPERSON:** Okay.

20 **ADV SELEKA SC:** Thank you, Chair. Yes but prior to her becoming the company secretary, that is the time when we was serving in your office.

**DR NGUBANE:** She was.

**ADV SELEKA SC:** Yes.

**DR NGUBANE:** Yes, she combined both work duties.

**ADV SELEKA SC:** No, before that, before she became the

company secretary she started in your office.

**DR NGUBANE:** I first met her at the first tender board committee I chaired. You know, when we came on board as non-executive directors ...[intervenes]

**ADV SELEKA SC:** Can I put my question differently so that – can I put my different differently?

**DR NGUBANE:** Okay.

**ADV SELEKA SC:** So that they expedite the process. When Ms Daniels was assigned to you, was she the  
10 company secretary?

**DR NGUBANE:** No, no, she was not.

**ADV SELEKA SC:** Yes, yes, that is what I am saying to you. So what I am saying to you then, is this, anybody could have been assigned to your office to assist you together than Ms Suzanne Daniels. Suzanne

**DR NGUBANE:** I would not have agreed to anybody because as far as I am concerned, the people who headed the Chairman's office previously under Mr Tsotsi, their knowledge was very doubtful. As I was explaining, I first  
20 met Ms Daniels at the board tender office and she knew everything and warned me of all sorts of things, so I have confidence when it came to the fact that she must come to my office.

**ADV SELEKA SC:** Yes, well that statement about the people who assisted Mr Tsotsi is quite interesting because

when Ms Daniel was assigned to your office, you had only been there for how long? Was that three months?

**DR NGUBANE**: No. What, January, February, March.

**ADV SELEKA SC**: March, yes, three months.

**DR NGUBANE**: Yes.

**ADV SELEKA SC**: So how would you have determined that the knowledge of the other people is doubtful in that period?

**DR NGUBANE**: If you check the minutes between the 9<sup>th</sup>,  
10 14 minutes, there were several meetings. Many board members ...[intervenes]

**CHAIRPERSON**: That is March.

**DR NGUBANE**: In March, yes Chair.

**CHAIRPERSON**: Ja, 2015, ja.

**DR NGUBANE**: Many board members complained that the office of the Chairperson was not responding to their queries. It was a general complaint which made me - I had the same complaints myself, so I knew that somewhere in the management of the Chairperson's office there was  
20 inefficiency.

**ADV SELEKA SC**: Okay. Now in regard to the publication of the media statements – and as I understand from you is that you would not verify the information yourself, you would rely on what you were told, is that correct?

**DR NGUBANE**: [inaudible – speaking simultaneously]

**ADV SELEKA SC:** Now you were a director on the board of Eskom.

**DR NGUBANE:** Sorry?

**ADV SELEKA SC:** You were a director on the board of Eskom.

**DR NGUBANE:** That is correct.

**ADV SELEKA SC:** You ultimately were appointed as the Chairperson of that board.

**DR NGUBANE:** Acting Chairperson first and later  
10 Chairperson.

**ADV SELEKA SC:** Now how do you execute your fiduciary duties on the board vis-à-vis what you say was your reliance on the say-so of somebody giving you a draft media statement for you to release.

**DR NGUBANE:** Well, again, Chairperson, Eskom had so many divisions, so many documents came to through the board via the company secretary's office. No one would say bring me the person that drafted this document, I want to question him because it was impossible to question  
20 technical information which might have been idea about or a glimpse about but the final detail, this would be matched when we come to the TCCs.

It was impossible to question the recommendations from ExcOs because they came with technical explanation why that contract could not be terminated at that time and

we had to mandate a continuation of the contract.

It was typical information so although with my previous experience in Science and Technology I could question a number of things but you could not go to each and every division and say come here and tell me why you say this. You are dependent on people who knew the system, who had direct linkages with the heads of divisions, you know, and that is how it worked, it worked on trust. Let me put it that way.

10 **CHAIRPERSON:** Well, before you proceed, Mr Seleka, I would like us to just deal with a certain angle of the statement, the draft media statement. Now earlier on you spoke – you said – I think you said you assumed that somebody had forwarded your draft statement to Mr Richard Seleka, is that right?

**DR NGUBANE:** That is correct.

**CHAIRPERSON:** Yes. Now that draft statement, had you drafted it yourself when it came into being or had Ms Daniels drafted it for you or had somebody else drafted it  
20 for you to look at an approve?

**DR NGUBANE:** The process was this, Chairperson. Media statements, there was a media division in the corporate sector.

**CHAIRPERSON:** The communications division.

**DR NGUBANE:** Communications division. They would

create the draft, hand it to Ms Daniels, if she was satisfied, I would then sign it.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** I would read it. You know, if I did not find anything contentious in it, I would accept it and sign it.

**CHAIRPERSON:** Yes, yes. So before the communications team drafted a statement, I take it that there would be communication with you to say what is the statement going to be about.

10 **DR NGUBANE:** That is correct.

**CHAIRPERSON:** And maybe to say what point should it cover. Would that be such a conversation before they drafted?

**DR NGUBANE:** Certainly there would be expression of need.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** Mr Chairman, you must respond to this.

**CHAIRPERSON:** Yes.

20 **DR NGUBANE:** Mr Chairman, you are going to speak at such and such a venue, you need to say this.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** You know, that sort of communication always took place.

**CHAIRPERSON:** Yes. So would they identify the need for a media statement first and then approach you or would

you identify that need and then say to them we need to issue a statement on this issue, please draft something or is the position that sometimes they would initiate, sometimes you would initiate too?

**DR NGUBANE:** That is correct, Chairperson. At that stage there was a lot of press controversy about some payments that were made to Tegeta. I think it must have been called from the Koorfontein Mine, Arnot or Majuba or Komati. But there was a lot of controversy.

10 **CHAIRPERSON:** Yes, yes.

**DR NGUBANE:** You know, there was a controversy about the quality of the ...[intervenes]

**CHAIRPERSON:** Coal.

**DR NGUBANE:** About the values and so on.

**CHAIRPERSON:** Ja.

**DR NGUBANE:** So there was a need to clarify.

20 **CHAIRPERSON:** Yes, yes. Now – so sometimes you would see the need then to say to them there needs to be a draft statement, a draft something and let me see, is that right?

**DR NGUBANE:** Correct, Chairperson.

**CHAIRPERSON:** Sometimes they would identify the need and communicate with your office to say the Chairperson needs to deal with this, we are going to draft something.

**DR NGUBANE:** That is correct.

**CHAIRPERSON:** Is that right?

**DR NGUBANE:** But in this case, if I remember well, it came from some discussion at the board.

**CHAIRPERSON:** Ja.

**DR NGUBANE:** That we had to respond.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** To this controversy.

**CHAIRPERSON:** And would they be in attendance at a board meeting or they would be briefed after the board if  
10 there was something, some media statement to be drafted?

**DR NGUBANE:** No, that would depend on the company secretary.

**CHAIRPERSON:** Oh, the company secretary would, ja, they would not attend board meetings.

**DR NGUBANE:** Yes.

**CHAIRPERSON:** Okay so in this case do you recall whether after the discussion of the issue at the board meeting do you remember whether the company secretary would then have been in touch with them and been in touch  
20 with Ms Daniels and then a draft was prepared?

**DR NGUBANE:** Well, Ms Daniels would have been at the board meeting and then ...[intervenes]

**CHAIRPERSON:** Yes, okay. So she would know fully what ...[intervenes]

**DR NGUBANE:** She would know fully what was needed.



**CHAIRPERSON:** Yes, okay.

**DR NGUBANE:** And proceed to produce the draft.

**CHAIRPERSON:** Okay, okay. So would the case be that sometimes you would not even talk to the communications team yourself but Ms Daniels would talk to them because she would know exactly what had been discussed at the board and so on.

**DR NGUBANE:** Probably once or twice.

**CHAIRPERSON:** Ja.

10 **DR NGUBANE:** I had a query and brought in the person who actually wrote the statement.

**CHAIRPERSON:** Yes, okay.

**DR NGUBANE:** But I think that was not more than once or twice.

**CHAIRPERSON:** Okay, alright. Now before you became aware that the draft statement seems to have been sent to Mr Richard Seleke, had you already seen the draft statement or by the time you saw it, it had been sent to him?

20 **DR NGUBANE:** By the time I saw it, it is when these emails started happening.

**CHAIRPERSON:** Oh, okay, so it must have been sent to him before you became aware of it.

**DR NGUBANE:** Must have been ja, much earlier.

**CHAIRPERSON:** Okay. Now that this person that Ms

Daniels was communicating with was Mr Richard Seleke. Is that something you were told by Ms Daniels or did you know that independently, namely that it was Mr Richard Seleke? Were you told by Ms Daniels that this person that she was communicating with was Mr Richard Seleke?

**DR NGUBANE:** I asked, Chairperson, who was making the comments.

**CHAIRPERSON:** Yes, you were asking Ms Daniels.

**DR NGUBANE:** Ms Daniels.

10 **CHAIRPERSON:** Yes.

**DR NGUBANE:** Then she told me it was the DG.

**CHAIRPERSON:** It was the DG?

**DR NGUBANE:** Yes.

**CHAIRPERSON:** Who at that time the DG was Mr Seleke. Okay, alright. And you were comfortable with that.

**DR NGUBANE:** I was quite comfortable, Chairperson.

**CHAIRPERSON:** Yes, yes, but does that mean that it would have been sent to the DG by Ms Daniels or could it have been sent by the communications team of Eskom?

20 **DR NGUBANE:** No, I do not think the communications team with Eskom ever corresponded with the DG.

**CHAIRPERSON:** Yes, it must be ...[intervenes]

**DR NGUBANE:** Must have been Ms Daniels.

**CHAIRPERSON:** Ms Daniels, yes. Would there have been some discussion between yourself and Ms Daniels before

this which would have made her comfortable to send your draft media statement to Mr Seleke without clearing that with you first? Why would she send your statement to somebody outside of Eskom without you knowing?

**DR NGUBANE:** Well, there was a lot of communication between this Ms Daniels and DPE, different levels of officials. It was an accepted fact that there was this communication.

**CHAIRPERSON:** You had no problem with it once it came  
10 to your attention.

**DR NGUBANE:** Absolutely.

**CHAIRPERSON:** And she might have known that you would not have a problem.

**DR NGUBANE:** Absolutely. Otherwise, Chairperson, we would not have been able to run Eskom.

**CHAIRPERSON:** Yes. Well, my own – one of my concerns is why the DG of the DPE must get involved in how Eskom media statements must read? Eskom is a separate entity and the board is running Eskom, why must he get so  
20 involved in that, the board must be able to make its own decisions right or wrong, run the business, why must it look like he was macro-managing the Chairperson?

**DR NGUBANE:** Again, Chairperson, this is a difficult – I agree with you, in a normal company this would not happen.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** But there was so much pressure from the war room, from the Minister, from the DG himself to be kept informed about everything we did, particularly as is related to the public because ultimately it involved them in answering about our actions. So I was not averse to them taking interest.

**CHAIRPERSON:** Well, I can understand up to a certain level just getting informed, I am just concerned where it goes beyond getting informed, getting to a point where they say no, no, your media statement must contain this point, contain that point, half a page, not the full page of whatever. I am getting concerned when it gets to that.

**DR NGUBANE:** Well, probably let me just go to the issue of the media statement by Mr Tsotsi.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** Mr Tsotsi's defence of himself was that what he wrote before I get it to DPE and the communications people in DPE advised him to change certain parts of the statement.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** So it was the normal ...[intervenes]

**CHAIRPERSON:** Well, I would be concerned even with him doing that, so it is not about the person, it is just about the practice. But I think the point you are making

is, you know, you were not the first one to do it, he did it as well, maybe in the context in which it happened with all the pressure from the war room and DPE, you know, there did not seem to be anything wrong with it.

**DR NGUBANE:** Chairperson, one wants to work in peace.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** I should not put out a statement and DPE comes on me and say why did you do this?

**CHAIRPERSON:** Ja, well you just referred to Mr Tsotsi  
10 now about his own media statement and the input that he said DPE put – made his statement when we are talking about the input that you say Mr Seleke was making to your media statement. I must say that when you say one wants to work in peace, Mr Tsotsi also talked about trying to work in peace within – I think it is something [indistinct] 17.55.

**DR NGUBANE:** Agreed.

**CHAIRPERSON:** I think maybe we should take the tea break. Let us take the tea break, it is nearly twenty five past, we will resume at twenty to twelve.

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

**CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay, just before I let you continue Mr Seleka, Dr Ngubane are we agreed that whoever

Businessman is, he is making a contribution to how your media statement will end up looking like?

**DR NGUBANE:** That is correct Chairperson.

**CHAIRPERSON:** Okay thank you. Mr Seleka?

**ADV SELEKA SC:** Thank you Chairperson. Dr Ngubane you say you could not yourself verify the information given to you, you relied on those who gave it to you?

**DR NGUBANE:** Correct, it is correct Chairperson.

**ADV SELEKA SC:** Yes, now you are inside Eskom,  
10 Businessman is outside of Eskom but he comments on the factual details even to the minute details regarding the volumes in relation to the supply by Exxaro, how is he able to do that?

**DR NGUBANE:** Well there are probably different levels to this answer, because he can communicate directly with heads of divisions, but every quarter when we compile the shareholder report a lot of annexures are put in those reports, relating to each division at Eskom. So the DPE has an extensive record of the work at Eskom, I mean for  
20 instance the Minister was complaining about the pricing of coal and diesel, she complained about some suppliers of coal getting paid more money while others were getting paid less, that was a lot of detail that she had and I will take it that these reports were sent through she actually reads and I would assume also the DG actually reads them.

**ADV SELEKA SC:** Yes, so what you see from Businessman's email is details about quantities, what Exxaro wanted and he is helping you to put that in your own statement, how come that you cannot do it yourself with Ms Daniels, why do you need him to suggest that that be inserted in your statement.

**DR NGUBANE:** As I said Chairperson there is a lot of information that goes to the DPE, so I can't ask – answer precisely why he would have such information, but I do  
10 know that I get information on coal quantities, on who got what tender, and so on.

**ADV SELEKA SC:** But my question is different, my question is why do you need his input, the information you say he has comes from Eskom, it comes from you.

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** So you first have it before he has it, you have first hand information, he has second hand information, why do you need him to tell you what you need to say with your own information.

20 **DR NGUBANE:** Well probably I was not comprehensive enough in terms of reading every document thoroughly, but I did try my best to go through every document, one would sleep at one o'clock, two o'clock preparing for Board meetings with reports from all sorts of sectors of Eskom. You know it is quite possible not to know everything on

your fingertips.

**CHAIRPERSON:** Maybe Mr Seleka's point might not just be about you but maybe about those within Eskom who had a contribution to make to your statement and therefore the question being since they know the information, Ms Daniels for example, and I assume the communications team, you now, but at least Ms Daniels you know, one would have thought that if someone like the DG of DPE was to have a look at the media statement before it went out it would be  
10 on the basis that he would have a look and really see whether there was really anything out of the extraordinary otherwise leave it to the Eskom personnel to put into the statement what they believe should be put in and not to try and now get so involved in the content of the statement, do you understand what I mean, because the team at Eskom he would be expected to assume know what they are doing, they have got the technical expertise, so they will put in their statement if they shared it with him.

They would have a look not with a view to getting  
20 so involved in what it says but have a look and say is there something that is out of the ordinary that might not be okay, otherwise leave it to Eskom to issue a statement that they are happy with. You understand?

**DR NGUBANE:** That is correct Chairperson but I think Ms Daniels corrected him.



**CHAIRPERSON:** Yes.

**DR NGUBANE:** You know about this information.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** So I presume that was normal.

**CHAIRPERSON:** Yes, Mr Seleka.

**ADV SELEKA SC:** Thank you Chairperson. So Dr Ngubane this you say is the first email communication between – from Eskom, yourself Ms Suzanne Daniels and Businessman?

10 **DR NGUBANE:** I do not recall other emails.

**ADV SELEKA SC:** Yes, no I heard you earlier saying this is the first communication as you were going into it, which is attached as BSN38 to your affidavit.

**DR NGUBANE:** Where as I say I do not remember their communication?

**ADV SELEKA SC:** Yes, let me help you there. Go to the second bundle.

**CHAIRPERSON:** Which is Eskom bundle 09B.

20 **ADV SELEKA SC:** Yes, I was going to place it...[intervene]

**CHAIRPERSON:** It is better to call it like that otherwise when you say second bundle whoever reads the transcript then one does which one is first bundle, which one is second bundle.

**ADV SELEKA SC:** Yes, you were a step ahead of me

DCJ. On page 761.6, 761.6.

**CHAIRPERSON:** 769?

**ADV SELEKA SC:** 761 Chairperson point 6.

**CHAIRPERSON:** Oh 761.

**ADV SELEKA SC:** Yes. There is an email ...[intervene]

**CHAIRPERSON:** Okay 761 point?

**ADV SELEKA SC:** 6.

**CHAIRPERSON:** Point 6, okay. The emails we were dealing with earlier where June 2016.

10 **ADV SELEKA SC:** 2016.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** These emails are September 2015, a year before and the one at the bottom of the page Dr Ngubane it is an exchange of an email between Businessman dated 28 September 2015 and that email is specifically addressed to yourself, subject forward for Chairpersons, so documents as discussed. Do you see that?

**DR NGUBANE:** Yes, I see that.

20 **CHAIRPERSON:** Okay at page 761.6 the bottom email comes from Businessman it is addressed to “to Dr Ngubane” it is dated the 28 September 2015 at 04:41pm and the subject is for Chairpersons and then it says serve documents as discussed. Do you remember that email Dr Ngubane?

**DR NGUBANE:** No, I was not presented with this email when I met with the investigators.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** So I did not search for it.

**CHAIRPERSON:** Okay but from your as you see it, it does not ring a bell?

**DR NGUBANE:** No I do not know what documents.

**CHAIRPERSON:** You might have received, you might not have received you just did not get a chance to search and  
10 check?

**DR NGUBANE:** Absolutely sir.

**CHAIRPERSON:** Okay.

**DR NGUBANE:** And above that is from Suzanne Daniels to me a Round Robin resolution document. I presume this is the document that is referred to below.

**CHAIRPERSON:** Well the one above that seems to be from you to Ms Suzanne Daniels.

**DR NGUBANE:** Yes.

**CHAIRPERSON:** And it is dated 28 September 2015 at  
20 5:23pm so it came after the one that we have referred to that came from Businessman and was addressed to you and it simply says sent from my Samsung device. And I suspect that that means you sent – well you sent something, maybe you sent something with the email to Ms Suzanne Daniels maybe it was the same documents that

Businessman sent to you.

**DR NGUBANE:** It could be.

**CHAIRPERSON:** Ja, it could be but you cannot remember not having had the chance to check.

**DR NGUBANE:** No.

**CHAIRPERSON:** Okay, well on the understanding that you said the person who was using this email address Businessman was Mr Richard Seleke. So where it says serve documents as discussed so that would suggest that  
10 you had had a discussion with Businessman before he sent these document but I take it you might not recall.

**DR NGUBANE:** No.

**CHAIRPERSON:** Not having checked.

**DR NGUBANE:** I would have to check.

**CHAIRPERSON:** Ja, okay, Mr Seleka.

**DR NGUBANE:** But I am not sure if I will be able to check and get it now but anyway probably Ms Daniels might give ...[intervene]

**CHAIRPERSON:** Ja, Ms Daniels might be able to clarify.

20 **DR NGUBANE:** Yes.

**CHAIRPERSON:** Ja, okay.

**ADV SELEKA SC:** Let us do this Chairperson, thank you Chair. Dr Ngubane let me assist you.

**CHAIRPERSON:** I am sorry.

**ADV MKHABELA:** Mr Chairman if I may without

interrupting the flow of Mr Seleka's evidence as you will be aware, we have prepared a comprehensive affidavit which includes in it various annexures and we came here on the understanding that that will be the evidence that we will be going through. The documents that have just been referred to now for instance we have not have sight of them and as I sit here I do not have accesses to that documentation.

So it hinders my ability to provide proper legal advice to Dr Ngubane. I do not know if it is not possible...[intervene]

**CHAIRPERSON:** I am sure arrangements can be made

**ADV MKHABELA:** For Mr Seleka to at least provide us copies of the additional bundle that he seems to be referring to which we have not had sight of which we had not seen.

**CHAIRPERSON:** Ja.

**ADV MKHABELA:** So we are able to follow the proceedings and possibly be able to assist the Commission.

20 **CHAIRPERSON:** Yes, no that is fine, Mr Seleka.

**ADV SELEKA SC:** Thank you Chair, we could share with the legal representative of Dr Ngubane a copy that my junior has.

**CHAIRPERSON:** Well a copy should have been provided to Dr Ngubane's lawyers of everything so that we are all

speaking, using the same documents.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** A full set of the bundles should have been made available to them as well.

**ADV SELEKA SC:** Yes, the bundle is not an additional bundle it is what the document office has regularised in order to separate what was one bundle into two.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Yes, so Dr Ngubane will have exactly  
10 what I have and what you and have Chairperson.

**CHAIRPERSON:** Ja, well can somebody and your junior arrange with somebody to identify exactly what Dr Ngubane's lawyers do not have.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** And copies can be made available even if we are not going to stop the proceedings but maybe by, depending on how many documents there are maybe in an hours' time they might be available. Can somebody work on that.

20 **ADV SELEKA SC:** Yes, I will ask one of my investigators to do that.

**CHAIRPERSON:** Ja, so they will try and make a plan to make copies available to you.

**ADV MKHABELA:** Thank you Mr Chairman might I clarify though that we do not have anything except for the

affidavit that we deposed to...[intervene]

**CHAIRPERSON:** Oh is that so?

**ADV MKHABELA:** Yes.

**CHAIRPERSON:** No, no I think that you ought to at least well Mr Seleka might be able to say but whether they are given and they make copies for themselves from what you have or whether the Commission makes copies for them. So it maybe that the Commission does not make copies for them because that can be quite expensive and the  
10 Commission does not have money but if the bundles are made available, they are requested to make copies for themselves I am sure that will not be a problem.

**ADV SELEKA SC:** Indeed Chair.

**ADV LESLIE MKHABELA:** Even if I may Chair even an electronic version so that we are able to follow the proceedings without delaying ...[intervene]

**CHAIRPERSON:** Yes, okay that should be attempted.

**ADV SELEKA SC:** So we will do it right away Chair.

**CHAIRPERSON:** Okay alright.

20 **ADV SELEKA SC:** Yes, then Dr Ngubane I was saying let me assist and I approached the documents from the point of view that you would be familiar with the documentation. If you turn to page 761.9 it is those 761.9 please assist Dr Ngubane, 761.9.

That is Eskom bundle 09(B). It is that same email

which is the second, you have got two emails one at the top and one below. The one below from Businessman dated 28 September 2015, 4:41pm and it is addressed to yourself dalton.ngubane subject is the same forward for Chairpersons, serve documents as attached.

Now the document is on the flip side if you turn to page 761.10. It is dated well in brackets there is a company logo 28 September reference number Round Robin B1, 28 September 2015 the board, attention Dear  
10 members. So they are drafting this document for the Board to say urgent request to approve the suspension of contract they say contact, it is contract, and or commercial relationship with Mail and Guardian, City Pres and Sunday Times on a Round Robin. This is the draft document that gets to be sent to you.

**DR NGUBANE:** Now I remember.

**ADV SELEKA SC:** Now you remember.

**DR NGUBANE:** I have not seen this document before that came from the investigators.

20 **ADV SELEKA SC:** Yes.

**DR NGUBANE:** But this document was circulated to Transnet as well. I am not sure about the other SOE's which came from the department which asked us to seize contact with these publications until they could justify what they were saying about us. So Transnet would have had



the same document and indeed I took it to the board and we did issue a document distancing ourselves from these public issues.

**ADV SELEKA SC:** Yes, but then let us go back to page...[intervene]

**CHAIRPERSON:** Well before you go back.

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

**CHAIRPERSON:** Dr Ngubane that is worrying to me, that is worrying. The entity the board are supposed to make  
10 their own decisions. If some media houses say things about Eskom it is supposed to be Eskom who decides how to deal with it. It is not somebody else, not the department which is supposed to tell the Board how to handle Eskom affairs or relations with media houses.

So it worries me if the department says to you as Eskom Board distance yourself from these people. Why are they getting so involved you are supposed to run the business of Eskom as the board yourselves. They are supposed, I mean the board members get appointed by the  
20 Minister subjected to their cabinet approval I guess and so and so and they are supposed to appoint people in whom they have confidence that these people can handle these matters on their own.

So why are they making decisions as to what you should do, what you should not do?

**DR NGUBANE:** Well Chairperson we are a young democracy and there is a lot of hand holding between government and the institutions. In any democratic transition the elite, that is the leadership in government guides the process. I am sure if one examined departmental relationships with any of their SOE's you would find that there is a lot of involvement of the department in the SOE's and I think this is inevitable in the transition phase in which we are going through. For  
10 instance, I wanted pension conditions at Eskom changed. Before 1994 when a person had served five years he was added five years to make ten years. So that he could retire at fifty, having done five years but be given ten years to get additional benefits. That was Eskom policy. If the widow of a deceased Eskom employee or at a particular level whether it is F-Band or E-Band it could remain in the Eskom house permanently.

Those were benefits that were there before 1994, nobody in government or in the department bothered to  
20 change those arrangements. So a lot of policies, benefits and arrangements come from the past. So this type of hand holding becomes acceptable in that context. We do not as boards say department you cannot tell us XYZ probably Malesela Phukubje, who was company secretary at this time might clarify how all this came about.

**ADV SELEKA SC:** Chair your microphone is off.

**CHAIRPERSON:** I am sorry I normally remind other people. So I am saying what you have just said does not dispel my concern that the board I would imagine had men and woman of diverse experiences. Some of whom I would imagine had very high academic qualifications. You yourself have been a Minister in the first democratic government under President Mandela, you mentioned Minister of Science of Technology for a number of years,  
10 you had been Premier of Kwazulu Natal, you had been an ambassador, you had been Chairperson of the SABC board. Why must they think they cannot leave you to make your own decisions?

**DR NGUBANE:** Well Chairperson I was also – while I was Chairperson of SABC, I was also a Chairperson of the Land Bank.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** And in all those instances one wanted to change practices and policies but it was difficult.

20 **CHAIRPERSON:** Yes.

**DR NGUBANE:** You know.

**CHAIRPERSON:** But it must be this attitude on the part of government departments I mean if I had – if I found myself in a position where I had to appoint somebody who had been Premier of a province, who have been a Minister, who

had been an ambassador I imagine that I would say this person knows what he is doing I do not have to bother. As long as he knows the parameters, I leave things to him.

So why would the department want to, maybe micro manage is a wrong word but they want to say you must make a decision that you want nothing to do with the City Press, you want to have nothing to do with the Sunday Times or whatever the publications are. I mean you can make you own decisions about that, that is not something  
10 technical, it does not need a genius, it is something that you can see how they have behaved towards Eskom or towards the board. You can see what they have published, you can make your own decisions. Do we ask for a meeting with the editors of these publications and have a constructive engagement or call them to account?

Do we report them to the relevant institutions or do we say we boycott them; we do not buy their papers or whatever. You can make those decisions yourself why must somebody prepare statements to say this is what you  
20 must decide. That is what I have a problem with because one is not dealing here with people who have no experience.

**DR NGUBANE:** Well I agree Chairperson, fully agree with you. But the reality is if the department takes the attitude that alright we let you lose, see to everything yourself.

**CHAIRPERSON:** Hm.

**DR NGUBANE:** That will be very hard for the Board and the organisation.

**CHAIRPERSON:** Hm.

**DR NGUBANE:** You know. But I agree with what you are saying.

**CHAIRPERSON:** Yes. Because you see I think the kind of independence I know it will not be complete independence but the kind of independence that the Board is supposed to have from the department ought to be such that it should instil confidence even in the public that it is the Board that is in charge of Eskom it is not the department. You know. And this kind of communication where they seem to say this is the decision you must make about City Press and about Sunday Times does not instil that confidence you know. Because one says, of all matters that must be the easiest for them to handle.

**DR NGUBANE:** Well.

**CHAIRPERSON:** Ja okay alright.

20 **DR NGUBANE:** Probably we become cowards Chairperson.

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

**ADV SELEKA SC:** Thank you Chairperson. And Dr Ngubane as you said the same last statement was sent to Transnet, Denel and Eskom.

**DR NGUBANE:** Sorry, sorry.

**ADV SELEKA SC:** Yes.

**DR NGUBANE:** No I am sure about Transnet.

**ADV SELEKA SC:** Transnet.

**DR NGUBANE:** I suspect Denel also.

**ADV SELEKA SC:** I see Denel on page 761.11. It is a – where there is a resolve of that. Denel/Eskom hereby suspend any dealings by placing advertising and so on. But you say Eskom distanced itself from this.

**DR NGUBANE:** No Chair we took a resolution they  
10 implemented it.

**CHAIRPERSON:** They implemented it.

**DR NGUBANE:** They implemented it ja.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** And that is the resolution on page 761.7?  
If you turn the page back.

**DR NGUBANE:** Back.

**ADV SELEKA SC:** Urgent request to approve the suspension of contact in any form whatsoever and or commercial relationship with [00:02:20] and Denton.

20 **DR NGUBANE:** Yes that is correct.

**ADV SELEKA SC:** Ja page 761 is Resolution of the Board directors of Eskom Holdings.

**CHAIRPERSON:** I mean somebody who is – who does not sit in meetings of the Board is basically dictating what decisions the Board must take in this. That is what is

happening. You understand?

**DR NGUBANE:** Yes Chair.

**CHAIRPERSON:** Ja.

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

**CHAIRPERSON:** And I think it is wrong. If you want to influence what decisions the Board takes be a member of the Board. Come inside transparently like everybody. Be a member of the Board and influence but if you are not part of the Board do not sit somewhere and then dictate what the  
10 Board should decide. Mr Seleka.

**ADV SELEKA SC:** Thank you Chair. Dr Ngubane the other point is this and I think I shared this with you during the consultation. These emails exchanged in September 2015 – September 2015. Mr Richard Seleke was appointed at the DPE only on 27 November 2015 and the Fundudzi Report finds that. He is a month later appointed as the DG I think you said at the DPE. So my question is who would you have discussed this draft with? The Businessman who says documents as discussed. Who is this man?

20 **CHAIRPERSON:** Maybe we should – maybe you should put it this way Mr Seleka I am sorry I am [mumbling].

**ADV SELEKA SC:** Not a problem Chair.

**CHAIRPERSON:** So what Mr Seleka is saying to you Dr Ngubane is you said that – well you said that this Businessman was Mr Richard Seleke and when you – but

when you said that I think we were talking about the 2016 emails. Now what Mr Seleka is putting to you is that in 20 – in September 2015 you are – there is communication with Businessman and he says: it cannot be that they are coming from DPE because Mr Seleka is not in DPE at that stage. What do you say to that?

**DR NGUBANE:** Well...

**CHAIRPERSON:** I am sorry I think I said Mr Seleka instead of Mr Seleke.

10 **ADV SELEKA SC:** You are forgiven Chair.

**CHAIRPERSON:** Well you are quite tolerant because...

**DR NGUBANE:** Well...

**CHAIRPERSON:** When somebody says Zonde to me I am not so tolerant.

**DR NGUBANE:** Well you know Chairperson in fact I have never gone around looking at those dates.

**CHAIRPERSON:** Yes, yes. So you...

**DR NGUBANE:** I am trying to locate correspondence from the DG.

20 **CHAIRPERSON:** Yes.

**DR NGUBANE:** To Mr Brian Molefe.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** Because that will also confirm then what is being put before me.

**CHAIRPERSON:** About his appointment?



**DR NGUBANE:** No, no it was about the relationship with Treasury.

**CHAIRPERSON:** Oh.

**DR NGUBANE:** It says the DG wrote Mr Molefe.

**CHAIRPERSON:** Ja.

**DR NGUBANE:** Brian about how we must conduct that relationship. I was trying to look at that letter to sort of check the dates.

**CHAIRPERSON:** Oh.

10 **DR NGUBANE:** And time.

**CHAIRPERSON:** Oh okay. But are you able to accept that Mr Richard Seleke was not at DPE in September 2015 or is that something you are not sure about?

**DR NGUBANE:** Well I have not thought about that. I prepared to accept – I said I had not thought about that.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** But I am prepared to accept that.

**CHAIRPERSON:** To accept ja. Yes okay. Mr Seleka.

20 **ADV SELEKA SC:** And then Dr Ngubane I – I wanted you to assist the Chairperson because the Businessman is writing as discussed. Who did you discuss with prior to the email of 28 September being sent to you?

**DR NGUBANE:** As I say probably the company secretary can clarify this because I did not have a discussion on this.

**ADV SELEKA SC:** Ja because that email of 28 September

which is exchanged at 4:41 pm only the two of you feature in that email – is the Businessman and yourself. An email comes from the Businessman and it is addressed to you. The company secretary is not copied in that email. In fact at 5:23 pm you forward that email to the company secretary the same day 28 September 2015.

**CHAIRPERSON:** Well do we know what documents Businessman is referring to there because it may be that when Dr Ngubane looks at those documents, he might recall  
10 who it is he may have discussed them with.

**ADV SELEKA SC:** It is the one we have already referred to Chair.

**CHAIRPERSON:** At 761.7?

**ADV SELEKA SC:** At 7 – well that is the Board Resolution that comes – that is a copy and paste of the document at 761.10.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** 761.10.

**CHAIRPERSON:** So those are the documents that...

20 **ADV SELEKA SC:** Those are the documents.

**CHAIRPERSON:** Are referring to.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** You understand that Dr Ngubane which documents they – this is referring to?

**DR NGUBANE:** I do Chairperson.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** But there was a memorandum from the company secretary on this very issue of putting an end and you know unfortunately I would have looked for that if I had known about this initially.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** Because it would then clarify

**CHAIRPERSON:** Help you ja. Well I am – that is what I am thinking about I just want to make sure that what you have  
10 helps you to remember maybe the context and then you can remember who it is you may have had a discussion with about these documents.

**DR NGUBANE:** As I say Chairperson I do not remember discussing this issue.

**CHAIRPERSON:** Yes, yes.

**DR NGUBANE:** Apart from forwarding it.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** And also getting a memo.

**CHAIRPERSON:** Yes.

20 **DR NGUBANE:** So I would need to ...

**CHAIRPERSON:** To see the memo.

**DR NGUBANE:** Ja.

**CHAIRPERSON:** The memo would have come from Ms Daniels to you?

**DR NGUBANE:** The memo would have come from the

company secretary.

**CHAIRPERSON:** From the company secretary.

**DR NGUBANE:** And I think at that time it was Malesela Phukubje.

**CHAIRPERSON:** Oh okay and it was – the memo related to these documents.

**DR NGUBANE:** It was about this whole issue.

**CHAIRPERSON:** Oh okay. Well if we do not have a copy of that memo we must try and get it. If we do let us go to it.

10 **ADV SELEKA SC:** I do not think we have Chairperson.

**CHAIRPERSON:** Oh and maybe Ms Daniels might assist in getting it if...

**ADV SELEKA SC:** Yes [00:10:50]

**CHAIRPERSON:** Ja.

**DR NGUBANE:** Actually Chairperson I think it was before Ms Daniels time.

**CHAIRPERSON:** Oh is that so.

20 **DR NGUBANE:** You know it is all confusing here because there is also an email to Ms Daniels but you know or it was during the transition, I am not sure.

**CHAIRPERSON:** Yes okay because that certainly does appear that you forwarded the documents to Ms Daniels.

**DR NGUBANE:** Sorry.

**CHAIRPERSON:** Ja. Ja. But is there a possibility that these documents may not have come from Mr Richard Seleke

coming through Businessman if – if Mr Richard Seleke was not at DPE in September 2015 is there a possibility that they may not have come from him – they may have come from somebody else?

**DR NGUBANE:** Very possible Chairperson.

**CHAIRPERSON:** It is quite possible.

**DR NGUBANE:** yes.

**CHAIRPERSON:** But you cannot recall who it might be.

**DR NGUBANE:** Exactly.

10 **CHAIRPERSON:** Yes. Is – is the position that the only person you dealt with who used this email Businessman was Mr Seleke

**DR NGUBANE:** That is correct Chairperson.

**CHAIRPERSON:** Yes. Mr Seleka.

**DR NGUBANE:** Thank you. So Dr Ngubane if that is to be accepted that means Dr – Dr – Mr Seleke, Richard Seleke would have had an interest in Eskom even before going to the DPE.

20 **DR NGUBANE:** Well I am not sure in what position he was in before becoming DG of Eskom. But depending on he was...

**CHAIRPERSON:** I think he was at Transnet. I am basing what I am saying on other documents that I have seen in the commission. If I am not mistaken, I think he – he was a member of the Transnet Board or maybe he was not a

member of the Board at Transnet maybe he was employed but I think he was at Transnet before he got appointed as DG of DPE. So I think when he went to DPE he went there to take the position of Director General.

**ADV SELEKA SC:** That seems to be correct Chair. I understand he was prior to that a Board member at Transnet until appointed as the DG – as a DG at DPE.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** In November 2015.

10 **CHAIRPERSON:** Yes.

**DR NGUBANE:** Well I can only speculate Chairperson.

**CHAIRPERSON:** Yes. Okay. Well it would be necessary that Dr Ngubane obtains whatever documents he may be able to obtain that might enable him to be more helpful in regard to this. So ja.

**DR NGUBANE:** That will be in order.

**CHAIRPERSON:** Okay.

**DR NGUBANE:** Chairperson.

20 **ADV SELEKA SC:** So Dr Ngubane you are aware of that disciplinary hearing against Ms Suzanne Daniels that she was by Eskom subjected to disciplinary action.

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** Yes. And that she found guilty?

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** And on this very aspect of infoportal

email address that she was found guilty.

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** For having shared documentation with the Businessman?

**DR NGUBANE:** Correct.

**ADV SELEKA SC:** Yes. Were you still at Eskom at the time of her disciplinary action?

**DR NGUBANE:** No – I think I had left Eskom. I left Eskom in June 2017.

10 **ADV SELEKA SC:** 17.

**DR NGUBANE:** Yes thank you.

**ADV SELEKA SC:** And the Chairperson of the disciplinary hearing found that the probabilities that the email belongs to Mr Salim Essa and not Richard Seleke. You aware of that ruling?

**DR NGUBANE:** I saw a bit of that report but she had said at that commission – that inquiry that the Businessman address belonged to the DG. But the Chairperson of the inquiry said he doubted that. But he did not say or identify who exactly  
20 these emails belong to.

**ADV SELEKA SC:** Well according to the ruling she did. In fact according to the ruling she says you told her the email address belongs to Mr Richard Seleke.

**DR NGUBANE:** Well I – I – probably my representative Mr Mkhabela might deal with that issue.

**ADV SELEKA SC:** Okay.

**DR NGUBANE:** Because ...

**CHAIRPERSON:** Okay let us – let us – I just want to make sure. Mr Seleka you – Seleka you were saying Ms Daniels according to the ruling of the disciplinary Chairperson – the Chairperson of the Disciplinary Hearing recorded that Ms Daniels said she heard from Dr Ngubane that that email address was for Mr Seleke.

**ADV SELEKA SC:** Correct Chair.

10 **CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** And Dr Ngubane you say you are aware that that is what the Chairperson of the inquiry – of the hearing found?

**DR NGUBANE:** That is right.

**CHAIRPERSON:** You are aware of that.

**DR NGUBANE:** I am aware of that.

20 **CHAIRPERSON:** Okay alright. I think what Mr Seleka was doing was to give you an opportunity to comment on the statement by Ms Daniels to the Disciplinary Hearing to say she heard from you that this email address was for Mr Seleke. I do remember that earlier on you said she was the one who told you.

**DR NGUBANE:** That is correct Chairperson.

**CHAIRPERSON:** Yes. So that is the position as far as you



are concerned, she told you.

**DR NGUBANE:** Absolutely.

**CHAIRPERSON:** Okay alright.

**ADV SELEKA SC:** Thank you Chair. Yes. And she – she had recorded to have said you told her that in April 2015 about the time she started working with you. April 2015. Now that is way before June 2016. Do you have any comment on that Dr Ngubane.

**DR NGUBANE:** Are you asking about the time when she  
10 came to my office?

**ADV SELEKA SC:** No about the time according to the Chairperson of the Disciplinary Hearing you would have told Ms Daniels whose email address infoportal belonged to.

**DR NGUBANE:** No.

**ADV SELEKA SC:** So it is dated they say – they place it somewhere in April 2015.

**DR NGUBANE:** No Chairperson it cannot be true.

**CHAIRPERSON:** I am sorry. Is the position that you never told her that this email address belonged to Mr Seleke at any  
20 time whether it was April 2015 or September 2015 or 2016 you never told her that?

**DR NGUBANE:** No, no Chairperson.

**CHAIRPERSON:** Yes. You heard from her.

**DR NGUBANE:** I heard from her.

**CHAIRPERSON:** Yes okay.

**ADV SELEKA SC:** Thank you. Now Dr Ngubane please turn to page 761.19. Page 761.19. There is again the second email there coming from Businessman. This is 10 December 2015 that is addressed to not yourself but to Matshela2010. What – do you see that?

**DR NGUBANE:** Yes I can.

**ADV SELEKA SC:** Yes. The focus for present purposes is on the contents of the email. It seems to relate to Tegeta two pager between Tegeta and Eskom salient points. Eskom  
10 will provide bank guarantee for R1.68 billion. So now Businessman is writing to Mr – what it appears to be Mr Matshela Koko and bullet points dealing with matters relating to Tegeta. And the one-point R1.68 billion which you of then deal with in your affidavit. You see that?

**DR NGUBANE:** Certainly.

**ADV SELEKA SC:** And at the top of the page it seems to be an email from Matshela2010 – Matshela[2020@yahoo.com](mailto:Matshela2020@yahoo.com) December 2015 time stamp is 7:31 and is a forward to Ms Suzanne Daniels – two pager. You also see that?

20 **DR NGUBANE:** I see that.

**ADV SELEKA SC:** Does this ring any bell with you? Does it remind you?

**CHAIRPERSON:** Well Mr Seleka should you not read that email.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** First or ask Dr Ngubane to read – maybe you can read it. So that we – the context.

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

**CHAIRPERSON:** Is understood.

**ADV SELEKA SC:** Yes. So the subject is two pager. Now that is the second of the two emails. The one below.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** The subject to pager.

10 “Two pager between Tegeta and Eskom Salient Points.

1. Eskom will provide bank guarantee for R1.68 billion. CP for release is Section 11 approval from DMR competitions commission approval.

2. Tegeta will supply from OCM – “

I believe that is Optimum Coal Mine – is that correct Mr Ngubane – Dr Ngubane?

**DR NGUBANE:** Yes. Yes.

**ADV SELEKA SC:**

- 20
- “As a contract but for the twelve months pre-payment January 2016 to January 2017 will give a 5% discount off the R154.00.
  - Tegeta will supply from Koornfontein as per contract for same period at the original R380.00 not the requested increase tariff.

- At end of each month starting end February 2016 Eskom shall deduct R140 million from amounts due to recoup the R1.68 billion.
- Tegeta receiving a pre-payment for two months supply but Eskom can use monies owed from all three mines [Brandfontein] also to recoup the R140 million a month.
- Therefore if Tegeta does not deliver full volume from OCM or Kroon I believe that should be Kroonfontein the payments due for Brakfontein can be [00:23:43].
- Any amounts due over the R140 million for each month shall be payable to Tegeta Two pager almost as addendum to the supplier contracts.”

**CHAIRPERSON:** That is an email from Businessman to Matshela2010 is that right?

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** That is how it is written?

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

**CHAIRPERSON:** Matshela2010 and you said you think that it must have been directed at Mr Matshela Koko?

**ADV SELEKA SC:** Correct Chairperson.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Which...

**CHAIRPERSON:** Okay continue.

**ADV SELEKA SC:** Which Mr Matshela – which the email address [matshela2010@yahoo.com](mailto:matshela2010@yahoo.com) forwards to Ms Suzanne Daniels at the top of the page.

**CHAIRPERSON:** Let me ask this question before you ask your next question Mr Seleka. If the person using this business – this email address Businessman and infoportal or whatever is a government official such as would be a DG why would he consistently in these emails using an email address other than his or her official government email address? So that question arises to me I do not know – do you note that Dr Ngubane that it seems that consistently he is never using a government official email address he is always using this address?

**DR NGUBANE:** I see that Chairperson.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** However people use different addresses at times.

**CHAIRPERSON:** No I accept that and it may well be that in terms of what we have seen the emails that we have seen them coming from this maybe we have not seen enough to be able to say he never uses an official address. But it is a little of concern that – I mean you were saying that with regard to yours some would be on Eskom email address others on your private email address depending on whether

you at the office or whatever I am not sure when you were sending the email.

**DR NGUBANE**: Well that would be concerning Chairperson.

**CHAIRPERSON**: Yes.

**DR NGUBANE**: Because this is an official ...

**CHAIRPERSON**: Yes this is official.

**DR NGUBANE**: Discussion.

**CHAIRPERSON**: Yes.

**DR NGUBANE**: You know. But I ...

10 **CHAIRPERSON**: Yes.

**DR NGUBANE**: I cannot second guess.

**CHAIRPERSON**: Yes. Yes. And because right now is really going into very serious details about some transactions.

**DR NGUBANE**: Absolutely.

**CHAIRPERSON**: Yes. But you see also for me another question would be why would the DG of DPE get involved in such details on transactions between Eskom and whoever? Because that – that seems to me it would be too much. It is like – it is like he has a specific interest. I mean does he  
20 have a department to run to get involved into these types of details when Eskom and you were saying just a while ago it is an entity that has got thousands and thousands of employees. It has got high ranking executives, officials who have the technical knowledge. Why would the DG get – get himself to be involved in these types of details?

**DR NGUBANE:** Chairperson as I said the company secretary kept a file.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** In her office.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** Of all correspondence that she brought to me.

**CHAIRPERSON:** Ja.

**DR NGUBANE:** Now I am not sure if this would be there but  
10 I do not remember seeing this.

**CHAIRPERSON:** You do not remember seeing this?

**DR NGUBANE:** No

**CHAIRPERSON:** Ja. Okay. But would you – if it was the DG of DMR who sent this would you also be quite surprised that he would be getting so involved? Or would that not surprise you?

**DR NGUBANE:** Well the DG of DMR.

**CHAIRPERSON:** No I am sorry DPE.

**DR NGUBANE:** Oh DPE.

20 **CHAIRPERSON:** Ja. Ja.

**DR NGUBANE:** I would not expect this detail.

**CHAIRPERSON:** You would expect this detail?

**DR NGUBANE:** I would not expect.

**CHAIRPERSON:** You would not expect this?

**DR NGUBANE:** Such detail.

**CHAIRPERSON:** Yes, yes

**DR NGUBANE:** Other than probably giving a guideline.

**CHAIRPERSON:** Yes ja. Okay. Mr Seleka.

**ADV SELEKA SC:** Yes. Now Dr Ngubane would you even expect the intervention at this particular level from the DG of DPE? Would she tell you the terms on which Eskom should contract with Tegeta? Let alone the details but just getting involved even ...

**DR NGUBANE:** Sure.

10 **ADV SELEKA SC:** In the slightest?

**DR NGUBANE:** Well, again Chairperson. Normally I would not expect this. But as they say, things happen differently. For instance, the motivation for prepayment to optimum coal mine was supported by the DG of Mineral Resources. I mean, this was a direct involvement in a coal supply issue at Eskom. So while one does not expect this level of involvement, it does happen sometime.

**ADV SELEKA SC:** Thank you, Chair. And then, Dr Ngubane the details in that email. I mean, we know that the board  
20 had taken a resolution to do a prepayment in Tegeta.

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** And that was ...[intervenes]

**DR NGUBANE:** Tegeta to OCM?

**ADV SELEKA SC:** OCM.

**CHAIRPERSON:** Yes.



**ADV SELEKA SC:** Yes. And the figure was exactly this R 1,68 billion?

**DR NGUBANE:** That is correct.

**ADV SELEKA SC:** And we understand that the payment was subsequently converted into a guarantee.

**DR NGUBANE:** That is correct, yes.

**ADV SELEKA SC:** You have explained in your supplementary affidavit, you were not involved. The guarantee decision did not come to the board.

10 **DR NGUBANE:** No, Chairperson.

**ADV SELEKA SC:** But your involvement as the board was to resolve to make a prepayment?

**DR NGUBANE:** A prepayment to buy coal from OCM.

**ADV SELEKA SC:** Yes.

**DR NGUBANE:** In fact, Chairperson, the MOI for Eskom has not allowed the issuing of bank guarantees.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** And... well, in your affidavit, I think you have subsequently clarified that, in your affidavit you had  
20 said:

“The R 1,68 billion guarantee was approved by the board during December 2015. I do not have copies of the report but served before the board not the minutes of the meeting.”

I am reading from your affidavit.

**DR NGUBANE**: That is correct.

**ADV SELEKA SC**: Yes. But I believe you have clarified the issue of the guarantee and the issue of the prepayment approval. Is that right?

**DR NGUBANE**: I was concerned with that statement.

**ADV SELEKA SC**: Yes.

**DR NGUBANE**: Because it was information given to me. So when I checked, you know, my statement to parliament which had been prepared by officials, I checked that... I found that  
10 Eskom Treasury had actually given the guarantee to ABSA but that had never come to the board.

**CHAIRPERSON**: And the board would have been against that because MOI does not allow, is that right? Is that what you are talking about a minute ago?

**DR NGUBANE**: Absolutely.

**CHAIRPERSON**: Ja, okay. But the officials would have known that as well, is it not?

**DR NGUBANE**: [No audible reply]

**CHAIRPERSON**: Well, the MOI, what the MOI allowed and  
20 what it did not allow?

**DR NGUBANE**: Well, the company secretary who is a custodian of governance would definitely have known it.

**CHAIRPERSON**: Yes, yes, yes. Mr Seleka.

**ADV SELEKA SC**: Thank you, Chair. Yes, I think the Chairperson has already raised what would have been my

next question. The point being, that you see somebody from outside of Eskom, because this become ultimately the decision within Eskom, dictating the terms of what ultimately becomes that decision. But the Chairperson has already raised it with you. That is a concern.

**DR NGUBANE**: Okay.

**ADV SELEKA SC**: You understand.

**DR NGUBANE**: Okay.

**ADV SELEKA SC**: Yes.

10 **DR NGUBANE**: Absolutely.

**ADV SELEKA SC**: Ja, I went out of sequence then Dr Ngubane because of the issue of the boards being a Gupta board and that is what took us to that process. You see that creates that impression.

**DR NGUBANE**: Ja.

**ADV SELEKA SC**: You see that?

**DR NGUBANE**: Absolutely.

**ADV SELEKA SC**: Ja.

**DR NGUBANE**: Absolutely.

20 **ADV SELEKA SC**: And so members of the public reads these things and become concern. Now let me to your service on the board, December 2014 and the events that followed after that. I mean, we have heard ...[intervenes]

**CHAIRPERSON**: Well, Mr Seleka.

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

**CHAIRPERSON:** Maybe... I mean you already asked Dr Ngubane to explain his relationship with Mr Salim Essa. I think that we must get out of the way the part of his evidence that relates to his relationship with the Guptas. So I think to...[intervenes]

**ADV SELEKA SC:** Okay. Indeed.

**CHAIRPERSON:** ...analyse that part.

**ADV SELEKA SC:** Indeed.

**CHAIRPERSON:** Do you want to talk on that issue, Dr  
10 Ngubane, your relationship with the Gupta Family?

**DR NGUBANE:** Well ...[intervenes]

**CHAIRPERSON:** No, you speak in your affidavit, you deal with it.

**DR NGUBANE:** Yes.

**CHAIRPERSON:** That is what I am talking about. Ja. How you came to know them and ...[intervenes]

**DR NGUBANE:** Well, I came to know members of the Gupta Family particularly people who were working on the New Age newspaper because SABC was broadcasting the breakfast  
20 meetings which were arranged by TMA. And as chairman I was to attend quite a number of those breakfast meetings.

And I was seated at the same time with Mr Howa, Mr Williams who was the editor at TMA, New Age. And some of the Gupta family members. That was the more frequent, you know ...[intervenes]

**CHAIRPERSON:** Encounter with them.

**DR NGUBANE:** ...encounter with them. But there would also be social events at their home, at hotels. For instance, the... what was it? The presentation of the Person of the Year. They had that programme where Ms Thuli Madonsela won the award.

So there were events like and I used to get invited and attend. And there was also the wedding at Sun City. I got invited. I attended.

10 It was that sort of social level, engagement. I mean, I did not interact with them in any business way, particularly, because I had nothing to do with issuing of contract or any other such issues.

**CHAIRPERSON:** I think, in your affidavit you also said you got invited to their residence.

**DR NGUBANE:** Yes.

**CHAIRPERSON:** And sometimes you went there.

**DR NGUBANE:** That is right.

20 **CHAIRPERSON:** Ja. Are you able to recall how many times you might have been to their home? Obviously, if it is... I do not want necessarily the exact number. You might say it is a few times or you might say it is a number of times. You might say it were many times.

**DR NGUBANE:** Well, I would say a number of times.

**CHAIRPERSON:** A number of times?

**DR NGUBANE:** Because the relationship as well was at SABC.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** So it was over a period.

**CHAIRPERSON:** A period?

**DR NGUBANE:** Ja.

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

**ADV SELEKA SC:** Thank you, Chairperson. Dr Ngubane, you were also saying in your affidavit that you have travelled  
10 to Dubai three or four times but never at the expense of the Guptas.

**DR NGUBANE:** Chairperson, I did a number of trips offices. Official trips were booked by the office with SABC and when I was at Eskom. And I always travelled for official work on SAA. But when I travelled to Europe or ...[intervenes]

**CHAIRPERSON:** Unofficial business.

**DR NGUBANE:** ...Japan for private business, I always use Emirates because they were the cheapest of all the airlines at that time. And if... invariable you went to Dubai and then  
20 reconnect from Dubai to your travel destination. And that was my association with the trips to Dubai because it is a transit route.

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

**ADV SELEKA SC:** So you were not... are you saying to the Chairperson, you were not going to Dubai here because that

explanation is not given that Dubai was just a transit. You are saying you travelled... oh, sorry. You used the word. I beg your pardon.

You used the word I travelled through Dubai three or four times. Are you saying to the Chairperson you are not visiting the Gupta brothers in Dubai?

**DR NGUBANE**: No, Chairperson. I did not even go to do shopping in Dubai which a lot of people do. It was to pass through.

10 **ADV SELEKA SC**: Then your relationship with Mr Nazeem Howa?

**DR NGUBANE**: It was a good relationship because he was a journalist. You know, he was the one who was linking SABC with the programmes of TMA, you know, the broadcast. He was one at the forefront.

**ADV SELEKA SC**: Yes, but what was your relationship with him?

**DR NGUBANE**: Well, it became friendly in the sense that we were in the almost similar institutions, media institutions.

20 **ADV SELEKA SC**: Well, the reason we are asking that and you will recall the reason why?

**DR NGUBANE**: [No audible reply]

**ADV SELEKA SC**: You remember?

**DR NGUBANE**: [No audible reply]

**ADV SELEKA SC**: Because he sent an email in which he

draft a statement. That becomes your media release regarding Mr Tsotsi's resignation.

**DR NGUBANE**: Yes. Well, Chairperson I have been through that with the investigators

**CHAIRPERSON**: Yes.

**DR NGUBANE**: I never ...[intervenes]

**CHAIRPERSON**: You have to bring that through me.  
[laughing]

**DR NGUBANE**: I mean, I never saw the speech that was  
10 alleged to have been made by Mr Howa because my speech came as usual from the media section. So I, I mean, unless I see both and compare them ...[intervenes]

**CHAIRPERSON**: Yes.

**DR NGUBANE**: ...I will not really be able to tell which was which.

**CHAIRPERSON**: Is the allegation that the speech that you ultimately made or statement that you ultimately issued, was the same as the one that it is alleged Mr Howa prepared in a sense true?

20 **DR NGUBANE**: Well ...[intervenes]

**CHAIRPERSON**: That was the allegation?

**DR NGUBANE**: That was the question Chairperson.

**CHAIRPERSON**: Yes, but nobody has shown you both?

**DR NGUBANE**: No, sir.

**CHAIRPERSON**: Okay alright. Mr Seleka, do we have



both?

**ADV SELEKA SC:** I was checking with my investigators Chair. They give me a note. Dr Ngubane, did you not confirm to me that it is the same?

**CHAIRPERSON:** Yes, please raise your voice.

**ADV SELEKA SC:** Yes. Did you not confirm ...[intervenes]

**CHAIRPERSON:** I must tell you, today you are doing well with speaking aloud.

**ADV SELEKA SC:** [laughing]

10 **CHAIRPERSON:** So do not spoil that record. [laughing]

**ADV SELEKA SC:** I beg your pardon, Chairperson.

**CHAIRPERSON:** H'm.

**ADV SELEKA SC:** Did you not confirm to me that it is the same that was released?

**DR NGUBANE:** No, sir. I told them at our second meeting with the investigators.

**ADV SELEKA SC:** Yes.

**DR NGUBANE:** I said, I asked you to bring me a copy of the speech. And one of them said: No, this is off the table.

20 That is how that discussion ended.

**ADV SELEKA SC:** No, I was in that meeting. I know the statement was shared. The email and the statement was shared. It is on page ...[intervenes]

**CHAIRPERSON:** Was shared with whom?

**ADV SELEKA SC:** With Dr Ngubane. That email is still

contained in your bundle Dr Ngubane, page 761.1.

**CHAIRPERSON:** Well, give him more details to jog his memory.

**ADV SELEKA SC:** I can do.

**CHAIRPERSON:** Is it in the bundles?

**ADV SELEKA SC:** It is in the bundles, yes.

**CHAIRPERSON:** Okay I think your junior must help him to find it.

**ADV SELEKA SC:** Eskom Bundle 09(b).

10 **CHAIRPERSON:** Zero one?

**ADV SELEKA SC:** 09(b).

**CHAIRPERSON:** Oh, 09. Oh, 09 under B.

**ADV SELEKA SC:** Bracket B.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Page 761.

**CHAIRPERSON:** 761.

**ADV SELEKA SC:** Point 1.

**CHAIRPERSON:** You say 761.1?

**ADV SELEKA SC:** Correct, Chairperson, 761.1.

20 **CHAIRPERSON:** Yes.

**ADV SELEKA SC:** But I did... in fact, Dr Ngubane I get confirmation from the investigator that the one drafted - which is on the next page Chairperson – that statement was not released. Eskom released a different statement. So Dr Ngubane may well be correct.

**CHAIRPERSON**: Okay let us take it step by step.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: At page 761.1 ...[intervenes]

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: There is an email from Nazeem Howa to Salim Essa.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: And the subject: Statement from new board March 31. Attachments, statement from new board  
10 March 31. And then it says Salim by. And then it says amended version for your approval. And the message says, this message has been scanned for... Oh, that is just ... Now the statement referred to in that email, is it the one that appears at 761.2?

**ADV SELEKA SC**: Correct, Chairperson.

**CHAIRPERSON**: Is that the one that therefore came from Mr Howa?

**ADV SELEKA SC**: Correct, Chairperson.

**CHAIRPERSON**: So based on the email at 761.1, Mr Howa  
20 sends it Mr Essa. And then, what happened? Did it end up at Eskom?

**ADV SELEKA SC**: The draft statement, you would see Chairperson, the statement by Dr Ngubane. That is the heading. Chairperson of Eskom on behalf of the board.

**CHAIRPERSON**: Oh, okay.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Okay. Now that statement goes up to where? Where does it end?

**ADV SELEKA SC:** It is a two page plus document.

**CHAIRPERSON:** Does it end at 761.3?

**ADV SELEKA SC:** Point 3. That is correct, Chairperson.

**CHAIRPERSON:** Okay. Now have you ever seen this statement Dr Ngubane?

**DR NGUBANE:** No, Chairperson.

10 **CHAIRPERSON:** Before today, you have never seen it?

**DR NGUBANE:** I have not seen the statement. I had asked the investigators to get me the statement.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** But when we met again ...[intervenes]

**CHAIRPERSON:** Ja.

**DR NGUBANE:** ...they did not give me the statement.

**CHAIRPERSON:** Oh.

**DR NGUBANE:** They said, in fact, it was off the table.

**CHAIRPERSON:** Yes.

20 **DR NGUBANE:** I concluded, you know, it was a matter of no issue.

**CHAIRPERSON:** No, issue.

**DR NGUBANE:** Yes.

**CHAIRPERSON:** Ja. But I take it that you have not had a chance to read it, so you do not know what it says, except

for what you might be more quickly?

**DR NGUBANE**: I certainly have not had the chance to read it but it looks to me very long.

**CHAIRPERSON**: Yes.

**DR NGUBANE**: Very detailed.

**CHAIRPERSON**: Yes.

**DR NGUBANE**: And that is not a sort of media statement one would give.

**CHAIRPERSON**: Yes. Ja, it is quite long for a media  
10 statement.

**DR NGUBANE**: Exactly.

**CHAIRPERSON**: Okay now... Mr Seleka, where is the one that Dr Ngubane ultimately issued?

**ADV SELEKA SC**: By Eskom, Chairperson, I believe is the one on page 761.5.

**CHAIRPERSON**: 761.5?

**ADV SELEKA SC**: Yes, 761.5.

**CHAIRPERSON**: Are you there Dr Ngubane?

**DR NGUBANE**: I am happy with that. Well, that is the  
20 statement?

**CHAIRPERSON**: That is the statement you issued?

**DR NGUBANE**: Yes.

**CHAIRPERSON**: Okay, okay, okay. Mr Seleka, you...

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

**CHAIRPERSON**: But do we know whether that statement,

the long one that came from Howa, do we know whether it was sent to somebody at Eskom or not?

**DR NGUBANE**: I would not know Chairperson.

**ADV SELEKA SC**: We have not ...[intervenes]

**CHAIRPERSON**: You do not know anything?

**DR NGUBANE**: No.

**CHAIRPERSON**: Ja. Mr Seleka?

**ADV SELEKA SC**: We have not... the investigators have not been able to determine that Chairperson.

10 **CHAIRPERSON**: Yes. How did they obtain it?

**ADV SELEKA SC**: He says from the Gupta leaks.

**CHAIRPERSON**: From the Gupta leaks?

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: Oh, okay. I guess further work needs to be done to understand it. Ja.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: Okay.

**ADV SELEKA SC**: Yes, they will indeed do so Chairperson.

**CHAIRPERSON**: H'm.

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

**CHAIRPERSON**: Well, it is something quite important.

**ADV SELEKA SC**: It is.

**CHAIRPERSON**: Because on the face of it, it seems that Mr Howa may have prepared a statement that he intended should be release by Dr Ngubane.

**ADV SELEKA SC:** That is right.

**CHAIRPERSON:** So the question would arise, why would he get involved in that? So it is important to do investigation and see. I mean, it is a long statement. I guess you are not going to undertake such a long media statement for no reason.

**DR NGUBANE:** [No audible reply]

**CHAIRPERSON:** Okay but the investigators should investigate and if need be, Dr Ngubane can deal with it at  
10 some stage if necessary.

**ADV SELEKA SC:** Yes, thank you Chair. Yes. So Dr Ngubane ...[intervenes]

**CHAIRPERSON:** Well, maybe... Well, I just want to read some portions of this long statement into the record, just so that some of its features are captured in the transcript. It is the statement up here at page 761.2 going up to 761.3. The first paragraph says:

“It is meant to be Dr Ben Ngubane, Chairperson of Eskom on behalf of the board.

20 Merely a month has passed since we took the decisive step to ask four of our most senior executives to step down from their day to day roles to allow the board to appoint independent persons to assist us to develop a plan.

I am sure that Eskom is able to deliver a

sustainable, secure and sufficient supply to its consumers.

Yesterday, at a meeting of the board, it was decided or accepted the resignation of Mr Zola Tsotsi, as both chairperson and a director.

On behalf of the board, I want to express our sincere thanks to Mr Tsotsi for his selfless decision and I want to wish him well for his future endeavours.

10 The board has, once again, reaffirmed its approach around its broad ranging investigation and the request for key individuals to stand down in order for the process to take place without fear or favour.”

And then later on in the... on that particular page, 761.2 it says”

“The board, once again, confirms the key challenges impacting on Eskom and its ability to provide a sustainable, secure and efficient electricity supply. These are:

- 20
1. Cash constraints at the utility.
  2. An overburdened energy system leading to unprecedented load shedding.
  3. An aging fleet and seriously flawed maintenance programme.
  4. Rapidly increasing price of electricity.



5. Delays and cost overrun of the new build programme.”

And then at page 761.3 it says somewhere:

“It is our expressed desire that the investigations determine whether the current situation was exacerbated by incompetence, ill-informed decision making, mismanagement or untoward actions.”

Ja, okay. I just wanted to capture certain parts of the statement. Maybe I should ask this question, a different  
10 one. If indeed the statement was prepared by Mr Howa or at his request, that would suggest that somebody would have spoken to him to say: Would you prepare a statement?

Or if nobody spoke to him from Eskom, he might have thought that the situation was such that if he forwarded the statement to Eskom, it would be found to be helpful and could be used.

Did you know any grounds on which he could have thought that he was entitled to prepare a statement for you and send it and you would use it?

20 Do you think your friendship, if it was a friendship, that you had with him, may have made him believe that he could give you this kind of assistance?

**DR NGUBANE**: Well, he was a journalist Chairperson. And the story about Mr Tsotsi’s resignation was in all the newspapers. But I am not sure if that will be justifying

preparing the specific statement.

**CHAIRPERSON**: H'm. In terms of your relationship, as you know it, is there a chance that he might have thought that you would welcome this kind of initiative on his part?

**DR NGUBANE**: Well, you know, at one stage one of my nephews was aspiring to be a contributor of a column.

**CHAIRPERSON**: H'm.

**DR NGUBANE**: So he wrote a number of articles which was sent to Mr Howa to check if generally speaking they are  
10 acceptable. That, of course, and that he know commissioning. So probably, on that basis he wanted to help me. I do not know. But that is... this is as far back as I can think of why someone would want to write me a document.

**CHAIRPERSON**: And at the time of... at this time, 21 March 2015, how much did you keep in touch with him?

**DR NGUBANE**: Not much. The occasion that he wanted me to contribute or ask questions about Eskom but it was not much.

20 **CHAIRPERSON**: Yes.

**DR NGUBANE**: Ja.

**CHAIRPERSON**: Yes, okay. Mr Seleka, you might have one or two questions and then we adjourn or we could adjourn for lunch immediately. Okay, let us adjourn for lunch. We are at seven minutes past one. We will resume at five past two.

We adjourn.

**INQUIRY ADJOURNS:**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay, let us continue.

**ADV SELEKA SC:** Thank you, Chairperson. Dr Ngubane, on this draft we were dealing with, the draft media statement we were dealing with before the adjournment, I just want to put to you what Mr Tsotsi said about it and you can comment on that, in his affidavit to this Commission he

10 says:

“Since the release into the public domain of the Gupta emails it has come to my attention that reference was made to communication between Dr Ngubane and a certain Mr Howa, who was then the editor of New Age Newspaper. It stated that Mr Howa would assist Dr Ngubane in drafting a media statement detailing my departure from the Eskom board. This communication took place on 10 days before the matter of my resignation from the board was discussed.”

20

**DR NGUBANE:** Chairperson, I do not know what Mr Tsotsi bases this on. You know, I might be asked questions about his resignation afterwards but beforehand, I do not know where he gets it.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** So you – ja, it is one thing where he might have gotten this from, it is another thing whether is it factually correct.

**DR NGUBANE:** It is not factually correct.

**ADV SELEKA SC:** If no further questions from you, thank you, Chair. Mr Ngubane then I wanted to go back to your service on the board of Eskom being appointed 11 December 2014 as one of the new members, correct? I do not whether you would know, maybe you could explain  
10 to the Chairperson, your recollection of when would have been the first board meeting, the ordinary board meeting that the board was to attend.

**DR NGUBANE:** We had an induction somewhere in January, probably 16 or somewhere, and then the board committees were meeting, quite a number of meetings. But the official scheduled board meeting should have been 26 February. Sorry - yes, 26 February.

**CHAIRPERSON:** Ja, 26 February, ja.

**ADV SELEKA SC:** 2015.

20 **DR NGUBANE:** 2015.

**ADV SELEKA SC:** Yes.

**DR NGUBANE:** And that was cancelled where the Chairperson was Mr Tsotsi. Then on the 9<sup>th</sup> he called a special board meeting.

**ADV SELEKA SC:** Yes, just before that one, were you

given the reasons why the meeting, the scheduled board meeting of 26 February was cancelled.

**DR NGUBANE:** Well, this – what upset a lot of board members because it did not.

**ADV SELEKA SC:** Oh, we understand the board members received an email from Mr Phukubje, Malesela Phukubje.

**DR NGUBANE:** Absolutely correct.

**ADV SELEKA SC:** Yes, in which he explained that the meeting has been cancelled on the request of the  
10 shareholder. On the request of the shareholder representative, meaning the Minister.

**DR NGUBANE:** Well, it could be because on the 9 March 2015 meeting board members wanted to know why the meeting was cancelled and Mr Tsotsi I think said it was on instruction. So it was said then on the meeting of the 11<sup>th</sup> which was scheduled by the shareholder, she would be asked the reasons for the cancellation.

**ADV SELEKA SC:** And did she give – did the Minister give the reasons?

20 **DR NGUBANE:** No, I do not remember her giving reasons, but I would have to – I could check that, if you do not mind.

**CHAIRPERSON:** Ja, you can check.

**DR NGUBANE:** I am looking at the minutes of the 11 March when we met with the shareholder. No, I do not see

her actually giving reasons.

**ADV SELEKA SC:** But did the Minister deny that she asked for the cancellation of that meeting or you do not recall her denying it? You do not find it in the minutes. Are those the minutes of 11 March 2015 with the Minister?

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** Chairperson, just the page reference without having to go to the minutes, in Dr Ngubane's bundle that is page 286 to 289.

10 **DR NGUBANE:** What page?

**CHAIRPERSON:** Is that in bundle 09A?

**ADV SELEKA SC:** 09A, indeed, Chair.

**CHAIRPERSON:** And what page?

**ADV SELEKA SC:** Page 286 to 289.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** 286?

**ADV SELEKA SC:** Yes, 286.

**CHAIRPERSON:** Ja, it is the file – these are the minutes of the Eskom board meeting with the Minister on 11 March  
20 2015 at ten o'clock.

**ADV SELEKA SC:** Yes. Chairperson, if you look at – and Dr Ngubane, if you look at page 287 at the bottom of the page there are two bullet points. The line just before those two bullet point says:

“During the discussion phase of the meeting the

following questions were asked by board members.”

And there is your question:

“What are the reasons for cancellation of the board meeting of 26 February 2015?”

So I suppose that is one of the questions the Minister was asked.

**DR NGUBANE:** I do not see it, I do not see the response.

**CHAIRPERSON:** It is not in the minutes, as far as I could tell.

10 **DR NGUBANE:** I am not sure if you have seen it, but...

**ADV SELEKA SC:** No, I have not. I have not.

**CHAIRPERSON:** Is your recollection that the Minister was asked that question?

**DR NGUBANE:** The Minister was definitely asked that question at the meeting.

**CHAIRPERSON:** Yes, and you cannot remember what answer, if any, she gave.

**DR NGUBANE:** No, Chairperson.

**CHAIRPERSON:** I cannot remember, okay.

20 **ADV SELEKA SC:** Thank you, Chair. But is it not then – because what Mr Tsotsi says and this is the version, his testimony before the Commission, that he was asked to cancel that meeting.

**DR NGUBANE:** Well, it could be true, Chairperson, but I was hoping that would have had a definite response on the

question.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Ja, but you ...[intervenes]

**CHAIRPERSON:** But it would be strange if at the meeting the Minister was specifically asked a question and she did not respond, hey?

**DR NGUBANE:** Well, I would have expected to find the answer.

**CHAIRPERSON:** Yes, it might mean – it might mean that  
10 maybe the minutes are not accurate because I think it is not – it might not be just that question. Unless what comes on the second bottom half of page 288, unless what those bullets points are meant to be responses to the questions. I think they start on the other side but my recollection was that certainly the one about the reasons for the cancellation of the meeting, there seemed to be no response at all.

So I wonder whether it might mean that the minutes are not accurate because I would have imagined if the  
20 Minister was asked such a pertinent question, she would answer in one way or another.

**DR NGUBANE:** Certainly, Chairperson. Probably the person who took the minutes might have missed it.

**CHAIRPERSON:** Yes, yes. Okay. Mr Seleka?

**ADV SELEKA SC:** Thank you, Chairperson. And the very



- Dr Ngubane, the very fact of saying we are going to ask the shareholder representative why the meeting was cancelled, it is an appreciation of that the request could have come from the Minister and so the Minister must account for that cancellation.

**DR NGUBANE:** I agree, Chairperson.

**CHAIRPERSON:** Well, I see at page 288 that one of the questions that apparently was put to the Minister by members of the board was whether the Minister was  
10 comfortable with the composition of the board committees as they currently stand. Again, for me, that is strange, you know? The board should not be – it should just make its own compositions of committees and should not be checking whether the Minister is happy with that or not.

**DR NGUBANE:** Agree, Chairperson.

**CHAIRPERSON:** Ja.

**DR NGUBANE:** What happens, the Chairperson of the board assigns people to committees and then sends the list to the DPE.

20 **CHAIRPERSON:** Yes, just for information, I would imagine. Ja. Mr Seleka?

**ADV SELEKA SC:** Thank you, Chair. Dr Ngubane, then the – well, you are the meeting of the 11<sup>th</sup> but let us take you back to the meeting of the 9<sup>th</sup> how you get to be notified of that meeting. We understand you receive an

email from the company secretary in which two documents were attached, a proposed – a memorandum and a proposed resolution for the board. Do you recall that?

**DR NGUBANE:** Yes, Chairperson.

**ADV SELEKA SC:** Yes. And you have listened to the evidence that – well, let me rather ask you. The memorandum that was received by the board and the proposed resolution relate to the Chairperson what you recall they were dealing with.

10 **DR NGUBANE:** Chairperson, the notice of the special board meeting on the 9<sup>th</sup> came from company secretary together with the two documents. The first document was the notice of the meeting, the second document had a resolution that we had to take that we accepted the less than normal days of notification and it was business unusual.

And the second resolution was establish – well, problem is the sequence might be wrong, but there was a resolution establishing a subcommittee of three people, Mr  
20 Tsotsi himself, Ms Chwayita Mabude and Mr Zethembe Khoza.

A further resolution was giving authorisation for them to have a board mandate, board delegation, so that they can exercise the authorities as they would have been exercised by the board.

Further on, there was a resolution saying this board - mean this subcommittee of three must be allowed to make deviations from the Eskom procurement procedure. In other words, they would get money, they would appoint the investigators, they will oversee the investigation, they will then report to the board and to cabinet. I think those were the essential resolutions that were contained.

**CHAIRPERSON:** I know Mr Seleka is focusing on the meeting of the 9<sup>th</sup> now, I just want to go one step back.

10 The cancellation of the meeting of the 9<sup>th</sup> – well, I said to Mr Tsotsi when he was giving evidence, I found it strange that he agreed to cancel the meeting of the board at such short notice without being given reasons why because he said first he received a call from the former President Mr Jacob Zuma who said he had been trying to get hold of the Minister and Deputy Minister but he was not able to find them but indicated that the board meeting of the 26 February needed to be postponed and said, I think, the Acting DG of DPE at the time would phone him and then Mr  
20 Tsotsi said not long after that call he received a call from the Acting DG who said she had been asked by the Minister to ask him to postpone the meeting and Mr Tsotsi said he asked for the reasons and the Acting DG said the Minister had not given any reasons but he nevertheless went ahead and postponed the meeting.

So I said I found that strange again because this was going to be a meeting of the [indistinct] – background noise]. I hope we are safe, will somebody have a look at what is happening?

So I said I found that strange again because this was going to be a meeting of the board and there was no indication that the Minister was scheduled to be part of that meeting.

**DR NGUBANE:** That is right.

10 **CHAIRPERSON:** There was no indication that the President was meant to be part of that meeting. So why would somebody who is not meant to attend that meeting seek to have that meeting, a meeting of other people, cancelled? I found it strange. I do not know, what is your – do you have any comments to make to me about what I am saying?

**DR NGUBANE:** Yes, Chairperson, we were all puzzled and quite – I will say annoyed because we made plans for the meeting and then those plans changed without real  
20 reasons being advance.

**CHAIRPERSON:** And they were never given, as far as you can recall.

**DR NGUBANE:** No.

**CHAIRPERSON:** Okay, alright, continue, Mr Seleka.

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

Ngubane, you have seen – just to conclude the Chairperson's line of questions, you have seen that – or I am not sure whether you were here, we were referring to the MOI which gives the board exclusive control over the management of the SOE. In this case Eskom. Well, whether you were here, I do not know whether you will recall off hand the provisions of the MOI.

**DR NGUBANE:** Well, certain powers are reserved for the shareholder in the MOI otherwise all control is with the  
10 board.

**ADV SELEKA SC:** Yes and Mr Tsotsi in his affidavit and when he was here he said the scheduled meetings could not be cancelled. They could be postponed by the board itself. So what I am asking you is, the limits, if you say certain powers are reserved for the shareholder, are those the powers that bear on what we are talking about here, the setting of meetings for the board and cancellation of that meeting for the board? Could the Minister cancel the meeting?

20 **DR NGUBANE:** Not in terms of the MOI.

**ADV SELEKA SC:** So then you have gone to explain what was – the gist of what was contained in the proposed resolution. To your recollection, because I did not hear you mention this, did you recall whether or not the proposed resolution also included the suspension of the

executives.

**DR NGUBANE:** It did, Chairperson, because it was emphasised that the inquiry should not be impeded by the board or by anyone so that it loses credibility.

**ADV SELEKA SC:** Ja.

**DR NGUBANE:** Therefore, the suspension of the executives involved in the areas of investigation should go on.

**ADV SELEKA SC:** Yes. Well, we have looked at the  
10 document, both the memorandum and the resolution, none of the two explicitly referred to the suspension of the executives, much less to indicate how many number of executives should be suspended.

**DR NGUBANE:** Well, the Chairperson said there were charges to be dealt with concerning the executives, said he had a report – well, I am not sure if I can mention what he said.

**CHAIRPERSON:** Well, tell us what he said unless you have a reason to think you should not say.

20 **DR NGUBANE:** What he said, Mr Matshela Koko was caught on camera in a sexual escapade with a fellow employee at Eskom. Mr Matona did not investigate this matter.

The FD, Mr Tsholefelo Molefe had met with someone who was putting in a tender and had a discussion

with the person during the evaluation of tenders.

I cannot remember what he said in terms of Group Capital, Esso. But if I recall there was general complaint about the huge numbers of billions that were being paid for claims a Medupi but I am not sure if that was actually framed like with that.

So these were reasons he wanted us to accept the suspension with the charged to be preferred. I presume by that stage the board has started to doubt Mr Tsotsi's  
10 credibility because everyone said well, show us the papers, show us the report, because these are serious allegations, before we suspend the executives. He did not give us a report so then the board took that decision of approaching the shareholder to hear her view about the suspension.

Later on the board again raised the issue of the report. In a separate meeting Mr Tsotsi admitted that there was no report. So this is the reason why it was emphasised that the inquiry will not include finding about wrong doing on the part of the executives but clearly the  
20 FD, Mr Koko, Mr Matona, Mr Dan Marokane, were included in those misdemeanours that he wanted the investigation to be based on. I am sorry that I have mentioned people's name in this context.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** But I resume there is no other way.

**CHAIRPERSON:** Ja, well what I find strange, and I mentioned this to Ms Klein yesterday, with regard to the evidence that at the meeting Mr Tsotsi relied on allegations of misconduct by – on the part of at least some of the executives to say they must be suspended because he said here the meeting of the 9<sup>th</sup> came about because of the meeting he attended at the President's residence in Durban on the 8 March where he met, he said, with Ms Dudu Myeni, Mr Nick Linnell, former President Zuma. I think  
10 there may have been one or two other people in the meeting and he said this is where Ms Myeni told him about the idea of an inquiry, that there should be an inquiry at Eskom and that there should be a suspension of certain executives and he said that Ms Myeni said that the issue of the suspension of the executives should not be a problem because they would told that their suspension had nothing to do with allegations of misconduct on their part.

They would be told that it was simply to ensure that the investigation was not hindered in any way by their  
20 presence and he testified that when he met with the board, I guess maybe it must be the 9<sup>th</sup> , it was the 11<sup>th</sup>, he said he repeated the same line that the basis for suspending the executives would not be that they have done anything wrong, it would simply be to say it would be to avoid any hindrance to the investigation.



So it is quite interesting that your evidence and that of Ms Klein is that actually when he came to the board, he relied on allegations of misconduct on the part of the executives to say they should be suspended.

So I am just saying it is quite strange but you seem to be quite clear that that is what he said.

**DR NGUBANE:** Very much so, Chairperson.

**CHAIRPERSON:** Yes, yes, and the idea that there should be no reliance on misconduct as far as you know came  
10 from the board members.

**DR NGUBANE:** Absolutely because the board said or felt that these allegations were defamatory and there should be a proper document setting them out.

**CHAIRPERSON:** Mr Seleka?

**ADV SELEKA SC:** Thank you, Chairperson. So, Dr Ngubane we have the minutes of that meeting of the 9<sup>th</sup> and they are in your bundle, page 276, now as you go there let me just say that the minutes on the face of them reflect that they were signed by yourself.

20 **DR NGUBANE:** Yes.

**CHAIRPERSON:** They were?

**ADV SELEKA SC:** Signed by Mr Ngubane.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** So that is P276 to P281.

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** 281 if you can turn to it – you are there?

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** So if they're signed by Dr Ngubane for purposes of noting the meetings, proceedings, so you confirm that you're signing there, having signed there.

**DR NGUBANE:** 18 November 2016.

**ADV SELEKA SC:** And there's no other minutes of a meeting that took place on the 9<sup>th</sup> of March 2015?

10 **DR NGUBANE:** That's correct.

**ADV SELEKA SC:** That's nearly two years before you signed them.

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** Now in these minutes what you say Mr Tsotsi said is not captured?

**DR NGUBANE:** Not recorded.

**ADV SELEKA SC:** It is not captured in these minutes.

**DR NGUBANE:** Sure.

20 **ADV SELEKA SC:** What you say he said about executives that they should be suspended, you can remember definitely, the misdemeanours for which they should be suspended relative to the inquiry, sexual escapades you refer to, is not captured in these minutes, or even – well I cannot recall on that one, about the report, I can't recall offhand so I can't say that to you.

Do you want to have a look at it because – or do you want to comment?

**DR NGUBANE:** I looked at it.

**ADV SELEKA SC:** You did, okay, okay.

**CHAIRPERSON:** I am sorry, I didn't hear that.

**DR NGUBANE:** I did look at these minutes.

**CHAIRPERSON:** Yes, yes.

**DR NGUBANE:** A lot of things are missing.

**CHAIRPERSON:** Yes.

10 **DR NGUBANE:** But we had a problem with the Secretariat, where there used to be a backlog of transcription from the tapes into minutes. If we want to find this bit of it we would definitely have to listen to the tapes.

**CHAIRPERSON:** To the tapes ja, and they used to keep the tapes for a long time?

**DR NGUBANE:** They are supposed to.

**CHAIRPERSON:** Okay, have those been checked?

20 **ADV SELEKA SC:** The checking was done Chairperson, the investigators could not be provided with the audio recordings for the meetings of the 9<sup>th</sup> of March 2015, there are other minutes for March that month which couldn't be found, except for these ones they obtained. I don't know how they obtained these ones, but they were given these minutes. We have obtained – I mean the recordings, we

have obtained other audio recordings but not relevant to March 2015 from Bowman Gilfillan, the law firm.

**CHAIRPERSON:** So were the investigators told that there were no tapes relating to the meeting of the 9<sup>th</sup> or were they told that there were no tapes?

**ADV SELEKA SC:** They were told the audio recordings cannot be found.

**CHAIRPERSON:** They could not be found?

**ADV SELEKA SC:** Yes.

10 **CHAIRPERSON:** Okay, well I guess that needs to be done is that the Commission must satisfy itself whether indeed the tapes cannot be found, so we might not – we might have to do more than just take somebody's word that they cannot be found.

**ADV SELEKA SC:** Correct.

**CHAIRPERSON:** Okay I think Dr Ngubane the Commission will do further investigation to try and find those tapes, because it looks like there is a vast difference, at least on this point between what the minutes  
20 say and what you say did happen.

**DR NGUBANE:** But Chairperson in a subsequent meeting the members were still demanding the report.

**CHAIRPERSON:** That report?

**DR NGUBANE:** Which are the charges.

**CHAIRPERSON:** Yes. And the minutes of that meeting

reflect that demand.

**MR NGUBANE:** Yes probably 14<sup>th</sup> or something, I think that was the date, but then the legal person, because it was said we cannot suspend people without charges, the legal advisor said you can suspend without charges because it will come out at the end of the inquiry, so that is how that issue ...[intervenes]

**CHAIRPERSON:** Ja, okay, okay. Yes Mr Seleka?

**ADV SELEKA SC:** Thank you Chairperson. Dr Ngubane  
10 let's deal with this report that you are referring to, and you have seen the transcript of the audio recordings of the minutes of the 11<sup>th</sup> of March after the meeting with the Minister.

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** And we played that part of it where you are heard saying we don't have the document, which is the report Mr Norman Baloyi was seeking to obtain to be provide with, you said the document might be out there, that is not our document, we are making the decision and  
20 this is our own decision.

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** Yes, so in the audio what you are saying now is different from what you said in the audio, at the meeting.

**DR NGUBANE:** No but that was a subsequent meeting.

**ADV SELEKA SC:** That's the meeting immediately after you met with the Minister.

**DR NGUBANE:** Well Chairperson let me clarify this.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** We were very unhappy about suspending the executives without charges.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** Brought to us. Then we go to the meeting with the Minister – well let me just go back. The CEO, Mr  
10 Matona, at the earlier part of the meeting on the 11<sup>th</sup>  
...[intervenes]

**CHAIRPERSON:** Yes actually Mr Seleka I wondered why you did not start with that, the first meeting before the Minister so that we cover whatever Dr Ngubane might have to say about that meeting and we can move in stages, that meeting before the Minister, the meeting with the Minister, the meeting after the Minister.

**ADV SELEKA SC:** Yes now indeed Chairperson, one would ordinarily do that.

20 **CHAIRPERSON:** Ja, but you can complete ...[intervenes]

**ADV SELEKA SC:** I can do that.

**CHAIRPERSON:** Ja, you can complete what you are saying.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Well Dr Ngubane I interrupted you, you

were seeking to explain something and saying something had happened at the first meeting, at the earlier meeting before the Minister came. Ja, I think you wanted to explain that with reference to what Mr Seleka was asking you.

**DR NGUBANE:** The first meeting was a normal board meeting, we had a report, different reports.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** There was a report by the CEO, Mr Matona. He spoke about the problems at Eskom, the  
10 voluntary severance packages led to Eskom losing a lot of senior people, the skills war room had put a stop to this, then he mentioned other issues but came to the financial report; Eskom was in a dire financial situation. Normally they have a buffer of R20billion to be able to transact Eskom business, but this buffer had come down to 4.6 or something billion which was made of loans that was still to come in. If you remove those loans what they had was they were in the red for R3billion, so the going concern for Eskom was not there, so Eskom was technically bankrupt.

20 Now we go to the meeting with the Minister. The Minister goes over this again, saying Eskom is in financial trouble. Of course, he made also some other remarks which are there in the minutes.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** And he said there needs to be a forensic

inquiry into the affairs of Eskom and she tabulated the areas that were problematic, generation, lack of maintenance, delay in coming on stream of the new built, excessive expenditure on diesel, you know she counted quite a number of things, even the interest that was being paid in terms of loans you know all that came in.

Now she virtually instructs us that we must conduct a forensic audit and also tells Audit & Risk to go out and look for an investigator who will be independent, who will  
10 not be compromised in any way to carry out the inquiry, so when this is over and we go back to the meeting of the 11<sup>th</sup>, in committee, then the decision is taken to approve the inquiry, because it's clear now that the shareholder herself is seriously concerned. Every year, or at the beginning of a term the Board signs a shareholder compact, this shareholder compact spells out the performance predetermined key performance areas for the Board and we sign this and accept it with the shareholder.

Now what she was saying was essentially coming  
20 out of the shareholder, shareholder compact, namely that she can give guidance to the Board on key areas of concern, so we go back to the meeting now in committee and we say after all this then let us proceed with the inquiry, that's when the decision came in. However there will be no investigation that seeks to target people, it will



be about issues the Minister raised, about the performance of the system in general and so on.

**CHAIRPERSON:** Yes, I think the question that Mr Seleka had posed sought to say there is something that you are saying, I think with regard to the report, which Mr Seleka seems to suggest is not borne out by something, Mr Seleka do you want to repeat your question?

**ADV SELEKA SC:** Yes, yes, thank you Chairperson. Dr Ngubane you were saying members demanded to have a  
10 report from Dr Tsotsi but in the audios the transcript of which you were provided with yesterday, you are heard there saying there might be a document out there but that is not our document, we are proceeding with the decision and that is our own decision, and that was in response to Mr Norman Baloyi who was asking for the report.

**DR NGUBANE:** This is after the meeting with the shareholder that we now have taken a decision to proceed with the inquiry, whether Mr Tsotsi has given us the report you know we can't be controlled by that, because now we  
20 have got – if I can call it marching orders, that was in that context.

**ADV SELEKA SC:** Yes, no correct, I am talking about it in that very context as well.

**CHAIRPERSON:** So I – is the point you are making Dr Ngubane this that prior to the meeting between the Board

and the Minister you and other members of the Board were interested in seeing the report that Mr Tsotsi had talked about, but after the Minister had left as far as you were concerned at least, there was no significance in having hold of that report anymore.

**DR NGUBANE:** Correct Chairperson.

**CHAIRPERSON:** That is what you are saying?

**DR NGUBANE:** Correct.

**CHAIRPERSON:** Okay.

10 **DR NGUBANE:** Not that we exonerated the Chairperson, for talking of a report which he did not produce, not that.

**CHAIRPERSON:** Yes, okay, ja, just that for purposes of making a decision you no longer needed it.

**DR NGUBANE:** Yes.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Yes, so then Dr Ngubane what you are saying to the Chairperson is that the Board ultimately took the decision itself to commission an inquiry?

**DR NGUBANE:** Absolutely.

20 **ADV SELEKA SC:** Did the Board similarly take the decision to suspend the executives?

**DR NGUBANE:** Well that has got its own history. When Mr Tsotsi could not give us the report with charges, we said let them go on special leave so that we do fulfil the part that the investigation should not be hindered or

fettered, let them take special leave. The advisor, the legal advisor then came in to say, he was at the meeting, you cannot have special leave for investigations, you can have it for death in the family, or illness or whatever but not for investigation. Now for lack of a better word suspension was used.

**ADV SELEKA SC:** Yes you – okay a couple of things because you do – you did say that the Minister when she arrive or after she had arrived in the meeting, she went  
10 through the key areas that were affected and that required investigation or inquiry.

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** And you do say in your affidavit that the Minister then instructed you to commission this inquiry, so it became clear to you that it is the shareholder representative or government that wants this inquiry, in your affidavit, but you also go on to say, those ...[intervenes]

**CHAIRPERSON:** I think that was a yes, your answer was  
20 yes, ja, I think you nodded, so want to capture that.

**DR NGUBANE:** Thank you Chair, definitely a yes.

**CHAIRPERSON:** Ja, okay.

**ADV SELEKA SC:** Thank you Chair. And you also say the Minister said that the executive should step aside?

**DR NGUBANE:** That is correct Chairperson.

**ADV SELEKA SC:** Now did you ...[intervenes]

**DR NGUBANE:** I think we can check that with the minutes.

**ADV SELEKA SC:** You mean the minutes with ...[intervenes]

**CHAIRPERSON:** Although it might not matter you know whether she said step aside or suspend, I think everybody knew what they were talking about that they should not be around during the investigation, that was the point,  
10 whatever label, whatever terminology was used.

**DR NGUBANE:** That is correct Chairperson.

**ADV SELEKA SC:** Ja, in fact in your affidavit you say that although the Minister did not direct the Board to suspend the four executives she raised concerns of her own against them and the last sentence in that paragraph says, paragraph 4.17:

“The Minister felt that the presence of the four executives might hinder the investigation.”

**DR NGUBANE:** That is correct Chairperson.

20 **ADV SELEKA SC:** Did you ask her to provide a report why they should be – they should step aside.

**DR NGUBANE:** Well it followed from the requirement that there is no interference or impudence of the investigation.

**ADV SELEKA SC:** Yes, you know why I am asking this question is this, if the executives are ultimately suspended

on the basis articulated by the Minister and not as you say on the basis articulated by Mr Tsotsi of misdemeanours, why do you still want the report, or you say to the Chairperson that you still want the report from Mr Tsotsi about misdemeanours, why is it relevant?

**DR NGUBANE:** Because if I as a Chairman say to Board members I have the report with something and then subsequently I cannot produce that report it means I have lied to the members of the Board, that was the principle  
10 here. You said there was a report, you have not produced this report, you know what are you, are you lying, I mean this is essentially the sentiment, not that because it was invalid, but because it was a commitment made and people's names drawn through the mud, them being there in the report, because it is a fairly serious allegation.

**ADV SELEKA SC:** Yes now I hear you. I suppose the challenge for the Commission is that that aspect doesn't appear from the minutes that you signed, so one, number  
20 two is that notwithstanding the absence of that report, or even the existence of it, the Board decided to take a decision, not based on that, on the reasons articulated as you say by Mr Tsotsi.

**DR NGUBANE:** Right.

**ADV SELEKA SC:** So – well we hear what you say because at the end of the day it seems to the Board, and

even as captured in the recording that to you that document was irrelevant. You said it might be there, that's not our document, we're making the decision, it is our decision.

**DR NGUBANE:** Yes, because Mr Baloyi was insisting that that document forms part of what we are doing when in fact it was not there in the first place, we had taken a decision after consultation with the shareholder, in other words it was a new ball game that we're entering, but the fact that  
10 Chairman said publically at the meeting that there was a report and when do you want to enumerate allegations to the Board that to me was a very serious matter.

**ADV SELEKA SC:** Well the Chairperson explicitly told the Board that that report was the groundwork conducted by the Presidency. Did you ask the Minister about the existence of that report?

**DR NGUBANE:** Chairperson he never attributed that report to the Presidency when he spoke to us. What he attributed to the Presidency, which was quite ridiculous for  
20 us, was that he was the power to deviate from Eskom procurement procedures, he was the power. The Presidency has done all the governance and legal work around this deviation. Now no one having any idea about Eskom procurement can believe that, because no one came from the Presidency to the Eskom Commercial Division to

conduct such procurement. This is what he said to us.

So we – I mean that was quite ridiculous to say give me the carte blanche, let me proceed because the Presidency has done the work, I mean who would believe that.

**ADV SELEKA SC:** Yes, I am a little bit unable to follow your answer there Dr Ngubane, he did in fact say the President has done the work.

**DR NGUBANE:** On the deviation.

10 **ADV SELEKA SC:** Well the minutes, which I will read to you now of the 9<sup>th</sup> of March, the ones you signed, specifically say the President – let me read – a memorandum detailing the current status of events around Eskom was tabled for information, details of which had been circulated to members, the memorandum included resolutions around the establishment of an external and independent board of inquiry for Eskom at the request of the Presidency. The Chairman reported that the Presidency had expressed a concern that the impact of  
20 Eskom and power on the country was being understated. In this regard it was felt that the Board had to be certain that it received accurate information from management for all issues and initiatives once the Board had the information it would have to make decisive resolution.

He had been requested to request the Board to

authorise and mandate an independent external inquiry to establish the facts of the current difficulties. This inquiry will have to be unfettered and it carries on.

The Chairman took members through each of the resolutions proposed as follows, then you get the resolutions.

The issue of deviation was but one of those resolutions, I think ...[intervenes]

**CHAIRPERSON:** Mr Seleka we are at four minutes past  
10 three, let's try to – let's aim at finishing evidence on the meetings of the 11th by half past three.

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

**CHAIRPERSON:** Ja, let's try and cover all of those meetings of the 11<sup>th</sup> by half past three.

**ADV SELEKA SC:** Thank you Chairperson. And that is assuming Dr Ngubane, assuming Dr Ngubane what you're saying about what the Chairperson says is correct, that he made the allegations of misdemeanours, because we put that issue to Ms Klein that in fact the Chairperson himself  
20 was taken aback by allegations that the FD, the Financial Director, had met with bidders in a tender process. He was taken aback that there was such allegations that the Financial Director had met with the bidders.

**DR NGUBANE:** Chairperson those allegations could not have come from anyone other than the Chairperson, he did



make those allegations.

**CHAIRPERSON:** Was there at any stage after the meeting of the 11<sup>th</sup> and even after Mr Tsotsi had left Eskom was there a stage at which these allegations of misconduct by the executives where they came back, even if the executives had also left, were they ever heard of these allegations again or they ended at that meeting?

**DR NGUBANE:** Well the issue of allegations was dropped in terms of a decision that was taken.

10 **CHAIRPERSON:** Yes, yes.

**DR NGUBANE:** So we didn't deal with that.

**CHAIRPERSON:** Ja, they never came back to the Board.

**DR NGUBANE:** Ja.

**CHAIRPERSON:** Okay. Now let me ask this question, do you remember whether when you heard about this idea of the suspension of executives for the first time, whether it is on the 9<sup>th</sup> of March or on the 11<sup>th</sup> of March whether there were only three executives being talked about who would be suspended, initially and the fourth one was only added  
20 somewhere along the way, do you have any recollection whether from the beginning you only heard about the suspension of four executives or whether initially you had been told about three executives and later on the fourth one was added?

**DR NGUBANE:** From the beginning Chairperson it was

clear from what Chairman Tsotsi said that it involved all four.

**CHAIRPERSON:** Yes. And you – you heard from him about four executives to be suspended?

**DR NGUBANE:** Well absolutely.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** That is why he gave reasons.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** Why they should be suspended.

10 **CHAIRPERSON:** Yes. It is just that in his evidence he – he said that at the meeting in Durban that he said he had with Ms Dudu Myeni and the former President and Mr Nick Linnell three names of – three names only were mentioned and I seem to think he said that the fourth name was added by the Minister.

**DR NGUBANE:** Correct.

**CHAIRPERSON:** On the day that the Minister addressed the Board which would be the 11<sup>th</sup>. That is what he said and he said he was opposed to the idea of the Financial Director  
20 being added. Does that ring a bell at all with you?

**DR NGUBANE:** Chairperson I am almost certain this is not true.

**CHAIRPERSON:** Hm.

**DR NGUBANE:** Ja.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Thank you Chair. Now Dr Ngubane I have just read to you where you saying in your affidavit that the Minister raised concerns of her own against the four.

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** And that felt that the presence of the four executives might hinder their investigation. And the four executives I take you are referring to those who were ultimately suspended?

**DR NGUBANE:** That is correct Chairperson.

10 **ADV SELEKA SC:** Yes but is it not that there already the Minister says as you point out she says I have concerns with the four executives and I am – I feel that their presence will hinder the investigation. So how do we reconcile that with your answer to the Chairperson that you are definitely sure the Minister did not say?

**CHAIRPERSON:** No I think the – my question – the question he was answering from me was a question – was a question whether it was the Minister who added the fourth name and he said no the Minister as far as he knows it was Mr Tsotsi  
20 who mentioned all four names. Yes.

**ADV SELEKA SC:** Yes.

**DR NGUBANE:** That is what I...

**ADV SELEKA SC:** Yes no I appreciate that Mr Ngubane but what I am saying then the Minister you should have – you would have written here that the Minister raised concerns

with the three.

**DR NGUBANE:** With the three. Sorry.

**CHAIRPERSON:** No I think there is misunderstanding.

**ADV SELEKA SC:** Is it a misunderstanding Chair?

**CHAIRPERSON:** Ja I think from your side. Dr Ngubane's version is.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** He has never heard of the suspension being of three executives only.

10 **ADV SELEKA SC:** Yes.

**CHAIRPERSON:** From the beginning he only heard about the suspension of four executives.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** And the person that he heard talk about the suspension of four executives from the beginning was Mr Tsotsi.

**ADV SELEKA SC:** Okay.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Okay.

20 **CHAIRPERSON:** That is right Mr – Dr Ngubane?

**DR NGUBANE:** That is correct Chairperson.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** So he says they might have also spoken about four.

**ADV SELEKA SC:** Okay.

**CHAIRPERSON:** But everybody was speaking about four as far as Dr Ngubane is concerned.

**DR NGUBANE:** Absolutely.

**ADV SELEKA SC:** Yes. Yes no I – I follow what you are saying Chairperson.

**CHAIRPERSON:** Or maybe you missing something so if I am missing something you can pursue.

**ADV SELEKA SC:** Yes no that is fine. That is fine Chair.

10 So Dr Ngubane then the – the position of Mr Tsotsi to have four suspended would have been similar to the Minister who wanted the four – who showed that the four will hinder the investigation.

**DR NGUBANE:** Correct Chairperson. In terms of the areas of concern which you identified. Mr Tsotsi identified those areas, the Minister identified those areas.

**ADV SELEKA SC:** Yes. But then let me give you Mr Tsotsi's version which is what the Chairperson has given you. Maybe you have answered him but Mr Tsotsi and the audio show  
20 that Mr Tsotsi was opposed to the suspension of the Financial Director. He only gave three names.

**DR NGUBANE:** Well – well I do not know but...

**CHAIRPERSON:** Maybe the – maybe the way to start is this. On your recollection Dr Ngubane when Mr Tsotsi talked about the suspension of four executives was he talking about

the suspension of four executives on the basis that he was saying to the board the four executives whose areas of work is affected – will be affected by the litigation must be suspended or must take special leave of something. In other words was he talking on the basis that all four must be suspended or did he ever speak on the basis that he supported the suspension of three but not the suspension of the Financial Director? What is your recollection?

**DR NGUBANE:** Sorry Chairperson. Not as far as I  
10 remember. It was all four areas and their people had to step  
aside.

**CHAIRPERSON:** Yes okay.

**ADV SELEKA SC:** Thank you Chair. The – however to accelerate this Dr Ngubane – oh or expedite this. Ultimately the board makes the – made the decision based on what you say was a clear direction from the shareholder representative.

**DR NGUBANE:** That is correct.

**ADV SELEKA SC:** So you decided as the board then both to  
20 commission an inquiry and to suspend the executives.

**DR NGUBANE:** That is correct.

**ADV SELEKA SC:** And the suspension was for three months.

**DR NGUBANE:** That is correct.

**ADV SELEKA SC:** As communicated to them at least. So

tell – well there is evidence – the witnesses have already testified let me rather rephrase my question. The executives are then suspended and at some point they make enquires with the board about the Terms of Reference of the investigation. One of them offers to assist the board in the inquiry. The other one goes to the Labour Court. How does the board deal with those enquiries from the executives in your recollection?

**DR NGUBANE:** Well I do not think – there are minutes here  
10 where Mr Baloyi talks about this. I am not sure which minutes. They wanted to have cell phones because they wanted to communicate with the executives at Eskom.

Mr Baloyi was saying they cannot have cell phones or computers or cell phones or – somewhere you know communication equipment because they are not supposed to talk to the people at Eskom.

Some other person said by virtue of suspension you cannot communicate with the people in the organisation. So that issue was discussed.

20 **ADV SELEKA SC:** Yes my question is for instance Mr Dan Marokane he writes a letter and he offers to assist Eskom in the inquiry if the board genuinely wants to find solutions to the problems that letter of his is dated 18 March 2015. Let us start with him. According to your recollection how did you deal with the request or offer made by Mr Dan Marokane?

**DR NGUBANE:** Well my recollection is that the fact that they were removed from their positions means they – it was not required for them to interact or interfere with the investigation. So the offer of help is meaningless then if it is granted the suspensions were therefore meaningless.

**CHAIRPERSON:** Well that raises – please do not forget next question Mr Seleka.

**ADV SELEKA SC:** Okay Chair.

**CHAIRPERSON:** That raises a question that I was going to  
10 raise with you. If it was – if the board accepted that the investigation was not going to be into any wrongdoing on the part of the executives but the investigation was going to be a genuine investigation to try and establish what was wrong at Eskom and so on.

Why did the board think the executives would interfere with that investigation? Because they were not – this would not be a case where the investigation was into the any wrongdoing on their parts. You know when it is said somebody must not interfere with the investigation usually it  
20 is because the investigation relates to allegations of wrongdoing on their parts.

Now here the board accepts that there is no allegation of wrongdoing on their part so if the investigation seeks genuinely to find solutions why does the board not think that the leadership of the entity which has been there



over the years try different solutions should not be part of the solution. Why does the board not think that these people can assist in the investigation so they should not be suspended? They should be part – they should tell the investigators if you are thinking of coming up with this forget because five years ago we tried exactly that and it did not work.

If you are thinking of coming up with this idea to solve this problem forget because we tried it last year. It did  
10 not work. That would be a constructive way to try and find a solution.

But now when you remove them it seems to be – there seems to be some tension between saying on the one hand the investigation would not be into any wrongdoing on their part but at the same time removing them from the process of finding a solution. What do you say to that?

**DR NGUBANE:** Well Chairperson it was emphasised that the credibility of the results and the reports must be unquestionable. So the reports must be based on  
20 completely objective assessment. In other words if Dan Marokane is paid R22 billion we attach Africa Power Systems for claims that they have made for modifications to the plans that they have made. And he approved that. There is no certainty that he would not want to justify that.

**CHAIRPERSON:** Yes but when he wants to justify that that

is when you confront him as the investigator and say, how do you justify this? As an investigator you are not going to be able to say you have completed the investigation without hearing what he has to say. If he wants to justify it let him justify it. You question his reasoning. You question his reasons.

If his reasons are plausible you accept them. If they are not plausible you reject them. But his reasons they become part of the investigation and that enhances the  
10 quality of the investigation. It is an investigation where you have looked at everything. You have had all perspectives and you come to a conclusion having heard all perspectives this is the right way to go.

**DR NGUBANE:** Well I am not sure if the department or the government would have accepted this situation as being real to your finding or information. Because the...

**CHAIRPERSON:** Why not?

**DR NGUBANE:** Because the person might have been defending himself; his actions.

20 **CHAIRPERSON:** But a person is entitled to defend himself but as the investigator you engage them. I mean just like this investigation. This is an investigation. We are not hearing only one side of people who make allegations up against other people. We are hearing everybody.

You are sitting there you were saying earlier on you

were taking exception to people who may have referred to your board as the Gupta board. I am not going to say I do not want to hear your defence because – because I say then my findings will not be credible if I hear your defence. That does not make sense.

It makes sense that I should hear what you say because if I make a finding having heard your side too that finding has more credibility than a finding which does not – which is not based on hearing your side as well.

10 **DR NGUBANE**: Well...

**CHAIRPERSON**: So what I am saying is I struggle with the reasoning that says on the one hand let us suspend the executives but we must make it clear the investigation is not looking into any allegations of wrongdoing to them. We are simply wanting to find genuine solutions to the problems of Eskom. So I do not understand it.

**DR NGUBANE**: Well I hear you Chairperson however it should have complicated the investigation if the same people who were being said to have failed to prevent what was  
20 happening are then relied upon for information. Rather go into the department and say show me invoices, your contract management documentation. Show me how the contract management office goes into the project site and records what is happening and records the claims purely on record not relying on what people say.

**CHAIRPERSON:** But remember the board was saying this investigation is not going to look into the conduct of the executives you see. That is what the board was saying. It is not going to look into the conduct of the executives.

**DR NGUBANE:** Precisely Chairperson.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** That is why they should not be there. Because if we start looking into their conduct then that is another level of investigation.

10 **CHAIRPERSON:** Well – well I said to I think either Mr Matona or Mr Tsotsi earlier this week. I said I wonder whether it is possible for an investigation into the performance of Eskom to be conducted – to be conducted without that being also an investigation into how the leadership of Eskom has led the entity namely the executives what decisions they have made which may have led to poor performance on the part of the entity. You understand that. These are – these executives were the leaders in terms of management. If you want to – if you are looking into the  
20 performance of Eskom you say it is not performing well it just seems to me that necessarily you are investigating the question of have, they been making the right decisions? Do they know what they are doing? Why is the company performing so poorly? You understand what I mean?

**DR NGUBANE:** I do.

**CHAIRPERSON:** Because the company does not run itself. It is run by human beings. Those executives are the top people so I was saying to either Mr Matona or Mr Tsotsi I am not sure how accurate it was to say you know the conduct – the investigation does not relate to their conduct because it seems to me they make decisions and those decisions either result in good performance by the company or bad performance. And if you want to see how you will turn things around it seems you will be looking at how they have been  
10 running – running the company. Do you want to say anything about that?

**DR NGUBANE:** Well I see your standpoint but I am also trying to express the fact.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** If we started allowing them to come into the investigation then that will involve ipso facto finding guilt against the executives. We were not going to try and find guilt among the executives.

**CHAIRPERSON:** Yes.

20 **DR NGUBANE:** We were going to find how the system works.

**CHAIRPERSON:** J.

**DR NGUBANE:** And then the recommendation from Dentons put out a lot of recommendations how we can improve the system. And that was what we were interested in.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** Not engaging for instance Mr Matona why did you say load-shedding must become part of our lives in South Africa because load-shedding is going to take many years. I mean if you were involved this is the question you would be asked. Why did you say that? But because he is not there, we are not looking at his pronouncements but we are looking at how the system works.

**CHAIRPERSON:** Okay just – but just go back to the need or  
10 end justification for the suspension. You see as I see it there is nothing wrong – there would have been nothing wrong with the investigation going on while they were there and them being asked to contribute whatever they can to the investigation.

After all I would imagine a lot of them are technical people and so on and so on. But that would not make them to be the investigators. The investigators would be independent, they would ask them whatever they need to ask them in order to better understand the systems and whatever  
20 but in the end when the investigators make their report they would be able to say this is the input we got from this executive and that executive about this and about that and about that.

They would be able to say these ideas from this executive are good ideas. We have tested them objectively;

we cannot reject them just because they come from somebody within the company. But these ones have no basis. We reject them.

So they take what they believe is good and make it part of their report and the solution and reject what has no basis that they get from the executives. But without the executives interfering in anything they keep their part – the investigators keep their part but they have a chance to make their own contribution and the investigators decide what  
10 persuades them and what does not persuade them.

**DR NGUBANE:** Chairperson.

**CHAIRPERSON:** Hm.

**DR NGUBANE:** If I may?

**CHAIRPERSON:** Yes.

**DR NGUBANE:** [Inaudible - mumbling].

**CHAIRPERSON:** Yes no that is fine just have a look.

**ADV SELEKA SC:** Chairperson may I add a question so we can deal with both or shall I wait?

**CHAIRPERSON:** Oh okay you can add if you think ...

20 **DR NGUBANE:** Well I found what I wanted.

**CHAIRPERSON:** Oh okay. Alright.

**DR NGUBANE:** This is the Dentons Task Order 1.

“In preparing the scope of work for Task Order 1 the scope of work we have sought to address the problems statement and key

areas of concern described in Eskom's Terms of Reference. The problems statement that the scope of work is intended to address is defined as follows: The board seeks to obtain an independent and unfettered view regarding the credibility and the correctness of information that Eskom's executive management EXCO provides – provides in their reports relating to poor performance of generation, delays in bringing new generation etcetera.”

That was the scope of work. Then they continued to say:

“When we go to Task Order 2 then there may be other investigations interviews and so on”

Now the Audit and Risk committee in spelling out the Terms of Reference said Eskom reserves the right to stop or terminate the investigation at any stage once they are satisfied that these areas have been covered. And this is what happened.

20 When the information came about these issues it was enough for Audit and Risk to package the reports which touched on every – each division and say put this into operation. Because of your management in terms of maintenance and many other aspects the primary energy, the buying of coal and so on that enabled us in eight months of



our existence at Eskom to stop load-shedding which had been going on for almost two years at stage 3 level.

We stopped the load-shedding for fifteen months using these guidelines. So the contribution that would have been made by the executives I may not dispute. But in terms of what was – the objective was to get to grips very quickly within a matter of three months that was achieved.

**CHAIRPERSON:** Okay. Mr Seleka.

**ADV SELEKA SC:** Thank you Chairperson. What I wanted  
10 to also say Dr Ngubane is that and you touched on it that the methodology included the interviews. The Dentons Report did in fact say in effect the methodology of the investigation was limited to

1. Interviewing employees of Eskom and also other persons and
2. Review of documents.

But then they say there was a limitation. They give you a list of limitations, access to documents, access to emails and then the third is interviews with suspended employees.  
20 Interviews were requested with certain employees who were under suspension. We were advised that these interviews could not be arranged due to the suspension of the employees in question. We were required to make direct contact with these employees for these purposes. So the interviews with employees even though suspended was

envisaged in the methodology.

**DR NGUBANE:** Absolutely.

**ADV SELEKA SC:** But they highlight it as a limitation that Eskom could not provide them with – with the requested interviews. So you said [00:28:34] director yourself.

**DR NGUBANE:** Chairperson there were task orders contained in proposals from Audit and Risk and we wanted to keep to those task orders for the sake of three months return of results. We interview executives – to interview all levels  
10 of management would have taken a year or even two years but we wanted as the Minister said she wanted a short sharp deep dive. A short, sharp deep dive meant you have to look at the system and look at all the areas what – this just was not a general forensic investigation which can take any amount of time.

**CHAIRPERSON:** Yes. Mr Seleka.

**ADV SELEKA SC:** Thank you Chair. Then – so the commission Mr – Dr Ngubane what it should accept from you is that their requests by the executives particularly the one  
20 who said he could offer assistance was not acceptable?

**DR NGUBANE:** No, because it was not part of task order number one.

**ADV SELEKA SC:** Now Mr Dan Marokane specifically has said that letter of 18 March 2015 went unanswered but then he called you when you were the acting chairperson

...[intervenes]

**DR NGUBANE**: Yes.

**ADV SELEKA SC**: ...somewhere in May, 20 May. And in two days you had arranged Mr Khumalo and Mr Zethembe Khoza to engage in the separation negotiations.

**DR NGUBANE**: Well, if I remember well, Dan Marokane wanted to move on. By the way, I go to the same church as Dan Marokane. We know each other very well. So he had implied to me that we are delaying his ability to move on. So  
10 I asked Zethemba Khoza and Romeo, please we have to deal with this issue urgently. That is how they came to see him very quickly.

**ADV SELEKA SC**: Yes. So prior to that, was there an option for him to come back to Eskom?

**DR NGUBANE**: There was an option for everyone to come back after the inquiry was finished. And somewhere along the line, for instance, I was president of the CCMA. During the break...

By the way, I was not the official representative of  
20 Eskom. I went there because the board said Mr Tsotsi is going there but we would also like you to be there. At the intermission I go to him say... and Mr Tshediso, I have known for a long, long time. We are on very good terms.

I said: Tshediso, why do you come here when you know that in three months' time the investigation is complete and

you guys come back to Eskom?

So he was very angry. He said: you have dishonoured my name. You have cast suspicions n my integrity. I am never going back to Eskom.

We have had quite a long discussion. I said but in the end, you will still need Eskom whatever job you go to say there was nothing wrong that you did.

We parted on that note but his statement was very emphatic: I am not going back.

10 **ADV SELEKA SC:** Yes, what Mr Matona has told the Commission is that he had taken Eskom to the Labour Court and to the CCMA ultimately seeking a relief that would give him his job back.

**DR NGUBANE:** Certainly. But he knew that we had said at the end of the three months when the investigation is over, they can come back. He knew that.

**ADV SELEKA SC:** And he said to the Commission that when... the first occasion when you met with him, you asked for a postponement at the CCMA so that you can get  
20 instructions from the shareholder representative  
...[intervenes]

**CHAIRPERSON:** Well, Mr Seleka you are using instructions, I think, in a legal language. Dr Ngubane might not understand that in that way. I think you might be wanting to say ...[intervenes]

**ADV SELEKA SC:** Mandate.

**CHAIRPERSON:** ...mandate. Ja. [laughing]

**ADV SELEKA SC:** [laughing] Correct, Chairperson. So that you could hear the mandate from the shareholder representative. And on the second occasion, Mr Khumalo told him in that meeting that the option of going back is off the table.

**CHAIRPERSON:** But first of all Chairperson he is confusing me with the chairman. It was the chairman who was going to  
10 consult the shareholder, not me. I was there just because Dentons is there as well but in my own initiative because of my relationship with him, I tried to persuade him that it was more useful to wait for the investigation and come back.

**CHAIRPERSON:** The chairman you referred to would have been who?

**ADV SELEKA SC:** Mr Zola Tsotsi. But would he not have gone by then ...[intervenes]

**DR NGUBANE:** Yes, Chair. But the whole team was emanating from his term. The suspension was during his  
20 term.

**CHAIRPERSON:** But he would not be able to represent the board of which he was no longer a member even if the matter arose during his term.

**DR NGUBANE:** Well, I am not too sure on what basis the board said I should go there. But I certainly did not go with

the lawyer from Eskom.

**CHAIRPERSON**: Ja.

**DR NGUBANE**: Or consult with the lawyers at Eskom.

**CHAIRPERSON**: Ja.

**DR NGUBANE**: I was just there as an individual in the gallery.

**CHAIRPERSON**: Ja.

**DR NGUBANE**: And after the break, I went down to meet with Matona...[intervenues]

10 **CHAIRPERSON**: And you are certain Mr Tsotsi was there?

**DR NGUBANE**: I did not meet Mr Tsotsi.

**CHAIRPERSON**: Oh, you did not. Ja.

**DR NGUBANE**: But I was told Mr Tsotsi will be there but you must also be there.

**ADV SELEKA SC**: Ja. Ja, it would be strange if... it depends when it was because Mr Tsotsi left the board on the 30<sup>th</sup> of March. If the CCMA meeting was at some stage during March then maybe Mr Tsotsi might have been there but I...

20 But even if it was after the 20<sup>th</sup>, because the 20<sup>th</sup> of March, he effectively was charge, I think, by the board or...

I am not sure if he would between the 20<sup>th</sup> of March and the 30<sup>th</sup> of March, I am not sure he would have performed any duties as chairperson of a board.

Or what is your recollection? You remember... Am I right that on the 20<sup>th</sup>, at the meeting on the 20<sup>th</sup>, the board told him that he was...

**DR NGUBANE**: Yes.

**ADV SELEKA SC**: It is 19, Chair.

**CHAIRPERSON**: 19 or 20 that he was going to be charged. So my own assessment is that it is unlikely that the board would allow him to go and represent it as chairperson at the CCMA between the 20<sup>th</sup> of March and the 30<sup>th</sup>, in the light of  
10 the issues that were there between the board and himself.

**DR NGUBANE**: I agree Chairperson but my going there ...[intervenes]

**CHAIRPERSON**: Ja.

**DR NGUBANE**: ...was purely as an observer.

**CHAIRPERSON**: Okay, okay.

**DR NGUBANE**: Ja.

**CHAIRPERSON**: And you cannot remember who... well, you think it was Mr Tsotsi who represented the board?

**DR NGUBANE**: I think so because I think someone said he  
20 will be there. You know.

**CHAIRPERSON**: Oh.

**DR NGUBANE**: But you must also go there.

**CHAIRPERSON**: Okay alright.

**DR NGUBANE**: And I did not even interact with the Eskom lawyers.

**CHAIRPERSON:** Yes, okay.

**ADV SELEKA SC:** Thank you, Chair. Yes, well... ja, it is only because I think the question has been asked Dr Ngubane that Mr Matona did not place Mr Tsotsi in the settlement discussion or even at the CCMA.

He only mentioned your name and Mr Khumalo but I think Ms Venete Klein would have been involved as well because... in fact, the three of you were authorised by the board ...[intervenes]

10 **DR NGUBANE:** Sure.

**ADV SELEKA SC:** ...to engage the suspended executives.

**DR NGUBANE:** Yes, Chairperson but this was after the report that these suspended executives wanted to part with Eskom. And their duty was just with... because we were trying to make this very smooth, you know.

Not to engage again in protracted legal battles because obviously they will have claims and so on. I mean, I did not go into the legality of it but the essence of it was, to try and handle this in a calm and amicable way whatever the  
20 settlement issues or parting issues were.

But I must add that after my meeting with Mr Matona, I was not surprised when I was told he wants to part with Eskom. I was not surprised at all.

However, I did not attend all meetings because at that stage, I was busy going to... I mean, the staff morale at



Eskom was absolutely low.

So we started on a programme of visiting all the power stations to persuade people to give more into their work because we wanted to stop load shedding.

And we could not do that unless each power station was working optimally and cooperating with others, for instance, the National Control Centre which was regulation the load shedding.

You know, it was trying to get this thing to work  
10 efficiently. So I did not spend much time with the issue of the settlements or the executives.

I did attend some meetings but I am sure there were other meetings that I was not part of.

**CHAIRPERSON:** Well, we may as well deal with this other issue that I have raised with Ms Klein as well yesterday because she also gave evidence on the basis that the executives who left Eskom left because they made their own decisions that they wanted to leave Eskom.

**DR NGUBANE:** Yes.

20 **CHAIRPERSON:** And not that the board did not want them anymore.

**DR NGUBANE:** That is right.

**CHAIRPERSON:** Now from what you say, it looks like you are going along the same line Is that right?

**DR NGUBANE:** That is correct, Chairperson.

**CHAIRPERSON:** Yes. Now what I am put to him which I am putting to you as well is, certainly Mr Matona, who is the only one of those executives who has given evidence here, said that he went to the Labour Court because he wanted his job back.

He mentioned he was paying his lawyers from his own pocket if I remember correctly. He was disagreeing with his suspension.

And he said then the Labour Court referred his matter to  
10 the CCMA. He said he still wanted his job back. He said that Eskom asked for the postponement of the CCMA process because he said they wanted to talk to the minister to see what offer they could make to him.

I may be mistaken but I thought he said you were the one who represented Eskom at the time when the postponement at the CCMA was sought.

But he says, then subsequently there were two meetings between him and those who represented the board. He says at the first meeting he was told by this delegation from the  
20 board, when he said he wanted his job back, he was told that going back to his job was off the table.

He says, as a result of that, he needed to go home and reflect on the whole matter. And I assume that he meant, because he was still thinking he could get his job back.

And he said, he reflected and realised that he was not

wanted at Eskom anymore. He said it was clear that the board did not have him as part of his future plans at Eskom and he realised that if he was going to litigate to try and get the job back, financially he would not make it.

So he then realised that he should rather accept that he was not going to get his job back and talk about money. He says at the second meeting, that is when there was a discussion about money and ultimately, he was given... the settlement agreement was that he would get a year's salary.

10 That is the evidence he gave.

Now my question was, if Mr Matona or any of the other two executives, who did not return, if they decided on their own to leave Eskom, why did the board authorise that they should be paid a year's salary?

Because if somebody wants to leave, you let them leave. They resign. And they get... if there are any benefits that you get from resigning in the company, you will get those benefits.

**DR NGUBANE:** Yes.

20 **CHAIRPERSON:** But you do not get given more benefits.

**DR NGUBANE:** Yes.

**CHAIRPERSON:** What I did say is that, however, where the company does not want you back and you want to go back, then there is a dispute and then in that context the company could say: We will pay you so much, a year's salary

provided you agree to resign and let us part ways.

So in that way the company is in effect buying his departure from the company. Then I can understand that situation.

But where somebody... where the company has no problem with you continuing working for it and you say you are no longer interested, one would have expect the company to say: Well, then put in your resignation and what normally happens when anybody resigns will happen. Do  
10 you want to comment on this?

**DR NGUBANE**: Chairperson, I think Matona is making some errors.

**CHAIRPERSON**: H'm.

**DR NGUBANE**: I did not intervene with the CCMA to say they must postpone the hearing.

**CHAIRPERSON**: I may be wrong in saying that he said it is you but he certainly said the man at Eskom who ever represented Eskom but I thought he said it is you.

**ADV SELEKA SC**: Can I read that... can I read from his  
20 affidavit Chairperson?

**CHAIRPERSON**: Ja.

**ADV SELEKA SC**: He says:

“At the first CCMA hearing on 13 April 2015...”

Now by that time Mr Tsotsi is out.

**CHAIRPERSON**: Yes.

**ADV SELEKA SC:** Yes.

“...Eskom represented by the then chairperson of the board, Dr Ben Ngubane, requested a postponement to enable the Eskom Board to consult the shareholder on what Eskom could concede or offer in the CCMA reconciliation process.

Eskom requested two or more other subsequent postponements during which time they approached me and requested to negotiate directly with me.

10 In my interaction with the Eskom Board representatives, Dr Ngubane, Mr Romeo Khumalo, Mr Venete Klein, it was clear that the option of my return to my job to Eskom was off the table.

The only issue being returns of my separation on the company.”

Well, I went further but maybe you can concentrate on the first paragraph.

**CHAIRPERSON:** Yes. So from that affidavit it is clear that he says one, the meeting at the CCMA, the first meeting at  
20 the CCMA was during April which is when Mr Tsotsi was no longer chairperson of the board. Two, he specifically mentions that you were there and you were part of three representatives of the board of Eskom.

**DR NGUBANE:** At the CCMA, I did not contact Eskom lawyers. I presume such an arrangement of postponing will

be dealt with by legal representatives.

I met Mr Matona during the break and we had a discussion. I was looking for the minutes of the Audit and Risk Committee when they were employing Dentons.

One of the statements they make is that: Please, talk to the negotiating team. Ask Dentons to curb their price because Dentons wanted to go not on a fixed rate but just in terms of this.

10 Ask them to curb their price and ask them to finalise the scope of work with us because we want in three months' time to have the senior executives back at Eskom. I will try and find those minutes.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** Because to me ...[intervenes]

**CHAIRPERSON:** Yes.

**DR NGUBANE:** ...it is very clear that the scope did not include sending away the senior executives but they were expected to return. And at no meeting did the board take a decision that we want... we do not want these people back.

20 At no stage, Chairperson.

**CHAIRPERSON:** What do you say then about why the board decided they should be paid each one a year's salary or thereabout in circumstances where the board had never said we do not want you back?

**DR NGUBANE:** Because at some stage, we were

informed... I cannot recall exactly whether it was P & G or which committee, that the people wanted to part ways with Eskom.

Now the challenge was to make this parting of ways as amicable as possible. Hence, we were given the task to talk to the senior executives who wanted to go so that this thing is amicable, the parting is amicable and there is a proper settlement.

I did not go into the discussions about how much the  
10 settlement would be. It was P & G who did that.

**CHAIRPERSON:** Who was leading P & G at the time? It's not Ms Klein, right?

**DR NGUBANE:** I think it was Zethembe Khosa.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** No, no. It could not have been him. It must have been Ms Klein.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** Because Mr Zethembe Khosa was now acting CEO.

20 **CHAIRPERSON:** Yes.

**DR NGUBANE:** Ja.

**CHAIRPERSON:** You see my difficulty ...[intervenes]

**DR NGUBANE:** I may be wrong about ...[indistinct]

**CHAIRPERSON:** Ja. No, no. That is fine. My difficulty is simple that whereas an employer, I have no problem with you

coming back after you have been suspended and continue working for me but you decide you want to go, why must I pay such a lot of money to you? It is your decision. You wanted to go. I want you to continue. Why must I pay?

**DR NGUBANE**: Chairperson, you are right. However, there was a lot of panic at that stage at Eskom. So I presume it was to try and limit the fall out because by large, these decision to suspend did not really been because we wanted to suspend.

10        They came about through all sorts of processes. So I think the issue was to try and limit the fall out. I mean, going back to court to fight about claims and so on.

It does not state it but I think this must have been the reason why a settlement that is amicable were sought. I have not read the settlement documents of any of the executives.

**CHAIRPERSON**: H'm. Ja. Yes.

**DR NGUBANE**: I am not sure what it says.

**CHAIRPERSON**: Okay.

20        **DR NGUBANE**: But I am sure the motivation was to have a good separation.

**CHAIRPERSON**: Ja, it is really strange to me. I would have thought even if they were... it was though that they would pursue mitigation, I would have thought that Eskom would say: Look, what are they going to say about us?



Because we never said we do not want them back. They are the ones who say they no longer want to work for us.

**DR NGUBANE**: Ja.

**CHAIRPERSON**: So if anyone of them is going to go court, let us see that but we are not going to pay a year's salary for somebody who decides on their own they are leaving. That is my thinking. But you... it may be that you have said all you can say about the issue.

**DR NGUBANE**: Well, I cannot justify that.

10 **CHAIRPERSON**: Yes.

**DR NGUBANE**: But my thinking is, after the commitment that in three months' time stated in writing to Dentons you must be back at work, means to me that there was never an intention that they must never come back.

**CHAIRPERSON**: It would be good if you would be able to lay your hands on those minutes or give whatever information to your legal team to pass onto the evidence leader so that we can look for those minutes. That we may have that.

20 **DR NGUBANE**: I will do so Chairperson.

**CHAIRPERSON**: Ja, thank you. Mr Seleka.

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

**CHAIRPERSON**: Well, we are at four o'clock. Let us talk about how far we can go.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: From your side Dr Ngubane we can still go on, is it not?

**DR NGUBANE**: Until midnight, sir.

**CHAIRPERSON**: [laughing] Ja, that is good. I think from your lawyers also there is no problem.

**DR NGUBANE**: Ja.

**CHAIRPERSON**: Mr Seleka.

**ADV SELEKA SC**: Certainly not midnight, Chair. [laughing]

**CHAIRPERSON**: [laughing] But let us have an idea in  
10 terms of... we have to strike a balance between not taking  
too long...[intervenes]

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: But please do justice to all the issues.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: So what is your assessment based on that of how much more time?

**ADV SELEKA SC**: Will Chair be fine if we estimate five o'clock?

**CHAIRPERSON**: Ja, that would still be fine.

20 **ADV SELEKA SC**: Yes. Let me ...[intervenes]

**CHAIRPERSON**: Let us try ...[intervenes]

**ADV SELEKA SC**: ...to beat that deadline.

**CHAIRPERSON**: Ja, okay. No, it is fine. But maybe we can take a short adjournment now and then return. Okay let us take a short adjournment. We will resume at quarter past

four.

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

**CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Let us continue. Just a last shot, Dr Ngubane, on what we were talking about before the break about the payment to the executives, that if the position is that indeed Eskom or the board was quite happy to have  
10 the executives back at work then it means that Eskom paid, I think – I think there was mention of about R18 million?

**ADV SELEKA SC:** Ja, a little over 18 million, Chairperson.

**CHAIRPERSON:** Ja, paid to the three executives, together about R18 million so that executives that the Eskom board wanted to come back to work would go away. Does it make sense? Eskom wants these executives back but it pays them R18 million so that they can go away.

**DR NGUBANE:** Chairperson, I am sure if they went to  
20 court and what to claim it would be more than that.

**CHAIRPERSON:** Yes, Mr Seleka?

**ADV SELEKA SC:** Thank you, Chairperson. Ja, Dr Ngubane, the court issue, if you want them back would not arise, then you will simply get them back.

**DR NGUBANE:** Excuse me?

**ADV SELEKA SC:** I say the court issue, if you want them back would not arise because you will simply get them back, the executives.

**DR NGUBANE:** You mean the CCMA?

**ADV SELEKA SC:** The executives.

**DR NGUBANE:** Yes?

**ADV SELEKA SC:** If you are prepared to get them back, court disputes do not arise because they will simply come back.

10 **DR NGUBANE:** And I was saying if there was litigation.

**ADV SELEKA SC:** Yes.

**DR NGUBANE:** For claims and all that.

**ADV SELEKA SC:** Yes.

**DR NGUBANE:** It probably would cost far more than 18 million.

**ADV SELEKA SC:** Yes. Now ...[intervenes]

**CHAIRPERSON:** If they had a case.

**DR NGUBANE:** Invariably the Labour Court keep complaining.

20 **ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Well, I thought – I would have thought that the board would have a good case to say well, they must tell us where did we say we do not want them. Where did we say we do not want them, they must tell us, show us were, when did we say that? Okay, Mr Seleka.

**ADV SELEKA SC:** Thank you, Chair. Chairperson, the legal representatives for Mr Ngubane handed me what, on the face of it, is a minute of Eskom Holdings Audit and Risk Committee dated 14 April 2015. I think that is what Dr Ngubane may have referred to during his testimony. Their minute is, however not signed and I have been – what I am being referred to are two paragraphs in the minute. The one underlined reads:

10 “Commercial to get an agreement from Dentons to cap the price and commit to providing regular biweekly reports in order to expedite the investigation so as to facilitate that the four executives promptly resume their duties...”

I think “in Eskom” that part is cut out. Then:

“The resolution is resolved that Commercial to send an urgent email to Dentons indicating Eskom’s position and also get response from Dentons in terms of the specific clauses in the standard NEC contract.”

20 I will leave the other part.

“Commercial to get an agreement from Dentons to cap the price and commit to providing regular biweekly reports in order to expedite investigations so as to facilitate that the four executives promptly resume their duties in Eskom.”

14 April 2015 but it is unsigned.

**CHAIRPERSON:** That is in April?

**ADV SELEKA SC:** That is in April 2015.

**CHAIRPERSON:** Yes. Well, I guess that they need to be - somebody who was at the meeting needs to say whether what is written in the minutes reflect what was discussed before we can accept them.

**ADV SELEKA SC:** Indeed, Chairperson.

**CHAIRPERSON:** The other ones have been accepted  
10 because they have Dr Ngubane's signature.

**ADV SELEKA SC:** Yes – oh, and Dr Ngubane ...[intervenes]

**CHAIRPERSON:** So we get somebody who can say this is a true reflection of the minutes and then if that is so then there is no problem. But that might be arranged for. There minutes that are signed that are somewhere in Eskom.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** And this might just be an unsigned copy.

**ADV SELEKA SC:** Yes.

20 **CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Yes, the members ...[intervenes]

**CHAIRPERSON:** Ja, so I think Dr Ngubane's lawyers could probably obtain a signed version and then we can take it from there.

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

**CHAIRPERSON:** But of course if those minutes reflected the board's position, the challenge is even bigger.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** To say – so there is even evidence that the board ...[intervenes]

**ADV SELEKA SC:** Audit and Risk, Chair.

**CHAIRPERSON:** Oh, the audit and risk.

**ADV SELEKA SC:** The audit and risk.

**CHAIRPERSON:** But what I am saying is, if what audit  
10 and risk committee was saying reflected the position of the  
board then there even a greater challenge to say why then  
pay so much because it is clear you wanted them back, you  
know? But we have discussed it with Dr Ngubane, I am  
not asking you to say anything further unless you feel you  
want to say something.

**DR NGUBANE:** Well, I would say the delegation of  
authority at Eskom gives these committees delegated  
approval authority.

**CHAIRPERSON:** Yes.

20 **DR NGUBANE:** I mean, not everything except it is beyond  
the budget it should come back to the board.

**CHAIRPERSON:** Ja. Yes. So is that to say the – in  
regard to this matter that the audit and risk committee had  
all the power, had the same power as the board, had been  
delegated enough power to make whatever decisions?

**DR NGUBANE:** Absolutely, Chairperson.

**CHAIRPERSON:** Okay, okay, alright. So I think it is important just to get signed minutes so that we are sure that it reflects what was said at the committee.

**ADV SELEKA SC:** Yes. Thank you, Chair. Dr Ngubane, before the adjournment you were saying you never saw the agreements of the – the settlement agreements of the executives or vet the details of it.

**DR NGUBANE:** No. Once I got a report...

10 **ADV SELEKA SC:** Yes.

**DR NGUBANE:** That settlements had been arrived at but the quantities were not mentioned.

**ADV SELEKA SC:** Yes. But can you recall? You have in fact signed two of those settlement agreements. You signed a settlement agreement for Mr Marokane and the one for Ms Molefe. Okay? I think they are in your file.

**DR NGUBANE:** Correct.

20 **ADV SELEKA SC:** I will just read the dates. One for Mr Marokane is 28 May. For the record, Chairperson, page reference is 263 of bundle 9. Eskom bundle 09(A), page 263. So what you have been shown there is the settlement agreement of Mr Marokane, you will see you signed.

**DR NGUBANE:** Correct.

**ADV SELEKA SC:** Your signature is just above his and then his below. Do you recall this? Do you recognise...?



**DR NGUBANE:** Well, my signature is sitting there.

**ADV SELEKA SC:** That is 28 May 2015 and the one for Ms Molefe is page 274. That one is signed on 25 June 2015.

**DR NGUBANE:** Ja. I was mistaken, Chairperson.

**ADV SELEKA SC:** Okay. The other thing I want to add to that, Dr Ngubane, is that 25 – by 25 June 2015 the board had already told Dentons do not do further investigation. In fact the board tells Dentons on 11 June – Dentons write:

10           “On 11 July 2015 we were requested to prepare a  
detailed presentation to the board in addition to a  
draft report dealing with the state of the  
investigation to date. We understand that this was  
due to the need to meet the deadlines for various  
other commitments that had been made by the  
board in respect of the timeframes of the  
investigation. A detailed presentation to the board  
was delivered on 25, 26, 2015. For these purposes  
investigatory activities ceases shortly after 11 June  
20           2015 and resources were redirected from the  
normal course of the investigation to the  
development of preliminary findings.”

So if the audit and risk committee meeting is to go by, expedite your process so that the executives can come back, by the time you tell Dentons to not do further work,

there was room open for Ms Molefe to come back on the strength of those minutes.

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** So why did she not come back?

**DR NGUBANE:** Well, as far as I know, all of them had decided to seek separation.

**ADV SELEKA SC:** But they say they were frustrated by the board.

**DR NGUBANE:** Well, I do not know, Chairperson,  
10 because, you know, whether this was false information or what but that was the standpoint where all the further negotiations took off.

**ADV SELEKA SC:** There is a point relating to the meeting of the 11<sup>th</sup> which I just want to address with you. Do you recall Mr Nick Linnell? He is present in the meeting with the board.

**DR NGUBANE:** Yes, sure.

**ADV SELEKA SC:** And we heard you saying: Nick, we are contracting with you and not ENS.

20 **DR NGUBANE:** Ja, yes.

**ADV SELEKA SC:** Yes. That is right. So Mr Nick then gets contracted.

**DR NGUBANE:** No, sir. [Laughs]

**ADV SELEKA SC:** Well, whatever words – ja, two witnesses before the Commission said it was not an

appointment but it was an agreement that we will use Mr Nick Linnell and he was used, we could see from the documentation, to draft the media release, being invited to meetings of audit and risk and P &G which is People in Governance.

**DR NGUBANE:** Correct.

**ADV SELEKA SC:** So the board did engage – let me use the word engage Mr Nick Linnell.

**DR NGUBANE:** There were frantic efforts coming from the  
10 office of the Chairperson for the tender board committee to meet to produce a contract for Mr Linnell. He was even asking the board build programme meeting to convert itself to a tender committee to achieve this. I objected to this. In fact there is an email – I must give it to my representative – where there is this to and fro, must now have a tender committee. I said I cannot – I will still  
Chairman of the tender board, I cannot just create a meeting from thin air and say sit here and give Mr Linnell his contract, it is a process. So I am saying to Nick, if we  
20 contract, we will be contracting with you, not other people. That I think was the essence of that discussion.

**ADV SELEKA SC:** Ja, well – so that is what the board did.

**DR NGUBANE:** No, we never completed the process.

**ADV SELEKA SC:** So why was he requested to formulate

– remember during the meeting?

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** You go out and you say Romeo has given you the name of a person, he said he will formulate the media release and you tell them – you call in Ronnie and you come back at some point and say Ronnie says the person is not available now but we must formulate a statement and give it to him. But at that point Nick also says I have prepared the draft. The board says, let us look  
10 at it.

**DR NGUBANE:** Well, as I say, there was this frantic effort to conclude the process for him to consult. However, because the shareholders had given this task to the audit and risk committee, the tender board would not carry on with that process. I think that is what caused the further delay because then the responsibility shifted from the tender board committee, you know, to ARC, audit and risk.

**ADV SELEKA SC:** But tell the Chairperson, Dr Ngubane, was Mr Nick Linnell engaged by the board to assist in what  
20 the board had started as in the build-up towards the commissioning of the investigation?

**DR NGUBANE:** That is correct.

**ADV SELEKA SC:** Yes. So you then have Mr Linnell, at some point his engagement is said we do not need you anymore. He received an email, he says we do not need

you anymore. Are you aware of that?

**DR NGUBANE:** I am aware the ARC decided otherwise.

**ADV SELEKA SC:** So the executives are suspended based on the resolution of the board, an inquiry is instituted but then is short-lived on Dentons own report and Dentons own report says the findings are inconclusive because this is a midpoint report. I will read it to you.

**DR NGUBANE:** No, I agree with what you are saying.

**ADV SELEKA SC:** Oh, you – okay.

10 **DR NGUBANE:** All I am just pointing out...

**ADV SELEKA SC:** Yes.

**DR NGUBANE:** That the work was going to be arranged in terms of task orders.

**ADV SELEKA SC:** Yes.

**DR NGUBANE:** You know, the audit and risk would say now this is your task. But audit and risk had also said we reserve the right to terminate the inquiry at any point when they think they have got what they want.

**ADV SELEKA SC:** Yes.

20 **DR NGUBANE:** So they wanted now to get more work for themselves.

**ADV SELEKA SC:** Who is that?

**DR NGUBANE:** Dentons.

**ADV SELEKA SC:** Oh.

**DR NGUBANE:** Ja. They wanted to now create another

order so that they can go on to the next phase and that phase would have been essentially criminal investigation. Now that is not what had been the intention, the intention was to get a hold, do a deep dive, get a hold of the problems in the organisation.

**ADV SELEKA SC:** Ja and exactly the deep dive gets – you said the shareholder wants it real and pure findings of fact. Now this report, Dentons rather:

10 This report represents a snapshot of the investigation at the midpoint of the investigation period (about 18 June 2015) and is provided to Eskom on the specific request of Eskom. The findings, views, conclusions and recommendations set out in this report are accordingly subject to verification and testing, provided to Eskom as a record of the investigation as set out at the midpoint of the investigation period and do not constitute definitive findings, views, conclusions and recommendations.”

20 Now where is the deep dive with the findings the shareholder wanted? Did the shareholder get what it wanted?

**DR NGUBANE:** Well – can I read this Chairperson?

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** “Deliverables.

“The Dentons team shall submit the following deliverables, progress reports to be issued fortnightly, draft inquiry report dealing with the independent finding of the inquiry, final inquiry report.”

Now what we got in terms of what the deep dive produced where a number of recommendations which helped us to improve the system and stop load shedding. That was the  
10 deliverable that we wanted. We are not about to create a forensic investigation in terms of who broke the procurement law, who did what or who did that. We just wanted to fix the organisation.

**ADV SELEKA SC:** Ja, it seems on Dentons’ report this was not a deep dive but a shallow dive.

**DR NGUBANE:** Let me say so, sir, depends on how tall you are whether it is a deep dive.

**ADV SELEKA SC:** Because they say you cannot – what is the word ...[intervenes]

20 **DR NGUBANE:** And sorry, sir, can I also say this?

**ADV SELEKA SC:** Yes.

**DR NGUBANE:** By the way, at that stage Eskom was very short of money, I think that factor must also be borne in mind, you know? In the following year, I think that is March 2017, Eskom had profit, it had investments, it was

selling its electricity into the neighbouring countries because there was excess supply and we were paid in dollars, not rands. So Eskom was creating a nest egg. Then we could have gone back and said now we are doing a real deep five but unfortunately, there were other pressures.

**ADV SELEKA SC:** Oh, so the deep dive was ultimately not done?

**DR NGUBANE:** Well, were a short man, so it was a deep  
10 dive.

**ADV SELEKA SC:** Dr Ngubane, Mr Tsotsi was here and he, reflecting on the suspensions of the executives, the ultimate separation agreements concluded with the executives, against the backdrop of no allegations of wrongdoing, the board said we are making against them. Against the backdrop of an inquiry that did not have to investigate any misconduct or wrongdoing on the part of the executives he said to the Chairperson I think the purpose was to remove these people in order to make a  
20 space for other people.

**DR NGUBANE:** Well, that is a horrific assumption, Chairperson. I do not think that sophistry within us to actually plot this thing and plan it that way. The only reason that we ask that the Minister allows Brian Molefe to come across was because the Acting CEO, Mr Zethembe



Koza was a none executive director. He did not have the reach that a real career CEO would have in reaching out to all the segments of the organisation. So the decision was let us find someone who is familiar with SOEs, who is familiar with public service who can have a proven record that they have actually turned around some organisation. That turnaround to Molefe, who had done excellent work at PIC had taken the asset value of PIC from 1 billion in seven years to 800 billion.

10 He had come to Transnet, he had taken a very poorly functioning rail system, particularly the coal line and the coal exports at Richards Bay and turned it completely around so that they had about R372 billion to spare.

Now these were the considerations to say let us find someone with that expertise to help us and we were right because the whole atmosphere changed at Eskom, the efficiency, the communications between different centres of work changed. I went with him to some of the power stations. Whenever he appeared people were  
20 applauding, clapping and he would there in the centre of the room and dance and sing. You know, it was incredible and it just changed so that within eight months there was no more load shedding. That was the consideration, we are not so sophisticated as to plan to conspire. If people did that, well, I was not part of it, you know, but that is how

we approached it.

**ADV SELEKA SC:** Ja. You know, as you were talking, Dr Ngubane, I am reminded of the point you said earlier on. You could not do a deep dive because of financial constraints and even this minute, if we are to go by, earlier you were saying the audit and risk told Dentons to expedite, cap the price. Now what motivates you to spend over 18 million in settlement with the executives instead of taking them back?

10 **DR NGUBANE:** But, as I said, sir, we got a report that they were not willing to come back so that represented a fight looming ahead.

**ADV SELEKA SC:** Yes, could you – then it goes back to the Chairperson's question, why then pay them out?

**DR NGUBANE:** Because if people go the Labour Court and say we were badly treated, we were unfairly dismissed, this, this and that, we want to put this claim, I think they would have won it.

**CHAIRPERSON:** Dr Ngubane, how could they have won it  
20 if you did not treat them badly?

**DR NGUBANE:** Well, I mean, that is what they thought.

[inaudible – speaking simultaneously]

**CHAIRPERSON:** You do not have to prove that you did not treat them badly.

**DR NGUBANE:** But Mr Matona, the CMA, was very angry,

says you people destroyed our integrity and all that. you know, they were angry with us because our understanding of the term suspension was different from their understanding.

**CHAIRPERSON:** Ja, you see, this is part of what complicates the matter because if you know one, there were good reasons for the investigation, you believe that you did nothing wrong by suspending them, in any event, while they were suspended, you were paying them their full  
10 pay, all their benefits, so when they are supposed to come back and the investigation is done or is about to be finished, if they decide to leave in circumstances where you had to say to them, we have no problem with you, you should come back, but they decide to leave, on what grounds can they put in any complaint?

**DR NGUBANE:** But, you know, Chairperson, I do not know how much money we spent on legal opinion at Eskom. Most of our actions were driven by legal opinion.

**CHAIRPERSON:** Ja.

20 **DR NGUBANE:** Most of it.

**CHAIRPERSON:** But on the facts that you know would you say that there was any – there would have been any basis for anybody to say they were badly treated?

**DR NGUBANE:** When people are just suspended and there are no charges I think they stand a very good chance

of winning in court.

**CHAIRPERSON:** So why did you suspend them then if you felt they would win in court.

**DR NGUBANE:** Because our understanding of suspension was like step-aside.

**CHAIRPERSON:** Now if they won in court what would they get, because you were paying them, what would they get?

**DR NGUBANE:** Well ...[intervenes]

**CHAIRPERSON:** Because it is not like you suspended  
10 them without pay so you would be ordered to pay their  
money or any back pay, you would have been paying them,  
so what is the worst that would happen to Eskom?

**DR NGUBANE:** Chairperson you know that becomes for  
legal experts.

**CHAIRPERSON:** [laughing] you see part of the problem  
is, one, if your version and that of Ms Klein is correct that  
the board had no problem with them and wanted them to  
come back, but well Ms Klein didn't say this, but you are  
saying it, you say well maybe they would sue us and even  
20 though they are the ones who decided they don't want to  
continue working for Eskom so we wanted the separation to  
be amicable, even if they sued you I mean how much could  
they get if you are going to make it clear that we never  
said we don't want them back, actually we wanted them  
back, here are the minutes of the Audit & Risk Committee.

If they had not decided to go they would still be working for Eskom, and if they left Eskom it would be for other reasons later but not because of this investigation, but I appreciate that we have been talking about this for some time, it is just that it keeps on coming back, but if you want to say something say so.

**DR NGUBANE:** Chairperson if we had an advisor like you ...[intervenes]

**CHAIRPERSON:** [laughing]

10 **DR NGUBANE:** We would hopefully not need any kind of ...

**CHAIRPERSON:** [laughing] yes Mr Seleka.

**ADV SELEKA SC:** I guess that is why he is a judge.

**CHAIRPERSON:** [laughing]

**ADV SELEKA SC:** So Dr Ngubane ja going back to what Mr Tsotsi's observation to the Chairperson was, why was – fresh into the suspension you will recall you get that media conference convened by Minister Lynne Brown on the 17<sup>th</sup> of April 2015, and there she announces her decision to  
20 second Mr Molefe to Eskom.

**DR NGUBANE:** Yes sir.

**ADV SELEKA SC:** And hence this observation that Mr Matona when told coming back to Eskom is not an option for you and he is talking about this in April and then after April subsequent meetings, it's because the gap is now

closed by Minister Lynne Brown seconding Mr Molefe to Eskom.

**DR NGUBANE:** If I remember well Chairperson Minister Brown said we would like Mr Matona to come back to Eskom but we would have to redefine the roles.

**ADV SELEKA SC:** Yes.

**DR NGUBANE:** You know which mean there could be two people at Eskom, the acting CE, the old CE, I don't know how she was going to re-arrange those jobs, but that was a  
10 real possibility.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Which might suggest that as far as the Minister was concerned, I don't know about the Board, but as far as the Minister was concerned if Mr Matona came back there was no option of him coming back as CEO as long as Mr Brian Molefe was there, because I think he actually makes that remark in the context of bringing, appointed Mr Molefe as Acting CEO.

**DR NGUBANE:** It could be Chairperson but one of them  
20 could probably have become the COO.

**CHAIRPERSON:** Yes, yes, yes, no, no I accept that it could be but you know if you have been Group CEO and then now you must be something else, it might not be something that everybody would take well. I just mention but I accept that that remark is attributed to the Minister,

not to the Board.

**DR NGUBANE:** At that stage I think Mr Molefe was still on secondment.

**CHAIRPERSON:** Yes, yes.

**DR NGUBANE:** He was not a full CEO.

**CHAIRPERSON:** Yes, yes.

**DR NGUBANE:** And Transnet I am sure would have probably wanted him back.

**CHAIRPERSON:** Yes.

10 **DR NGUBANE:** So but that even never got discussed at the Board level.

**CHAIRPERSON:** Ja, okay.

**ADV SELEKA SC:** Ja she, just to your point about Matona might be coming back she did say, she also did discount Molefe and Matona working together for a period, “I would like Molefe for the full year to actually work in turning around Eskom and if that means with Mr Matona beyond three months time we will find another title for him.” I think that is what you were referring to?

20 **DR NGUBANE:** Yes, correct.

**ADV SELEKA SC:** Now at that stage Dr Ngubane were you aware of Mr Molefe’s performance at Transnet?

**DR NGUBANE:** Well I was in government Chairperson and we all knew what Molefe was doing, we all knew, it was just public knowledge, he was a whizz kid who had a

golden hand, you know.

**ADV SELEKA SC:** Had the Minister when making this announcement on the 17<sup>th</sup> of April had prior consultation with the Board.

**DR NGUBANE:** No I think the consultations had gone on for some time and were ...[indistinct] to the Transnet Board and the Transnet Board had responded that they were willing to release Molefe, I think that is the time when the Minister made the announcement, when the secondment  
10 was final, was approved, I don't think it was before the secondment was approved.

**ADV SELEKA SC:** Ja, now you have got to be sure about that because the Minister here on the 17<sup>h</sup> of April announced that she had consulted with the President, the Deputy President, the Transnet Board and the Eskom Board but had to later retract that statement, because the Boards had not yet been consulted.

**DR NGUBANE:** No I lose that, I cannot follow that.

**ADV SELEKA SC:** Do you recall when – I think in your  
20 affidavits you said when there was a gap in the CEO it was the Minister, Lynne Brown, who suggested to you that Mr Brian Molefe should be considered for the position of CEO.

**DR NGUBANE:** That is correct.

**ADV SELEKA SC:** At Eskom.

**DR NGUBANE:** Ja.



**ADV SELEKA SC:** So the idea to have Mr Molefe at Eskom came from the Minister?

**DR NGUBANE:** Probably but everyone was looking around as if – and obviously we were consulting her, but the sequence of events is difficult, remember now, but I can safely say she did point to Molefe as a possible secondment.

**ADV SELEKA SC:** Now in the – that ruling of the Chairperson in Ms Suzanne Daniels' disciplinary hearing

10 the Chairperson had this to say and I want you to comment on this to the Chairperson before us here. He writes about Molefe and Singh and he says Molefe and Singh took up the reins at Eskom in the phase of damning evidence that the two of them were instrumental whilst at Transnet of causing the increase of the estimated total cost from R38.6billion to R54.5billion for the acquisition of 1 060 locomotives without compliance with procurement processes. To date no steps have been taken to recover the excess of R17billion lost to the people of South Africa.

20 Instead Molefe and Singh were allowed to pursue their new interests at Eskom. In the Transnet deal R5billion was paid to an unknown entity which intervened, name Tequesta Group Limited incorporated in Hong Kong and headed by one Salim Aziz Essa a native of Polokwane and now residing in Dubai. In May 2015 Essa purchased

Trillian, a competitor to Regiments, which features prominently in the hearing before me. That issue about the locomotives we know that it was widely reported in the media.

Was the Board not aware of that?

**DR NGUBANE:** It never arose and I don't think anyone of us has an in-depth knowledge of these figures and the timeframe I am not sure what the timeframe was when the locomotives and them coming to Eskom, but it never  
10 featured as a negative in any discussion.

**CHAIRPERSON:** Well I wanted to say that well I haven't looked at what was known at the time when Mr Brian Molefe was seconded to Eskom, what was publically known, I haven't looked at that, but certainly since this Commission has been hearing evidence, and of course much before that in the years preceding this commission there was a lot about – allegations of corruption at Transnet, including during the time when Mr Brian Molefe was in charge and Mr Singh was there, but certainly in this  
20 commission there has been a lot of evidence which includes allegations, certain allegations against them while they were at Transnet and there are also allegations, there has been evidence led in this Commission in relation to allegations of wrongdoing on their part in Eskom so the picture that seems to emerge is this, and a lot of people

will understand this picture against the proposition that the Gupta family had used various people within government and in SOE's in order to loot and a lot of people will understand this picture against the background that the way they worked was that they wanted certain people in certain strategic positions that they knew would cooperate with them in their plans of looting public funds, and the picture that seems emerge is that you will remember the Public Protector's report that led to Mr Brian Molefe  
10 leaving Eskom, part of it was that it referred to a lot of communications between him and the Guptas and I think visits to their house as well, that he was Group CEO of Transnet and during the time when he was Group CEO certain transactions happened that benefitted Gupta associated entities in transactions under Transnet.

Similar allegations are made against Arnot Singh and then you have this situation where at a certain point in time according to Mr Zola Tsotsi a meeting – he gets called to a meeting in Durban in the President's residence, there  
20 is Ms Dudu Myeni, there is Mr Tsotsi, there is the former President, according to Mr Tsotsi and Mr Nick Linnell had been called as well by Ms Myeni according to both of them. There is a discussion that an inquiry must be instituted at Eskom and that certain executives must be suspended.

He gets to Eskom and puts this to the Board,

ultimately the idea of an inquiry happens and suspensions happen, and you have this situation where on your evidence and on the evidence of Ms Klein the Board had no problem with these executives coming back after the investigation but nevertheless they are paid each one a year's salary to go away and then once they are not there Mr Brian Molefe is brought in to be Group CEO at Eskom and after some time Mr Arnot Singh is brought in to be Chief Financial Officer at Eskom, and against that  
10 background, think about the evidence that I have heard from some of the witnesses about the Guptas, one of the first witnesses to testify before the Commission was Mr Themba Maseku, who used to be the CEO of GCIS or Director General, who said he had a meeting with Mr Ajay Gupta during which Mr Ajay Gupta demanded at about R600million, the budget that was to be used for media advertising and so on by Government should be used on their newspaper and when he resisted that he told him that anyone who did not cooperate with them they report to the  
20 President, and the President – I think he said sort him out, and ultimately when he continued to refuse to cooperate with them Mr Ajay Gupta said to Mr Masego I will report to your seniors so that they can replace you and then a few months later Mr Masego gets transferred from his position under circumstances that to say the least seem mysterious.

This is a man who six weeks before he was removed had been subjected to a performance assessment and the panel included his Minister, Minister Chabane, and they were so happy with his performance in that position that they gave him something 114 or 120%. Six weeks later this person who was such an excellent performer in his job is moved to another position.

And then I heard the evidence of Mr Jonas. Mr Jonas said on the 23<sup>rd</sup> of October 2015, that's the same  
10 year we are talking about in regard to Eskom, on the 23<sup>rd</sup> of October 2016 he had a meeting at the Gupta residence with a Gupta brother, he could not remember which one, but the evidence establishes that the only Gupta brother who was in the house, in the premises, was Mr Tony Gupta and Mr Jonas says the Gupta brother who was there who had a meeting with me, told me that Mr Nhanhla Nene, the Minister of Finance at the time, was going to be fired because he was not working with them, that is the Guptas and he offered him – he said he must agree to be Minister  
20 of Finance after Mr Nene had been fired, but he would have to work with them and he was prepared to – he even offered him R600 000 I think immediately and R600million or something like that later, and he said if he needed advisors they would provide advisors and then a few weeks later on the 9<sup>th</sup> of December indeed Mr Nene is fired. He

is replaced by Mr Des van Rooyen.

Mr Des van Rooyen has given evidence before me, the first time he comes to National Treasury he is coming with two advisors and Mr Godongwana of the ANC had told the DG, Mr Fuzile the day before you are going to get a new minister and he is going to come with two advisors that he doesn't know.

One of the things that Mr Jonas said to me he was told by the Gupta brother who was with him on the 23<sup>rd</sup> of  
10 October was that there were certain people that they as the Guptas were working with and he mentioned, two of the people he mentioned were Mr Brian Molefe and Minister Lynne Brown, that is part of the evidence I have heard.

**DR NGUBANE:** The second one?

**CHAIRPERSON:** No, I am saying he mentioned two, one is Mr Brian Molefe, the other one was Minister Lynne Brown, two of the people that Mr Jonas said he was told by Mr Tony Gupta these are some of the people we work with, you must also work with us, and Mr Jonas even said they  
20 said something like these ones, or Mr Brian Molefe, his career is in fact taken care of, his future is taken care of, or something like that.

That is what I was told by Mr Jonas in evidence.

So when therefore one looks at what happened at Eskom, against this background, some of it is in evidence

before the Commission, it causes one concern and then of course you may or may not have heard Mr Tsotsi say – on one of the days when he gave evidence, that on one occasion he had a meeting with Tony Gupta and Tony Gupta showed him on his cell phone Whatsapp messages that were exchanged by – he said about half of the members of the Board of Eskom, it was a Whatsapp Group, things that they were talking about, he said he would not give them, but he must just look.

10            Now if all of those things are true it causes one to be quite worried about what exactly was happening, do you understand?

**DR NGUBENE:** I do Chair.

**CHAIRPERSON:** Ja, okay.

**CHAIRPERSON:** Mr Seleka?

**ADV SELEKA SC:** Thank you Chairperson. Dr Ngubane to add to that immediately before us also we have Mr Tsotsi who together with the Board takes resolution that lead to the initiation of the inquiry, the suspension of the  
20 executives, the Boards, and I use the words quite carefully, engages with Mr Nick Linnell and seven days later – seven days after those resolutions are made on the 19<sup>th</sup> the Boards in a meeting decides that Mr Tsotsi should be charged for exactly the resolutions that the Board itself took with him.

**CHAIRPERSON:** Maybe I should add this while you are reflecting on the question Dr Ngubane, I don't want you to forget the question, but he can always repeat it, Mr Tsotsi gets trashed and ultimately he leaves the Eskom board in circumstances where if his evidence was true the previous month, he left at the end of March, he said that around the beginning of February he said it was the State of the Nation Address and he says he was called by Minister Brown and at the meeting with Minister Brown, Minister  
10 Brown I think complained that she was, she had received complaints both from the Board and from management that he was interfering with management or operational issues, he must stop that otherwise she will find somebody else to do this job as Chairperson.

He says a few hours later Tony Gupta phoned him and he said I see that you are not assisting us, you must know or you must know or remember that we put you in that position, we can take you out of that position. Two months later he is out of Eskom.

20 Now of course I haven't decided what is true and what is not true, all I am simply saying is if some of this evidence is true it might connect in a certain way with other evidence and it might cause one to be worried. That is all I am saying.

But Mr Seleka had put a question, I think he must



repeat it because I have disturbed your attention.

**DR NGUBANE:** Ja, ja, please.

**CHAIRPERSON:** Okay Mr Seleka I think you repeat the question.

**ADV SELEKA SC:** Thank you Chair. Now what the Chairperson has just explained, augments the question, because that is the picture you see in the information presented to us Dr Ngubane. We in fact hear from the evidence that the Chairperson says to the Board the  
10 President has asked us to do this. The minute of that meeting which you signed on the 9<sup>th</sup> of March says exactly that, which was signed virtually two years later.

When you signed that long time after the meeting you really have to apply your mind to make sure the contents are exactly as it took place many months before, is it not? Is it not Dr Ngubane? When you sign tomorrow.

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** For an incident that took place yesterday it is still fresh in your memory. You can remember.

20 **DR NGUBANE:** Okay.

**ADV SELEKA SC:** But when you sign twelve months, eighteen months, twenty months later it is hard to remember what happened. You have to refresh your memory and you have to go through the document to ensure that it is a correct reflection of what took place so a long time ago. And

there you find President has expressly that he has concerns. The Board is aware of this.

The Board calls for the Minister; the Minister comes puts the same position to the Board. The inquiry, the executives must be suspended – must step aside whichever way it was used.

You ultimately suspend them because you say it was clear to you now that this thing was coming from the government, from the shareholder.

10 And in your affidavit you say you were taken aback by this because you were an all new Board – an all new Board except for two people Mr Tsotsi himself and Ms Mabude. So the Board does not know what is happening it was an I am trying to get to – ja at this time all of us your affidavit paragraph 4.13 –

20 “All of us except Mr Tsotsi and Ms Mabude were newly appointed to the Board. We were therefore taken by serious – surprise that we had to deal with an issue of such magnitude so early in our tenure.”

But you nonetheless agreed, you resolve it and you again surprisingly seven days later charge Mr Tsotsi with the decisions that you made with him and he is removed and you take over. How should the commission deal with that?

**DR NGUBANE:** Well they say in my affidavit there was a lot

of tension between the Board and Mr Tsotsi.

**ADV SELEKA SC:** Chair may I add something before Dr Ngubane?

**CHAIRPERSON:** Oh ja.

**ADV SELEKA SC:** Sorry Dr Ngubane.

**CHAIRPERSON:** Ja okay.

**ADV SELEKA SC:** Dr Ngubane may I add this – deal with it as well as you answered it. You ultimately say it was clear that this was a request from the shareholder representative.

10 **DR NGUBANE:** [Inaudible]

**ADV SELEKA SC:** No to make the resolutions that you did as the Board.

**DR NGUBANE:** Well from the minutes and deduce that [00:03:34] said must be done is supported by the shareholder and therefore even the state of the organisation and the company load-shedding, loss of income we had to do something.

20 So we had to engage otherwise how would you have said we do not want to do this when in fact the state of the organisation was in a pallor state. Load-shedding was happening all the time.

The War Room was getting in one month two reports, financial reports. One was talking of dismal failure of the finances the other report was talking of a prosperous thriving Eskom in one month to the War Room and this is what the

Minister is asking us how this can be. So we could not have said no we are not going to do a forensic report in the light of all of that. But coming to an issue...

**ADV SELEKA SC:** But – sorry you will go to the issue but you need to add also there were two – remember it is not just an investigation it is also the suspension.

**DR NGUBANE:** Yes.

**ADV SELEKA SC:** Yes. Okay coming to the issue.

**DR NGUBANE:** Well the shareholder says if this is going to  
10 be credible there should be no impediment of people who have an impact on the investigation. Is that not what reasonable people would accept to say the shareholder feels strongly about this issue we have to do it, our shareholder compact actually spells out how we should cooperate with the shareholder and there was no other way.

**ADV SELEKA SC:** Yes. My – what I am trying to get from you in order to explain to the Chairperson is if the decision is ultimately made by the Board because the Board itself accepts that it is the shareholder who wants the Board to  
20 make those decision that resolution why is it that the Board charges Mr Tsotsi with – with charges relating to those decisions and yet you leave the Minister whom you say after the meeting – about whom you say, after the meeting with the Minister – paragraph 4.18 of your affidavit.

“It was clear to the Board that the

government as the shareholder of Eskom required the inquiry to proceed and that the four executives has to “ – and I am reading how you write it quote “step aside” whilst the inquiry was underway.”

So it is no longer Mr Tsotsi requiring this in fact on his version it was never him requiring this it was the President at the time. And now the Board knows it is the Minister who wants this.

10 **DR NGUBANE:** Chairperson I spoke of the breakdown of trust. Tsotsi claimed the existence of a report which dealt with the wrongdoing of executives. Later on he says there is no report.

He suspends Koko on the basis that Koko is in charge of maintenance when Koko is actually in charge of commercial and the engineering and Mongezi Ntsokolo is in charge of generation and maintenance. He does not charge him. Instead he proposes that Mr Mongezi Ntsokolo becomes the acting CE of the organisation. He proposes  
20 that a person who is on suspension [00:08:17] there would come back as the head of – acting head of generation and commercial section.

Madisela was on suspension. He is proposed to come back. The Board kicks – pushes back. The Board decides that you cannot take a GE and make him acting

when you have just removed other four GE's in order to create no impedance for the investigation it does not make sense.

So the Board proposes that Mr Khoza who is a non-executive director should take the position of acting CEO. Now the fact that he had tried to reload – railroad us into passing a resolution that was giving him all the power, taking all the power from the Board through broad delegation to deviate from procurement processes and so on and the fact  
10 that he had in the newspapers and everywhere was talking about him clearing executive functions. Signing letters to companies and so on.

Now although we come to a point where we are forced now to implement this inquiry and suspend executives there is a lot of frustration and ill feeling among Board members that this man we cannot trust. He has lied to us and so on.

That was the background to the passing of the motion of no confidence which was not passed because he appealed  
20 to us and said if you pass this resolution my livelihood will be threatened because I am on many Boards and I depend on this Board earnings to live. So then I said to my colleagues we do not want to destroy him so give me a chance to talk to him so that we do not pass the motion of no confidence but he resigns.

And then we spent a lot of hours talking with him and him kicking back and saying I did nothing wrong there is no reason for this motion. And ultimately, I convinced him I think there was also Kumalo or somebody else, I convince him that the best solution for us and you is that we do not pass this resolution we safeguard your status in terms of other Boards just leave. You know ultimately that is how we ended up.

**CHAIRPERSON:** Well I think that everybody accepts that  
10 this decision that there should be an inquiry at Eskom and the idea that the executives should be suspended came from outside of Eskom. Do you accept that?

**DR NGUBANE:** I do.

**CHAIRPERSON:** It did not come from inside Eskom. So that on its own should be worrying you know. Why are Eskom matters being dealt with outside of Eskom?

Of course, some of the people who are outside of Eskom have a legitimate interest in Eskom like the President of the Country. Like the Minister. They have a legitimate  
20 interest on issues relating to Eskom and so on so one can accept that.

But there may be other people who might not have had legitimate interests and we do not know at this stage who exactly came up with this idea that Ms Myeni according Mr Tsotsi and articulating to Mr Tsotsi and if the idea has

come from the President himself one would have thought that the President would call the Minister and discuss the idea with the Minister and maybe call the Minister and the Chairperson of the Board of Eskom discuss that there is this idea.

Maybe the President did discuss it with the Minister maybe we just do not know but according to Mr Tsotsi and according to statement of Mr Nick Linnell that has been given to the commission at that meeting that took place at  
10 the President's residence in Durban the President spoke very little.

The person who seemed to be – who talked most of the time according to I think both Mr Tsotsi and Mr Linnell was Ms Myeni. So – so that worries one. But of course, I have seen a statement by Ms Myeni that says well actually that meeting took place because Mr Tsotsi is the one who kept on contacting her seeking advice about Eskom issues. I think I have seen something like that.

And Ms Myeni will testify at some stage in due course  
20 and hopefully throw more light but it is part of what is worrying why those matters Eskom matters were not being discussed at proper and legitimate Eskom structures. You understand.

**DR NGUBANE:** What worries me Chairperson.

**CHAIRPERSON:** Yes.



**DR NGUBANE:** Is that the meeting with the Minister spells out the problems that Eskom is faced with. And she suggests a solution that we should have a deep dive.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** An inquiry.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** And then be able to deal with the problems.

**CHAIRPERSON:** Yes.

10 **DR NGUBANE:** Then we see this as a legitimate reason to carry on.

**CHAIRPERSON:** Ja.

**DR NGUBANE:** With the investigation.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** So it is not that this comes out from outside.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** It is that the facts are presented by the shareholder.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** That I am worried about these aspects.

20 **CHAIRPERSON:** Yes.

**DR NGUBANE:** We have a shareholder compact with her which comes from a strategic intent statement that is made at the beginning of our term.

**CHAIRPERSON:** Hm

**DR NGUBANE:** I mean there is no way we can just say we

are not following this. What you are talking Minister does not make sense we will make the decisions. We are in a situation where we are facing stark reality, we must do something about it.

**CHAIRPERSON:** Ja. No, no at the time when the Minister speaks to the Board that is one thing. But that does not change the fact that there is a context there and the context is there was a meeting in Durban and to which the Chairperson of the Board attended where he basically was  
10 the only person from Eskom. You know. And he came back with the idea and the Minister only comes in as I understand the position – only comes in because at the meeting of the 9 March the Board says we want the Minister.

If the Board had had no problem – had understood the motivation from Mr Tsotsi properly on the 9<sup>th</sup> the Minister might not have come to address the Board. But because the Board was not satisfied with certain things coming from Mr Tsotsi about these – this idea the suspension of the executives and the inquiry then they said we want to hear  
20 from the Minister. So there is a background to it. But I think you have your points as well.

**DR NGUBANE:** But also Chairperson.

**CHAIRPERSON:** Hm.

**DR NGUBANE:** If a chairman treats a Board the way Mr Tsotsi treated us.

**CHAIRPERSON:** Hm.

**DR NGUBANE:** There will be resentment.

**CHAIRPERSON:** No, no I accept that if you are a leader, if you are Chairperson and you do not treat your colleagues in a way that is acceptable, they will resent you. I accept that that could happen. Yes Mr Seleka.

**ADV SELEKA SC:** Thank you Chairperson. Now Dr Ngubane reading from your affidavit paragraph 4.15.5 you are setting out the points discussed.

10           “The Board – the points which the Board required clarity on.”

So the Board specifically needed to obtain clarity from the Minister regarding the following. Then there is a list and I am going to read some of the points. The second point is

“The proposal of the appointment of Mr Nick Linnell.”

The proposal to conduct the inquiry.

20           “Mr Tsotsi indicated that President Zuma required Mr Linnell to undertake the inquiry.”

Then in Ms Klein’s affidavit and the Board resolution you say

“you charged Mr Tsotsi with the failure to seek or obtain Board approval for the appointment of a consultant ie Mr Nick

Linnell.”

But he told you he is the President who asked him to – the Board to appoint him. So what we are looking at is - was there substance to the charges that you levelled against him. Were they real charges?

**DR NGUBANE:** Well...

**ADV SELEKA SC:** Let us deal with that first one because you in the Board meeting you said Nick we contracting with you not ENS.

10 **DR NGUBANE:** No. You know Chairperson that is a red herring in real fact. Because we started working and talking and planning with Mr Linnell. Nice gentleman, very knowledgeable but the process of bringing him in was defective. Now we could not just simply say go away Mr Linnell. He was there and he had already addressed us. So we had to find a formalisation of that process through the proper procurement processes.

20 But then at the meeting of the 11<sup>th</sup> the Minister charges the Audit and Risk committee with carrying out the appointment of investigators and this where Mr Linnell I think fell off because then they came up with Dentons. So it was not a question of saying we do not want you at all Mr Linnell it was a process.

So my comments with him at the meeting was that do not tell us about other people because we are talking about

you. But the process is not yet there. It is not yet completed.

**CHAIRPERSON:** Hm;

**ADV SELEKA SC:** But that you did not say to him.

**DR NGUBANE:** I did not say to him.

**ADV SELEKA SC:** You did not say that to him in the meeting?

**DR NGUBANE:** When I meant we are contracting with you that is what I meant that we – we – the process of  
10 contracting is about you not about other people.

**CHAIRPERSON:** Is not the position that at that meeting of the 11<sup>th</sup> Mr – the Board requested Mr Linnell to start doing certain work and actually members of the Board were making inputs into some – I do not know whether it was a statement or whatever but making inputs.

Now if that is correct is the position not that the – the Board members would have known in the context of how Mr Linnell came that no processes had been followed in bringing him in and if they had known that why did they not they – what  
20 would be wrong with them objecting? Saying but we cannot put our stamp of approval to the – to this man working with us in circumstances where we know we are aware that there has been a breach of processes.

So we as a Board cannot do that. You Mr Chair – Mr Tsotsi why do that – do this because you would know

otherwise the whole Board gets tainted with using somebody or a consultant or somebody in breach of processes. Why use this person that you know should not be here?

**DR NGUBANE:** Chairperson.

**CHAIRPERSON:** Hm.

**DR NGUBANE:** If you came or some lawyer came into our meeting.

**CHAIRPERSON:** Ja.

**DR NGUBANE:** We are discussing certain problems. It is a  
10 friendly environment. Surely if he participates no-one is going to chase him out. The only problem is going to come when he starts charging money.

**CHAIRPERSON:** Okay. Okay.

**DR NGUBANE:** Because then it is going to be – the question is going to be raised by the way.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** We did not agree on anything.

**CHAIRPERSON:** Yes okay.

**DR NGUBANE:** But in case – in the context of being civil.

20 **CHAIRPERSON:** Ja.

**DR NGUBANE:** You know and participating in conversations.

**CHAIRPERSON:** Ja.

**DR NGUBANE:** We can surely do that.

**CHAIRPERSON:** There is no problem.

**DR NGUBANE:** Yes.

**CHAIRPERSON:** Okay so the point therefore is as long as Eskom was not incurring any costs.

**DR NGUBANE:** That is right.

**CHAIRPERSON:** In using him.

**DR NGUBANE:** Right.

**CHAIRPERSON:** There was no problem.

**DR NGUBANE:** That is right.

**CHAIRPERSON:** Okay. Take it from there Mr Seleka.

**ADV SELEKA SC:** Thank you Chair. Did the Board know  
10 that Mr Tsotsi as you say in the affidavit, he had been asked  
by the President at the time to invoke the services of Mr Nick  
Linnell? If you doubted Mr Tsotsi did the Board enquire from  
the President?

**DR NGUBANE:** Nobody enquired from the Deputy – from the  
President. Because it would have been improper. Quite  
seriously improper to say Mr Tsotsi tells us you said this we  
do not believe him. That is why the shareholder was brought  
in to try and reach that lack of trust you know.

**ADV SELEKA SC:** Oh okay so that is one of the points you  
20 say. The Board specifically needed to obtain clarity from the  
Minister regarding the following and number 2 is that point.  
What did the Minister say?

**DR NGUBANE:** About Mr Linnell?

**ADV SELEKA SC:** About proposal of the appointment of Mr  
Linnell to conduct the inquiry?

**DR NGUBANE:** Well the Minister ordered ...

**ADV SELEKA SC:** Address the Chairperson.

**DR NGUBANE:** Audit and Risk to work on appointing a consultant and then investigate. She did not specify anything about Mr Linnell. It was up to Audit and Risk to decide the process who ultimately gets the contract.

**CHAIRPERSON:** Does that mean that Mr Linnell at least at the end of the meeting of the Board with the Minister could well have been eligible to be considered by the Audit and Risk committee in due course for either being appointment as a consultant or whatever. Is that what he means? It could have been him, it could have been somebody else.

**DR NGUBANE:** Absolutely Chairperson.

**CHAIRPERSON:** Yes okay. Okay.

**ADV SELEKA SC:** Thank you Chair. Are you saying Dr Ngubane that you pointedly raise with the Minister the question, the proposal of the appointment of Mr Linnell and the Minister did not answer to that?

**DR NGUBANE:** No I am not saying that Chairperson.

20 **ADV SELEKA SC:** Okay. Yes that is what I want to – you need to clarify to the Chairperson.

**DR NGUBANE:** I am saying the Minister spelt out the process. Audit and Risk must do this work, finding the investigator and then end of story. Audit and Risk has been tasked with it.



**ADV SELEKA SC:** Yes okay but here – well and I do not want to belabour it here the proposal is Ms Minister we have the Chairperson saying the President has asked us to appoint Mr Nick Linnell we want clarity on that?

**DR NGUBANE:** No we did not ask that Chairperson.

**ADV SELEKA SC:** Then the other point is this. You are – you wanted clarity on the role that the Board would play in relation to the activities of the War Room that had been set up to manage the power supply challenges that were facing  
10 Eskom. The Board was appraised of the War Room and its activities by the Minister when she came to speak to the Board on 11 March 2015. During this time the Board was not involved in the activities of the War Room. Executives were responsible for that. So you learn of the activities of the War Room from the Minister on 11 March 2015 – the new Board.

**CHAIRPERSON:** Yes she had spoken about complaints from the War Room etcetera. But the concern of the Board was with the War Room focussing on Eskom.

**ADV SELEKA SC:** Yes.

20 **DR NGUBANE:** And giving directives what is the role of the Board in that situation? That was the concern.

**ADV SELEKA SC:** Could – can you explain to the Chairperson insofar as the Minister and we understand complaints about the executives providing - the executives or management providing inaccurate information or

inadequate information to the War Room. Was that a concern to the board?

**DR NGUBANE**: Not... well, we were concerned in terms of the complaints that management was not providing the right and correct information. We were concerned about that but we had no direct input into the War Room information.

**ADV SELEKA SC**: Yes. So would you have been concerned at the time here on the 11<sup>th</sup> of March when the minister is telling you about the activities of the War Room?

10 **DR NGUBANE**: What we wanted that information passes on the way to the War Room. In fact, the minister conceded that it is one of the chairperson of board committee would go to the War Room to represent the board.

**ADV SELEKA SC**: Yes. If... you may address the Chairperson because what I am trying to figure out is. When does the board become concerned about the issues of management relative to the information given to the War Room? Is it on this meeting or after this meeting?

20 **DR NGUBANE**: No, no, no. I think on the 9<sup>th</sup> of March this issue was raised.

**ADV SELEKA SC**: And do you know why that issue of concern which relates to Eskom's operations does not find its way into Eskom's reasons or the board's reasons for suspending the executives?

**DR NGUBANE**: No, to us it was just inefficient. There were

a lot of inefficiencies at Eskom. That is why we are having load shedding but it was part of that. Eskom was broke. It was part of that whole story. But the minister pre-empted this whole thing by saying: I am aware that you feel sidelined by the War Room. It came from the minister.

**ADV SELEKA SC:** Yes, but the reason I am asking that is because Mr Matona testified here that the board never raised with him concerns regarding information by management given to the War Room.

10 **DR NGUBANE:** But they had a direct relationship with the War Room, not with us in terms of that level of consultation and this is what we were concerned about. Matona could not have solved that issue. It was only the minister who could have resolved the issue of representativity of the board in War Room affairs, not Mr Matona.

**ADV SELEKA SC:** Yes, but my question is and trying to explain to the Chairperson. There are accusations made against the executives that they provided inadequate or incorrect, inadequate information to the board, to the War  
20 Room. Does the board raise that with the executives if it is also a concern of the board?

**DR NGUBANE:** We did not know what information they were sending to the War Room except what the minister told us. But this was going to be found out in the inquiry about how trustworthy the information that was going to the Warm

Room was. And in the end Dentons says we could not really find examples of this information.

**ADV SELEKA SC:** So then Mr Matona is then correct that the board did not raise the concerns?

**DR NGUBANE:** No, he is.. he is correct.

**ADV SELEKA SC:** Yes, thank you. The information before this Commission regarding the decisions of Transnet. Transnet boards and Eskom boards relative to the secondment of Mr Molefe is that Transnet took its decision  
10 on 20 April 2015 and Eskom took its decision only on 23 April 2015. Those dates are after the announcement by the minister on 17 April 2015 at the press conference.

**DR NGUBANE:** Well, Chairperson the minister by that time had already consented to the idea of secondment and had instructed us to write the Transnet Board and put our request to them. So the issue that Molefe will be seconded to Eskom had been decided.

That is why paperwork remained to be done. And I see that you did not deal with the secondment of Mr Anoj saying  
20 in your affidavit: “Do you have information about his secondment came about?”

**CHAIRPERSON:** Well, he dealt with it. He said he did not know how he gets to Eskom.

**DR NGUBANE:** No, no. I subsequently found it.

**CHAIRPERSON:** Oh, you did?

**ADV SELEKA SC:** Let me see ...[intervenes]

**CHAIRPERSON:** Yes, I found it strange that you did not ...[intervenes]

**ADV SELEKA SC:** Sorry.

**CHAIRPERSON:** I had found it strange that you would not how the chief financial officer would have come to Eskom.

**DR NGUBANE:** You know what happened to me, Chairperson?

**CHAIRPERSON:** Yes?

10 **DR NGUBANE:** I have been out in KZN.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** I got lockdown there.

**CHAIRPERSON:** Oh, okay.

**DR NGUBANE:** During the lockdown time.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** All my documents were here in Gauteng.

**CHAIRPERSON:** Oh, so it made it difficult?

**DR NGUBANE:** Very difficult to construct all these.

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

20 **DR NGUBANE:** I could phone my son to look for this document or that one.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** And obviously not being a faired with Eskom documents, I got very limited information.

**CHAIRPERSON:** Ja, okay.

**DR NGUBANE:** I wanted to give my representative this document.

**CHAIRPERSON:** Ja, to share with the Commission.

**DR NGUBANE:** On the secondments.

**CHAIRPERSON:** H'm.

**ADV SELEKA SC:** Is that of Brian... ag, not Brian. Of Mr Anoj Singh, Dr Ngubane?

**CHAIRPERSON:** Yes, I think that is the secondment of Anoj Singh that he is talking about.

10 **DR NGUBANE:** Yes, the secondment of both Brian and Anoj Sing.

**ADV SELEKA SC:** And Anoj Singh.

**CHAIRPERSON:** Yes. Okay. The junior counsel can... Do you have your own copies or copies can be made for your lawyers and for all the Commission.

**DR NGUBANE:** Well, if copies could be made for my attorney.

**CHAIRPERSON:** Okay alright.

20 **DR NGUBANE:** I do not want copies myself. I will just give you what I have.

**CHAIRPERSON:** Oh, okay. Okay.

**ADV SELEKA SC:** Dr Ngubane, thank you. We will attend to that.

**CHAIRPERSON:** Well, you have to make arrangements with his attorney because he intends to make them available, first

and foremost to his attorney. [laughing] You have to make arrangements there.

**ADV SELEKA SC:** Indeed.

**CHAIRPERSON:** Unless you are going to make copies for him soon because he will not mind letting us have them but I do not want you to be seem to grabbing them for yourselves.

**ADV SELEKA SC:** [laughing]

**CHAIRPERSON:** [laughing] To the intended recipients.

**DR NGUBANE:** Well, Mr Chairman, we understand the  
10 Commission is short of resources.

**CHAIRPERSON:** [laughing] Well ...[intervenes]

**DR NGUBANE:** [Indistinct] not one of the... So we will make the copies available.

**CHAIRPERSON:** Okay alright.

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

**CHAIRPERSON:** But I do not know Mr Seleka you did not want to have a look at them and see whether, based on them, you wanted to ask Dr Ngubane questions or what your plan is. Or you might need more time?

20 **ADV SELEKA SC:** No, I have asked my junior to look at them.

**CHAIRPERSON:** Ja, okay.

**ADV SELEKA SC:** Yes, Dr Ngubane I do not know whether they are there on this. So the minister makes a press conference, 17 April 2015. And I have mentioned to you

earlier that there was a correction made by her subsequently.

I do not know whether you are aware of the statement she released on the 21<sup>st</sup> of April 2015. And let me read the statement and you can let me know whether...[intervenes]

**DR NGUBANE**: No, sorry Chairperson. I definitely will not have that statement.

**ADV SELEKA SC**: Yes, not you personally.

**DR NGUBANE**: Okay.

10 **ADV SELEKA SC**: But this would have been a media release by the minister.

**DR NGUBANE**: Okay.

**ADV SELEKA SC**: I will read it and then see whether you have any recollection. It is the reappointment of *Mr Brown*(sic), acting Chief Executive of Eskom:

“Greetings to all present. I am advised that this is an in-committee meeting and to a formal shareholders meeting.

20 On Wednesday, 15 April, I briefed the nation on the current state of the grids and the reason for implementation of Stage 3.

With that announcement, I have also informed the nation that I am looking at immediate steps to stabilise leadership at Eskom, both at executive and board level.



On 17 April 2015, I subsequently announced my decision to second Mr Brian Molefe as the new acting Chief Executive of Eskom.

I alluded to consultations with various stakeholders including President Jacob Zuma and the boards of both Transnet and Eskom.

I believe that the statement needs to be clarified.

Due to the urgency to stabilise Eskom, I called a meeting with the chairperson of Transnet Board, Ms  
10 Linda Mabaso and the acting chairperson of the Eskom Board prior to making the announcement.”

You were the acting chairperson at the time.

**DR NGUBANE:** That is correct.

**ADV SELEKA SC:** Yes.

“This decision was taken within context of challenges facing Eskom as well as the urgency with which it needed to be implemented.

I could only consult at this opportune moment with the full board.

20 At the time, I needed to contain the matter in confidence and avoid any media leaks.”

So remember what she said is: I have said I have consulted with, amongst others, boards of both Transnet and Eskom. So the clarification is that she only consulted or called the chairpersons of the two boards.

**DR NGUBANE**: Well, we were consulted. We were both present at the meeting. However, there was a lonely time to that stage. I cannot quantify ...[intervenes]

**CHAIRPERSON**: What? It was a long what?

**DR NGUBANE**: A lonely time.

**CHAIRPERSON**: Okay.

**DR NGUBANE**: Discussing with the minister.

**CHAIRPERSON**: Ja.

**DR NGUBANE**: And then coming to the stage where she  
10 called both chairpersons to the meeting.

**CHAIRPERSON**: Oh. H'm. H'm. The leap time, was that when the consultation was taking place or the consultation had taken place much earlier?

**DR NGUBANE**: The process had long started.

**CHAIRPERSON**: Oh, okay.

**DR NGUBANE**: But these stages, you know, ultimately writing the letter to the board of Transnet.

**CHAIRPERSON**: Ja.

**DR NGUBANE**: I think it followed our meeting with the  
20 minister.

**CHAIRPERSON**: Ja, okay.

**ADV SELEKA SC**: Ja, thank you Chair. Ja, Dr Ngubane I think you have... you will correct me that you have confirmed that the minister, the minister says that herself that it was her decision to second Mr Molefe from Transnet to Eskom.

**DR NGUBANE**: Ultimately, she had to make that decision.

**ADV SELEKA SC**: Yes.

**DR NGUBANE**: You see I... for instance, we will write the minister and say People in Governance are recommending that while you give extension to Mr Molefe's secondment to Eskom, we want to start the process of identifying a permanent CEO. So these things goes hand in hand.

We wanting to be continuing with secondment but at the same time we want to start the process. And the minister  
10 writes back and says: I agree. It is that sort of sequence of events.

**ADV SELEKA SC**: You wanted to start what process at the same time?

**CHAIRPERSON**: To find a new CEO.

**DR NGUBANE**: Looking for a new CEO.

**ADV SELEKA SC**: Now do you know what information the minister had at her disposal when calling the two chairperson of the board and conferring with them on her decision to appoint... to second Mr Molefe?

20 **DR NGUBANE**: Well, we had asked for someone to be seconded. So I think it was in that context that she contacted.

**ADV SELEKA SC**: Yes, but do you know what information she had at her disposal to elect Mr B as opposed to anybody else?

**DR NGUBANE:** Well, I cannot know that Chairperson but we had... the matter was on the table and so these are the processes.

**ADV SELEKA SC:** So the national... they did not share any information with you why on choosing Mr Brian Molefe?

**DR NGUBANE:** No, no she did not. She just thought Mr Brian Molefe will help Eskom.

**ADV SELEKA SC:** Did you ask any questions? Why Mr Brian Molefe?

10 **DR NGUBANE:** Yes, at some stage. No, no, no. That happened when we were looking to employ a permanent CEO. Then she asked that we get legal opinion. That we get motivation and so on. I mean, I considered those to be just formalities because she knew about Mr Molefe.

**ADV SELEKA SC:** Now did you... well, I do not know whether you had any say in the appointment. Did you support the secondment of Mr Molefe?

**DR NGUBANE:** Well, we were saying: Support the secondment. But also support us looking for a new... a  
20 permanent CEO.

**ADV SELEKA SC:** Yes. And in that process, we can see from your affidavit that Mr Brian Molefe was the person the board ultimately sought to have appointed permanently at Eskom.

**DR NGUBANE:** No, Chairperson. If anyone was at Eskom

at that time and seeing the transformation within three months of Molefe being present at Eskom, would have never wanted to let him go away. We were on the verge of turning things around. And then to get a new player coming in would jeopardise that.

I remember on Woman's Day, he told us - well, probably the following day – that an assurance that load shedding will never come back again. Now that was dramatic. A person who can perform this type of transformation add value.

10 **ADV SELEKA SC:** Yes. So we have to look at that Dr Ngubane against what we know in regard to the Tegeta prepayments, issues relating to that. The...[intervenes]

**DR NGUBANE:** Can I...?

**ADV SELEKA SC:** Yes, you can respond.

**DR NGUBANE:** But Chairperson, those things came later. I am just talking about the period up to the end of load shedding.

**ADV SELEKA SC:** Also, against the backdrop of what I have read to you earlier the locomotive deals at Transnet.  
20 And I think what the Chairperson was trying to convey as well which is issues that had arisen at Transnet.

**DR NGUBANE:** Chairperson, I only learnt about these issues after I had left Eskom. I really never had the detail of those transactions except when reports started being published.

**ADV SELEKA SC:** Also against the issues relating to the acquisition of optimal coal mine by Tegeta, specifically the meeting that you yourself and Mr Molefe have with the then Minister Ramathlodi.

**DR NGUBANE:** Well, now I think we are jumping a whole loop.

**CHAIRPERSON:** Okay, yes.

**DR NGUBANE:** Chairperson, on the 5<sup>th</sup> of August, I think it is 2016. If that is the correct date.

10 **CHAIRPERSON:** 2015.

**DR NGUBANE:** 2015 or 2016.

**CHAIRPERSON:** Oh, was it 2016? Let me check.

**DR NGUBANE:** Minister Ramathlodi suspended the licence, the mining licence of Glencore. Now Glencore had quite a number of mines, you know, which was supplying power stations. Not just Hendrina which was a big concern for us but also are not, I think ...[intervenes]

**CHAIRPERSON:** Okay ...[intervenes]

*[Parties speaking over one another – unclear]*

20 **DR NGUBANE:** ...were these supplied by coal from Glencore Mines. But not only that. Glencore had shares in other mines throughout the coal basins in Witbank.

So when these suspension happened and at the same time there was a quarrel... had a problem with Optimum Coal Mine about the pricing of coal, about the penalties that were

being claimed and they had threatened to stop supplying coal and, in fact, they did stop supplying coal to Hendrina which was producing 2000 Megawatt of energy with a very high CV in terms of coal burning.

We had to use reserves, stockpiles to breach that gap. Then comes the suspension of the mining basins.

Now if you took out Komati, took Amot, took out Hendrina – you will have a national blackout in this country for certain. And to come out of a national blackout, you  
10 need not less than six weeks of darkness.

And yet, on the 5<sup>th</sup> of August, we had barely stabilised the system and dealt with load shedding. Now this was going to take us right back, you know. So this issue...

I mean, Minister Ramathlodi had called in Brian to talk about the penalty issues with Glencore.

But this was an issue that required real intervention of asking to please remove the suspension because by the time our stockpiles finished and there was no fresh supply, we were sure to have a blackout.

20 That was the motivation for requesting that. And then he says... he refused us asking him to stop... to withdraw licences but he had already withdrawn the licences and that is why we were pleading with him, please restore the licence. So there is this communication ...[intervenes]

**CHAIRPERSON:** No... well, first you said the evidence

leader may have jumped also. So he will need to remember to go back and cover whatever he dumped, whether it is today or another day.

**DR NGUBANE**: Yes.

**CHAIRPERSON**: But now that he asked you a question on this issue, I want to engage you on it because it is an important issue. You and Mr Ramathlodi what appears to be two very different what damage can he opposed versions about that meeting.

10 Mr Brian Molefe has in his affidavit has been submitted to the Commission also talks this issue and in dealing with his version, I think it is substantially along the same lines as yours.

Mister or Doctor Arra Munja who was the Director of the Department of Mineral Resources when... at the time when Mr Ramathlodi was Minister of Mineral Resources has also been asked by the Commission to put up an affidavit to say what he remembers, what he knows to have happened.

20 His version is along the lines of Mr Ramathlodi's version up to a certain point. But there is a certain point where he says: I do not remember this about Dr Ngubane at the meeting but I remember this. So we can go there.

But as you might recall from the affidavit of Mr Ramathlodi. His evidence or in his affidavit and in his evidence, he said the meeting that he had with you and Mr



Brian Molefe happened in September 2015 at the beginning I think ...[intervenes]

**ADV SELEKA SC:** Chairperson, may I give you the reference?

**CHAIRPERSON:** Yes, I am asking for it. Ja.

**ADV SELEKA SC:** Okay. Eskom Bundle 09(b). The affidavit of Minister Ramathlodi.

**CHAIRPERSON:** Yes, I have the right bundle but I have the page somewhere but...

10 **ADV SELEKA SC:** 867.

**CHAIRPERSON:** 8610?

**ADV SELEKA SC:** 867?

**CHAIRPERSON:** Okay.

**DR NGUBANE:** Is that 867?

**ADV SELEKA SC:** Ja, (b).

**CHAIRPERSON:** Ja, it is correct.

**ADV SELEKA SC:** And the relevant paragraph is on page 871, paragraph 17.

20 **CHAIRPERSON:** Have you got it Dr Ngubane? 871 is the page.

**DR NGUBANE:** [No audible reply]

**CHAIRPERSON:** He says on the 5<sup>th</sup> of August 2015 or around 5<sup>th</sup> of August 2015, the annual... M was complaining that Glencore was not following proper procedures during assessments at Optimum Mine. He says:

“I then authorised ...[indistinct] to stop the operations to allow a team of DMR, NUM and Optimum representatives to resolve the issue of the retrenchments. This was resolved in two days and the operational stoppage was lifted and the mine resumed operations.

It is important to know that the stoppage was never dealt with as a suspension but rather under a provision of the Mineral and Resources Development Act. I cannot recall the specific section.”

10

And then he says in paragraph 18:

“In August, after the retrenchment issue had been resolved, it emerged that there was conflict between Eskom and Glencore over a penalty of approximately R 2 billion imposed by Eskom on Glencore for bad performance and poor quality coal if I remember correctly.”

And then he says:

“As a result of that conflict, Mr Brian Molefe, the then CEO of Eskom, had stopped taking coal from one of the Glencore Mines known as Optima.”

20

And then he says:

“I arranged to meet Mr Molefe at a small boutique hotel at the Mall of Africa in Waterfall to discuss this

issue with Glencore and he requested that I suspend Glencore's mining licences during our discussion.

I told Molefe that I was not going to suspend the licences as suggested and that nothing will be resolved if he does not meet with Glencore.

10 I then suggested that a team from Eskom, DMR and Optima be created to mediate the situation. He agreed to meet as suggested. However, the following day, Molefe called me and advised that the Eskom Chairman, Dr Ben Ngubane would like to meet with me. I agreed to set up an official meeting between Molefe, Ngubane and myself, [indistinct] 00.20 and Ramontja on or about 1 September 2015."

He says:

20 "At the meeting Ngubane requested that all licences for Glencoe must be suspended. I asked him how this would affect coal supply in the country. Ngubane did not think that this was an issue and he was comfortable that Eskom would negate any shortfall of coal. I then said I needed time to consider all the facts to make an informed view of suspending the licences as it could have significant economic impact if not dealt with correctly. We were already experiencing power outages. The

suspension of licences for mining concerns cannot be taken lightly as it is a protracted process. However, Ngubane became impatient as he advised me that had to brief the President on the outcome of the meeting before he left for his BRICS meeting that afternoon. I did not waiver in my stance. A few weeks after return of the President from his BRICS meeting on 22 September 2015 I was called to meet the President at his official residence. When I arrived, I met Mr Ace Magashule and Mr Ben Sizwane(?), whom I did not know at the time, in the waiting room. I privately met the President who thanked for my exemplary service as Minister of the DMR and informed me that he is moving me to the position of Minister of DPSA as there was a vacancy at the time. I then agreed and left.”

10

Now I wonder whether there might not be a problem with the time because I think in your affidavit you ...[intervenes]

20

**ADV SELEKA SC:** Can I give the Chair the page reference number?

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** That is page 49.

**CHAIRPERSON:** Thank you.

**ADV SELEKA SC:** That is Eskom bundle 09(A).

**CHAIRPERSON:** Yes. It would appear that if the meeting

that Mr Ramatlhodi was talking about, happened early in September. Then you may have – you may be mistaken because early in September it would seem he had not suspended any licences, he had only suspended them at the beginning of August and he says it took two days and they were lifted. But if the meeting took place early in August then that point would not count against your version because for two days he accepts that there had been a stoppage of operations.

10           But he links the meeting – for what it is worth, he says, if I understand him correctly, on the day on which you had this meeting the President was going to be leaving for a BRICS meeting and he says you said to him you were going to brief the President before he could leave. Yes?

**DR NGUBANE:**     Chairperson, I did not know anything about the President's departure or any meeting.

**CHAIRPERSON:**    Ja.

**DR NGUBANE:**     He went to see him purely on the basis that power stations were threatened because of inadequate  
20 coal. If we exhausted the stockpiles then there will be a blackout, which will be a tragic event. So I do not know how this conversation came about because it was not part of the discussion. President – I mean, sorry, Mr Chairman, we were working so hard to stop load shedding, how could we go and say bring us a blackout because if we made

such a request, that is what would have happened.

**CHAIRPERSON:** He says he had an earlier meeting with Brian Molefe who had made a similar request on his own before the meeting which involved you. And when I look at what was happening at the time, between Eskom and Glencoe and Tegeta, it appears that that was during a time when according to Glencoe – but Mr Ephraim who gave evidence here, Mr Brian Molefe was – had become very inflexible in the discussions which Glencoe was trying to  
10 have with Eskom to say please, the price that we have to use to sell the coal to you is not viable, we cannot continue like this, we are operating at a loss, let us have an increase and he was saying, Mr Ephraim, in his evidence here, on his statement, he said just before Mr Brian Molefe arrived at Eskom they had made a lot of progress with various personnel at Eskom discussing the need for a revision of the price of coal in terms of their agreement with Eskom and actually there was a recommendation that was placed before the board on the  
20 basis that management was happy to say let the board decide and otherwise they had no problem. But at that meeting where the board was supposed to look at this proposal, it was three days after Brian Molefe had arrived, he says the board referred this proposal to Brian Molefe and Mr Ephraim says then the attitude changed completely,

there was rigidity, inflexibility from the part of Mr Molefe, their whole spirit led to and characterised our discussions with various people within Eskom, before he came changed. We were being squeezed and he – the impression one got – and it may be a wrong impression because one has not heard everybody, but the impression one got from the way he was putting things, it was as if Mr Molefe may have been helping Tegeta or may have been helping those who wanted to buy – to take over by making  
10 it difficult for them so that when an offer is made to say we buy your company or your shares, they must realise that it is not viable to continue like this, we may as well sell. That impression may be wrong when one has had a chance to hear everybody but that is the impression that seems to be created.

So it is possible that somebody might say well, if Brian Molefe asked Mr Ramathodi to suspend Glencoe's licences and if Dr Ngubane also asked him to do that, it may well be that the idea was to put Glencoe in a position  
20 where they would take whatever offer was being made by those who wanted to take over. That is an impression that might be wrong when one has heard all the evidence. I am just saying there is that impression which one gets from the side of Glencoe who have given evidence.

**DR NGUBANE:** No, Chairperson, I am sorry to say this. I

get an impression that someone is out to lynch me because I only had one meeting.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** With Mr Ramatlhodi.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** And it was - you know, the penalty issue, I am not in the primary energy division.

**CHAIRPERSON:** Ja.

**DR NGUBANE:** So I get information.

10 **CHAIRPERSON:** Ja.

**DR NGUBANE:** The information I get is that from about 2010/2012 the price of export coal almost trebled. Glencoe started washing coal to export great and giving Eskom [indistinct - speaking African language] whatever remains.

**CHAIRPERSON:** Ja, ja.

**DR NGUBANE:** And that is when the issue of penalties started coming in because the volumes and the quality were wrong and other companies starting doing this type of  
20 thing. The explosion at Duvha Power Station was ascribed to inferior coal being burnt there and not therefore getting proper combustion and so on and with that pressured.

So who agree we should get people from Primary Energy to come and explain this. I come in because Brian himself tell me we are in a very precarious situation. If



this suspension continues, we will lose power from – not just Hendrina but other stations supplied by the Glencoe mine.

Then I panicked myself, I say let us go and see the Minister because this cannot happen, we cannot work so hard and then the end this happens. And then I come with a long discussion paper which I spell all the risks and all that and then later, I cannot remember now how many weeks or whatever, he reinstates the licences, you know?

10           So if we had said stop supplying – I mean, stop the mining licences of these companies, then we should go to a mental asylum because we will be mad, Chairperson, there is no way which we can run electricity supply to the country without these mines that were threatened. So ...[intervenes]

**CHAIRPERSON:**     Want to say Ramontja says in his – about the meeting, he says he attended the meeting.

**DR NGUBANE:**    Yes.

**CHAIRPERSON:**    I think in your affidavit you do not  
20   remember that there was anybody other than the three of you but he says he had been called by Minister Ramatlhodi to be present at the meeting together with the Deputy DG. He says:

“Around September 2015 I was called by the former Minister Ngoako Ramatlhodi to attend a meeting

with Eskom officials at the office of the Minister. The attendees of the meeting were myself, as the then Director General of the department, the former Ngoako Ramatlhodi, Mr Joel Rafella, Dr Baldwin Ben Ngubane, former Chairperson of Eskom, and Mr Brian Molefe. The deliberations at the meeting were primarily between the former Minister Ramatlhodi and Dr Ngubane.”

And then he says:

10 “I was provided with the affidavit of the former Minister Ngoako Ramatlhodi signed and dated 11 June 2020 for the purpose of commenting on the contents of paragraph 21. I concur with the contents of the paragraph save to mention that to the best of knowledge and belief, I cannot vividly recall the following points and behaviour as mentioned in a statement.

1. Whether Dr Ngubane did mention that he did not think that this was an issue and he was  
20 comfortable that Eskom would negate any shortfall of coal.”

So, in other words, in his affidavit Mr Ramatlhodi had said – this is part of what you said. So Mr Ramontja says although I agree with what Mr Ramatlhodi says happened at that meeting, there are two points that I do not

remember happening. Once of them, he says he does not remember that Dr Ngubane said he did not think this was an issue and that he was comfortable that Eskom would negate any shortfall of coal.

And then says, the second point he does not recall, is that Dr Ngubane became impatient in the form of behaviour. He says he does not recall that because I think Mr Ramatlhodi in his affidavit said you became impatient. So he says he does not recall that.

10 But what he does say, he says, however, he did advise the Minister that he will brief the President on the outcome of the meeting. So I am just giving you that somebody else who says he was present at the meeting has put this version. You might not wish to say anything but just so that you understand what evidence has been put up.

**DR NGUBANE:** Well, I had on my side Mr Molefe, I do not know what he has said.

**CHAIRPERSON:** Oh, actually let me go there so that –  
20 what page is it, Mr Seleka? Oh, I have got I, page 796 is where his affidavit starts.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** That is at Eskom bundle 09(B).

**ADV SELEKA SC:** So the page?

**CHAIRPERSON:** Page 796. Let me show the relevant

part.

**ADV SELEKA SC:** Chair, I seem to have a different page reference.

**CHAIRPERSON:** Oh, is that so?

**ADV SELEKA SC:** Mr Dan Molefe's affidavit?

**CHAIRPERSON:** Oh, has he many affidavits?

**ADV SELEKA SC:** I have it, it is page 536.

**CHAIRPERSON:** 536?

**ADV SELEKA SC:** Yes.

10 **CHAIRPERSON:** Okay, let us – well certainly the one that I am talking about is...

**ADV SELEKA SC:** And then the relevant paragraphs which Ramontja is referring to, appear on page 560.

**CHAIRPERSON:** Hang on, his one – Molefe's one is what page?

**ADV SELEKA SC:** 560. No, Eskom 09(B)

**CHAIRPERSON:** Oh, that must be under A here.

**ADV SELEKA SC:** B, 09(B)

**CHAIRPERSON:** Oh, it is under B?

20 **ADV SELEKA SC:** Yes, page – the affidavit starts on page 536.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** The relevant passage is – I am on page 560.

**CHAIRPERSON:** Yes, have you got it, Dr Ngubane?

**DR NGUBANE:** Yes, Chairperson.

**CHAIRPERSON:** Ja, I think it is just from paragraph 96.

He says – that if Mr Brian Molefe:

“On the 5 August 2015 the Department of Minerals announced that Glencoe’s mining licences have been suspended.”

I think that date coincides with the date that Mr Ramatlhodi gives although he does not say the licences were suspended. He says it was the stoppage of operations, I

10 think. And then he says:

“The reason for the suspension was that Glencoe had not followed due process in the proposed retrenchments of their workers.”

That is the same as what Mr Ramatlhodi says.

20 “The effect of the suspension of the mining licences would be to suspension of coal supplies by Optimum to Hendrina. Dr Ngubane and I had a meeting with Minister Ramatlhodi where Dr Ngubane asked him to reconsider the decision to suspend the licence of Glencoe because of our concern about the negative impact on the security of supply of coal to Hendrina power station and possible impact on load shedding. We were relieved when a few days later the suspension of the licences was withdrawn. I was dumbfounded

when in May 2017 former Minister Ramatlhodi claimed that the Eskom Chairman Dr Ngubane and I met with him to ask him to suspend Glencoe's licence and that he refused because it would result in more load shedding. He seemed to have forgotten that he had in fact suspended the licences at the time."

And then he talks about 20 August. That is something else. So his version is in line with what you say, he puts  
10 there. It seems that the big problem might be exactly when this meeting happened because Mr Ramatlhodi puts it in early September whereas Mr Molefe puts it early August but Mr Ramatlhodi says early August is the stoppage of operations. So there was stoppage of operations because there was no compliance with retrenchment procedures. But he says this meeting happens at another time, unconnected with that, whereas Mr Molefe says no, it was connected with that.

**DR NGUBANE:** Chairperson, I only had one meeting with  
20 Minister Ramatlhodi.

**CHAIRPERSON:** Yes.

**DR NGUBANE:** So I do not know where he gets this meeting in September.

**CHAIRPERSON:** Yes, yes. No I think he also does not say he had two or more meetings with you, the person in

respect of whom he mentions two meetings is Brian Molefe because he said he met with him alone and then later, I think the following day, he met with him plus with yourself and then other officials of his department, on his version.

But I think you have put your version, they have put their version. I think the investigator will continue to check. I think a lot depends on exactly when it happened.

**ADV SELEKA SC:** I have a question, Chair.

**CHAIRPERSON:** Ja.

10 **ADV SELEKA SC:** Before you close it.

**CHAIRPERSON:** H'm?

**ADV SELEKA SC:** I said before you close it, Chair, I have a question myself.

**CHAIRPERSON:** Oh, ja, ja, okay.

**ADV SELEKA SC:** Dr Ngubane, the other point of difference appears from your own affidavit which is on page 49 of bundle A, Eskom bundle 09(B).

**DR NGUBANE:** Sorry, what is the number?

**ADV SELEKA SC:** A, I beg your pardon, page 49.

20 **DR NGUBANE:** Page 49?

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Under A.

**ADV SELEKA SC:** Under A, ja. Paragraph 11.18.

**DR NGUBANE:** Okay, thank you.

**ADV SELEKA SC:** And you see that paragraph where you

state:

“These were the concerns that drove Mr Molefe and I to request a meeting with Minister Ramatlhodi who then was the Minister of Mineral Resources, to apprise of the consequences of suspension of the coal mining licence. The meeting took place at Minister Ramatlhodi’s offices in Pretoria. The meeting was arranged by Mr Molefe, I cannot remember the date of the meeting. Luckily Mr  
10 Ramatlhodi reinstated the mining licence on 11 November 2015.”

So you do not recall the date of the meeting but you recall the date of the reinstatement.

**DR NGUBANE:** Because I must have read this somewhere.

**ADV SELEKA SC:** Now if you go back to A – well do not have to go – I will read it for you. Dr Ramontja says that the suspension was on the 5 August and the reinstatement was on the 7 August and it attaches media article of the  
20 same date 7 August 2015 which reads:

“Glencoe to resume South Africa mining.”

That is Financial Times, dated 7 August 2015.

“Glencoe is said to resume operations at its Optimum Coal mine after the South African government lifted its suspension of the mine’s



licence.”

So 11 November 2015 is at odds with 7 August 2015.

**DR NGUBANE:** No, I must have read this date in some document. My ...[intervenes]

**CHAIRPERSON:** What is your recollection as to how long it took Mr Ramathodi to reinstate the licences after the meeting that you had with him?

**DR NGUBANE:** It was not very long.

**CHAIRPERSON:** And few days or months or weeks?

10 **DR NGUBANE:** Few days or weeks. Probably two weeks, I am not sure.

**CHAIRPERSON:** Because, you see, in your own affidavit you do say in paragraph 11.15 at page 48 that the suspension of the licences was effected on the 3<sup>rd</sup>. You say the 3 August, if I am not mistaken. Ja, I think whether it was the 3<sup>rd</sup> or 5<sup>th</sup>, but early in August.

**DR NGUBANE:** Yes.

**CHAIRPERSON:** Now if the date of 11 November 2015, which is when you say the mining licences were reinstated  
20 were to be correct, it would mean that the suspension took about what, three, four months?

**ADV SELEKA SC:** No a little over two months.

**CHAIRPERSON:** H'm?

**ADV SELEKA SC:** A little over two months.

**CHAIRPERSON:** Well, August, September, October. No,

it is 11 November, it is over three months.

**ADV SELEKA SC:** About three.

**CHAIRPERSON:** Because if the suspension of licences happened on the 3<sup>rd</sup> or 5<sup>th</sup> August, that is like – by end of August that is a whole month.

**ADV SELEKA SC:** That is correct.

**CHAIRPERSON:** Then September, the suspension is still on, that is the second month. October, the whole of October, that is another month and then they only  
10 reinstated on the 11 November. That is close to three and a half months.

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

**CHAIRPERSON:** So that would be quite a long time.

**DR NGUBANE:** That is right.

**CHAIRPERSON:** And the impact and the consequences maybe would have been quite devastating. I do not know, what do you think?

**DR NGUBANE:** It would have been, Chairperson.

**CHAIRPERSON:** Yes.

20 **DR NGUBANE:** I must – I do not know, I must have been checking different publications about it.

**CHAIRPERSON:** Yes, yes.

**DR NGUBANE:** And confused it with some other date.

**CHAIRPERSON:** Yes, ja, ja. Okay, Mr Seleka? Well we actually we moved past five, past six. No, I think we have

to stop. Fortunately, I understand that arrangements have been made in any event that Dr Ngubane was coming to come back to deal with other issues in regard to other Eskom matters.

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

**CHAIRPERSON:** So maybe what we should have in mind is that whatever you might still have needed to deal with under secondment and suspensions, you can deal with when he comes back to give evidence on other Eskom  
10 issues, start with that, put it aside and then deal with the other matters. That is what I think should happen, Dr Ngubane, is that fine with you?

**DR NGUBANE:** I asked my representative to intercede with the ...[intervenes]

**CHAIRPERSON:** With the evidence leaders.

**DR NGUBANE:** I need to plant some maize.

**CHAIRPERSON:** Yes. Well, look, arrangements will be made, I am sure you will get time to plant some maize. Arrangements will be made but I want to thank everybody  
20 for all the cooperation to work even beyond normal time in order to try and cover as much as we have. We were hoping that we would finish at least on the suspensions of executives and secondment, we did not finish but I think whatever is left is not much, so when you come back then we will try and finalise everything, but thank you to you

and thank you to your legal representatives, arrangements will be made and you will then come back.

**DR NGUBANE**: Thank you Chairperson.

**CHAIRPERSON**: Okay.

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

**CHAIRPERSON**: Thank you very much we ...[intervenes]

**COUNSEL**: Excuse me Chair, may I add one further note just on cooperation and it is something that has not been brought to the attention of my learned friend. Chair you raised a question about obtaining recordings from Eskom of the missing March meeting.

**CHAIRPERSON**: Yes, yes.

**COUNSEL**: Chairperson I can confirm from my attorneys that they have made further inquiries this afternoon and have shared electronic copies of those recordings with the Commission's team, just to confirm that Chair it includes particularly the now notorious recordings of the 9 March meeting.

**CHAIRPERSON**: Oh, oh, that is great.

20 **COUNSEL**: Chair we have not had a chance to listen to that yet, but we ...[intervenes]

**CHAIRPERSON**: Yes, on thank you very much, I think that is very helpful, thank you very much.

**ADV SELEKA SC**: Indeed, indeed Chair.

**CHAIRPERSON**: Okay there is a witness who was

supposed to testify, who has been deferred to next week.

**ADV SELEKA SC:** Ms Suzanne Daniels.

**CHAIRPERSON:** Yes I think will – I can hear his evidence on Tuesday, or will that be challenges and we should arrange another time. From your side?

**ADV SELEKA SC:** Not from our side, not from our side.

**CHAIRPERSON:** Yes, okay let – arrangements can be made for me to hear her evidence on Tuesday.

**ADV SELEKA SC:** On Tuesday.

10 **CHAIRPERSON:** Ja.

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

**CHAIRPERSON:** Thank you very much to everybody, we will now adjourn.

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

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO 14 SEPTEMBER 2020**

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