

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

07 OCTOBER 2020

DAY 278



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 07 OCTOBER 2020

CHAIRPERSON: Good morning Mr Seleka, good morning everybody.

ADV SELEKA SC: Morning Chairperson.

CHAIRPERSON: Are you ready?

ADV SELEKA SC: We are ready Chairperson.

CHAIRPERSON: Okay.

ADV SELEKA SC: The first witness for today Chairperson is Ms Nonkululeko Dlamini formerly Veleti

10 **CHAIRPERSON:** Yes.

ADV SELEKA SC: And she is ready to take the oath.

CHAIRPERSON: Please administer the oath or affirmation?

REGISTRAR: Please state your full names for the record?

MS DLAMINI: I am Nonkululeko Sylvia Dlamini.

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

MS DLAMINI: No I do not.

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

MS DLAMINI: I do.

ADV SELEKA SC: Do you swear that the evidence that 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 DLAMINI: So help me God.

CHAIRPERSON: Thank you; you may be seated Ms Dlamini.

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: Hm.

ADV SELEKA SC: Ms Dlamini is legally represented Chair perhaps the Advocate could place himself on record?

CHAIRPERSON: Yes. You can do it from where you are just switch on the microphone, yes.

10 **ADV STUBBS:** Thank you Deputy Chief Justice and thank you Mr Seleka. My name is Mkhululi Stubbs. I am from the Johannesburg Bar.

CHAIRPERSON: Thank you.

ADV SELEKA SC: Thank you Mr Stubbs. Chairperson for this witness we will use Eskom Bundle 10 and in that file it will be Exhibit U21.

CHAIRPERSON: Yes okay.

ADV SELEKA SC: Thank you Chair. Ms Dlamini you – is it Dlamini. I should refer you as Ms Dlamini, is that correct?

20 **MS DLAMINI:** Yes that is correct.

ADV SELEKA SC: Yes thanks. So the file is also there before you; Eskom Bundle 10. You will see the documentation relating to you is under U21 and that is the only documentation which we will refer you to. Ms Dlamini you have provided the commission with an affidavit which

is contained on page – and I will be referring you to pages – page numbers on the top left corner of the document which are the page numbers in black and not the ones in red. So your affidavit is on page 411. Can you see that? That is affidavit:

“I, the undersigned Nonkululeko Dlamini.”

You see that? It starts from that page and it runs up to page 416.

MS DLAMINI: Yes I see it.

10 **ADV SELEKA SC**: You see that. Just keep your microphone on. You confirm the signature to be yours on that page – 416?

MS DLAMINI: Yes I confirm Chair.

ADV SELEKA SC: And the date is 7 October 2020?

MS DLAMINI: 7 September.

ADV SELEKA SC: 7 September 2020 I beg your pardon. You see that?

MS DLAMINI: Yes thank you.

ADV SELEKA SC: Thank you. It has just one annexure to
20 it. Chairperson may I beg leave to have the affidavit – well it is the only document Chairperson Exhibit U21 with the annexure thereto? U – indeed Chairperson. Chairperson.

CHAIRPERSON: The affidavit of Ms Nonkululeko Dlamini starting at page 411 is admitted and will be marked as Exhibit U21.

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: Hm.

ADV SELEKA SC: Ms Dlamini thank you for making yourself available to assist the commission. Just for the purposes of information and to the Chairperson your – you have offered to assist the commission in regard to a matter relating to the suspension of the executives. If you talk to the microphone.

MS DLAMINI: Yes Chairperson.

10 **ADV SELEKA SC:** Yes. And just before we go into that could you tell the Chairperson please what is your profession?

MS DLAMINI: Chairperson I am by profession I am a qualified Chartered Accountant so I trained through getting my junior degree at Wits University and the higher diploma from the University of Natal. And I did my articles through Ernst and Young and then qualified as a Chartered Accountant.

20 **ADV SELEKA SC:** I see. The particular issue before us the suspension of the executives relates to Eskom executives who were suspended on 11 March 2015 three of them and the other one on 12 March 2015. In an affidavit of one of those executives Ms Tsholofelo Molefe which we provided you with you will recall. She makes – she states to this commission that on the 10 March 2015.

CHAIRPERSON: I am sorry Mr Seleka. Do you want to let Ms Dlamini tell me first when she joined Eskom and what position she held at the time of the suspensions?

ADV SELEKA SC: Indeed Chairperson.

MS DLAMINI: Thank you Chairperson. So I joined Eskom in 2003 it was 1 October. I joined as a Management Accountant at the corporate level and I stayed in that position for about three years.

I was then promoted still within the same
10 department to be one level higher in that – in the same space which was basically a position that was consolidating on all the information from the various divisions of Eskom and reporting to EXCO and information that would ultimately get to the board of Eskom. Basically financial reporting and operations of Eskom.

Around 2006 at the beginning of 2006 I then started as a finance manager in the division called Group Capital where the whole building of the new power station – power stations at Eskom was being executed and I was basically
20 the finance person that was supporting all the project managers in the projects with a team of course and I was then consolidating again into the division information that would again get to the EXCO and the board.

I was reporting at the point of starting in that role in 2006 to a General Manager so there was a role called

Finance Manager that reported to General Manager Finance who would be responsible for other functions within the division but still finance.

She resigned from the organisation about eighteen months later when I was a finance manager reporting to her. And – and therefore around I think about mid-2008 I was then promoted to be the General Manager Finance still for the Group Capital Program and therefore I was still largely responsible for what was about financials of the
10 projects but I had to take other roles like supporting HR and other elements within the division and had a broader team to – to support and basically reporting to me.

Around – so that was around 2008 and 2011 I think it was Eskom went through quite a huge restructuring and transformation and in that process Shared Services was formed and was required to basically support the whole of Eskom with transactional processes basically to try and drive efficiencies and make sure that we standardise ways of doing things and work from one system. And it was a
20 Shared Services that was not only focussing on finances. It had the finance element which was about accounts payable, things that are repetitive and transactional.

It also built in fleet management. Eskom has a very huge fleet across the country and we needed to basically consolidate that function to get efficiencies in the

procurement processes. But also to be able to support the business because you would find one business with vehicles that they do not need while others are going to buy vehicles and it was about trying to get the culture of sharing in where – for the parts of the business that were in the same vicinity.

It – the shared services centre also took care of some HR processes that is the hire to retire where they were not necessarily strategic but could be transactional.

10 So it had about five functions in it.

So we set it up in 2011. It had another element called Master Data Management basically to clean the data in the organisation. So it started in 2011 where we had to work with the organisation and pull the people into this unit called Shared Services which we achieved.

In 2011/12/13 we were going through really the setup and stabilising. But around 2014 it had fully stabilised and all the issues were resolved.

20 And around 2014 Eskom was also going through quite significant financial challenges amongst others you know besides load shedding and other issues that were a challenge. And in that process including the fact that the tariff was just never enough to cover the financial needs of the business.

So in the – in around I think it was the beginning of

2014 or even earlier there was a project to – that was designed with the assistance of external consultants. It was called Business Productivity Program. And really it was looking across again the business to extract efficiencies and to make sure that whether it be procurement, maintenance and other stuff we were doing work more efficiently.

If I recall at that point in time there was a gap of about 225 billion in the tariff application that we had made.
10 And the understanding was that the business had to extract close to 70 billion to basically assist in closing the gap.

So I was not part of the design of the program but I was then requested to take over when it moved to implementation phase and it reported to the Chief Financial Officer or the Finance Director.

And that was the role I took over at the beginning of 2014. And for most of that year and it was really a virtual structure which reported to the board again and EXCO to basically track whether we were getting these savings
20 because the idea was to get to 70 billion over a period of about five years.

And at the start it would be slow but we were expecting it to pick up so virtually I was managing a team that was coordinating the structure across the business and reporting that information both to EXCO and it

reported to a board sub-committee called Finance Investment Committee on frequent intervals.

And that was at the time I then was requested – that was most of 2014 and in 2015 March that is when the suspensions then happened.

CHAIRPERSON: So what was your position in March 2015?

MS DLAMINI: So I was still a senior General Manager in the Shared Services because when I took over the
10 business productivity I did not have to relinquish that role but it was not so demanding.

CHAIRPERSON: Okay.

MS DLAMINI: So I took more accountability and activity on the business productivity program. So I was Shared Services Senior General Manager.

CHAIRPERSON: And did you report to Ms Molefe?

MS DLAMINI: I reported to Ms Molefe yes.

CHAIRPERSON: Okay alright. Mr Seleka.

ADV SELEKA SC: Thank you Chair. Yes then Ms Dlamini
20 let us go right into what Ms Molefe has said and you deal with that aspect in your affidavit. Being that on the 10 March 2015 you received telephone calls from Mr Koko. If you could please tell the Chairperson where were you when the calls were received and what were your activities at the time of the telephone calls being received from Mr Koko?

MS DLAMINI: Yes. So Chair it was – it was the week of the 9 March so we had a finance strat session – strategy session where we – we went as a finance team. So Ms Molefe as the Chief Financial Officer had probably nine or ten people reporting to her and I was one of them.

So we had scheduled in time to be spending two days at a venue called – at the time it was called Eskom College I think it is now called Eskom Academy of Learning. We were scheduled to spend two full days the
10 9th and the 10th at the venue with the assistance of a facilitator to go through this finance strategy session.

The 9th – the 9th being the first day started late. We did not start early. I cannot remember but we started probably close to midday so we went on for most of – well for the rest of the day once we started.

And we continued on the 10th – we started – I think we started on time on that day. And we broke – we took a break for lunch I think it would have been around twelve because the program was then packed having lost a day
20 the day before.

So we – we went for lunch and the lunch was in the same venue. So we had board rooms downstairs and I think the lunch venue you had to go upstairs. We spent about an hour there.

So when we finished, we were to start you know

around about one I think it was. So we were to start and I received a call as we were walking back to the venue and we were walking in a group.

Ms Molefe was there and the other team members – the colleagues were – we were walking together. And in – I picked up the call and it was Mr Koko and he then asked as much as I might not report – repeat it word for word but he enquired where I was and I indicated I was there at a strategy session at Eskom College.

10 He requested that I meet with him at Melrose Arch quite urgently. And my response was well we are at a strategy session I may not be able to leave right now. And I think we had quite – it was quite a quick conversation and it sounded urgent.

And at that moment because we were walking in a group and Ms Molefe was there and instinctively there was no conversation before that. I then said to her, do you know what is happening at Melrose Arch because I have just received a call from Mr Koko. And really it was to
20 determine whether it was critical that I go there given that generally when you are at a strategy session it is usually a period that you try not to disturb with work issues.

And because in my role in Shared Services and Business Productivity Program I worked with all the executives across – across. It was a function – well both

functions required that I support the business across – so I did have a lot of interaction with various executives at different times. And therefore, to check the importance of the requirement to be at Melrose Arch with Ms Molefe was just to assist if it would be okay for me to leave and – and would she know what was happening there.

So that was quite a quick conversation because it was just as the facilitators were waiting for us to start. And I then did indicate to him that I – I cannot actually
10 leave the strategy session right now and I have engaged Ms Molefe. It is not advisable that I leave. So that was the engagement.

ADV SELEKA SC: Could you tell the Chairperson your – you say you were working with a number of executives but you have also earlier said to the Chairperson that you reported to Ms Molefe, is that correct?

MS DLAMINI: Yes functionally Chair I reported to Ms Molefe because I was part of the finance team and generally the projects I was leading were led in the finance
20 space. However because issues were around how operations were run and each of the divisions had their own finance functions and a lot of decisions to make the projects successful needed executives.

I did interact a lot. I mean if you look at the Shared Services Centre it had a significant HR leg and it meant

that I was interacting with the HR team not only the executives but also the general managers below. And basically the whole organisation.

If you look at the business productivity program it touched on maintenance issues in terms of how efficiently we were to do maintenance. It touched on primary energy issues in terms of coal procurement and so on. So indeed I – I interacted with all executives generally in my role.

ADV SELEKA SC: Yes. When you say you interacted with
10 them does that mean or does not that you are reporting to them because you used the word functional reporting to Ms Molefe. What would you use in relation to the other executives? Is it just interacting with them?

MS DLAMINI: Yes – so functionally I reported to Ms Molefe because

1. Any leave approval on my whereabouts were under her leadership.

But in terms of the delivery on the projects everybody was relevant and therefore I – I could be engaging an executive
20 that is responsible for maintenance or even procurement to understand how they were doing in that division in relation to the program that we were running. So when I say I interacted it was also in line with the function of making sure that the projects that I was running with were delivered.

I mean in Shared Services for instance if there was an issue with a vehicle or fleet issue and a particular division had issues I had to take responsibility and make sure issues were resolved.

If a supplier was not paid in a particular division and the complaint arose I had to take a lead in and showing that the issue is resolved. So because the functions were led in finance but were – were impacting the whole business we – we interacted with all executives
10 in that sense.

ADV SELEKA SC: Okay. So you are with your functional what?

MS DLAMINI: Functional executives.

CHAIRPERSON: Supervisor / manager.

ADV SELEKA SC: Ja your functional person you report to you are being called at this stage in a strategy session. You are in a strategy session with the person you are – report to. You have been called by Mr Koko you say and he is calling you to join him where he was? If you nod just
20 say yes.

MS DLAMINI: Yes. Yes Chair.

CHAIRPERSON: Yes was he already at Melrose Arch? Do you know that that was the position or was he somewhere with a view to also proceeding to that venue? Is that something that transpired in the discussion?

MS DLAMINI: Well not in that detail Chair but in the way that he indicated that it was urgent it sounded like he was already there.

CHAIRPERSON: Okay alright. Okay. Yes continue. Oh ja you then – you said you did not think you could join him because you – you were still busy in the session, is that right?

MS DLAMINI: Yes Chair. So – because we had a full day session at the Eskom College I indicated that I cannot join
10 your meeting because I am currently in a session. And in fact I checked with Ms Molefe basically to understand what was happening and to assess if it was something she knew about and whether it was something she believed I could leave the strategy session because Chair what would happen in certain instances you could be in a meeting with one executive but if you make an example of an issue that needed to be unlocked immediately and a particular executive needed that support it would happen that you leave one meeting to go – and because it was a full day
20 strategy session if it was a case you can leave this for thirty minutes and then come back because it does happen in strategy sessions where people have got urgent matters they leave and come back. But it was to assess for me whether the request from Mr Koko was more important than what Mr – Ms Molefe required us for at the college.

CHAIRPERSON: Yes and what did Ms Molefe say in response to you?

MS DLAMINI: No her response Chair was no you cannot go we need to be here for the day.

CHAIRPERSON: Yes. Going back to the conversation you had with Mr Koko. What did he say to you once you had told him that you did not think that you would be able to join him because you were busy in this session?

MS DLAMINI: Yes. Chair so I- I think in that short space
10 of time I did give him feedback that I actually cannot go – I cannot leave the meeting I am at now. And it – to my recollection it was around that time when I said I cannot join that he actually asked that I send him my CV in the meanwhile.

CHAIRPERSON: Yes. And what did you – did you agree to send him your CV?

MS DLAMINI: So we were rushing to – to the venue at the time and to my recollection I did say well I can send you the CV but I cannot join. But I had not assessed what it
20 was about because it was – I think when I – I just reflect it was a period of less than ten minutes from us walking from the venue of lunch to get into the venue of the strategy session and needing to start and having to check with Ms Molefe and go back. So it was quite a quick conversation.

CHAIRPERSON: Hm. So you – but you did ultimately

send him the CV on that day?

MS DLAMINI: Yes – So Chair we were at the Eskom College and I had my laptop and to my recollection I forwarded it to him. But because it was a strategy session Chair ordinarily you do not keep laptops and cell phones on. So I – I think I tried at some point to send it because you would have had a tea break somewhere in between. So I think I tried to send it but what then happened later is that as we were closer to finishing the session he followed
10 up having not received it. And it might have been a case of the network or because we were not at our workstations as such.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Thank you Chair. Just quickly Ma'am Dlamini the – you were being called from one meeting to the next if there is something urgent and you would come back. But would this – would that be in a situation like this where an executive – Group Executive is calling you to come outside of your work premises?

20 **MS DLAMINI:** So Chair Eskom itself had many venues. We were based at Megawatt.

ADV SELEKA SC: But may I add this? Sorry may I add this? Outside of your work premises to a shopping mall or a shopping centre something unrelated – a premise unrelated to Eskom?

MS DLAMINI: So it was a rare thing Chair it – I would not say it had happened many times. So as much as Eskom had Megawatt Park and other venues in Sunninghill and other areas generally it would be – it would be you are called; you are in Sunninghill you are called to come and meet an executive in Megawatt Park or it could be in – in – so we had offices in Pretoria, Menlyn and so on. But it was not – it was the first time that I got called to a venue like that.

10 **ADV SELEKA SC:** Yes. So this would have been strange to you that you should meet him at Melrose Arch? It would have been a strange request?

MS DLAMINI: Yes. Chair...

CHAIRPERSON: Or unusual.

ADV SELEKA SC: So not – not – so not straight because we – we were supporting executives with our functions. And – so maybe – and maybe that is – maybe it was a bit – a bit unique or different or unusual hence I decided to check what could be happening there and it is not a venue
20 that even at my – in my personal capacity I would have frequented that at any point in time.

ADV SELEKA SC: Yes. So when...

CHAIRPERSON: Did you say you did not – you did not get a chance to ask him the reason for him to ask you to go to that venue? Did you say you did not get to ask him that?

MS DLAMINI: So in that – in that few minutes of conversation Chair I would have asked but you know it was – I do not think there was a straight answer to say there is this happening. It was come it is quite urgent.

CHAIRPERSON: Oh okay.

MS DLAMINI: But as I say it was a short time and it sounded very urgent.

CHAIRPERSON: ja.

MS DLAMINI: When I – when I say – I said I could not
10 come and when I actually checked with Ms Molefe what was happening. So it was quite a quick conversation. I did check you know. Because generally when you are called for a meeting you also want to just assess what you need to prepare in terms of the various activities you might be working on. So I did ask but I do not think I necessarily got a specific response.

ADV SELEKA SC: Okay. When he asked for your CV did you ask him the reason for him asking for your CV?

MS DLAMINI: Yes so – so Chair because of the sequence
20 where – so he says come it is urgent and I say I cannot come. And he says; okay in the meanwhile you can send me your CV. I – and I may not recall specifically because the conversation again was quick. So I probably did ask but I do not recall a response.

Now again for an executive to ask for your

information like that was not a frequent thing but it had happened to me before because I think in 2009 or so or – no 2010 I was nominated for an Executive of the Year and it so happened that there was a request for me to provide information which was talking about my history; my career and it – so it is not a usual – frequent thing but it had happened to me once before and I provided that information.

And then I realised it was for the citation for the
10 award process and this was another round. And it being asked by an Executive it was not a usual thing but it was not something that was asked by a stranger of me.

ADV SELEKA SC: You say you tried to send the CV and you think there was... there might have been a connection issue. Mr Koko followed up. Could you tell the Chairperson, when you say he followed up, what does he say to you? Is he following up by telephone call?

CHAIRPERSON: Or maybe let us put it this way. After you had this conversation with Mr Koko and you checked with Ms
20 Molefe and Ms Molefe said no, she needed you to be in the session and therefore you did not go to Melrose Arch. Did you and Mr Koko speak to each other later in the day?

MS DLAMINI: Yes. So Chair, what actually happened is. So I did not go at lunch time. I went back to the session. And I think in between, I attempted to basically to forward

the CV at the time.

Then later in the day, I think the session would have finished around five, five-thirty. He followed up and requested that we meet later in the day.

CHAIRPERSON: He called you?

MS DLAMINI: Yes.

CHAIRPERSON: Mr Koko?

MS DLAMINI: Mr Koko called again to require that we meet ...[intervenes]

10 **CHAIRPERSON**: Are you able to say roundabout what time this might have been?

MS DLAMINI: So it would have been Chair, as the session finished which was around... with... I think it was anytime from five-thirty onwards but before six-thirty.

CHAIRPERSON: After five?

MS DLAMINI: Yes.

CHAIRPERSON: Yes. And did you meet them?

MS DLAMINI: So I was in Midrand already because the Eskom ...[intervenes]

20 **CHAIRPERSON**: You were?

MS DLAMINI: I was in Midrand.

CHAIRPERSON: Yes.

MS DLAMINI: Midrand has... that is where the Eskom Academy of Learning is. So we were there in the venue and...[intervenes]

CHAIRPERSON: That is where the session...?

MS DLAMINI: That is where the session was held.

CHAIRPERSON: Ja. Yes. That is the session with Ms Molefe and her team.

MS DLAMINI: Ms Molefe and the team.

CHAIRPERSON: Yes.

MS DLAMINI: And therefore, he did follow up later and requested that we meet. And to my recollection because it was not even a long meeting, hardly a 20-minutes meeting.

10 On my way from the Eskom College, home, I met him on the way. It might have been a café or a McDonald's restaurant but it was on my way after the session.

CHAIRPERSON: Oh, the two of you made arrangements and you met on your way home.

MS DLAMINI: Yes.

CHAIRPERSON: And you cannot remember whether it was at KFC or at McDonald's but one of the two?

MS DLAMINI: Yes, Chair.

20 **CHAIRPERSON:** Okay. And how did the conversation go this time?

MS DLAMINI: So in that conversation Chair, still he was following up that he did not receive the CV. And because I had not had a comprehensive conversation...

I do recall I left the car with my laptop to go into the venue where we were meeting and it was still about following

up about the CV, which I again checked, and it seemed he had not received.

What I do recall is that as I tried to check if I sent it, he did give me an alternative email address to say try and send it in this address and that was the conversation.

And at that point I was also trying to find out what was happening that required this information. And at that point in time, he related that there were suspensions that were going to happen and he was also getting suspended.

10 And he indicated that I might be asked to act in that role, in the role. Because there was, not in those words, there was chance that the FD was also in the list of suspensions.

Because if you just look at the Eskom role's at executive level, they are very technical. Engineers per division and then the support function. The functions in the Finance, HR.

So he indicated that he was getting suspended and there were other executives that were getting suspended. And that is when it transpired.

20 But when we had the conversation, it did not end with him telling me who had requested that he requests my CV. And the fact that he also was aware that he was also getting suspended.

And I know I tried to go there to understand, you know, why are the suspensions coming, what has happened.

Because I was not Chair aware.

And as much as I have not listened to all what has happened in the commission but I was not aware of the activities from the 6th to the 10th when I got a call.

I was not aware of all those activities. I was just continuing with my daily activities until I got that call from Mr Koko to go to Melrose Arch.

CHAIRPERSON: So he said he was going to be suspended and he said there was a possibility that the financial director
10 would be suspended as well?

MS DLAMINI: Yes, Chair and other executives as well. But he... I do not think he necessarily gave me the numbers of how many ...[intervenes]

CHAIRPERSON: Ja, what I wanted to find out whether those are the only names he mentioned in connection with suspension, namely himself and the financial director and he did not mention anybody else.

MS DLAMINI: To my recollection.

CHAIRPERSON: Yes, okay. Did you... did he indicate how
20 many people were going to be suspended?

MS DLAMINI: No, I do not recall specifically ...[intervenes]

CHAIRPERSON: Yes.

MS DLAMINI: ...him giving me all the names or that were going to be so many.

CHAIRPERSON: Yes.

MS DLAMINI: But I know he did mention himself.

CHAIRPERSON: Yes.

MS DLAMINI: And he did mention that the finance director.

CHAIRPERSON: And did you say he said that there was a possibility that you could be asked act in the position of the financial director?

MS DLAMINI: Yes. Yes, Chair.

CHAIRPERSON: Okay alright. What else transpired during that conversation?

10 **MS DLAMINI:** Chair, that really was the focus of him wanting to meet with... there was not much more that we discussed. I think we were not in that...[intervenes]

CHAIRPERSON: Oh.

MS DLAMINI: ...venue for more than 20-minutes because the first part was to try and open my laptop and get the CV to go. And then the other discussion was the suspension. So it was not a long conversation or a long time in that discussion. So there was not much else that transpired.

20 **CHAIRPERSON:** Did he tell you during this meeting who you were going to have met in Melrose Arch if you had made yourself available for that meeting during the day?

MS DLAMINI: No, he did not. And I did not ask either.

CHAIRPERSON: Yes.

MS DLAMINI: Because in the discussion... you know, the Melrose Arch, I... it was him that called and I was not even

aware who was with him. So I did not necessarily explore there, how many people.

But I got therefore a sense that it means the reason that he needed to meet me, probably is what he was going to discuss with me at Melrose Arch. But no, I did not ask the question who was at Melrose Arch.

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you, Chair. So Ma'am Dlamini, we... you confirming to the Chairperson that this was on the
10 10th of March 2015?

MS DLAMINI: [No audible reply]

ADV SELEKA SC: This meeting is on the 10th of March 2015.

MS DLAMINI: Oh, yes. Yes, Chair.

ADV SELEKA SC: You confirm to the Chairperson, your meeting with Mr Koko is in the evening... on the evening of that day, the 10th of March 2015. Correct?

MS DLAMINI: Yes, Chair.

ADV SELEKA SC: Okay. You confirm that he meets with
20 you, requesting you to provide him with your CV. Correct?

MS DLAMINI: Yes, Chair.

ADV SELEKA SC: And he, in the process, he tells you that he is going to be suspended along with other executives but he does not give you the number. You say you cannot recall?

MS DLAMINI: Yes, Chair not to my recollection.

ADV SELEKA SC: But he does indicate to you that the FD will be one of those executives and there is a possibility that you might be asked to act in her position.

MS DLAMINI: That is correct, Chair.

CHAIRPERSON: With regard to the FD, did you put... did he say she would be one of those to be suspended or she would be suspended? Or did she... did he say there was a possibility that she could also be suspended?

10 I thought earlier on you said... he said there was as possibility that the FD could also be suspended. Do you remember exactly what he said?

MS DLAMINI: Ja, Chair I think it was along the lines there is a possibility that the FD is going to be suspended.

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you, Chair. Did you... two things. One is your CV. In that meeting now with him, do you ask him: Why do you want my CV?

20 **MS DLAMINI**: I did Chair. So I did because it was very clearly urgent in the way that he needed it. But I did ask. And again, him being the executive at Exco and I basically operated one level below him.

It was not an interrogation in: I will not give you unless you tell me why you need me. I was just trying to understand what was happening that would require my CV.

ADV SELEKA SC: Yes. Because you were not applying for a job, were you?

MS DLAMINI: No, not internally Chair. I was outside.

ADV SELEKA SC: Yes. Now, was he aware that you are applying for a job?

MS DLAMINI: No, he was not.

ADV SELEKA SC: Did you ask him to source a job for you?

MS DLAMINI: No, I did not.

ADV SELEKA SC: So... I mean, if you are asking him: But
10 why do you want my CV? It is not you want to interrogate
him. It is just that you want to know where is my CV going?
Did you not want to know?

MS DLAMINI: No, I did. And I... as I indicated, I did ask
what it was going to be used for. So what... and what was...
Chair, what transpired therefore is that when he indicated
that there was an issue of suspensions and ...[intervenes]

CHAIRPERSON: The possibility that you could be asked to
act.

MS DLAMINI: The possibility that I could be asked to act.

20 **CHAIRPERSON:** H'm.

MS DLAMINI: And he did not necessarily indicate who was
asking him to collate CV's. Because one issue was: Why is
it that my CV is required? And the indication was that there
is a possibility that you may be asked to act.

And Chair, at that moment, my thoughts would have

been, it is probably a process that the board is coordinating, that he is coordinating for the board because any suspensions would be ideally handled at board level.

But I was not having a direct interaction with the board around a matter like that. But having... knowing that he was an Exco member and Exco interacted with the board, as much as he did not give direct responses and had requested though my CV, my assumption was that he was probably working with the board.

10 Not in a sense that it was necessarily me that was definitely going to act because we have heard a number of scenarios where the finance director left and another executive acted.

So we had quite a capable team at different times because I do recall that when one director left or finance director left, it was a period of six months where someone else acted.

20 So it was along the lines of there is a possibility. You are going to be acting. There is suspension. So I was not sure if he was collating of the board various information but there was not a direct response.

ADV SELEKA SC: So are you saying to the Chairperson, you understood his request for your CV to relate to the possibility of you going to act in the position of FD? You made that connection. Is that what you are saying to eh

Chair?

MS DLAMINI: Yes, Chair because at that moment, that was the only conversation that we had.

ADV SELEKA SC: Yes.

MS DLAMINI: I was not looking for a job. I was not aware of any other activity.

ADV SELEKA SC: And are you saying to the Chairperson that you got the impression that he is doing this exercise, the collation of CV's, on behalf of the board?

10 **MS DLAMINI:** Yes, Chair that was the only assumption I could make because a process would be managed at board level. So I would not know who would be. But a process that affects executives would be driver at board level.

ADV SELEKA SC: Yes. And in this case, the FD is still in her place. Your functional line of reporting. She is still in her place. So she has not left.

MS DLAMINI: Yes, Chair.

ADV SELEKA SC: Yes.

MS DLAMINI: She was there.

20 **ADV SELEKA SC:** This, which makes it even more strange, is it not?

MS DLAMINI: [No audible reply]

ADV SELEKA SC: Now, I am talking about the example. You were saying somebody, the FD had left previously and somebody acted in their position. But in this case, the FD is

still there and you are told beforehand of the possibility of a suspension, the possibility of you acting. All these things have not happened.

MS DLAMINI: That is correct, Chair. They have not happened.

CHAIRPERSON: But is it not how it would work Mr Seleka? You would not wait until the FD is out before you look for CV's. You would look for CV's before she leaves to see who is going to act because you might not suspend her if you do
10 not have somebody to act.

So that would be my expectation that the CV's would be asked for before the FD is suspended. Because as the board or whoever, the authority, it would be irresponsible to suspend without knowing whether you will get a suitable person to act in that position.

MS DLAMINI: H'm.

ADV SELEKA SC: Yes, Chair they will tell us when they come here.

CHAIRPERSON: [laughing]

20 **ADV SELEKA SC:** Because we understood that the suspensions by the board itself had not been decided. At least as of the 10th of March 2015.

CHAIRPERSON: Yes, but it is clear from what... from the evidence I have heard that there were certain people who were contemplating that the executives would be suspended.

So I think they were doing their homework. Yes. Okay let us continue.

ADV SELEKA SC: Thank you, Chair. Ms Dlamini, the meeting you had with Mr Koko, when you were at home, is it at Melrose Arch or somewhere else?

CHAIRPERSON: She said at KFC or McDonald's on her way home. I take it could not have been Melrose Arch. Was it, Ms Dlamini?

MS DLAMINI: Ja, Chair I never went to Melrose Arch.

10 **CHAIRPERSON:** Yes.

MS DLAMINI: Because at the time, I was asked to go. It was around midday.

CHAIRPERSON: Ja.

MS DLAMINI: And it was that moment I was walking with the team back to the venue.

CHAIRPERSON: Ja. And Melrose... the KFC or McDonald's that you talked about would be in Midrand or where would it be?

20 **MS DLAMINI:** Chair, it would have been around Midrand and I was trying to recall which one it would have been.

CHAIRPERSON: Ja.

MS DLAMINI: Because it was just on the way. I just could not figure out which one it was.

CHAIRPERSON: Ja, do not worry ...[intervenes]

MS DLAMINI: Which one ...[intervenes]

CHAIRPERSON: I do not think it is important which one it was.

MS DLAMINI: Ja.

CHAIRPERSON: Okay Mr Seleka, let us make some progress.

ADV SELEKA SC: Thank you, Chair. Yes. Mr Dlamini, you have seen Mr Koko's affidavit. And I want to read from the paragraph where he refers to you. You will recall he says about you:

10 “Ms Nonkululeko Dlamini was not only a colleague but a family friend. I called her on the day...”

 And the day he refers to is the 10th of March 2015.

 “...and we met for dinner in the evening in Midrand. I deny that I called her to come to Melrose Arch. Ms Nonkululeko Dlamini and I were very surprised when she was appointed the acting CFO after Ms Molefe was suspended.”

 Let us deal with ...[intervenes]

CHAIRPERSON: I am sorry. Where are you reading from?

20 Where do you find Mr Koko's affidavit?

ADV SELEKA SC: Chair, it is in one of the exhibit bundles.

CHAIRPERSON: Oh, not in this bundle?

ADV SELEKA SC: It is not in this bundle.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: It is... I do not think the Chairperson will

have it with him. But let me provide the Chairperson with... ja, it is in the bundle that I do not think the Chairperson will have there.

CHAIRPERSON: I think they must try and get maybe that bundle so that if I may need to check anything. I might pick up something else that I might want to have clarified by Ms Dlamini. But you can give me what you have. What you can give me in the meantime if you have got a spare?

ADV SELEKA SC: Yes, I do have.

10 **CHAIRPERSON:** H'm.

ADV SELEKA SC: I do have, Chairperson.

CHAIRPERSON: Okay.

ADV SELEKA SC: I beg leave to hand it up which is the affidavit of Mr Matshela Moses Koko. I have opened to the paragraph I am reading from.

CHAIRPERSON: So Ms Dlamini, it looks like Mr Koko denies that he called you and then asked you to go to a meeting at Melrose Arch on the 10th. What do you say about that?

20 **MS DLAMINI:** Chair, on the basis that the time the call came which was around lunchtime and on the basis that I doubt I would have dreamt up and decided to tell Ms Molefe that I am being called to Melrose Arch.

Because it was not something I had kind of rehearsed and knew that there was a meeting at Melrose Arch. Mr

Koko did call me around lunch time and requested that I meet with him at Melrose Arch. So I am not sure ...[intervenes]

CHAIRPERSON: So you are definite that he called you and that what he said to you during that conversation is what you have told me?

MS DLAMINI: Yes, Chair.

CHAIRPERSON: Yes, okay. What about what he is saying that the two of you did have dinner that evening, namely the evening of the 10th of March?

MS DLAMINI: Ja, Chair we met but we did not have dinner. It was a conversation or a meeting about...[intervenes]

CHAIRPERSON: And you said it took about 20-minutes?

MS DLAMINI: Ja, it was not a long meeting. It was about 20-minutes.

CHAIRPERSON: Yes. Mr Seleka.

ADV SELEKA SC: Thank you, Chairperson. Then he further says Ms Dlamini:

“I was very surprised. Ms Dlamini and I were very surprised that she was appointed the acting CFO after Ms Molefe was suspended.”

Your comment to that to the Chairperson.

MS DLAMINI: Ja. So Chair, as I indicated. My history with Eskom. I started in 2003 and I started working closely with Mr Koko as I started in 2006 in the Build Programme. He

was ...[intervenes]

CHAIRPERSON: I am sorry, Ms Dlamini. What paragraph are you reading from Mr Seleka?

ADV SELEKA SC: Yes. Ms Dlamini, that is the last sentence in the paragraph 47. Just... Mr Koko is saying, you and him were surprised.

CHAIRPERSON: Just hang on one second. I just want to know because I have been looking for it.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** And I realised that... okay alright.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay continue Ms Dlamini. You were responding to Mr Koko's assertion that the two of you were very surprised when you were appointed acting FD. What do you say to that?

MS DLAMINI: Ja. So Chair, we... as I indicate. Even in the sentence that talks about knowing each other. I have known him since I have started in the Build Programme. And I worked with the team, he led with him and other people.

20 So we worked together from 2006 in different roles. And the question of being surprised. When the announcement... or rather, when we were called to act, he was not there.

I actually did not see him since that evening until we were called in the boardroom on the ...[intervenes]

CHAIRPERSON: The 11th of March?

MS DLAMINI: In fact, I think we were called on the 12th.

CHAIRPERSON: On the 12th?

MS DLAMINI: So I may confuse the dates.

CHAIRPERSON: Yes.

MS DLAMINI: Because we were on the 10th at the college and the suspensions, I think, happened on the 11th and we were called in the morning of ...[intervenes]

CHAIRPERSON: 12.

MS DLAMINI: ...12 March.

10 **CHAIRPERSON:** Ja.

MS DLAMINI: And we were called by the... I received a call from the company secretary, Mr Malesela Phukubje and indicating that the chairperson of the board needed to see us or see me in the board room. And in the board room there was a few board members. It was ...[intervenes]

CHAIRPERSON: Yes. No, leave out who was there. What do you say what he says? He says the two of your were surprised. Were you surprised that you were appointed as acting FD?

20 **MS DLAMINI:** So Chair, it was not a surprise because I have heard it from Mr Koko ...[intervenes]

CHAIRPERSON: Yes.

MS DLAMINI: ...on the 10th.

CHAIRPERSON: Yes. Now when he says the two of you were surprised that you were appointed as acting FD, it

gives the impression that when you got the news, you were together. Were you together with him when you got the news that you were going to be appointed as acting FD?

MS DLAMINI: No, I was not Chair. And that is why I am explaining how it happened because we were called into a boardroom.

CHAIRPERSON: Yes.

MS DLAMINI: But he was not in the office.

CHAIRPERSON: Ja.

10 **MS DLAMINI:** He was not in the office.

CHAIRPERSON: He was not there.

MS DLAMINI: No.

CHAIRPERSON: Did you talk to him on that day, on the 12th?

MS DLAMINI: No, Chairman.

CHAIRPERSON: You did not talk to him?

MS DLAMINI: Ja. On that day, the activities just rolled into communicating with lenders and other people. So I was not with him.

20 **CHAIRPERSON:** Yes. Did he call you either on that day, namely the 12th of the following day to congratulate you and the two of you had a discussion?

MS DLAMINI: No, not... he did not call to congratulate Chair.

CHAIRPERSON: H'm. Did you ever at any stage convey to

him that you were surprised that you were appointed to act as FD?

MS DLAMINI: No, Chair.

CHAIRPERSON: So you do not know where he gets this idea from that you were surprised when you were appointed acting FD or do you?

MS DLAMINI: No, Chair. So I do not know where he gets the idea because he... all the time, he had indicated and it was a definite thing yet. And therefore, from the perspective
10 of it happening.

Obviously, it was not a comfortable period. It was not... it was a nerve wrecking period because a lot was happening in the organisation.

CHAIRPERSON: Yes.

MS DLAMINI: But it was not a case of, you know, you have been appointed. Congratulations.

CHAIRPERSON: Ja.

MS DLAMINI: We are so surprised because we never had that conversation.

20 **CHAIRPERSON:** Do you know when he might have got to know of your appointment as acting FD? Do you know when he might have got the news?

MS DLAMINI: Chair, the news became public as soon as that morning because the media announcement was made by Eskom.

CHAIRPERSON: Yes, yes.

MS DLAMINI: I think on the same day and or if not later that day or the next day.

CHAIRPERSON: So he might have ...[intervenes]

MS DLAMINI: It was public knowledge. But given that he had indicated the day, two days before, I would not know if he would have heard it then. He would have heard but it actually happened through the news or through other means.

CHAIRPERSON: You understand why he would be
10 surprised that you being appointed acting FD in
circumstances where, on your version, he is the one who had
told you on the 10th that there was a possibility that you
would be appointed acting FD? You understand the
statement on his part that he was surprised?

MS DLAMINI: No, I do not Chair.

CHAIRPERSON: Yes. Mr Seleka.

ADV SELEKA SC: Thank you, Chair. Ms Dlamini, just one
last point from my part. I have shared with you the minutes
of the meeting of 19 March. Chairperson, you will find that
20 in the reference bundle, page 222.

CHAIRPERSON: Did I give you back the copy you gave
me?

ADV SELEKA SC: Indeed, Chairperson. Thank you.

CHAIRPERSON: Okay. Oh, I am sorry. Let me just have a
look before I give back. Yes?

ADV SELEKA SC: Reference Bundle, page 222. That is Eskom Bundle 24. Sorry, Eskom Bundle 12. Chair, may I proceed?

CHAIRPERSON: Yes, yes.

ADV SELEKA SC: May I proceed?

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes. On page 224, it is a minute of a... this is a minute of a Special Board In-Committee Meeting held on 19 March 2015. This is the Eskom Board. And on
10 page 224, which is page 3 of the minute, at the top of the page, it reads... the paragraph says:

“The chairperson accepted blame for the failure to take the board, as well as the fact that work that was already being done e.g. interviews, et cetera.”

Then the paragraph I am referring you to is this one:

“The people who were acting in places of the suspended executives were allegedly called into a meeting and knew beforehand that they would be acting. The board needed to find out how this
20 happened. They were apparently called into a meeting and the acting CE met with them.”

Do you have any comment on this?

MS DLAMINI: Chair, in terms of the acting. My knowledge came through the engagement I had with Mr Koko on the 10th.

I had not been in any meeting with the acting CE and I have not been in any meeting with any other people before the acting was announced.

I actually was in the meeting with them for the first time in the boardroom when the chairperson of the board was relating the suspensions and requesting the acting.

ADV SELEKA SC: Who would have been the acting CE at the time, 19 March 2015?

MS DLAMINI: Chairperson, when the suspensions
10 happened, Mr Zethembe Khoza was then asked to act as the interim Chief Executive.

ADV SELEKA SC: Thank you. For how long did you act in the position of FD?

MS DLAMINI: Chair, I acted... I think the announcement came out on the 12th when we were asked. And I acted until end of July but I resigned from Eskom on the 1st of May but I acted as well when I was serving my notice.

ADV SELEKA SC: Until the end of July 2015?

MS DLAMINI: Yes, Chair.

20 **ADV SELEKA SC:** Chairperson, those are the questions from my side.

CHAIRPERSON: Yes, okay. Thank you very much, Ms Dlamini. You are done definitely.

ADV SELEKA SC: I am. [laughing]

CHAIRPERSON: [laughing] Ja, okay. I take it that there is

nothing that counsel for Ms Dlamini really would like to re-examine on. Maybe just take instruction, miss. Counsel, I doubt that you have any re-examination?

ADV STUBBS: I beg your pardon, Deputy Chief Justice. It almost feel strange to be sitting whilst speaking to you.

CHAIRPERSON: Ja. [laughing]

ADV STUBBS: So I apologise for that. I do have just one corroborating affidavit.

CHAIRPERSON: Ja.

10 **ADV STUBBS**: But I would ask you, Mr Chair.

CHAIRPERSON: Ja.

ADV STUBBS: Not to hand up.

CHAIRPERSON: Ja.

ADV STUBBS: But to refer to Ms Dlamini as corroboration of her version of events about the phone call at Melrose Arch. And that... I do not know the bundle or the pages but perhaps my learned friend might help me. It is Ms Molefe's affidavit. In her affidavit, I believe, that she confirms Ms Dlamini's version.

20 **CHAIRPERSON**: Yes, she does. She was here yesterday. She confirmed so. That is in order.

ADV STUBBS: Okay.

CHAIRPERSON: You do not have to ask or re-examine on that.

ADV STUBBS: Thank you, Chair.

CHAIRPERSON: Okay alright. Thank you very much, Ms Dlamini. We appreciate that you came to assist the Commission. You are now excused.

MS DLAMINI: Thank you, Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: I think we should take the tea adjournment ...[intervenes]

ADV SELEKA SC: Yes, Chair.

10 **CHAIRPERSON:** So that you can arrange for the next witness.

ADV SELEKA SC: Yes, certainly.

CHAIRPERSON: We will take the tea adjournment and we will resume at half-past eleven.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS:

INQUIRY RESUMES

CHAIRPERSON: Mr Seleka?

20 **ADV SELEKA SC:** Thank you, Chair. Chair, during the adjournment it came to our attention that we needed to canvass just one last aspect with Ms Veleti and we have requested her to remain for a while. She currently agreed and she is still here.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: We are still dealing with that bundle.

CHAIRPERSON: Yes, let her get settled first.

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

CHAIRPERSON: The oath that you took earlier on, Ms Dlamini, will continue to apply. You understand that?

MS DLAMINI: Yes, Chair.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Thank you, Chairperson.

CHAIRPERSON: What page was her statement again?

10 **ADV SELEKA SC:** We are still Eskom bundle.

CHAIRPERSON: Number 21?

ADV SELEKA SC: That is page.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Ms Veleti – Dlamini’s affidavit is on page 411 of Eskom bundle 10. Ms Veleti, an annexure to the affidavit is on page 417 which we would ...[intervenes]

CHAIRPERSON: Did you say, Mr Seleka, earlier that this was an annexure to her affidavit?

20 **ADV SELEKA SC:** It is not an annexure as such, Chairperson, it is a standalone document which was provided to her by the Commission.

CHAIRPERSON: Oh because then it should be ...[intervenes]

ADV SELEKA SC: Mark it as an exhibit?

CHAIRPERSON: It would need to be an exhibit on its own

but you might have to reflect on the need to get a technician or expert to come and identify what this is so that it gets admitted from cell phone providers or somebody who has the technical know-how who can say what this is. We all know what it is but you need, I think, somebody technical to identify it and to confirm but you can go ahead and ask Ms Dlamini what you need to ask her.

ADV SELEKA SC: Thank you. Ms Dlamini, on page 417
10 the Commission's investigators have sourced this information the details of which have been shared with you. Could you confirm to the Chairperson that you have had – you have considered this document?

MS DLAMINI: I have considered the document, Chairperson.

ADV SELEKA SC: The document, just for the purposes of the record, it contains a list of dates, of telephone calls that were made presumably – and I say presumably so that you could confirm that to the Chairperson between
20 ...[intervenes]

CHAIRPERSON: Well just indicate first what is the document as you understand it and who has provided it to the Commission? Is the cell phone record produced by particular cell phone company?

ADV SELEKA SC: It is the cell phone records that would

have been provided pursuant to an investigation by the Commission. The ...[intervenes]

CHAIRPERSON: But do we know who provided, is it a cell phone company?

ADV SELEKA SC: The cell phone – it is mobile network operators, we see the number 082, that would be presumably Vodacom and 083 being MTN. Chairperson, we will obtain the affidavit to confirm the exact mobile operators that are involved.

10 **CHAIRPERSON:** Ja. No, that is fine, just make sure you obtain an affidavit from the right people who can say the right things for this to be admitted but I think for now you can ask Ms Dlamini questions on the understanding that this is a document provided by a cell phone company or a regulator reflecting or purporting to reflect calls made between certain numbers.

ADV SELEKA SC: Yes, thank you, Chairperson. Ms Dlamini, this documentation purports to reflect and we seek your confirmation in regard to some of the contents herein,
20 telephone calls that would have been made during the times – the dates specified on the far left which is from 9 March 2015 to 12 March 2015 on the timestamps indicated telephone calls presumably having been made from a cell phone number 0828599334.

CHAIRPERSON: Hang on, hang on. It might be better no

...[intervenes]

ADV SELEKA SC: Not to mention.

CHAIRPERSON: Publicly specify anyone's cell phone number but you can indicate Ms Dlamini which number on the page you want to draw her attention to. Maybe she can mention the last two digits of the number that you are particularly interested in or the numbers that you are particularly interested in.

ADV SELEKA SC: Yes, Chair, that is – alternatively I will
10 mention SCC 1, the cell number SCC1 and the cell number SCC2. Under SCC2, you see that Ms Dlamini?

MS DLAMINI: Yes, I see, Chair.

CHAIRPERSON: Well, the SCC number 1 and SCC number – oh, you mean as a column?

ADV SELEKA SC: That is right, as a column.

CHAIRPERSON: Ja, ja, ja, as a column.

ADV SELEKA SC: In which event I will simply ask you
...[intervenes]

CHAIRPERSON: Well, you can always say count from the
20 top from the first number at the top, count 1, 2, 3, 4 when you reach 5. That is the number I am interested in, then you can ask her.

ADV SELEKA SC: Yes. So that first number, yes, under the column, as the Chairperson has indicated number 5 which is the heading SCC1. Without mentioning that cell

number do you recognise the cell number, Ms Dlamini?

CHAIRPERSON: Is it number – what number is it, 5?

ADV SELEKA SC: Column 1, 2, 3, 4, 5. Yes, Chairperson.

CHAIRPERSON: So it is the number that appears as number 5 on the column described as SCC1.

ADV SELEKA SC: Correct. Do you recognise that cell number, Ms Dlamini?

MS DLAMINI: Yes, I do, Chair.

10 **CHAIRPERSON:** I think one can say it is a number ending with 34, is that right?

MS DLAMINI: Yes, Chair.

CHAIRPERSON: Yes, whose number is that?

MS DLAMINI: It is Mr Koko's cell number.

CHAIRPERSON: Ja, you know it.

MS DLAMINI: As it is the number that I have contacted him on or, Chair, I know it.

CHAIRPERSON: Okay, alright.

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

20 **CHAIRPERSON:** What time is that? I think you must link that – what time does it seem to – does that call seem to have been made?

ADV SELEKA SC: Can Ms Dlamini look at column 1, 2, 3, the third column under the heading SCC call time. The times are listed there. On the 9th, the first call is 16.29.

MS DLAMINI: Yes, Chair. And to the Chairperson's question the call that I spoke to is on the 10 March at 12.51.38 which was about a minute and 34 seconds.

CHAIRPERSON: I am sorry, I was – well, my – the number that appears at five relates to a call that was made at 10.38. It looks like you went to 6 – I think it is the same number.

ADV SELEKA SC: Yes.

MS DLAMINI: So, Chair, 6 is the right call.

10 **CHAIRPERSON:** H'm?

MS DLAMINI: 6 is the right call.

CHAIRPERSON: 6 is the right one?

MS DLAMINI: Yes, Chair.

CHAIRPERSON: When you look at the time.

MS DLAMINI: At line 6.

CHAIRPERSON: Yes, okay.

MS DLAMINI: And the time is 12.51.

CHAIRPERSON: Okay.

MS DLAMINI: 38 seconds.

20 **CHAIRPERSON:** Okay. Okay, continue, Mr Seleka, because we need to know which number called which number.

ADV SELEKA SC: Yes. So, Chairperson, for your purposes, column SCC1 reflects one cell number.

CHAIRPERSON: Yes.

ADV SELEKA SC: Throughout.

CHAIRPERSON: Okay, okay.

ADV SELEKA SC: Then the next SCC2 also reflects one cell number throughout.

CHAIRPERSON: Oh, okay, okay, okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: I did not know that.

ADV SELEKA SC: So there is only two cell numbers here, Commissioner.

10 **CHAIRPERSON:** Yes, okay, okay.

ADV SELEKA SC: Ms Veleti then is – Ms Dlamini, I beg your pardon – then is referring the Chairperson to – now I am looking at the first entry under the 10 March 2015, the very first entry under 10 March 2015 with a timestamp at 12.51 Tuesday. If the Chairperson follows?

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes. So she says to the Chairperson that is the call she would have received from Mr Koko. Is that the first call you would have received from Mr Koko on
20 the day?

MS DLAMINI: Yes, Chairperson.

CHAIRPERSON: Well, let us first see – now under SCC1, under that column, there is one number.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: And then under column SCC2 there is a

different number.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Throughout. The number that is the same number that appears throughout from the top to the bottom on the column referred to as SCC2, whose number appears under that column, Ms Dlamini, SCC2? Do you know that number?

MS DLAMINI: That is my number.

CHAIRPERSON: It is your number?

10 **MS DLAMINI:** Yes.

CHAIRPERSON: Okay. Now, Mr Seleka, does this document reflect which number called which number?

ADV SELEKA SC: Yes. Then the next column, Chairperson, immediately after number SCC2, the title is SCC person calling.

CHAIRPERSON: Yes.

ADV SELEKA SC: Do you see that, Ms Dlamini, as well?

MS DLAMINI: Yes, Chair.

20 **ADV SELEKA SC:** And then the last column, it is headed SCC person called.

CHAIRPERSON: Yes.

ADV SELEKA SC: And then they give the name.

CHAIRPERSON: Yes.

ADV SELEKA SC: So the document then, Ms Dlamini, reflects the calls made – should I mention the name,

Chairperson, I suppose I could?

CHAIRPERSON: Sorry?

ADV SELEKA SC: I should mention the name as it is reflected here.

CHAIRPERSON: Oh, yes.

ADV SELEKA SC: Ja. So the document then, Ms Dlamini, reflects the telephone calls that would have been made by Mr Matshela Koko from the cell number we indicated under SCC1 to yourself, person called,
10 Nonkululeko Sylvia Dlamini/Veleti to the cell number represented or reflected under column SCC2. You follow that?

MS DLAMINI: Yes, that is correct, Chair.

CHAIRPERSON: This reflects that, it seems to me, that there were numerous calls that were made by Mr Matshela Koko to you on the 10 March 2015, I think certainly more than six. Do you recall whether that would be true?

MS DLAMINI: Chair, it does reflect a number of calls but when you look at column 4 which gives you the duration of
20 the call, you will notice that a lot of those calls are 00, which means there was no time of the call that we ...[intervenes]

CHAIRPERSON: Oh, that you did not speak?

MS DLAMINI: Yes, Chair.

CHAIRPERSON: Yes.

MS DLAMINI: So a lot of the calls indicate that there was attempt to call.

CHAIRPERSON: Yes.

MS DLAMINI: But I was not reachable.

CHAIRPERSON: Oh, okay.

MS DLAMINI: And other calls seem to be three seconds.

CHAIRPERSON: Yes.

MS DLAMINI: Four seconds.

CHAIRPERSON: Yes.

10 **MS DLAMINI:** And my assumption would be it might have been going to voicemail or something.

CHAIRPERSON: Yes, yes, okay.

MS DLAMINI: So you will note that in this list of calls on the 10th indeed there is quite a number, in fact it is about 20 something, only two calls are over a minute, it is the call that happened basically 6 – actually start from the top, it is line number 6, which was at 12.51.38 which was one minute 34 seconds which is with reference to the time when we were going back to the venue from the lunch.

20 **CHAIRPERSON:** Yes.

MS DLAMINI: That conversation I referred to earlier.

CHAIRPERSON: Yes.

MS DLAMINI: And then if you further down you see a call later that is about ...[intervenes]

CHAIRPERSON: 17.58.

ADV SELEKA SC: Yes.

MS DLAMINI: Yes, Chairperson, it is about 17.58.27
...[intervenes]

CHAIRPERSON: That took three minutes.

MS DLAMINI: Which about three minutes.

CHAIRPERSON: Yes, okay.

MS DLAMINI: And it is around about when we finished the session.

CHAIRPERSON: And that would tie up with your evidence
10 that after you had finished the session the two of you were
in touch with each other.

MS DLAMINI: Which was the follow-up calls.

CHAIRPERSON: Which was a follow-up call.

MS DLAMINI: To meet – and yes [inaudible – speaking
simultaneously]

CHAIRPERSON: Yes. But this does reflect is that on the
10th Mr Koko made numerous attempts to reach you.

MS DLAMINI: Correct, Chair.

CHAIRPERSON: And then he did reach you at – is it
20 12.58? 12.51 and he reached you again at 17.58. Those
are the only times he appears to have reached you. The
other times where it is only seconds you say that must
have been when he went into voicemail.

MS DLAMINI: Yes, Chair, because I do not recall talking
to him that many times.

CHAIRPERSON: Yes.

MS DLAMINI: But also when it is two seconds, once again it would not represent a conversation.

CHAIRPERSON: Yes.

MS DLAMINI: So I then assumed that it attempts but as I indicate, we were not necessarily with our cell phones and reachable.

CHAIRPERSON: Yes.

MS DLAMINI: The whole day.

10 **CHAIRPERSON:** Yes. Just on the 10th ...[intervenes]

ADV SELEKA SC: My calculation, Ms Dlamini, gives me 22 telephone calls on the 10 March.

MS DLAMINI: Yes.

CHAIRPERSON: Ja, he tried to reach you about 22 times on the 10 March and there were two occasions when he was able to speak to you since.

MS DLAMINI: Yes, Chairperson.

CHAIRPERSON: Yes, okay, alright.

20 **ADV SELEKA SC:** Chair, that will be the evidence we wanted to place before you.

CHAIRPERSON: Okay. Thank you, very much, Ms Dlamini.

MS DLAMINI: Thank you, Chairperson.

CHAIRPERSON: You are excused.

ADV SELEKA SC: Chairperson, the next witness is here,

I will allow the assistant to just sanitise the place.

CHAIRPERSON: Who will it be?

ADV SELEKA SC: That is Mr Norman Baloyi. Should I proceed to identify the bundle in the meantime, Chairperson?

CHAIRPERSON: H'm?

ADV SELEKA SC: Should I proceed to identify the bundle in the meantime or should we first ...[intervenes]

CHAIRPERSON: Let him get settled and let us take the –
10 administer the oath or affirmation.

ADV SELEKA SC: Thank you, Chair.

REGISTRAR: Please state your full names for the record?

MR BALOYI: Norman Baloyi.

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

MR BALOYI: I have no objection.

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

MR BALOYI: Yes, I do.

20 **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.

NORMAN BALOYI: So help me God.

CHAIRPERSON: Thank you, you may be seated, Mr

Baloyi.

ADV SELEKA SC: Thank you, Chairperson, Eskom bundle 10 and under that bundle we are dealing with EXHIBIT U20. Mr Baloyi, welcome. Thank you, just keep your microphone on.

MR BALOYI: Thank you, sir.

ADV SELEKA SC: Just housekeeping, Mr Baloyi, let me see whether you have the bundle I am referring to, that is Eskom bundle 10, EXHIBIT U20 and that is on page – you
10 follow the pagination on your left, top left corner which is the pagination in black. They start with Eskom 10 and then the pagination number.

MR BALOYI: Yes.

ADV SELEKA SC: So we will disregard the pagination which is in red at the top right hand corner. Do you see that?

MR BALOYI: H'm.

ADV SELEKA SC: So that starts on page 302 and that is between tramlines an affidavit. Do you see that:

20 "I, the undersigned, Norman Baloyi..."

MR BALOYI: Yes, I do.

ADV SELEKA SC: Do you see that? That affidavit runs up to page 312.

MR BALOYI: Yes, I can see that.

ADV SELEKA SC: There is a signature at the bottom of

page 311, the page before.

MR BALOYI: Yes.

ADV SELEKA SC: Do you confirm that to be your signature?

MR BALOYI: Yes, it is mine.

ADV SELEKA SC: The date is 7 September 2020, you confirm that as well?

MR BALOYI: Yes, it is.

10 **ADV SELEKA SC:** So you confirm this to be your affidavit?

MR BALOYI: Yes.

ADV SELEKA SC: Thank you. Chairperson – I do not think your affidavit has annexures, Mr Baloyi. Chairperson, I beg leave to have the affidavit admitted into evidence as EXHIBIT U20.1.

CHAIRPERSON: The affidavit of Mr Norman Baloyi starting at page 302 is admitted and will be marked as EXHIBIT U20.1.

20 **AFFIDAVIT OF MR NORMAN BALOYI HANDED IN AS EXHIBIT U20.1**

ADV SELEKA SC: Thank you, Chairperson. Mr Baloyi, you have agreed to assist the Commission in regard to an issue relating to the suspension of the executives at Eskom, correct?

MR BALOYI: I did not get the question.

ADV SELEKA SC: You have agreed to assist the Commission in regard to the issue relating to the suspension of the executives at Eskom.

MR BALOYI: Yes, I did.

ADV SELEKA SC: That took place on 11 March 2015.

MR BALOYI: Yes, sir.

ADV SELEKA SC: And 12 March 2015.

MR BALOYI: Yes, sir.

ADV SELEKA SC: Now a lot of evidence has been led
10 before this Commission which I will relay to you so you can confirm and we start with that a board – a new board is appointed on 11 December 2014 at Eskom.

MR BALOYI: Yes.

ADV SELEKA SC: The Commission has been told that you were one of the board members, newly appointed effective 11 December 2014.

MR BALOYI: Yes, sir.

ADV SELEKA SC: The Commission has also been told that the board went through an induction.

20 **MR BALOYI:** Yes.

ADV SELEKA SC: Process. And maybe you could tell the Chairperson briefly at that induction what takes place and according to your recollection when was the board's induction?

MR BALOYI: I will not recall the date but actually all the

workshops, strategic workshops and the strategic issues on the meetings were always held at Eskom Megawatt Park except when we were called by the Minister to Cape Town. So I presume it should have been in Megawatt Park, Eskom.

ADV SELEKA SC: Sorry, just address the Chairperson. You presume...?

MR BALOYI: Yes ...[intervenes]

CHAIRPERSON: You say the induction or induction
10 workshops took place at Eskom offices?

MR BALOYI: Yes, I believe it was in Eskom offices, Chairperson.

CHAIRPERSON: Yes.

MR BALOYI: Because all activities that we always had at Eskom were always at the Megawatt Park.

CHAIRPERSON: Except when we were called by the Minister to Cape Town.

CHAIRPERSON: Yes.

MR BALOYI: Yes.

20 **CHAIRPERSON:** You said you do not remember the date when the induction took place but you remember the month. Was it January 2014, was it February?

MR BALOYI: Uhm...

CHAIRPERSON: Does January '16 ring a bell as possible date?

MR BALOYI: You know, I was checking my invitations this morning and all I could see were the invitations for committees and the board which happened to be cancelled. I will not recall exact date.

CHAIRPERSON: Yes.

MR BALOYI: But what I know is that on the same day or around the second day because I was in Polokwane when I got a call that you have been appointed, we – the Minister wants to meet with you and I had to drive to Pretoria. We
10 all met there as new board members and the Pretoria office of the Minister. So but that in itself, I will not ...[intervenes]

CHAIRPERSON: You cannot remember. Alright ...[intervenes]

MR BALOYI: It happened not so long after.

CHAIRPERSON: Okay.

ADV SELEKA SC: So, you know, talking of you being called and informed of your appointment, can you tell the Chairperson how did you become appointed on the board?

20 **MR BALOYI:** I think it was through the board nominations and somebody nominated me to be in the board and in that particular day when we met the Minister the Minister said to me but, you see, I do not appoint people because I know them, I do not know you but I appointed you because I want – I like your skills and experience that you have

acquired.

CHAIRPERSON: Do you know who nominated you?

MR BALOYI: I think – I remember ...[intervenes]

CHAIRPERSON: I guess you should know.

MR BALOYI: I will not know exactly but I think of the two
I will not recall.

CHAIRPERSON: But do you know whether you were
nominated or did you ever see a nomination?

MR BALOYI: Yes actually because I had to consent to the
10 nomination.

CHAIRPERSON: Yes.

MR BALOYI: Yes, I did ...[intervenes]

CHAIRPERSON: Was it somebody that you did not know
who nominated you?

MR BALOYI: It is somebody that I know.

CHAIRPERSON: It is somebody that you know?

MR BALOYI: Yes.

CHAIRPERSON: But you cannot remember?

MR BALOYI: Ja because there were two people that did it
20 at the same time but I can actually check my archives.

CHAIRPERSON: Oh, that's strange, at that time were
there a number of Boards on which you were serving?

MR BALOYI: In 2014 the one Board I can remember, I
think they were not more than two, if they were two.

CHAIRPERSON: Oh.

MR BALOYI: It was not a lot of them.

CHAIRPERSON: I am just surprised that you – I thought maybe you were, you were sitting on many boards, therefore it might not be remembered who nominated you for which Board.

MR BALOYI: No actually because there are two people who usually nominate me so I would not want to mention their names without verifying, so among the two.

CHAIRPERSON: Sorry, you don't, you know their face but
10 you don't their names?

MR BALOYI: No, no I know their names, I am saying that I can check shortly about who was – about who nominated me for Eskom Board, but they are people that I worked with before, they are people that – we know each other.

CHAIRPERSON: Okay.

MR BALOYI: So I do not want to speculate who among the two .

CHAIRPERSON: Okay, Mr Seleka?

ADV SELEKA SC: Thank you Chairperson. Mr Baloyi so
20 you get appointed on the Board, you go through an induction period and you say you can't recall exactly when did that take place. Can you recall when was your first board meeting?

MR BALOYI: Because the first Board meeting that was scheduled for the 26th of February was cancelled, and was

...[intervenes]

CHAIRPERSON: Was the meeting of the 26th February going to be the first meeting of the Board?

MR BALOYI: It was going to be the first meeting of the Board.

CHAIRPERSON: Okay.

MR BALOYI: Ja, because prior to that there were committee meetings that were held.

CHAIRPERSON: Before that?

10 **MR BALOYI:** Yes, and I can recall that, it could have been during the induction when we were listed to sit in different committees, because I – as I remember that I was actually was supposed to chair Audit and Risk Committee from the initial list that was given to us by the Chairperson of the Board.

ADV SELEKA SC: Yes, so that meeting was cancelled, the Commission has been told that much, do you know what reasons were given for the cancellation?

20 **MR BALOYI:** There were no reasons that were given, but I think we were informed on the eve, or in the evening of the meeting, around nine or ten o'clock somewhere, so it was an SMS from the Company Secretary.

ADV SELEKA SC: When was the next meeting of the Board?

MR BALOYI: The next meeting was on the 9th of March.

ADV SELEKA SC: Can you please tell the Chairperson whether is that a scheduled board meeting?

MR BALOYI: I think yes it was a scheduled Board meeting if I remember, because we were having it for the first time that may not be 100% sure because actually during that particular meeting the main agenda was the issue of the inquiry.

I remember that some of the Board members were not ...[intervenes]

10 **ADV SELEKA SC:** Sorry, just clarify to the Chairperson, what do you say may not be 100% sure?

MR BALOYI: No, no actually, because the meeting was short as far as I remember and Eskom Board meetings they usually take the whole day, even the committee meetings they usually take the whole day, but on that particular day I remember it was shorter meeting, it could have been a special meeting because in that particular meeting as far as I remember there was a concern by the Company Secretary that the Board needs to have its own meeting,
20 because there have been committee meetings that the Board hasn't met and there's a corporate plan that needs to be approved so that it can be effected on the 1st of April, and the deadline is an issue.

So hence I am not 100% sure whether it was an ordinary meeting or it was a special meeting, but one thing

is for sure is that it was a shorter meeting than the meetings, other people were not there, other board members were not there physically but we consulted telephonically or on video.

CHAIRPERSON: Yes the doctor said he called that meeting specially after he had attended a certain meeting in Durban so probably it was a special meeting.

MR BALOYI: Yes more likely because some people were on video, because the normal board meetings I mean we
10 were usually informed on time and then we make ourselves available.

CHAIRPERSON: Yes.

MR BALOYI: And it is very rare that you've got some people being on video conference or teleconference, they would physically be there.

CHAIRPERSON: What was discussed at the meeting of the 9th?

MR BALOYI: The main agenda item for the meeting was to set up the inquiry and the Board Chairperson, Mr Zola
20 Tsotsi, he presented to us the theory or the background or the need for this particular commission of inquiry that had to take place, so he said that he met with the President and he has also, and the President has met with the Minister.

CHAIRPERSON: President who?

MR BALOYI: Mmm?

CHAIRPERSON: You said he met with President who?

MR BALOYI: President Zuma.

CHAIRPERSON: Mmm.

MR BALOYI: Yes, he said they met over the weekend and the meeting was on Monday, I think they could have met the day before, the way that I recall, but we met and then the President also had spoken to the Minister on the idea of having this type of inquiry, so like he met one or
10 two occasions with the President and some of the meetings could have been cancelled, but there was some interaction, because the President wants to have this particular issue of knowing exactly what is the state of affairs at Eskom, because the President had initiated through the cabinet, the war room and there are some reports that are not always accurate or whatever, so there's a need that we get the true facts of them first of Eskom.

CHAIRPERSON: And what was the reaction of the Board members on the 9th of March to Mr Tsotsi's proposals?

20 **MR BALOYI:** Ja, no single Board member actually accepted their proposal.

CHAIRPERSON: Mmm?

MR BALOYI: No single board member accepted the proposal, because as I said earlier on that in Eskom there's a volume of paper, a volume of work, even the

Board and the committee meetings there was always a volume of paper, so you could see that people are very busy, executives are very busy with day to day work and the feeling of the Board members were – was that to have this inquiry or this – ja, commission of some sorts, or to do that investigation it is going to consume more time for the executives because they are too much pressed and there are so many pressing issues and there is also a war room that are serving – the Boards that are serving the, the ones
10 that are serving, so the feeling was that the timing is not perfect, I mean and we still need to interrogate some documents, we need to interrogate some things because what we know now is what the executives have given us but we haven't had time to interrogate this and that whether this is – whether it is the practice, so it was a feeling of many Board members that the timing is not good planning and then because he had mentioned the name of the President and the name of the Minister so there was a proposal that if we can meet with the Minister.

20 **CHAIRPERSON:** Yes.

MR BALOYI: On Wednesday instead of Monday.

CHAIRPERSON: Yes, okay, unless there is something still on the meeting of the 9th Mr Seleka I think you can go straight to the meeting of the 11th.

ADV SELEKA SC: Let me just ask Mr Baloyi one

question. Mr Baloyi you talked about a proposal for the inquiry, that proposal according to your recollection involved the suspension of the executives on the 9th of March?

MR BALOYI: Actually the proposal as far as I remember, because there were issues of finance and so on and the Board chairperson said that our Minister will need to be consulted together with the Minister of Finance but it is better that we don't speak to the Minister of Finance at this
10 stage, the FD is going to deal with some of the issues of the finances and so on, so there was no other proposal short of suspension, but people were just not happy with the issue of inquiry, ja, more especially that we were informed that there was already other inquiries that just took place, just before – during that particular time so – and they even executed the recommendations, so they extended time to execute the recommendations from the other inquiries of the executives.

ADV SELEKA SC: Okay, so you mentioned to the
20 Chairperson the meeting on the – there was a proposal to have a meeting with the Minister and that meeting took place on Wednesday 11 March 2015. We understand that there was a couple of meetings, were a couple of meetings on that day, you can take us through those meetings.

Firstly we understand it's a meeting of the Board

without the Minister, and then the Minister arrives and she has a meeting with the Board. You can start with the first one.

MR BALOYI: Thanks Chair. Yes we started with the Minister – oh no, we started with the Board meeting because the pressing issue was the Corporate Plan and I think it was being presented by the CEO, and during his presentation there was an interruption that the Minister is in and then the Board Chairperson went out and asked Ms
10 Klein to take over as the Chairperson, and then we had to wait, we had to continue until the Chairperson came back with the Minister, so – and then in that particular one the Minister did have a session, it was the second session actually, the board was already having their – which was not finished, which was going to be completed after the Minister has left.

CHAIRPERSON: What are the main features of the discussion at the Board meeting before the Minister arrived that you remember which you would like to highlight?

20 **MR BALOYI:** The main feature was the corporate plan.

CHAIRPERSON: Corporate plan?

MR BALOYI: Ja, Corporate plan because it was ...[intervenes]

CHAIRPERSON: That the CEO was presenting?

MR BALOYI: Yes, actually yes, and it was supposed to

have been the main agenda on the 26th of February.

CHAIRPERSON: On the 26th?

MR BALOYI: Yes.

CHAIRPERSON: Yes.

MR BALOYI: And when you get to ...[intervenes]

ADV SELEKA SC: Sorry Chair, the stenographers are asking Mr Baloyi to speak louder, just drop the mic.

CHAIRPERSON: Ja, and raise your voice sir.

MR BALOYI: Okay.

10 **CHAIRPERSON:** Thank you. So did you say when the Minister arrived Mr Matona, the CEO was still presenting the corporate plan?

MR BALOYHI: Yes, they were still busy presenting, but it had to be stopped, so that we can attend to the Minister.

CHAIRPERSON: Raise your voice, I think your voice is quite low.

MR BALOYI: Okay, yes I think it had to be stopped because the Minister was – had arrived and was going to address us.

20 **CHAIRPERSON:** Yes, okay Mr Seleka?

ADV SELEKA SC: Thank you Chairperson. So Mr Baloyi just tell the Chairperson on the Minister's arrival what happens in the meeting?

MR BALOYI: Ja, during the meeting actually the Minister told us that ...[intervenes]

ADV SELEKA SC: Let me say this, or carry on, carry on, sorry, I beg your pardon.

MR BALOYI: Okay, when the Minister came and we had to stop and attend to the Minister what I recall is that the Minister said to us that she has been protecting the executives of Eskom and that she ...[intervenes]

CHAIRPERSON: She said she had been protecting who?

MR BALOYI: The executives of Eskom.

CHAIRPERSON: The executives of Eskom?

10 **MR BALOYI:** Yes.

CHAIRPERSON: Did she say who she had been protecting them from?

MR BALOYI: No actually because there were issues of in – there were some issues from the war room, there were some, because they were providing information to the war room, providing information to the Board, so I think there was some question marks around some of the documents, so because I believe that the Minister was out of the war room and S & L because it was a cabinet related
20 committee.

CHAIRPERSON: You say you think there were issues relating to the information that the Executive provided to the war room, are you repeating what the Minister said at the meeting or is it something that you were aware of yourself, not necessarily that that's what the Minister said?

MR BALOYI: No actually the main issue that she has raised or that happened before that is that I think it happened even on Monday, when we were at the meeting, when ...[intervenes]

CHAIRPERSON: Hang on Mr Baloyi, my question is when you say you think there were some issues about information that the executives had been giving to the war room, are you talking about issues that you were aware of or are you saying that's what the Minister said at the
10 meeting?

MR BALOYI: Okay, actually Chairperson I am telling of what came to recollection because I am not sure whether the Minister referred to the war room issues, but what she said to us is that they have got – the issues of the access of information, there is something that the Board members were saying that we are ...[indistinct] some of the issues, so we don't know whether the issues was that true or not true, because it could be the same thing with the war room because it was just established after us, and then the
20 issue of the access of information is something that didn't come to the Board's attention in a formal way, it was more of a speculation.

CHAIRPERSON: So is your answer to my question that you are not saying that that's what the Minister said, you are simply telling me what you were aware of.

MR BALOYI: Yes, it is something that I was aware of, because the Minister was part of the war room and then she was saying that she is more concerned about some issues ...[intervenes]

CHAIRPERSON: No hang on, don't tell me yet what the Minister said if you say this is not what the Minister said. You were aware that there were some issues relating to information that the executives were providing to the war room, is that what you are saying, at that time that's what
10 you were aware of?

MR BALOYI: Yes, yes.

CHAIRPERSON: How did you – what was your source of this information that there were issues about information that the executives had been providing to the war room?

MR BALOYI: I cannot say directly whether it was issues from the newspapers or issues from the Eskom media room, I cannot say with confidence of where exactly the issues were because I was not part of that war room, but – and we hadn't had the Board meeting yet so those things
20 that you pick from ...[intervenes]

CHAIRPERSON: So you don't know where you got that information from?

MR BALOYI: Yes there was no ...[intervenes]

CHAIRPERSON: Okay, Mr Seleka?

ADV SELEKA SC: Yes, thank you Chair. Mr Baloyi the

way I heard you say was that the Board had gotten information which it had not interrogated so you were not sure whether you could rely on the information and you asked yourself what also about information regarding the war room.

MR BALOYI: Yes.

ADV SELEKA SC: Okay so but that explanation, if you give that explanation to the Chairperson it conveys the understanding that you in fact did not have before the
10 Board issues regarding the war room, you simply questioned what about given what I have, which I haven't interrogated, what about the issues regarding the war room.

MR BALOYI: Yes, but there was no formal communication around that.

ADV SELEKA SC: Just speak louder again there was what?

MR BALOYI: Yes there was no specific information that was given to us about the war room, issues that we needed
20 to be concerned about, but there was no formal communication around it, it was more of speculation or something other people's feelings about it.

CHAIRPERSON: Okay, tell me the main points that the Minister made at that meeting which she had with the Board, if you remember that?

MR BALOYI: The Minister said that she has been protecting Eskom Executives and she is tired of protecting them. She wants to actually feedback and not protect them anymore because there have been issues about their work and she does not want to protect them anymore about the type of information and the type of work that they are doing, so she will not want to protect them anymore. That was the main essence of the meeting, and then she also said that – when she left, because we did interrogate, we
10 did speak to her about issues and so on – about our understanding, about what she was coming for, because the main reason of her coming was on the issue of inquiry whether she is endorsing or she is initiating or she is supporting the inquiry that took place, because all Board members were not happy with it when it was presented ...[intervenes].

CHAIRPERSON: So what did she say about the inquiry?

MR BALOYI: She was supporting it and she said that she will want it, she will have an interim report within three
20 months, she will want to have something from that inquiry reported to her.

CHAIRPERSON: Interim report or final report in three months.

MR BALOYI: It was mainly ...[intervenes]

CHAIRPERSON: Or just a report?

MR BALOYI: It was a report actually, because it was anticipated that it will take more than three months but within three months there has to be something to be provided.

CHAIRPERSON: Did she address the issue of suspensions of executives?

MR BALOYI: Not directly as I remember, but from the feeling that she was saying, she was saying that she is not going to protect any executive anymore, so from my
10 understanding is that there could be possible suspensions of executives, from my reading of how she presented to us.

CHAIRPERSON: I am sorry, just repeat that.

MR BALOYI: From the way that she spoke to us, she was endorsing the commission of inquiry and then she was also endorsing the issues of possible suspensions because she had ...[intervenes]

CHAIRPERSON: Oh it wasn't a commission of inquiry isn't it?

MR BALOYI: Not a commission of inquiry, the commission
20 is ...[intervenes]

CHAIRPERSON: About investigation.

MR BALOYI: Ja, by the President and ...[intervenes]

CHAIRPERSON: Ja, so are you saying that she touched on the suspension of executives of are you saying she did not address that issue?

MR BALOYI: She said that she is not going to protect them and if we need anything from her we must not hesitate because she will not go far, she will go to the mall or so on, but whenever we need her during the day we are free to call her to come back or maybe clarification or maybe for information and so on, because she didn't stay long with us, but from the presentation a person could sense that the issue of suspension is on the cards, but who was going to be suspended was a question mark, because
10 we had to go and meet at the board meeting that had to continue, so ...[intervenes]

CHAIRPERSON: That is now after the meeting with the Minister.

MR BALOYI: After the Minister.

CHAIRPERSON: Ja, but in terms of what was discussed between the Board and the Minister have you covered the main points?

MR BALOYI: Ja, the main points were the endorsement of the inquiry and that we need not protect anyone.

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

ADV SELEKA SC: Thank you Chair. Mr Baloyi let's see what you say about this Dr Ngubane has testified in his affidavit to this Commission, he says the Minister raised concerns about the executives, the four executives and she in the end said that they should step aside, and when the

Minister left the Board was now convinced that this is what the shareholder wants, the inquiry and the stepping aside of the executives. What is your recollection in regard to that?

MR BALOYI: Yes actually the other thing that happened is that she asked the two executive directors to step out of the room, but before they could step out the CEO, Matona, said that he will want to see something before he leaves and then he told his story about how things are, the type of steps he is trying to do to rectify things or to go with the process of work or the disadvantages that are supposed to be advantaged afterwards, so he did make a short presentation, maybe of two to three minutes, somewhere there, so and then they left and then it is when the Minister continued with the Board and your question is?

ADV SELEKA SC: The question is this, let me read what Dr Ngubane says to this Commission in his affidavit. He says:

“Did not direct the board to suspend the four executives she raised concerns of her own against them The concerns related to the War Room which she suggested complained was not receiving consistent information. The Minister then – the Minister felt that the presence of the four executives might hinder

the investigation.”

Then he says:

“After the meeting with the Minister it was clear to the board that government and shareholder of Eskom required the inquiry to proceed and the four executives had to step aside whilst the inquiry was underway.”

So I was asking is that consistent with your recollection?

MR BALOYI: My recollection is that only the three board
10 members were – no the three executives were supposed to be suspended.

ADV SELEKA SC: Yes but my..

MR BALOYI: Not four – the fourth one happened not to be.

ADV SELEKA SC: Okay.

MR BALOYI: He happened to be included afterwards by the PMG committee.

ADV SELEKA SC: Okay. So are you saying to the Chairperson you – it is consistent with your recollection that it was clear after the meeting with the Minister that the
20 inquiry had to happen and that executives at least according to your recollection three executives had to be suspended or step aside?

MR BALOYI: Yes.

ADV SELEKA SC: So he has four but you say you recall three?

MR BALOYI: Yes it was three actually.

ADV SELEKA SC: Thank you.

MR BALOYI: Yes it was three of that I am a hundred percent sure.

ADV SELEKA SC: May I proceed Chair?

CHAIRPERSON: Yes you may proceed. I think it is possible for us to finish by one o'clock with this witness.

ADV SELEKA SC: Okay let us – let us see Chair.

CHAIRPERSON: Ja okay.

10 **ADV SELEKA SC:** Let us – Mr Baloyi after the meeting with the Minister what does the board do?

MR BALOYI: The board said and identified those three people that had to be – to be suspended. And the board identified those three people except the FD. And then the board said that the PMG committee – People in Governance Committee will be the one to deal with the processes that needs to take place. And then that committee sat and I asked to sit into that committee. But before that during the board meeting I did raise the issues of the report.

20 **CHAIRPERSON:** Just one second Mr Baloyi. Mr Seleka what you can do is identify – there are a number of areas where his evidence is the same as the evidence of everybody's it is not that evidence is not issue in terms of what happened.

ADV SELEKA SC: Yes.

CHAIRPERSON: What happened – where his evidence is the same as others we do not need to spend much time on that but...

ADV SELEKA SC: Okay Chairperson.

CHAIRPERSON: But where there are differences then we can focus on that.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: That helps me. Mr Baloyi yes let us do
10 that. So you were talking about a report. Let me ask you specifically about that and you can explain to the Chairperson. The other board members have also come here and said some of the board members have said to the Chairperson Mr Tsotsi said there was a report – a background report and they wanted him to produce that report. Is that the report you are referring to?

MR BALOYI: Yes it is the report that I am referring to that prior to the suspensions we need to have right information.

ADV SELEKA SC: Yes.

20 **MR BALOYI:** So that we can have right process to take.

ADV SELEKA SC: So are you saying to the Chairperson that you made a request for that report to be provided?

MR BALOYI: Yes I did Chair.

ADV SELEKA SC: And what was the response to you?

MR BALOYI: The response was that – that is not our report

we must not worry about it. We have to do our own inquiry.

ADV SELEKA SC: Can you recall who said that?

MR BALOYI: I think it is the – Doctor Ngubane.

ADV SELEKA SC: Thank you. Now take the Chairperson to how the name of the Financial Director Ms Tsholofelo Molefe was included? You say three persons had been identified and there were not four but subsequently we know that the FD was also suspended. Can you recall how her name was included on the list?

10 **MR BALOYI:** Ja her name was included during the meeting of the People and Governance. But the board...

CHAIRPERSON: During the meeting of?

MR BALOYI: People and Governance.

CHAIRPERSON: People and Governance.

MR BALOYI: Governance Committee.

CHAIRPERSON: Yes.

MR BALOYI: Ja but the board who had in those three people but the fourth one was not in those – the board was not aware about the fourth one. I mean did not include the
20 fourth one. Because the inquiry was not about the financial issues but it was merely about these other issues.

CHAIRPERSON: So are you saying at the end of the board meeting that took place after the Minister had left there were only three executives that the board had

MR BALOYI: Identified.

CHAIRPERSON: Said should be suspended?

MR BALOYI: Yes.

CHAIRPERSON: And they did not include the Financial Director?

MR BALOYI: Yes, yes.

CHAIRPERSON: And then when the PMG Committee met after that board meeting it was at that PMG meeting that her name was added. Is that what you are saying?

MR BALOYI: Yes exactly.

10 **CHAIRPERSON:** Do you remember how or who added her name?

MR BALOYI: I remember Ms Mabude have been the one to say that because she was dealing with – she was in Audit and Risk Committee Chairperson. So she said that there are some financial issues so she has to be also included.

CHAIRPERSON: Hm. Ms Mabude?

MR BALOYI: Yes.

CHAIRPERSON: Yes so she was the one who suggested that her name should be – the Financial Director's name
20 should be included?

MR BALOYI: Yes, yes.

CHAIRPERSON: Okay. And did the PMG Committee then accept that?

MR BALOYI: Yes they accepted that.

CHAIRPERSON: Yes. Was there – was there a debate

about it with some members opposed to her inclusion and others wanting her to be included or there was no opposition?

MR BALOYI: I think I am the only one that could have – no – that actually opposed it.

CHAIRPERSON: Were against this idea?

MR BALOYI: Yes.

CHAIRPERSON: Yes.

MR BALOYI: Because it was not the idea of the board.

10 **CHAIRPERSON:** Because her name had not been endorsed by – had not been approved by the board as somebody to be suspended?

MR BALOYI: Yes, yes.

CHAIRPERSON: Okay. And you advanced this argument at the PMG meeting?

MR BALOYI: Yes though I was not a member. I was ...

CHAIRPERSON: Ja.

MR BALOYI: I just asked to stay on to be part of it.

CHAIRPERSON: Yes.

20 **MR BALOYI:** Because I worried about the change of events that was so drastic so I wanted to actually observe things that are happening.

CHAIRPERSON: Yes and what was your – what was the response of other members at the PMG meeting to your point that – but the Financial Director is not one of the executives

that the board said should be suspended?

MR BALOYI: Actually there was no opposition. Everyone was fine with that idea.

CHAIRPERSON: Sorry?

MR BALOYI: There was no opposition to that idea that she must be suspended as well.

CHAIRPERSON: There was no opposition to?

MR BALOYI: To the suspension proposal. Everyone was fine with that idea.

10 **CHAIRPERSON:** With the suspension.

MR BALOYI: Except myself.

CHAIRPERSON: Of the executives?

MR BALOYI: Of the FD.

CHAIRPERSON: Of the FD?

MR BALOYI: Yes.

CHAIRPERSON: So you were the only one who opposed?

MR BALOYI: Yes, yes.

CHAIRPERSON: And everyone else seems to be – seemed to be...

20 **MR BALOYI:** Supporting it.

CHAIRPERSON: To have no problem.

MR BALOYI: Yes.

CHAIRPERSON: Are you including Mr Tsotsi as well because he said he attended that meeting. Was he not opposed to the inclusion of the Financial Director's name?

MR BALOYI: No I think – ja you may be – he may be right that he was not actually supporting it as well.

CHAIRPERSON: Yes.

MR BALOYI: Yes, yes. I recall now thanks Chair.

CHAIRPERSON: Yes. But in the end the majority...

MR BALOYI: Agreed.

CHAIRPERSON: Were supported that she should be suspended as well?

MR BALOYI: Yes, yes.

10 **CHAIRPERSON:** Okay. Mr Seleka.

ADV SELEKA SC: Thank you Chair. Doctor Baloyi your – what was your position in regard to the suspension of all of the executives?

MR BALOYI: My overall picture around it is that I could sense that between the 9th and the 11th there could have been lots of consultations because everyone was opposed on the 9th then everyone was for it on the 11th. And my other impression is that during the breaks one board member said that he had another meeting the day before where he was
20 called in by the DPE officials. So – and he was informed that these people must be suspended tomorrow. So – and then it is when the idea of change of events came to reality that it looks like things were happening during those two periods.

CHAIRPERSON: Do you remember which board member

said that to you?

MR BALOYI: It was the PMG Chairperson.

CHAIRPERSON: Who?

MR BALOYI: Zethembe Khoza.

CHAIRPERSON: Who was that?

MR BALOYI: Zethembe Khoza

CHAIRPERSON: He is the one who told you that he had been called to the Department of Public Enterprises and told that these executives should be suspended?

10 **MR BALOYI:** Yes he said he met with the officials. I do not know whether it was in the – in the DPE offices or somewhere else. But...

CHAIRPERSON: He said he met with whom?

MR BALOYI: I am not sure where they could have met but he said that he met with them the day before.

CHAIRPERSON: With the DPE people?

MR BALOYI: Ja he was called into that meeting

CHAIRPERSON: Ja.

20 **MR BALOYI:** To meet with them. So that he be informed as a Chairperson of PMG.

CHAIRPERSON: Yes.

MR BALOYI: Yes.

CHAIRPERSON: Okay. Okay. Did he say to you who else was in that meeting?

MR BALOYI: No he did not tell me the people that were

there.

CHAIRPERSON: He did not. Yes. Okay. Mr Seleka.

ADV SELEKA SC: Thank you Chair. So then the suspensions do take place. Well just before then Mr Baloyi how – we know that people were appointed to act in the positions of those who were suspended or were to be suspended. Do you know how the names of those who were to act came about?

MR BALOYI: Yes Chair during those breaks that I said that
10 we had several breaks.

CHAIRPERSON: On the 11 March.

MR BALOYI: Yes on the 11th ja during the PMG meeting there were a lot of calls that were done to the Presidency office.

CHAIRPERSON: To the Presidency?

MR BALOYI: Ja to the Presidency's office.

CHAIRPERSON: Yes.

MR BALOYI: Ja those calls were actually enquiring who should act – whom – must we put so and so; must we put so
20 and so? And then the report that came was that they said we must not put this as a – as a – you must not put so and so; so and so. But so and so and so and so are fine. And it was actually those types of – of consultations that were happening so that we are in line with the office of the Presidency. Yes.

CHAIRPERSON: Who was or who were making these calls to the Presidency?

MR BALOYI: Ja it was Doctor Ngubane. Ja he is the one who was calling the Presidency office.

CHAIRPERSON: Do you know whether he was the only one who was making these calls on this issue – on this issue of who should act in these positions?

MR BALOYI: I...

CHAIRPERSON: You do not know?

10 **MR BALOYI:** I do not know who was calling.

CHAIRPERSON: Yes.

MR BALOYI: But it is people from the President's office.

CHAIRPERSON: Yes.

MR BALOYI: Yes and because he did say that he has got connections in that office and then he has to consult with them.

CHAIRPERSON: Yes.

MR BALOYI: With – that they will approve so and so and so and so.

20 **CHAIRPERSON:** Yes.

MR BALOYI: Ja.

CHAIRPERSON: Was it Doctor Ngubane who said he did have connections at the office of the President?

MR BALOYI: Yes he did say so.

CHAIRPERSON: Yes. Now was he ...

MR BALOYI: Because actually I – he – he was referred to as an Ambassador.

CHAIRPERSON: yes.

MR BALOYI: So and then who could wait for him to make those consultations and then coming back to us with a report.

CHAIRPERSON: Yes.

MR BALOYI: Yes.

CHAIRPERSON: Now when he was making those calls was
10 he making those calls because he had been asked by the board or the PMG Committee to make those calls on its behalf or was he just making those calls on his own as far as you know?

MR BALOYI: Ja to tell you the truth I cannot recall actually whether he was. It was just own initiative or it was the initiative of the PMG Committee. But at those consultations did take place.

CHAIRPERSON: But after making the calls was he reporting back to the committee? Was he reporting back to say I have
20 been in touch with the office of the President or with the Presidency this is what they say? Was he saying that too openly or was he saying that to you privately? How did you come to know?

MR BALOYI: No actually it is something which was part of the meeting and I do – I did see some transcripts – the

transcriptions around that. That we were waiting for his response.

CHAIRPERSON: Yes.

MR BALOYI: On the consultations – the feedback.

CHAIRPERSON: Yes.

MR BALOYI: So it was not actually something that ...

CHAIRPERSON: It was not something hidden?

MR BALOYI: No it was not hidden yes.

CHAIRPERSON: He was transparent about it?

10 **MR BALOYI**: Yes, yes, yes.

CHAIRPERSON: Yes.

MR BALOYI: It was not – there was no secrets around it.

CHAIRPERSON: So – but – so he was making reports to the PMG Committee to say I have been in touch with the Presidency they say that the people who must act are the following people?

MR BALOYI: Yes.

CHAIRPERSON: And you are sure about that?

MR BALOYI: Yes I am sure.

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

ADV SELEKA SC: Chair Mr Baloyi has referred to that in his affidavit.

CHAIRPERSON: Yes.

ADV SELEKA SC: Ja. So Mr Baloyi if Mr Ngubane says to the Chairperson well the names for acting persons came

from Mr Tsotsi what would be your response to that?

MR BALOYI: Actually Chairperson there were no – there were no – there were not specific people that were properly assigned to do that. Actually it is something that I wanted to see from the committee on how are they arriving at who should act; who should not act. Because it was a new board altogether and some of us were starting to know there was – those executives. And some of the people – two people who were coming from the old board. So it is possible that it was
10 not one person who was making those inquiries or those names. It is possible – or not actually opposed to that because there were conflicting feelings around who should act and who should not act. But one thing for sure is that we did not have the CV's of the people in front of us.

CHAIRPERSON: You did not have the CV's?

MR BALOYI: The CV's of the people.

CHAIRPERSON: You did not have it?

MR BALOYI: So that we know who would be more suitable or will not be more suitable.

20 **CHAIRPERSON:** Yes.

MR BALOYI: We did not [00:19:20].

CHAIRPERSON: Ja.

MR BALOYI: The candidates that should be acting.

CHAIRPERSON: Was there a memorandum or document that had been – that was placed before the members of the

PMG Committee which sought to tell the members of the PMG Committee about each one of the people that were being considered for acting?

MR BALOYI: I did not see that memorandum.

CHAIRPERSON: Yes.

MR BALOYI: I did not – no I do not remember seeing that.

CHAIRPERSON: Ja well I am not saying there was I am just asking because you say there were no CV's.

MR BALOYI: There was no formal process.

10 **CHAIRPERSON:** Yes there was no formal process.

MR BALOYI: Of doing it – no there was no assessments of who – why so and so is suitable than the other. There was no assessment.

CHAIRPERSON: Yes. Now going back to the question of the names. You say as I understand you it is possible that there may have been more than one person phoning the Presidency or obtaining names, is that right?

MR BALOYI: Yes.

20 **CHAIRPERSON:** But with regard to Doctor Ngubane do you remember that there are some names that he told the PMG Committee about as people that were being endorsed by the Presidency for acting or is that something you do not remember?

MR BALOYI: Actually what I remember are the three executives that left in December 2019 – no 2018 and those

were [00:21:09] given the package. I think they were around ten people that left or eleven people – somewhere there were nine around December 2018. And those executives are the ones that I identified to as being said that they are not supposed to act in the CE positions. I think there are – of them that I remember that these ones were out we cannot consider these ones.

CHAIRPERSON: I think I am losing you now.

MR BALOYI: So I am ...

10 **CHAIRPERSON:** Okay my question was do you remember or do you not remember whether Mr – Doctor Ngubane at any stage told the PMG Committee of some of the names of people that he said were endorsed by the Presidency for acting? Is that something you remember as having happened? Is that something you do not remember as having happened?

MR BALOYI: He did mention them but I do not remember them by their names.

CHAIRPERSON: He did.

20 **MR BALOYI:** He did mention them

CHAIRPERSON: He did mention some.

MR BALOYI: He did raise them – yes he did release there was that – suitable and those that are not suitable.

CHAIRPERSON: Yes.

MR BALOYI: I remember more special those who were not

suitable; the ones that I said they are the ones that left – that were given packages in December 2018. So they are the ones that I am really sure that he said that these ones are not the accepted or acceptable from the office.

CHAIRPERSON: Hm. Mr Seleka.

ADV SELEKA SC: Thank you Chair. Mr Baloyi of those who became appointed for instance one we know acting appoints. One is Ms Nonkululeko Veleti Dlamini. Do you know whether Doctor Ngubane mentioned her – her name?

10 **MR BALOYI:** I do not remember Chair.

ADV SELEKA SC: Do you remember one of them is Mr Zethembe Khoza who acted in the position of Mr Matona? Do you remember whether his name was mentioned by Doctor Ngubane?

MR BALOYI: I think his name came at the end when we could not all see the suitable ones.

ADV SELEKA SC: When you could not what?

MR BALOYI: When we could not actually find the ones that were pre-approved.

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

MR BALOYI: Because I know that he did act immediately after them.

ADV SELEKA SC: Yes then you will help who else acted? Mr Edwin Mabelane?

CHAIRPERSON: Would you be able to remember the

names?

MR BALOYI: No I will not remember the names of those that acted in all others but I just know the FD one and the CE – Group CE. Evidently the Group CE’s are the ones that I am a hundred percent sure that I know.

ADV SELEKA SC: Are the ones that you are a hundred percent sure?

MR BALOYI: That I know ja. The others I am not sure hundred percent.

10 **ADV SELEKA SC:** Do you recall Mr Linnell?

MR BALOYI: Yes I remember him.

ADV SELEKA SC: Well let me – I am reminded of this before I go to Mr Linnell. Mr Tsotsi on the other hand in regard to the acting appointments he says:

20 “I stepped out of – there was a break or he went out for lunch or for tea whatever – when he came back the PMG was in session. The people in Governance Committee was in session in the meeting and he saw for the first time upon arrival into that meeting that the PMG had decided on who is going to be in the acting positions. And he was asking but you are new board members how do you know these people?”

Do you have any recollection of that?

MR BALOYI: Yes I have got the recollection of that. Because it is the same question that I raised as well that I said earlier that you are new except that those two people who were from the previous board including the Chairperson. He did raise that.

ADV SELEKA SC: He did.

MR BALOYI: Hm.

CHAIRPERSON: And what response did he get and from whom?

10 **MR BALOYI:** I do not remember the response but the question was raised.

CHAIRPERSON: He said that when he testified he said he was told that the names had been provided. Now I cannot remember whether he said he was told the names have been provided by the Minister or by the Presidency. But he said somebody said the names had been provided or approved. Do you remember anybody that may have said something along those lines in response to him? Or is that something you cannot remember?

20 **MR BALOYI:** I cannot say with confidence because the only person I knew who was in contact with their offices was Doctor Ngubane. He is the only person I know.

CHAIRPERSON: Yes. Okay. Okay.

ADV SELEKA SC: So we are one minute away from lunch time.

CHAIRPERSON: Well it looks like we will have to continue with him after two.

ADV SELEKA SC: Ja what I will do I will try...

CHAIRPERSON: I think you just mentioned the – Mr Linnell so he might have something to say about Mr Linnell so – but we can – but maybe we should see whether if we take thirty minutes from two to half past two whether that might be enough or not. What is your sense of how much more time we need with him?

10 **ADV SELEKA SC:** Shoo I am unable to estimate time now.

CHAIRPERSON: Ja. Okay alright. I think that is fine. Let us adjourn.

ADV SELEKA SC: Yes.

CHAIRPERSON: For lunch we will come back at two but during the break I think you can reflect on just identifying the areas where there might be controversy about what happened.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Or areas where other witnesses have not been able to enlighten me on.

ADV SELEKA SC: Yes.

CHAIRPERSON: And then we can focus more on those areas.

ADV SELEKA SC: On that.

CHAIRPERSON: I mean except for the role of Mr Linnell I

mean we have dealt with the – except for that I am not sure other than his removal what else we may be needing to look at but you might be able to remember over lunch.

ADV SELEKA SC: Ja. It will be Mr Linnell. It will be the removal of Mr Tsotsi.

CHAIRPERSON: Ja the charging of Mr Tsotsi and his removal.

ADV SELEKA SC: That is correct.

CHAIRPERSON: Ja.

10 **ADV SELEKA SC:** I think Mr Baloyi should touch a little bit on the exit negotiations with...

CHAIRPERSON: Ja.

ADV SELEKA SC: The executives.

CHAIRPERSON: Ja.

ADV SELEKA SC: And then the last is his own removal.

CHAIRPERSON: Ja. Ja. No I think we – we probably we should be able to finish within thirty minutes after two. Okay alright. We are going to take the lunch adjournment we will resume at two. We adjourn.

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

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES:

CHAIRPERSON: Okay let us continue.

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

are still under oath.

MR BALOYI: Thank you. Thank you, sir.

NORMAN BALOYI: (s.u.o.)

ADV SELEKA SC: Just raise your voice, please.

MR BALOYI: Thank you, sir.

ADV SELEKA SC: No, the voice. [laughing]

MR BALOYI: Okay.

ADV SELEKA SC: Thank you. Mr Baloyi, hopefully we can go faster. I had asked you before the adjournment about Mr
10 Nick Linnell and... well, I mentioned his name and my question is this. Do you recall Mr Nick Linnell?

MR BALOYI: Yes, I do.

ADV SELEKA SC: We understand that Mr Nick Linnell was present in one of the board meetings on the 11th of March 2015.

MR BALOYI: Yes, Chair I recall.

ADV SELEKA SC: Do you recall that?

MR BALOYI: Yes.

ADV SELEKA SC: Can you recall what was Mr Nick
20 Linnell's involvement in the board meeting?

MR BALOYI: Ja, he was introduced as a consultant who was going to assist us with cases of the suspensions and also of identifying appropriate Companies Act and can assist with inquiry.

ADV SELEKA SC: Thank you. And did... what was the

board's attitude towards the introduction of Mr Linnell?

MR BALOYI: He was welcomed. There was no resistance towards his engagement and... yes, in short.

ADV SELEKA SC: Yes, he was welcomed. There was no resistance to his engagement?

MR BALOYI: H'm.

ADV SELEKA SC: So ...[intervenes]

CHAIRPERSON: Was there any explanation provided as to where he was from and how he came to be presented to the
10 board as somebody who could assist?

MR BALOYI: Actually, it was mentioned on the meeting of the 9th but the name was not mentioned because in that presentation by the board chairperson on the Monday, he said that there is a consultant that has been identified from the meeting that he had the day before.

So this person can assist us in many ways and said can identify... he mentioned this involvement but not his name. And then the name came on the Wednesday, on the 11th. Yes.

20 **CHAIRPERSON:** Did he say where the consultant came from or how he came to be in touch with this consultant, either on the 9th or on the 11th?

MR BALOYI: No, it was not mentioned actually. Only the issue of that they have identified and he is going to assist us. But the issue of his full background was not given or

where they met, were not given.

CHAIRPERSON: Was it said that he had been recommended by anybody?

MR BALOYI: It was not mentioned.

CHAIRPERSON: It was not mentioned?

MR BALOYI: Except to say that he was with the president on... that was on the meeting of the 9th that he was with the president. And then he identified someone who can assist us.

10 **CHAIRPERSON**: Okay.

MR BALOYI: From the president's side.

CHAIRPERSON: Okay.

MR BALOYI: H'm.

CHAIRPERSON: Continue Mr Seleka.

ADV SELEKA SC: Thank you, Chairperson. Did... we understand from the evidence already presented Mr Baloyi that Mr Linnell had by that time already prepared a memorandum and a draft proposal for the board. Were you aware of that?

20 **MR BALOYI**: Yes, actually we... the only thing that we were questioned on the 9th was the presentation that was given to us without the notice. But on the 11th, what was already made available was the issue of the suspension letters. The issue of the memo is something else which actually did not come to my attention if I remember.

ADV SELEKA SC: Who drafted... who had drafted the suspension letters?

MR BALOYI: They were done by Mr Linnell.

ADV SELEKA SC: Mr Linnell?

MR BALOYI: Yes.

ADV SELEKA SC: And the board accepted that the letters as drafted by Mr Linnell?

MR BALOYI: Yes, we did accept them because we used them ultimately and they were served to the executives. And
10 most of the content was the same content from one letter to the other. So it was mainly copied and pasted in most of the letters.

ADV SELEKA SC: H'm. We understand from the evidence and those who gave who testified before the Commission, that the board agreed that there will be no allegations of wrongdoing against the executives or allegations of misconduct.

MR BALOYI: I did not get that properly.

ADV SELEKA SC: That the board agreed that there will be
20 no allegations of misconduct or wrongdoing against the executives to be suspended.

MR BALOYI: Yes, there was.

ADV SELEKA SC: So can you recall what then ultimately caused the board to suspend these executives?

MR BALOYI: The reason that prevailed was to say that the

investigation should take this without any interference(?) without any... they used the word unfitted.

ADV SELEKA SC: They used the word...?

MR BALOYI: Unfitted. So it was just to allow the inquiry to go on without any disturbance by an executive who was ...[intervenes]

ADV SELEKA SC: Well, was there any evidence that the executives to be suspended would interfere with the inquiry or the investigation?

10 **MR BALOYI:** There was no evidence that they were going to temper with the inquiry because we did argue around that. And I also argued on the issue of the laptops that we do not need to take their laptops.

We can image their laptops. And with... we have got information, they can go then, the information that they have.

So it was not the issue of their presence was going to be invaded because all information that is digitally, it could be available if needed(?) from the imaging of those laptops.

20 **ADV SELEKA SC:** Yes. Just remember to raise your voice.

MR BALOYI: Okay.

ADV SELEKA SC: So you were saying to the Chairperson, one, the reasons for the suspensions to in... which is allegedly to interfere with the inquiry, you argued about that.

MR BALOYI: Yes, I did.

ADV SELEKA SC: So you personally raised that with the board.

MR BALOYI: Yes, I did.

ADV SELEKA SC: As what? As not a good reason?

MR BALOYI: Actually, I raised the issue of their removal from office, not to be a good idea.

ADV SELEKA SC: You said the idea to remove them is not good?

MR BALOYI: Yes ...[indistinct]

10 **CHAIRPERSON:** Did you remain opposed to their suspension right up to the end?

MR BALOYI: Yes, I did.

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you, Chair. And then, in regard to the Tools of Trade. The laptops you mentioned, what did you say about that again? If you could repeat for the Chairperson.

MR BALOYI: Ja, I said that we do not need to take their laptops because the idea was that they must bring their
20 laptops the following day.

And is said that we do not need to take their laptops. We can image their laptops. And so we said that we can have all the information even if they can go and tamper with that one, it will not matter because we have got the original one.

ADV SELEKA SC: And what was the reaction from the board on the laptops?

MR BALOYI: It was also rejected and I think they brought back their laptops.

ADV SELEKA SC: Do you know which member of the board in particular rejected your proposal?

MR BALOYI: It was not accepted. I will not say that there was a specific person who rejected it. The idea was not accepted.

10 **ADV SELEKA SC:** I see. I may come to that later on but let me ask you this. So the executives then gets suspended and we understand from their evidence before this Commission that they wrote letters to the chairperson, at least, of the board.

Two of the executives write letters and they make enquiries about the terms of reference, the unfairness or otherwise of their suspensions, and they offered to assist the board in the inquiry.

20 Were you aware of those letters written by the executives?

MR BALOYI: No, I was not made aware.

ADV SELEKA SC: Were you aware that Mr Matona had taken Eskom to the Labour Court and then the CCMA?

MR BALOYI: Yes, I saw the proceedings over the internet or something in these lines, ja.

ADV SELEKA SC: And do you know what position the board took in regard to Mr Matona's labour dispute?

MR BALOYI: What I know is that there was a settlement afterwards, actually, with all three executives.

ADV SELEKA SC: All?

MR BALOYI: All three executives. There was a settlement agreement afterwards.

ADV SELEKA SC: What about the fourth with...?

MR BALOYI: I think the fourth one went back after some
10 months.

CHAIRPERSON: That is Mr Koko, of course?

MR BALOYI: Yes, yes.

CHAIRPERSON: Now, Dr Ngubane and Ms Klein testified here and said that the board wanted the suspended executives, all of them, back.

Or that the board had no issues with them coming back but that the executives who concluded settlement agreements, did so because they are the ones who said they wanted to leave.

20 It was not as if the board did not want them back. What did you know about what the board's position was or what the board's attitude was or what the attitude of some members of the board may have been?

MR BALOYI: Actually, there was no bad relationship between the executives and the board. Actually, I think the

board caught the executives by surprise when they were suspended because there was no... there was no bad blood ...[intervenes]

CHAIRPERSON: It was a new board.

MR BALOYI: Yes. And they were still trying to get to know each other.

CHAIRPERSON: H'm. Yes.

MR BALOYI: So the decision(?) of the board was not bad towards them. Ja and so everybody was caught by surprise
10 as I say. But the issue is that even when we had the meeting on the 9th, we were all in defence of not having the inquiry. We still need to get our facts ourselves. We still need to engage with the executives. So ...[intervenes]

CHAIRPERSON: On the 11th?

MR BALOYI: Ja, it did change completely.

CHAIRPERSON: Yes.

MR BALOYI: Yes, h'm.

CHAIRPERSON: Well ...[intervenes]

MR BALOYI: But the hostility between the two groups,
20 there was no hostility.

CHAIRPERSON: Yes, there was no hostility between the board and ...[intervenes]

MR BALOYI: The executives.

CHAIRPERSON: ...the executives.

MR BALOYI: H'm.

CHAIRPERSON: But Mr Matona gave evidence here and said he had been unhappy about being suspended. So unhappy was he that he had brought an urgent application in the Labour Court to challenge his suspension.

And that his matter ended up at the CCMA and the representatives of the board asked for a postponement of the matter because they wanted to get a mandate, I think, they said from the shareholder, the minister as to how to resolve the matter.

10 But that when Mr Matona met with the representatives of the board, who I think he said included Mr Romeo Khumalo. I think he said it included Dr Ngubane if I am not mistaken as well. I do not know if Ms Klein was there as well. I am not sure.

But he said that one of the representatives of the board, I think he said it was Mr Khumalo, told him in very clear terms when he talked about going back to his job that that was off the table, namely going back to his job at Eskom.

20 And that they could talk about a separation package, I think. But talking about Mr Matona going back to his job was off the table. That is what Mr Matona told me when he gave evidence here.

And yesterday, one of the executives, Mr Marokane said that he wrote letters to, after being suspended, he wrote letters to the Chairperson, Mr Tsotsi and I think also maybe

to Dr Ngubane later on. I am not sure.

But he wrote letters to try and get clarification on matters and his letters were ignored. And after some time, he felt he was not wanted by the board anymore, the way they were handling this thing.

And he, therefore, reached out to Dr Ngubane and said maybe we should talk about a separation. But he says that was because he felt unwanted.

He had wanted to go back but he thought that the board
10 did not trust him anymore, he was unwanted. That is why he said, let us talk a separation package.

And Ms Molefe gave evidence here also, yesterday. And she said she wanted to go back but Mr Romeo Khumalo said to her that they should talk about a separation package.

So she said that the idea of a separation package came from Mr Romeo Khumalo, a member of the board. And she, at some stage, threatened to take Eskom to court.

And Mr Khumalo said: Well, you do not want to sue the state or take on the state or something like that. And
20 ultimately, she decided: Okay we can talk settlement.

Have you got something to say with regards to this evidence from these executives?

MR BALOYI: Ja, I honestly could not because I was not in the picture by then.

CHAIRPERSON: Ja-no, do not speculate.

MR BALOYI: No, I am just ...[intervenes]

CHAIRPERSON: Ja, just ...[intervenes]

MR BALOYI: I do not have any and I do not have information.

CHAIRPERSON: Ja, tell me whether you ever heard about these things that were said to have been said by members of the board who interacted with the executives. And whether you think that if they said the things that the executives say they said whether that reflected... they reflected the board's
10 attitude or not as far as you know... you knew.

MR BALOYI: Ja, my understanding is that the way that the executives were treated because there was a long delay in communicating with them. It could suggest that there was a changing of attitudes towards them.

Like, you said that one of them said they are still waiting for the mandate or whatever. So I think that mandate could have been the one that changed their attitudes.

As I have witnessed the changing of the attitudes from the meeting of the 9th to the 11th. It was a different set of
20 people actually because ...[intervenes]

CHAIRPERSON: What had met on the 9th at the board meeting.

MR BALOYI: Ja.

CHAIRPERSON: And the board that have met on the 11th.

MR BALOYI: Ja ...[intervenes]

CHAIRPERSON: It was like it was a different board?

MR BALOYI: Ja, but simply put.

CHAIRPERSON: Ja.

MR BALOYI: H'm. So I think that could have been influenced by the interaction they had with the other offices.

CHAIRPERSON: Yes.

MR BALOYI: H'm. But in general, when we spoke after the suspensions, all board members agreed that they were that way, it was done the suspensions, it is now how you suspend
10 executives.

Ja, because the image was created out of nowhere and there was no time to reflect where we are doing the right thing or not. Everything just came at a bit of light. Ja.

CHAIRPERSON: Oh. Did the board not reflect on the question of why they should pay the kinds of amounts that they paid to these three executives in terms of their separation agreements, settlement agreements?

MR BALOYI: I am not sure how they negotiated that because I was not in the picture by then.

20 **CHAIRPERSON:** Oh, have you left by then?

MR BALOYI: Ja.

CHAIRPERSON: Oh, okay. No, that is fine. Mr Seleka.

ADV SELEKA SC: Thank you, Chair. Mr Baloyi, in regard to the laptops. I... you say you had indicated that it was not necessary to take away the laptops.

May I find out from you whether you were aware of these emails exchanged, that I will refer you to in the same bundle that you have.

Chairperson, the same Eskom Bundle 10. But now I refer to emails in Exhibit U15.

CHAIRPERSON: Well, would you not just tell me the page number if it is the same bundle?

ADV SELEKA SC: I will do so. Certainly, Chairperson. These are ...[intervenes]

10 **CHAIRPERSON**: Because I have not admitted any Exhibit U15 as far as I remember.

ADV SELEKA SC: Yes, that will be... the exhibit relating to Mr Marokane.

CHAIRPERSON: Can you tell me the page number?

ADV SELEKA SC: The page number is 193. There are a couple of pages. Let me give them to you, Chairperson. From 188.

CHAIRPERSON: From one, eight...?

ADV SELEKA SC: 188.

20 **CHAIRPERSON**: Oh, okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: If Mr Baloyi could be assisted quickly. Mr Baloyi, these are the annexures. As you go there to Mr Anton Nienaar's affidavit to this Commission.

MR BALOYI: [No audible reply]

ADV SELEKA SC: To his affidavit, he has attached the following emails exchanged between him, Ms Venete Klein, Ms Elsie Phule.

You will see from the emails there on page 188, there is an email from Ms Vente Klein, Saturday, March... 14 March 2015 at 09:28 a.m. to Ms Elsie Phule. Urgent Feedback Please, is the subject line. And email reads:

10 “Hi, Elsie. I see from the collections from the cards, laptops, et cetera that we did not collect from the CE. What was the reason for that?”

And the email immediately above that on 18 March 2015 at 09:11, Ms Elsie Phule writes:

 “Anton, as discussed, please confirm whether the laptop has been collected from CE.”

Do you see that?

MR BALOYI: Yes, I do.

20 **ADV SELEKA SC:** Then there is an email at the top of the page from Ms Venete Klein, 18 March 2015 at 15:31 p.m. to Ms Elsie Phule, cc'd Anton Nienaar, Venete Klein and Shaun Maritz. Again, the subject line: Urgent Feedback Please.

 “Anton, given the significance of this matter, I would like your confirmation asap. Regards.”

And that was sent from an iPhone.

MR BALOYI: Yes.

ADV SELEKA SC: Were you aware of this communication?

MR BALOYI: No, I was not aware.

ADV SELEKA SC: Was this communication reported to the board?

MR BALOYI: I do not remember at all.

ADV SELEKA SC: Thank you. So you then mentioned to the Chairperson that four... three of the four executives concluded separation agreements with Eskom and one of them returned.

10 Do you know the reasons why the one who returned, being Mr Koko, was accepted back from suspension?

MR BALOYI: Yes, actually from the... after the suspensions, actually, it came to my attention that the issue of the suspensions were somehow initiated(?) by Mr Koko.

And also hearing the evidence that I have heard so far, more specially about the meetings of the 10th, I happened to believe that it could be true that everything that was initiated, it was planned and it was and it was a project to exit.

20 So that is my impression of it. Because I doubt if, when the other ones were approached or they were approached, whether the same approached was done to him. I doubt it.

Unless, if there could be some evidence that an interaction that were done between the other executives, were also done to him. It is something that maybe can make

us believe otherwise.

ADV SELEKA SC: Well, Ms Daniels has provided evidence to this Commission. She says she was present in all of the meetings where the delegation from the board negotiated with the four suspended executives.

She says in her affidavit and before this Commission that:

“Negotiations with Mr Koko were completely different from those of the other three executives.”

10 **MR BALOYI:** I can believe that.

ADV SELEKA SC: But was the board given the reasons why Mr Koko was accepted back?

MR BALOYI: I was not in the picture by then.

ADV SELEKA SC: You were not in the picture by then?

MR BALOYI: H'm.

ADV SELEKA SC: Thank you. Were you still at Eskom when the board decided to bring charges against Mr Tsotsi?

MR BALOYI: Yes, I was.

20 **ADV SELEKA SC:** Can you recall what those charges were?

MR BALOYI: The charges were him using or utilising the services of Mr Nick Linnell as a consultant without the necessary approval by the board. And also for leaking the document, actually there was a leaked document about things that had to unfold. That particular leakage, where

he is talking about things that the board did not agree, the proposals that he has done he wrote the as if the board has agreed to those proposals. So those were the main charges against him.

ADV SELEKA SC: Yes. Let me quickly go to the reference bundle because it might help us expedite this aspect. The reference bundle – they will assist you with the reference bundle, Mr Baloyi. Chairperson, page 226 in the reference bundle. Page 226, Mr Baloyi, those – are
10 you on that page?

MR BALOYI: Yes.

ADV SELEKA SC: That page contains the minutes of Eskom board in-committee meeting of 30 March 2015 at 20h00. Present, I see that you were there, Mr N T Baloyi.

MR BALOYI: Yes.

ADV SELEKA SC: The purpose of the meeting appears on the next page, page 227, paragraph 7. Paragraph 7, page 227. Are you there, Mr Baloyi?

MR BALOYI: I am in 227 but there is no paragraph 7.

20 **ADV SELEKA SC:** Okay, concentrate on ...[intervenes]

MR BALOYI: I have got ...[intervenes]

CHAIRPERSON: You mean item 7?

ADV SELEKA SC: Item 7, yes. Thank you, Chair.

CHAIRPERSON: Matters for approval.

ADV SELEKA SC: Indeed.

CHAIRPERSON: 7.1:

“Proposal to remove the Chairman of the Board.”

Page 227, black numbers on the left hand corner. It is on the right, the relevant page is on your right, not your left. Have you got page 227? Look at the black numbers at the top. Have you got page 227?

MR BALOYI: Yes, I am in 227.

CHAIRPERSON: Yes, go down – can you see the numbers 1, 2, 3, 4 up to 7.1 on the margin?

10 **MR BALOYI:** There is no numbering. I cannot see the numbers.

CHAIRPERSON: Has he been given the right bundle?

ADV SELEKA SC: Ja, he had gone two more pages further.

MR BALOYI: Okay, yes.

ADV SELEKA SC: Item 7, do you see that, Mr Baloyi?

MR BALOYI: Yes, yes.

ADV SELEKA SC: “Proposal to remove the Chairman of the Board. At this point Mr Tsotsi joined the meeting in his capacity as a director.”

20

Do you see that?

MR BALOYI: Yes.

ADV SELEKA SC: If you turn the page. There are charges there identified as Charge 1. Can you see at the top of the page?

MR BALOYI: Yes, I do.

ADV SELEKA SC: Yes and then Charge 2, towards the end of the page.

MR BALOYI: Yes, I see.

ADV SELEKA SC: Charge 3, 3.1. Next page, charge 4 towards the end of the page.

MR BALOYI: Yes.

ADV SELEKA SC: Charge 5, right at the end of the page.

MR BALOYI: H'm.

10 **ADV SELEKA SC:** And those were the charges brought against Mr Tsotsi.

MR BALOYI: Yes.

ADV SELEKA SC: And mainly, as you say, the first two charges is for him using Mr Linnell, that he procured the services of an external consultant Mr Nick Linnell to provide consulting services to the company without following the company's prescribed procurement processes or informing the board of his actions.

MR BALOYI: Yes.

20 **ADV SELEKA SC:** What is your comment on that charge, Mr Baloyi?

MR BALOYI: Actually I did question this in a number of emails that I wrote to the board before we charged him because there was no – it was a contrary evidence regarding this because when the idea was conceived or

was presented on the 9th, there was no disapproval around that because Nick Linnell the consultant who was brought in on the 9th, no one objected to that, they only objected to the procurement processes that were to be used as a way of speeding up the process and not followed the normal process in terms of appointing service providers and then we also accepted Mr Linnell on the 11th so the board members were supposed to have disagreed on the engagement of Mr Linnell on that first day. No, on that
10 first day or the second day that we met but nothing was opposed.

ADV SELEKA SC: Chairperson, quickly with Mr Baloyi. In your bundle, Mr Baloyi, you have provided the Commission with various emails. I want to refer you in particular to page 364. I could in fact just read the emails to you because those are your emails, just to save time.

MR BALOYI: Yes.

ADV SELEKA SC: For the record I will mention the page numbers. 364 there is an email from you on 23 March
20 2015 at 18.47, Norman Baloyi, and you write:

“Please note that not everyone was in the board meeting after Nick had already presented and the proposal, as far as I remember, was not rejected by anyone and this needs verifying, the audio. I have asked the company secretary to do such

verification. I am saying this to ensure that the board is well-covered at all angles. There is nothing personal or blame game. It is to make sure that we are not found wanting because these types always end up in court and transcripts may be requested hence we also need to be cautious and prove due diligence. Thanks.”

Do you see that?

MR BALOYI: Yes, I see that.

10 **ADV SELEKA SC:** Who are you writing to there, Mr Baloyi?

MR BALOYI: I am writing to the board members.

ADV SELEKA SC: You turn the page – oh, rather, page back to P363.

MR BALOYI: H’m.

ADV SELEKA SC: There is an email at the bottom of the page, from you, I believe, Ntbaloyi@hotmail.com. Is that correct?

MR BALOYI: Yes, I see.

20 **ADV SELEKA SC:** You write to Markp@blts.co.za. Can you tell the Chairperson who is that?

MR BALOYI: This was the...

ADV SELEKA SC: Who is MarkP?

MR BALOYI: It is the lawyer that was asked to assist us with the process.

ADV SELEKA SC: MarkP?

MR BALOYI: Ja.

ADV SELEKA SC: Are you certain that is MarkP? It is not Mr Mark Pamensky? H'm? Or where are you? No, at the bottom of the page. Sorry, Mr Baloyi.

MR BALOYI: Oh, okay. Ja, he is the board member, ja.

ADV SELEKA SC: And then you cc'd Naidooverushni@gmail.com, venetekleininc.co.za,

10 Baltman.ngubane@gmail.com, Khozazw@eskom, romeokumalo@vodacom,

Chwayitam@yahoo,

Nasias.c@vodamail and Patnaidoo.co.za. So you said those are the board members?

MR BALOYI: Yes, I think were all covered, ja.

ADV SELEKA SC: And he subject line is:

“Backup of notice meeting, removal of director(2)”

It is an email also of 23 March 2015 at 26.20:

20 “True, the honest thing is that needs presentation was well-received and there was every reason to endorse him. I wish this part is not recorded. Even it is recorded the board can always rescind in proper decisions but most of all we need to ask a labour specialist if we can add because my little

labour knowledge is that you can always add a charge/allegation as long as there is still a relationship before the final decision is made.

Thanks.”

You specifically are saying there that Mr Nick Linnell’s presentation was well received. Tell the Chairperson what are you discussing here with the board members or as the board members, Mr Baloyi?

MR BALOYI: Yes actually ...[intervenes]

10 **CHAIRPERSON:** Did you say tell me, Chairperson? I think you said tell me, Chairperson.

ADV SELEKA SC: Oh, tell the Chairperson.

MR BALOYI: Thank you. Thank you, Advocate. Yes, actually here we were somehow debating the charges, that this charge does not hold any water because we agreed to engagement of Nick and we are – I mean, he made a good presentation and we all received it and we also made use of his documents so ...[intervenes]

20 **ADV SELEKA SC:** Whose – sorry, Mr Baloyi, whose view was it that the charges do not hold any water?

MR BALOYI: I cannot tell exactly because what happened is that there were people who were liaising with the company lawyers that we appointed.

ADV SELEKA SC: Do you understand my question?

MR BALOYI: Yes.

ADV SELEKA SC: Who held the view that the charges that seems to be formulated here do not hold any water?

CHAIRPERSON: I think he was referring to a particular charge.

MR BALOYI: Yes, actually each of the particular – I cannot say that so and so came with this particular charge because what I was trying to say is that there were people who were assigned more especially from the People in Governance who were assigned to liaise with the lawyers
10 that we appointed to assist us with this process.

ADV SELEKA SC: Yes. No, we understand that. Let me ask you the question differently. What was your view in regard – what is the view you are expressing in these emails?

MR BALOYI: The view I am expressing is that the charges that we are putting forth are fictitious charges, they are not real, they are not tangible or we cannot back them with evidence.

CHAIRPERSON: Are you saying that in regard to all the
20 charges that were preferred against Mr Tsotsi or are you referring to only some?

MR BALOYI: Actually, most of the charges, if I can say, because some of them were coming from the other ones as a way of inferences. So but the main charge was – were those two charges that I spoke about, about the consultant

commencing the work without authorisation, commissioned the media statement, you know, so – because even in the other ones there was the commission of the media statement.

Actually, in one of the – in that particular media statement, there was evidence that that particular proposal was leaked from the department not from the Eskom side so – and then it was about what we are going to be doing in the next few days or months in relation to this and it was
10 more of a proposal that the Chairperson was speaking endorsement or amendment from the board.

So it happened to be leaked and that leakage, we could not prove that he was the one who leaked it to the media and it was only in one media house, it was not in all major media houses, to show that he was not the one who was responsible of leading it.

So hence I said that these two were actually somehow formulated in order to form a basis to remove him.

20 **ADV SELEKA SC:** So that will be charge 3 which says:

“The director authorised the commission of a media statement in relation to the inquiry into the affairs of the company.”

MR BALOYI: Yes.

ADV SELEKA SC: Charge ...[intervenes]

CHAIRPERSON: That media statement, had it not been drafted in either the board meeting or in the meeting of the PNT committee and had members of the board not made their own contributions to this media statement as far as you remember?

MR BALOYI: No, actually ...[intervenes]

CHAIRPERSON: Was it not prepared by Mr Linnell, Nick Linnell and the members of the – either the board or the committee were making contributions as to what should go
10 into the statement or not or was that a different statement?

MR BALOYI: No, actually it was not the media statement *per se* but it was a proposal document. I do not know, whether it was prepared by Mr Linnell or it was proposed by the Chairperson but this media statement – no, that particular proposal, it went to all board members about how are going to unbundle the processes of inquiry and so on.

So it was supposed to be discussed by the board and approved by the board or for the board to amend that is why we can use it in unbundling the process but the issue
20 of the leakage because the allegation here was that he is the one who commissioned that release of that document, something that we could not even prove.

ADV SELEKA SC: Mr Baloyi, I think Mr Tsotsi's response to the board is captured on page 229 and he explains something along the lines of what you are saying the

statement got into the public domain without him being aware of that but he will deal with it when he comes.

CHAIRPERSON: And to the extent, Mr Seleka, to the extent that how – what happened with regard to certain charges appears in a transcript of the meeting. We might need to go over the whole thing because one can read there and see what the attitude of the members of the board was to a particular issue.

ADV SELEKA SC: Thank you, Chair.

10 **CHAIRPERSON:** But where it is not covered then we need to cover it.

ADV SELEKA SC: Yes. Mr Baloyi, the issues are set out in detail there in that minute of the board meeting which you attended. It may be covered in due course in more detail with other witnesses but ultimately the board decided to level these charges against Mr Tsotsi.

MR BALOYI: Yes.

ADV SELEKA SC: Were you still there when the board had a meeting with Mr Tsotsi at which meeting
20 ...[intervenes]

MR BALOYI: Yes, I was there.

ADV SELEKA SC: ...as we understand Dr Ngubane and I think another board member were asked to separately speak to Mr Tsotsi in order to get a separation agreement.

MR BALOYI: Yes, I was there.

ADV SELEKA SC: And that ultimately resulted in Mr Tsotsi tendering his resignation.

MR BALOYI: Yes.

CHAIRPERSON: Can you remember whose idea it was that Mr Tsotsi should be charged? Who came up with this idea in circumstances where it seems a lot of things that he was charged with were things that the board seems to have had no objection to before.

MR BALOYI: I do not know exactly unless if I prepared
10 ...[intervenes]

CHAIRPERSON: Cannot remember.

MR BALOYI: I needed to be prepared, ja, it is a question I needed to have prepared but if I can find the answer I can forward the answer today.

CHAIRPERSON: Ja, it is just that it is something strange.

MR BALOYI: Ja.

CHAIRPERSON: I have never heard of a board of directors charging the Chairperson or even another board member, I have never heard of that, but maybe it does
20 happen but it all looks very strange and, of course, he gave evidence here - Mr Tsotsi - that about two months – about six weeks or so before he had been called by the Minister of Public Enterprises who complained that he was – she had received complaints that Mr Tsotsi was interfering in operational issues and she told him to stop

that otherwise she would find somebody else to do the job that Mr Tsotsi was doing and he says on the same day, which I think he says was around the day of the State of the Nation Address in 2015, early February, he says on the same day he received a call from Mr Tony Gupta. I cannot remember whether it was just a call or whether they actually met but he says Mr Tony Gupta complained to him that ...[intervenes]

ADV SELEKA SC: It was a meeting, Chair.

10 **CHAIRPERSON:** Sorry?

ADV SELEKA SC: It was a meeting.

CHAIRPERSON: Oh, it was meeting, yes, thank you. He complained to him that Mr Tsotsi was not assisting them and Mr Tsotsi understood the reference to them as a reference to the Gupta family and that Mr Tsotsi said Mr Tony Gupta said that they were the ones who had put him into this position and they could take him out of that position.

20 So about six weeks later then the board seems to – or six to seven weeks, eight weeks, the board seems to adopt an attitude that he should be charged, he should be removed but some of the – at least some of the charges appear quite strange when one looks at the minutes or the transcript of the meetings of the 11th. So that is why I am interested in knowing who came up with the idea, but you

say you cannot remember.

MR BALOYI: Yes, but it is something that I can verify.

CHAIRPERSON: Yes, okay.

MR BALOYI: Ja and I can come back to you today.

CHAIRPERSON: Okay, no that is fine.

MR BALOYI: Because I would not want to drop a person's name without evidence.

CHAIRPERSON: No, that is fine. If you do remember just be in touch with the legal team and – ja. Okay, Mr Seleka.

10 **ADV SELEKA SC:** Thank you, Chair. Mr Baloyi, your emails trail might refresh your memory but you will have a look at that.

MR BALOYI: Yes.

ADV SELEKA SC: You have mentioned that you were not at the – you owned the picture on the picture, can you tell the Chairperson what do mean by you are not on the picture when some of these questions were asked?

MR BALOYI: Ja because the same thing that was done to him was done to me.

20 **ADV SELEKA SC:** Which is?

MR BALOYI: Ja, that actually I questioned ...[intervenes]

ADV SELEKA SC: Put on your microphone. It just went on now.

MR BALOYI: No, no, is that I did question certain transactions, it was actually the IT tender which I was

expecting that it will be concluded at a certain period because my background is mainly IT so – and there was just a board tender which I think it started at 2 billion and then it went to 4 billion after its expiry and that was extended, extended, extended until it went 4 point something billion and there was a process of getting a new service provider.

So I went to call the Chairperson, the new Chairperson or Acting Chairperson, which was Dr Ngubane, 10 to enquire if that particular transaction has been concluded and his response was very – because he was the Chairperson of the Tender Committee because I did write emails to the IT executives about what was happening.

And I also did ask Mr Koko because IT was reporting to him, I guess, about these issues of these extensions of the tender and that has been continuing.

So – and without any – without any feedback, it happened that – I mean, Dr Ngubane was very negative around giving me the answer whether he awarded or not 20 awarded that particular IT tender.

So and then I called Mr Koko around it, so – to ask whether it was concluded. He said yes, it is concluded by the Tender Committee some weeks or whatever prior. So I said but I thought that it was going to also come to the board. He said no, it is within the mandate of the Tender

Committee to approve so it is already approved, something which Dr Ngubane did not tell me and he was the Chairperson of it.

And then I questioned – I mean, that the authority for that particular tender it was within the executives' mandate authority, so why did it not conclude at the executives' authority instead of going to dah, dah, dah and, you know, to the other committee and there was not response around that.

10 And then my feeling that I wrote to the board is that we need to be careful because it looks like we may end up being the ones to be blamed when we approve things that were supposed to be approved by the executives because this particular transaction is within the mandate of the executives. So where they needed to have concluded them themselves.

 So I did question those type of things to the board. So and it also happened that during my conversation with Mr Koko, I asked him if he is not going to join the – no, no,
20 I did congratulate him about the court case that he had then to have won for Eskom and so on and then also the issue of the Labour Court or CCMA whether he is going to follow the same road. So – and then he said he is thinking around those lines but he will need some suggestions or if I know some good lawyers and so on, so he did make a

follow up around it, I think in the evening, to say that I must write to him and my proposal of who I think he should consider.

And actually when that thing came to him the following day he wrote to the Chairperson, wrote to the Minister to say that I am confused because I am in a good standing with the Board, and I got this advice and asked him to asked him to put it in writing so that you'll see that it was the communication between myself and Mr Baloyi
10 but myself I don't want to fight with the Board, I want everything to come to a rightful conclusion and so on. So – and then they used that against me to say that I am working against the Board and then they are going to do their processes without my involvement because by that time I was in Pietermaritzburg and then I phoned them that I'm in Pietermaritzburg I have got the toll gate slips that can prove that I'm not around can you wait until I come back. So, they didn't want to so everything just happened like that.

20 **ADV SELEKA SC:** So, you are saying this was during Mr Koko's suspension?

MR BALOYI: Yes.

ADV SELEKA SC: And he writes a letter, after communication with you, he writes it to the Chairperson of the Board?

MR BALOYI: Yes, and also to the Minister.

ADV SELEKA SC: And also, the Minister?

MR BALOYI: Hm.

ADV SELEKA SC: Is that the letter – Chairperson just by reference contained on page 373.

MR BALOYI: Yes.

ADV SELEKA SC: And, can you tell the Chairperson, in a nutshell, what does he say to the Chairperson and the Minister in regard to you?

10 **MR BALOYI:** He says that I must go to CCMA and that the Board will not propose that submission to CCMA and that he should not rely on the processes that were initiated by the Board.

ADV SELEKA SC: He should not?

MR BALOYI: He should not rely on it because it will take long. So, in essence, saying that I am encouraging him to go the legal route, in short.

ADV SELEKA SC: So, were you advising him as he alleged in the letter?

20 **MR BALOYI:** I did say to him that he can successfully interdict this because of the way that suspensions done. It was in – not in line with the law because everything was an emergency of a sort, the procedures were not followed.

ADV SELEKA SC: So, he didn't do that, instead he wrote to the Board – I mean to the Chairperson and the Minister.

MR BALOYI: Yes.

ADV SELEKA SC: Complaining about you.

MR BALOYI: Yes.

ADV SELEKA SC: And as a result of this, you were, ultimately removed from the Board.

MR BALOYI: Ja.

CHAIRPERSON: I see in the letter that he says you congratulated him on the Eskom vs. Westinghouse matter. I don't know whether that was the Constitutional Court
10 judgment or the High Court judgement, do you remember, do you remember which one it was?

MR BALOYI: The Constitutional Court if I remember.

CHAIRPERSON: Well if he was talking about the Constitutional Court one, he should know that the Constitutional Court did not deal with the merits and I know it because I wrote the majority judgement. It did not deal with the merits, whether there was – there were problems with procurement or not, that's all I can say, okay let's continue.

20 **ADV SELEKA SC:** Thank you. Mr Baloyi it's a very strange letter in the sense that, that paragraph says,

"I sent an email to Mr Baloyi, now I'm reading the bottom paragraph on page 373, I sent an email to Mr Baloyi, advising him that I will be pursuing his advice and ask him to recommend an appropriate

lawyer for me and he complied”,

So if you he advised you along the lines he’s saying, that he will pursue the advise, isn’t it strange that he was, at the same time complaining about your conduct to the Board or to the Chairperson and the Minister?

MR BALOYI: Ja, actually it is more – it is contradictory – it’s actually a contradiction because you can see there isn’t any consistency and there’s no honesty in both – I mean you cannot write the same thing and the same thing say
10 that – and the same things are not actually in line with one another. So, there was an element of contradiction and even our discussions actually. The content that this letter is having, it was something that was cited by – it was not something that I said, I mean...[intervenes].

ADV SELEKA SC: Ja, you should tell the Chairperson.

MR BALOYI: Yes, I did actually make the advice but the content has been added somehow, somewhere.

ADV SELEKA SC: So are you saying...[intervenes].

MR BALOYI: But in short is that the letter is not
20 consistent, ja because on top he’s talking about advice, that I informed him about 1, 2, 3 and then he said he’s agreeing then he’s saying he doesn’t want to, you know.

ADV SELEKA SC: I see, so you are saying, in any event, the letter itself – the contents of the letter are not strictly reflective of your conversation with him?

MR BALOYI: No, no they're not at all.

ADV SELEKA SC: You're saying this was used against you to remove you?

MR BALOYI: Ja, ja it's the only thing that was used.

ADV SELEKA SC: Who removed you?

MR BALOYI: As I said that they had a meeting without my presence.

ADV SELEKA SC: Who's that?

MR BALOYI: The Board, they had the meeting without
10 my presence, saying that I was supposed to have been there or get a representative or whatever and I said to them that I – I informed them in advance that I'm not around and I'm coming on this date please wait until I come back, just one week.

ADV SELEKA SC: I don't think the Chairperson will hear you.

MR BALOYI: Okay, sorry, so it was just an emergency that was created to deal with it in my absence, yes, so – and then – because when we – I finally went to meet with
20 the Minister the whole discussion around our conversation with the Minister, it was about me talking to the Executive who is suspended. So – and ultimately at the end the Minister said that what I needed to have done would have been to inform Board members not to communicate with the Executives and that was what I was expecting the

decisions of the Minister to be because it was not about the content it was not about whether this one is right or this one is wrong it was about communicating with the suspended Executive ...[intervenes].

CHAIRPERSON: But the Board had never made a resolution that Board members should not communicate with the suspended Executives, had it, it had not?

MR BALOYI: No, no there was no communication.

CHAIRPERSON: So, by talking to a suspended Executive
10 you had not gone against any decision of the Board?

MR BALOYI: Yes, true.

CHAIRPERSON: Ja what had been done was that the Executives had been told not to communicate with people in the company which I assume would be staff.

MR BALOYI: Yes.

CHAIRPERSON: Yes, so did the Minister point out which decision of the Board or which rule or policy you had broken?

MR BALOYI: No, actually what – in our discussion, at
20 the end of our discussion he said that it was supposed to have done that directly to the Board, not to communicate with the suspended staff and also even when she wrote the letter to me the only thing was for me to have communicated.

CHAIRPERSON: Why would she be – why would she be

involved in matters of whether the Board – members of the Board talk to Executives of Eskom, as Minister, why would she get involved in that?

MR BALOYI: I was surprised, hence my only expectation from her was to have given a warning that you must not do it again from now on because seeing that, because when she wrote me that letter I think I've written to her five or six times to persuade her to change her mind around that and then – but there was never correspondence back, there
10 was never a response around that.

CHAIRPERSON: Hm, okay.

ADV SELEKA SC: So Mr Baloyi the Commission, the Chairperson understands you to be saying, the Minister actually appreciated that there was no directive at the time and when you were at the meeting she's saying, I should have made a directive, put it in place and prohibited Board members from speaking to the suspended Executives.

MR BALOYI: Ja it is exactly that, as you put it.

ADV SELEKA SC: Did she put in place, that directive?

20 **MR BALOYI:** I don't know because the only correspondence I got from her was that particular letter from her.

ADV SELEKA SC: What letter was that?

MR BALOYI: It was the letter to say that you are no longer going to be a Board member.

ADV SELEKA SC: But are you aware, prior to her giving you the letter of removal that she put in place a directive?

MR BALOYI: No, I didn't actually get any correspondence around that, I don't think it was ever given to the Board members.

CHAIRPERSON: The decision of the Board to remove you, what is the reason that they gave?

MR BALOYI: It was mainly to have communicated with the suspended...[intervenes].

10 **CHAIRPERSON:** They said because you had communicated with a suspended Executive?

MR BALOYI: Yes.

CHAIRPERSON: And was – do you know whether that was in the minutes or that's what they told you?

MR BALOYI: It was not in the minutes it's what they told me.

CHAIRPERSON: That's what they told you?

MR BALOYI: Ja.

20 **CHAIRPERSON:** And did they point out where they had made a decision that Board members should not communicate with the suspended Executives.

MR BALOYI: No there was no...[intervenes].

CHAIRPERSON: There had never been such a...[intervenes].

MR BALOYI: No there was never such a directive or a

rule.

CHAIRPERSON: Ja, okay, alright.

ADV SELEKA SC: Chairperson, relative to your question, Mr Baloyi you could turn to page 376, it appears to be a letter from the Chairperson of the Board, interim Chairperson of the Board, Dr Ngubane, to yourself.

CHAIRPERSON: Yes, has it got a date 7 April 2015, it's addressed to you Mr Baloyi and the heading is – the subject, meeting of the Board of Directors for your
10 removal,

“We refer to the notice of Directors meeting which you received on Tuesday 7 April 2015”,

Now, the letter is written on the 7th of April right,

“Pursuant to the notice, the Board met, and the resolutions contained therein were adopted unanimously. Please be advised that you are suspended as a non-Executive Director of the company with immediate effect. Your position on the Board shall become vacant on the letter of the
20 Minister's concerned to your removal being received, within 7 calendar days of 7 April 2015 or the expiry of the time of filing an application for review in terms of the Companies Act or the granting of an order by the Court on such application. Please be advised that you have a

duty of confidentiality in relation to all matters which came to your attention in your capacity as a non-Executive Director of the Board. You are required to keep confidential all such matters and that the company will hold you liable and seek appropriate redress including anything for damages”,

I guess that’s supposed to say, should, it says would,

10 “Should you breach your duty of confidentiality. You are further advised to refrain from any further communication with Eskom, it’s Directors and its employees”.

Where is the one where – where are those resolutions that were attached to the notice of the Directors meeting?

ADV SELEKA SC: It would seem to be page 377, Chairperson.

CHAIRPERSON: Okay.

20 **ADV SELEKA SC:** Which is between tramlines a notice of directors meeting.

CHAIRPERSON: Okay.

ADV SELEKA SC: They’re giving a notice there,

“Notice is hereby given that a meeting of the Board of Directors will be held”,

And the proposed resolutions are set out from the middle of the page.

“Resolution one, removal of Director.

Reasons for the resolution.

10 The Board is of the view that Mr Baloyi, the Director, has neglected or has been derelict in the performance of his functions as a Director as provided for in Clause 1310.3.3. of the MLI read with Section 71 (3) (b) of the Act. The Board believes that the Director has not acted in good faith and for proper purpose nor has he acted with the degree of care, skill and diligence that may reasonably be expected of a person carrying out the same functions in relation to the company, as those carried out by the Director for the following reasons”,

Then the reasons follow,

20 “The Director has committed one or more acts of misconduct involving dishonesty towards the Board in that, through his actions and/or omissions he has exposed the company to certain risks as enumerated below. You have engaged with and made confidential disclosures regarding the purported intentions of the Board to at least one of the suspended Directors of the company. In breach of

your fiduciary duties you have threatened to disclose information relating to the Board, alternatively about and concerning the Board in order to embarrass the Board. You have sought to mislead one or more of the suspended Directors in regard to the Board's intentions. You have threatened to pursue certain litigation to advance an improper agenda and put the company to unnecessary expense".

10 Mr Baloyi then they carry on, I suppose you – I don't know did you receive this notice?

ADV SELEKA SC: Yes, I did receive it Chair.

CHAIRPERSON: When did you receive it, I think it's date the 4th of April, when did you receive it?

MR BALOYI: It could have been the same day but it was the date when I was not in Gauteng.

CHAIRPERSON: Oh did you say that you could not attend because you were in Maritzburg.

MR BALOYI: Yes, Pietermaritzburg yes.

20 **CHAIRPERSON:** But you communicated with them and asked them to ...[intervenes].

MR BALOYI: Ja I did.

CHAIRPERSON: Change the date of the meeting.

MR BALOYI: Yes, I did.

CHAIRPERSON: And they refused.

MR BALOYI: Ja.

CHAIRPERSON: Who did you communicate with, was it the company secretary or the Chairperson?

MR BALOYI: I think both, if I'm not mistaken.

CHAIRPERSON: Yes.

MR BALOYI: Because in the whole board I think I might have written to them.

CHAIRPERSON: Yes, did you suggest a date for the meeting?

10 **MR BALOYI:** Yes, I said that I'm coming in less than a week.

CHAIRPERSON: Less than a week?

MR BALOYI: Ja.

CHAIRPERSON: Yes, did you indicate that it could be – the meeting could be on any date from a certain date or what did you say?

MR BALOYI: Yes I did.

CHAIRPERSON: And how much time was there between the date of 7 April to the date from when you would be
20 available?

MR BALOYI: It's less than a week, I said immediately.

CHAIRPERSON: Yes, and what reason was given for not accommodating you?

MR BALOYI: No, they only said that if I was not going to be available they were supposed to – I was supposed to

send a lawyer to go and present to them that I'm not available on that day.

CHAIRPERSON: You were telling them before the date of the meeting or were you telling them after.

MR BALOYI: Immediately, no I wrote to them immediately.

CHAIRPERSON: Yes.

MR BALOYI: Ja it was.

CHAIRPERSON: They said you should send a lawyer?

10 **MR BALOYI:** They said to me I should have sent a representative to come and ask for postponement or whatever but it was the very same thing that they did to Mr Tsotsi because you can't give – these things, I mean, the MOI says that you must have at least ten days of notice and here you can see that it's three days, it's from the 4th to the 7th.

CHAIRPERSON: Okay, Mr Seleka.

ADV SELEKA SC: Thank you Chairperson. Just to finalise, Mr Baloyi, so you say you are, as you were
20 explaining to the Chairperson, you think your removal is linked to you questioning certain transactions?

MR BALOYI: Ja, actually from what you could have noticed that actually everything emanated from there...[intervenes].

CHAIRPERSON: From the?

MR BALOYI: From the IT tender.

CHAIRPERSON: Yes.

MR BALOYI: Everything emanated from there because the – Dr Ngubane was chairing it and...[intervenes].

CHAIRPERSON: Is that the T-Systems transaction?

MR BALOYI: Yes.

CHAIRPERSON: Ja.

MR BALOYI: Everything emanated from there, so hence there was uncomfotability around whether they've done
10 things right or wrong and I was surprised that the auditors could not find anything as well, around that.

CHAIRPERSON: Who were the auditors, do you remember?

MR BALOYI: I think it was SNG.

CHAIRPERSON: Yes.

MR BALOYI: I think so.

CHAIRPERSON: Why do you say everything emanated from your question the T-Systems tender?

MR BALOYI: No, because it is the one that made me to –
20 the enquiry I made to Dr Ngubane it was around whether everything has been concluded and instead of him responding to that, he just shouted at me and I was shocked because that was the first time that we were communicating after the departure of the previous Chairperson and I was asking in good faith to check

whether we have concluded because my worry was the continuity extension as it was already above R4billion and that was extended. So – because if you can see the emails that I wrote, after the departure of Mr Tsotsi, I think I wrote around the first four days that I've questioned these transactions and I'm not getting satisfaction with the responses. So, there's something that I was concerned about that will make this issue of these transactions to be as proper as possible and then I also suggested that, can
10 we meet the following week that we discuss this and instead of meeting the following week to discuss all this, I just happened to get this particular letter which was not, actually factually correct as well, in terms of the notice it was not factually correct because you could see that there were manufacturing of these particular allegations they were not actually factual.

CHAIRPERSON: But Mr Seleka just take Mr Baloyi to each one of those allegations against him and let him give a response to say what he has to say about each one of
20 them.

ADV SELEKA SC: Yes, thank you Chair. Mr Baloyi that's back on page 377, that notice of directors meeting, the reasons are set out from paragraph 1.1 below.

“The Director committee one or more of the acts of misconduct involving dishonesty towards the board

and that through his actions and/or omissions he has exposed the company to certain risks as numerated below. 1.1 You have engaged with and made confidential disclosures regarding...[intervenes]”.

CHAIRPERSON: Maybe before you go to 1.1 maybe let him say what he has to say about that introductory part. What do you say about that part Mr Baloyi, where the notice says you had committed one or more acts of
10 misconduct involving dishonesty towards the Board in that, through your actions and/or omissions you had expose the company to certain risks?

MR BALOYI: Ja, actually it is not correct because there was no misconduct from my side and there was no...[intervenes].

CHAIRPERSON: Did you do anything involving dishonesty?

MR BALOYI: No, nothing, actually there was nothing at all.

20 **CHAIRPERSON:** Yes, okay then you can take him to the specifics.

ADV SELEKA SC: So 1.1 says,
“You have engaged with and made confidential disclosures regarding the purported intentions of the Board to at least one of the suspended directors

of the company”,

Now I must say, Mr Baloyi that confidential disclosures are not specified but what is your comment on that, did you make disclosures of a confidential nature?

MR BALOYI: No, there was nothing confidential, actually it was – they were referring to the letter that was written by Mr Koko, the one that I said that ...[intervenes].

ADV SELEKA SC: Just repeat that, they were referring?

MR BALOYI: They were referring to those information that
10 was written in the letter...[intervenes].

CHAIRPERSON: From Mr Koko?

MR BALOYI: Yes, everything emanated from this.

CHAIRPERSON: Ja.

MR BALOYI: Ja so...[intervenes].

CHAIRPERSON: So, they were taking what he was saying as true?

MR BALOYI: Yes.

CHAIRPERSON: Okay, but you maintain that you never disclosed to Mr Koko or any suspended Director anything
20 confidential?

MR BALOYI: No, there was nothing confidential in that Board, there was nothing that was private or secret because the issues of the suspensions – I mean, we didn't have the Board meeting to talk about the issues of the suspensions.

CHAIRPERSON: Yes.

MR BALOYI: After that, we didn't have any – and I was not in [indistinct] in any committee.

CHAIRPERSON: Yes, 1.2 Mr Seleka?

ADV SELEKA SC: Thank you. Well I can go to 2, Chair, I had a question there about the intentions of the Board whether you said anything about the intentions of the Board to Mr Koko, do you know what are the intentions of the Board they're referring to?

10 **CHAIRPERSON:** They don't even say what intentions.

MR BALOYI: Ja because actually, what we all knew was that the – and it's what the Executives were told, that we want to do this inquiry then after that you won't come back. So – and we even told them so there was – that's why I'm saying that there was no intention of them not coming back or whatever the intention was that they will come back. Ja, so there was nothing that was specified.

CHAIRPERSON: 1.2?

ADV SELEKA SC: 1.2 says,

20 “In breach of your fiduciary duties you have threatened to disclose information relating to the Board, alternatively about and concerning the Board in order to embarrass the Board”.

CHAIRPERSON: Do you know what they were talking about here?

MR BALOYI: Not at all.

CHAIRPERSON: Did you ever threaten to disclose information relating to the board or up on the board.

MR BALOYI: Nothing.

CHAIRPERSON: Do you know anybody to whom you may have made this threat? Did you ever make that threat along these lines to anybody whether to a member of the board or to somebody from outside?

MR BALOYI: No.

10 **CHAIRPERSON:** Because the way it is phrased formulated it is as if you said to the board or a member of the board; I am going to disclose A, B, C, D.

MR BALOYI: No I think what I might have said was – could have been to say that the issues of these particular tenders ...

CHAIRPERSON: The TC Systems tender.

MR BALOYI: Yes.

CHAIRPERSON: Ja.

MR BALOYI: If he can go to the media.

20 **CHAIRPERSON:** Yes.

MR BALOYI: If he is going to embarrass the board.

CHAIRPERSON: To embarrass the board.

MR BALOYI: Ja.

CHAIRPERSON: Okay so which is different from what they are saying here.

MR BALOYI: Ja.

CHAIRPERSON: But of course if there were wrong things about that tender then you know the board should not be wanting to sweep them under the carpet.

MR BALOYI: Exactly.

CHAIRPERSON: 1.3 – Mr Seleka.

ADV SELEKA SC: 1.3 Mr Baloyi reads:

10 “You have sought to mislead one or more of
 the suspended directors in regard to the
 board’s intentions.”

Now did you know who are they referring one or more of the suspended directors?

MR BALOYI: No actually they are different to the same directors who was ...

CHAIRPERSON: Mr Koko.

MR BALOYI: Ja.

CHAIRPERSON: That is the only one you can think of.

MR BALOYI: Ja he is the only one.

CHAIRPERSON: But you – you actually do not know.

20 **MR BALOYI:** Ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: But you – you are – that is the only one you can think of.

MR BALOYI: He is the one they were referring to.

CHAIRPERSON: Ja. Okay.

MR BALOYI: Hence it was the very same conversation.

ADV SELEKA SC: And did you understand what they meant that you were trying to mislead him or sought to mislead him?

MR BALOYI: No. No because of the factual incorrect things that he wrote in the conversation.

ADV SELEKA SC: Yes. There is no – correct – well not correct but what I am asking you is, did you understand – did you understand – not understand. Is it clear from this letter?

10 **MR BALOYI:** No it is not. It is vaguely. Actually it was not written by lawyers. I could see that it was written by Doctor Ngubane.

ADV SELEKA SC: You mean the lawyers can be clear in their writing?

MR BALOYI: Ja.

ADV SELEKA SC: Ja okay. 1.4

20 “You have threatened to pursue certain litigation – you have threatened to pursue certain litigation to advance an improper agenda and put the company to an unnecessary expense.”

CHAIRPERSON: Do you know what they were talking about here?

MR BALOYI: No.

CHAIRPERSON: Did you ever ask them or anyone of them;

what are you talking about here you people?

MR BALOYI: No I did not actually ask about their...

CHAIRPERSON: You never got the chance.

MR BALOYI: Hm because I was asking them to wait until I come back.

CHAIRPERSON: Yes. But you – did you ever threaten to pursue any litigation at all?

MR BALOYI: No I think it was the issue of if they continue in my absence.

10 **CHAIRPERSON:** Oh.

MR BALOYI: Ja if they continue with this process.

CHAIRPERSON: Did you threaten to...

MR BALOYI: And it was not about the tender.

CHAIRPERSON: Did you threaten to go to court if they proceeded in your absence to remove you?

MR BALOYI: Yes I did.

CHAIRPERSON: You did threaten that?

MR BALOYI: Yes I did mention that.

20 **CHAIRPERSON:** So you suspect that is what they may be talking about?

MR BALOYI: Ja.

CHAIRPERSON: But if that is – if that is what they are talking about would you have had an improper agenda in resorting to court?

MR BALOYI: Yes I was ..

CHAIRPERSON: Would you have had an improper agenda in going to court about this issue?

MR BALOYI: Yes I was going to have a proper agenda to ...

CHAIRPERSON: No I said improper – it says improper.

MR BALOYI: No not improper – no, no, no. It was not improper around everything.

CHAIRPERSON: Yes.

MR BALOYI: There was nothing improper.

CHAIRPERSON: Yes.

10 **ADV SELEKA SC:** Yes but Mr Baloyi how is this a reason to remove you when the reasons to remove must emanate outside of the calling of the meeting. You understand what I am saying? How does this become a reason to remove you if the meeting is actually sought to be convened for reasons outside of that.

CHAIRPERSON: I am not sure if I also understand.

ADV SELEKA SC: So if you say I am asking for more time please stop the meeting from considering what is alleged to be dishonesty on your part. How is this then part of a notice
20 that is calling you to that meeting to remove you?

CHAIRPERSON: I am not sure if I understand.

ADV SELEKA SC: He does not follow Chair.

CHAIRPERSON: Just try again a formulation.

ADV SELEKA SC: So you are saying to the board please give me more time because I am not around. So they are

calling you to a meeting.

CHAIRPERSON: Actually he is saying change the date to another date when I am available.

ADV SELEKA SC: Yes that is right.

CHAIRPERSON: Ja.

ADV SELEKA SC: So they already have the reasons why they want to remove you.

MR BALOYI: Hm.

ADV SELEKA SC: So how does your request on the day
10 they notify you and you are saying to them, no change the date becomes also now a reason why you should be removed when you say well if you do not – if you do not extend the meeting date I might go to court.

CHAIRPERSON: Oh okay. Okay now I understand.

MR BALOYI: Okay.

CHAIRPERSON: Let me put it this way. Mr Baloyi to the extent that number 1.4 seeks to condemn you or remove – to be used to remove you because you threatened to go to court if they did not change the date for the meeting. Are
20 you able to understand how they could use that to remove you?

MR BALOYI: Yes I understand your – I understand.

CHAIRPERSON: Ja. But can you understand their reasoning?

MR BALOYI: That intention cannot be used as a reason.

Even number 1.2 that I have threatened to disclose.

CHAIRPERSON: Yes.

MR BALOYI: They cannot remove a person because he says – said he has threatened to disclose. I mean.

CHAIRPERSON: Well he has not threatened to disclose 1.4. He is threatening to pursue litigation. And you explained that you threatened to pursue litigation if they did not agree to change the date of the meeting. So the question is whether now when they take that and use that as part of the
10 reason why you should be removed are you able to follow their logic?

MR BALOYI: Ja I can follow their logic because they were trying to make allegations as many as possible. They were also trying to see to it to check which one may stick which one may not stick. So let us make as many allegations as possible so that one may stick.

CHAIRPERSON: They throwing at you as many allegations as possible.

MR BALOYI: Ja.

20 **CHAIRPERSON:** Okay alright.

MR BALOYI: Because in general is that when we were – when we did the proceedings of the previous Chairperson Mr Tsotsi I did indicate where we are violating the memorandum of incorporation. That we are not in compliance actually we are supposed to give him at least ten days of notice. And

there we are giving him a few days. So we are not even compliant. And even this – it was not in compliance.

CHAIRPERSON: Yes.

MR BALOYI: Because I mean it was three days or something. So they were continuing to violate the MOI that it was audit approved to be in use. So – and for your information is that maybe if I could have made but I think I did make them available the emails I wrote about the first four days. But actually remember Mr Tsotsi when he left on
10 the 30th.

ADV SELEKA SC: Yes.

MR BALOYI: And then the first four days [talking over one another].

CHAIRPERSON: Are the emails – are there emails that are not here which are relevant to...

MR BALOYI: Yes.

CHAIRPERSON: What we are talking about?

MR BALOYI: Exactly. Because I think the – but I did send them through but I cannot see them here.

20 **CHAIRPERSON:** Okay maybe they will tell you where they are.

MR BALOYI: But they have got the subject of saying the first four days.

CHAIRPERSON: What are some of the important things you – you said in those emails?

MR BALOYI: No I was saying that the treatment of the board Chairperson I mean for example when I called and he shouted at me it was the first glitch that he ever done to me. I mean we never had such before. It just came as a surprise to me. I mean it was within the four or three days of him being the acting Chairperson.

CHAIRPERSON: Yes.

MR BALOYI: So it came as a shock that he could respond to me in such a harsh way. And then I do not know maybe it
10 is because of the transaction that I have questioned because he was supposed the one to approve it as the Chairperson of the tender committee. So – and then I – also would have mentioned certain violations of some corporate governance. But I did write that in the letter to the Minister. I think I wrote around twenty pages.

CHAIRPERSON: Yes.

MR BALOYI: Twenty something – twenty-four pages.

ADV SELEKA SC: Ja that is...

MR BALOYI: Where I indicate that all those issues that we
20 are experiencing as a new board under the new Chairmanship after Mr Tsotsi has left. So the very few days there was very strange. The behaviour was – from the chairperson was very strange. It was inconsistent with how he used to be before he was the chairperson.

CHAIRPERSON: Hm. Mr Seleka.

ADV SELEKA SC: The representations to the Minister Mr Baloyi page 385 check whether that is what you are referring to?

MR BALOYI: 3?

CHAIRPERSON: The other emails that he is talking about we do not have?

ADV SELEKA SC: The other emails we do not have. We have emails but they do not bear reference to the issue Mr Baloyi is referring to.

10 **CHAIRPERSON:** Oh then maybe if he could later on do an affidavit and...

ADV SELEKA SC: Yes.

CHAIRPERSON: Attach them and deal with them and make the points he wanted to make.

ADV SELEKA SC: Yes Chairperson.

CHAIRPERSON: Ja.

ADV SELEKA SC: Is that – page 385. Page 385.

MR BALOYI: Yes it is here.

20 **ADV SELEKA SC:** These your representations to the Minister?

MR BALOYI: Ja the 22 pages yes.

ADV SELEKA SC: I see that from page – page 396 Mr Baloyi you seem to deal with these allegations we have gone through in that notice of the board to you. And you address them under paragraph 6.2.

CHAIRPERSON: I am sorry just to get this right. Your representations Mr Baloyi to the Minister are dated 15 April 2015 and they start at page 385 and go up to 406 is that right?

MR BALOYI: Yes.

CHAIRPERSON: Okay alright. These representations related to the – your removal by the board? Did they relate to your removal for the – from the board?

MR BALOYI: Ja why I must not be removed ja.

10 **CHAIRPERSON:** Oh okay. But after the board had made the decision?

MR BALOYI: Yes.

CHAIRPERSON: Yes okay alright. Continue Mr Seleka.

ADV SELEKA SC: So as I understand the board made a resolution and presented it to the Minister?

MR BALOYI: Hm. In my absence yes.

ADV SELEKA SC: Yes. So the Minister was the one ultimately going to remove you?

MR BALOYI: Ja.

20 **ADV SELEKA SC:** So you are making representations to her why she should not remove you?

MR BALOYI: Yes.

ADV SELEKA SC: And in your representation you deal with the grounds upon which the board made its resolution?

MR BALOYI: Yes.

ADV SELEKA SC: And that specifically appears from page 496 paragraph 6.2. You see that?

MR BALOYI: Yes.

ADV SELEKA SC: Are you on that page?

MR BALOYI: Yes I am.

ADV SELEKA SC: 6.2 is the board:

“On 7 April 2015 consider the following breaches of fiduciary duties which were never discussed with me on 3 April 2015 SES Committee meeting.”

10 **MR BALOYI:** Yes.

ADV SELEKA SC: And you list them 6.2.1 to 6.2.4 which bear.

MR BALOYI: The same ja.

ADV SELEKA SC: Their reflection to ..

MR BALOYI: The one...

ADV SELEKA SC: It is a reproduction of those? You have engaged with and made confidential disclosures regarding the purported intentions. Which is the first one it has got all of them [00:15:22]. So you then address the Minister on
20 each one of them in your representations.

MR BALOYI: 6.3 actually – ja I commented on 6.3.

ADV SELEKA SC: Just raise your voice?

MR BALOYI: I said I commented on 6.3. I said that this clearly and obviously proved that the board had realised that I have the prospect of challenging and winning against their

decision of removing in the court of law because of the conditions of the Company's Act 76 Section 4A5C as they know I am a [?] director against the suspension of the four executives. They twisted their allegations so that they removed me based on what is contained in 6.2 something that was never tested to be true but a conclusion was made.

ADV SELEKA SC: Hm. And I see that if you turn the page to page 399 at the bottom of the page you specifically deal with the issue of confidentiality. And under breach of
10 confidence you say:

“It is Mr Koko and Doctor Ngubane and not me who disclosed the confidential information that took place between Mr Koko and myself. Doctor Ngubane wrote to each and every member individually the letter that was written about me by Mr Koko.”

Well you could refer us – let us see. If you – I see you seem to refer to a paragraph number and you make a comment on a bullet point. So let us quickly start at page 397 under
20 paragraph 7 Violations of Corporate Governance and Company's Act. Are you there? So you say; let me please indicate the law how Corporate Governance was violated in this regard. The obvious role of the chairperson. Then your bullet point follows.

“The acting Chairperson failed to play a

conciliatory role as a Chairperson when confronted with the letter from Mr Koko instead he took the advisory letter from the lawyers read it out to the board members and believed it as a definite breach of fiduciary duty without first testing it.”

As the acting Chairperson I believe you are referring to Mr – Doctor Ngubane?

MR BALOYI: Yes. It is him ja.

10 **ADV SELEKA SC:** 7.2 you say:

“The Chairperson is obliged to use his or her power appropriately”

Sorry just before that the word first testing it are you saying this letter was not given to you in order to respond to the allegations made by Mr Koko?

MR BALOYI: Actually what happened is that they did that – they got the letter Mr Koko.

ADV SELEKA SC: Yes.

MR BALOYI: They asked for a board meeting.

20 **ADV SELEKA SC:** Yes.

MR BALOYI: Where we went there and then I – he said that he received the letter from the lawyers.

ADV SELEKA SC: Who said that?

MR BALOYI: Doctor Ngubane. That he got the letter – the opinion letter from the – from the lawyers so that he was

saying to them that I talking to the suspended executive. I breached fiduciary.

CHAIRPERSON: Just speak up – speak up Mr Baloyi.

MR BALOYI: Okay.

CHAIRPERSON: I am not following what you are saying.

MR BALOYI: No, no he was saying that he got a letter of the opinion – the legal opinion from the lawyers.

CHAIRPERSON: Who was saying that?

MR BALOYI: Doctor Ngubane.

10 **CHAIRPERSON:** About what?

MR BALOYI: That for me to have spoken to

CHAIRPERSON: Mr Koko.

MR BALOYI: Mr Koko ja it was a breach of fiduciary duty because I was talking against the board.

CHAIRPERSON: Ja but before they...

MR BALOYI: So the issue...

CHAIRPERSON: Before they decided to call you to a meeting where they intended removing you they had not asked you to respond to Mr Koko's letter and hear what you
20 have to say before they could weigh up and see whether they should believe what Mr Koko was saying or they should believe you, had they?

MR BALOYI: There was this social and ethics committee that I had engagement with.

CHAIRPERSON: Sorry.

MR BALOYI: There was Ethics and Social – what – Social and Ethics Committee where – where we had discussions about that. And then it was supposed to – I think we – I did have a meeting with them to explain exactly what I said. That some of these things that are written are not true.

CHAIRPERSON: Oh the Ethics Committee – Social and Ethics Committee.

MR BALOYI: Yes.

CHAIRPERSON: Did ask you to explain – to respond to
10 what Mr Koko had said?

MR BALOYI: Ja it was mainly about the content of the letter.

CHAIRPERSON: Yes about the content.

MR BALOYI: Ja.

CHAIRPERSON: And you – you explained what had happened?

MR BALOYI: Ja.

CHAIRPERSON: So the decision to...

MR BALOYI: What is true and what was not true.

20 **CHAIRPERSON:** The decision to call a meeting happened after that?

MR BALOYI: Yes, yes.

CHAIRPERSON: So the Ethics – Social and Ethics Committee would have gone to the board and told them what your response was to Mr Koko's letter?

MR BALOYI: Yes.

CHAIRPERSON: To the allegations that – of Mr Koko made?

MR BALOYI: Yes, yes.

CHAIRPERSON: Okay so when they called the meeting they have had – they had had the benefit of your version and Mr Koko's version.

MR BALOYI: Yes.

CHAIRPERSON: Okay alright.

MR BALOYI: Actually the meeting – no, no, no. The
10 meeting of the board happened I think it was Thursday. And then they said that I must meet with that committee and I think it was maybe the following day.

CHAIRPERSON: After they had made a decision?

MR BALOYI: No, no. Actually when the letter was received they made an urgent special board meeting.

CHAIRPERSON: Hm.

MR BALOYI: Where I was informed that there is this particular letter that we received from Koko and then we need to – I have requested the lawyers to check whether
20 there is a breach of fiduciary duties. I got the legal opinion it says there is a breach and then we must do some fact finding with the...

CHAIRPERSON: Just switch on your microphone you have switched it off.

MR BALOYI: So that I can explain exactly what happened.

So

CHAIRPERSON: So the question is simply whether by the time the board gave you a notice of the meeting of the 7th April where they intended to remove you as a director whether by the time they sent you that letter you had been given a chance to put your side of the story in response to what Mr Koko had said in his letter.

MR BALOYI: Oh yes, yes we did.

CHAIRPERSON: You had got that opportunity?

10 **MR BALOYI:** Yes.

CHAIRPERSON: And you had used it?

MR BALOYI: Yes.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Thank you. The lawyers they used is it Thompson Wilks?

MR BALOYI: I do not know because I asked for the legal opinion that they did not want to give it to me.

ADV SELEKA SC: They did not give you the legal opinion?

MR BALOYI: Ja they did not. So I do not know which ones.

20 **ADV SELEKA SC:** Well I see a letter is written to you by Thompson Wilks.

MR BALOYI: They were the ones that we were using during [mumbling] Mr Tsotsi.

ADV SELEKA SC: They used those during Mr Tsotsi?

MR BALOYI: Ja.

CHAIRPERSON: How far are we from finishing Mr Seleka with him?

ADV SELEKA SC: Mr Baloyi then your representations to the Minister are there – to the Minister yes. And is there any particular one you wish to draw the Chairperson's attention to? I have read some of them where you say confidentiality of information was in fact not disclosed by you but by Doctor Ngubane and Mr Koko.

MR BALOYI: Hm.

10 **ADV SELEKA SC:** Well given the ultimate decision by the Minister it would seem that your representations did not fly.

MR BALOYI: We can say so.

CHAIRPERSON: Did you in these representations say that your removal was connected in any way with your questioning the T Systems tender?

MR BALOYI: I think so. I believe so actually.

CHAIRPERSON: Sorry.

MR BALOYI: I believe so.

CHAIRPERSON: You are not sure?

20 **MR BALOYI:** No I believe so.

CHAIRPERSON: You believe that you did?

MR BALOYI: Ja it was the main thing.

CHAIRPERSON: Yes, no but the question I am asking is not whether you believe so but whether you included that in the representations?

MR BALOYI: Oh yes I did yes.

CHAIRPERSON: You did include it in the representations?

MR BALOYI: Yes.

CHAIRPERSON: Do you know whether the board responded to your representations to the Minister before the Minister took a decision?

MR BALOYI: No the – because the processes actually are usually like the board will first meet and they write the recommendations to the Minister. And then the Minister will
10 just call you for the [00:27:00] to come and present yourself and then the Minister will make the decision based on your presentation. So the board will not have had this because they did not get one prior to writing to the Minister. And there was no more – there was no engagement with them.

CHAIRPERSON: Oh you did not give the board a copy of your representations?

MR BALOYI: I – no I did not give the board it is only the ...

CHAIRPERSON: But you also do not know whether the Minister sent them a copy to enable them to respond to what
20 you had to say before she made the decision, is that right?

MR BALOYI: No I do not know the in between processes.

CHAIRPERSON: You do not know. Okay. I see that in the Minister's letter dated or appearing at page 407 signed on the 20 April 2015 I see that she refers to the meeting that she had with you on the 14 April in respect of your – she

says your presentation. And then she says among other things Section 762Aii she does not there say of which Act provides that a director may not use his position to obtain information to knowingly cause harm to the company. Then she says by advising the suspended executive to approach the CCMA as well as threatening to make public the information you obtained you have acted contrary to your fiduciary duties to the company. So the first part of that last sentence I have read seems to say it is wrong to say to an
10 employee you may go to the CCMA if you are aggrieved.

MR BALOYI: Yes she is.

CHAIRPERSON: Is that how you understand it too?

MR BALOYI: She is saying so.

CHAIRPERSON: I thought – I thought employers advise employees all the time when an employee gets suspended or dismissed they are advised of their rights you can go to the CCMA if you are aggrieved.

MR BALOYI: Exactly.

CHAIRPERSON: Or you can go and appeal if you are
20 aggrieved. I thought that is just something that gets done?

MR BALOYI: Exactly actually normally I mean whenever you dismiss a person you need to give them of their right that they have got the right to...

CHAIRPERSON: Yes.

MR BALOYI: Seek ...

CHAIRPERSON: But it looks like the Minister thought – the Minister and the board thought that to the extent that if you had said that that would have been wrong. Okay then they say this by threatening to make public the information you obtained. You have acted contrary to your fiduciary duties. You do not... do you know what she is talking about there?

MR BALOYI: No ...[intervenes]

CHAIRPERSON: What information she is talking about?

MR BALOYI: No. Actually, I think it was copied and
10 pasted. It was corrected ...[intervenes]

CHAIRPERSON: It was copied and pasted from the board's resolution?

MR BALOYI: Ja.

CHAIRPERSON: Yes. She says further, seven...

“...764(i) of the Companies Act 71 (2) and (8) allows directors to take reasonable diligent steps to become informed about matters in order to exercise the powers and functions of a director of a company.”

20 Sub-section 5 goes on to set out the extent contemplated in that:

“A director is entitled to rely on one or more employees of the company in order to obtain information, opinions or thoughts or statements.

It is my understanding that an executive placed on

suspension falls without the employees whom a director may contact.”

Then she says:

“It is my view, by communicating with a suspended official, you have breached a fundamental principle of trust between yourself and the board, whereas the information that you sought to obtain and further contact with other employees of the company, should have been obtained through the interim chief executive.

10

You have admitted to divulging confidential discussions of the board with the suspended official, which for me raises concerns about ethical boundaries which should be observed by all directors.”

Did you admit divulging confidential discussions of the board to a suspended official?

MR BALOYI: [No audible reply]

CHAIRPERSON: H’m?

20 **MR BALOYI**: No ...[intervenes]

CHAIRPERSON: Did you admit to the minister that you had divulged confidential discussions of the board to a suspended official?

MR BALOYI: No, there was nothing to... there was nothing confidential. As I have said that the issues of the suspended

executives was never discussed after they were suspended.
We never had the board meeting where we discussed them.

CHAIRPERSON: Yes.

MR BALOYI: So there was nothing that was ever discussed
at the board about ...[intervenes]

CHAIRPERSON: She says here, you admitted
...[intervenes]

MR BALOYI: No.

CHAIRPERSON: ...though divulging confidential
10 discussions ...[intervenes]

MR BALOYI: It was ...[intervenes]

CHAIRPERSON: ...to the board. Did you ever admit
...[intervenes]

MR BALOYI: No.

CHAIRPERSON: ...that you have done that?

MR BALOYI: I did not.

CHAIRPERSON: Yes.

MR BALOYI: The good part of it is that, that meeting was
recorded.

20 **CHAIRPERSON**: Yes.

MR BALOYI: So hence I asked ...[intervenes]

CHAIRPERSON: Is that the meeting with the minister?

MR BALOYI: Yes.

CHAIRPERSON: It was recorded?

MR BALOYI: Yes. As I asked your investigator to also get

hold of that particular recording.

CHAIRPERSON: Yes. We have the transcript.

ADV SELEKA SC: No. we do not have it.

CHAIRPERSON: Oh, but have any attempts been made to get it or not really?

ADV SELEKA SC: I do not think it has yet been made. No, not yet.

CHAIRPERSON: Oh. So I think attempts should be made to obtain it.

10 **ADV SELEKA SC**: The recording.

CHAIRPERSON: And then she says in the last paragraph:

“I have considered the board’s recommendation together with the presentation you have made at the meeting and in terms of Clause 13.11.3.7.2 of Eskom’s Memorandum of Incorporation, I hereby exercise my right as shareholder and inform you that I consent to the board’s recommendation to remove you as a non-executive director with effect from 22 April 2015.”

20 Well, that is here decision. Okay. Mr Seleka.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Are there still outstanding issues to ...[intervenes]

ADV SELEKA SC: There is one important question. Let me see whether Mr Baloyi knows the answer to this. Mr Baloyi,

do you know who replaced you at the board after you were removed?

MR BALOYI: I do not know but I know there are people who came on board afterwards because there were obvious changes.

ADV SELEKA SC: Do you know the appointment of Mr Leonardo ...[intervenes]

MR BALOYI: H'm?

ADV SELEKA SC: Giovanni?

10 **MR BALOYI:** [No audible reply]

ADV SELEKA SC: You do not know?

MR BALOYI: No, I do not know.

ADV SELEKA SC: But do you know of his appointment on the board? Not that you know him.

MR BALOYI: Oh.

ADV SELEKA SC: But of his appointment to the Board of Eskom?

MR BALOYI: [No audible reply]

20 **CHAIRPERSON:** Did you hear who was appointed after you had left, who was appointed in your position?

MR BALOYI: Ja, that point, I do not know. But I have noticed the appointments.

ADV SELEKA SC: The Chairperson cannot hear you.

MR BALOYI: No, I have noticed the appointments but I do not know who ...[intervenes]

CHAIRPERSON: It was people you did not know?

MR BALOYI: I did not know.

CHAIRPERSON: It was somebody that you did not know?

MR BALOYI: Yes, I did not.

CHAIRPERSON: Okay was there somebody who replaced Mr Tsotsi as a director? Do you know whether somebody was appointed to replace him as a director? I know that in terms of chairperson, Dr Ngubane became the acting chairperson or interim chairperson.

10 **MR BALOYI:** Ja ...[intervenes]

CHAIRPERSON: Was there somebody who was appointed as a director?

MR BALOYI: I do not know, actually.

CHAIRPERSON: You do not know?

MR BALOYI: No

CHAIRPERSON: Okay alright.

ADV SELEKA SC: So there was no appointment of any person to replace Mr Tsotsi before you were removed?

MR BALOYI: No, there was no one.

20 **ADV SELEKA SC:** Okay. That is all Chairperson.

CHAIRPERSON: Yes. I had a question a minute ago but it seems to have gone away. Did you ever get to know more about who owned T-Systems and who had an interest in T-Systems whether during your time at Eskom or after?

MR BALOYI: I did not get to know the people or the

...[intervenes]

CHAIRPERSON: You never got to know who owned that company or who ...[intervenes]

MR BALOYI: I just know it as a German company.

CHAIRPERSON: As a German company?

MR BALOYI: H'm.

CHAIRPERSON: Okay alright. Okay Mr Seleka.

ADV SELEKA SC: I have no further questions, Chair.

CHAIRPERSON: Okay. Thank you very much Mr Baloyi for
10 coming to give evidence. I thought we were going to finish
much earlier but the circumstances did not permit. But there
were some important issues you needed to deal with this
afternoon.

But thank you very much for making yourself available.
If you are able to get the correspondence that you talked
about, the emails.

Please, make contact with the legal team so that maybe
you could put up an affidavit where you deal with those
emails and attach them and comment on them.

20 And then we will take it from there. Thank you very
much for coming to assist the Commission. You are now
excused.

MR BALOYI: Thank you, sir.

CHAIRPERSON: Mr Seleka, what is... what is our situation?

ADV SELEKA SC: Chair, tomorrow we have one scheduled

witness.

CHAIRPERSON: H'm.

ADV SELEKA SC: And on looking at the time.

CHAIRPERSON: Ja.

ADV SELEKA SC: The witness scheduled, specifically scheduled for tomorrow, should be fairly brief.

CHAIRPERSON: Ja.

ADV SELEKA SC: That is the company secretary.

CHAIRPERSON: Ja.

10 **ADV SELEKA SC:** Or former.

CHAIRPERSON: H'm.

ADV SELEKA SC: If the Chair permits, we could due to time constraints start with Mr Venete Klein in the morning.

CHAIRPERSON: Ja.

ADV SELEKA SC: Or we could start now.

CHAIRPERSON: Ja, if we have only... otherwise, if we have only witness tomorrow, I think we would have enough time. Is Ms Klein available to come back tomorrow?

20 **ADV SELEKA SC:** No, I have not canvassed that at all. I see actually has postponed.

CHAIRPERSON: If she nodding where she is? Ja, she is nodding. Ja.

ADV SELEKA SC: Oh, okay.

CHAIRPERSON: Ja. No. Thank you of that. So I think let us adjourn her evidence to tomorrow.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Ja, ja. Okay. Thank you very much. We will now adjourn for the day and we will continue tomorrow at ten o'clock.

ADV SELEKA SC: Thank you, Chairperson.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS 8 OCTOBER 2020

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