

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

06 OCTOBER 2020

DAY 277



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Recording & Transcriptions

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06 OCTOBER 2020

TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 06 OCTOBER 2020

CHAIRPERSON: Good morning Mr Seleka.

ADV SELEKA SC: Good morning.

CHAIRPERSON: Good morning everybody.

ADV SELEKA SC: Morning.

MR LINNELL: Chair I cannot hear.

UNKNOWN PERSON: I can hear you.

MR LINNELL: They do not seem to hear me.

CHAIRPERSON: What is that now?

10 **UNKNOWN PERSON:** Are you sure about that because they also do not forget things are on mute at the moment.

MR LINNELL: Oh okay alright.

ADV SELEKA SC: Mr Linnell was saying he could not hear us.

MR LINNELL: I can hear you now Counsel.

ADV SELEKA SC: He can hear now.

CHAIRPERSON: Yes those things should be checked before I come in.

ADV SELEKA SC: Indeed so.

20 **CHAIRPERSON:** Yes. Are we ready?

ADV SELEKA SC: We are ready Chairperson.

CHAIRPERSON: Yes okay let us get going. Mr Linnell the oath you took yesterday continues to apply today. You understand that?

MR LINNELL: I understand that Mr Chairman.

CHAIRPERSON: Okay alright. Thank you.

ADV SELEKA SC: Yes.

CHAIRPERSON: I know that when we lost the signal I had asked you a certain question and I asked you not to forget the question and your answer and you promised not to forget the question and the answer. Do you still remember the question and the answer?

MR LINNELL: I do indeed Mr Chairman.

CHAIRPERSON: Okay alright. I cannot remember what
10 the question was. Obviously, I do not know what the answer was going to be.

MR LINNELL: I will follow on from that as you asked me to do. Mr Chairman yesterday you asked a specific question; could I have made a statement – a general statement that state owned enterprises and other state entities that the internal capacity or capability to interrupt and prevent corruption. So you queried that on the basis that these entities all have capable Human Resource and Legal Departments within them and then therefore should not
20 necessarily need external ...

ADV SELEKA SC: It seems we lost the sound.

CHAIRPERSON: Well we have lost him.

ADV SELEKA SC: Yes. Okay he is still talking but we cannot hear him. We cannot hear you Mr Nick. Maybe you can hear us but we...

CHAIRPERSON: Do I need to adjourn?

MR LINNELL: No, no I...

ADV SELEKA SC: Oh there.

CHAIRPERSON: Oh is he coming back?

ADV SELEKA SC: Yes.

MR LINNELL: Mr Chairman so you queried whether why was it not that internal companies with HR Departments and Legal Departments had the capacity to do this. And ...

ADV SELEKA SC: Okay now.

10 **CHAIRPERSON:** Yes now...

MR LINNELL: You wanted my answer...

CHAIRPERSON: Yes I am sorry Mr Linnell you have helped me remember what my question was but I think you may have understood it in different way than I intended it. I think you had said that you had assisted SAA to deal with a disciplinary matter or disciplinary hearing relating to somebody at SAA. And I had questioned why Ms Dudu Myeni would bring you into deal with that because an entity such as SAA would have a Legal Department and would
20 have a Human Resources Department that could deal with disciplinary matters. I think that was – that was my – my question. And you were going to give your answer because I think you said that SAA did not have – either did not have a Legal Department or did not have people who could do what you were doing.

MR LINNELL: Mr Chairman that – as I understood your question then.

CHAIRPERSON: Yes.

MR LINNELL: My answer to that is – is that if it were true that these state owned enterprises including South African Airways and Eskom and others did have the capacity to do as you will expect then you would not be here for the last 200 hundred days listening daily to state owned enterprises that had failed to detect and prevent
10 corruption.

Every single one had an internal HR and Legal Department and every single day brought before you are instances of how that failed. And South African Airways is no exception.

In the case of South African Airways where I performed a coordinating role it provided an external influence to the – the investigation and it allowed a light to be shined on that investigation which the internal functionaries were dispossessed of that power simply
20 because of the environment in which state owned enterprises and other state entities are obliged to operate even to this day.

So my comments Sir was to make it clear that this – the role of an external coordinator lived – a liberty could detect what was wrong; to highlight it and expose it was a

positive influence in value to these entities and when I come before you with my affidavit which the commission has in respect of SAA I would hope to explain my role there.

Obviously today as we go through my role as a coordinator at Eskom, I hope to be able to provide you with that explanation of what my conduct was at SAA. In fact, and the fact that other entities might have had an agenda why they might of interposed my role I would ask to have
10 that divorced from what I did. Because what I did is what I did.

Their motive they must come before you and explain directly. But I do not conduct their motive; I conducted my role which I hope to put to you today Sir.

CHAIRPERSON: No, no I understand what you are saying Mr Linnell but I think your answer is wider than my question or maybe address is a slightly different issue. You talk about corruption in general. I was talking about to the extent that you were brought in to deal with disciplinary
20 matters to the extent that you were brought in to deal with disciplinary matters.

So my question was; my understanding would be that the – these SOE's would have people who can run disciplinary hearings and I do know that sometimes they would bring in lawyers from outside. But it seems to me

and you must tell if I am – tell me if I am misunderstand what you said. It seems to me that in relation to disciplinary matters at least the one at SAA if I understood you correctly. SAA would have a situation where they bring you in in regard to a disciplinary matter and you – they might still need to bring lawyers as well.

So if I am right that they would have internal people who can deal with disciplinary matters it would seem therefore that they leave people within the department –
10 within the entity who can deal with disciplinary matters. And disciplinary matters do not really need lawyers because disciplinary matters are not supposed to be run like trials in courts you know.

They would have internal people and then they bring you in then lawyers are brought in. It just seems to me that you – in that situation you are bound to end up with the entity paying a lot of money for outside people on a matter that could be dealt with internally.

So that is what I am talking about and I am
20 confining it to a disciplinary hearing purposefully because it is easier to deal with that than to talk about general. We can talk about general later on but just confining oneself to a situation where you were brought in to deal with a disciplinary matter in – for example SAA. That is my concern. You understand?

MR LINNELL: Mr Chairman if I could – I do Sir.

CHAIRPERSON: Hm.

MR LINNELL: Thank you. Mr Chairman disciplinary procedure is an end result of an allegation, an investigation which if it has merit leads to a disciplinary hearing. The first step is an allegation and an investigation.

In most SOE's many of the functionaries who are associated with wrongdoing are the people at the top of the
10 organisation. Not exclusively but in many cases they are. It is impossible for people who are subordinate to those leaders in that environment to have their independent capability to enquire and investigate their bosses. It does not happen. In real life Sir it cannot happen.

It is unfair on those people to challenge their bosses and get to a point where they suggest their bosses be subject to a disciplinary hearing. I did not get involved in the many disciplinary hearings which HR and Legal do every day in those organisations.

20 Typically though when people who are at the heads of the organisation and it is unfair and unreasonable for someone internal to that to try and discipline or expose his boss. And I think Sir even listening to many of the – people who have deposed before you during this commission have expressed that limited ability and I think

Sir I have heard you express consternation that that was not possible and it ought to happen. So at SAA Sir the investigations and coordination I was involved with and always with professional people alongside me was simply to make sure that the people at the top to whom allegations have been made were thoroughly investigated, exposed and dealt with and Sir many times that exposure led to them being acquitted.

So there is a transparent investigation that had led
10 to them being exonerated. And it is also right and it was also fair and just. So it is not just people who are found behaved incorrectly it is as important to be found to be independently exonerated. And that was my role Sir.

CHAIRPERSON: Yes.

MR LINNELL: And I think today hopefully that would be depicted in Eskom as well.

CHAIRPERSON: Yes. No you see to the extent that you talk about top people like the CEO, the CFO I think one would understand the idea of bringing somebody from
20 outside you know. But there may be a lot of managers who can be dealt with internally.

So I think that it would be a question of looking at a particular entity and looking at the level of the position that a particular employee or manager holds. If there are people within the entity who can handle that disciplinary

matter in relation to that person because there are people above him or her who can deal with the matter then that should be dealt with that way. But once I accept that once you reach a certain level the CEO, the CFO you might need somebody from outside.

But even there my – my query would be if you are going to need attorneys why do you need a coordinator you know? I know for example with regard to SAA that there was a matter which has been testified about before this
10 commission where a law firm was brought in and the law firm provided what is called an initiator like a prosecutor if you like in the disciplinary inquiry. Then they brought in an advocate to chair the disciplinary inquiry you know.

So there are those things – so I would imagine that to the extent that an entity does that that should be enough. Do you want to say something about that? Obviously I am not speaking about a specific case I am speaking in general. You want to say something about that?

20 **MR LINNELL**: I think you said two things Mr Chairman. One is that that the lower levels the internal capacity should be enough to deal with those because those would be typically free of influence because they are normal. And I – I will agree with you totally.

And you then said that the people at the higher

levels might warrant an external person in the form of an advocate or an attorney to come and provide some sort of independence. And I agree with that.

But in a big matter and possibly Sir the better way of me explaining the role of a coordinator provides value would be heard in the evidence which will be brought before you today on what my role was or intended to be at Eskom. Because the proper coordinator understands that in complicated cases even an investigator acquires a
10 perception and a direction where they follow.

And it is not untoward it is not unreasonable to have someone else who points out and says does this necessarily lead in this way or should we also expose that? And I think in the Eskom papers that will be demonstrated.

CHAIRPERSON: Hm.

MR LINNELL: In a factual way. But Sir in the SAA ones when I – if you read my statements for a couple of years not you personally your commission has in each of the instances that I have been involved there would have been
20 largely similar to what you will hear today. But when I come before you in those instances I could then be able to deal with those facts as facts in those instances.

CHAIRPERSON: Hm. Okay no that – that is fine. Thank you. Mr Seleka.

ADV SELEKA SC: Thank you Chair. Mr Linnell we know

that in respect of Eskom there were no disciplinary proceedings instituted against the executives that got suspended.

MR LINNELL: Mr Chairman there was to the point that I left Eskom the week of the 19th. The executives had been suspended on precautionary suspension as we discussed yesterday with a view to ensuring that the investigation was free of their influence. Subsequent to my removal those executives or some of them were terminated for want
10 of a better reason. But to my knowledge no disciplinary hearings or allegations were ever made against those people.

ADV SELEKA SC: Yes. But you would have known that. That was clear from the very beginning that no wrongdoing was being alleged against them or any issue of misconduct. So that was apparent from the very beginning.

MR LINNELL: If I could it put Mr Chairman I could answer it this way. Certainly, there were allegations about a host of things within Eskom which we now know to be true. But
20 at that time they were allegations.

Some of those pointed to departments which before it was meant to be the three executives headed those departments and in some cases subsequent relevant have indicated those people were involved. So at that time Sir I was aware and I think in the recordings of the board

meetings I did indicate that the investigation could well identify wrongdoing on the part of these people but at that time there should be no preposition that anything was alleged or considered against them. It was purely precautionary.

ADV SELEKA SC: But – yes but what I am saying to you Mr Linnell is what the board decided. The board decided we will not make any allegations of wrongdoing against them. These people are not being suspended for
10 misconduct. Correct?

MR LINNELL: That is correct.

ADV SELEKA SC: Yes.

MR LINNELL: And I agree with that Mr Chairman.

ADV SELEKA SC: Yes. So that...

CHAIRPERSON: I agree with that.

ADV SELEKA SC: Yes. Thank you. So yesterday we went through – and you know just before I move on that is evident also from your statement. I want to read that statement we were dealing with – the supplementary
20 statement on page 26.3 top left hand corner 26.3.

MR LINNELL: Is it the supplementary Mr Chairman?

ADV SELEKA SC: That is the supplementary yes. The supplementary affidavit. It starts on page 26.1.

CHAIRPERSON: If you could read it Counsel I will recollect it.

ADV SELEKA SC: You will recollect. That is para – it is on page 26.3 paragraph 15.4. It says -

10 “While there was – there was unverified information that the three might have been – might have had previously been received – perceived to impeded an investigation of their areas of responsibility. It was made clear that no direct aspersions or allegations were intended or contemplated at that stage. That was the task of the investigation. The executives were as I understand individually counselled regarding that point and this was publicly stated to staff and – and through the media. The suspensions were precautionary to allow the investigation to proceed quickly and free from any perceived influence while acknowledging that if wrongdoing was found then some accountability rests with top

20 management. So my emphasis is on it was made clear that no direct aspersions or allegations were intended or contemplated against the executives.”

MR LINNELL: I stand by that statement correct.

ADV SELEKA SC: Ja.

MR LINNELL: Mr Chairman.

ADV SELEKA SC: Mr Linnell we have gone through the version that is put by Ms Dudu Myeni in her affidavit yesterday. And the Chairperson also asked you the question about – well expressing this particular point that it may well be good to have concerns about what is happening in a SOE. It is well and good but the question is and it is another matter what – how do you express those concerns and how do you go about dealing with
10 them? You recall that?

MR LINNELL: I do.

ADV SELEKA SC: Yes. Now let us see what is happening here because as we were going through the statement of Ms Myeni yesterday you could see that the type of meetings that were held with you and where they were held, at times they were held have become an issue before this commission. You appreciate that?

MR LINNELL: I appreciate that.

ADV SELEKA SC: Yes. You see that the – coming out of
20 those meetings we have had completely conflicting versions about what transpired in those meetings. Do you hear me?

MR LINNELL: I can hear you.

ADV SELEKA SC: Yes but...

MR LINNELL: Do you want me to comment?

ADV SELEKA SC: It is a yes or a no? We have gone through the evidence yesterday.

MR LINNELL: Yes.

ADV SELEKA SC: And we see one version from Ms Myeni, a different version from yourself. You can speak out.

MR LINNELL: Okay. You are correct Mr Chairman that there were different versions. I think the version of Mr Tsotsi and my version is by and large similar.

ADV SELEKA SC: yes.

10 **MR LINNELL:** The version of Ms Myeni is entirely – that the documentation which immediately followed that meeting confirms the call it my version and Tsotsi's version by and large.

ADV SELEKA SC: Yes.

MR LINNELL: The documents documented that is the evening of the 8th in a sense were a version of the minute because it agreed a process.

ADV SELEKA SC: Yes. And let us take the point further Mr Linnell because we dealing here specifically with how
20 do you address the concerns? What steps are proper to address those concerns? Look at the meetings that you have. Look at the persons who are present in those meetings. The meeting which is particular held on Sunday. These meetings are not at Eskom. You follow?

MR LINNELL: I do.

ADV SELEKA SC: This meeting is not with the board at Eskom.

MR LINNELL: I agree.

ADV SELEKA SC: You agree. And what you see out of this meeting is – is Ms Myeni disavowing even the involvement of the President in the meeting.

MR LINNELL: I do – I understand that.

ADV SELEKA SC: And that is exactly the concern that Chairperson is trying to raise with you. You may have
10 concerns about what is happening but how do you go about dealing with those concerns? You need a proper way. Ms Myeni herself in her affidavit says the President could never have been part of this meeting. He could never have given instructions in the manner in which Mr Tsotsi says the President did. And I quickly want to read from her statement she says:

“At the level of the former President.”

At the level of the for

“One would expect a written directive to the

20 Minister of – or Chairman of the board.”

MR LINNELL: I remember.

CHAIRPERSON: Mr Seleka. I am not sure Mr Linnell can help much on that. He was invited to a meeting. He agreed to come to a meeting. He was told what the venue was. He went to the venue; participated and as long as he

was asked to be involved, he continued to be involved until he was told he was no longer required. So I am not sure that he can help much in terms of – of that. Of course if you asked him a direct question whether if you raise or you make a proposition of what was wrong with this meeting or with this way of handling of things then he can comment if he is able to. Hm.

ADV SELEKA SC: Thank you. Mr Linnell you have heard the Chairperson? Let me – let me put to you what I am
10 seeking to raise with you which is did the manner in which the matter was dealt with – the manner in which meetings were held, issued discussed and decided to be carried out not raise a concern to you as a former Magistrate; as a lawyer with you know in your experience as a lawyer?

MR LINNELL: You see, Mr Chairman. In my ...[intervenes]

CHAIRPERSON: Or maybe... maybe... I am sorry Mr Linnell. Let me ask the question this way and if you are not covered by the answer afterwards you can put in another way.

20 Mr Linnell, when you look at this meeting in Durban, when you look at who was present at the meeting, what was being discussed and that it was about Eskom.

Is there any concern you had about the meeting and the discussions and the composition of the meeting and the venue, everything was there? Anything that concerned you

about the meeting?

MR LINNELL: I think the simple answer Mr Chair is. No, I was not concerned ...[indistinct] [*connection not clear*] The reason I am not concerned is more important than that.

You see, I have no doubt in this real world that meetings with government and state do not take place in every instance.

Even to this day, in a formal environment, interactions take place and that is how the world works. It happens in
10 business, it happens in the state and if that was the then president's preferred modus operandi...

As long as he was doing it for a proper purpose, then there was nothing wrong with it. I would think we could cite hundred of examples where presidents meet third parties because they want to facilitate the improvement of the state and there is nothing wrong with that.

So it is not untoward in my view. I agree that if the motive is improper, then the whole thing is improper. The important thing was the execution of that intention should be
20 done properly ...[intervenes]

CHAIRPERSON: I guess what you are saying ...[intervenes]

MR LINNELL: ...intention.

CHAIRPERSON: H'm. I guess what you are saying is, in principle there is nothing wrong with a president of the country asking people that he wants to meet, to come to his

residence for a meeting. That is the one thing you are saying. Is that correct?

MR LINNELL: I am saying that yes in the context of state business ...[intervenes]

CHAIRPERSON: Yes.

MR LINNELL: ...there is nothing wrong with him to conduct ...[intervenes]

CHAIRPERSON: Yes.

MR LINNELL: ...his state ...[indistinct] [*connection not*
10 *clear*] where he thinks best.

CHAIRPERSON: Yes, yes. And with regard to the composition of the meeting, you are saying you would leave that to the president as to who he wants in a particular meeting. Am I right that that is what you are saying?

MR LINNELL: I would be saying that as well, yes.

CHAIRPERSON: Yes, yes. Okay alright. Mr Seleka.

ADV SELEKA SC: Thank you, Chairperson. Thank you, Mr Linnell. So let me go to the... to this point Mr Linnell regarding the role of a coordinator because that also has to
20 do with the manner in which this process unfolded.

And as I going to it, may I ask you this? I seem to understand you have explained to the Chairperson that you are saying, and correct me if I am wrong, that the end justifies the means?

MR LINNELL: I would not go as so far as to say the word

statement. I think certainly the means are important. The means have to proper and appropriate and lawful. So I am not saying one can do anything. For example... as an example *[connection not clear]* ...*[intervenes]*

ADV SELEKA SC: [Indistinct]

MR LINNELL: I think the practise(?) *[connection not clear]* is important ...*[intervenes]*

ADV SELEKA SC: Yes.

MR LINNELL: ...as much as the end.

10 **ADV SELEKA SC:** Okay. Now let us look at your position because you are asked to be the coordinator of an investigation or an inquiry.

MR LINNELL: Correct.

ADV SELEKA SC: Was there a formal appointment for you?

MR LINNELL: I think in simple terms or ...*[indistinct]* *[connection not clear]* there was no formal appointment. I sat at a board meeting in which the resolution adopted was that I conduct certain subsequent steps. The board was present and I think that is largely documented in my
20 ...*[indistinct]* *[connection not clear]*

If I was... if one said, was I appointed to run and coordinate the whole investigation, that had not arrived because the preconditions to the approval to this which is in my board memorandum included, for example, the approval of the Minister of Finance ...*[indistinct]* *[connection not clear]*

ADV SELEKA SC: H'm.

MR LINNELL: So they had got to phase 1.

ADV SELEKA SC: Okay there is ...[intervenes]

MR LINNELL: But I was appointed ...[indistinct] [*connection not clear*]

ADV SELEKA SC: Yes. Sorry. So your answer to the Chairperson is, there was no formal appointment for you to serve as a coordinator.

CHAIRPERSON: I guess when you say formal appointment,
10 you mean a written appointment or a letter as a coordinator?

ADV SELEKA SC: By Eskom.

CHAIRPERSON: Ja.

ADV SELEKA SC: By Eskom by the board.

CHAIRPERSON: H'm. H'm. I think the answer is yes he has ...[intervenes]

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

CHAIRPERSON: ...written letter of appointment.

ADV SELEKA SC: Yes.

MR LINNELL: [Indistinct] [*connection not clear*] There was
20 no letter of appointment.

CHAIRPERSON: H'm.

ADV SELEKA SC: Yes. And we see from your affidavit Mr Linnell that you would have started with the work of drafting resolutions, drafting a memorandum, drafting letter of suspension even before you met with the board.

MR LINNELL: Correct.

CHAIRPERSON: I think Mr Seleka it is important, once we have moved away from the Durban meeting ...[intervenes]

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: ...that we deal quickly with what he did after the Durban meeting but before the meeting of the 11th. There are, I think, memos and emails that we covered that. Then we come to the meeting of the 11th.

ADV SELEKA SC: Yes, Chair.

10 **CHAIRPERSON:** But you might... if I am derailing you.
[laughing]

ADV SELEKA SC: No, no. [laughing]

CHAIRPERSON: Feel free to follow ...[intervenes]

ADV SELEKA SC: Ja.

CHAIRPERSON: ...your plan. But I would like it in that sequence.

ADV SELEKA SC: Yes.

CHAIRPERSON: To say, we dealt with how he was called to Pretoria by Ms Myeni. We have dealt with the meeting in
20 Pretoria. We have dealt with the meeting in Durban.

We need to deal with what happened after the meeting in Durban but before the 11th. Then we come to the 11th and then there will be a time to say, between the 11th and the 19th or 20th, what was his involvement and what happened.

ADV SELEKA SC: Yes.

CHAIRPERSON: It is going to be easier, certainly to me
...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...if we deal with it in that sequence.

ADV SELEKA SC: Sequence. That is also an appropriate
order Chairperson.

CHAIRPERSON: Ja. H'm.

ADV SELEKA SC: Mr Linnell, I was running ahead of the
Chairperson.

10 **CHAIRPERSON:** [laughing]

ADV SELEKA SC: [laughing] So Mr Linnell, let us take it
step-by-step then. Coming out of the meeting on Sunday.
You say you would have left the presidency at around four in
the late afternoon.

MR LINNELL: Correct.

ADV SELEKA SC: Yes. Then could you please relate
...[intervenes]

MR LINNELL: Correct.

ADV SELEKA SC: Could you please relate to the
20 Chairperson what was given to you as a task relative to the
intended inquiry for you to do?

MR LINNELL: The agreement... thank you, Mr Chairman.
The agreement, leaving that meeting, the understanding was
that I would prepare a board memorandum together with
supporting resolutions which should be submitted by Mr

Tsotsi that evening to the members of the board which would propose to them an extraordinary board meeting the following day being the Monday the 9th to discuss the contents of the memorandum which were a proposal that an inquiry be conducted into the affairs of Eskom.

That ...[indistinct] *[connection not clear]* point was agreed. Then I think ...[indistinct] *[connection not clear]* agreement but not immediately following that evening's requirement was that I would prepare a draft, a memo which
10 would be used to support the board in conducting the pre-suspension hearings with the individuals concerned.

So the following day on the Monday or maybe overnight or whatever, the next day, I had prepared a memorandum which is before us in the pack together with suggested suspension letter.

The memorandum included the various steps on how to conduct preliminary hearings towards precautionary suspension.

And then I sent that to a large legal firm. I asked them
20 to vet that memorandum and proposal and the suspensions letters.

And I asked them specifically to determine three or four points which are in the letter in the pack including, is this right, is this proper, is this lawful and is there anything else which might or might not be right or wrong with it.

Subsequent to that, that was done and that document was also forwarded to Mr Tsotsi at SAA and those same lawyers attended the meeting, I think, on the 9th at Eskom but we never called in because the meeting aborted the discussion.

But they would have ...[indistinct] *[connection not clear]* to discuss the legality of pre-suspensions but that was the meaning of that point what I was instructed to do.

ADV SELEKA SC: Yes. Thank you. So that, if you go to
10 your affidavit, if you would Mr Linnell. On page 33 from paragraph 24. As you go there, it says:

“That evening...

And I believe you are referring to the evening of Sunday, the 8th of March 2015?

MR LINNELL: That... Yes, I am there, Mr Chairman.

ADV SELEKA SC: Thank you. The evening is over the 8th of March 2015?

MR LINNELL: Correct. Do you want... would you like me to read that?

20 **ADV SELEKA SC:** No, no. I will read it quickly.

“That evening, I drafted the proposed board memorandum and proposed resolutions and forwarded these to Mr Tsotsi.

The email also provided process guidance notes for Mr Tsotsi for the board meeting.

This note emphasised the meeting from the board of the president's role and the key requirements of the proposed inquiry."

The next paragraph which is 25. It says:

"Between Monday, 9 March and 11 March, I took formal legal advice on the proposed suspensions. This included the opinion that the proposed suspensions were not inconsistent with Eskom's disciplinary code of prevailing case law."

10 Paragraph 26:

"I prepared an aid in a more detailed in the process of the suspension discussions together with the draft suspension letter which were reviewed, amended and finalised by the senior labour lawyer attorney consulted and these were forwarded in writing to Mr Tsotsi on the 11th of March."

And then you say you went to Megawatt Park in anticipation of being called by the board. You took with you a senior labour lawyer consultant and his associate deal with
20 labour matters requested by the board.

"We were, however, later told that the board was not in agreement and we left in part considered that might be the end of the matter."

So which date... well, is this what you are referring to in your explanation to the Chairperson?

MR LINNELL: It is Mr Chairman. One point though which is correct here or needs clarification. Paragraph 27 when we went to Megawatt Park with the attorneys, I think that was on the 9th.

With the sequence as you read it, it is almost as if it might have been on the 11th. They attended the first board meeting or they were downstairs on the 9th.

So at that stage the formal documentation that you have read about, you refer to as annexures. I do not think they
10 were being completed at that point. So the lawyers went before the documents had been done.

ADV SELEKA SC: Yes.

MR LINNELL: In case they were asked to give a verbal opinion.

ADV SELEKA SC: Did you attend the meeting of the 9th of March of the Eskom Board?

MR LINNELL: No, we remained downstairs until we were told it has been cancelled.

CHAIRPERSON: Does that mean you were on standby for
20 that meeting if you were needed at the meeting?

MR LINNELL: Correct, Mr Chairman. We were asked by Mr Tsotsi... well, he did not ask me to bring the attorneys. He asked me to be there in, I think in the morning of the 9th to appear before the board.

I asked the attorneys to go with me because it was going

to require some form of legal assistance. We sat downstairs in the reception area until about midday at which stage we were told there was not going to be an occasion to meet and we all left.

CHAIRPERSON: H'm. Mr Seleka, we identified all the documents he prepared.

ADV SELEKA SC: Yes.

CHAIRPERSON: And forwarded to Mr Tsotsi after the Durban meeting but before the meeting of the 11th.

10 **ADV SELEKA SC:** We have not gone into them yet Chairperson.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: We can do so now.

CHAIRPERSON: Okay, okay.

ADV SELEKA SC: We can do so.

CHAIRPERSON: Okay.

ADV SELEKA SC: I just have one question to ask him before we do so. Mr Linnell, you were in Durban the Sunday evening on the 8th of March. This meeting on the
20 9th of March is the next day and we understand that it was scheduled to take place at nine o'clock. Did you come to Joburg directly from Durban?

MR LINNELL: I did Mr Chairman. I believe I flew out on the first flight on the Monday morning, the 9th.

ADV SELEKA SC: Yes. I think the Chairperson was asking

about that in relation to another meeting. So it related to this meeting. Now let us look at the annexures that you referred to.

Let us go back to paragraph 24 of your affidavit, page 33 where you say you have drafted a proposed board memorandum, proposed resolutions and forwarded these to Mr Tsotsi.

This note emphasised... there is a guidance note as well. It emphasised the need to inform the board of the president's role. And you refer us to page 15. That would be page 43 ...[intervenes]

MR LINNELL: [Indistinct] *[connection not clear]*

ADV SELEKA SC: ...of the bundle.

MR LINNELL: 43?

ADV SELEKA SC: Yes.

MR LINNELL: Oh. That is correct. That is the letter I sent to Mr Tsotsi on the morning... evening of the 8th.

CHAIRPERSON: What was the gist of what you were saying in that email/stroke?

20 **MR LINNELL**: Mr Chairman, it had two annexures on with the memorandum to the board calling for a special meeting of the board, short notice. And included some narrative about the formalities of that.

And it included the proposed resolutions that the board would have wanted to consider if they agreed to that

memorandum. So they were attached.

And then, the letter is more incisive than that requisite. It is a number of things. It suggested that the company said to adapt these documents to meet standards of the company.

So I was providing the content and I was asking that the company secretary address it in the terms of as Eskom requires them.

And I then provided some guidelines as the importance of how to get people to a meeting. And then coming back to
10 counsel's earlier question this morning about the discrepancy of an unrecorded or *un-minute* meeting in Durban on the 8th.

In this document which you are looking at now towards the bottom, it makes it quite clear.

"The president has engaged both you as chairman and the minister regarding the current status of Eskom. It is his view that the effect on the economy is massively understated.

He believes that the board is obliged to addressed
20 the weaknesses and challenges as in the company. In order to do that, the board must be certain that there *is an accurate practice [connection not clear]* on hand. Once that he has its/his facts, it should ...[indistinct] *[connection not clear]* conviction."

And then it goes on. It says in paragraph 4 there:

“We have also had a conversation with the minister who has concern concur with the initiative as proposed by the president and formulated by yourself.”

So the nexus of that Mr Chairman is that, he has made quite clear in those earliest documents of the 8th that this directive originates from the presidency and it requires the involvement of the minister.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** Yes, I see that in the second half of the letter/email at page 43, you say to Mr Tsotsi:

“Once you get the green light, please call each director providing them with context:

1. The president has engaged both you as chairman and the minister regarding the current status of Eskom. It is his view that the effect on the economy is massively understated.”

Were you basing that on the Durban meeting on what was said at the Durban meeting?

20 **MR LINNELL:** That is correct, Mr Chairman. And it probably needs clarification. That was not in so many words his words but that was the words that were proposed to him in that second session. So the discussion included this which has sent through. So these were sent to what was discussed is this as opposed to this thing, his wording.

CHAIRPERSON: Yes. Okay Mr Seleka.

ADV SELEKA SC: Thank you, Chair. Just for the purpose of the record Mr Linnell. I will identify the email. It is an email from yourself sent on Sunday, the 8th of March.

MR LINNELL: Correct.

ADV SELEKA SC: Thank you. Sunday, 8 March 2015 at 06:37 p.m. It is sent to ztsotsi@liquifier.biz and the subject line is Board Memorandum and Resolutions, 9 March 2015. You say:

10 “Dear, Chair. Please find a copy of the memorandum and proposed resolutions. If you are happy, I would suggest that you require the company secretary to adapt to any format standards used by Eskom.”

So you have said that already to the Chairperson.

 “Could you also review the substance of this to ensure that you feel it makes the point adequately? This document would be circulated together with a notice of an urgent meeting for the board to attend
20 at nine a.m. or ten a.m. (If you believe it will give members more time to attend.)

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

At the meeting, it will be important to record the directors who were not present, whether they received the notice. We need to have at least seven members present all that is apparent from this email.”

MR LINNELL: Correct, Mr Chairman.

ADV SELEKA SC: Yes. And then the portion which the Chairperson was reading out to you which says:

10 “Once you get the green light, please call each director providing them with context. The president has engaged both you as chairman and the minister regarding the current status of Eskom.”

Did you know that the minister was also engaged?

MR LINNELL: The agreement that we left the presidency had an obligation ...[indistinct] [*connection not clear*]. And I say it with respect. And an obligation on Mr Tsotsi.

20 The president agreed that he would there and then consult with the minister and obtain her approval. So my expectation was by the time this is done, that had been done.

ADV SELEKA SC: Okay but at that stage, you did not know for sure that the minister had been consulted?

MR LINNELL: I did not.

CHAIRPERSON: You wrote that in the expectation by the time of the meeting of the board that would have happened?

MR LINNELL: Correct, Mr Chairman.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: Paragraph 2 then reads:

“He believes that the boards...

You are referring to the president there, I suppose?

MR LINNELL: Correct.

ADV SELEKA SC: Yes.

10 “He believes that the board is obliged to address the weaknesses and challenges facing the company. IN order to that, the board must be certain that it has the ultimately facts to hand.

Once it has these facts, it should decisively and with conviction the manner in which this process is managed is un-turn-able.

And independent inquiry is possible the best approach as that has the capacity to act urgently and potentially has an independent and objective approach.

20

It will also be seen to be more transparent.”

Is this your own words? I mean, concepts or are these concepts that were used by the president, an independent inquiry which should be more transparent, right? Which should be urgent and have an objective approach.

MR LINNELL: My paraphrasing of the understanding of the meeting. If... with respect Mr Chairman. If we look at the part of the meeting in my affidavit where we concluded this ...[indistinct] [*connection not clear*] the report by agreements at the meeting with the presidency. I believe this sums up those points.

CHAIRPERSON: Basically, what you were doing here in this email. You were seeking to guide the chairperson, Mr Tsotsi as to how to handle this issue with regard to at the board
10 meeting and you were basing that on your understanding of what the Durban meeting contemplated. Is that right?

MR LINNELL: That is correct, Mr Chairman.

CHAIRPERSON: Yes. Okay.

ADV SELEKA SC: Thank you. That is right. But I will just read this one paragraph Mr Linnell. It says paragraph 4:

“You have also had a conversation with the minister who has concurred with the initiative proposed by the president and formulated by yourself and their approach proposed.”

20 I will ask you again a similar question in respect of the first paragraph, did you know that Mr Tsotsi have had a conversation with the minister?

CHAIRPERSON: Did you not ask him already that question?

ADV SELEKA SC: That ...[intervenes]

CHAIRPERSON: I think you did.

ADV SELEKA SC: That related to the president, the first one Chair.

CHAIRPERSON: Oh, I thought there was specifically the one relating to paragraph 4 which only refers to the minister?

ADV SELEKA SC: Paragraph 1 also refers to the minister, Chair.

CHAIRPERSON: Okay. Mr Linnell, I thought he had asked
10 you that question but if he has not, you can answer but I know what the answer is. [laughing]

MR LINNELL: I think it is a different question.

CHAIRPERSON: Oh.

MR LINNELL: So at that stage, when I said Mr Tsotsi had spoken to the minister, that was me writing as it would be at nine o'clock or later that evening because he was going to have a conversation with the minister.

So it was recording what he would be saying that he had a conversation with the minister. That is Mr Tsotsi's
20 conversation with the minister rather than the president. A separate conversation with the minister.

CHAIRPERSON: Well, we may have spoken at cross-purposes but when earlier on you read paragraph 4, I came in and said that what you were writing under 4 was what you expected would have happened by the time of the - so we

might have spoken at cross-purposes but I was talking about the Minister that is why I was saying – I thought the question had been asked. Okay, alright.

MR LINNELL: That is correct.

ADV SELEKA SC: Chairperson, if you look at paragraph 1

CHAIRPERSON: Ja.

ADV SELEKA SC: It also has the Minister – the President has engaged both you as Chairman and the Minister so that my first question related to that.

10 **CHAIRPERSON:** Well, I certainly was looking at paragraph 4, not 1. But paragraph 1 – my paragraph 1 says the President has engaged both you as chairman or – and the minister in a small letter ...[intervenes]

ADV SELEKA SC: That is right..

CHAIRPERSON: You see under (d) the minister is capital letter so it is easy to see it. Yes, okay, alright.

ADV SELEKA SC: Yes because the first one says it is the President who engages the minister, the second ...[intervenes]

20 **CHAIRPERSON:** Well, I spoke thinking we were talking about 4, but that is fine.

ADV SELEKA SC: No, that is fine, Chair, thank you.

CHAIRPERSON: Okay.

ADV SELEKA SC: So Mr Linnell these were then the documents exchanged with Mr Tsotsi prior to the meeting

of the 9 March.

CHAIRPERSON: I think sent rather than exchanged
...[intervenes]

MR LINNELL: That is correct.

CHAIRPERSON: ...sent to him.

ADV SELEKA SC: Yes.

CHAIRPERSON: Because Mr Tsotsi did not send anything
did he?

ADV SELEKA SC: Oh, he also did.

10 **CHAIRPERSON:** Oh he did? Oh, okay.

ADV SELEKA SC: Ja, we did go through those emails.

CHAIRPERSON: Oh, okay, alright, so they were – it is
documents that were exchanged.

ADV SELEKA SC: Yes. Mr Linnell?

CHAIRPERSON: Do you confirm that, Mr Linnell?

MR LINNELL: That there was an exchange of emails – I
certainly sent it to him I think at half past six on Sunday
night the 8th.

CHAIRPERSON: H'm.

20 **ADV SELEKA SC:** Yes.

MR LINNELL: Possibly I think there was further
communication I think between him and me subsequent to
this, there were back and forth emails on sent topic that
evening.

CHAIRPERSON: Yes.

MR LINNELL: So I think Mrs (indistinct – recording distorted) a dialogue via email with Mr Tsotsi that evening.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes.

CHAIRPERSON: And you confirm the contents of the memorandum appearing at page 45, that is the memorandum, one of the memoranda.

MR LINNELL: Yes.

CHAIRPERSON: You confirm the contents thereof, is that
10 right?

MR LINNELL: I confirm the contents thereof of that email.

CHAIRPERSON: Yes, is there anything you want to highlight in that memorandum or we can take it as read? You were simply giving guidance?

MR LINNELL: Bear with me, Mr Chairman.

CHAIRPERSON: You were giving guidance.

MR LINNELL: Chairman, there is one – ja, there is nothing extra to ...[intervenes]

CHAIRPERSON: Nothing you want to highlight.

20 **MR LINNELL:** Unless there is something you want to me to refer specifically, if it reads for itself I can elaborate.

CHAIRPERSON: Mr Seleka, if you want – if there is something you want him to highlight, I do not think it is necessary, the memo speaks for itself.

ADV SELEKA SC: Correct.

CHAIRPERSON: Then at page 47 you have got a decision record of the board. You prepared that to assist Mr Tsotsi in the meeting in terms of what the board would need to resolve, is that correct?

MR LINNELL: That is correct, Mr Chairman.

CHAIRPERSON: Yes. And the briefing notes at page 51? What was the purpose of those briefing notes? Was that to guide the Chairperson in carrying out the suspension of the directors, of the executives?

10 **MR LINNELL:** Mr Chairman, on what page?

CHAIRPERSON: I am sorry, page 51.

MR LINNELL: 51?

CHAIRPERSON: Yes, says briefing notes for pre-suspension ...[intervenes]

MR LINNELL: That is ...[intervenes]

CHAIRPERSON: Sorry?

MR LINNELL: Yes. Mr Chairman, these – from 51 following, I developed that I think between maybe that evening or Monday the 9th through to the I think the 11th.

20 At the 11th these were signed off by the external attorneys who reviewed this and this document was the one ultimately that I forwarded I think on the morning – I stand corrected it is in the record on the morning of the 11th in advance of that board meeting. So this was a briefing that in detail as to how did to go about properly and traversed

suspension letters and if I might, Mr Chairman, I do not think I mentioned it to counsel but the suspension letters here are not ultimately the suspension letters which Mr Matona was required to sign and [inaudible – speaking simultaneously]

CHAIRPERSON: Yes, before – yes.

MR LINNELL: ...subsequent CCMA matter ...[intervenes]

CHAIRPERSON: Yes, before we get there, let us just finish ...[intervenes]

10 **MR LINNELL:** And this is not part of that.

CHAIRPERSON: Hang on, Mr Linnell. Let us finish with regard to the briefing notes before we get to the suspension letters. What was the purpose of the briefing notes? Was to guide the Chairperson in handling the suspension of the executives?

MR LINNELL: Yes, it was, Mr Chairman.

CHAIRPERSON: It has got to give him a step-by-step guide as to what to do, is that right?

MR LINNELL: That is correct. My sense was if you are
20 going to do this and we do not do it properly it will be upended on day one and this stressed the importance of doing it procedurally correctly.

CHAIRPERSON: Yes and I see that as at this stage in terms of these notes you were – it seems you were talking about the suspension of only three executives, is that

correct?

MR LINNELL: That is correct, Mr Chairman.

CHAIRPERSON: At that stage you had no knowledge of a fourth executive who was going to be suspended?

MR LINNELL: Not to my recollection. My recollection is that the fourth name was certainly discussed but I think it was during the board meeting or the [indistinct] 07.00 and risk committee board meeting on the 11th.

CHAIRPERSON: Yes.

10 **MR LINNELL:** But when I drafted this, my recollection there were only three people who had been identified.

CHAIRPERSON: Yes, okay.

MR LINNELL: But certainly I remember later there was a discussion about the fourth.

CHAIRPERSON: Okay, alright. Mr Seleka. I am happy up to that point unless there are some specific questions you want him to deal with in regard to those notes.

ADV SELEKA SC: No, Chair, that is – the issues are apparent from the notes.

20 **CHAIRPERSON:** Ja, ja. He wanted to say something about the suspension letters, do you want to ask him about that?

ADV SELEKA SC: Yes. Mr Linnell, you were trying to explain to the Chairperson whether the suspension – well, sorry, let us go to page 55. Let us go to page 55 of the

bundle.

MR LINNELL: I am page 55.

ADV SELEKA SC: We see drafts – what appears to be draft letters of suspension.

MR LINNELL: Correct, these are.

ADV SELEKA SC: Would this have been drafted by you as well?

MR LINNELL: I drafted these but I had a firm of attorneys to review them. They made certain corrections to them
10 which were incorporated in this version you have here.

ADV SELEKA SC: And what did you want to say to the Chairperson about this letter of suspension?

MR LINNELL: Probably at the wrong sequence but, Mr Chairman, counsel may come to it later. Mr Chairman, as I understand it later when the CCMA hearing was heard I looked at the discourse on that and I think this process and the suspension letter was not followed in at least one of the instances when the suspensions took place. So the purpose of this to some extent not [indistinct] 09.12 as
20 intended.

CHAIRPERSON: Okay.

ADV SELEKA SC: Ja. Should we understand you to be saying the suspension letter you drafted were not – was not the one ultimately used in the suspension itself?

MR LINNELL: I believe when I checked, and I stand

corrected, there were changes made to the letters which I think in the CCMA together with the discussions rendered them procedurally unfair.

ADV SELEKA SC: Okay. So going to the meeting of the 9th you say you were not called into the meeting. You were invited but you did not get to go into the meeting because you were advised that the board does not agree with the proposal.

MR LINNELL: That is correct, Mr Chairman.

10 **ADV SELEKA SC:** Can you tell the Chairperson what happens thereafter in regard to your services in particular?

MR LINNELL: I think at that point when we left, we – my perception was this has come to the end but I think it was later that afternoon or the next day Mr Tsotsi invited me to come back on the 11th. So to the extent that on the 9th was attended. By the 10th or 11th I had be re-invited to attend a meeting on the 11th.

ADV SELEKA SC: So the 11 March 2015 was a Wednesday?

20 **MR LINNELL:** I believe so, Mr Chairman.

ADV SELEKA SC: Ja, the Sunday is the 8th and you have a meeting on the 9th, the next day, the board, not yourself, which was a Monday. Tuesday is the 10th and the 11th is a Wednesday. Did you go back to Cape Town or you remained in Jo'burg?

MR LINNELL: I remained in Jo'burg, Mr Chairman, I was there on another matter which required me in Jo'burg.

ADV SELEKA SC: Did you do any further work in relation to the intended inquiry between the 9th and the 11th?

MR LINNELL: I would imagine so, I cannot recall when Mr Tsotsi said he would want me there on the 11th but I am quite sure between the 9th and the 11th I had done a lot more work including having the documents we just reviewed signed off by a firm of attorneys.

10 **ADV SELEKA SC:** Could you tell the Chairperson when did you put together the terms of reference for the intended inquiry?

MR LINNELL: I would have started – Mr Chairman, I would have started that process in my mind I would imagine after the 11th.

ADV SELEKA SC: Okay.

MR LINNELL: Then there was no time period in which to do it although it was urgent so it might have been piecemeal but on the 15 March, which would have been the
20 Sunday following. I got an email from I think the company secretary - it is one of the annexures - asking me for my comment on their version of the terms of reference.

ADV SELEKA SC: Okay.

MR LINNELL: At that point I ...[intervenes]

ADV SELEKA SC: We will come to it.

MR LINNELL: ...redrafted theirs and forwarded it.

ADV SELEKA SC: Yes, we will come to it. Chair, we need to go into the meeting of the 11th. I see the time.

CHAIRPERSON: Okay, we will – well, let us just start a little bit – what was the purpose of your being asked to come to the meeting of the 11th, Mr Linnell, as you understood it?

MR LINNELL: I think it was – Mr Chairman, I think it was very much the same purpose of the 9th that I would
10 [indistinct] 13.54 for the board to discuss the proposed inquiry.

CHAIRPERSON: Would it be correct to say the purpose was for you to effectively give support to Mr Tsotsi as Chairperson in reporting to the board about the Durban meeting and assisting to answer questions in the – assisting in the answering of questions that could arise from the meeting, the board meeting with regard to the investigation, you know, the inquiry and the suspension and all issues connected with what was discussed in
20 Durban, is that right?

MR LINNELL: That is correct.

CHAIRPERSON: And to see whether the board was approving the Durban decisions so to speak, is that right?

MR LINNELL: That is correct, Mr Chairman.

CHAIRPERSON: And the Durban decisions included that:

1. There should be an inquiry into the affairs of Eskom.
2. That inquiry should not take more than three months.
3. That inquiry should be conducted transparently.
4. That inquiry should be independent.
5. You should be the coordinator of that inquiry and,
6. The three executives should be suspended pending the completion of that inquiry.

Those were some of the important issues that needed to be placed before the board to see whether the board
10 approved. Is that right?

MR LINNELL: That is correct, Mr Chairman.

CHAIRPERSON: Yes, okay, let us take the tea adjournment and we will resume at half past eleven.

ADV SELEKA SC: Thank you, Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: The technicians who advise us about this laptop must talk to the technicians or advisors who were involved when I heard the evidence of other
20 witnesses via video link because the witnesses could see me without a laptop here, so I have had a number of witnesses via video link and I do not remember that there was ever a laptop here, so – but let us continue. Okay, Mr Seleka?

ADV SELEKA SC: Thank you Chairperson. Mr Linnell you

are still with us?

MR LINNELL: I am with you thank you counsel.

ADV SELEKA SC: Thank you. When we adjourned we had gone into – we were about to go into the meeting of the 11th of March 2015, the Chairperson had asked you to give a summary of the purpose for which you were invited into that meeting, and five points were highlighted to you which I think arise also from that email you had sent to Mr Tsotsi.

10 Now did you – this time around, the meeting of the 11th, were you called into the meeting?

MR LINNELL: That is correct.

ADV SELEKA SC: So you met with the board members in the meeting?

MR LINNELL: That is correct Mr Chairman.

ADV SELEKA SC: Now just for clarity purposes we understand that there were three meetings if not four even on that day. There was a meeting of the board at 9 o'clock which was followed by a meeting of the board with the
20 Minister, Minister Lynn Brown at the time. Were you present in any of the two meetings?

MR LINNELL: I was not present in the first meeting or the meeting with Minister Brown but I think the recollection is I attended the board meeting after that and then one of the committee meetings after that but the record would show

call it the first – the meeting after Ms Brown. I think that was a board meeting I attended but it might have been a committee meeting but I did not attend the first one or the one with Ms Brown.

ADV SELEKA SC: I see and the committee one so sorry – you would have attended the third meeting on that day.

MR LINNELL: I believe so.

ADV SELEKA SC: And you say you would have attended a meeting with the committee.

10 **MR LINNELL:** That is correct.

ADV SELEKA SC: That would have been the PNG, the People and Governance Committee?

MR LINNELL: I think that is what it is called.

ADV SELEKA SC: Did you just quickly did you also attend a meeting where the executives were suspended?

MR LINNELL: No, I did not.

ADV SELEKA SC: So you were not present when they were given letters of suspension?

MR LINNELL: No, I was not Mr Chairman.

20 **ADV SELEKA SC:** Okay now let us look at the points for which you were invited in the meeting with the board. The Chairperson read out to you or summarised to you the five main points one of them included delegating powers to a sub-committee that will execute the mandate for the enquiry. So you had a proposal which included

establishing an enquiry and coupled with that was a suspension of the executives. Can you confirm to the Chairperson those two points which were proposed in the resolution whether the board agreed to those?

MR LINNELL: When I attended Mr Chairman I think it was very clear that they agreed to the enquiry, they agreed through the delegation of authority to sub-committee to manage that process and I think it was on the board sub-committee they approved the suspensions.

10 **CHAIRPERSON:** Did they approve that you be the coordinator?

MR LINNELL: Mr Chairman I do not recollect that in so many – I cannot recall whether it was expressly referred to but it will be in the minutes I think I read it in the minutes they did. But without doubt that was the outcome of that meeting because that sub-committee then directly engaged me to do a number of activities.

CHAIRPERSON: I have looked at the transcripts, maybe transcripts I believe one of them is that of the board
20 meeting that took place after the board had met with the Minister. That would be the board meeting at which you were introduced to the board members, is that correct?

MR LINNELL: That is correct.

CHAIRPERSON: Were you introduced by Mr Tsotsi to the board members?

MR LINNELL: Yes, that is correct.

CHAIRPERSON: Yes, and as to what your role was going to be was it Mr Tsotsi who explained this to the board members or was it you who explained what your role was contemplated to be?

MR LINNELL: As I recall Mr Chairman he asked me to explain that to the board. So I would have told the board what I thought the role would be or should be.

CHAIRPERSON: Yes, I saw in the transcript wither of that
10 meeting or in the transcript of that meeting as well as the transcript of the PNG committee meeting that from a certain stage you became very involved in the discussions. Is my understanding correct? Both at the board meeting...[intervene]

MR LINNELL: I was certainly involved in the discussion.

CHAIRPERSON: Both at the board meeting as well as at the PNG committee you appeared to have been very active in the discussions. Is that correct?

MR LINNELL: That would be correct Mr Chairman.

20 **CHAIRPERSON:** Yes, I got the impression and you must tell me if this is not correct. I got the impression that the board did not reject you, did not reject your involvement and rather that they embraced you in terms of your role in this Eskom matter.

MR LINNELL: That is correct Mr Chairman, very much so.

CHAIRPERSON: So to the extent they may not have expressly approved your involvement they certainly expressed no objection and they certainly made use of your availability and your services and allowed you to be very active in the discussions that followed. Is that right?

MR LINNELL: That is correct Mr Chairman.

CHAIRPERSON: Yes, okay now at the end of the board meeting before the PNG meeting the board had agreed that there should be an enquiry, is that correct? Is it correct
10 that the board had agreed that there should be an enquiry?

MR LINNELL: Very much so Mr Chairman the board approved the enquiry.

CHAIRPERSON: And the board approved that the enquiry should not take longer than three months, is that right?

MR LINNELL: Yes, they especially said three months.

CHAIRPERSON: And if the board approved the idea that there should be a suspension of executives, is that correct?

MR LINNELL: That is correct Mr Chairman.

20 **CHAIRPERSON:** At that stage are you able to remember that is now the stage of the board before the PNG meeting do you remember whether the board was speaking about four executives which included the financial director or whether they were speaking only about three executives at the end of that meeting or is that something that you are

not able to remember?

MR LINNELL: I remember the discussion was back and forwards, one meeting I attended when that was certainly discussed at one moment the board or the sub-committee said there were four and then there were three and then there were four and then there were three, and that facilitated back and forwards until there was a point in time then it was four. So there were often times that someone would summarise okay there is four and then a minute later
10 someone would say are there not three. So the final outcome of that discussion was there were four.

CHAIRPERSON: That is by the end of the board meeting before the PNG meeting?

MR LINNELL: Mr Chairman the record would, the transcripts would show what meeting it was I cannot recall that debate about four or three backwards and forwards took place at the committee meeting or it was at the formal board meeting but it was one of those two.

CHAIRPERSON: No that is fine I thought you might
20 assist. I looked at the transcript I think if I am not mistaken by end of the board meeting you probably arrived to say somebody would speak about three, somebody else would speak about four but I think certainly at the PNG meeting there was certainly a discussion of four even though Mr Tsotsi at some stage even at the PNG meeting

might have at some stage said no it is three. But in the end the people who were suspended were four executives including the financial director, is that correct?

MR LINNELL: That is correct Mr Chairman.

CHAIRPERSON: Yes, Mr Seleka you may continue.

ADV SELEKA SC: Thank you Chair. Chairperson I will not traverse those issues shall I move on. Mr Linnell then we have from your affidavit references to your subsequent engagement by the board. Can you tell the Chairperson
10 about that in regard to how you are then engaged further by the board?

MR LINNELL: Mr Chairman would you like me to paraphrase it generally and then go to paragraphs so that you can have an overview first?

CHAIRPERSON: You can paraphrase.

MR LINNELL: So okay, so after that meeting if I think of one of the board sub-committees which is now delegated with this task Ms Mabude took me to the – I went to see the internal auditor executive and we had a meeting about
20 how the process could unfold and to what extent internal audit could supply copies of past audit reports. Then the next day that was the 12th there was a media briefing at which Mr Tsotsi and members of the board introduced the enquiry to the media including reference in that media briefing to a role that I would play as coordinator.

Then following that I attended a meeting with the top 30 executives and that was with Ms Mabude and Dr Naidoo and I was introduced into that meeting as the person who would coordinate and run this investigation and I addressed those executives with a request that as those people would have knowledge of some of the matters that ought to be investigated could they submit them anonymously or through the company legal advisor who would then send them through to me and they would be
10 incorporated in terms of reference and that was agreed at that point.

Then following that I was then asked by Dr Pat Naidoo to attend the – I think there were a number of letters describe but it was a recovery type committee of Eskom which was looking at the turnaround of Eskom and I was invited to that with the introduction to the members of that committee that this person will be coordinating the investigation and I should take part in all their deliberations to make sure I got that input. And then I was
20 also invited back to the sub-committee to which I would have reported to if I should continue and both of those committees to which I have been invited to were subsequently cancelled. One was reinstated and then cancelled again and I never met any of those committees again after that and that summary takes a course of about

a week.

CHAIRPERSON: Yes, no that is helpful.

ADV SELEKA SC: Yes, I was about to ask you to give us a sense of the timing of these events Mr Linnell because the meeting is on the 11th and you end, the day is ended with the suspension at least of the three executives. But where were you at the time of the suspensions of these executives because we see from the minutes of PNG that the suggestion is that you may have been present in that
10 meeting when the executives were suspended.

MR LINNELL: Mr Chairman I was certainly in a meeting where the suspension issues were discussed. I was vocal in that meeting and there was a lot of discussion about the priority of doing it, how it would be done the fairness of it, the fact that they should not have preconceived ideas there have to be a process and that debate was quote lengthy where we went to the importance of doing it properly and that is recorded in the sub-committee's meetings. But and at that meeting I think there was some discussion about
20 towards the end of it as I recall the legal officer of the company re-drafting or drafting the suspension letters. But after that meeting I cannot recall where I went when I did not sit in the suspension hearings.

ADV SELEKA SC: Yes, there was also a talk about the formation of a media release...[intervene]

MR LINNELL: That is correct Mr Chairman.

ADV SELEKA SC: In the PNG meeting, was – did you prepare a draft media statement for Eskom as well?

MR LINNELL: I think I did prepare a draft and I have not got my hands on that but certainly I participated in that meeting and what should be included in that document. I cannot recall now if I drafted something before that as a template but I was certainly involved in the discussion about the media release.

10 **ADV SELEKA SC:** Ja, let me just recall help you recall quickly because the transcripts showed that as they were talking about who will formulate a media release and what should go into it you then said I have a draft and I will put together a draft and you say oh you put together a draft and they talk about it but then they say Dr Naidoo you will work with Dr Pat Naidoo to finalise the draft. Do you recall that?

MR LINNELL: Sorry what did he say?

ADV SELEKA SC: That you – then there is a voice saying
20 that you will work with Dr Pat Naidoo to finalise the media statement.

MR LINNELL: Okay that did not happen, I did not sit with Dr Naidoo to do there press release. To my knowledge or recollection now I do not think they did a press release at that time in the end I think they had a media briefing. They

might have read a press release to that media briefing but I cannot recall that exactly – I do not recall sitting with Dr Naidoo to finalise it but if he deduced I did then I would accept that I just do not remember that.

ADV SELEKA SC: Well we do not know what happened that is what we pick up from the transcript. Talking of the press conference you say you were announced at that press conference as the coordinator?

MR LINNELL: That is correct.

10 **ADV SELEKA SC:** And who from the board side was present at the press conference?

MR LINNELL: I cannot remember which ones but there were four or five and that might have been that committee which was now responsible for the enquiry who was left Mr Tsotsi I think he did the discussion. I think all the members of staff were also invited to that same meeting so it was in their auditorium and immediately after that media briefing I received numerous enquiries directed to me from media about the enquiry. So it was quite clear in the
20 media's mind as well as anyone else's that I was appointed to do the coordination.

ADV SELEKA SC: Yes, questions Chair.

CHAIRPERSON: Is it correct that you cannot remember exactly who or at what stage the financial directors name was included in the list of executives to be suspended, is

that right? You are unsure about that.

MR LINNELL: It could be in either one of those meetings.

CHAIRPERSON: Yes, do you remember who exactly introduced her name into the list?

MR LINNELL: I cannot recall but I am sure the recordings would pick that up.

CHAIRPERSON: Ja.

MR LINNELL: But it certainly went back and forth I think for...[intervene]

10 **CHAIRPERSON**: For some time

MR LINNELL: Time to time there were different agreeing and disagreeing with it. There was one gentleman who consistently opposed it, in fact one gentleman consistently opposed all of the suspensions.

CHAIRPERSON: Yes, who – do you remember whether that would have been Mr Baloyi?

MR LINNELL: It was Mr Baloyi you are right, Mr Chairman.

CHAIRPERSON: Yes, okay alright.

20 **CHAIRPERSON**: Now the names of the people who were going to act in the positions that would be temporarily vacated by the four executives. Do you know at what stage those names were introduced into the discussions?

MR LINNELL: I did not go through all the transcripts but I do not think I was in any of those meetings where that was

discussed but I do recall being in a meeting when Mr Khoza was announced or indicated that he would be, he was appointed to be the acting CEO because I have got a note somewhere at that comment that was surprisingly because he made a comment in response to that which and I still remembered because it was quite interesting. He asked what is the difference between generation and distribution.

CHAIRPERSON: Between generation, between what and
10 what?

MR LINNELL: He made a statement which indicated seeking to understand the difference between generation and distribution.

CHAIRPERSON: Yes.

MR LINNELL: That struck my mind at the time because that is rather key to the business and if you were going to be appointed acting CEO that is quite an important thing to understand. So I was present when that was said in one of the meetings.

20 **CHAIRPERSON:** Mr Tsotsi testified as I recall when the meeting of the board ended before lunch he went to lunch and when he came back he went to the PNG committee whose meeting had already started. I think he said he thought it may have been running for ten minutes before he arrived and he said he found the meeting of the PNG

committee discussing names of people who were going to replace the executives to be suspended and he said he was shocked by this because of all the people who were in that meeting who were board members or members of the committee he was the only who would know the people who could replace temporarily the executives.

Now to the extent that you may have attended the PNG meeting you might recall whether he said anything like that or is it something that you cannot remember?

10 **MR LINNELL:** I cannot recall at the back was recorded then I suppose but I personally do not remember being present when that committee discussed who was going to do it and I do not remember the sequeli to that. But mainly what I remember was that bit when that appointment of the acting CEO made that comment.

CHAIRPERSON: Yes.

MR LINNELL: I was present then because that struck me.

CHAIRPERSON: Yes, I think that soon we will need to go to what happened during the week preceding or the days
20 preceding the 19th of the 20th of thereabout of March but before we do that I want to talk to you about whether there was a need to suspend the executives. I have seen in the correspondence and in the minutes where you motivated why you thought that the executives should be suspended. As I understand your evidence and I think that was the

evidence of Mr Tsotsi and Mr Ngubane as well and Ms Klein. The reasons given seems to be that either they, if they were not suspended they could interfere with the investigation or people working under them would have felt that they were not free enough to contribute to the investigation if they were asked for information. Is my understanding of your reasons correct?

MR LINNELL: That is correct Mr Chairman.

CHAIRPERSON: Ja, now bearing in mind that the board
10 said that the investigation was not into any allegations of wrong doing on the part of the executives. Why would they want to interfere with the investigation because they were not the accused, they would be seeking to assist in finding a solution to problems at Eskom. Why should they not have been allowed to be at Eskom to continue with their jobs while assisting the investigation in whatever way because they were the people who were running Eskom?

Who would have known what decisions they took; when they took those decisions; why they took those
20 decisions; who could say this is what we have tried? It has failed because of this or that and if those conducting the investigation said have you tried this they could say no we did not try it because of A, B, C, D and engage them on possibly looking at other ways of resolving problems.

MR LINNELL: Mr Chairman I think there is two parts to that.

My strong belief is that there is ignoring the identity of the individuals there is a strong human risk that if there is an investigation in areas which I control that – and there might be culpability or just incompetence within that area of control the people underneath me who have information might be intimidated by my mere presence from coming forth.

And I think that is – that business principle is well established that that is a risk which happens. Including as turned out that in a – in a few months after this one of the
10 returnee invest – executives was re-suspended and during his suspension he was found to have been communicating with people providing the then investigators with – with information.

So the first point is I think there is a high risk of people being intimidated that they might interfere. The second point to make Mr Chairman is this. That in the suspension letters they are required to be available to the company and the investigators at their request in order to provide information.

20 So the fact that they are suspended does not mean they are excluded from providing information. It is just that one wants to situationally remove them from creating a presence which might intimidate. They are not prohibited or discouraged from providing evidence.

CHAIRPERSON: There – there was no factual basis was

there to say these specific executives would be – would be likely to interfere. The – the idea of a suspension was just based on a general proposition without reference to the specific executives, is that right?

MR LINNELL: Not entirely Mr Chairman. In the briefing notes for the suspensions there was – I placed in that briefing that in respect of each of the three not the four – the three one issue which if true would indicate a propensity to interfere or not come forward with – or not disclose
10 information which needs to be disclosed. So those were in the briefing notes that I gave.

So I do not know when the suspension discussions were held whether my [?] memoir for the suspensions did disclose those to those executives. But in each of instance there is one point which said there is this allegation that in this instance you did not disclose this and therefore this might indicate a propensity for you to not be forthcoming. So – and they would be a – they were invited to re my [?] memoir they would have been invited to comment on that
20 allegation. Whether that happened or not I do not know.

CHAIRPERSON: Do you know whether...

MR LINNELL: So I put that in the documents. So it was substantive issue and a general theory that one wished to avoid.

CHAIRPERSON: Well I would have thought that if the idea

was to find a solution without any focus on wrongdoing I would have thought that they should have been there; they should have continued with their job and they should have been brought in to ask – to answer questions and to engage in discussions and obviously if they gave information whatever information they gave could be verified.

The investigators I take it would have all access they needed to information at Eskom and they would be part of the solution rather than they being excluded while a solution
10 is being found and yet they were the people who were running the organisation.

MR LINNELL: Mr Chairman I do not – with respect Sir I would not agree with that. I think if one starts off with a premise that there were problems at Eskom because evidence [00:05:59] to maladministration.

There was allegations of as we saw yesterday of sabotage. If it could be in reality in those allegations then the Heads of the Departments in which those allegations submit to then either those people are incompetent not
20 knowing that this is happening or they are complicit in it happening.

So the moment you have a situation where there is a strong demand for an investigation because there is a problem in Eskom as I think it is clear that there was. Then one has to say, those people either knew it and covered it up

or they were not competent so they did not know it.

CHAIRPERSON: You see...

MR LINNELL: And both of those would render them vulnerable.

CHAIRPERSON: You see that – that was part of the issue I raised with Mr Tsotsi or Mr – or Dr Ngubane or both of them about this idea that the executives were being told do not worry there are no allegations of wrongdoing bla, bla, bla because I was saying but if there were problems at Eskom
10 surely the leadership of Eskom if there is something that has gone wrong surely the leadership of Eskom must have something to do with it.

Either in terms of doing certain things intentionally or not running Eskom the way it should be run and so on. And – and this idea that do not worry it is – it is – there are no allegations of wrongdoing might have been inaccurate because maybe it might not be misconduct as such but it might be that you people are failing to provide proper leadership to the entity. You people are failing to identify
20 where the problems are. You people are failing to identify the solutions that should be identified as leadership of Eskom.

So – so at one level there is that problem but at another level there is the issue of – if you take them out in circumstances where you say you are not pointing fingers of

them – or at them. It seems to send different messages.
But I think you –you have made your point. Is that right?

MR LINNELL: Correct Mr Chairman.

CHAIRPERSON: Yes. Okay Mr Seleka.

ADV SELEKA SC: Thank you Chair. Mr Linnell you – the difficulty again the Chairperson is going to have is this. One of the board members when – when asked about this question whether there was any evidence that the executives would interfere with the investigation Ms Klein said to the
10 Chairperson there was not a shred of evidence. And hence the question was there a need to suspend the executives?

MR LINNELL: Mr Chairman I have in my – it is my opinion that there is no doubt that they ought to have been suspended. Whether four or three – fourth I do not have a view on but the three key players in the main departments needed to be removed because it was well known at the time that those areas were the areas which needed to be investigated because there were things wrong in those areas.

20 At that time the company – the country was suffering massive blackouts and as we know a potential – sorry load shedding but a potential blackout was – was possible. Now if we have to just oppose the interests of three executives with the lives and the economy of the country these are choices one has to make and they are not easy and they are

not necessarily either right or wrong.

But it is a balanced point of view and if you want to stop the bigger danger one has to take a view how will I determine this properly? And our view at the time I am not sure about Ms Klein's view – my firm view on the time and I think subsequent events have supported that, that that was a necessary step.

ADV SELEKA SC: Well let me add because there is not only Ms Klein you have already said to the Chairperson one board
10 member was opposed to the suspension in general – suspensions and that was Mr Baloyi.

You have also said to the Chairperson which is what we know Mr Tsotsi also testified before the Chairperson that he was opposed to the suspensions when he was at the meeting on the 8 March with yourself, Dudu Myeni and the President.

So there is at least three members of the board – not outside of Eskom – of the board, serving on the board with fiduciary duties you say either there is no evidence or that
20 we are opposed to the suspensions. Do you have any comment on that?

MR LINNELL: Well I do. Mr Tsotsi as you indicated yesterday was without a doubt unhappy with the suspensions on the 8th. On the 11th he was totally supportive of the suspension so in that board meeting he spoke in support of

the suspensions. There is no doubt about that.

Dr Baloyi – Mr Baloyi consistently opposed it but I think in the end he agreed to it. Whether it was against his – his judgment but I – my recollection ultimately he – he aligned with the majority view.

As to Ms Klein's view is I do not remember that specific comment of hers but my recollection is if you take the totality of the meeting in the end she would have been supportive of that suspension. So yes she might have had a
10 comment too in the discussion and as I said yesterday or earlier today that discussion was extensive and when that
[00:13:02] over a lengthy period of time it was not an automatic acceptance by the board. It arose out of a lengthy discussion at which consensus was achieved at the end.

ADV SELEKA SC: Yes. But can I make it clear to you because the proposition the Chairperson is seeking to test with you is the need for the suspension not whether people supported the suspensions.

So Ms Klein says there is no – she testified before
20 the commission not that she made a comment at the meeting in this commission she testified there was not a shred of evidence that they would impede the inquiry.

Dr Ngubane said if they went to courts they would succeed. If you look at the grounds on which they were suspended.

MR LINNELL: Mr Chairman I think I read the transcript that Mr Ngubane made a comment. If one reads the – to the end of all those minutes all of them present agreed to the result. So certainly on the way people were persuading each other one way or the other but at the end of that meeting there was a con – as I recall there were no detractors from the decision to do what was done.

And that was a board meeting and I think I made it clear I my contribution in that meeting is these are things
10 you have to decide and this is – this is your decision and I certainly was a proponent to that decision or recommendations but they agreed to it.

ADV SELEKA SC: Yes well –

CHAIRPERSON: Did – did the inquiry that was going to happen – the investigation that was going to happen did it require interviews with lots of employees? The inquiry that was contemplated.

MR LINNELL: It would have – the Terms of Reference did authorise an investigators to interview all members of staff
20 but it also proposed a whistle blower facility. Because one's experience is that even in any situation some of the best information arises when someone just says I am not prepared to be identified but I have something to tell.

CHAIRPERSON: Well

MR LINNELL: Chair.

CHAIRPERSON: I was...

MR LINNELL: Chairperson.

CHAIRPERSON: I was going to...

MR LINNELL: [00:15:52] into an interview.

CHAIRPERSON: I was going to say to you to the extent that there may have been concern even if there may have been no factual basis for the concern that some employees might not feel free to talk if the executives were not suspended. The employees could be told that they could speak to the
10 investigators without them having to identify themselves. The investigators I guess would be people who did not know them. They would not have to write down – write statements. They could simply say this is what I know, this is what I suspect is contributing to the problems without having been – without having to sign anything and without the investigators having to know their names. Is it not? That – that could be done in which case the employees should feel free to say whatever because they know nobody is going to know within Eskom that they are the ones who
20 gave that information.

MR LINNELL: With respect Mr Chairman I do not think that is so good. If two people robbed the bank and one makes an anonymous tip off of it; the other was involved. That person knows who tipped them off.

So if there was a wrongdoing at Eskom and one

person knew that the boss had done it and he – his boss also knew he had done it and there is a whistle blower report then it is quite clear who told the story Sir. Those things are – are – that is the reality of these things I think it is bono facto experience ad nauseum I do not think this is a unique situation of Eskom. I think...

CHAIRPERSON: But you see – you see.

MR LINNELL: Just hang on.

CHAIRPERSON: You see Mr Linnell obviously you are not
10 going to have a situation where there is hundred percent guarantee or anything. There is no such thing on this [?]. It is a question of whether it is reasonable you know. Whether you taking reasonable measures and whether it is reasonable to think that somebody is going to fear this or that if the following scenario is presented. I hear what you say but as things stand I still am inclined to think that there may not have been – really been a need but I will hear more witnesses and maybe by the time I hear the last witness I will have been persuaded. But I have heard what you have
20 to say in support of the need. Mr Seleka.

MR LINNELL: That I [00:19:06] Mr Chairman. I think... think...

CHAIRPERSON: Yes.

MR LINNELL: May I [?].

CHAIRPERSON: Yes, yes do so.

MR LINNELL: Chair if I may respond to that?

CHAIRPERSON: Ja.

MR LINNELL: At that time the facts were not known. At that time one had to make a decision on what you did know and those decisions as I have said just now when you have two competing issues and they both have consequences someone at the time has to take a view and sometimes that view is subsequently deemed to be the wrong view. It – you have to take a view.

10 **CHAIRPERSON**: Ja.

MR LINNELL: And at that time the view was this was the right thing. I think it had been – the principle had been supported by external legal opinion. I have just seen another bundle where a subsequent legal opinion supported it and so in the circumstances at that moment that appeared to be the right situation. Since then events turned out regarding these suspensions which were never anticipated and if that had not happened I do not believe we would be questioning the wisdom of the suspensions now. There is
20 only [00:20:18] that one thinks this went wrong therefore was it the correct first step? But at the time there was nothing to indicate that this was incorrect.

CHAIRPERSON: So your point is simply that – your point is that as the commission looks at whether there was a need for suspensions or not it must remember what was known –

what you knew then as opposed to what you may have come out after?

MR LINNELL: I think there is a totality of both Mr Chairman.

CHAIRPERSON: Ja. Okay alright. Mr Seleka.

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: From my side I am happy that we moved to that last week.

ADV SELEKA SC: Okay.

CHAIRPERSON: But if you still have some things?

10 **ADV SELEKA SC**: Yes.

CHAIRPERSON: Feel free to explore them.

ADV SELEKA SC: Yes. You see Mr Linnell whether or not the executives are inside or outside of the company at the time of the investigation if information is uncovered now testing your – your two robbers of the bank – if the information is discovered then the executives would know if I acted with somebody within Eskom that can only be that person who told the investigators what the information is. Whether they are inside or outside.

20 **MR LINNELL**: That is true and that is my point Mr Chairman. It is during the investigation you want someone to come forward. If I – if I come forward with information and you are found guilty of that and you are removed and I have no risk then I am free to give you the information.

But if you sitting there and at that time I say if I come

forward with information you might penalise or affect the future of my career I am going to take the option and it has been made in front of this commission before today with other witnesses they feared retribution. That is a human behaviour.

It is not unique to Eskom. That is how people behave. If they feel retribution they do not come forward. That is how we felt at that time and I accept that a league of opinions supported that view. But if we were wrong I accept
10 we were wrong.

ADV SELEKA SC: Sorry Mr Linnell. The fear of retribution was definitely not made in relation to the executives we are talking about.

MR LINNELL: I would – I would differ that is definitely the risk.

ADV SELEKA SC: No do not...you are giving the commission a general view. The commission has to deal with the facts. There was no allegation that we feared retribution from these executives.

20 **MR LINNELL:** Well I do not know Mr Chairman but what I do know is in the briefing documents. I placed one incident in respect of each of the three people which indicated there might be a propensity to interfere with an investigation. That would be – if we followed the [?] memoir those individuals would have been asked whether there was any validity in

those allegations. And if – if there were not valid and they were disputed then I would agree with you that tends to weaken their argument. But from my perspective they were written and that was part of the record.

ADV SELEKA SC: Well the executives have submitted affidavits to this commission have said none of that was put to them. The board members who came before the commission as well have not said to the commission we put that to the executives. So that is not the evidence before
10 this commission that there were fears of retribution or that there would be interference with the inquiry.

MR LINNELL: From my perspective with respect Mr Chairman is in the documents that I prepared and the argument I prepared for the board included that very purposely.

ADV SELEKA SC: Yes.

MR LINNELL: And if the board chose to do something else from my perspective they will have been wrong. From my perspective I thought that was the right thing to do and I
20 sought opinion on that.

ADV SELEKA SC: Ja we understand that. That is from a theoretical point of view. Factual point of view is something else. But you see the commission deals with these facts Mr Linnell that there was a meeting even before the 11 March. The meeting one of which you attended that the executives

must be suspended. You were not given reasons for the suspensions. You said before the commission you thought if you investigate those areas you will have to remove those executives. There was a meeting we understand. You want to comment on that? There was a meeting at Melrose Arch where the four executives were discussed.

MR LINNELL: Ja that obviously I was not aware of. We were in meeting on the 6th and the 8th and then the 11th.

ADV SELEKA SC: Yes. So there seems to be a pre-
10 conception – a preconceived idea that the executives must be suspended and they go about to play it that reasoning with the concepts of legalities. And they get you to do it.

MR LINNELL: I – I would argue that the evidence of Ms Daniel which I heard on your commission hearings about the meeting I think it was on the 10th which she was told by one of the Gupta associates that this was going to happen. And that in itself did not resonate with me as being particularly logical in its content.

Because if that was the case and these Gupta people
20 knew in advance and had planned in the weeks before the 6th they intended to suspend these four people. Why on earth would the Gupta's on the 10th be calling in one of the employees and saying how do we do this? That does not make sense. Something happened there but it is not as we think it is.

The board started off on the 11th – on the 9th as being hostile to the whole process. They demanded a meeting with the Minister on the 11th at which she convinced them that this was necessary.

At the meeting of the suspensions on the 11th the board was not ad idem at the beginning as to the suspensions. If that had all convoluted beforehand I would have expected everyone [00:27:50].

ADV SELEKA SC: Yes but that does not address the point
10 Mr Linnell. It does not address the point. The point is this, when the suspensions were meted to you you were not given grounds why these people should be suspended. You say to the Chairperson I considered that the people in these areas should be suspended. You considered that.

You then sold the idea to those you were meeting with that this is the people – if you investigate these areas these are the people to be suspended.

MR LINNELL: That was quite right.

ADV SELEKA SC: Yes.

20 **MR LINNELL:** And the context of that is on the first day when we discussed the need that is on the 6th and the 8th to have another [?] investigation it is my firm belief that the main actors need to be removed in fear of that investigation. Otherwise it will fail.

ADV SELEKA SC: Yes.

MR LINNELL: That is a principled decision I took. The process of doing it was in the process of defining the approach to the pre-disciplinary – pre-suspension discussions which I formulated what was fair process. But that is a process in principle I bought into on the 6th and 8th that if you are going to do this properly do it properly. Those people needed to be – or the right people needed to be removed.

What happened on the 11th or the 12th when they
10 were spoken to that was a process and if you are going to the process properly you must follow the legal process which I did. I proposed and it is documented. But I am not trying to say that I did not – did not want the suspensions to happen on the 6th and 8th that would have been something I would have been quite convinced would have been the appropriate thing.

ADV SELEKA SC: Yes.

MR LINNELL: Who was to be suspended I did not have a view.

20 **ADV SELEKA SC:** No, we understand that. The thing is, there is no factual basis and that is what we are attesting with you. There was no factual basis to affect the suspensions. You worked on the basis what you say it is a principle in life. People influence the inquiry or intimidate others. But that was not the case here.

MR LINNELL: I am afraid I have to disagree Chairman. The issue of whether it is prudent or not to suspend executive is possible that of someone who has got independent skills to come and discuss that with you and provide an opinion. My thinking at the time was that would definitely would have led to an inhibition and fairly ...[indistinct] [connection not clear] inquiry.

ADV SELEKA SC: Okay.

MR LINNELL: If that is wrong, then the best person to
10 come and tell you is someone who *know better than that*.
[connection not clear]

ADV SELEKA SC: Yes. No, that is alright. That was your opinion Mr Linnell. Can we move on, on that basis?

MR LINNELL: Absolutely.

ADV SELEKA SC: So because you have indicated then that the board engages with you in the days following, the 11th of March?

MR LINNELL: That is correct, Mr Chairman.

ADV SELEKA SC: Yes. I could expedite that.

20 **CHAIRPERSON:** I think he gave a summary of what happened ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...for the week after the 11th of March.

ADV SELEKA SC: Yes.

CHAIRPERSON: And I think he should now tell us about

what happened the end of that week after the 11th of March up to the time when he understood he was no longer needed.

ADV SELEKA SC: Yes.

CHAIRPERSON: You want to tell me about that Mr Linnell?

MR LINNELL: Mr Chairman, starting from the 15th which is the Sunday... so prior to that, as I have mentioned, I was invited to certain committee meetings which were subsequently cancelled but on the 15th, which is the Sunday, I was asked to provide input into the terms of reference from
10 Ms Mabunda [*connection not clear*] via, I think it was the company secretary ...[indistinct] [*connection not clear*] or one of the... I think it was Leo or Theo, in Eskom.

I provided input to that as a first draft. I then, the following three days, the 16th, 17th and 18th continued to develop the terms of reference.

Given at the time, included with invitations to the various committees, these terms of references were circulated to members of the committee until we got to the morning on the 18th when I did my final draft of the terms of reference which
20 are before the committee.

Those terms of reference were objected to by Ms Mabunda and on the night of the 18th, I met with Mr Tsotsi and Ms Mabunda to discuss those.

And at that meeting she said to me the committee does not want this. And we have an adversarial conversation.

Because I said: Well, what is wrong with these that she does not want these terms of reference and that associate(?) media [*connection not clear*] release?

She could offer no reason other than at the end of that meeting she said: Well, you can appear before the committee tomorrow and argue that yourself. We left the meeting on that basis.

The next morning, my invitation to that meeting was then cancelled. It was reinstituted I think on the 23rd and
10 cancelled again.

I never had any more engagement beyond that. So I was engaged with drafting the media statement on the 18th and the terms of reference on the 18th. And from that moment my services were disconnected... discontinued.

CHAIRPERSON: So what is your... were you told either verbally or by way of an email or letter that your services would no longer be needed? Or did you infer that your services were not needed once meetings to which you had been or invitations to meetings that had been extended to
20 you were withdrawn?

MR LINNELL: I ...[indistinct] [*connection not clear*] Mr Chairman. I think it was on the morning of the 17th following the 16th, we were talking and it is said at about five o'clock a.m... before five o'clock a.m.

I received an official email from, I think, the company

secretary saying, and we can refer to the document here, saying that your services are no longer required.

The ...[indistinct] *[connection not clear]* committee no longer needs you in respect of the inquiry ...[indistinct] *[connection not clear]* no longer required to attend the ...[indistinct] *[connection not clear]* and recovery meetings.

So ordinarily, one would have said: Well, I am no longer required to this inquiry. However, at that time, I was disinclined to accept that as termination of what I believed I
10 had been asked to do.

So I discussed that with Mr Tsotsi by way of informing him and I continued. So on the 17th and the morning of the 18th, I continued to develop the terms of reference for the inquiry.

And that is why on the 18th, I have sent Ms Mabunda the final draft and I mentioned here on that evening of the 18th to discuss that final draft. So I do not know if I have covered that adequately?

CHAIRPERSON: Yes.

20 **MR LINNELL:** You are right Mr Chairman. There was an email I received ...[indistinct] *[connection not clear]* morning of the 16th or the morning of the 17th. And ...[indistinct] *[connection not clear]* they continued on that.

CHAIRPERSON: Well, I wanted to ask whether having regard to everything that happened, you are able to put your

finger on why your services were no longer needed or is that something you cannot put your finger on?

MR LINNELL: Yes, objectively and ...[indistinct] *[connection not clear]* The inclination I was given at the time, I think it was the night of the 16th. It might have been a Monday.

I was told that an informal gathering of board members and some of the suspended executives had taken place during the evening of that.

10 It was the evening of the 16th at which they were discussing the inquiry and whatever. It was immediately following that information I received that I received a letter, the email of the 17th early hours of the morning saying you are no longer required further by this committee for the inquiry.

So the information I had before I got the email indicated or corroborated the email I subsequently got. That is the one point.

20 The second point is, in my engagements directly with Ms Mabunda, on the terms of reference, on the evening of the 18th, it is quite clear that she and I think representing the views of the Audit and Risk Committee, did not like my terms of reference. And it was for that reason I was eliminated.

At the same time Mr Chairman, they were circulating an internal alternative terms of reference which was probably a

third of the scope and for example excluded important things.

Like, in my terms of reference, as the documents will show, I recommended a retired judge to act as a role of almost overseer to ensure that there was no bias in the inquiry.

Now that is one specific issue that Ms Mabunda and I think Ms Brown specifically objected to and I heard that from Mr Tsotsi and from another. I think it might have been
10 certainly Ms Mabunda.

So whether it was just that they did not want to judge... the former judge to be an independent overseer who would make sure that there was no cover up and it was transparent.

They certainly approached that but I think they approached the whole depth of the inquiry.

CHAIRPERSON: Yes.

MR LINNELL: And certainly they were succeeding in terms of reference for the...

20 **CHAIRPERSON:** Yes. I am going to take you back to the meeting of the 11th. Mr Tsotsi gave evidence to the effect that, and I hope my recollection is correct, that Dr Ngubane said that it was the minister, Minister Lynne Brown who said the financial director should be included among the executives to be suspended.

You have any recollection of hearing Dr Ngubane saying that at either the PMG meeting or the board meeting that came after the meeting between the board and the minister?

MR LINNELL: Mr Chairman, I do not recollect that. What I recollect is, there was a lot of interplay between all the directors, whether it is three or four and was the FT(?) part of it or not. But I do not remember anyone saying, whether it was Dr Ngubane or anyone else, that the minister had said anything at all. That does not... I might have missed it.

10 **CHAIRPERSON**: Yes.

MR LINNELL: But I did not hear that.

CHAIRPERSON: And I think, if I am not mistaken, Mr Tsotsi also said he was told when he raised the issue of... or when he expressed his surprise that the PMG meeting was discussing names of people who were going to act in the positions of the executives.

When he expressed his surprise that the committee members were discussing these names and circumstances where they did not know these people.

20 I think he said that somebody, either Dr Ngubane or maybe somebody else, said the names came from the minister, Minister Lynne Brown.

Do you recall having hearing anybody, whether it was Dr Ngubane or somebody else, saying that these names of people who were going to act in the positions of the

executives, came from the minister?

MR LINNELL: Mr Chairman, I do not recollect any of that discussion whether it was mentioned that the names came from the minister. I do not remember anyone... I do not think I was present when they discussed the names or replacements.

CHAIRPERSON: Okay.

MR LINNELL: The minutes might reflect that I was there but I have no recollection of being in that meeting at all.

10 **CHAIRPERSON**: Yes.

MR LINNELL: So I would not heard that.

CHAIRPERSON: Okay.

MR LINNELL: But presumable the minister would have said that in the meeting on the 11th.

CHAIRPERSON: Yes. Okay alright. Mr Seleka.

ADV SELEKA SC: Well ...[intervenes]

MR LINNELL: [Indistinct] [connection not clear]

ADV SELEKA SC: Thank you, Chair. Mr Linnell, there is also a version put in one of the affidavits, if not two
20 affidavits, that the names of the acting people came from the presidency. Would you know anything about that?

MR LINNELL: I have never heard that at all before today.
No.

CHAIRPERSON: H'm.

ADV SELEKA SC: Let us go back to ...[intervenes]

MR LINNELL: Sorry, can I comment?

ADV SELEKA SC: Yes, Mr Linnell.

CHAIRPERSON: Yes.

MR LINNELL: Thank you, Mr Chair. When I say I cannot recall that, that is certainly was not mentioned in the meeting on the 8th. Definitely not. It might have been mentioned subsequently in another meeting but on the 8th in Durban, that did not come up at all.

CHAIRPERSON: No, it would not have come up in Durban
10 because the names of acting people, as far as I recall, were not discussed at the Durban meeting, is it not?

MR LINNELL: That is correct.

CHAIRPERSON: Ja.

MR LINNELL: They were not mentioned.

CHAIRPERSON: H'm.

ADV SELEKA SC: H'm. Thank you, Mr Linnell. Going back to the time when you are told that you are no longer needed, you gave the chairpersons what you think were the reasons why you were no longer needed.

20 One of those is that you learnt of a meeting that took place in the evening of the 16th of March 2015. And I am going to help you with the page reference to your affidavit. It is page 36. And as you go there ...[intervenes]

MR LINNELL: Page 36?

ADV SELEKA SC: That is correct, yes. Page 36,

paragraph ...[intervenes]

MR LINNELL: Paragraph?

ADV SELEKA SC: Paragraph 42 and 44. In paragraph 42, you relate about the email you received on the 17th of March which tell you that you were no longer needed. Well, it says you are no longer required to attend a meeting. And then in paragraph 44, you say:

10 “Upon making some enquiries concerning this change of events, I received information that a number of members of the board and some of the suspended executives had attend a late night private meeting during the night of Monday, 16th. I assumed that this was linked to the early morning email cancelling my appointment.”

Do you see that?

MR LINNELL: I do.

ADV SELEKA SC: Yes. Can you... are you able, please, to relate to the Chairperson? Who would you have made enquiries with as you state in paragraph 44?

20 **MR LINNELL**: I think as I have mentioned before. I am reflecting... I do not think I made deliberate enquiries. I was informed of the meeting and I got a feeling I was informed of the meeting during its course. In other words, it would have been on the 16th.

So, whereas here, I say on making enquiries, I think that

is actually in reverse order. I think, as I recollect, it would have been on the 16th, I would have been told that there was a meeting in progress as a house at which certain board members, certain suspended executives and with respect the minister being present.

That was the purport of that information I received. Then the next morning, I got the email and so where I say here I got the email 04:50 a.m. and then made enquiries.

I think the information I got was before the email and
10 then I do reference to the email that what I read the evening before.

So my sequence is, without a doubt, I was given information that there was a meeting.

CHAIRPERSON: We are at one minute to one on my watch. My position is that unless there is something else that has escaped my mind, Mr Linnell has covered most of the things that I considered important. But if there is one or two questions you still wanted to ask him, feel free to do so. But I would like that after lunch, we go to the next witness.

20 **ADV SELEKA SC:** Thank you, Chair. I can do so quickly with Mr Linnell. Okay Mr Linnell, thank you for clarifying the order there. You said the minister was also present in that meeting of the 16th of March?

MR LINNELL: That the... that was the information I got as part and parcel who was at that meeting.

ADV SELEKA SC: Yes.

MR LINNELL: And it was interesting because I think it might have been Jabu because I remember thinking: How would anyone know who is having a meeting? That was... it was quite strange information to receive.

So I do not know in fact a meeting took place but it certainly appeared to be linked to the early hours of the morning the email.

So the gentleman sending the email ought to be able to
10 tell the Commission who instructed him to send that email at 04:50 a.m. on the 17th because that would verify why this happened.

ADV SELEKA SC: So when you refer to Jabu, are you talking about Jabu Mashingani?

MR LINNELL: I think it would have been him.

ADV SELEKA SC: Or ...[intervenes]

MR LINNELL: If he deny it, I am not ...[indistinct]
[connection not clear] but I think it might have been him.

ADV SELEKA SC: Or ...[intervenes]

20 **MR LINNELL:** ...who informed me of that meeting.

ADV SELEKA SC: If not him?

MR LINNELL: Then it might have been Mr Tsotsi because I did not have... I did not know anyone else who could tell me that in the middle of the night.

ADV SELEKA SC: Yes.

MR LINNELL: You know, early hours.

ADV SELEKA SC: Yes, you will recall that you mentioned in your affidavit that you wrote a letter for Mr Tsotsi to address to the minister.

MR LINNELL: Correct.

ADV SELEKA SC: And in that letter, this statement is also made that there was a secret meeting on the 16th of March 2015 where some board members met with some suspended executives. So is it you or is it Mr Tsotsi
10 who knew about this meeting?

MR LINNELL: I drafted that letter and I put that in because that was my information and he would have agreed to that information because he signed the letter. So I drafted that letter, I think with some input from Jabu.

ADV SELEKA SC: Yes.

MR LINNELL: And so he subsequent ...[indistinct] [connection not clear] So the ...[indistinct] [connection not clear] of the minister report of that was to complain to the minister that these behaviours of the board were continuing
20 behind Mr Tsotsi's back and the allegation that at the bottom line is this was in order to prevent the inquiry going ahead.

ADV SELEKA SC: Yes.

MR LINNELL: So it was a very specific letter.

ADV SELEKA SC: Just quickly. Can you tell the Chairperson whether you which board members were said to

have convened this meeting and which some suspended executives?

MR LINNELL: I never heard that. No, Mr Chairman.

ADV SELEKA SC: You were not given the names?

MR LINNELL: No.

ADV SELEKA SC: Ja, is that not strange? But you... they said the minister... you think they said the minister was also present in that meeting.

MR LINNELL: And therefore then the inclusion of that or
10 the letter to her would have been quite telling. In a sense, it was deliberate.

ADV SELEKA SC: Because of the information that she was also present at that meeting?

MR LINNELL: Well, it does come back to her that Mr Tsotsi knows about a meeting and if in fact she was present at that meeting, she would know that he knows that there was a meeting.

ADV SELEKA SC: I see. I think Chair that concludes my questions.

20 **MR LINNELL**: Chair, with respect ...[indistinct] [connection not clear]

CHAIRPERSON: Yes.

MR LINNELL: Can I ...[intervenes]

CHAIRPERSON: Mr Linnell?

MR LINNELL: Yes?

CHAIRPERSON: Is there something that you would like to say?

MR LINNELL: [Indistinct] [connection not clear]

CHAIRPERSON: Yes?

MR LINNELL: Thank you, Mr Chairman. With... with regard to my role, if I could encapsulate that? From my perspective, I was asked to coordinate an inquiry.

I believe that inquiry was necessary and urgent and critical to the country. I have prepared documents including
10 terms of reference to that inquiry, media briefings.

I have put together things which would ensure that that inquiry would be transparent and independent and comprehensive.

And as a result of that, I ended up with an impasse with the board and that led to my removal. So it is my view that the brief originally given to me, I sought to fulfil completely and even after that, I continued in a sense to oppose my... not so much my removal but the termination of the inquiry.

As you would know, in the bundle a letter was also sent
20 to the chairperson of the Portfolio Committee complaining about the same thing and making the same allegation that the board was faulting the inquiry as scoped in the terms of reference.

So the minister was told that the board was frustrating(?) this very expressly. And the chairman of the

Portfolio Committee was told that expressly.

And Ms Mabunda and the committee would have known that they were opposing that. And that was the end of my dealings with the.

CHAIRPERSON: Yes. No, no. That is fine. Just one point. You know we spoke in relation to SAA about whether you were brought into... you were been brought into these SOE's to do a job in respect of which they had capacities. I have heard evidence that...

10 For example, you talk about media releases that you drafted. I heard evidence that Eskom had a Communications Department which used to prepare media statements for the chairperson. I think they...

I have heard evidence about also there being a head of the Legal Department at Eskom. But I am just mentioning that, that we have had the discussion about it.

So I will look at it and bear in mind what you said and it would seem that the role you also playing was not necessarily strictly a role that related to giving legal advice.

20 Is that correct?

It seems to have been some role. Maybe the fact that you had legal background was useful but there must have been a reason why you would bring in lawyers when you had the legal background.

Is my understanding more or less correct that your role

is ...[intervenes]

MR LINNELL: For the suspensions of the ...[indistinct]
[connection not clear] Ja.

CHAIRPERSON: Yes.

MR LINNELL: The suspensions or the media?

CHAIRPERSON: No, no. What I am saying is. It seems
that your role was not one that necessarily depended upon
or required essentially legal knowledge and I am saying that
maybe that is why we see you bringing in lawyers sometimes
10 to assist and then you...

We see you drafting media statements something that
the Communications Department at Eskom would normally
do. So it seems to me that your role was not necessarily a
role to provide legal services. Is that right?

MR LINNELL: Mr Chairman, you are absolutely right. You
are correct, Mr Chairman. I was not at all to provide any
legal opinion or advice. That was not the purpose.

It was to doing a setup of an inquiry that required
somebody with knowledge but I sought independent legal
20 advice on legal issues. But my main role was putting
together the terms of reference and the media statement and
canvassing entities to do the functions referred to in the
terms of reference.

So my role was purely a business coordination role. I
was putting together the way of it all, to conduct an inquiry.

It was not a legal role at all.

And I think... we did mention that the board and the minister refused to allow the media release to be released to the press.

And the benefit of that would have been, that would have cast in stone how the inquiry subsequently would have rolled out because it sets out very clearly that it would be independent, that there would be a judge, that there would be independent people and that is what was squashed.

10 **CHAIRPERSON:** H'm. Now to the ...[intervenes]

MR LINNELL: [Indistinct] [*connection not clear*] that not be Internal Communications Department.

CHAIRPERSON: To the extent that you say your role was not or that of providing legal services. What qualifications did you have, formal qualifications to provide that non-legal service. We know you had a law degree.

MR LINNELL: [inaudible – speaking simultaneously]

CHAIRPERSON: We know you had law degrees, you had been an attorney in Zimbabwe, we know you had been a
20 magistrate from – so if one said this somebody is going to provide legal services one can understand from that point of view minus the fact that one does not know how much familiar you may have been with South African law but you may have been familiar with it but if we leave aside legal qualifications because those might be useful for legal

services.

What formal qualifications did you have to provide the non-legal role that you – to play the non-legal role that you were playing?

MR LINNELL: I have an Honours Bachelor Commerce degree from the University of Cape Town as in technology. I worked for 20 years in large corporates in South Africa all the way through to board level.

I operated in a consultancy company which provided
10 similar legal consulting services to many, many corporates in South Africa over a period of 20 years. So if you exclude the legal background I had altogether, I have had 20 years extensive corporate South African business experience and almost 10 or more years, 15 years, of consulting experience within the South African business environment and so I have done many, many documents of terms of references, scoping of contracts, inquiries, projects, implementations of technology solutions, insurance company turns around, medical schemes, I have
20 been there for 15 to 20 years, doing that.

This is what I do which I would have been engaged to do in Eskom. Running of these terms of reference and the media statement would have been something I was very experienced in doing.

CHAIRPERSON: Thank you very much, Mr Linnell, thank

you for availing yourself to assist the Commission to throw more light as to what happened or what led to the inquiry that took place at Eskom and the suspensions of the executives and the role that you played up to the time when you were told you were not long required at the meetings ...[intervenes]

MR LINNELL: Mr Chairman, may I make one final comment, is it acceptable?

CHAIRPERSON: Yes, you may.

10 **MR LINNELL:** Mr Chairman, at the time we did the suspensions, in no one's mind was it ever contemplated that these people would not return to work in the way they did not.

So what followed, no one, neither the press nor ourselves – it was never evident that what transpired was contemplated in any event and whether it was considered by anyone at that stage is debatable. It might have but certainly we did not have any understanding that what transpired was contemplated at all.

20 **CHAIRPERSON:** Well ...[intervenes]

MR LINNELL: And that I made clear in my statement.

CHAIRPERSON: Yes.

MR LINNELL: Where I identify their subsequent termination as being suspicious in relation to the terms of their suspension. I draw reference to that in my affidavit.

CHAIRPERSON: Well, I will see evidence, I will see when all the evidence is in but there is a possibility that there was someone or there were people outside of Eskom who were making certain decisions or influencing certain decisions that were being taken at Eskom including the decision to suspend these executives.

We will see when all the evidence is in. I did hear evidence, for example, that when Dr Ngubane was either Acting Chairperson or Chairperson, that is later than this
10 time, somebody from outside of Eskom sent him a document reflecting what resolution the board should take in regard to certain newspapers and Dr Ngubane took that document to the board and it seems the board endorsed those decisions that were sought it seems by somebody outside of Eskom but we will hear more evidence and one will hopefully get a clearer picture as we hear more evidence. But thank you very much, Mr Linnell, for availing yourself. Thank you very much.

MR LINNELL: Thank you.

20 **CHAIRPERSON:** We are going to take – so you are excused, Mr Linnell. We are going to take the lunch adjournment, it is quarter past one, we will resume at quarter past two.

ADV SELEKA SC: Thank you, Chairperson.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: ...or affirmation.

REGISTRAR: Please state your full names for the record?

MR MAROKANE: Daniel Letsetja Marokane.

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

MR MAROKANE: No.

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

MR MAROKANE: 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.

DANIEL LETSETJA AROKANE: So help me God.

ADV SELEKA SC: Thank you, Mr Marokane. Chairperson, the bundle we will be using is Eskom bundle
10.

20 **CHAIRPERSON:** Yes, I have got it.

ADV SELEKA SC: And that bundle

MR MAROKANE: And that bundle has – the file has various exhibits. We will concentrate only in – for the purpose of this witness, EXHIBIT U15. That is where the ...[intervenes]

CHAIRPERSON: Well, remember, you must still introduce the exhibits, let it get admitted.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: And then you can take it from there.

ADV SELEKA SC: That is where the black pagination become relevant, Chairperson.

CHAIRPERSON: H'm?

ADV SELEKA SC: : That is where the black pagination become relevant. Mr Marokane, you will have a file before
10 you also marked Eskom bundle 10. I just wish to confirm whether it is in the same as mine. If you look at the spine of that file it has a list of exhibits and I am looking at the first one which is EXHIBIT U15.

MR MAROKANE: That is correct.

ADV SELEKA SC: Is that correct? Thank you. And just for housekeeping purposes, Mr Marokane, you have provided the Commission with an affidavit, two affidavits, one has become the main affidavit and the other a supplementary to the first affidavit.

20 The first one is contained on page 4 and now the pages numbers I am going to refer you to are the ones on the left right hand corner, top left right hand corner, the black numbers as opposed to the red numbers. Do you see that?

MR MAROKANE: I see that, Chairman, thank you.

ADV SELEKA SC: Ja, just drop the microphone to get closer to it, thank you. So that is an affidavit which is two pages long, page 4 to page 5. There is a signature of the deponent on the 1 March 2020. Do you confirm that to be your signature?

MR MAROKANE: I confirm that, Chair.

ADV SELEKA SC: Chairperson, I will beg leave to have that affidavit admitted as EXHIBIT U15.1.

CHAIRPERSON: Is that the first one stuck in at page 4?

10 **ADV SELEKA SC:** Page 4, correct, Chairperson. Page 4 together with the annexures thereto which is ...[intervenes]

CHAIRPERSON: The affidavit of Mr Daniel Lesetja Marokane starting at page 4 and going up to page 5 is admitted and will be marked as exhibit?

ADV SELEKA SC: U15.5?

CHAIRPERSON: U?

ADV SELEKA SC: 15.5.

CHAIRPERSON: 15.5. Okay.

ADV SELEKA SC: Thank you, Chair. Then, Mr
20 ...[intervenes]

CHAIRPERSON: Has got it annexures?

ADV SELEKA SC: It has got one annexure, Chairperson.

CHAIRPERSON: Is that the letter starting at page 6?

ADV SELEKA SC: Page 6, correct.

CHAIRPERSON: So alright, okay.

ADV SELEKA SC: To page 10. Thank you, Chair. Mr Marokane, if you could please turn to page 11. This is now between [indistinct] 05.17 supplementary affidavit, it starts on page 11 and ends on page 13, deponent signing on the 27 September 2020 do you confirm that to be your signature?

MR MAROKANE: I confirm that, Chairman.

ADV SELEKA SC: Can you confirm this to be your supplementary affidavit as well?

10 **MR MAROKANE:** I do, Chairman.

ADV SELEKA SC: Thank you, Chairperson, I beg leave that admitted as EXHIBIT U15.2 together with the annexures thereto.

CHAIRPERSON: The supplementary affidavit of Mr Daniel Lesetja Marokane starting at page 11 is admitted and will be marked as EXHIBIT U15.2 together with its annexures.

MR MAROKANE'S SUPPLEMENTARY AFFIDAVIT PLUS ANNEXURES HANDED IN AS EXHIBIT U15.2

20 **ADV SELEKA SC:** Thank you, Chairperson, there is a number of them there. Mr Marokane, just another housekeeping which is apparent from your supplementary affidavit that you have testified in a closed session interview before you came to the public hearing.

MR MAROKANE: That is correct, Chairman.

ADV SELEKA SC: The reference to that, if you are still

on your supplementary affidavit, page 11, is to be found in paragraph 4. Are you there? You say:

“I confirm that I was called to closed session meeting with the Commission on 1 September 2020 wherein I testified under oath. I also confirm that I have been provided with a copy of the transcript of my testimony...”

In this case the interview.

“...attached hereto as DM1.”

10 **MR MAROKANE:** I confirm that, Chairman.

ADV SELEKA SC: Now DM1 – well, let me complete the paragraph:

“I have perused the transcript and hereby confirm the contents thereof to be a true reflection of my testimony.”

Annexure DM1 is found on page 14. Page one four.

MR MAROKANE: I confirm that, Chairman.

ADV SELEKA SC: Thank you, Chair. Shall we proceed, Chairperson?

20 **CHAIRPERSON:** Yes but just to clarify.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Annexure DM1 to Mr Marokane's affidavit is a transcript of an interview conducted by members of the legal team of the Commission and in that interview he spoke under oath on the matters relating to

his suspension and that transcript he has just confirmed he has gone through it and he confirms it as correctly reflecting his evidence. You confirm that, Mr Marokane?

MR MAROKANE: Mr Chairman, I confirm that.

CHAIRPERSON: Okay, alright. Thank you.

ADV SELEKA SC: Thank you, Chairperson. Mr Marokane, in the light of the transcript, let me get an indication from you how – what you will be comfortable with when you testify now before the Chairperson. Would you
10 prefer to tell the Chairperson a story or would you refer the Chairperson to portions of your closed investigation transcript?

MR MAROKANE: Chairman, you know, having read a lot of documents in preparation for today will be prepared to engage with you on the questions that you have.

CHAIRPERSON: Yes.

MR MAROKANE: And allow the liberty to pick up any issues from the transcript or I myself may refer to a portion of the transcript as you go through.

20 **CHAIRPERSON:** Yes. No, that is fine. I think, Mr Seleka, just lead him on the important issues. He has confirmed.

ADV SELEKA SC: Indeed, Chair.

CHAIRPERSON: I do not think there is a lot that we require from him. To a very large extent I think my interest

is more on how he exited Eskom.

ADV SELEKA SC: I see.

CHAIRPERSON: Because in terms of how the suspension was done, there does not appear to be much controversy in regard to that but you can just lead him on the important issues.

ADV SELEKA SC: Yes. Thank you, Chairperson. Mr Marokane, in the light of that preamble from the Chairperson let me put this particular background to you.

10 It has been extensively led before this Commission, evidence pertaining to the suspension of the four executives on 11 March 2015. You have been mentioned as one of the executives that were suspended. If you could please keep your microphone on? As you agree, state that on record so that agreement could be captured. You have been identified as one of the executives that were suspended at the time and ultimately a settlement agreement be concluded with you and Eskom. Now does that – all that...

20 **MR MAROKANE:** That is a fair capturing of the events there, Chairperson.

ADV SELEKA SC: A fair capturing of – a highlight of the events. Now could you tell the Chairperson quickly in regard to what your position was at a time of the suspension on 11 March 2015.

MR MAROKANE: Chairperson, by the time I was suspended on the 12 March 2015 I was holding the position of Group Executive Group Capital. This portfolio was responsible for the construction of all [indistinct] 12.52 infrastructure. This would include the well-known Medupi, Kusile, Ingula power stations, when we also involved a number of projects within the transmission space. This is the portfolio that I took over as a fulltime executive in November 2014 having acted in that role for a period of a
10 year.

ADV SELEKA SC: Sorry, I should make the correction, I asked you about your suspension on 11 March. So your suspension was 12 March you say?

MR MAROKANE: My suspension was on the 12 March a day after the rest of my colleagues who were suspended.

CHAIRPERSON: When had you joined Eskom?

MR MAROKANE: Briefly, Chairperson, I joined Eskom in January 2010 as a managing director for Primary Energy. I then moved through to different portfolios within a period
20 of a year or so. I became the Chief Commercial Officer for the business and after a further period of a year that portfolio was expanded to include the technology group which essentially encompassed all the engineering responsibilities within the business.

So it became Group Executive Technology and

Commercial I held that role until around July 2013 when I was asked to go and care take the portfolio of Mega Infrastructure Construction.

CHAIRPERSON: And then when did you get to the position that you were holding when you were suspended?

MR MAROKANE: I was in that role from, you know, July/August 2013 as a caretaker executive. The executive responsible for that role had just left the company and whilst the search was on for a fulltime, you know,
10 colleague, I looked after the goings on of that division leading to my being appointed in that role eventually in November 2014 which was essentially some four months of being in that position by the time I was suspended.

CHAIRPERSON: Yes, so at the time you were suspended you had been with Eskom for about four or five years?

MR MAROKANE: That is correct, Chairperson.

CHAIRPERSON: Yes. During that time had there been anybody at Eskom who had complained about your performance of your job?

20 **MR MAROKANE:** Chairman, there has never been any complaint about my performance in any job I have held [inaudible – speaking simultaneously]

CHAIRPERSON: Yes, yes, yes. I see you hold the degrees BSc Chemical Engineering, MSc Petroleum Engineering and MBA, is that right?

MR MAROKANE: That is correct, Chairperson.

CHAIRPERSON: Yes. So your portfolio, the one you were in when you were suspended, just briefly, what does it do, what were you responsible for, what does it do?

MR MAROKANE: Chairperson, the portfolio Group Capital is responsible for the construction of the mega projects. So I will be quite specific here. Medupi Power Station, construction of Medupi Power Station and Kusile were a direct responsibility of that portfolio.

10 My getting to that role, Chairperson, and I talk about these two phases of me being a caretaker and me being appointed fulltime in that role, I was asked to step in to deal with the challenges that led to the delays as I understood at the end of July 2014, Chairperson. So I went in there to really help the team recover the schedule slippage and also deal with the topical issues that were making us be delayed in as far as bringing in new generation capacity is concerned. Having done that, which is a matter that I go quite at length in my first affidavit,
20 supplementary affidavit attachment, having identified the issues I progressed with the team to execute on those plans leading to the attainment of the first mega milestone in as far bringing Medupi into operations.

I was confirmed after Mr Matjila's arrival as a Chief Executive, I was confirmed in November 2014 to be the

custodian of that role on a fulltime basis which effectively places me to have been in it with - you know, for four months by the time the new board, you know, engaged us with the discussions of the 11th, 12th March.

ADV SELEKA SC: Thank you, Chair. Was the board aware of the achievement you are referring to in regard to the – is that Medupi Power Station?

MR MAROKANE: Chairperson, the board that engaged with me by the time I left had two members who came from
10 the previous board, that is Mr Zola Tsotsi, the Chairman himself also Ms Chwayita Mabude.

All other board members were new, you know, and in my recollection I have only engaged with them, maybe three of them on the topical substantial issues of the portfolio I was dealing with. So many of them had not had the opportunity to fully hear from me or understand exactly where my portfolio was at.

As a matter of fact in the suspension meeting I took a little bit of time to actually sketch this background that I
20 have sketched to now, Chairperson, to understand that with the background that I have sketched to you now, are you actually now saying that you want to suspend me, the one that you have sent to go and fix the issues, you want to suspend me so that you can understand what the issue are?

They were quite coy in terms of responding to that but it is a matter that I came back to in my letter in detail. In detail I thought I should afford the new board members some reflection in terms of how I got to be there so that they can then, you know, reflect on their own decisions now.

CHAIRPERSON: They basically did not know you really. They did not know what you were – they were new, the majority of them.

10 **MR MAROKANE:** Ja, Chairperson, it is correct and fair to say they did not know me, they may have known my socially, they were not au fait with my work and the details of my portfolio except the two that I have already mentioned, Chair.

CHAIRPERSON: Yes, okay. Continue, Mr Seleka.

ADV SELEKA SC: Thank you, Chair. So that achievement, Mr Marokane, would have been prior to the appointment of this board, the new board which we understand it was appointed in December 2014 or after
20 that.

MR MAROKANE: Chairperson, we reached the milestone of bringing the first unit of Medupi on line around the 7th or the 4th – I speak under correction, it could be anytime between the 4th and 6th of March 2015, this new board was already there. This achievement that they were alive to at

a point in time.

ADV SELEKA SC: Alright. So take us to the days of your suspension. How are you contacted and made aware that the board wants to see you and when do you meet with the board or is it the board, whoever meets with you in regard to that?

MR MAROKANE: Chair, the lead up to the attainment of that milestone, you know, caused(?) some [indistinct] 20.57 to it, the festive season prior to that was entirely
10 spent on working. As a matter of fact when the new board was inducted myself and Mrs Molefe were actually on business travel overseas, we never even met them, as part of the preparations of meeting that milestone in the first week of March.

So as a result of the intensity of the work leading to that period I took some time out after reaching that milestone, I asked for time for leave to recharge and as such, by the – when the board met on that specific day I was actually on leave.

20 **CHAIRPERSON:** On the 11 March.

MR MAROKANE: On the 11th I was on leave, Chair, and it was only around nine o'clock at night when the company secretary called me to indicate that the board would like me to come in and have a conversation with them, it pertains to suspensions of some executives.

ADV SELEKA SC: Ja.

CHAIRPERSON: Did you understand why was everything so urgent that you must be phoned at 9 p.m. and the board wants to see you same evening? Did you ever understand what was this great urgency?

MR MAROKANE: Chair, in my affidavit I point out that - you know, I asked the company secretary as to how long has the board been meeting and I was given a response that they have been meeting the whole day.

10 I wanted to find out as to why is it that they could not anticipate that they will need me in the course of their meeting at a later stage so that I could also do my planning, you know, can we not stand this down to the next day and the response I received was that the board actually intended to go out and have a media update on the subject the following day, which is the 12th and it is at that point that I actually to meet at six o'clock in the morning, if need be.

 We of course met at eight o'clock that morning prior
20 to what was already set up as a media interview and presentations at ten o'clock.

CHAIRPERSON: Okay, so you met them the following morning on the 12th?

MR MAROKANE: Ja, we met, Chairperson, at eight o'clock on the 12th, ja, in the morning.

CHAIRPERSON: Yes, but it was not the whole board that you were meeting at that time, is it not?

MR MAROKANE: Ja, my recollection - and it was quite aided by the investigation team that it was primarily the members of the People in Governance Committee.

CHAIRPERSON: Okay, tell me about your encounter with them, your meeting with them.

MR MAROKANE: Well, when I arrived for my eight o'clock meeting, not all board members were there as yet so I
10 stayed in my office for a while and I was later called into the boardroom.

The Chairman of the board was actually presiding over this meeting. He welcomed me into the meeting and they said, you know, we are having conversations of executives, you are one of them that you need to have a conversation with and this pertains to specifically the board's decision to institute an independent inquiry into the dealings of the company so they can understand precisely where we are and part of the resolution was quite
20 clear that this investigation has to happen in a space that is free from the influence of executives in whose areas of responsibilities the investigation is going to focus and as such I am going to be, you know, put on suspension for a period time when the investigation is ongoing.

He made it very clear, Chair, that the investigation

will take no longer than three months and also was quite at pains to explain that, you know, there is nothing wrong or any allegations against me that have been tabled, they need to create an atmosphere that is free to get to the bottom of the issues here.

CHAIRPERSON: Okay, continue, Mr Seleka.

ADV SELEKA SC: Thank you, Chair. In explaining all that to you, Mr Marokane, the Chairperson – who is the Chairperson now at this stage?

10 **MR MAROKANE:** The Chairperson was Mr Zola Tsotsi.

ADV SELEKA SC: Mr Zola Tsotsi. Does he explain also to you whether the board has any adverse allegations against you, allegations of misconduct, allegations of wrongdoing?

MR MAROKANE: No. Chairperson, none of those were put forth. As I said, he really emphasised that there is no wrongdoing on the part of the executives that was being suspended.

The intention here is to create a space of unfettered
20 access in terms of the board arriving at its own conclusion in terms of the condition and state of the company.

ADV SELEKA SC: We understand that there were issues relative to the war room, inaccurate information given to the war room or unreliable information. Was that raised with you in that meeting?

MR MAROKANE: Chairperson, none of that was raised with me. I can put it also here that, you know, in the one meeting around my portfolio, that I had with two or three of the board members, this was some three weeks before then, I had suggested to the board that the intensity and pace of the war room in tackling the issues that we are dealing with required an accelerated pace of on-boarding the board so that they can meaningfully engage with the executives but also provide the guidance that the
10 executives require from them and we had started conversations around can we even look at a weekend session where we can spend more intense time to bring them up to speed.

So at that point in time, Chair, nothing was raised about the unhappiness coming from the war room.

If anything else, this could have been an issue of how do we accelerate the learning curve of the board members to be on par to meaningfully direct executives or contribute in the war room process itself.

20 **ADV SELEKA SC:** Thank you. Now your – the annexure to your affidavit which is on page 6 of the bundle. It is a letter I believe is addressed by you to the Chairperson now during your suspension.

MR MAROKANE: That is correct, Chairperson.

CHAIRPERSON: Before that, Mr Seleka.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Before we go to that letter, let us see if we can finalise that meeting. I know that in the letter you touch on what happened at that meeting.

MR MAROKANE: Ja.

CHAIRPERSON: What was advanced to you as the need for your suspension.

MR MAROKANE: Ja.

CHAIRPERSON: At that meeting.

10 **MR MAROKANE:** Ja, Chairperson, in that meeting I actually sat next to Mr Tsotsi, he was seated positioned like this. He had a piece of paper that he was probably using to jog his memory in terms of the sequence of the points he needed to raise with me and that is a point that piece of paper, copy thereof, was also presented through to me so I could follow the story line with him but that was not before he had dealt with probably the important part, which was the opening paragraph of that letter which dealt with the rationale for the suspension.

20 As I said, at that point in time he was really still freewheeling and explained the rationale for the suspension to be one of we want to investigate and find out what really is happening and as a result of that you will be suspended.

But we, you know, we reiterate you are not, you

know, guilty of anything, there is no allegations against you, this will be a real fact finding exercise.

The rationale for the suspension, Chairperson, is carried in the first two paragraphs of that letter but because he was really talking a lot of [indistinct] 29.37 on it, when we got to a point of dealing with the points now on a point by point, we were somewhere around point 4 or point 5. That is when I got a copy of the letter to start moving with him.

10 At that point in time I realised that some of the process issues that he was confirming with me were inaccurate.

For instance, it carried – and I carried this in that letter, my first letter which is on page 6 there. You know one of the paragraphs which is in paragraph 5 it says:

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

There was nothing like that, you know you’re sitting over
20 here, these things are being read through to me, so I was quick to pick this kind of inaccuracies and I requested that we actually scratch them out of my suspension letter.

I was going to have to sign the suspension letter and therefore I needed it to be as accurate as possible. So this was scratched out, Chairperson, you’ll see that in

my suspension letter two parts, including the date of the letter, because I met the Board a day after they already typed these letters, I corrected these inaccuracies and got the Chairman to initial next to me with the concurrence of the rest of the Board members who were there.

CHAIRPERSON: Did you wonder what he was talking about when he said, you have made various representations that they've considered, which means he is sitting next to you and nothing like that has happened?

10 **MR MAROKANE:** And Chairperson, I mean, I'm a Senior Executive I'm quite *au fait* with the disciplinary processes and what it entails, I could immediately see that this is, you know, this is procedurally getting quite messed up.

CHAIRPERSON: Okay yes, so ultimately you had an agreement with him to cross out certain things in the letter that were not accurate?

MR MAROKANE: That's correct Chairperson, we crossed out the areas that were, immediately visible to me being inaccurate including the date of the letter at the top and
20 those two sections that I referred to and then we signed the letter – we both signed the letter and I left the meeting room.

CHAIRPERSON: Yes, and that was your letter of suspension?

MR MAROKANE: That was my letter of suspension.

CHAIRPERSON: Yes.

MR MAROKANE: It became the letter to which, you know, I reflected on in the next few days and wrote quite an elaborate letter to Mr Zola Tsotsi which is – that on the 18th of March, Chairperson, I wrote that letter to address, specifically, three things, the first one was the inaccuracies that I picked up in the meeting but also the inaccuracies that I subsequently found out that I could not see immediately in the meeting, that was the first issue, so I
10 was dealing with factual issues. The second one of the things that I raised in there, Chairperson, was the discontinuity of the rationale that I was picking up from what he told me, verbally in that meeting and what I linked over from the first paragraph that was written there that, that first paragraph spoke about something else it spoke about intentional sabotage or intentional tampering of the power system. So, I needed to reconcile the positions that he articulated and what he wrote and also the position that the company articulating in the public. So, I addressed
20 that particular thing as well in my first letter then the last thing of course, if I may, Chairperson, dealt with the issue – I went to town in terms of explaining how I ended up being in a chair as an Executive of Group Capital, how I was sent there to go and fix problems, what I did exactly, what it resulted in and the milestone that we reached the

week before, imploring to the Board, to say, can we – can you let me get on with the business of fixing this thing and gaining the traction that we had set up ourselves in terms of accelerating the recovery of our schedule. I offered, again in there, that I'm available I'd like to engage with this fact-finding mission of yours. I reminded the Board in that document that we have just completed two intense forensic studies in terms of what were the problems with the welding issues at Medupi and how were we looking like
 10 in relation to the benchmark of a further project execution. These were Board instituted processes that were less than a year old and we were ready executing on those we were gaining traction it was not the right time to actually be starting another inquiry that is not well defined. I raised these three issues in that letter of mine, that letter was never acknowledged nor responded to and it became a pattern with all the subsequent letters like the rest of the Board.

ADV SELEKA SC: Thank you Chair.

20 **CHAIRPERSON:** That's where you wanted to go and – so you are there.

ADV SELEKA SC: Thank you.

CHAIRPERSON: Mr Marokane has covered certain important features on the letter, it is quite a detailed letter but it's self explanatory we don't have to read it into the

record. We can read into the record only some parts if there are some that are particularly important but let me allow you to continue.

ADV SELEKA SC: Yes, no correct, I think Mr Marokane, just that last part at paragraph 26 we have read it out to – I think Dr Ngubane as well it says,

10 “If the Board has an absolutely genuine desire to, one, get to the heart of all Eskom problems, two, understand how those problems came about, three, and how they were, over time, handled and mishandled and four, what Eskom needs to do in order to overcome its challenges. I’m willing to cooperate with the independent investigation on the basis that I will be allowed to advance and share my genuinely held oath and my frank views without fear of retribution or any other adverse consequence to me, my professional integrity, my reputation in the marketplace and importantly my career in Eskom and my anticipated and, indeed, 20 hoped for career path within Eskom”.

So, you still hoped for a career path within Eskom?

MR MAROKANE: That’s correct, Chairperson, we had a lot of work to do. I joined Eskom as part of a broader belief and I was not yet anywhere close to where I thought the organisation needs to be with the assistance of

professionals like myself.

ADV SELEKA SC: I see your reference to – that you be allowed to advise and share your genuinely held, open and frank view without fear of retribution. We heard earlier, Mr Linnell talking about, he motivated for the suspension because the top Executives are there, he feared that they would not allow for an independent investigation even fear of reprisals by those who are working under the top Executives but it seems here, you are the one who had the
10 fear of retribution.

MR MAROKANE: Chairperson, and this really comes from the work that we had done in understanding how we got there. The delays in the programmes and so on, they required people who to face and fix the problem, you needed to, as one colleague of mine says, you needed to make reality your friend, you needed to face up to bad news, you have to be bad news ready, that way you can start going to your inner depths and finding solutions and talking about what was wrong inside Eskom or what was
20 wrong with the projects, must as, amongst ourselves professionals will easily get to the point, I'm not certain that, you know, then and even now, is a matter that is easily embraced by others who invested in – even including the shareholders. So, part of fixing these problems is being able to face the truth and that's what I was referring

to there. That if we have to go down the path of establishing what exactly happened, we have to be ready, all of us to acknowledge what works and what does not work without, you know, applying any coating to it.

ADV SELEKA SC: Yes, what do you say to this statement or allegation that, well your suspension was made because you could influence people under you, you could intimidate them not to cooperate with the inquiry?

MR MAROKANE: Chairperson I wouldn't spend a lot of
10 time on that, as I said, this investigation was meant to establish facts and against the background of having not been accused of anything or allegations it doesn't make sense to me, why would I want to do that kind of irresponsible act as an Executive?

ADV SELEKA SC: Yes, as you were explaining your suspension to the Chairperson, I wanted to refer you to your letter which is on page 123 of the Bundle. Page 123 that will be top left-hand corner.

MR MAROKANE: I've got a different number here.

20 **ADV SELEKA SC:** It's further on.

CHAIRPERSON: Okay let's ask...[intervenes].

MR MAROKANE: Is it the red numbers or the black ones?

ADV SELEKA SC: The black ones.

CHAIRPERSON: That's Eskom's letter to him, is that right?

ADV SELEKA SC: That's the suspension letter, yes

Chairperson.

CHAIRPERSON: Ja.

ADV SELEKA SC: It's further on.

MR MAROKANE: Further on?

ADV SELEKA SC: Yes.

MR MAROKANE: Okay, sorry, okay I've got it – no sorry I don't have it.

CHAIRPERSON: Well, look if you just ask him, he probably will be able to respond even without reading the
10 letter.

MR MAROKANE: Chairperson, I have it here.

CHAIRPERSON: He had a lot of time to look at that letter, ask him what you want to ask him.

ADV SELEKA SC: Yes when you were dealing with the changes you were making I see you were paging, I thought you wanted to find the letter, I didn't want to interrupt you. So that's the letter that – the explanations of which you were making to the Chairperson.

MR MAROKANE: That's correct, on that letter Chair,
20 you'll notice that the dates of 11 March is scratched out and 12th inserted there, that point is also initialled, both by myself and the then Chairperson, Mr Zola Tsotsi, paragraph 4 – paragraph 5, the sentence starting with, "I confirm that", I've scratched that out.

CHAIRPERSON: Ja one can see that ja.

ADV SELEKA SC: That's right, thank you and then that paragraph 1 of the letter, Mr Marokane it says,

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

10 Did you understand this statement?

MR MAROKANE: Chairperson, that's exactly the point I was raising, that when we began the meeting and Mr Tsotsi was explaining the Board's decision, at this point in time, after the pleasantries he was actually talking without direct reference to the note he has, which I now know, is a letter and he had already sketched the picture, as I articulated earlier that it's about finding out the true state. We started focusing on the specifics of the letter as we were moving from paragraph 3 or so down, which is why I was able to

20 pick up inconsistencies or inaccuracies. You will also see that, in the first paragraph I have not scratched out the 11th of March date which is repeated there but certainly the reason as explained in here, the possibility that the power delivery may be compromised by, either, intentional or negligent conduct was not brought to my attention at that

point in time because this is different from fact-finding to establish what is happening because what is insinuated here is that there could have been some act of misconduct, I could have spent some time on that and this is why I wrote that letter subsequent to having time to read it in detail but also subsequent to looking at the rationale that Eskom was advancing to the world out there.

ADV SELEKA SC: Yes, thank you.

CHAIRPERSON: But during your meeting with Mr Tsotsi
10 on the 12th and whoever else was there, did you object to the suspension or did you not object, you accepted that they'd made whatever decision, you didn't agree with it but did not object or you did object?

MR MAROKANE: Chairperson, I may not have explicitly used the word, I object to the decision. I definitely saw that you have taken no input from me whatsoever in arriving at your decision. This was defined already.

CHAIRPERSON: Yes.

MR MAROKANE: It was premeditated, it was finished. I
20 was being told what you have decided and this is the essence of some parts of my letter to them, that you've decided that you're going to go down this route and I made it a point that my own views, having studied the letter, having observed what was being said in the media that this is an unprocedural process that they've taken. I may as

well, at this point, counsel, through you, indicate to the Chairperson that this letter that I sent on the 18th of March was on my own personal letterhead, Dan Marokane, it came from me because at that point in time, despite the legal help I was receiving, I felt I needed to continue to extend some hand of collaboration here with the Board that maybe we can find each other before this becomes a lawyer talk.

CHAIRPERSON: So that came from you it hadn't been
10 prepared for you by a lawyer?

MR MAROKANE: Well I prepared it in consultation with my lawyers, but I needed to remain the face of engagement with my Board at this point in time it's an Executive – in engagement with this Board.

CHAIRPERSON: Yes, okay, alright. So, ultimately your meeting with Mr Tsotsi and other members of the PMG Committee ended and you left on the basis that you were suspended with immediate effect?

MR MAROKANE: That's correct Chairperson.

20 **CHAIRPERSON:** Yes, Mr Seleka do you want to take it from there, what happened, any interactions after that?

ADV SELEKA SC: Yes, thank you Chair. Mr Marokane you say then this letter was not responded to, what happens thereafter?

MR MAROKANE: Well after that, Chairperson, two days

after I sent my letter and it wasn't acknowledged or responded to, my lawyers sent another letter to the, then Chairperson, Mr Zola Tsotsi indicating that they're acting on my behalf and would like to understand if we'll be receiving any response to my letters. More importantly it's – maybe, counsel if you can help me in terms of finding where the Annexure is but indicating that this is a procedurally unfair process and they would like to start engaging with the organisation, I think it's also in that
 10 letter that we spoke about, you know, getting an update in terms of the terms of reference of the investigation so that we could collaborate.

ADV SELEKA SC: Yes let's see, if you turn to page 111 whether that is the letter you're looking for.

MR MAROKANE: That's correct Chairperson, that would be a letter from Brian Khan Attorneys, that basically is a follow up on my un-responded to letter and just detailing the process of how we would like to engage in, ultimately, leading to the information around the investigation itself.

20 **ADV SELEKA SC:** So, this letter is dated 20 March 2015, from Brian Khan Attorneys.

MR MAROKANE: It is from Brian Khan Attorneys it is correct addressed to Mr Zola Tsotsi and copied to the company secretary at the time, Mr Malesela Phukubje.

ADV SELEKA SC: And did you receive a response to this

letter?

MR MAROKANE: This letter, like the first one, Chairperson was not responded to or acknowledge as well.

ADV SELEKA SC: So that letter ends on page 113.

CHAIRPERSON: And then there was another letter at page 115 dated 28 April 2015, do you see that one, from your lawyers, I think?

MR MAROKANE: That's correct, Chairperson, the letter which is marked as DM3 on page 115 was sent on the 28th
10 of April so this is some good – the last letter is on the 8th
of March so over a month later or some six weeks later, we follow up with another letter, this time a number of things had happened, you know, by that time we thought surely the three month long investigation must be underway at this point in time. We wanted to get some sense of the terms of reference, we were not afforded those stellar points, we raised, in this letter, a point we raised in our first letter in terms of the discontinuity in the rationale of our suspension based on what was publicly available in
20 terms of the reasons for the rationale all are sitting in our letter in our letter but now we also had linked over papers that were in the labour dispute with Mr Matona in terms of the Chairman's affidavit responding to that. New reasons were actually advanced in that case in as far as, why the suspension happened. So, we wanted to engage with

Eskom to actually understand, what exactly is going on.

CHAIRPERSON: Yes okay.

ADV SELEKA SC: Is it because you thought there was reasons – the new reasons you referred to, applied also to you?

MR MAROKANE: Excuse me, please say that again?

ADV SELEKA SC: What you said – you're saying they advanced new reason in the affidavit of Mr Tsotsi.

MR MAROKANE: Yes, they actually contained in – that
10 note is contained in paragraph 6.2. The pleadings that were made by the Chairperson, specifically, dealt with allegations regarding the eradication of misconduct, reference to wrongdoing or misconduct or negligence and performance of the Executives. This was sitting in the Labour Court matter that Mr Matona was dealing with, so we sought to understand from Eskom the rationale – the real rationale and which of this that we were being paddled and moving around is the basis of our suspension which we deemed unfair at that point in time.

20 **ADV SELEKA SC:** Yes, if you page on, we see that there seems to have been a response to that letter from Bowman Gilfillan it's an email on page 118.

MR MAROKANE: That's correct, Chairperson, it says, after that letter, we received a response from Eskom's lawyers, Bowman Gilfillan who essentially dismissed

anything that we had raised, did not engage substantively on it and just reserved their rights and confirmed that, at that point in time the client was not willing – or was not of the view that it should share the terms of reference of the Commission with us because then we compromise the inquiry. So, that was the only response ...[intervenes].

CHAIRPERSON: That you ever got.

MR MAROKANE: Ja, after nine weeks or so of sitting at home as a Senior Executive waiting and having no contact
10 with my employer, basically I was in the dark for all this period.

CHAIRPERSON: How did the suspension affect you?

MR MAROKANE: Well, Chairperson, I think on a professional level, you know, how I came into Eskom, I was not – I really say this with absolute humility, I was not a moderate performer. I was recruited into Eskom because of my abilities and skills. Now to be sitting at home with a cloud of suspicion and poor performance on you, it's very painful on a professional level. On a personal level it's
20 my name being dragged into all this insinuations that's going on. It's my family name being dragged into all of this.

CHAIRPERSON: And then when was the next step you decided to take after this, and what was the step?

MR MAROKANE: So, my assessment of – Chairperson,

my assessment of Eskom's response through their lawyers was that they are not going to genuinely engage with the issues that I've identified as being material. It takes one act, one act of inconsistency in breaking a trust relationship but over a period of nine weeks, this was sufficient for me to arrive at the conclusion that the working relationship that is supposed to be based on trust with the Board, was no longer existing and having experienced in other places, what happens the moment

10 you've got tension between the Boards and the Executives, I did not want the situation to re-visit Eskom, it had too many things to focus on, the country needed it to be focused on doing the task, I was just one person, Dan Marokane, I understood what is going on here, let me remove myself and at that point in time, Chair, I picked up the phone and called the, then interim Chairperson because Mr Zola Tsotsi had left, I picked up the phone and called Dr Ngubane, Dr Ngubane whom I knew very well before he came to Eskom. Me and him belonged to the

20 same denomination and not the same church so we didn't go to the same church we belonged to the same denomination, we were both Catholics and I said to him, you know, my honest assessment is that our working relationship of trust is broken can we find a way of peacefully separating with each other. He was quite

grateful for the call, he undertook to identify part of the Board members who could, perhaps, start these conversations with me and the following day he actually reverted to the names of the Board members who subsequently met with me and I think over two engagements and multiple emails back and forth we arrived with what is sitting as an Annexure here, separation agreement to the organisation and I left.

CHAIRPERSON: Well when you contacted Dr Ngubane
 10 and said to him that you thought that, in fact, there was no trust anymore between yourself and either Eskom or the Board, did he say anything along the lines that – and when you said, can you talk about parting ways, did he say anything along the lines that, hang on, the Board actually contemplates that you should come back it has no issues with you, there is no problem of trust, you know, this inquiry did not – or is not looking into any wrongdoing, we – as far as the Board is concerned we expect you to come back in due course, so why are you talking about the
 20 parting of ways?

MR MAROKANE: Chairperson I stated my position with Dr Ngubane of, you know, me having lost trust in the Board that we can function together going forth and as a result, I requested we engage in discussions for mutually agreeable separation. He heard me, he thanked me for reaching out

and he undertook to revert with mandated individuals for that conversation and that actually happened very swiftly Chairperson. The following day – this call, I do recall it was in the evening on a Thursday the following day I had the names of the two people who were going to engage with me and they reached out and we began the conversation.

CHAIRPERSON: From your point of view, how were you feeling at the time that you decided to approach Dr
10 Ngubane, how were you feeling about any future with Eskom?

MR MAROKANE: Chair, as I said, you know the – captured in my first letter I was still fully committed to getting back and we get on with the job.

CHAIRPERSON: Yes.

MR MAROKANE: At that point, nine weeks later, having been ignored in the manner that it happened and also seeing the various messages coming from the Board at that point in time, I was no longer willing to be working with a
20 party like that, you know, I had a choice here. The choice is really, me walking because the Board is new, the Board is not going to be fired to accommodate one Executive who feels that trust issues are done, I understood it very clearly that I'm in a space where I cannot work with those – I'm supposed to work with – from a position of trust I was

disappointed. It was a very premature ending of a career, I thought I'd make, within the SOE and as a matter of fact within the SOE's as well because I came from one SOE prior to joining Eskom. It was an abrupt end to what I saw as a long career and definitely an abrupt end to anything that I was contemplating even in the periods leading up to the response of the 30th also from the team.

CHAIRPERSON: So, you met with a delegation of the Board, or representatives of the Board?

10 **MR MAROKANE:** Ja, the two Board members, Chairperson, who were mandated to engage with me on this subject were Mr Romeo Kumalo and Mr Zethembe Khoza and both gentlemen – I don't recall who of the two actually reached out to set up our first meeting and it was very, you know, social set up, nothing too tense, we had a first conversation. We had a second conversation, probably, a week apart and I'm very aware they were supported by the system back in the organisation because they needed to go back and check points or check

20 mandates and ultimately with the participation of Ms Klein who has also been here we arrived at the separation agreement.

CHAIRPERSON: How many meetings did you have before you reached agreement?

MR MAROKANE: Chairperson I had – my recollection is

two meetings face to face meetings with those two gentlemen and in the process, we may have exchanged close to 20 email correspondences back and forth. I definitely had at least four email correspondence towards the end with Ms Venete Klein on trying to get particular aspects of the agreement.

CHAIRPERSON: When Dr Ngubane was here as well as Ms Klein, when they gave their evidence on different days, here one of the issues that arose was whether the
10 departure of the three executives, including you, from Eskom, that is yourself, Mr Matona and Ms Molefe was an issue that arose was whether or not the executives decided on their own that they no longer wanted to continue working for Eskom or whether it was representatives of the board or some board members who interacted with them who indicated that those executives were not welcome back. Mr Matona gave evidence that he was told by the representatives of the board who met with him that the
20 issue of him going back to his job was off the table and they could talk about another basis of parting ways. That is what he said.

So with regard to you, how would you describe the situation in terms of your decision to approach Dr Ngubane about the possibility of exiting Eskom?

MR MAROKANE: Chairperson, I can confirm that I made

the approach with Dr Ngubane. So if you look at the mechanics of it, I reached out. Those are the mechanics but you have to look at the circumstances leading to that.

CHAIRPERSON: Yes.

MR MAROKANE: And the trail of evidence of my letters and the issues that I raise in them and their respond. Very careful response towards the end suggested to me that, you know, I could have done it then or it was going to be just a matter of time.

10 This is now a – this is now how you treat an executive that you want to come back to work? This is not how you treat that executive, it is not how you treat an executive that to say there is no allegations against them and you just want them to come back after you found the facts to continue with your work.

 We have broken very important core line of trust here and therefore, you have rendered, you know, our relationship not to be conducive for working.

 So I made the call based on the behaviour that was
20 being displayed by Eskom up to – by the board up to that point.

CHAIRPERSON: I do not know whether you say so in one of your letters but is the position that when you looked at what had happened from the day of your suspension up to the time when you decided to reach out to Dr Ngubane, is

the position that you concluded that you were not wanted by the board anymore?

MR MAROKANE: That is correct, Chair, that is essentially the point I was raising that the manner in which the board conducted itself in engaging with me whilst on suspension on the matters that raised suggested that I am not welcome at the board, ja.

CHAIRPERSON: H'm. Do you remember whether actually do say so in one of your letters? I seem to remember that
10 you say you felt unwanted. Do you remember whether you say anything along those lines? I do not know whether I am confusing what you may have said in letters or whether it might be Ms Molefe who says that but I seem to think it was you.

MR MAROKANE: So maybe if I may refer to some semblance of that.

CHAIRPERSON: Ja.

MR MAROKANE: In my first affidavit, Chairperson, paragraph 3.

20 **CHAIRPERSON:** Ja.

MR MAROKANE: Paragraph 3 there is a sentence that starts with:

“As time progressed it became clear to me that the board was deliberately frustrating me. It was well into the month of May around the 20th and

[indistinct] 04.52 around the 13th that I called the interim Chairman of the board, Dr Ben Ngubane in the evening to indicate to him that I had come to the conclusion that I could no longer trust the board and as such I wanted us to discuss how to separate.

CHAIRPERSON: Yes.

MR MAROKANE: And by the following morning the two gentlemen designated to carry out those conversations with
10 me were already notified and were ready to engage.

CHAIRPERSON: Yes. So the two members of the board who met with you, Mr Romeo Kumalo and who was the other person?

MR MAROKANE: And Mr Zethembe Khoza.

CHAIRPERSON: Ja and Mr Zethembe Khoza. When they met with you they came on the basis or spoke to you on the basis that what was to be discussed was the parting of the ways, is that right?

MR MAROKANE: That is correct, Chair.

20 **CHAIRPERSON:** Yes, there was no other discussion of anything else.

MR MAROKANE: That is correct, that is correct.

CHAIRPERSON: Yes. And ultimately you reached a settlement agreement with Eskom, is that right?

MR MAROKANE: That is correct, Chair, and I left the

service of the utility at the end of May.

CHAIRPERSON: Yes.

MR MAROKANE: Yes.

CHAIRPERSON: And, of course, the settlement agreement is here, I saw it. In terms of that settlement agreement were you paid effectively a year's salary, half month's salary?

MR MAROKANE: No, Chairperson, I was paid an equivalent of six months' salary and I was paid some of the
10 bonus schemes that were due but not yet payable before the time.

CHAIRPERSON: Yes.

MR MAROKANE: So it was really around that, ja.

CHAIRPERSON: Yes. So, okay, I thought – I think one of the people or maybe Dr Ngubane or Ms Klein or maybe Mr Tsotsi, I thought that somebody said for all the three executives who did not come back they were paid about 12 months' salary but you say certainly in your case that was not the case.

20 **MR MAROKANE:** Ja. Chairperson, let me address that matter. In the separation agreement the makeup of the separation amount is not explicit.

CHAIRPERSON: Yes.

MR MAROKANE: It is a lump sum number [inaudible – speaking simultaneously].

CHAIRPERSON: Yes.

MR MAROKANE: I know that if that number meant 12 months of my salary together with other provisions of payments it could have been – the sum total could have been a higher number.

CHAIRPERSON: Oh, okay.

MR MAROKANE: So that I know that it was made up of six months' salary, it was made up of – and it is there, Mr Anton Minnaar's explanations of how he dealt with this
10 retention bonus systems.

CHAIRPERSON: Yes.

MR MAROKANE: Some components of those, I was made it up but in the end it may look like equal to 12 months salary.

CHAIRPERSON: A year's salary, yes.

MR MAROKANE: But it was made up of different components.

CHAIRPERSON: Oh, okay. So would it be correct to say ...[intervenes]

20 **MR MAROKANE:** The equivalent of ...[intervenes]

CHAIRPERSON: Irrespective of how it was made up it was – the total amount is in the region – was in the region of a year's salary.

MR MAROKANE: That is correct, Chairperson.

CHAIRPERSON: Ja, okay, alright. Okay, alright.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: That is on page 125, Chairperson, the settlement agreement.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes. Mr Marokane, yes, insofar as you say Mrs Venete Klein did the last interaction with you in regard to the settlement agreement. May I quickly just refer you to the pages. Page 299.4. It is in reverse order,
10 I beg your pardon, to 299.1.

MR MAROKANE: Okay.

ADV SELEKA SC: You will see it is a string of emails from the 21 May 2015.

MR MAROKANE: That is correct, Chairperson.

ADV SELEKA SC: The last one being on the 31 August 20 – no, no, the 27 May 2015.

MR MAROKANE: 27 May 2015, that is correct.

ADV SELEKA SC: Would that have been your engagement with Ms Klein in regard to the settlement
20 agreement?

MR MAROKANE: That is correct, Chairperson, so you will see that the first email from her to me was on the 21 May 2015 and we had a few emails back and forth, almost every day, up to the 27 May 2015. This was essentially the final version of the separation agreement, we signed it on the

28 May, became effective from the 1 June.

CHAIRPERSON: Well, I asked Dr Ngubane and Ms Klein when they gave evidence here and they told me that the board had no problem with these executives and that actually the board wanted them back.

I asked them why the board paid these executives so much money if the position was that the executives decided by themselves to leave and the board actually wanted them to stay.

10 I said if the executives said they wanted to leave and you wanted them to stay, why did you not say look, as far as we are concerned, you are welcome to continue, we have in mind that we – you will still part of the future of this company but if you decide on your own you want to leave then that is your decision, why did you agree to pay so much money? Are you able to say anything to me on that issue as to why Eskom of the board was prepared to pay the money that they paid to reach a settlement?

MR MAROKANE: Chairperson, I can confirm that in an
20 engagement the subject of the board's wish to have me back was never broached so this ...[intervenes]

CHAIRPERSON: It was never brought up.

MR MAROKANE: It was never brought there, it was never on the table, it was never on the table.

CHAIRPERSON: Yes.

MR MAROKANE: And, you know, now that you raise it, I just remember my contract maybe somewhere in here, counsel, but if you look at the provisions of my employment contract, I am speaking under correction but I think my notice period was actually six months.

So if the board – ja, say the board did not want me to leave the board could have enjoyed the further six months of my service without having to pay a cent because I would have been obligated to see through my notice
10 period. Ja, so all those instruments were there, whatever. Ja, I think it is between three months or six months but I do recall it was quite unusually long. Ja, six months.

CHAIRPERSON: Your own understanding of why they were prepared to pay this, the money that they paid did maybe through a discussion with the representatives? Are you able to say what your understanding was of why they were prepared to pay?

MR MAROKANE: My understanding, Chairperson, is that they were prepared to pay for my departure because they
20 realised or by then they would have realised that what they had carried to us, to me in particular, was procedurally unfair and could have been successfully challenged in a court. They could see from my correspondence to them specifically the response from my lawyers on the 2 May, in response to their lawyers, very light response that they

were – my lawyers were taking advice and consultation for me in terms of what is the next steps and I - you know, the only sense they wanted to avoid a protracted legal battle and hence they were ready to pay me to go away.

I do – and I can also, you know, indicate, Chairperson, that I listened to Dr Ngubane's presentation here and he said something to that effect himself, but...

CHAIRPERSON: Yes, no, he did, but let me put this to you. If you challenged your suspension on the basis that it
10 was – the process was unfair. Remember that during your suspension you were getting your salary, is that right?

MR MAROKANE: That is correct, Chairperson.

CHAIRPERSON: So the only thing that could happen is that your suspension could be stopped by the CCMA or by a court and then you would go back.

MR MAROKANE: That is correct, Chair.

CHAIRPERSON: You understand that?

MR MAROKANE: That is correct.

CHAIRPERSON: I doubt that there will be any money you
20 would get because this was not a suspension without pay, you understand that?

MR MAROKANE: Yes.

CHAIRPERSON: But at the time that you reached out to Dr Ngubane, you were not too far, were you, to the expiry of the three months of the inquiry.

MR MAROKANE: That is correct.

CHAIRPERSON: And the understanding had been, when you were suspended, that you were suspended pending the completion of the inquiry, is it not?

MR MAROKANE: That is correct, Chairperson.

CHAIRPERSON: So the question for me is if you went to court at the time you reached out to Dr Ngubane, one, to challenge the suspension financially does not look like there was going to be anything financially you would get
10 because you were being paid.

MR MAROKANE: That is correct.

CHAIRPERSON: But maybe the court or the CCMA could say this suspension must be terminated because it is procedurally unfair but that would be very close to the expiry of the three months anyway.

MR MAROKANE: Ja.

CHAIRPERSON: But also, they could appeal or review and then three months would expire.

MR MAROKANE: Ja.

20 **CHAIRPERSON:** And you would come back anyway.

MR MAROKANE: Ja.

CHAIRPERSON: So I have that issue with that suggestion, you know, that in terms of going to court, one, it was unlikely that it was going to cost Eskom any money if you went to court and succeeded. If the court of the

CCMA stopped the suspension, one, the three months was about to expire anyway but two, there would have been a review or an appeal.

MR MAROKANE: Ja.

CHAIRPERSON: Which would have allowed the three months to expire anyway. So I have some doubts whether or not, to say the least, whether or not that could have been a genuine concern on their part.

MR MAROKANE: Ja. Chairperson, I mean, I did not know
10 fully what was really going through their minds but I can tell you two other key considerations from my part which you just have reminded me. You know, you indicate that at the point when I reached out to initiate the separation discussions we were about a month away from the conclusion of the third month. At that point in time, Chairperson, nobody knew, myself in particular, how far the investigation progressed and whether it had even started, as a matter of fact.

So the three months, whilst know about the three
20 months at the beginning, I was uncertain as to whether they started on time and were going to finish it within the three months period itself.

And then the key other consideration on my side – and so this talks to the waking up in the morning and basically basking in the sun, that I was being subjected.

That did not sit well with me.

And then the second issue of course is the fact that, you know, if a court of law was to find that this is procedurally unfair and Marokane must return back to Eskom, this was basically meaning I am going to go back and work with the people in whom I have lost trust. So this is a recipe for disaster.

So my consideration at that point in time to say I have been placed in a position where it is untenable for me
10 to continue to work with this board so I need to leave.

CHAIRPERSON: No, no, you see, I do not have a problem with the points you make but those points go towards the question of why you decided to reach out in the way you did.

MR MAROKANE: That is correct.

CHAIRPERSON: They do not explain why Eskom decided to pay so much money.

MR MAROKANE: That is correct, Chairperson.

CHAIRPERSON: Because they, the board, the people who
20 were doing investigations were reporting to the board.

MR MAROKANE: That is correct, Chairperson.

CHAIRPERSON: So one must take it that the board knew how far the investigation was and how far – how much time was left before the investigation would be completed, you see?

MR MAROKANE: That is correct, Chairperson.

CHAIRPERSON: You might not have known.

MR MAROKANE: Ja.

CHAIRPERSON: But they must have known.

MR MAROKANE: Ja, ja, I ...[intervenes]

CHAIRPERSON: So that is part of my query to say from their side if they wanted the executives to continue, I have difficulty understanding why they were prepared to pay as much as they offered to pay. But you are not them, you
10 can speak for yourself.

MR MAROKANE: Chairperson, now you have made me more curious, I will be following you more to hear whether you are getting his response, ja.

CHAIRPERSON: Sorry?

MR MAROKANE: I say you have now sharpened my curiosity, I will be watching carefully as to whether we will ever get to that answer.

CHAIRPERSON: Okay, alright. Okay, alright. I do not know whether, Mr Seleka, there is anything further you
20 wish to get from Mr Marokane.

ADV SELEKA SC: Yes.

CHAIRPERSON: But I think from my side I have covered most of the things if not all the things I wanted to cover.

ADV SELEKA SC: No, indeed, Chair, you have covered nearly everything. I just wanted to clarify on the evidence

they presented here is that the delegation of the board had a mandate to settle at a maximum of 12 months.

MR MAROKANE: Ja.

ADV SELEKA SC: So they could settle at anything up to 12 months.

MR MAROKANE: Ja.

ADV SELEKA SC: So that is one thing. And lastly, Mr Marokane, we have the board minutes of 11 March 2015 before the Minister came there and I see that you could not
10 attend the meeting, there is an apology from your side together with other people but I that minute it is record here that:

“With regard to Group Capital and the Build Programme it was noted that the board had visited to Medupi. It was reported that Medupi Unit 6 had been synchronized which was a significant event in Eskom’s history and was the first time such an even had taken place in the last 20 years. It was noted that in future the Minister of PE wanted to be
20 included in successful events like this.”

That will be the Minister of Public Enterprise. Is that an aspect that relates to you?

MR MAROKANE: Ja. Chairperson, the matter being referred to – first of all, I was not a board member so I only attended board meetings by invitation.

CHAIRPERSON: By invitation, ja.

MR MAROKANE: With fellow Exco members when it happened. This specific incident happened in the week of the 5th, 6th or so of March. It is a matter that ...[intervenes]

CHAIRPERSON: That is the milestone you were talking about.

MR MAROKANE: The milestone I am talking about, Chairperson, it is very difficult to plan it to the T because it
10 is about how far you have progressed, you know, with the construction but also with the -you know, how you – how you tuning the plans in terms of getting it ready for the particular event of synchronising into the grid.

So we could not have found a perfect time where upfront everybody is there. We were there as executives because we had sense that it will happen between this time and that time and so we were there. And that is what is being referred to in that space.

ADV SELEKA SC: Yes but what I thought you could
20 explain to the Chairperson does that relate to the milestone you referred to at the beginning of your testimony?

MR MAROKANE: That is correct, Chairperson. So this milestone of eventually getting the first unit of Medupi functional was arrived at around the 7th of 6th of March,

that two days thereafter we were back at the war room as far as the progress meetings, the war room in Cape Town. I took leave three days later only to come back and be suspended. That is basically the sequence of events, ja.

CHAIRPERSON: So around the 6th of 7th of March this milestone was reached, is that right?

MR MAROKANE: That is correct, Chairperson.

CHAIRPERSON: And you were very excited about, I would guess.

10 **MR MAROKANE:** Absolutely, ja.

CHAIRPERSON: And it was quite an achievement for your portfolio.

MR MAROKANE: It was a very important achievement for the utility.

CHAIRPERSON: Yes.

MR MAROKANE: Ja.

CHAIRPERSON: Of course, unbeknown to you, two days later or so, a day or two later, namely 18 March, you were being discussed at a meeting in Durban.

20 **MR MAROKANE:** So I found out, Chairperson.

CHAIRPERSON: Included – your name was included among those who were supposed to be suspended.

MR MAROKANE: So I found out, Chairperson.

CHAIRPERSON: Yes.

MR MAROKANE: Yes.

CHAIRPERSON: Yes, must have quite painful when you...

MR MAROKANE: It is, it is, the pains you pay for serving the country, but...

CHAIRPERSON: Yes, yes. Okay, Mr Seleka?

ADV SELEKA SC: Thank you, Chair. Mr Marokane, would you have come to know one way or the other about the pending suspensions in particular your suspension before the 11 March?

MR MAROKANE: Ja, Chairperson, as per my
10 supplementary affidavit in the closed session – and I also listened to Ms Daniels' testimony. She is correct in saying that when she got home the day after the now famous Melrose Arch meeting that she called – she reached out to me. I saw her, I saw her that evening because she expressed some real sense of urgency and importance on this matter. I saw her, she told me the story as she relayed it out here.

This, back in 2015, looks unthinkable, you know, when you believe in the power of the governance
20 committees and how things are done it looked a little bit farfetched.

And what I did, as per my affidavit, Chairperson, upon –as I drove back home I reached out to Ms Molefe, who is one of my suspended four, to indicate that there is a matter like this that may be happening.

But other than that, that is really the essence of how I got to know of it and so we kept watching things as they were unfolding, ja.

CHAIRPERSON: Well, that might be quite important. Ms Daniels testified about a number of things.

One of them is that I think on the 10 March she was invited or she was taken to a meeting by Mr Matshela Koko at Melrose Arch where the two of them met with Mr Salim Essa and at that meeting Mr Salim Essa asked her
10 something along the lines what is the procedure at Eskom if you want to suspend somebody or how do you suspend somebody at Eskom or something like that and at that meeting she learnt that there would be suspensions of certain executives.

Now are you saying that on that day Ms Daniels did tell you about that meeting?

MR MAROKANE: That is correct, Chairperson.

CHAIRPERSON: Yes.

MR MAROKANE: Ms Daniels sent me a text – I think she
20 probably tried calling me and my phone was off.

CHAIRPERSON: Yes.

MR MAROKANE: And left me a voicemail to the effect that she needed to see me urgently.

CHAIRPERSON: Yes.

MR MAROKANE: And she could not wait for the next day.

CHAIRPERSON: Yes.

MR MAROKANE: This was in early part of the evening and she relayed this story as you have just captured it, Chairperson.

CHAIRPERSON: Yes.

MR MAROKANE: That she has come across this kind of information.

CHAIRPERSON: Yes.

MR MAROKANE: And she felt that she just needed me to
10 know because she was still in shock in terms of understanding what is intended for me, ja.

CHAIRPERSON: Yes. You say she first sent you an SMS?

MR MAROKANE: Yes, she may have sent me an SMS. My phone was off, Chairperson.

CHAIRPERSON: Yes.

MR MAROKANE: You know, remember I was on leave in that short time.

CHAIRPERSON: That is your leave, ja.

20 **MR MAROKANE:** So I may have been engaged in one or two other things that led my phone to eventually be off having been out - you know, out there for the whole day.

CHAIRPERSON: Yes. So you actually had a meeting that evening?

MR MAROKANE: Ja. Chairperson, as I state in my

affidavit, once I have reached out to her in the early part of the evening, I actually drove to her house.

CHAIRPERSON: Yes.

MR MAROKANE: I drove to her house. She relayed that story in exactly the same manner that you have captured.

CHAIRPERSON: Yes.

MR MAROKANE: You know, I indicated to her that, you know, we work in very competitive space here, there are parties now and again who are unhappy about the
10 decisions we make and some of them openly, Chair, say we will go report you at DPE or we will go tell the Minister or we will go tell the board. This is something that in our execution of duties as executives in the SOEs you frequently come across and I had come, you know, through a few of those in a short space in Eskom.

So I took that message, well, thanks for letting me know but let us see what is very doable here be a few of those in a short space in Eskom.

So I took that message, well, thanks for letting me
20 know but let us see what is very doable here because this looks very farfetched.

Because I was not a board member and I did not know of the board meeting the following I actually called Ms Molefe and said look, can I see you before I get to my house, there is a matter I need to think about before

tomorrow.

And, you know, upon engaging with her, Ms Molefe, I got confirmation that indeed there is a board meeting tomorrow and so I relayed the story to her, we were both a bit shocked in terms of the intensity of what is being planned here, deep down I always believed in the Board doing the right thing, or holding or some governance is going to hold on and will see how this unfolds, but by the end of the next day it was done, it was essentially done.

10 **CHAIRPERSON:** So in a certain way you kind of corroborate what Ms Daniels says, obviously you were not at the meetings between – among yourself and Mr Koko and Mr Essa but you say she phoned you and asked that you meet, you drove to her house, she told you that this is what had happened and you subsequently same evening also shared that information with Ms Molefe?

MR MAROKANE: That is correct Chairperson.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Thank you Chair. Chair the – what Mr
20 Marokane referred to as a notice period it is in the contract, clause 17.3, I will just read it into the record.

CHAIRPERSON: Ja.

ADV SELEKA SC: It says:

“This contract may be terminated by either party giving six months written notice to that effect to the

other party provided that the company shall be entitled to terminate this contract without notice for reasons justifying a summary dismissal.”

CHAIRPERSON: Yes.

ADV SELEKA SC: It will be included in the reference now Chair.

CHAIRPERSON: Yes, ja, okay, alright.

ADV SELEKA SC: Thank you.

CHAIRPERSON: Are you done?

10 **ADV SELEKA SC:** I am indeed Chairperson.

CHAIRPERSON: Yes, okay Mr Marokane thank you very much for coming to give evidence, we appreciate it very much, I don't know if you might have something you want to say before I release you?

MR MAROKANE: Chairperson thank you for the opportunity, it has been revisiting painful eras, it has not been quite easy, but I am glad it is done, thank you very much.

CHAIRPERSON: Thank you very much, you are excused.

20 I guess Mr Seleka we must take a short adjournment before we start with the next witness?

ADV SELEKA SC: Certainly Chair.

CHAIRPERSON: Yes, okay, we will take a short adjournment, it is about nine minutes to four, shall we resume at ten past.

ADV SELEKA SC: That will be in order Chair.

CHAIRPERSON: Yes, we will resume at ten past four, we adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Are you ready?

ADV SELEKA SC: Yes we are ready Chairperson.

CHAIRPERSON: Hm.

10 **ADV SELEKA SC:** The witness – the next witness is Ms Tsholofela Molefe.

CHAIRPERSON: Hm.

ADV SELEKA SC: She is present and ready to take the oath.

CHAIRPERSON: Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record?

MS MOLEFE: Tsholofela Beatitude Lettie Molefe.

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

20 **MS MOLEFE:** No I do not.

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

MS MOLEFE: Yes I do.

REGISTRAR: Do you swear that the evidence you will give will be the truth; the whole truth and nothing else but the

truth; if so please raise your right hand and say, so help me God.

MS MOLEFE: I do so help me God.

CHAIRPERSON: Thank you.

ADV SELEKA SC: Thank you. Chairperson for this witness Eskom Bundle 11 has been prepared. Eskom Bundle 11 Ms Molefe you will have a file before you which is similarly marked Eskom Bundle 11. If you look at the sp – the very first page the cover page of the – that file and just for
10 housekeeping purposes Chairperson just to confirm with the witness. You have provided the commission with an affidavit – two affidavits. The first is found on page 1 or page 5. I beg your pardon. We follow the pagination on the top left hand corner. The black pagination as opposed to the red pagination. You see that?

MS MOLEFE: That is correct I see it – I can see it.

ADV SELEKA SC: You can see it. Page 5. It is an affidavit that runs up to page 17. Well there is page 18 also – the Commissioner's details.

20 **MS MOLEFE**: That I have got up to page 15. Am I looking at the correct one?

ADV SELEKA SC: Just concentrate on – ja I see. That is the red pagination.

MS MOLEFE: Okay.

ADV SELEKA SC: Look at the ...

MS MOLEFE: The black pagination.

ADV SELEKA SC: The left – the pagination in black.

MS MOLEFE: Correct 18.

ADV SELEKA SC: I beg your pardon?

MS MOLEFE: Yes.

ADV SELEKA SC: You have it?

MS MOLEFE: Page 18 I have it.

ADV SELEKA SC: Thank you. The signature appears on page 17.

10 **MS MOLEFE**: That is correct.

ADV SELEKA SC: Is that your signature?

MS MOLEFE: That is my signature.

ADV SELEKA SC: And the affidavit is dated 22 July 2020. You confirm that as well?

MS MOLEFE: I confirm that.

ADV SELEKA SC: Chairperson I beg leave to have the affidavit marked Exhibit U12.1.

CHAIRPERSON: The most important part is that you ask that it be admitted as evidence.

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

CHAIRPERSON: The affidavit of Ms Tsholofelo Beatitude Lettie Molefe starting at page 2 of Eskom Bundle 11 will admitted as an Exhibit and will be marked Exhibit U12?

ADV SELEKA SC: U12 .1. Thank you Chair.

CHAIRPERSON: Exhibit U12.1 yes.

ADV SELEKA SC: It is admitted thank you Chairperson. The next Ms Molefe is your supplementary affidavit. That you find on page 597.

MS MOLEFE: 597.

ADV SELEKA SC: That is Item 13 if you follow the file dividers.

CHAIRPERSON: What page?

ADV SELEKA SC: 597.

CHAIRPERSON: 597.

10 **ADV SELEKA SC:** Yes Chairperson. Between tramlines it is supplementary affidavit and that runs up to page 607.

MS MOLEFE: I have it.

ADV SELEKA SC: You have it. The signature – under deponent you confirm that to be your signature?

MS MOLEFE: That is my signature.

ADV SELEKA SC: The date of the affidavit is 2 October 2020.

MS MOLEFE: That is correct.

ADV SELEKA SC: Confirmed that. And you confirm this to
20 be your supplementary affidavit?

MS MOLEFE: That is mine.

ADV SELEKA SC: Chairperson I beg leave to have this also admitted into the evidence as Exhibit U12.2.

CHAIRPERSON: The supplementary affidavit of Ms Tsholofelo Beatitude Lettie Molefe starting at page 597 and

going up to page 607 will be admitted as an Exhibit and will be marked Exhibit U12.2.

ADV SELEKA SC: U12.2 May I add together with the annexures thereto Chairperson.

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you. Ms Molefe you similarly with the previous witness you had a closed session interview with the Eskom work stream which you confirm in your supplementary affidavit on page 598 paragraph 5. So just
10 remember keep to the ...

MS MOLEFE: 598.

ADV SELEKA SC: The black pagination. Are you there?
Page 598 paragraph 5. It says:

“I confirm that I was called to a closed session meeting with the commission on 20 August 2020 wherein I testified under oath. I also confirm that I have been provided with a copy of the transcript of my testimony attached hereto as TM1. I have perused the
20 transcript and hereby confirm the contents thereof to be a true reflection of my testimony.”

MS MOLEFE: That is correct.

ADV SELEKA SC: That is correct. Now that transcript is found on page – it starts on page 609 as the cover page. It

ends on page 737. Insofar as it relates to you.

MS MOLEFE: I have it.

ADV SELEKA SC: Thank you. Chairperson with that housekeeping out of the way we may proceed.

CHAIRPERSON: Yes.

ADV SELEKA SC: Thank you.

CHAIRPERSON: Ja.

ADV SELEKA SC: Ms Molefe you were called to testify in regard to mainly the suspension of the executives. Evidence
10 has been led already before this commission that you became one of the executives that were suspended on the 11 March 2015.

MS MOLEFE: That is correct.

ADV SELEKA SC: It is a bit of a background to yourself and the lead up to the suspensions tell the Chairperson what is your profession, your qualification and profession as part of the background?

MS MOLEFE: Thank you Chair. I am a Chartered Accountant by profession. I have got a BA Honours in
20 Accounting and Finance which I obtained at the University of London in the United Kingdom through the British Counsel's Scholarship and I also have a B.Com Honours that I obtained through Unisa. I served my articles with Coopers and Leibrandt at the time. We do training in accounting and auditing to enable me to obviously qualify as a Chartered

Accountant. I obviously had to write board exams qualifying exams that enabled me to qualify as a Chartered Accountant. So in a nutshell those are my qualifications.

ADV SELEKA SC: Yes. When did you join Eskom?

MS MOLEFE: I joined Eskom in July 2005. I joined as a finance manager for the Transmission Division – a division of Eskom. A position that I held for about 6 months after which I was promoted to General Manager of Finance and Business Support in the same division. I then moved over after about
10 four years. Having done several projects with the then CEO at the time Mr Brian Dames. I then got promoted to become the Group Executive of Customer Service. A position that I held for about three years just – or just under three years after which I was then appointed the Finance Director of Eskom in 2014 – January 2014.

ADV SELEKA SC: Yes. At the time of your suspension was that the position you occupied of ...

MS MOLEFE: That is correct.

ADV SELEKA SC: Of Financial Director.

20 **MS MOLEFE:** I was the Financial Director of the company.

ADV SELEKA SC: Now there is a meeting which is referred to in your affidavit and it came up during the testimony of Mr Tsotsi. The Chairperson wanted clarity in regard to that meeting. There seems to be a confusion as we read oh obviously not on your part but on our part whether the

meeting you refer to as the one Ms Tsotsi said he was going to cancel but nonetheless you made the board to convene that meeting and proceeded to convene. Is it the same meeting as the one which was cancelled on the 26 February 2015? Could you explain to the Chairperson whether there is a distinction?

MS MOLEFE: Yes Chair those are two different meetings. The meeting of the 26th February would have been the first board meeting – full board meeting with the new board. The
10 meeting that Mr Tsotsi tried to – or cancelled was the meeting that was going to take place around the 30 November 2014 if I am not mistaken. And in fact if I can just – if I recall it was actually a special meeting Chair because the important...

CHAIRPERSON: That meeting would have – would have fallen under the previous board?

MS MOLEFE: It would have been – the previous board that is correct.

CHAIRPERSON: Ja okay.

20 **MS MOLEFE**: Ja it was with the previous board. What had happened Chairman is that we had just completed our interim financial result. The auditors had obviously signed on the results and we were then going to do a result announcement the following week. I think it was a Tuesday if I am not mistaken.

The 30 November if I am correct I think it was a Sunday and that is why it was a special meeting. And the reason for that special meeting was that the old board had been seized with an investigation into the TNA contract – the New Age contract which the entering CEO at the time Mr Matjila had – had signed without following due governance. On finding out about that the previous board decided to investigate the matter and once they investigated the matter they obviously received a report.

10 They had appointed Gobodo Forensics to do the investigation into the matter. Once the report was out the external auditors then found out about it before we went for the results announcement. And obviously we would have informed the auditors about it as part of practice but because the board was still deliberating on the matter we had not obviously informed the auditors.

 The auditors then obviously called and said, look we understand there is this matter as far as we are concerned it is a reportable irregularity by an executive of authority being
20 the interim CEO and therefore it requires that we change our audit opinion that we have already given and put a matter – what they call a matter of emphasis on their report.

 And they also wanted to recommend to the board at the time that they need to also amend their directors report in the financials to indicate what steps they had taken

regarding the matter.

So that required then we have a special meeting because the board had already looked at the financials. So it required that we have another board meeting so that the auditors could then explain to the board and give them obviously direction in terms what needed to be done. I then called Mr Zola Tsotsi.

I called him I think it was on Friday evening after my meeting with the auditors. I think he had been overseas if I
10 am not mistaken. We agreed that we would meet in the office on Saturday so that I could explain to him why there was a need for another board meeting.

He then agreed with me; he understood after I had explained to him that this is the position of the external auditors. He then convened a meeting for Sunday. So that was the meeting that was then to take place. The meeting of the 30 November.

The meeting was convened through the Company Secretary at that time I think it was Melissa [?] and it was
20 going to take place at four o'clock in the afternoon. While I was preparing for the meeting on the day I think around about twelve – twelve thirty Mr Tsotsi then called me to indicate that he is going to cancel that meeting. Now the importance of that – that – those but...

CHAIRPERSON: Just hang on Ms Molefe. Did you say that

your meeting with Mr Tsotsi that was planned for Saturday did take place?

MS MOLEFE: It did take place at the office.

CHAIRPERSON: And that is where he agreed that there should be a meeting on Sunday?

MS MOLEFE: Yes Chair.

CHAIRPERSON: Okay alright. But now on Sunday around about twelve o'clock.

ADV SELEKA SC: Around about twelve o'clock he then
10 called.

CHAIRPERSON: He called to indicate his intention to cancel the meeting?

MS MOLEFE: That is correct.

CHAIRPERSON: Okay alright continue.

MS MOLEFE: Ja. He then indicated that – so I impressed the point upon him and said not to cancel the meeting because he was aware as well that we needed to have the financials approved; have the interim results announced because those financials were important for us to go and
20 raise funding in the – on the international market. So he understood the importance of those financials.

I impressed upon him that we cannot cancel the meeting we have to go ahead. He then said to me he will speak – he will think about it and he will come back to me. He came back to me I think just under an hour indicating that

– in fact he did not come back to me the secretary – the company secretary send us messages to all board members to say the – the Chairman has requested the meeting to be cancelled and that he is going to have a meeting tomorrow with the shareholder, the Minister Lynne Brown at the time to discuss the matter.

I had impressed on him to – I then called him again. I said Mr Tsotsi these results are very important. I do not think it is a good idea to cancel the meeting. And I actually
10 asked him but who is asking that we cancel the meeting? Is it the board? Is it the shareholder? And he said to me it is people from outside.

He would not tell me who it was but he just said that he is getting pressure from people from outside to cancel the board meeting.

What I then did I called all the board members that I could find to inform them of this matter. Fortunately most of them had not seen the cancellations from the company secretary. So they were getting themselves ready to actually
20 attend the board meeting in the afternoon at the Eskom offices at four o'clock. So the meeting did go ahead without Mr Tsotsi.

At that meeting the board that was – that had confirmed that they would be attending they selected a chairman to obviously lead the discussions. The auditors

were there. They – we were then obviously guided by the auditors the board members then approved the financials accordingly.

Unfortunately Mr Tsotsi was not happy. What I had done Chairman just to also indicate before the board meeting is that I called Mr Matona to find out if he knew about the cancellation. He was not aware of it and I said to him, well Mr Tsotsi is going to discuss with the shareholder tomorrow. And he said well I am not aware that they have a meeting
10 because I have a meeting with the shareholder tomorrow. And he asked me to join him for the meeting.

I then joined him for the meeting the following day which was the Monday and while I was there Mr Tsotsi sent me a message again to say the – the meeting that was convened the day before because he had cancelled it he has been advised that it was constituted unlawfully and therefore the proceedings of those meetings are null and void.

So I then informed the Minister – I then in fact informed the – the CE Mr Matona because we were meeting
20 with the Minister. He then informed the acting DG as well as the Minister in the meeting and the Minister was not happy about that. He said he knows nothing of that. He does not have a meeting. She does not have a meeting with Mr Tsotsi and the board must do the right thing.

He is not going to – she is not going to interfere in

the proceedings of the results announcement. So I then called the board members again individually informed them that you know it would appear that there is technicality regarding how the meeting was convened on Sunday because it had been cancelled by Mr Tsotsi.

So they then decided that they will convene another meeting on that evening to make sure that it has been constituted properly so that they can approve again the financial statement.

10 So that occurred on the evening of the – on the Monday I think it was. But Mr Tsotsi did attend the meeting and he apologised to the board members for their – I think he called it a misunderstanding but the board did not want to get into the details of that.

But the meeting was then – the meeting proceeded to approve the financials. But that would – that was Chair in a nutshell the meeting that he had cancelled and he said to me he was getting pressure from outside.

CHAIRPERSON: The – there seems to have been an
20 urgency in having the meeting and in having the financial statements approved. Was that because there was a time frame within which the date by when they needed to be approved was close by or what?

MS MOLEFE: Yes Chair if I can just explain? The financials had already been approved but because there had been an

investigation into the dealings of the TNA the auditors then said they need to before the results are released they need to amend their audit report. And we only had about three days before the results announcement. So that was the urgency of that meeting.

CHAIRPERSON: Okay.

MS MOLEFE: Ja.

CHAIRPERSON: Okay. So you never got to know what outside pressure Mr Tsotsi was talking about?

10 **MS MOLEFE:** Chair I got to find out much later that he – and I really cannot remember how I found out that he was getting pressure from the CEO of TNA. I think it is Mr Howa if I am not mistaken.

CHAIRPERSON: Mr Howa.

MS MOLEFE: Ja that he should cancel. And the reason for that was because of the issue regarding the TNA matter that had been approved without due governance. And I refer it in my affidavit.

CHAIRPERSON: Yes.

20 **MS MOLEFE:** In my main affidavit Chair.

CHAIRPERSON: Okay. Alright. Thank you Mr Seleka.

ADV SELEKA SC: Thank you Chair. Well when Mr Tsotsi was here he was asked a question relative to the pressure brought to bear on him and he said to the Chairperson he would have been more straightforward with you that it was

the President putting pressure on him. Did he say that?

MS MOLEFE: No Chair I – absolutely I did hear him say that in his testimony and that is not correct because I was quite pointed in asking him who exactly asked him to cancel the meeting? I even said is it the board? Is the shareholder? But he just said it is pressure from outside. He did not mention the name of the President.

CHAIRPERSON: How did you find out that it was Mr Howa?

MS MOLEFE: Chair I think later – much later and it was
10 really just through the grapevine that you know I got to find out much later.

CHAIRPERSON: So you did not find out from Mr Tsotsi?

MS MOLEFE: No I did not find out from Mr Tsotsi.

CHAIRPERSON: And you did not find out from Mr Howa?

MS MOLEFE: No I did not find out from Mr Howa.

CHAIRPERSON: Was it simply a grapevine?

MS MOLEFE: It was really simply a grapevine.

CHAIRPERSON: Okay.

MS MOLEFE: Ja but it made sense because the issue was
20 he was getting pressure.

CHAIRPERSON: Ja.

MS MOLEFE: That we should not amend the financials to include reportable irregularity relating to the TNA matter.

CHAIRPERSON: You see the problem with the grapevine is that some are unreliable.

MS MOLEFE: Absolutely, absolutely.

CHAIRPERSON: It is not something you can really rely on.

MS MOLEFE: Ja.

CHAIRPERSON: To say that was the position.

MS MOLEFE: Ja.

CHAIRPERSON: You see so that is not very helpful you know. But what he did say to you is he was getting pressure from outside?

MS MOLEFE: Ja.

10 **CHAIRPERSON:** We do not know who he was talking about in terms of what he told you. You may have heard whatever you heard in the grapevine.

MS MOLEFE: Ja that is correct.

CHAIRPERSON: And certainly he said to you there was pressure from outside.

MS MOLEFE: Ja.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Thank you Chair. So Ma'am when you are appointed to FD, Financial Director in January 2014 who
20 would – who was the Minister of the DPE at the time?

MS MOLEFE: It was Minister Malusi Gigaba that I got appointed – when I got appointed.

ADV SELEKA SC: When you got appointed.

MS MOLEFE: Ja.

ADV SELEKA SC: Did you have any interaction with the

office of the Minister?

MS MOLEFE: Yes Chair I mean we – we had quite a number of interactions with them. I think even before then but even when I was the CFO on a number of occasions through our shareholder report and execution we would obviously see them. But specifically I had an interesting engagement with the Chief of Staff.

ADV SELEKA SC: Yes.

MS MOLEFE: In the Minister – in the office of the Minister
10 Thamsanqa Msoni.

ADV SELEKA SC: Please tell the Chairperson about that?

MS MOLEFE: Yes Chair so I think to probably two months into my appointment – in fact I was on my way to a meeting.

CHAIRPERSON: As financial..

MS MOLEFE: As the Financial Director.

CHAIRPERSON: Director.

MS MOLEFE: Ja.

CHAIRPERSON: Ja.

MS MOLEFE: I was on my way to a meeting.

20 **CHAIRPERSON**: Was the position of Financial Director effectively the same as a CFO?

MS MOLEFE: Yes it is the same Chair.

CHAIRPERSON: It is the same job?

MS MOLEFE: Ja.

CHAIRPERSON: Okay alright.

MS MOLEFE: Ja. So I was actually on my way to a meeting at the DPE offices in Pretoria. Mr Thamsanqu Msomi asked to see me when I have time and I said to him actually I am on my way to your office to have meetings with some of your colleagues.

After my meeting I will come and see you. So I do it – I did go and see him and when essentially I went to the meeting he really just congratulated me for you know my appointment and in – actually indicated that they hope that
10 they would have a much better relationship – working relationship than they had with my predecessor Mr Paul O’Flaherty.

And I said why is that? He said no it was just really you know difficult to work with him and he also said that they have also been receiving quite a number of complaints from you know black suppliers that Eskom is not embracing transformation and I said to him, I am quite surprised because we give quite a lot of feedback to the department around our you know obviously initiatives as a company in as
20 far as Enterprise Supply Development is concerned and transformation has been top of mind for our board.

And he said well there are one or two suppliers that would like to meet to just you know allay their concerns. I said to him look I do not have a problem. We do have a Chief Procurement Officer in the company. In fact I think it

was Dan Marokane at the time.

I said that you know he has been appointed Chief of Commercials so you know he would be the right person to speak to. But I am quite happy to speak to whoever has got those grievances and then I can obviously refer them appropriately to the relevant executive. He then said okay I will try and set up a meeting for you.

And indeed that meeting took place I think around about – a couple of weeks later. And that meeting took place
10 Chair if I recall I was actually on my way to Cape Town and I said to him, look I actually do not want us to meet in the office because I am worried I am going to miss my flight. Can we meet somewhere on my way – out of my office? So we met at the Barons just on Woodmead. There is an Engine Garage there somewhere.

So we met there and I said to him I do not have much time just do the introduction and then I will take that details and I will take them to the relevant officials just to understand what are the issues. So as I was sitting there a
20 gentleman called by the name of Salim Essa.

I was meeting him for the first time. So that was the gentleman that said that he had concerns. But when I asked him which suppliers do you you know work for? What do you do? Have you actually pitched for work before from Eskom? He merely said no you know I work with various companies

and – and he said that we would like to do business with Eskom. And I said well I will take you through you know I will refer you to the relevant processes that you would want to make sure you know if you wanted to work with Eskom. So I really had to go. So I really cut the meeting short and that was really my first encounter with the chief of staff when he introduced me to Salim Essa as well.

ADV SELEKA SC: Yes. Now ...[intervenes]

CHAIRPERSON: At the Engen Garage you met Mr Gigaba's
10 chief of staff and Mr Essa?

MS MOLEFE: Ja. So that with the chief of staff. That would have been the second encounter.

CHAIRPERSON: Oh.

MS MOLEFE: Because my first encounter was at his offices.

CHAIRPERSON: H'm.

MS MOLEFE: He then introduced me to Mr Salim Essa.

CHAIRPERSON: Okay.

MS MOLEFE: As... next to the Barons and Engen Garage
20 there.

CHAIRPERSON: Okay.

MS MOLEFE: Ja.

ADV SELEKA SC: So did you take Mr Salim's, Essa's particulars in that meeting?

MS MOLEFE: No, I did not Chair. I actually did not take his

particulars. I think I did. Sorry, I think I did take his card or something.

Ja, I think I did take his card if I recall but I did not follow up. So Mr Msomi actually follow up and he kept on following up and he kept on following up.

I actually remember telling the chairman that: You know what, I have been getting these constant requests. Can you ask the DPE officials...

In fact, I was asking what is the protocol with, you know,
10 officials in the minister's office and Mr Tsotsi said: Well, they should not be engaging with executives. Do not worry, I will talk with him. So that was the last I heard of Mr Msomi. Ja.

ADV SELEKA SC: But did you pass on the message to the relevant people at Eskom?

MS MOLEFE: Ja. So Chair, I mean, I spoke about it but because there was no specific issue that he was complaining about. He was obviously going to through Mr Msomi bring the specifics which obviously really did not come.

20 All that Mr Msomi wanted was, you know, one meeting after the other without providing the necessary detail. That is when I refused to, you know, like to engage any further.

ADV SELEKA SC: Could you please tell the Chairperson whether was this your first and last meeting with Mr Salim Essa?

MS MOLEFE: Chair, it was the... I met Mr Salim Essa twice. So that was the first time. The second time I met Mr Salim Essa, I met him with Mr Colin Matjila, who was the interim Chief Executive at the time after Mr Brian Dames left.

So what had happened Chairman is that shortly after my appointment somewhere around April we had a Board Strategy Session.

As part of the Board Strategy Session, I would then as the Financial Director present a financial plan to the board
10 and our execution plan over the next few years.

After my presentation, Mr Tsotsi was not particularly happy with the presentation in terms of what he said. He was not specific on what are the issues.

He just said that it was not robust enough and that the minister would like to see a rather very detailed plan.

CHAIRPERSON: I am sorry. Just tell me. The presentation that you are talking about that Mr Tsotsi was not happy with, what presentation was it, who were you making the presentation to, what was it about?

20 **MS MOLEFE**: I was doing a presentation on the financial plan of Eskom to the board in terms of what would be our execution plan. We were busy looking at financial turnaround for the business including doing business productivity programme, looking at liquidity for the next few years of the company. So that was the presentation

...[intervenes]

CHAIRPERSON: And was this 2014?

MS MOLEFE: It was in 2014 around April.

CHAIRPERSON: Around April.

MS MOLEFE: So it was with the previous board.

CHAIRPERSON: Okay alright.

MS MOLEFE: Ja. Around 20 April 2014.

CHAIRPERSON: Okay. So Mr Tsotsi was not happy with it?

MS MOLEFE: Ja. So he was not happy with it. Mr Matjila
10 said to Mr Tsotsi: That is quite okay. I will work with the
CEO to make sure that we put together something that we
can, you know, present to the minister in three months' time.
So.

And that was on a Friday. We typically would have the
Board Strategy Session over a two day period where I
presented on the Thursday.

And then on the Friday afternoon, I think later that
evening, I spoke to... Mr Matjila called me. I cannot
remember if he called me on the Friday or Saturday.

20 He called me, requesting a meeting to just reflect on the
Board Strategy Session and talk about the next steps
regarding the financial plan. And so we met on a Sunday.

Both of us live very close to Fourways. So we agreed to
meet at one of the hotels in Monte Casino. I think it is called
Time Square.

While we were sitting there, he obviously said to me: As you saw the board was not particularly happy with the plan. I think we need to find people that can help us. We do not have time. We only have three months to submit a detailed plan to the minister.

And as we were sitting there, he waived his hand up and as he was waiving his hand up I thought he was just greeting someone, only to find that he was actually ask, you know, someone... showing someone where we were seated. And
10 that someone was Mr Salim Essa.

So it appears that obviously he had come to join us for our session and I got introduced to him again and he indicated...

In fact, Mr Matjila indicated that this is someone that can help us. He knows people that can help us with the financial sustainability plan. And I said how so?

And he said they have done, you know, similar work in terms of helping companies unlock cash on the balance sheet. They have got... they have done a lot of work at
20 Transnet. They have done a lot of work at, I think he said at SAA and the City Power. Ja, City Power.

So I said: Who is that company? He said the company is Regiment Capital. And I said: But do you work for Regiment Capital?

He said: No. You know, I am not an employee of

Regiment Capital but I do work with them. And he said essentially to the CEO: I will arrange that the CEO come and meet you guys as soon as you guys are ready. Mr Matjila then said: You know, they can come and meet us tomorrow.

He asked me to check my diary and I said I am happy to meet at four o'clock in the afternoon at our offices. So he then... he did not come with the CEO of Regiment Capital, Salim Essa. The person that came to see us was Eric Wood.

10 So that was really the second time that I met Salim Essa. The meeting took place. Salim Essa was not there. Eric Wood was there.

Mr Matjila joined the meeting together with one of our executives at the time, doctor ...[intervenes]

CHAIRPERSON: This is now the following day?

MS MOLEFE: This is the following day on the Monday.

CHAIRPERSON: And the venue the following day was where?

MS MOLEFE: It was at Eskom offices.

20 **CHAIRPERSON:** Okay and the previous day the venue was Eskom as well?

MS MOLEFE: No, it was at Monte Casino.

CHAIRPERSON: Okay.

MS MOLEFE: It was on a Sunday. Ja, roundabout noon.

CHAIRPERSON: Okay alright.

MS MOLEFE: On Sunday, ja. It was at Time Square at Monte Casino.

ADV SELEKA SC: Yes. Ms Molefe, do you also recall when about this, when exactly? Which month in 2014?

MS MOLEFE: I think it was somewhere towards, it was... because we would have had our Board Strategy Session around April. So it was probably towards the end of April but it was still in April of 2014.

ADV SELEKA SC: Yes. Okay you were going to your
10 meeting at Eskom for a moment but the way we understand is that you were to... Well, you did present the financials. Is it the financials?

MS MOLEFE: The financial plan.

ADV SELEKA SC: The financial plan to the board.

MS MOLEFE: Ja.

ADV SELEKA SC: Mr Tsotsi was the Chairperson of the board ...[intervenes]

MS MOLEFE: Mr Tsotsi was the Chairperson of the board.

ADV SELEKA SC: ...at the time. He says to you this plan
20 is not...?

MS MOLEFE: Robust enough.

ADV SELEKA SC: Is not robust enough. That is in April 2014?

MS MOLEFE: Ja.

ADV SELEKA SC: And I want... we want to understand.

What happened thereafter?

CHAIRPERSON: And Mr Matjila then said to Mr Tsotsi he should not worry because he would work ...[intervenes]

MS MOLEFE: He would work with me.

CHAIRPERSON: ...with Ms Molefe to ...[intervenes]

MS MOLEFE: Ja.

CHAIRPERSON: ...to fix the plan.

MS MOLEFE: Ja.

CHAIRPERSON: And subsequently, they had a meeting
10 ...[intervenes]

MS MOLEFE: We had the meeting on the Sunday.

CHAIRPERSON: ...where Mr Matjila said that he knew some people who could assist them.

MS MOLEFE: That is correct.

CHAIRPERSON: And then come in... then Salim Essa comes in at the meeting and then another meeting is arranged for the following day when Mr Eric Wood comes in.

MS MOLEFE: That is correct.

CHAIRPERSON: This is now at Eskom.

20 **MS MOLEFE:** That is correct, Chair.

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

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you. The Chairperson is on top of things.

MS MOLEFE: [laughing] That is correct, Chair.

ADV SELEKA SC: You may proceed. [laughing]

MS MOLEFE: [laughing] So we do had the meeting but that was the last time I met... I saw Salim Essa. I never saw him again. But the meeting did continue with Eric Wood.

ADV SELEKA SC: Yes. So Mr Essa... sorry, you will proceed. Mr Essa is then introduced to you by Mr Matjila?

MS MOLEFE: Yes.

ADV SELEKA SC: In order to officer assistance in regard to ...[intervenes]

10 **MS MOLEFE:** Yes.

ADV SELEKA SC: ...your financial plan.

MS MOLEFE: Our financial plan. He said that he knows people that can help us.

ADV SELEKA SC: I see.

MS MOLEFE: And he then mentioned Regiment Capital that worked... did similar work at Transnet, SAA and the City Power.

ADV SELEKA SC: And then the meeting on the next day.

20 **MS MOLEFE:** The meeting on Monday was to then ...[intervenes]

ADV SELEKA SC: At Eskom.

MS MOLEFE: ...the CEO, Eric Wood, ja.

ADV SELEKA SC: Please tell the Chairperson who is present in the meeting and what gets to be discussed.

MS MOLEFE: So present in the meeting was myself, Mr

Colin Matjila, Dr Steve Lemon who was the Group Executive for Sustainability at Eskom and Eric Wood himself.

So he did come alone, if I recall. And he really just wanted to tell us about Regiment Capital, what do they do. And I recall vividly that Dr Steve Lemon asked him: But do you understand the challenges and the complexity that Eskom has and how big the balance sheet is?

And he indicated that yes he does and they actually do work normally on large mandates like that with McKenzie,
10 the consulting firm.

So he then undertook to prepare a proposal on balance sheet unlock for Eskom which he would then submit within a few days, I think he said. So the meeting was on a Monday.

It was agreed that Friday he would then, you know, submit his proposal to us. So after the meeting took place, I went to Mr Matjila's office and I said to him we need to follow process.

There are various other firms that have been wanting to help Eskom because it is, you know, public knowledge that
20 obviously Eskom has got various challenges. So we need to follow our procurement processes.

And he said to me: We do not have time for those procurement processes. They are longwinded. This is an emergency. We have worked with all these firms before and Eskom would not be in that position if they had successfully

been able to help us.

And I said to him, even if it is an emergency, our procurement processes do allow for emergency procurement. It does not allow for urgency but it allows for emergency and it is very clear what you do in case in an emergency.

And we sort of quarrelled a bit about that. And he said to me: I can see you are uncomfortable. I will sign the agreement when he comes.

So that was interesting because he said: I will sign the
10 agreement when it comes. So two weeks, later
...[intervenes]

CHAIRPERSON: Before two weeks later. He said to you it was an emergency as a way of justifying not following procurement processes. And you said: But our procurement processes make provision for emergencies. Is that right?

MS MOLEFE: That is correct, Chair.

CHAIRPERSON: And what was his answer to that argument?

MS MOLEFE: He was quite adamant that because we had
20 used all these other firms that I was referring to. I mean, I gave him examples and I said, for instance the company like Deloitte, for instance a company like this, they have been knocking on our doors to help us with certain things.

And he said: But your company has been using these firms for many years and the company would not be in this

situation if they had been successful. We are going to use these guys. We do not have time to wait. Meaning, Regiment Capital.

CHAIRPERSON: But of course, a CFO in the state owned entities is usually someone who is expected to be quite familiar with the procurement processes in the company, is it not?

MS MOLEFE: That is correct, Chair. And that is why ...[intervenes]

10 **CHAIRPERSON:** And you would be quite familiar yourself?

MS MOLEFE: That is why I was telling him what we need to do. And that is why I knew that the emergency procurement procedure allows for that situation.

CHAIRPERSON: Yes.

MS MOLEFE: Ja.

CHAIRPERSON: The timeframe within which you were expected to come back to the board with the plan, financial plan, if it was a financial plan. Did it allow... would it have it allowed you to go through the processes without problem,
20 procurement processes?

MS MOLEFE: Yes, Chair. And I mean, it does. Remember that the ultimate goal was to submit a plan to the minister in three months' time.

CHAIRPERSON: Yes. So ...[intervenes]

MS MOLEFE: ...which would have been somewhere around

July..

CHAIRPERSON: So there was enough time?

MS MOLEFE: So there was sufficient time.

CHAIRPERSON: Yes.

MS MOLEFE: But if it is an emergency, I said even our procurement processes do allow for emergencies.

CHAIRPERSON: For emergencies, ja.

MS MOLEFE: Ja.

CHAIRPERSON: Ja.

10 **MS MOLEFE:** Ja.

CHAIRPERSON: Okay alright.

MS MOLEFE: In fact, I think I said to him, we can ask one of our general managers in Procurement to assist us with the process.

CHAIRPERSON: Yes.

MS MOLEFE: Ja.

CHAIRPERSON: Yes. Okay alright. Let us continue.

20 **MS MOLEFE:** So what happened. He then said to me: I can see you are uncomfortable. I will sign the agreement when it comes.

CHAIRPERSON: This is now after Mr Eric Wood has gone?

MS MOLEFE: This is after Mr Eric Wood... after the meeting.

CHAIRPERSON: Was Mr Eric Wood left on the basis that he was going to ...[intervenes]

MS MOLEFE: To put ...[intervenes]

CHAIRPERSON: ...deliver his document within five days?

MS MOLEFE: Yes.

CHAIRPERSON: Yes. So you were talking ...[intervenes]

MS MOLEFE: Ja.

CHAIRPERSON: ...the two of you, you and Mr Matjila
...[intervenes]

MS MOLEFE: Ja.

CHAIRPERSON: ...after Mr Wood had gone?

10 **MS MOLEFE:** That is correct, Chair.

CHAIRPERSON: Okay alright.

MS MOLEFE: Ja.

CHAIRPERSON: Continue.

MS MOLEFE: Ja. So and I do need to indicate Chair that...
so the document from Regiment comes back, I think, after
two weeks. But during that time, the team internally is
working. So we have not stopped because we do not have a
service provider helping us.

20 So we had quite a highly skilled team, you know, in
Finance across the group that we working on whatever
needed to be done to be able to assist the business.

So the document from Regiment comes back in two
weeks' time. It is emailed to me by Eric Wood himself. I
then forwarded it to Mr Matjila and I actually copied the...

I think it was Mr Nemo Solanco. I think he had already

changed positions. I am not sure. I could be mistaken there but he used to be, obviously, an advisor in the office of the chairman. And I think he was probably on transition to assuming Head of Legal at that time, if I am not mistaken.

So I copied him on the mail and I then said to Mr Matjila, this now qualifies as an emergency procurement because we have taken... they have taken 14-days to come back to us.

So I would suggest that we ask Nemo Solanco to advise on how to proceed with this matter. He did not respond to
10 me if I not mistaken.

He then called me later that evening and he asked me to, and I hope that I am not confusing the facts here, but he asked me not to put such things on email.

And I think he called me, if I am not mistaken, and he asked me why am I not supporting him and so forth. And I think we had a meeting on the next day.

Because at the same time, I was also questioning the TMA matter which he had approved. And that at time, I thought that he had not been given sufficient information that
20 he does not the delegation of authority.

So when I received the TMA, and I know I am digressing a bit, but for context. When I received the TMA contract at that time, I copied him and obviously responded to Mr Tsotsi who had sent it to me, indicating that he does not have the delegation for this.

So essentially, he was reprimanding me on those things. And he asked to have coffee with me the following and we had at Rivervale which is... used to be called Tintswalo(?), in Waterfall.

And he essentially said to me, why do I not support him. And I said: I do not have a problem with supporting him. I have got a problem that we are not following procedure in doing the things that we need to do.

And he then complaint again to say he does not have
10 time. He does not have any... I think he said that he is only there for three months and he is only there to fulfil the mandate of the shareholder.

But he did not explain further what that means. Because he felt I was not supporting him in whatever he had been asked to come and do. That is how I understood it when he said: I am here for three months and I am here to fulfil the mandate of the shareholder.

Ja. So I think that is how we ended on the matter. But the day that... you know, once the report came, I also then
20 printed it out for him.

This is now the Regiment Agreement. And I sent it to his office and I asked him to sign it.

CHAIRPERSON: Now the document that was delivered by Mr Eric Wood after 14-days or there about. Was that a proposal? Was that a proposed agreement? What was that

document?

MS MOLEFE: Chair, it was a proposed agreement and I do think I have submitted it. I am not sure if you would have it?

ADV SELEKA SC: No, we have been able to retrieve it Chair from the server.

MS MOLEFE: Okay.

ADV SELEKA SC: We have it here with the emails.

CHAIRPERSON: Yes.

ADV SELEKA SC: In due course, we will hand it up.

10 **MS MOLEFE**: Ja.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Yes.

CHAIRPERSON: So Mr Eric Wood would furnish you with a proposed agreement?

MS MOLEFE: That is correct, Chair.

CHAIRPERSON: But what was expected of him? What was the arrangement? What was he supposed to deliver?

MS MOLEFE: Chair, they were proposing a number of initiatives to help Eskom unlock cash on the balance sheet.

20 And I made the point earlier that we were doing work already.

Because some of the things that they were proposing, we were already working on them. We did not need a consultant to help us with those things.

It had nothing to do with a financial plan that we needed

to present to the minister. It was merely a number of initiatives on how, you know, we can obviously help Telkom with liquidity.

So it was a number of initiatives. We can unlock cash by, you know, the sale of list back of, you know, some of your properties or the sale of you Eskom Finance Company. It was those types of things.

CHAIRPERSON: Oh, that is quite interesting.

MS MOLEFE: Ja.

10 **CHAIRPERSON:** Because you had made a presentation to the board.

MS MOLEFE: Ja.

CHAIRPERSON: And Mr Tsotsi did not think it was robust enough and Mr Matjila had assured him, Mr Tsotsi, that he would work with you on the plan and subsequently, you had met, that is yourself and Mr Matjila. And at that meeting, he suggested that there were people who could help you.

MS MOLEFE: That is correct.

CHAIRPERSON: I assumed that he meant who could you
20 help you with a plan?

MS MOLEFE: Yes, Chair. And I suppose, maybe to them, because the plan was quite a detailed plan. It was looking at Eskom's financial sustainability. How do we recapitalise the company? How do we, obviously, strengthen the balance sheet? How do we ensure that we improve the liquidity.

But in his agreement, it was really just a number of initiatives to help unlock the cash. And those initiatives, we were already working on internally with my team with the support of the various business units as part of the overall plan.

CHAIRPERSON: H'm. Well, I was going to ask whether Eskom did not have the capacity to do what Mr Eric Wood then were going to be doing?

MS MOLEFE: Ja. Chair, there was capacity. I think what I
10 should highlight is that from time-to-time... obviously, one would obviously want to look at International Best Practise, benchmark what you are doing, just to, you know, enhance what you are doing in the business.

So from time-to-time, we obviously would go to consultants to see how we can enhance what we are doing. But it was not that there was nothing in place that we are doing as a company.

CHAIRPERSON: Okay alright.

MS MOLEFE: And the point that I am making is that
20 whatever they were suggesting, half of them or even more, we were already working on.

CHAIRPERSON: Okay.

MS MOLEFE: Ja.

CHAIRPERSON: Okay. Alright.

MS MOLEFE: Ja.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Thank you, Chairperson. Ms Molefe, you got the plan. Or not the plan but the draft from Mr Eric Wood.

CHAIRPERSON: And she sent ...[intervenes]

ADV SELEKA SC: You print it out ...[intervenes]

CHAIRPERSON: And she sent it to Mr Matjila?

MS MOLEFE: That is correct.

CHAIRPERSON: I think that is where... when I interrupted
10 her.

ADV SELEKA SC: Yes.

MS MOLEFE: Ja.

CHAIRPERSON: Ja, you sent it to Mr Matjila. And what happened?

MS MOLEFE: Ja. So I printed it out. I sent it to Mr Matjila. And I left it. He was not in the office. I left it at his desk and then I went to have a session at our Eskom, a learning academy with the finance team there.

While I was there, he called me and he asked me: Why
20 have you not signed this agreement? And I said: Well, I have told you how I feel about this agreement. I made it quite clear that I am not going to sign it. And you said yourself, if I feel uncomfortable, you will sign it.

And he responded by saying that: Well, why should I do your work for you? And I... we then started quarrelling

again.

He then said to me: I am sending a driver to our Eskom Academy of Learning, it was in Midrand. He then said to me he will send the driver with the document to sign it. And I said I am not going to sign it. And we obviously dropped the phone.

And I immediately called Mr Tsotsi to inform him that I think I would like to have a meeting with him and Mr Matjila. We had a disagreement that I think he needs to resolve.

10 Mr Tsotsi could not make the meeting. I then, I think, had another session with Mr Matjila. No, in fact, before I called Mr Matjila... Mr Tsotsi. Sorry. Mr Matjila asked me to put it in writing why I do not want to sign the document.

So I did that Chair. I put a detailed memo together to tell him that we have not followed process. This is what the process said. I referred to our own policy. I referred to the constitution in as far as the procurement procedures are concerned.

20 And I said I am concerned that, you know, we are not, you know, we would be find wanting when it comes to government.

So I put together that memo but I decided then to send it to, not only Mr Matjila, I sent it to Mr Tsotsi. I sent it to other board members who were chairpersons of sub-committees.

And I sent it to them, indicating my dissatisfaction with the request from Mr Matjila. Two days later, Mr Tsotsi called a meeting. In fact, there was a meeting that was scheduled. It was one of the sub-committee meetings. And Mr Tsotsi was also in the office.

So he called a meeting with those various chairman's. And we actually sat in his office. I stated my case. Mr Matjila stated his case.

What was interesting for me was that Mr Tsotsi then
10 said: You... the two of you are busy wasting time with longwinded procurement processes and you know that the minister is looking for this plan. So if this plan is not ready by the end of June... I think by that time, we were already into June. Maybe in the first week of June. And he said if this plan is not ready, heads are going to roll.

So I said to the chairman, I do not have a problem except that I am looking for a mandate in writing for me to do that. If the board is comfortable they want to continue on this basis, can I have it in writing? Then I will continue.
20 Because I do ...

I know that the mandate comes from the board. But in that meeting, two board members very vocal about it that were there. And they ...[intervenes]

CHAIRPERSON: Okay I am sorry. I thought this was a meeting involving you, Mr Tsotsi and Mr Matjila only?

MS MOLEFE: No, he... because what happened is that I had called for that meeting with him. But when I... when Mr Matjila asked me to put it in writing why I do not want to sign the Regiment Capital Agreement. Before the meeting was convened, I sent my reasons to Mr Tsotsi. I sent it to Mr Matjila. I sent it to other board members. And two days later, Mr Tsotsi convened a meeting.

CHAIRPERSON: With the board?

MS MOLEFE: That meeting was attended by... it was not all
10 the board members.

CHAIRPERSON: H'm?

MS MOLEFE: It was a few of them.

CHAIRPERSON: Oh.

MS MOLEFE: I think it was the Chairman of the Investment and Finance Committee. I think it was the Chairman of the Social Ethics and Sustainability Committee. I think the Chairman of the Risk was supposed to be there but could not make it, if I am not mistaken.

And then Mr Matjila was in the meeting, myself and Mr
20 Solanco, who was working in the office of the chairman. Ja. So we had that meeting and that is when Mr Tsotsi said: You know, heads are going to roll if the minister does not have this plan.

And the two board members then reported to me to say, they do not agree with this agreement. Because what I did

is, I also attached the agreement from Regiment when I attached my memo to them. They did not agree with it.

They did not understand the pricing in there because the pricing was quite substantial as well. So it was agreed that we would not do it but we recognised that there was a possibility perhaps the Minister would be asking for a plan end of the month so the agreement was that we would just then do a high level desktop exercise to assess this initiative but we did not go with the agreement that

10 Regiments was putting on the table.

CHAIRPERSON: So was the outcome of the meeting that the signing of the agreement, the Regiments' agreement was rejected?

MS MOLEFE: Yes it was rejected, Chair. And I mean – and I think in my testimony at the parliamentary Portfolio Committee I did indicate as well the pricing in there was also what was non-competitive.

CHAIRPERSON: Yes.

MS MOLEFE: If I calculate based on their pricing and how

20 they started the pricing, for those initiatives Eskom could have potentially paid half a billion rand just to do those initiatives.

CHAIRPERSON: Ja, okay.

MS MOLEFE: So that was the concern also that one had.

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you, Ms Molefe. The proposal given by Regiments – so you say it was not a proposal but an agreement?

MS MOLEFE: It was a drafted ...[intervenes]

ADV SELEKA SC: Draft agreement. And that was ultimately not signed, at least not by you?

MS MOLEFE: No, it was not signed, Chair.

ADV SELEKA SC: Who is the Minister at the time? I think you said this meeting between you, Mr Tsotsi and Mr
10 Matjila and other board members who were chairing the subcommittees were in June 2014?

MS MOLEFE: Yes, Chair, I think by that time Ms Lynne Brown had already come in ...[intervenes]

ADV SELEKA SC: So when ...[intervenes]

MS MOLEFE: So, ja.

ADV SELEKA SC: So when Mr Tsotsi says heads will roll the Minister wants this by the end of the month?

MS MOLEFE: Yes, Ms Lynne Brown had already just come in. I think she came in around May, if I am not mistaken,
20 of 2014. Somewhere around there, ja.

ADV SELEKA SC: And the high level desktop ...[intervenes]

MS MOLEFE: Exercise.

ADV SELEKA SC: Exercise you say was then commissioned to be done. Is that done by you and your

team?

MS MOLEFE: No, that was done by Regiments and McKinsey. It was about – I mean, I think it cost about under a million rand to go through with us some of the things that we probably had missed, some of the things we could have considered because the board wanted comfort that, you know, some of – we, as the finance team internally had considered everything. So they commissioned for that to continue but relative to the
10 agreement that I referred to, that that was not supported.

ADV SELEKA SC: Oh, so are you saying then their services were so procured, services of Regiments were still procured but for a different purpose?

MS MOLEFE: It was still procured, Chair, for a different purpose.

ADV SELEKA SC: And they were paid about a million rand for it?

MS MOLEFE: Ja, between themselves and McKinsey, they were paid about that much.

20 **ADV SELEKA SC:** And do you know when did they render that service? Exactly when?

MS MOLEFE: Chair, it was around the same time because we obviously needed to make sure that when we present the plan the board is comfortable that that plan is robust, as Mr Tsotsi put it. So the board was comfortable to say

let us assess what they are putting on the table against what the team internally has put on the table and that work continued but not in the form that it was proposed originally by Mr Eric Woods.

ADV SELEKA SC: So did Eskom meet the deadline of providing the financial plan to the Minister by the end of June 2014?

MS MOLEFE: We did present to the Minister and Chair, I think I need to indicate it was a number of streams. It was
10 what we were presenting to the Minister was really just over and above the financial plan, it was – if you recall, I think somewhere around – and I think we presented to Ms Lynne Brown sometime in Cape Town.

Obviously, you know, the power challenges were creating financial challenges so we had various meetings with the Minister because, you know, it is one thing solving the financial plan but if you do not think about the plan around, you know, power challenges, obviously it becomes a spiralling effect just in terms of your financial challenges.

20 So we essentially did present to her but I am making her understand that there a number of issues obviously that would need to be dealt with, that we need support from obviously the shareholder. The board would need support from the shareholder on.

We presented I think – I do not think it – I cannot

remember if it was exactly end of June, but somewhere around there we did present to the Minister because then the Minister would have had to obviously work with us together with the National Treasury to support Eskom on a number of issues that we had proposed.

ADV SELEKA SC: Was that the end the matter in regard to your financial plan as the financial director and the involvement of Regiments in that regard, and McKinsey?

MS MOLEFE: Ja, with regards to Regiments and
10 McKinsey in that regard it was the end of it. But, as I indicated, Chair, we continued with our work, we had our business productivity programme, we were working with the National Treasury team on a number of initiatives around how do we recapitalise the balance sheet of Eskom.

So we then did a follow up presentation actually to the Minister of Finance later in that year and that would have been Mr Nhlanhla Nene which then culminated in Eskom receiving a R23 billion injection from government with a number of conditions, of course. So that obviously
20 was announced somewhere in October.

So part of that plan and initiative was to actually work towards, you know, government supporting Eskom on a number of things.

ADV SELEKA SC: Yes, just before I move on, for the benefit of the Chairperson and yourself in regard to what

you said what was you heard through the grapevine. Chair, you will recall – and this is significant, it would have fallen through the cracks.

The evidence of Mr Tsotsi and particularly in his affidavit when he talks about his meetings with Tony Gupta, that is where he mentions that meeting and he refers to in his affidavit that:

10 “During the impasse of the TNA contract when the award of the contract by Acting CEO Collin Matjila was under scrutiny for irregularity, I was requested by Tony Gupta to make this problem go away. I responded that this I could not do as there were processes in place that must take their course. For the first time in my encounter with him he showed visible signs of anger and frustration as he kept insisting that I was not interested in assisting him.”

Then he goes on to talk about – this one you will recall in the organogram:

20 “Position was open at Eskom for procurement division of Chief Procurement Officer. This position was unoccupied. Tony Gupta approached me to request that I help him fill the position with a person from MTN.”

So perhaps Mr Tsotsi will explain to us further in regard to what you say was pressure from the CEO of – did you say

Regiments?

MS MOLEFE: No, no, no, Chair, and I said that is what I was speculating on, it is something that I heard through the grapevine [indistinct – disturbance with microphone] after me ...[intervenes]

ADV SELEKA SC: Yes.

MS MOLEFE: ...who had been pressurising Mr Tsotsi to cancel the interim financials. So that was a different matter, it was on the interim financial statement.

10 **ADV SELEKA SC:** Is it on the interim financial statements?

MS MOLEFE: Ja, approval by the board of the interim financial statements.

ADV SELEKA SC: I see. Okay. So the grapevine you were saying the CEO of TNA, Mr Howa?

MS MOLEFE: Yes.

ADV SELEKA SC: Yes, that is where I was picking up the TNA connection.

MS MOLEFE: Oh, the TNA matter.

20 **ADV SELEKA SC:** Yes. Well, let us deal then with the issue that develops in 2015, the beginning of 2015, the new board has been appointed and you have referred to this meeting which gets to be cancelled of the 26 February 2015.

Briefly to the Chairperson you have mentioned – but

let us ask you specifically whether were you given the reasons for cancellation of that meeting of the 26 February 2015?

MS MOLEFE: Chair, I was not given reasons for the cancellation, the cancellation came through the company secretary at the time but there was no reason given, if I recall.

ADV SELEKA SC: You have said earlier in your explanation of the distinction between the meeting you
10 referred in 2014, as cancelled by Mr Tsotsi, and this meeting, that this meeting of 26 February was the first board meeting?

MS MOLEFE: Yes, Chair, if I recall – and, I mean, thinking about the corporate calendar of the company, typically you would have board meetings four times unless there is a special meeting that has been – four times in the year unless there is a special meeting that has been called by the Chairman but you would obviously have the subcommittee meetings convening, you know, either, you
20 know, every month or every two of months, some of them every quarter.

So in my mind that would have been in terms of the corporate calendar of Eskom, the first board meeting and that board meeting would be the board meeting that approves the corporate plan and the borrowing programme

because it needed to be submitted to the shareholder and National Treasury in terms of the PFMA around about a month before, you know, execution. So we needed to submit it by the 28 February.

So our financial year starts April, 1 April of every year. So we would have had to submit it a month before one could execute on it.

ADV SELEKA SC: Yes. Now you were an *ex officio* member of the board, is that correct?

10 **MS MOLEFE:** I am a director of the company and therefore an executive director of the company.

ADV SELEKA SC: Executive director of the – so you would attend board meetings.

MS MOLEFE: I would attend board meetings, that is correct, Chair.

ADV SELEKA SC: By default.

MS MOLEFE: Ja.

ADV SELEKA SC: You see – and we need for you to explain to the Chairperson. We understood from Ms
20 Venete Klein that prior to the 26 February I think there would have been a board meeting but we hear also from – we see and hear from the audio recordings of the minutes of the 9th, the meeting of the 9 March 2015 of the board which I believe you attended, is that correct?

MS MOLEFE: I did, Chair.

ADV SELEKA SC: That some board members say on the 9 March, we have not even had our first board meeting.

MS MOLEFE: I would concur with that, Chair, because we would have had subcommittee meetings, we would have had the audit and risk committee because the corporate plan and the borrowing programme would have had to be recommended by the audit committee to the board for approval. That first board meeting would happen on the 26 February. I would have also had to present it for – to the
10 IFC meeting which is the Investment and Finance Committee meeting and I think those meetings, two of them took place before the 26 February between the - you know, beginning of January and the 26 February. I think what could have ...[intervenes]

CHAIRPERSON: I am sorry, what meetings were those that took place before the 26 February?

MS MOLEFE: It was the Investment and Finance Committee. I think two meetings took place, if I am not correct. Why I remember is that the first meeting Mr Khoza
20 chaired the meeting because Mr Mark Pamensky could not make it but the second one, Mr Mark Pamensky did chair and those two meetings happened before the 26 February.

CHAIRPERSON: So you are able to say the meeting of the board that was scheduled for the 26 February was going to be the first meeting of the board.

MS MOLEFE: The first meeting of the full board.

CHAIRPERSON: Ja of the full board. Whatever other meeting may have taken place may have been meetings of committees of the board.\

MS MOLEFE: That is correct, Chair.

CHAIRPERSON: And in particular you know about two meetings of the Investment Committee.

MS MOLEFE: And the audit and risk.

CHAIRPERSON: Yes and audit and risk committee.

10 **MS MOLEFE:** Ja. And I think there would have been a board tender meeting.

CHAIRPERSON: Yes.

MS MOLEFE: There would have been board tender meeting ...[intervenes]

CHAIRPERSON: Yes, yes, but those were all committee meetings.

20 **MS MOLEFE:** Ja. I do think, Chair, what probably did happen is that the board had requested to have an induction, I am aware of that, but I could not attend because I was travelling. In fact Mr Marokane referred to that travel. I am aware that the board met for that induction but I could not be at that meeting. So it is possible that after the induction Mr Tsotsi may have asked the board members – and it is normal, you know, either a board strategy session or some induction he may have

called board members to convene for a short meeting.

CHAIRPERSON: Well, my recollection is that it is accepted that there was an induction either in January or early February, I cannot remember, and my recollection is that Mr Tsotsi's version was also that the meeting of the 26th was going to be the first board meeting.

MS MOLEFE: I can confirm that, Chair.

CHAIRPERSON: Ja, okay.

MS MOLEFE: Unless there were special meetings for
10 ...[intervenes]

CHAIRPERSON: Ja.

MS MOLEFE: But the subcommittee meetings would have taken place.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Thank you. Thank you, Chair. Then let us go into the – then the meeting of the 11th. The meeting of the – well, there are various meetings on the 11th in fact and maybe you can take the Chairperson – others are common cause, let us deal with your meeting
20 when the Minister arrives. Tell the Chairperson on the Minister's arrival what gets to be discussed briefly in your presence and we understand that you were excused as one of the executives and you can tell the Chairperson who do you recall said you should be excused from the meeting?

CHAIRPERSON: Maybe before that and I do not know if I

missed it when you might have asked her about it. The meeting of the board on the 9th, you did attend that one.

MS MOLEFE: That is correct, Chair.

CHAIRPERSON: Yes, the meeting of the board that happened before the board met with the Minister on the 11th, did you attend that one?

MS MOLEFE: That is the meeting of the 9 March. I did attend that one, Chair.

CHAIRPERSON: No, there is the meeting of the 9 March
10 and then there is the 11th March.

MS MOLEFE: Yes.

CHAIRPERSON: Now you said you attended the meeting of the 9 March.

MS MOLEFE: Yes.

CHAIRPERSON: Now on the 11 March there was a meeting of the board before the Minister came.

MS MOLEFE: Oh yes, ja.

CHAIRPERSON: And then there was a meeting that was addressed by the Minister, a meeting of the board
20 addressed by the Minister and then after the Minister had left there was a board meeting that happened.

MS MOLEFE: Yes.

CHAIRPERSON: Now the first one on the 11th before the Minister came, did you attend that one?

MS MOLEFE: I did, Chair.

CHAIRPERSON: Oh, okay.

MS MOLEFE: I did.

CHAIRPERSON: Okay, thank you.

ADV SELEKA SC: Thank you, Chair. I am reminded to ask you something. On the 9th, that meeting you attended, that is the first meeting we understand Mr Tsotsi introduces the proposal to the board as requested by President Jacob Zuma to have an inquiry.

MS MOLEFE: That is correct, Chair.

10 **ADV SELEKA SC:** And I wanted to add something but let me ask you. Was that proposal made in your presence, because you attended the board meeting?

MS MOLEFE: That is correct.

ADV SELEKA SC: Did it include the suspension of the executives?

MS MOLEFE: No, it did not, Chair, and event that proposal was not supported by probably all of the board members in that meeting, the inquiry. So we were presented with a memo, it was not on the letterhead.

20 Mr Tsotsi indicated that he has been asked to do an inquiry and board members raised concerns and they in fact said please call the shareholder who is responsible for Eskom to come and address us and tell us what this is about because we cannot support this, we are worried about the extent of time it is going to take particularly in

management time.

We have been meeting management in various subcommittees, we clearly understand that the issues at hand are quite complex and many and we want them to get on with the job.

Now if we are going to ask them to do an inquiry it is going to require a substantial amount of time, you know, out of their day-to-day activities to be able to, you know, participate in the inquiry. So there was broadly no support
10 for that.

ADV SELEKA SC: Please tell the Chairperson, according to your recollection, because two – at least two of the board members – well, let us say one in this case, that would be Dr Ngubane, because Ms Venete Klein said she did not attend that board meeting, has said that there were allegations of misdemeanours made by Mr Tsotsi against the executives who he said should be suspended. Do you know whether that was made in the meeting of the 9 March 2015?

20 **MS MOLEFE:** No, it was not made, Chair, it was not even discussed. The issues of the suspensions were not even touched in the meeting of the 9th.

Chair, if you look at that memo, if I may add, if you look at that memo, at the back of it it has a list of resolutions so all the board members, if they agreed to it,

including myself and Mr Matona, would have to sign that we agree to the inquiry.

That is why I say, you know, it would not have made sense if we had agreed to it knowing that we are going to be suspended to have signed on such a resolution so the issues were not discussed, the issues regarding the suspension were not discussed.

CHAIRPERSON: Do you know where that memo is in the bundle? Is it ...[intervenes]

10 **ADV SELEKA SC:** It is in Mr Linnell's bundle.

CHAIRPERSON: Oh, okay, can we quickly have a look? I want to have a look at it.

ADV SELEKA SC: Yes, Eskom bundle 6.

CHAIRPERSON: Okay.

ADV SELEKA SC: Eskom bundle 6 page 45. Ms Molefe, they will also provide you with the bundle. We used it earlier this morning. Well, there is a memorandum and there is a proposed resolution. So the page number I have given to you, E45, relates to the memorandum. The
20 resolution is on page 47 so you could explain to the Chairperson ...[intervenes]

CHAIRPERSON: I am sorry, there is a memorandum at pages 45 and 46. There is a resolution at page 47 and 48 and onwards.

ADV SELEKA SC: And to 49, Chair.

CHAIRPERSON: To 49. The one you are talking about, Ms Molefe, is it the one at 47, the resolution of the decision record?

MS MOLEFE: That is correct, Chair, the page 47, 9 March.

CHAIRPERSON: Okay.

MS MOLEFE: I suppose it is a resolution that supports the memorandum on page 45.

CHAIRPERSON: Yes.

10 **ADV SELEKA SC:** So your explanation is we should look here and we find that the suspensions are not here.

MS MOLEFE: Yes, Chair, I mean I am sure I have gone through it, there are no discussions on suspension and if my memory serves me well it was not covered but the point I am making is that if the board had agreed, each one of us were have been asked to sign because there is a page right at the back which – with names of all the board members, my name and Mr Matona's names are on there, so we could not possibly have been signing a resolution
20 that requests executives to be suspended. It would have been discussed, that is the point I am making.

ADV SELEKA SC: Is that page 49?

MS MOLEFE: That is page 49.

ADV SELEKA SC: Yes, I see your names there.

MS MOLEFE: Ja.

ADV SELEKA SC: Your name appears at number 3.

MS MOLEFE: Number 3, ja.

ADV SELEKA SC: You would have signed resolving to suspend yourself?

MS MOLEFE: I am saying if we had discussed that suspension in that meeting but they were not discussed.

ADV SELEKA SC: No, I understand.

CHAIRPERSON: Is the suspension mentioned in the memorandum starting at page 45 because I am wondering
10 why the suspension would not be covered by the resolution seeing that both the memorandum appearing at pages 45 and 36 and the resolution appearing at page 47 onwards were prepared by Mr Linnell who was present at the Durban meeting which meeting resolved that the board - Mr Tsotsi must talk to the board with a view to getting it to support the idea of an inquiry as well as the suspension of the executives. So it was prepared by somebody who knew.

MS MOLEFE: Ja.

CHAIRPERSON: That there was supposed to be a
20 suspension of the executives and there was supposed to be an inquiry. So I am just wondering whether – why it would not be the – maybe it was oversight, I do not know.

ADV SELEKA SC: Chair, we have put it to Mr Tsotsi that question.

CHAIRPERSON: Ah hah?

ADV SELEKA SC: That there was not an explicit reference here.

CHAIRPERSON: Ja.

ADV SELEKA SC: To the suspension of the executives.

CHAIRPERSON: Yes.

ADV SELEKA SC: I cannot recall what was his answer now presently.

CHAIRPERSON: Ja.

ADV SELEKA SC: But there is indeed no explicit
10 reference to suspensions.

CHAIRPERSON: Ja.

ADV SELEKA SC: In either the memorandum or the proposed resolution.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: I mean, there might be no significance to the omission when one has regard to the fact that it is common cause that the suspensions were discussed at the Durban meeting and it is common cause that at the meeting
20 of the 11th of the board the suspensions were raised and ultimately they were affected.

So you have a situation where on the 8th - at the meeting in Durban on the 8th, suspensions were discussed, names were mentioned. Of course three names, not four at that time. And then this resolution does not expressly

refer to the suspensions on the 9th but we know that on the 11th the board was asked to approve suspensions and then there was a fourth name that was added. Okay.

MS MOLEFE: Ja.

ADV SELEKA SC: Yes, under oath Mr Linnell has testified to that effect, Chairperson, Mr Tsotsi as well.

Ms Molefe, so we go then to – those were my questions in regard to the meeting of the 9th. We go into the meeting of the 11th. This is the meeting before the
10 Minister arrives and I am going to ask you the same questions again, whether the suspension – well, the proposal made by Mr Tsotsi on the 9th, was it discussed in that meeting before the – rather, of the Minister?

MS MOLEFE: No, it was not.

ADV SELEKA SC: Was ...[intervenes]

CHAIRPERSON: Just one second, Mr Seleka. Yes, let us continue

ADV SELEKA SC: Thank you Chair. So your answer is no, the proposal was not made?

20 **MS MOLEFE:** The proposal was not made in that meeting of the 11th, before the Minister arrived. What took place, if I recall Chair, I was still hoping that the corporate plan would actually be presented in that meeting, but the – Mr Matona started giving what he called his first 150 days since joining Eskom.

He actually touched on a number of things that you know he has been dealing with, the financial challenges, the power delivery challenges, even mentioned by the way because I had in testimony even mentioned if I recall just you know issues that have been occupying executives including the work we are doing at the War Room but he actually did not finish giving his report.

I think about less than 45 minutes into the discussion, less than 45 minutes after the meeting started
10 the Minister came in. The Minister came in so Mr Tsotsi asked to adjourn the meeting to allow the Minister to come in so that everyone could greet the Minister. So when the Minister came in he really just thanked the board and was happy to see the board members there and he started complaining to the board about the lack of responsiveness from the CE specifically about leaking of reports to media and so forth and he said he understands that boardrooms have been leaked and he would have thought that that would be top of mind for the chief executive to give that
20 matter attention and the chief executive indicated that he has actually started the investigation and he is waiting for a report and we have been taking measures you know in terms of debugging all the boardrooms that obviously all the board members use for meetings.

He did say that no it is not happening urgent

enough there is just too many issues that Eskom – and he then asked she then sorry, she then asked us to recuse ourselves the Minister herself. So she asked me and Mr Matona to recuse ourselves. I think it was about 35/40 minutes after she came in that she asked us to recuse ourselves, ja.

ADV SELEKA SC: Did the Minister give reasons why she was asking that you recuse yourself?

MS MOLEFE: No she did not Chair.

10 **CHAIRPERSON:** That was you and who?

ADV SELEKA SC: It was myself and the chief executive Mr Matona, Tshediso Matona.

CHAIRPERSON: Yes, that is interesting it maybe that it was simply because you were part of the executive team and he might have wanted to...[intervene]

MS MOLEFE: To have an in-committee discussion with the board.

CHAIRPERSON: With the board.

MS MOLEFE: Ja.

20 **CHAIRPERSON:** And maybe that is as far as it goes and therefore it had nothing to do with the proposed or the impending suspensions but to the extent that it may have had something to do with an impending suspensions that maybe interesting because at that stage it would seem your name had not as yet been on the list of those to be

suspended. Is that not so or you would not know or had it begun to be mentioned?

MS MOLEFE: Ja, Chair and I guess if I go back to the meeting of the 9th I did not even think that she was coming there to speak about suspensions...[intervene]

CHAIRPERSON: Yes.

MS MOLEFE: Because the board had asked Mr Tsotsi to call the Minister to come and explain why this enquiry is required and who has asked for it.

10 **CHAIRPERSON:** Yes.

MS MOLEFE: So I had understood that at that time she is coming there to explain to the board the reason for that. So it was also surprising to us why we are being asked to recuse ourselves but we did not ask, the chief executive did not ask, I did not ask.

CHAIRPERSON: Yes, because you were both members of the board.

MS MOLEFE: Yes, Chair.

CHAIRPERSON: And one would have thought that what
20 other members of the board should hear about the enquiry you should hear as well.

MS MOLEFE: Unless of course they are discussing the two of you.

CHAIRPERSON: Of course.

MS MOLEFE: And they want you out of the meeting.

CHAIRPERSON: Yes.

MS MOLEFE: Ja.

CHAIRPERSON: And that is where I say in my – the fact that you were asked to leave the meeting you in particular is interesting because Mr Tsotsi has given evidence that somebody in the board and I think he said it was Dr Ngubane but I may be mistaken. But he said somebody in the board said that it was the Minister who said your name should be added to the list of the executives to be
10 suspended and therefore if she had knowledge that you are supposed to be in the list one would understand why...[intervene]

MS MOLEFE: Whys she asked.

CHAIRPERSON: If she wanted maybe to talk about suspensions she would want you and Mr Matona to leave the meeting.

MS MOLEFE: That is correct Chair.

CHAIRPERSON: Ja.

MS MOLEFE: Ja.

20 **CHAIRPERSON:** Okay, alright.

ADV SELEKA SC: Thank you Chair. So you and Mr Matona then steps out of the meeting and you do not know what gets to be discussed. Correct?

MS MOLEFE: That is correct Chair.

CHAIRPERSON: So this happens at a time when Mr

Matona had not finished his presentation?

MS MOLEFE: Yes, Chair.

CHAIRPERSON: And he never got to finish it.

MS MOLEFE: He never got to finish it.

CHAIRPERSON: Ja.

ADV SELEKA SC: Chair in fact, ja the minutes do reflect that the CE was busy:

10 “The CE had developed a turnaround plan he is reporting which was being updated and put onto a firm foundation the initial presentation has been used at the board induction and presented to the Deputy President.”

I skip one paragraph, I go to the next the CE stated:

20 “That the turnaround strategy considered all initiatives and tabled them at the War Room for consideration. At the last War Room meeting the Deputy President Eskom had advised that they had responded to all request for information from the War Room and had requested that management be advised of any gaps.”

Then it says:

“At this point the Chairman was excused from the meeting to meet the Minister of PE, Ms Klein took over as acting Chairman.”

Then...[intervene]

CHAIRPERSON: Ja.

MS MOLEFE: Ja, so and I guess I mean even that when Mr Tsotsi excused himself to meet the Minister it was probably five, ten minutes.

CHAIRPERSON: Yes.

MS MOLEFE: So even the acting of Ms Klein was really just, very short.

ADV SELEKA SC: Yes, okay you do not know what happens in the meeting you are – where are you in this
10 intervening period?

MS MOLEFE: Chair I was sitting in my office because the Minister had asked us to recuse ourselves. I went into my office I continued with my work. I obviously did not know what was going on in the board from time to time I would see board members during tea break, I did not even realise that the Minister had left, I do not know what time she left until I was called much, much later. In fact, before I got called I went into Mr Matona's office I think it was somewhere around five if I am not mistaken around there
20 to say I do not know you know what is happening in the board meeting, he also did not know. I said to him I think I am going to leave and as I was saying that he was then called to come back to the board and I was asked to stay and not go by the – and I actually remembered asking the company secretary but how long and he said well he does

not know. Ja, so that is what happened.

ADV SELEKA SC: So you were called back into the board meeting?

MS MOLEFE: Mr Matona was called alone back into the board meeting Chair and they asked me to ha what hang around but they would call me later.

ADV SELEKA SC: Yes, so tell the Chairperson what happens when you were ultimately called, who is there in the meeting and what are they telling you?

10 **MS MOLEFE:** So I go into the meeting obviously Mr Matona has left the meeting, Mr Tsotsi was chairing the meeting, Ms Chwayita Mabude was there, Mr Zithembe Khoza was there, Dr Pat Naidoo was in the meeting, Mr Norman Baloyi was in the meeting, Dr Ben Ngubane was in the meeting and Ms Venete Klein. I do not think Ms Verushnie Naidoo and Ms Carriem-Weber; I think it is Carriem or Cassiem I cannot remember but I do not think they were there. So Mr Romeo Khumalo came in after I had joined the meeting probably maybe for about five
20 minutes and he left. So he really did not stay long.

So as I walk into the meeting I sit to the right of Mr Tsotsi and he explains to me that you know you would have been in our meeting of the 9th you would recall that I informed the board that we have been asked to do an enquiry into the state of affairs of Eskom and the board

had decided that in order to have unaffected access into all the information that are required to enable such an enquiry they are going to ask the executives that looks after those areas that would be looked into, to step aside while this enquiry is happening.

He explained that it would take three months, they foresee that it would take three months and he was at pains explaining that I must understand that they are not alleging any wrongdoing on our part this is merely to
10 facilitate you know a very seamless process because they would like us to come back as soon as possible. He then asked me if I had any objection to being asked to step aside and this was even before he presented me the letter.

And I said to him I am surprised Mr Tsotsi you of all people who is serving a second term together with Ms Chwayita should know all the challenges in this company we have been through this on many occasions there has been task teams after task teams to us executives to solve the challenges at Eskom. So I am surprised that I am
20 being asked to step aside and in fact if I recall while I was saying that before I even finished what I wanted to say Ms Chwayita interjected and said listen the Minister was here and is not happy about a number of things including the financial challenges and she is therefore asked the board to do an enquiry and that enquiry requires that we make

sure that we have access to all information that we require that is why we are asking everyone to step aside.

So I was then presented with a letter of suspension and Mr Tsotsi then just took me through it and I think by that time I had really switched off because the minute they said to me shareholder was there it is not happy about a number of things including the financial challenges, we asking you guys to step aside. I just said if that is what the board wants if they believe that it is in the best interest
10 of the company I cannot stand in the way of the board. I therefore signed the letter Mr Chair and I left.

CHAIRPERSON: Well it is also interesting that you say somebody said the Minister was here and she said she was unhappy about among other things...[intervene]

MS MOLEFE: A number of things including the financial challenges, yes.

CHAIRPERSON: Including your portfolio.

MS MOLEFE: Ja.

CHAIRPERSON: Yes.

20 **MS MOLEFE:** Ja, and thinking about it I do not think I was specific about that in that in my affidavit.

CHAIRPERSON: Yes.

MS MOLEFE: But essentially it was triggered by the fact that they were asking me if I have a problem. Are there any reasons I believe that I should not step aside?

CHAIRPERSON: Yes.

MS MOLEFE: And as I was saying to Mr Tsotsi I do not understand why you would not know yourself these challenges when you have been with the company for several years that is when you know Ms Chwayita who had been in the board before as well interjected.

CHAIRPERSON: Now prior to you hearing at this stage when your suspension was being discussed that the Minister had said she was not happy with among others
10 something in your portfolio had there been anybody within the board who had expressed any unhappiness about your portfolio within Eskom?

MS MOLEFE: Chair the only thing that I can really think of is Ms Chwayita herself.

CHAIRPERSON: Ja.

MS MOLEFE: When we went to raise an international bond – by the way the way the process works is that the borrowing program once approved because it is an integrated plan on a yearly basis. It is detailed enough to
20 also provide the borrowing program which the board would then have approved and it actually tells you what sought of funding solutions we would be pursuing to support the business requirements. So in that shareholder compact that we have as well as the borrowing program which is submitted to the shareholder as well as the National

Treasury we do the detail the borrowing program.

So the board would have been fully aware of you know what we were doing but Ms Chwayita if I recall because some time in January towards end January of 2015 we went overseas to raise an international bond and while I was there she sent quite a number of emails to myself and the Treasurer of the company Ms Caroline Henry expressing his dissatisfaction with the fact that we were going overseas to raise a bond it is expensive and so
10 forth.

So that is the only thing that I could think of, I was once told by the acting DDG at that time Mogale while I was at DP offices that it appears the Minister is not happy about that as well. But I then said to her well you need to explain to the Minister because you were with us on the international road show to go and raise the funds. National Treasury officials were there so if there is any doubt in our Ministers mind she can then ask the officials in government about that bond. So that is the only thing
20 really that for me at that point I could really think of.

CHAIRPERSON: Well the Minister will come at some stage and give evidence but I just note that Mr Tsotsi said somebody and I think he said Dr Ngubane told him that the Minister was the one who added your name who said your name should also, you should also be suspended and now

you have somebody in the board saying when the Minister was speaking to the board she expressed unhappiness about among other things your portfolio or certain aspects in your portfolio. So she will come and she will come and...[intervene]

MS MOLEFE: Ja, and I mean I suppose Chair I will also listened to the testimony from Ms Venete Klein and I think they mentioned that the Minister was always complaining about information that management or executives were
10 providing to the War Room.

CHAIRPERSON: Yes.

MS MOLEFE: But then again you know it was quite a detailed process the War Room process. I was part of the process the CE Mr Matona was part of the process, we had support from our general managers and other executives but nobody had ever come to us and say we are unhappy with the War Room. The Deputy Minister of Energy chaired the War Room, the coordinating or secretary was Dr Phillips and there were the amended DG of Treasury use to
20 attend the War Room and so forth. So we presented to the Deputy President at that time who is the current President now on the 5th of March our obviously findings but it would have been work that we would have been doing with the officials. If anything to what Mr Marokane said it would have been maybe discomfort that the board seems to be

not part of that process but it is my view that they could have asked for further information.

We have reason to believe that there is dissatisfaction with the information you are presenting can you come and present to us. As I indicated on the 9th of March on the 11th of March before the Minister came the CE had started giving an account on amongst others work of the War Room. So I had never been approached by anyone or the Minister to say they are not happy with it, ja.

10 Ja, it was announced by end of December 2014 but it kicked off ja...[intervene]

ADV SELEKA SC: The mic if off Chairperson.

MS MOLEFE: But it kicked off beginning of January.

CHAIRPERSON: Oh okay when I asked that the earlier question it was off?

ADV SELEKA SC: I realised it was off.

CHAIRPERSON: Okay I asked just for the record I asked the question how long the War Room or how long the War Room had been around by March 2015 and the witness
20 said the War Room had been announced towards the end of December 2014. So it was fairly new...[intervene]

MS MOLEFE: Fairly new.

CHAIRPERSON: By March 2015.

MS MOLEFE: Yes, it started kicking off in January 2015.

CHAIRPERSON: In January, now by March when you

were suspended how many – do you remember how many times you had had as Eskom, you had had to furnish information to the War Room?

MS MOLEFE: We presented to the War Room every week Chair.

CHAIRPERSON: Every week?

MS MOLEFE: Every week we met at the Union Buildings with government officials every week.

CHAIRPERSON: Now you were always part of the team
10 that did that from Eskom?

MS MOLEFE: Yes, myself and the CE were always there.

CHAIRPERSON: And Mr Matona?

MS MOLEFE: Myself and Mr Matona were always there, yes Chair.

CHAIRPERSON: Yes, would there be other executives there sometimes or it was just the two of you?

MS MOLEFE: No we always had executives I think Dan Marokane would have joined from time to time it depended on the topic for the week in terms of what they wanted us
20 to cover so that we could come up with a plan.

CHAIRPERSON: Yes.

MS MOLEFE: Mr Matjila Koko would have attended...[intervene]

CHAIRPERSON: Sometimes.

MS MOLEFE: Sometimes and I think one or two

executives you know from generation in the main from the head of generation would have attended as well and then we would have been supported by general managers as the executive in the office of the CE and one of the general managers that was supporting me attended the meeting on a weekly basis with me.

CHAIRPERSON: But are you able to say positively that nobody from the War Room had complained to you or Mr Matona as far as you know that you people were not
10 providing accurate information to the War Room?

MS MOLEFE: Chair I mean if they did they really did not – I mean we had quite allot of engagements with them. They challenged our assumptions.

CHAIRPERSON: Yes.

MS MOLEFE: But the fact that you know they challenged our assumptions it does not necessary mean that our information is inaccurate.

CHAIRPERSON: Yes.

MS MOLEFE: So we would explain to them I mean if I
20 give you an example of the financials as an example. So today you know I present these are the forecast for the year we then have a power system challenge we have to run our open cycle guest turbines it means we need to buy diesel which was not initially in the forecast.

I then have to revise the financial forecast because

I have to take that into account. So when I present to the of course I would show a different number to the one that I showed last month but I would explain to them that there has been a change is due to one, two, three, four. So that is the sort of thing and that is why I talk about assumptions in forecast why it is different to but it was never an issue of the integrity of the numbers for me. It had never been challenged in that way, yes.

CHAIRPERSON: So there was an engagement.

10 **MS MOLEFE:** Yes, there was engagement.

CHAIRPERSON: People serving on the War Room with your presentations but nobody ever said what you were presenting was not helpful?

MS MOLEFE: Absolutely no Chair.

CHAIRPERSON: Nobody ever said that?

MS MOLEFE: No Chair, ja and I mean we obviously went through a lot of detailed work internally before we presented to the War Room and then we did actually you know power point presentations to the War Room and they
20 would challenge, they would ask us questions.

CHAIRPERSON: Yes.

MS MOLEFE: But nobody said you know we – ja.

CHAIRPERSON: Ja, well...[intervene]

MS MOLEFE: At least I was not told Chair; I was not told.

CHAIRPERSON: You were never – nobody ever said that

to you or in your presence?

MS MOLEFE: No.

CHAIRPERSON: Yes and Mr Matona...[intervene]

MS MOLEFE: No, not Mr Matona.

CHAIRPERSON: Also said nobody ever complained as far as he knew?

MS MOLEFE: No.

CHAIRPERSON: There is an affidavit by Ms Lynn Brown if the legal team has not given it to you they must give it to
10 you so that you can comment on it because in it she talks about these things, about these complains so that you can maybe do an affidavit in respond to those things.

MS MOLEFE: To that?

CHAIRPERSON: Ja.

MS MOLEFE: That will be helpful Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes, thank you Chair. What Ms Lynn Brown says Ms Zulu Molefe is that she met with the President earlier in the year and that the President
20 complained about information, well President Zuma not the Deputy President complained about information from the executives to the War Room that was inadequate and inaccurate. Now obviously the question is did you become aware of that?

MS MOLEFE: I was not made aware of that Chair I mean

the last War Room meeting would have been the meeting of the 5th of March where we would have been presenting to the then Head of the War Room as I indicated the Deputy President and various Ministers that had been appointed to support the Deputy President in the War Room were there as well.

So I think we presented and we were then asked to leave, I do understand that out of that meeting there would have been a cabinet memo that then talks about where to
10 from here having understood the challenges that Eskom is facing. So that is all that I know.

CHAIRPERSON: But that last meeting of the 5th of March you said, is that right?

MS MOLEFE: That is correct Chair.

CHAIRPERSON: Did you detect any unhappiness on the part of the War Room personalities the people on the War Room about Eskom's your work or your presentation any unhappiness that would drive anybody to say Eskom is not providing reliable information?

20 **MS MOLEFE:** Chair as I say it was never about reliable information it was really about to the point I am making in fact Ms Lynn Brown when the discussion around where to from here she actually asked as the shareholder representative she has not had sufficient time to socialise with what Eskom's executives had presented in the war

Room.

CHAIRPERSON: Yes.

MS MOLEFE: But and I am not sure if Mr or Ms Temetuna covers it in his affidavit but I know that he made various attempts to make sure that the Minister is sensitised of what we are presenting and I do not think he was able to do that because I would have had to go with him.

CHAIRPERSON: Okay.

MS MOLEFE: And I think the intention was that before it
10 is presented to the War Room the Minister must be taken through the outcome of that but we were not able to do that.

CHAIRPERSON: Okay.

MS MOLEFE: Ja.

ADV SELEKA SC: Thank you. Now Ms Molefe, you are in the suspension meeting. I cannot recall whether you mentioned whether or not Mr Mark Pamensky was present in that meeting?

MS MOLEFE: Sorry. He was not in the meeting.

20 **ADV SELEKA SC:** He was not?

MS MOLEFE: Pamensky was not in the meeting.

ADV SELEKA SC: Were you in that meeting when Mr Tsotsi present to you what the intention of the board is. The resolution, rather to suspend you. Did he mention the War Room, what we have been talking about now, as one of the

reasons why you needed to be suspended?

MS MOLEFE: No, Chair. He said that the inquiry is... would be concerned with the power delivery challenges. The, obviously, the delays in the construction of the power stations and the financial challenges.

I think he mentioned that as well. So the inquiry would cover that but it was never about issues regarding the War Room.

But, ja, so I think that is what he said to me. In fact, it
10 was interesting because I obviously signed the letter. I understood that they are concerned about the power delivery challenges.

He mentioned three things. Financial challenges, power delivery challenges, as well as the construction of the power stations. The delays in the construction of the power stations.

So at that time, I did not know who was been asked to step aside as he put it. I only found out the following who had been asked or who had been suspended.

20 In fact, that is why I wrote them the letter on the 17th. Because my concern was that what they said to me when they presented me with the letter of suspension and what had transpired in the media the following day, was inconsistent.

Because if they were consistent, then the Head of

Generation should have been suspended. So, and I said I reserve my right to challenge those things at a later stage.

Because it seems there is consistencies between what they said to me, they are trying to achieve, and what they presented the following day in media reports. Ja.

ADV SELEKA SC: Yes. Well, let us go into that. The letter, as you are writing to them. So you mentioned the one of the 17th. You are now, what, six days into the suspension. You were suspended on the 11th of March. Just tell the
10 Chairperson going forward because I believe you deal with that in your supplementary affidavit.

MS MOLEFE: Yes.

ADV SELEKA SC: Just relate to the Chairperson whether they respond to your letters and what transpired going forward.

MS MOLEFE: Ja. So I wrote to the Chairman, Mr Tsotsi, on the 17th of March and I did not get a response but later found out that obviously the board was... had also removed him. I found out through a media report. I did not get a response
20 back from him.

CHAIRPERSON: Well, let us... when you wrote... was it 17 March or 17 April?

MS MOLEFE: 17th of March. It was ...[intervenes]

CHAIRPERSON: Oh, he had not been removed that time as yet?

MS MOLEFE: No.

CHAIRPERSON: Yes.

MS MOLEFE: He had not been removed.

CHAIRPERSON: Ja.

MS MOLEFE: I think he was removed end of that month.

CHAIRPERSON: Ja, you want to talk about what the main features of your letter of the 17th of March were?

MS MOLEFE: Yes. So the main features Chair, if I may?

CHAIRPERSON: Counsel will help you to identify it. To
10 find it ...[intervenes]

MS MOLEFE: Yes.

ADV SELEKA SC: Yes.

CHAIRPERSON: ...where it is.

ADV SELEKA SC: Chairperson, it is dealt with on page 599 of the affidavit.

CHAIRPERSON: 599?

ADV SELEKA SC: 599.

CHAIRPERSON: Okay.

ADV SELEKA SC: The letter itself is TM2. That is on page
20 827. Eight, two , seven.

MS MOLEFE: Yes, Chair. Essentially, I was writing to Mr Tsotsi, indicating that having seen his press briefing on the 12th of March, I was quite disturbed by the term of events, particularly, the inconsistencies between the discussion we had when they were, you know, giving me notice of

suspension and what he said at the media briefing.

And I indicated that I would, you know, want to obviously engaged at a later stage. So those was essentially just to make him aware that it is concerning.

CHAIRPERSON: Just tell me what those... what reasons he gave or they gave in media briefings that were different from the reasons he gave to you.

MS MOLEFE: So Chair, essentially my concern here was that when they issued me with the letter of suspension, they
10 said that they need to do an inquiry and they want to make sure that there is access to information required to be able to do an inquiry.

That inquiries went to focus on the financial challenges of the company, the delays regarding the construction of the power stations and then the power delivery challenges which is mainly the, you know, the power plant challenges.

So when I saw the briefing, because at that time, I then did not know who... I made assumptions around who would be suspended because they did not share with me who would
20 be suspended.

When I realised that the General Group Executive was not part of the suspensions, I then said to him but you know there are inconsistencies here.

If you are asking us to step aside so that you can deal with those number of things. So in my mind, why you know,

have you suspended myself, the Head of Group Capital, the CEO and the Head of Technology and Commercial?

So those were the inconsistencies Chair that I was referring to, to say, you know, General challenges are causing power delivering issues. So why is there... Ja. So I did not say that in my letter ...[intervenes]

CHAIRPERSON: Who was the Head of Generations?

MS MOLEFE: Shu, Chair I cannot remember at that time whether it was Mr Thava Govender or Mongezi Ntsokolo
10 because Mr Thava Govender was Head of Generation for a while and then he moved over to Transmission. I think it could have been Mr Mongezi Ntsokolo if I am not mistaken.

CHAIRPERSON: Okay. And he had not been suspended?

MS MOLEFE: He had not been suspended.

CHAIRPERSON: Yes.

MS MOLEFE: Ja.

CHAIRPERSON: Okay. And the investigations were going to include his portfolio?

MS MOLEFE: Ja, absolutely Chair.

20 **CHAIRPERSON:** H'm.

MS MOLEFE: Like, that was my point. So I did not receive any response regarding my letter of the 17th. But obviously, we were hearing quite a lot in the media about what was happening at Eskom.

We were not getting any communication from the board.

And I was quite concerned because they said to us...

In fact, they said to us we must, you know, be available as when we are required because they would be... we would be required to participate in the inquiry.

So I think sometime in April, towards end of April, I learnt through media reports they had appointed a law firm called Dentons to do... you know, to do the investigations or the inquiry.

I then wrote to them on the 29th of April and that would
10 have been my second letter where I said to them I am concerned that they are not communicating with us.

It is almost six weeks since the suspension. They said to us it would take three months. We are concerned that we do not know what is going on.

How long are we expected to be home? Can they share with us the terms of reference of the inquiry because we understand that Dentons would start their investigation.

I particularly also wrote them Chair because I need to obviously prepare myself of the inquiry. I did not have any
20 information. I have taken all my work tools. And I also wanted to consult if I needed to prepare myself.

Because there were a number of things that were you know going on in media around, you know, either what has happened, what is the reason for our suspensions.

So I particularly asked them for the directors on offices

liability policy which I believe I was entitled to as an executive of the company should I need legal advice for me to be able to cover my legal expenses.

I also pointed them out to the Memorandum of Incorporation which actually says that, you know, an executive can be covered under those circumstances.

So that was the basis of my letter. They then responded using Bowman Gilfillan.

ADV SELEKA SC: Just before that Ms Molefe. Just turn
10 the page to 829. Eight, two, nine. Is that the letter you are referring to of 29 April 2015?

MS MOLEFE: That is correct, Chair. That is the letter.

ADV SELEKA SC: And I think you have already summarised the contents of that letter to the Chairperson.

MS MOLEFE: That is correct.

ADV SELEKA SC: Then you can turn the page to 832. I think that is what you were about to speak about, a response from Bowman Gilfillan, Mr Jerry Kapu.

MS MOLEFE: That is correct, Chair. So I then received a
20 response on behalf of Eskom from Mr Jerry Kapu who, obviously, who works for Bowman Gilfillan and clearly indicating that they acknowledge receipt of my letter but really being dismissive about some of the requests that I had made to the board.

ADV SELEKA SC: Can you turn the page to 836?

MS MOLEFE: [No audible reply]

ADV SELEKA SC: It is a letter dated 3 May 2015.

MS MOLEFE: 836?

ADV SELEKA SC: Yes, eight, three six. You follow the left... right hand corner again?

MS MOLEFE: That is correct, Chair.

ADV SELEKA SC: Tell the Chairperson whose letter is this?

MS MOLEFE: Chair, this is the letter I then wrote to Dr Ngubane. In there, I indicate to him that, you know, the
10 matter refers to the letter that I had written to them date the 29th of April which I have received a response from Mr Jerry Kapu.

And I actually indicated that I totally reject the contents of Mr Kapu's letter and that I fully reserve my right to take this matter. Because I was quite sure that I am entitled to tell Eskom, covering my expenses should I need to, as part of the inquiry because if this in relation to Eskom's services essentially.

So I also pointed out to them, as you can see under
20 paragraph 9, in terms of my suspension letter where they indicated that I am instructed to remain in telephonic contact with the chairman during the period.

We are expected to be contactable in the event that it is necessary for your to attend to the company premises and so forth. So I think the point I was making there Chair is that

essentially, you know, we are not... You know, they... we...

The manner in which the board is conducting themselves is not fair. Firstly, they have appointed lawyers to speak to us. We do not have or share the same benefits that...

And that is essentially the reason why I was asking them to provide me with the... as the policy. Escap is the Eskom cell captive which is our insurance which houses our insurance policy.

So that was essentially this... the sense of the meeting.

10 And what I indicated, as we can see in the last paragraph. I think where I say lastly... if I may read it?

ADV SELEKA SC: [No audible reply]

MS MOLEFE: “Kindly be advised that on the 30th of April

pursuant to receiving communication from Ms Daniels regarding the meeting, I immediately responded and advised her of my availability and further requested her to provide me with the agenda for the meeting in order to enable me to prepare for the meeting.”

20 They had sent a letter... the chairman had sent a letter through I think Ms Daniels, after I had written these letters to have a discussion with me on the way ahead.

So I was responding to that as well in the letter to say that can they just furnish me with the agenda for that meeting that they have asked for.

ADV SELEKA SC: Yes. Now just, I think carry on in regard to this meeting. Do you... tell the Chairperson, when was the meeting, did the meeting take place, who was present at the meeting? The meeting you say Ms Daniels...

“And I have been advised by Ms Daniels that the purpose of the meeting is to discuss the way ahead.”

You say:

10 “I find the letter to be very vague, evasive and I am highly concerned and uncomfortable in attending the proposed meeting in view of that fact. On the one hand, I am receiving communication directly from your office and yet at the same time from Mr Kapu for and on behalf of Eskom.”

MS MOLEFE: So the meeting Chair was called by Dr Ben Ngubane, obviously, through Ms Daniels. We then spoke over the phone around what time the meeting would take place and where. So the meeting was set for the 4th of May at Protea Hotel in Centurion. At the meeting...

20 Chair, if I recall the meeting, all that it says was the way ahead. I was really not provided with the agenda and the objective as I had discussed... I had asked. It just said to discuss the way ahead.

At the meeting present was Dr Ben Ngubane himself, Ms Venete Klein, Mr Romeo Khumalo and I think Mr Zethembe

Khoza was there as well, if I am not mistaken. I could be wrong there. But Ms Daniels was also in the meeting.

So I think Ms Klein introduced the meeting. Why they had asked me... and I really have to think about this because there was a lot of discussion between myself and Mr Romeo Khumalo.

And Dr Ben Ngubane did not say anything at all. It almost became a dialogue between myself and Mr Khumalo and with him doing most of the talking.

10 And essentially what he started by saying to me is that: We understand that you have been writing to Eskom, wanting to talk about your exit.

And Chair, the reason I say that. I could be confused. I remember Ms Daniels indicated that Ms Venete Klein introduced the meeting. I do not remember that but I could be wrong.

What I remember is Mr Khumalo actually saying to me that: We understand you have been asking, you know, you have been writing a number of letters to Eskom. You are
20 being, you know, uneasy. You would like to exist.

And I said to him no that is not the reason why I have been writing to Eskom. The reason I have been writing to Eskom is that it has been almost eight weeks since we have had... since the... our suspension.

You said we should keep in touch. We should be

contactable. You said that you would keep in touch. You would inform us of the inquiry. You said that it will only take three months and it has been eight weeks.

We have not had any form of communication regarding the inquiry. And I wanted to have the terms of reference so that I could prepare myself for this inquiry.

And he blatantly said to me: I am going to be very honest with you. The process has been compromised by Mr Tsotsi. It is not where we had anticipated it to be. We have
10 just finalised the terms of reference and only just appointed a law firm.

So we are still far from even, you know, starting the inquiry or going into the inquiry itself. So we think that you are not going to be called back in June as we anticipated. It is going to take a much longer period. So that is why we want to find out from yourself, would you be amicable to having a discussion... amenable to having a discussion around, you know, amicable as parting of ways.

And I said to him: Well, that was not the reason I was
20 asking. I emphasised the point that that was not the reason I was writing. And I raised my concerns about the fact that I am having an very unfair...

They are having an unfair advantage in that they had been able to appoint very expensive lawyers. I have asked for certain things.

I have not received it and I believe that I am entitled to get a fair process in a way that Eskom is as well. And they said to me, they hear where I am coming from but unfortunately this process has been compromised by Mr Tsotsi and they would like to see whether we should have a discussion of a way forward.

And they asked me if, can they put something together that I can consider and come back to them. And I said if that is what the board would like to do, please put something
10 together. I will consult with my lawyers and think about it.

Within, you know, three... because we met on the 4th of May. The following day, I received a request for a follow up meeting and that meeting took place on the 8th of May.

The meeting was at the same hotel. The meeting was this time only with Ms Venete Klein and Mr Zethembe Khosa and Ms Daniels was also present in the meeting, taking notes.

And essentially, Mr Venete Klein already had a proposal
20 of what looked like an exit package which she had already signed and she took me through it line-by-line what it means.

I did say to her and in my own words if I recall. I said this is a slap in the face considering that I was not thinking to exit the company but anyway, I will take it away and I will go and consult and I will come back to them.

So essentially Chair, that is what happened. I wrote to the, I think , on the 11th of May ...[intervenes]

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

MS MOLEFE: Ja.

ADV SELEKA SC: Just before that Ms Molefe. If you can turn please to page 839 and just identify the document to the Chairperson?

MS MOLEFE: Yes, Chair the document on page 839 is my letter. It is the letter, sorry, from Eskom to myself signed by
10 Ms Venete Klein and this is the letter that she brought to the meeting where she took me through this proposal.

ADV SELEKA SC: On the 8th of May 2015?

MS MOLEFE: On the 8th, ja.

ADV SELEKA SC: Then you may proceed.

MS MOLEFE: So I then went away Chair. And if I recall, I wrote to them on the 11th of May and I see I referred to Ms Venete Klein here as dear sir.

But I was writing to, essentially to Ms Vente Klein, indicating I have received their proposal and that I ask for
20 further information because I wanted to know.

Because in their proposal, they were also offering the low turning incentive which Grant 8 and Grant 9 that were due to on the 31st of March 2015 and 31st of March 2016.

So essentially I wanted to know how they arrived at such a package. So what informed them to arrive at such a

package.

ADV SELEKA SC: Sorry, may I ask you? We understand from the board members, those who have come to testify, that in fact they had wanted the executives back.

I think we have shown a minute of the Audit and Risk Committee that the Audit and Risk had minute that they want the executives to come back and the board members said they wanted you to come back. The first meeting on the 4th of May.

10 **MS MOLEFE:** 4th of May.

ADV SELEKA SC: Is it May? Ja, 2015.

MS MOLEFE: 4th of May 2015.

ADV SELEKA SC: Yes. Did those... wait on my question. Did those ...[intervenues]

MS MOLEFE: I mean, I do not believe that and I heard that is what they said giving testimony here. Because they started by saying...

As I say, it was a dialogue between myself and Mr Khumalo who started by saying: We understand that you
20 want to leave. And I outrightly rejected that.

I said that the reason for my letters was one, two, three, four. And reiterated that I have asked for this, I have asked for this, I have asked for that. And it has been eight weeks and we all...

All we hear is media reports that you have appointed.

You have not even informed us that you have appointed a law firm.

Because essentially we expected that they would be in touch with us to tell us where the process is, this is... even if they have not started but that communication was not there.

ADV SELEKA SC: Okay.

MS MOLEFE: I... ja. So essentially, I do not believe that.

ADV SELEKA SC: Yes, okay. Then page... you can go back to page 841. You were talking about the letter dated
10 ...[intervenes]

CHAIRPERSON: Before that. So is the position that at the commencement of the meeting of the 4th of May 2015 between yourself and representatives of the board, one, your position was that you are wanted to go back to work. Your position... you had never had any intention not to go back to work or to want to part ways with Eskom at that stage?

MS MOLEFE: Chair, I was willing to go back to work.

CHAIRPERSON: Yes.

MS MOLEFE: And I use that word very carefully.

20 **CHAIRPERSON:** Yes.

MS MOLEFE: Because they... and I suppose in my level as well, as a director of the company. I sit on the board. It is an issue of trust between myself and the board. But I could clearly see that they did not want me there. At least, that is how I felt.

CHAIRPERSON: Yes.

MS MOLEFE: I felt that we had been ostracised.

CHAIRPERSON: Yes.

MS MOLEFE: And just by their manner of communication
...[intervenes]

CHAIRPERSON: Yes.

MS MOLEFE: How they are using, you know, expensive
lawyers to communicate with us. They are not
communicating with us directly.

10 **CHAIRPERSON:** H'm.

MS MOLEFE: When our letters, we were communicating
with them directly.

CHAIRPERSON: Yes.

MS MOLEFE: So. But in that meeting, I was quite specific
to say: I am writing to you because I want to leave.

CHAIRPERSON: H'm.

MS MOLEFE: And if you think about it Chair. If we leave
before the inquiry has been completed, it would have been at
our disadvantage because then we would not have had the
20 opportunity if we left before to make our case in an inquiry.
So we would have left Eskom.

And I think that is what happened with the cloud on our
shoulders. What have they done? Because the inquiry has
not been completed.

So in my mind, it would have actually made it difficult for

me to move on and find employment without anyone questioning why I left because I would not have been given the opportunity to actually present my case.

So those were the main concerns that I had. Ja.

CHAIRPERSON: So you were concerned about issues of trust but you were willing to go back to work?

MS MOLEFE: Yes, Chair. And firstly I wanted to participate in the inquiry ...[intervenes]

CHAIRPERSON: In the inquiry.

10 **MS MOLEFE:** ...so that I could clear my name.

CHAIRPERSON: Yes.

MS MOLEFE: That was very important for me.

CHAIRPERSON: Yes.

MS MOLEFE: So that we can put those matters to rest.

CHAIRPERSON: Yes.

MS MOLEFE: And obviously giving them the benefit of the doubt ...[intervenes]

CHAIRPERSON: Ja.

MS MOLEFE: ...that they want to do an inquiry.

20 **CHAIRPERSON:** Yes.

MS MOLEFE: They do not know what has been going on. I was quite willing to participate in that inquiry.

CHAIRPERSON: Yes.

MS MOLEFE: And I was quite confident Chair that it would clear me.

CHAIRPERSON: Yes.

MS MOLEFE: And one would have expected that once they received the outcome as well. You know, in your mind you think, once they...

Even if they have any doubt in their minds about yourself, if those things are put to rest, then they would be, you know, willing to work with you.

I suppose those are the things that were playing but I could clearly see that, you know, these people are not willing
10 to have us back, coming back to the office.

CHAIRPERSON: So you say the first thing Mr Romeo Khumalo said was that they understood that the correspondence you had sent to the chairperson indicated that you wanted to part ways.

MS MOLEFE: That is correct.

CHAIRPERSON: And you make it quite clear that that was not true.

MS MOLEFE: That is correct, Chair.

CHAIRPERSON: And but he, nevertheless, said maybe you
20 should talk about a separation package.

MS MOLEFE: Ja.

CHAIRPERSON: Because the inquiry was still going to take quite some time.

MS MOLEFE: That is correct, Chair.

CHAIRPERSON: Okay. And that is how you ended up

discussing the possible separation package?

MS MOLEFE: Yes, Chair.

CHAIRPERSON: It was initiated by their side.

MS MOLEFE: It was initiated by their side, Chair.

CHAIRPERSON: Yes.

MS MOLEFE: Ja.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Thank you, Chair. Ms Molefe, then take us to that letter. You can summarise it.

10 **CHAIRPERSON**: Mr Seleka?

ADV SELEKA SC: Yes, Chair?

CHAIRPERSON: To the extent that the letters speak for themselves, we might not... she might not need to go through it.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: She may highlight if there is some important feature.

ADV SELEKA SC: Correct, Chair.

20 **CHAIRPERSON**: But I think what is important is to go to how the settlement happened.

ADV SELEKA SC: Yes.

CHAIRPERSON: But if there is something that she wants to highlight in the letters, that is fine.

ADV SELEKA SC: Yes.

CHAIRPERSON: Because at this stage, what is clear from

her evidence is that when Mr Khumalo said they understood that she wanted to discuss separation, she made it clear that that is not what her letter said.

MS MOLEFE: That is correct, Chair.

CHAIRPERSON: Ja, ja.

MS MOLEFE: So this letter Chair to Ms Klein following the 8th of May meeting where she presented me with seeking to understand what was the basis of their proposal.

CHAIRPERSON: Yes.

10 **MS MOLEFE**: So in the main those are the questions I asked.

CHAIRPERSON: Yes.

MS MOLEFE: And you can see that I referred to also Mr Anton Minnaar.

CHAIRPERSON: Ja.

MS MOLEFE: Where I ask can I be furnished with certain information?

CHAIRPERSON: Yes.

20 **MS MOLEFE**: And essentially that – because already a package had been presented to me.

CHAIRPERSON: Yes.

MS MOLEFE: And I said before I consult let me ask for all the information required but I think I left the meeting, Chair, both on the – particularly on the 4th feeling that, you know, this board obviously want to part ways.

CHAIRPERSON: Yes.

MS MOLEFE: And that was my feeling in that meeting.

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you. Thank you, Ms Molefe. Then just tell the Chairperson how the settlement agreement – because we see it is different from that proposal.

MS MOLEFE: Ja.

ADV SELEKA SC: Which is a one pager, given to you –
10 you say given to you by Ms Klein in the meeting of the 8 May. The settlement agreement you will find on page 849 and it is a document of some length, considerable length. You can tell the Chairperson quickly how you received that and how it was concluded.

MS MOLEFE: Yes, Chair, and I see – Chair, this is not the final settlement agreement that I signed.

ADV SELEKA SC: Yes?

MS MOLEFE: And I am just looking at – ja, I presume this is the settlement ...[intervenes]

20 **CHAIRPERSON:** It is no signed either.

MS MOLEFE: It is...

CHAIRPERSON: Have you got the signed one, Mr Seleka.

ADV SELEKA SC: The indication that we have it in another Eskom bundle which I will look for.

CHAIRPERSON: But that is fine, she can talk to the main

features.

ADV SELEKA SC: Yes.

CHAIRPERSON: She can talk to the main features as long as we have got the settlement agreement.

ADV SELEKA SC: In Mr Tsotsi's bundle.

CHAIRPERSON: In the file. What were the main features of the settlement agreement that you reached with the board?

MS MOLEFE: Ja, Chair, and I have to think because I
10 think I have another copy elsewhere.

CHAIRPERSON: Ja.

MS MOLEFE: So which I did not submit because I thought you had the right one.

ADV SELEKA SC: We will print it out for you, Ma'am.

MS MOLEFE: Okay. If my memory serves me well, this is the first agreement that Ms Venete Klein would have sent to me, so I would have asked for ...[intervenes]

CHAIRPERSON: Which you rejected.

MS MOLEFE: So she sent me a – ja, which I rejected.
20 Because, if I recall, Chair, and I cannot remember because I was still writing to them on the 1 June, on the 3 June and so forth. I just want to – because the one that signed was eventually I think finalised on the 25th but Ms Venete Klein was not part of the discussion. It was – I received another one because we rejected this one with my lawyers and Mr

Khoza, sorry, then met with my lawyers to discuss my – the proposed agreement, settlement agreement.

So if I look at these things, there are certain things that – firstly, I think the 12 month package I said no to and this is the original one.

ADV SELEKA SC: I see.

MS MOLEFE: I think they talk about grant 8 and 9 but there was also – also grant 10 is also there on 4.5. But I think in addition to that, I think to the point earlier on, I
10 also ask for the six months that I would have served and I think they did grant me that, the six months notice period. So that is why I know that this is not the correct one.

ADV SELEKA SC: Yes, okay, so that – this one seems to go with the emails exchanged on page 847.

MS MOLEFE: Yes, so ...[intervenes]

ADV SELEKA SC: The first email is 11 June 2015 at 8.24. It is written by Ms Venete Klein.

MS MOLEFE: That is correct, Chair, so this is the one that Ms Venete would have sent to me. So remember that
20 she brought the proposal on the 8th which was that one page what we spoke about and then she sent me this proposal which is a draft settlement agreement which we then did not accept as well.

ADV SELEKA SC: I see.

MS MOLEFE: Ja.

ADV SELEKA SC: So we will provide ...[intervenes]

CHAIRPERSON: Well, let us talk about the settlement agreement.

ADV SELEKA SC: Yes.

CHAIRPERSON: I have understood from the board members who testified that in effect the principle that they followed was that the executives should be paid around 12 month's salary/remuneration and Mr Marokane testified that what he ultimately got in terms of the settlement was
10 more or less equivalent to a year's salary/remuneration.

I think Mr Matona also said on his settlement, what he was paid was about a year's of 12 months' salary, I leave out other things. Was yours different on this – in regard to this point or was it not?

MS MOLEFE: Chair, it was not.

CHAIRPERSON: Ja.

MS MOLEFE: It was different, sorry.

CHAIRPERSON: Ja.

MS MOLEFE: It was different. As I indicated that that is
20 what they proposed.

CHAIRPERSON: Ja.

MS MOLEFE: And mine took a lot longer.

CHAIRPERSON: Ja.

MS MOLEFE: In fact, Chair, to digress a little bit, I also met with Mr Romeo Kumalo who was convincing me to

accept that package.

CHAIRPERSON: Yes.

MS MOLEFE: And I said to him I have got a serious problem, I should have participated in the inquiry because for me, my professional integrity and being able to find employment was the most important thing when people out there know that you have left Eskom under a cloud, it has not been made clear why you left. So for me that was very important.

10 And when he reached out to me to say I need – I am coming to you in my personal capacity and I am advising you please consider taking this. He said actually the Minister is not going to allow, you know, giving you more and I said to him it is not about being greedy, I am looking at my situation, what has happened, it could take me even much longer to find employment so I do not believe that you are compensating us enough if you want us to leave and he – and I actually said to him otherwise I am going to go to court. That is what I said to him and he said to me
20 you do not want to take on the state.

 So in fact I think I mentioned – I do not know if I mentioned in my testimony, I was actually prepared to go to court. I was preparing to go to court but the only reason that I decided not to is that it was taking a toll on my family, especially my mother. So I eventually sat down

with him but they brought Mr Khoza to come and speak to my lawyers but I refused the 12 month's deal.

So they then added six months notice period because we would have had six months notice period. So essentially mine would have been higher from that perspective. I did hear the other – ja, the other testimonies.

CHAIRPERSON: Yes.

MS MOLEFE: That – ja.

10 **CHAIRPERSON:** Okay, so do you think it is – yours may well have been about – or equal to more or less 18 months' salary?

MS MOLEFE: Yes, that is correct, Chair, including the ...[intervenes]

CHAIRPERSON: Because the negotiations with you took much longer.

MS MOLEFE: Ja.

CHAIRPERSON: And maybe because you were also saying you were thinking of going to court and so on.

20 **MS MOLEFE:** That is correct, Chair.

CHAIRPERSON: Yes. So ultimately you settled on that basis.

MS MOLEFE: Ultimately I settled, Chair, ja.

CHAIRPERSON: Yes, yes. So but with you it seems they were even prepared to pay much more than they were

prepared to pay the others for you to go.

MS MOLEFE: Ja and I really cannot tell what their motive was, whether they were prepared to pay me more than the others or what – how they were thinking about this but my conversations really with Mr Zethembe Khoza and Mr Kumalo, I made it clear that I am taking the matter to court.

CHAIRPERSON: Yes.

MS MOLEFE: So I did not tell them when I decided not
10 but obviously the fact that we sat down and – ja.

CHAIRPERSON: Yes.

MS MOLEFE: I am aware that my lawyer did tell me Zethembe Khoza that this lady is prepared to court and maybe that is why they decided to offer more.

CHAIRPERSON: But, interestingly, in all of this there was nothing that they were saying to you you have done wrong, is that right?

MS MOLEFE: No, Chair, there was nothing that they were saying ...[intervenes]

20 **CHAIRPERSON:** The discussion was never on the basis that there was something wrong you had done.

MS MOLEFE: No, there was nothing and I guess we were looking at what is happening in the media, what is being said, we have not been cleared, our name has not been cleared.

CHAIRPERSON: Ja.

MS MOLEFE: They want us to leave before the inquiry is concluded.

CHAIRPERSON: Yes.

MS MOLEFE: So we were always concerned about that, ja.

CHAIRPERSON: Now when you said to Mr Kumalo you were thinking of going to court had you – were you clear in your own mind probably with the benefit of legal advice as
10 to what you were going to go to court about, if you went court?

MS MOLEFE: So, Chair, in my ...[intervenes]

CHAIRPERSON: In other words, what you were going to be asking the court to do?

MS MOLEFE: Ja and I suppose, you know, under a lot of emotion, you are not even thinking about the outcome but all you are thinking about at that is that clearly these suspensions are unlawful and you do have a leg to stand on. So if we cannot agree outside of the court, let us
20 rather go to court. Ja.

CHAIRPERSON: So, in your own mind, what you had in mind is that you would go to court to challenge the suspensions?

MS MOLEFE: Yes. I was going to challenge the suspensions, Chair.

CHAIRPERSON: And I take it if you challenged the suspensions successfully it would mean going back to work?

MS MOLEFE: Chair, I mean, that is what it meant.

CHAIRPERSON: That is what it would have meant, ja.

MS MOLEFE: Ja and I mean there is a lot of correspondence I think that we shared and at some point I thought I had written to them.

CHAIRPERSON: Ja.

10 **MS MOLEFE:** Actually indicating that I had been with the company for nine years.

CHAIRPERSON: Yes.

MS MOLEFE: And I had not had any intention of leaving the company until I was suspended.

CHAIRPERSON: Yes.

MS MOLEFE: So – and I mean, I could not find that letter but if I recall I think I did write a letter, a very long letter to them to just express my dissatisfaction around how they have treated us and how they have dealt with this matter.

20 **CHAIRPERSON:** Yes.

MS MOLEFE: And I was essentially saying that I have never had any intentions of leaving the company.

CHAIRPERSON: Yes.

MS MOLEFE: I had been with the company for nine years and so forth.

CHAIRPERSON: Yes.

MS MOLEFE: Ja. But it was - as I said, when I was called to have the discussion to say please take – accept what we are giving you, this thing is bigger than you think.

CHAIRPERSON: Ja.

MS MOLEFE: I thought, you know what, let the courts decide, you know?

CHAIRPERSON: Ja.

MS MOLEFE: Ja.

10 **CHAIRPERSON:** Well, if you do find that letter, communicate with the legal team.

MS MOLEFE: Ja.

CHAIRPERSON: So that we can have it.

MS MOLEFE: Ja.

CHAIRPERSON: Okay, alright. And did it take you long before you got another job?

MS MOLEFE: Chair ...[intervenes]

CHAIRPERSON: After the settlement?

20 **MS MOLEFE:** I think I left 2016 – sorry, 2015, I got a job 2016.

CHAIRPERSON: Okay.

MS MOLEFE: But I suppose one of the things actually that came from time to time when you were - you know, unless people knew you personally it was difficult for them to offer. I mean, I did go to interviews, a few of the offers I

got were a lot lower than, you know, my position at Eskom, so obviously I would have had to take quite a big cut in my salary.

Even, you know, going into my new employment now, I went in as a Deputy CFO to re-establish my career but there were one or two potential employers that actually wanted to know what had I – what have you done at Eskom why have you been suspended? So it took a while but I think initially I decided let me rather just, you know, take a
10 step back, you know, get over this Eskom matter before I become active but I found employment by July 2016. Ja.

CHAIRPERSON: Okay, alright.

MS MOLEFE: So it took me a year.

CHAIRPERSON: Okay, alright. Mr Seleka?

ADV SELEKA SC: Just two aspects from my side Chairperson. The settlement agreement is here Ms Molefe, which is signed by yourself and Dr Ngubane. Chairperson just for completeness I will beg leave to hand it up and to give the witness as well a copy to confirm.

20 Chairperson I – just before I asked the witness about it I think we will have insert it with your permission Chairperson under page 285.

CHAIRPERSON: I think shouldn't replace the one that is at the end of the bundle with this one.

ADV SELEKA SC: That one belongs there because it is a

draft which was attached to the email.

CHAIRPERSON: Oh.

ADV SELEKA SC: I think the mistake was on my part.

CHAIRPERSON: Oh.

ADV SELEKA SC: So this one is the final, the sequel to that draft.

CHAIRPERSON: It could be a separate exhibit on its own.

ADV SELEKA SC: Either that or we add it Chairperson if you turn to page 285 provision is made for the settlement
10 agreement there.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Just two aspects from my side Chairperson. The settlement agreement is here Ms Molefe, which is signed.

CHAIRPERSON: But there was no settlement agreement, provision was made but there was no settlement agreement.

ADV SELEKA SC: But there was no settlement, yes correct chair.

20 **CHAIRPERSON:** 285.

ADV SELEKA SC: 285. So we will paginate it accordingly and inserted there.

CHAIRPERSON: Okay, no that is fine. Ms Molefe do you confirm that this is the settlement agreement that you signed with Eskom?

MS MOLEFE: That is correct Chair, this is the correct one.

CHAIRPERSON: Yes.

ADV SELEKA SC: That is the final one.

MS MOLEFE: That is the final one.

CHAIRPERSON: Okay, no that is fine.

ADV SELEKA SC: We will regularise it Chair.

CHAIRPERSON: That was 25 June 2015 when it was signed, was the Dentons – when was the Dentons report –
10 when was the inquiry finalised?

MS MOLEFE: The report is dated 2 July 2015, but they explained that they were directed on the 11th of June to provide a report, so they then stopped the investigation.

CHAIRPERSON: So it doesn't seem that it would have been correct as at the 4th of May for a member of the Board to say that the inquiry could still take much longer, because, one, the inquiry had been given three months to complete the investigation and it looks like it completed the investigation more or less within that time. I don't
20 know exactly when they started but I don't they started before April.

ADV SELEKA SC: They say the commence date was 20 April.

MS MOLEFE: Ja, 20 so it looks like they completed within the time that they were given or more or less, 20 April, 20

May, 20 June, ja. Ja, okay alright.

I think that this will be put in here.

ADV SELEKA SC: We will regularise that Chair.

CHAIRPERSON: Yes the other question that I have been asking I asked all the other executives, I already asked you about the Board's position or at least certain members of the Board, Dr Ngubane and Ms Klein, that they had no issues with the executives coming back, actually they expected them to come back. You have dealt with that to
10 say you don't believe that.

MS MOLEFE: No, I don't believe that Chair, I mean on the 4th of May already and that's why I was emphasizing the point of I almost went into a dialogue with Mr Kumalo, because they – I suppose they didn't want to be seen to be the one saying it, but we actually went to and fro, because eventually he was saying would you look at something like this and I mean I think I did mention they said Mr Tsotsi has messed the process up so it is going to take a lot longer than what they thought and they said they don't
20 know when it is going to completed, he did say that to me.

CHAIRPERSON: Well actually we nearly missed something Mr Seleka.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Somebody who reported to you apparently told you on the 10th of March about something

that Mr Koko had talked to her about. Tell me about that?

MS MOLEFE: Yes Chair it was Ms Nonkulequ Veletti now Dlameni on the 10th of March we had our finance strategy session. I think around lunch time or one of the breaks she came to me and said that Mr Koko has been calling her and he wants her to come to Melrose Arch immediately, so she was saying do I know anything about that, what is going on at Melrose Arch, and I said I don't know so ask Mr Koko to call me if he wants you to go there, because we
10 are busy here.

So that was the end of it Chair and she said to me I will tell him, and I never heard from Mr Koko. However I can confirm what Mr Marokane said earlier on, he then you know called me in the evening of the 10th to say you know I have just had – be to Ms Daniels house, can I see you, and he then told me that it looks like executives have been called to Melrose Arch to be informed that their bosses are going to be suspended the following day, are they ready to take over, from them.

20 **CHAIRPERSON:** The senior managers, or executives?

MS MOLEFE: No Mr Marokane was relating this to me indicating that Ms Suzanne Daniels had said that it looks like people are being called to Melrose Arch if I am not mistaken to say that executives would be suspended tomorrow, ja, and I mean on the day as well of the

suspension while I was waiting I kept on getting text messages from general manager that is it true that you are being suspended and I said but where did you hear from and they said well it is all over the offices now, most people are hearing this, it is rumoured that you are going to be suspended today, before I got to be suspended ja.

CHAIRPERSON: Yes, now the meeting that Ms – is it Valetti ...[intervenes]

MS MOLEFE: Nonquleko Valetti Dlamini.

10 **CHAIRPERSON:** Yes, the – she said she had received messages or she had been called by Mr Koko, who was saying she should come to a meeting at Melrose Arch.

ADV SELEKA SC: Ja, to meet some people.

CHAIRPERSON: To meet some people?

MS MOLEFE: Some people.

CHAIRPERSON: Yes, but there was no information who those people was?

MS MOLEFE: No she did not mention.

CHAIRPERSON: And do you know whether why she would
20 have been selected, is that something that she shared with you or did she know?

MS MOLEFE: I do not think she knew as well Chair.

CHAIRPERSON: As well ja. Did she finally act in one position or another?

MS MOLEFE: She acted as the finance director when I

got this outstanding.

CHAIRPERSON: In whose position did she ...[intervenes]

MS MOLEFE: My position when I got suspended.

CHAIRPERSON: Your position, oh, okay, okay. Thank you. Is there anything else that we haven't covered that you think is important, you want to mention?

MS MOLEFE: No Chair I think we have covered of most of the 39 and most important points.

CHAIRPERSON: Yes, okay.

10 **MS MOLEFE:** There is obviously quite a lot but I can't think of anything else.

CHAIRPERSON: Mr Seleka are you done?

ADV SELEKA SC: I am done Chair, I think that issue you're right, needed to be asked, I would have done so, but you may want for the purposes of those who are wondering why did you leave Eskom refer them Eskom's media release, which said that Molefe was never suspected of any negligence, misconduct of wrongdoing, and you will find it on page 265 of your bundle.

20 **MS MOLEFE:** 265.

ADV SELEKA SC: Chair there are other aspects – 265. There are other aspects which Mr Molefe deals with her in her supplementary affidavit.

CHAIRPERSON: Yes.

ADV SELEKA SC: But they are like curriculum issues.

They are matters ancillary to the main points.

CHAIRPERSON: Yes, okay do you want to tell me what they are, maybe they are important?

ADV SELEKA SC: Maybe they are. There's one where she talks about her meeting with Mr Tsotsi, after Mr Tsotsi had been removed.

CHAIRPERSON: Yes I have read that, that – I think that is something that she can just – as long as her affidavit is confirmed that's true I don't there's much that turns on
10 that, she met and she sets out in the affidavit.

MS MOLEFE: Ja.

CHAIRPERSON: The discussion that took place ja.

MS MOLEFE: Ja, that I was not supposed to be suspended yes.

CHAIRPERSON: Yes, ja, ja.

MS MOLEFE: And that he did say that to me Chair.

CHAIRPERSON: Ja, he said you were not supposed to have been suspended, ja, ja.

MS MOLEFE: Yes.

20 **ADV SELEKA SC:** You have also Ms Molefe mentioned an additional private meeting which Mr Kumalo had with you outside of their delegation.

MS MOLEFE: Yes Chair that ...[intervenes]

CHAIRPERSON: That was the one where he said he was there in his personal capacity.

MS MOLEFE: That is correct Chair.

CHAIRPERSON: Yes, you dealt with that one.

MS MOLEFE: Where he had wanted me to accept the package.

CHAIRPERSON: Yes, ja you dealt with that.

MS MOLEFE: The package ja and when I indicated that I would want to go out, consider going to court he said I should not take on the State.

ADV SELEKA SC: I think that is the one that is important
10 Chair, the last – well there may be another one, but the allegations that the FD had engaged with bidders during the bidding process.

MS MOLEFE: That is correct Chair.

CHAIRPERSON: Yes, yes, I might have thought she dealt with it but maybe it is because I read in her affidavit, because in her affidavit she sets out what the true position is. Do you want to say that quickly?

MS MOLEFE: Yes Chair I felt that having listened to both Dr Ngubane and Ms Venetta Klein referring to the matter it
20 is a matter that is hanging and I am aware of what they are talking about. During the tenure of the old Board when the Board was just with the investigation of Mr Matjilla on the TNA matter Mr Matjilla himself brought to the Chairman at the time, Mr Tsotsi, to complain that I have been engaging suppliers during a bidding process, so Mr Tsotsi mentioned

that at one of the Board meetings where we were discussing these TNA matters, or this investigation rather so the Board was hearing for the first time, I was hearing it for the first time, so I then persistently asked him in front of the Board to investigate the matter, and I even went as far as going to his office to say you cannot leave this matter unattended to, you need to investigate, because I do not know what Mr Matjilla is referring to. Eventually he wrote me a letter and unfortunately the letter I cannot find

10 Chair, it was written to me and sent to me on my Eskom email by the Executive in the Office of the Chairman at that time, Mr Dlamini, that he has found – Mr Tsotsi said I found no evidence that it is sufficient enough for me to investigate, I believe these investigations are baseless and unfounded, so I did receive the letter, because I made sure that I get such a letter, because I felt that the allegations were very serious.

So when it was – it came out here I could only think that that is the only matter that I know which I persistently

20 requested that it be investigated, ja.

CHAIRPERSON: Okay. Is everything covered now?

ADV SELEKA SC: Ja, the important question of course Ms Molefe is whether at the suspension was that given as a reason for your suspension?

MS MOLEFE: No it was not Chair. I think the Board was

quite clear or Mr Tsotsi in the meeting together with the Board that they want us to step aside so that ...[intervenes]

CHAIRPERSON: Ja, okay, thank you very much Ms Molefe for coming to give evidence and to assist the Commission. If something else arises we will ask you to come back, but thank you very much, you are now excused.

MS MOLEFE: Thank you Chair.

CHAIRPERSON: We are going to adjourn now, tomorrow
10 which witness is coming?

ADV SELEKA SC: We have three, we have scheduled three witnesses Chairperson, Ms Veletti who has been mentioned, Mr Baloyi and Ms Venetta Klein.

CHAIRPERSON: Ja okay alright, those are the witnesses for tomorrow.

ADV SELEKA SC: For tomorrow I understand there's strike action, I don't know whether it impacts on us.

CHAIRPERSON: I don't want to say anything publically.

ADV SELEKA SC: Oh, okay.

20 **CHAIRPERSON:** I am hoping that it will be possible for the Commission to continue with its work because it has got very little time left in order to finish its work and its work is in the public interest, so as things stand we will hear the evidence of those witnesses tomorrow.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Starting at ten o' clock. We adjourn.

ADVE SELEKE SC: Thank you Chair.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 7 OCTOBER 2020

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