

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

08 OCTOBER 2020

DAY 279



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 08 OCTOBER 2020

CHAIRPERSON: Good morning Mr Seleka, good morning everybody.

ADV SELEKA SC: Morning Chair.

CHAIRPERSON: Are you ready?

ADV SELEKA SC: We are ready Chairperson.

CHAIRPERSON: Yes. Please administer the oath or affirmation again?

ADV SELEKA SC: Yes the first witness Chairperson for
10 today is Ms Venete Klein.

CHAIRPERSON: Yes.

MS KLEIN: Morning.

CHAIRPERSON: Good morning Ms Klein.

MS KLEIN: Morning Chairperson.

CHAIRPERSON: Thank you.

REGISTRAR: Please state your full names for the record.

MS KLEIN: Venete Jolene Klein.

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

20 **MS KLEIN:** No I do not.

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

MS KLEIN: Yes I do.

REGISTRAR: Do you swear that the evidence you will give will be the truth; the whole truth and nothing else but the

truth; if so please raise your right hand and say, so help me God?

MS KLEIN: So help me God.

ADV SELEKA SC: Thank you. Chairperson Ms Venete Klein is coming for the second time in regard to the issue of suspension of the executives and the – the appearance this time around is to complete her testimony in regard to that. We will be using the previous bundle Chairperson it is paginated differently from the bundles we have been
10 using recently which is the black pagination and the red pagination. In her bundle we only have the red pagination.

CHAIRPERSON: Okay.

ADV SELEKA SC: And that is Eskom Bundle 02.

CHAIRPERSON: The one I have here has got both black and red and it is Eskom Bundle 02.

ADV SELEKA SC: Oh so they – they must have printed you a bundle different from mine Chairperson.

CHAIRPERSON: Yes do you know whether the witness' one has both?

20 **ADV SELEKA SC:** I was going to ask her to..

MS KLEIN: Sorry Chair what do you want me to check?

ADV SELEKA SC: Yes just assist the witness.

CHAIRPERSON: Have you got red and black numbers at the top of each of page – the pagination?

MS KLEIN: Red.

ADV SELEKA SC: No it seems to be like mine.

CHAIRPERSON: Only red ones?

MS KLEIN: Red ones.

ADV SELEKA SC: It is that one.

CHAIRPERSON: Oh okay.

MS KLEIN: Yes Sir.

CHAIRPERSON: Okay so we will use red numbers – page numbers today.

ADV SELEKA SC: Thank you Chairperson.

10 **MS KLEIN:** Thank you.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Ms Klein is legally represented Chairperson by a colleague of mine. Maybe he could place himself on record?

CHAIRPERSON: Yes. Thank you; you can do that from there.

ADV MAHON: Thank you Chairperson. Advocate Mahon representing Ms Klein instructed by Adams and Adams.

20 **CHAIRPERSON:** Thank you very much. Thank you. Mr Seleka.

ADV SELEKA SC: Thank you chairperson.

CHAIRPERSON: You will have to try and raise your voice this morning I think it is very low today.

ADV SELEKA SC: Okay. I will – I will do so Chairperson.

CHAIRPERSON: Ja.

ADV SELEKA SC: Ms Klein thank you.

CHAIRPERSON: I – I hardly get asked to raise my voice.

ADV SELEKA SC: Chairperson?

CHAIRPERSON: I hardly get asked to raise my voice anyway.

ADV SELEKA SC: Yes. Thank you Chair. Ms Klein thank you once more for coming before the commission to assist the commission. So you have that file before you which contains your affidavit. You see that?

10 **MS KLEIN:** That is correct Chair.

ADV SELEKA SC: Ms Klein because we have done your testimony.

CHAIRPERSON: Have you – you said affidavit. The first one is a statement is it not?

ADV SELEKA SC: Let us...

CHAIRPERSON: The one appearing at – starting at page 2.

ADV SELEKA SC: On page 2 Ms Klein.

MS KLEIN: Yes.

20 **ADV SELEKA SC:** Yes. It is between tramlines it is written statement by Venete Klein to the commission of inquiry into state capture; on page 2. But I believe that this has been commissioned. If you go to page 24 which is the last page of the affidavit.

CHAIRPERSON: Well it has been but it is interesting

normally an affidavit will start with I, the undersigned do hereby admit oath and say. This one does not start like that.

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: So one wonders whether she took the oath – I see the Commissioner of Oaths certifies that the deponent has acknowledged that she knows and understands the contents of this affidavit which was signed and deposed before me at – on this day and the provisions
10 of the regulation bla, bla, bla have been complied with. But Ms Klein herself does not seem to have said I swear. Okay alright but she has confirmed under oath that the contents of the statement are true and correct? Ja so that is fine.

MS KLEIN: Correct Chair thank you.

ADV SELEKA SC: Thank you Ms Klein. Ms Klein n regard to the suspension of the executives briefly just by way a background today we dealt with your appointment as one of the newly – one of the new board members in December
20 2014. Correct?

MS KLEIN: That is correct; that is correct Chair.

ADV SELEKA SC: And from – from there we – we addressed the activities of the board prior – leading up to the meeting of the 9th and the meeting of the 11th March 2015.

MS KLEIN: Correct Chair.

ADV SELEKA SC: You recall that? And an issue – it is not an issue really there was clarification needed to be done as to whether the first board meeting was that of the 26 February 2015 which got cancelled or whether there was a prior board meeting before that date. Correct?

MS KLEIN: Correct.

ADV SELEKA SC: And I think you were pointing out to the Chairperson that your recollection is that there was a
10 board meeting on the – in January.

MS KLEIN: That is correct Chair.

ADV SELEKA SC: 2015.

MS KLEIN: Yes.

ADV SELEKA SC: It – I think the reference...

CHAIRPERSON: I think she was going to check.

MS KLEIN: Yes.

CHAIRPERSON: Because she – she when she left last time the issue was still uncertain. She was going to check. Well obviously Ms Klein you can tell me whether you
20 checked and what you found?

MS KLEIN: Yes.

CHAIRPERSON: But really I do not think there is much significance whether the meeting of the 26 February was meant to be the first board meeting or there had been one earlier. So if it was the first or second the fact remains

that this was a new board; it had not had much time to do anything as a board. There may have been some committee meetings the board committee meetings but it was a new board. Did you find anything – did you – were you able to find anything when you checked?

MS KLEIN: Yes Chair I think for me the question I thought I was answering at the time was – was this the first time we had engaged with the executives? And on going back we have actually provided a deck of all of its prior
10 meetings. But to your point there were various other meetings. The meeting of the 16 January; the meeting of the 16 February so I believe the point I was trying to make was it was not like it was the first time. We certainly were a new board but we had engaged extensively with the executives over those first three months.

CHAIRPERSON: Well the – the extensive engagement between the board and the executives that I have not heard. I have heard about the induction which I think I was told was in January.

20 **MS KLEIN:** Yes it was.

CHAIRPERSON: I have been told that there were a number of meetings of committees of the board as opposed to the board itself between January and 26 February. I have been told of those. And therefore members of those committees we did meet in between – between January and

26 February may you have interacted with some executives that part I think I have been told. Does that more or less reflect?

MS KLEIN: Yes absolutely.

CHAIRPERSON: Your own understanding?

MS KLEIN: Absolutely Chair. Absolutely.

CHAIRPERSON: Ja okay.

ADV SELEKA SC: Yes. Thank you Chairperson. Yes Ms Klein's legal representatives did provide us with a bundle
10 that has minutes of some meetings Chairperson. But the witnesses have come here and testified that there were some level of engagement at supplementary levels. There is a minutes of a meeting on the 16 January 2015 where I thought maybe Ms Klein was going to refer the Chairperson to that. We already have it in the bundle.

CHAIRPERSON: Okay no that – that is fine. I mean when you have applied your mind to – to the bundle.

ADV SELEKA SC: Yes.

CHAIRPERSON: At some stage then we can see what
20 needs to be done – what can be done.

ADV SELEKA SC: Okay Chair.

CHAIRPERSON: But otherwise it seems that the picture that emerges is simply that there was an induction of the board at some stage in January. There were certain meetings of committees of certain committees of the board

after the induction – between the induction and the 26 February.

ADV SELEKA SC: Correct.

CHAIRPERSON: So during those meetings of committees there may have been some engagement between board members – certain board members and some executives.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja okay.

MS KLEIN: May I just add something please Chairperson.

10 **CHAIRPERSON:** Yes.

MS KLEIN: I think just to be clear it is the question of the engagement but you know in reading – going back from here and going to re-read everything you know the Chairperson opens a meeting and welcomes you to the first board meeting in January.

CHAIRPERSON: Yes.

MS KLEIN: And then later on you know we say but that was not the first board meeting this was – so I must say when you read it it can become very convoluted as well.

20 **CHAIRPERSON:** Yes ja.

MS KLEIN: But I think what is of importance is the level of engagement and who was all present.

CHAIRPERSON: Ja. Ja. No that is fine.

ADV SELEKA SC: Ms Klein ja we understand that but just to clarify for the Chairperson as well. In your own affidavit

you do say the 16 January was the induction on paragraph 23; page 6. So it is not only the Chairperson who subsequently says that was an induction others have said the same. But you also have said the same. And remember last time I pointed out in your statement to the Parliamentary Portfolio Committee you called it a board meeting but this affidavit subsequently done you called it an induction.

CHAIRPERSON: Maybe it was a board meeting which was
10 used as an induction.

MS KLEIN: You know Chairperson it becomes – as one delves deeper and deeper into it you pick up different things.

CHAIRPERSON: Ja.

MS KLEIN: You listen to recordings and then you say okay that is what I said then because that is what I knew it to be. Then I come back here and then I go and listen to the recordings and I have got a Chairperson saying to us welcome to your first board meeting. So it becomes – all I
20 am trying to say Chairperson is that the terms we used very interchangeably.

CHAIRPERSON: Ja.

MS KLEIN: Which did allow for I believe a lot of confusion in amongst the war – what were they called? What were they exactly? So it was more for me the issue did we

engage or did we not engage ultimately that is the question I was trying to answer.

ADV SELEKA SC: Yes thank you Ms Klein. So Ms Klein then we went through process and we came to the meeting of the 9th you say you could not attend the meeting of the 9th.

MS KLEIN: That is correct Chair.

ADV SELEKA SC: And – but we saw that you sent an email showing your interest in becoming part of the sub-
10 committee or an *ad hoc* committee that was being proposed to champion to oversee the inquiry.

MS KLEIN: That is – that is correct Chair.

ADV SELEKA SC: Yes. And that was in a memorandum which we have learned was prepared by Mr Nick Linnell. An email of which – it was attached to an email sent to board members?

MS KLEIN: Correct Chair.

ADV SELEKA SC: With a proposal of the resolution by the board?

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

ADV SELEKA SC: Then we have you did not make the meeting. We have the meeting of the 11th because the meeting of the 9th the board members decided that no want to see the Minister.

MS KLEIN: Correct.

ADV SELEKA SC: And then – and the meeting of the 11th was convened.

MS KLEIN: Chair – true can I just add onto – for Chair just for clarity. Obviously after being here the last time I went to go and look at why would I have wanted to be part of – in fact when you showed me the email I looked at this because my recollection was I could not make it. You know I even may have objected because why – why is it that you know you calling meetings at such short notice. But when
10 Mr Seleka showed me my interest in the meeting on reflection Chair remember there are two statutory committees of every board. The one is Audit and Risk and the other one is Social Ethics and Sustainability. I was the Chairperson of Social Ethics and Sustainability which is a statutory committee of the board. These two committees are responsible for giving feedback on the runnings of the organisation at an audit – sorry at an AGM annually. That was my reason for wanting to be a part of. I was not Chairperson of People in Governance at the time. Had I
20 been I probably would not have put up my hand for it. But as the Chair of Social Ethics and Sustainability which is a statutory committee I felt I was obliged to be part of any inquiry that would take place.

ADV SELEKA SC: Yes. But remember that email was presented to you Ms Klein because you had said to the

Chairperson you objected to a short notice and raised the governance issue. You recall that?

MS KLEIN: That is correct Chair. That is exactly what I said because I had raised so many objections to such short notices in every meeting that I must admit at the time that is what I thought I had done with that one. Until Mr Seleka pointed out to me that what I had actually done was to say I wanted to be part of it in as much as I was travelling the next day can you not just hold it later on in the day so that
10 I could become part of it. So I acknowledge Chair exactly what you are saying.

ADV SELEKA SC: Yes. And it became apparent that the memorandum and the proposal to establish an inquiry was a request of President Zuma at the time.

MS KLEIN: It became apparent Chair. Yes it did.

ADV SELEKA SC: Mr Linnell has said to the Chairperson that there seems to have been board members who met with the Minister prior to the meeting of the 11th in regard to this issue of the inquiry. Do you know of that?

20 **MS KLEIN:** No I have no clue – I have no idea about that Chairperson.

ADV SELEKA SC: When did it appear to you that this was the request of the President?

MS KLEIN: Because I was not at the meeting of the 9th Chairperson obviously board members from what I could

tell were becoming very uncomfortable with being given a directive from the President and calls were being made you know like you know – because remember as you correctly pointed out I wanted to be part of it. So when I could not be part of it you know there were calls between myself and different board members. And board members simply said this is what...

ADV SELEKA SC: I am sorry when – when did you become aware that it is a request by the President?

10 **MS KLEIN:** After the meeting of the 9th. Because I was not – I was not in the meeting of the 9th Chairperson.

ADV SELEKA SC: Yes. That was after the meeting of the 9th.

MS KLEIN: After the meeting of the 9th.

ADV SELEKA SC: But before the meeting of the 11th.

MS KLEIN: Correct.

ADV SELEKA SC: Yes. You say you did not become part of the committee that oversaw the – the inquiry.

20 **MS KLEIN:** That was my – like I said you showed me the email where I suggested becoming part of it.

ADV SELEKA SC: Yes.

MS KLEIN: But I was not part of it. It certainly was not in the documentation.

ADV SELEKA SC: But you certainly will recall from the board meeting that the delegation was made to People in

Governance and Audit and Risk to oversee the entire process.

MS KLEIN: That is correct yes.

ADV SELEKA SC: And that you were part of People in Governance?

MS KLEIN: I was part of People In Governance Chairperson but I was not chairing People In Governance.

ADV SELEKA SC: Ja no chairing beside the point but you want – you did not want to chair the sub-committee that
10 was being established or did you?

MS KLEIN: No, no of course not. Of course not Chair.

ADV SELEKA SC: Yes you just wanted to part of it.

MS KLEIN: Yes.

ADV SELEKA SC: Yes. So you were part of People In Governance.

MS KLEIN: I was part of People In Governance and we had a chairperson of People In Governance Zethembe Khoza at that time.

ADV SELEKA SC: Yes. And it was the People In
20 Governance that effected the suspensions.

MS KLEIN: That is correct Chairperson.

ADV SELEKA SC: Of which you were part.

MS KLEIN: That is correct.

ADV SELEKA SC: Yes. Now the Chairperson has asked repeatedly the witnesses who have come here – we

understand from Mr Tsotsi that the executives who were to be suspended were three.

MS KLEIN: Sorry Chair I did not get that last – I did not...

ADV SELEKA SC: The executives who were to be suspended were three.

MS KLEIN: Correct.

ADV SELEKA SC: Three executives were to be suspended.

MS KLEIN: Correct.

10 **ADV SELEKA SC:** But ultimately four executives were suspended.

MS KLEIN: That is correct.

ADV SELEKA SC: And the question has been how did the fourth executive which is the Financial Director's name make its way into the list. Are you able to answer that question?

20 **MS KLEIN:** Chairperson all I can say to you is that the morning that the Minister was there you know obviously on recollecting now or having – had the benefit of being here going away and then applying my mind again. What I recall the Minister said was that the people responsible for the areas that were affected she had no problem with ask – being asked to set aside. Because I think the discussion was about asking people to step aside. And if I remember correctly the Minister said something to the effect that the

people who were responsible for the various areas would be asked to step aside or could be asked to step aside. But she did say that it is the board's decision but the people who were responsible for the – what the board felt the areas of responsibility was could be asked to step aside.

ADV SELEKA SC: Did then – are you saying to the Chairperson it is at that stage that the fourth name being the FD was included.

10 **MS KLEIN:** It was not at the time when the Minister was there. When the Minister was there my recollection was there were no names mentioned. After the Minister left which is the meeting which started at twelve o'clock and this is where it becomes just a little bit more difficult because Chairperson when I was here last time I indicated that I had a recording of that meeting which starts at 12:23. But the meeting actually started at twelve o'clock and I am not saying to prove my point but what I am saying to you is the recording which I sent to the commission and
20 the recording which I got from Eskom because I wanted to make sure that maybe the version that I had maybe there was a fuller version. The recording I got from Eskom are actually exactly the same. It starts at twenty-three minutes past twelve or thereabouts Chairperson and in the first twenty-three minutes that is when the four names are put

to the board by the chairperson Zola Tsotsi. And he goes – he does not just put the four names to the board he goes as far as giving up a reason why each of those four should be suspended. Now unfortunately for all of us those twenty-three minutes is not on the recording. But the rest of the recording you can hear people fighting and saying but you know the FD should not be included because you know who is saying that she must you know. So my recollection of the whole thing is by the end of the meeting
10 that starts at twelve even though the recording starts at 12:23 and that ends at I think 1:30 the agreement there is there is only three people that will be suspended.

CHAIRPERSON: Well I had a look at I think the transcripts of what I believe was that meeting and my recollection is that when you read that transcript when it comes to the question of who the people are who are going to be suspended you seem to find different speakers talking about different – a different number of people. Some seem to talk about three; others seem to talk about four which
20 includes the Financial Director. But you come to a point and it may be that that is at the end of that meeting where the issue arises again whether the Financial Director is to be included. And Mr Zola Tsotsi if I under – remember correctly comes out quite clearly that no, no, no the Financial Director is not to be – is not included. My

recollection is that that is how that meeting ends.

MS KLEIN: That is correct Chair.

CHAIRPERSON: My impression is that nevertheless at the P&G meeting later on the – the name of the Financial Director seems to be included. Is that your – the same impression you have as well?

MS KLEIN: That is exactly the same impression Chairperson.

CHAIRPERSON: Yes, Yes. Yes Mr Seleka.

10 **ADV SELEKA SC:** Thank you. Thank you Chairperson. Then Ms Klein you have – let me deal first with this aspect about the recording which you say is apparently incomplete. Now this recording you have had it all the time. We did not know you told us on your last appearance that you have it. There are minutes that have since been produced from that meeting of 11 March 2015. Some of those minutes of the various meetings were signed by Doctor Ngubane we said more than a year later. 18 November 2016.

20 **MS KLEIN:** Correct Chairperson.

ADV SELEKA SC: And you were still serving on the board at the time.

MS KLEIN: That is correct.

ADV SELEKA SC: Those minutes would have been discussed before they are signed by the board.

MS KLEIN: Correct.

ADV SELEKA SC: Did you at any stage point out to the chairperson at the time that – but we are missing something from these minutes which should have been captured?

MS KLEIN: Chairperson no and I will – let me try and answer – answer you this way. It was not until I was asked about the suspensions for preparation for preparatory purposes of this committee or this inquiry that one then
10 started wanting to refresh your memory. And then you went to go and listen to recordings to make sure that your recollection is correct because we are talking about five years ago. That is the first point. So to answer you Chairperson no I did not point that out previously. The point that the minute was only signed a year later I cannot talk to. What I do want to place on record Sir is the voracity of the minute as it stands was approved by all board members in a meeting of April of 2015. I cannot
20 Chairperson explain to you how Doctor Ben only gets to sign it a year later.

CHAIRPERSON: Let me just make sure I understand that. Are you saying that when we see the minutes that Doctor Ngubane signed more than a year later and there is more than one I think – there are a few of those minutes.

MS KLEIN: Yes.

CHAIRPERSON: Are you saying that that does not necessarily mean that the board approved those minutes more than a year later. You say the board approved those minutes within a short space of time after the meeting concerned but the Chairperson for whatever reason signed them much later. Is that what you are saying?

MS KLEIN: Chairperson that is correct.

CHAIRPERSON: Yes and that is the – that falls in regard to all those minutes where Doctor Ngubane seems to have
10 signed more than a year later.

MS KLEIN: From what – from what I have heard from the commission Doctor Ngubane – because even in my own evidence.

CHAIRPERSON: Yes.

MS KLEIN: All of the minutes I have got is unsigned.

CHAIRPERSON: Yes.

MS KLEIN: What I do want to say to the commission however is that it was not new in Eskom that minutes got signed so much later than it actually happened. In fact
20 Chairperson when I got to a number of the meetings that I chaired I was asked to sign minutes of 2014 which is of the previous board ...[intervenues]

CHAIRPERSON: ...or could you sign those?

MS KLEIN: I think, you know, I want to place it on record so that... I know you got the company secretary coming later

and he can maybe help to enlighten us because the company secretary was there when the meeting of the 11th happened.

CHAIRPERSON: H'm.

MS KLEIN: And the company secretary was there ...[intervenes]

CHAIRPERSON: H'm.

MS KLEIN: ...when we, the board, ratified all of the minutes of the meetings that had happened in our time.

CHAIRPERSON: Yes.

10 **MS KLEIN**: So those, why Dr Ngubane signed it a year or two later, I cannot...

CHAIRPERSON: Yes, yes.

MS KLEIN: You will have to ask Dr Ngubane that, Chairperson.

CHAIRPERSON: Okay thank you.

ADV SELEKA SC: Thank you, Chairperson.

CHAIRPERSON: Do you know whether before the board approved any of these minutes whether there was a recording of the meeting, the proceedings of the meetings?

20 Whether they would have been assured that whoever prepared the minutes had listened to the recording and therefore what the minutes reflected what really had been discussed.

Because when you have a recording, you have a benefit. You know, you do not have to rely on your notes. You do not

have to rely on your memory when you prepare the minutes.

You can listen to the recording and make sure that the minutes you put together reflect in substance what was discussed.

Do you know whether the board was told that with the minutes that it approved that had been done?

MS KLEIN: Chairperson, to the best of my knowledge. Every single meeting was recorded. But I must also say, at the time at Eskom there were discussions which I know that
10 actually asked for it not to be recorded.

So it is a bit difficult to say that it was all one hundred percent recorded, number one.

Number two, I have actually also tried to get access to the In-Committee minutes because that would give, you know, rise to a lot of the questions being asked and until there are no such minutes.

So I cannot conclusively say to you Chairperson that every single meeting was recorded. I think Mr Phukubje would be the best person to answer that question for you
20 Chair.

CHAIRPERSON: Okay. No, that is fine.

ADV SELEKA SC: Thank you, Chair. Ms Klein, we then have these recordings. We have checked them with yourself. And we have, as you have, relied on them. Correct?

MS KLEIN: Correct, Chair.

ADV SELEKA SC: Yes. To the extent that you say, things are not there but yet not raised. You have not done anything about it and that is where it is. That is what it is.

MS KLEIN: Sorry?

ADV SELEKA SC: So to the extent that you say the audio recording is missing something ...[intervenes]

MS KLEIN: Yes.

ADV SELEKA SC: ...which you did not raise. There is
10 nothing the Commission can do about it.

MS KLEIN: I totally agree with you Chair.

ADV SELEKA SC: So we move on from the meeting of the
11th ...[intervenes]

CHAIRPERSON: I want you, of course... I am sorry. What,
of course, anybody who was at such a meeting can say is:
Having listened to the recording and having looked at the
minutes, I am able to say there are things which were
discussed at that meeting which are not contained in the
recording or which are not reflected in the minutes.

20 And the reason why they are not reflected may well be
because they were discussed before the recording started.

MS KLEIN: I agree with you Chairperson.

CHAIRPERSON: Yes. Ja, ja.

ADV SELEKA SC: Thank you. Ms Klein... Ja, perhaps I do
not need to belabour the point because Mr Tsotsi has said

explicitly that what was presented to him in Durban with the president was that three executives should be suspended or step aside and that is what he presented to the board.

And I think what you are trying to answer, which is not clear to me, is. What is your answer to when was the FD, the financial director's name added to the list?

MS KLEIN: I think if I look at my notes(?), Chairperson. My version which was the same version in parliament as what it is here. Is that it all happened at the same time.

10 **CHAIRPERSON:** And when you say it all happened, what are you...? The names?

MS KLEIN: The names.

CHAIRPERSON: Ja.

MS KLEIN: The names were motivated, according to me, which is what I have said in parliament and I say here again by Mr Tsotsi at the beginning of the meeting.

Bearing in mind, that was with the benefit of having looked at the minutes and you know, acquainted myself at the time of parliament with that.

20 When asked the question by the Commission to go and look at the suspensions more specifically because in parliament I was not really focussed on the Commission, only on the suspensions. It was more about a whole range of other issues.

I then went to go and listen to the recordings and it is at

that point that I became aware... not became aware. I started realising that what was in the minutes, which were all for with Mr Tsotsi, which by the way, I remember specifically Mr Tsotsi telling her that the financial director was involved with some form of tender tampering. That stuck in my mind.

But when I listened to the recording, it becomes clear that we would have heard it somewhere that she was involved with tender tampering but at that stage, at the end of the meeting which now ends at half-past twelve...

10 Sorry. We start at twelve. The recording starts at 12:23 but end at half-past one. The board took a decision that it was only three.

But to answer you Chairperson. Her name would have gone back onto the list which it originally was, according to me in the People and Governance Meeting which took place between, from what I can tell, from half-past one to 14:48 which is when the next meeting starts where the chairperson there opens up with the fourth person's name is on the list.

CHAIRPERSON: Ja, it is... I think when I read the
20 transcript to which I referred earlier, there were things that seemed to be confusing to me with regards to Mr Tsotsi because I think there is somewhere where he speaks on the basis that the financial director is included.

But there definitely is a place, I think it towards the end, where somebody raises the issue whether the financial

director is included/

And he specifically says: No, the financial director is not included. So it becomes confusing. But maybe it is...

That is the point where you say the board's decision at the end of that meeting was that it was three ...[intervenes]

MS KLEIN: That is correct, Chair.

CHAIRPERSON: ...and not the financial director. Yes.

MS KLEIN: That is correct, Chair.

CHAIRPERSON: But then at the P&G meeting, I think that
10 is what you are saying.

MS KLEIN: Yes.

CHAIRPERSON: ...her name was then included.

MS KLEIN: Included.

CHAIRPERSON: Yes.

MS KLEIN: Included.

CHAIRPERSON: But you do not have the recollection, or do you, as to who was the person who included her name for the first time at the P&G meeting?

MS KLEIN: Chair, it was very interesting because when I
20 started listening to everything again, some things then did crystallise because I was asked at this Commission the question before and I think I even raised it with you.

I said there was a time when Dr Ben was running in and out of the meeting on the phone.

CHAIRPERSON: Yes, yes.

MS KLEIN: I think I even said to you Chairperson.

CHAIRPERSON: Yes.

MS KLEIN: And I know it is not my job to do.

CHAIRPERSON: Yes. No, no ...[intervenes]

MS KLEIN: But I said, you know, I find it strange that Dr Ben was running in and out and coming back and forth. And I think what Dr Ben said was, that he was on the phone with the minister. That happened in that P&G meeting.

CHAIRPERSON: Yes.

10 **MS KLEIN:** And I think it is at that point ...[intervenes]

CHAIRPERSON: Yes.

MS KLEIN: ...when that name went back on.

CHAIRPERSON: Yes.

MS KLEIN: What exactly the minister said to him or did not say, I cannot account for it. You will have to ask Dr Ben.

CHAIRPERSON: Yes.

MS KLEIN: But it was at that stage ...[intervenes]

CHAIRPERSON: Yes.

20 **MS KLEIN:** Remember, the minister in the earlier meeting said ...[intervenes]

CHAIRPERSON: Yes.

MS KLEIN: ...people who are responsible for.

CHAIRPERSON: Yes.

MS KLEIN: So what exactly was said between Dr Ben and the minister, I do not know.

CHAIRPERSON: Yes.

MS KLEIN: But that was the point in P&G where the CFO's name went back onto the list.

CHAIRPERSON: Well, that is quite interesting. One, because as I recall, when the minister left the meeting she had with the board earlier on that day, she said she would be around if, as I understand the position, she meant, if board members want to clarify something with her.

10 She is not going to go far. She will be around or something like that. I think that is what I saw. That is one point. The second point. It is interesting because Mr Tsotsi, if I recall correctly, testified that Dr Ngubane told him that it was the minister who said the finance director, the financial director must be included as well.

Also, Mr Baloyi gave evidence yesterday and part of his evidence was that Dr Ngubane was frequently on the phone and he was phoning the presidency.

20 And I think he said that, for example in relation to people who were going to act in the positions of the executives who were to be suspended, that his understanding was that Dr Ngubane was getting the names from the presidency.

Now, of course, it could be the presidency... he could have been phoning the presidency at some stage. He could have been phoning the minister at some stage. We do not

know.

But what you do say, what do you confirm is that Dr Ngubane during, I think the P&G meeting was coming in and out of the meeting, making calls as you understood it, to the minister. Is that right?

MS KLEIN: That is correct, Chair.

CHAIRPERSON: Yes.

MS KLEIN: I cannot really talk to the presidency because I mean, I do not know who ...[intervenes]

10 **CHAIRPERSON:** Yes, but the minister that is... that was your understanding.

MS KLEIN: That was my understanding.

CHAIRPERSON: Yes, yes.

MS KLEIN: And I think for me, it would have lined up with what was said previously in our earlier meeting with the minister.

CHAIRPERSON: Yes, yes. Okay alright. Of course, maybe I could raise this with you which maybe I should have raised with other witnesses before. Because you just touched on
20 there having been allegation that the financial director had tampered or interfered or met with some service providers or tenders or whatever and ever. That in the meetings of the day, the 11th, one finds in the minutes or the transcripts that somewhere there were discussions about alleged wrongdoing on the part of the executives who were sought to be

suspended.

And yet, at the Durban meeting which Mr Tsotsi attended, it was made clear that the suspension of the executive directors was not going to be based on any wrongdoing. That is number one.

Number two, at the meeting or the meetings of the 11th of March, also ultimately, the board seems to have said: We are not alleging any wrongdoing on the part of the executives.

10 And yet, it seems that the basis, the reason that may have been advanced as to why the financial director must be included was this allegation of wrongdoing about tenders and service providers. You understand that?

One would have thought that from the beginning, it would have been said: Because we are not basing these suspensions on wrongdoing, please do not tell us about any wrongdoing. That is irrelevant.

Do you want to say anything?

MS KLEIN: Chairperson, I guess where I am struggling with
20 the sequence of events, is that my recollection or understanding, certainly of also now following the Commission with great interest on who is saying what, is that Mr Nick Linnell who was obviously briefed by whoever in Durban, actually had charges.

So it was not a case of let us just ask them to step

aside. Nick Linnell came to the meeting which he testified to with actual charges of wrongdoing.

So when you say that in Durban the decision was not to charge, that is not congruent with what Nic Linnell said. Nick Linnell said he came with the charges.

And the questions would have to be. Where did those charges come from? I mean, that would be my question.

CHAIRPERSON: No, no, no. I understand the same. My recollection is quite clear that at the Durban meeting, Mr
10 Tsotsi has said. And I suspect that Mr Linnell may have said the same thing too but I am much more clearer about Mr Tsotsi's evidence.

That when the Durban meeting discussed the suspensions, Mr Tsotsi was opposed to the suspensions. But one of the, or the main reason that was advanced to address his concern was that: No, no, no. These suspensions should not be a problem.

Because these executives will be told that there are no allegations of wrongdoing on their part. That certainly was
20 Mr Tsotsi's evidence.

I think you are right in saying, at the meeting of the 11th of March, the documents that Mr Linnell may have prepared which we have here, some of them maybe including allegations of wrongdoing against some of the... against the executives.

But I do not remember that in his evidence about the Durban meeting, I do not remember that he said that at the Durban meeting there were... there was a discussion of allegations of wrongdoing.

Maybe there were but what I think certainly Mr Tsotsi said was. It was said that the executives should not have a problem with suspension because it is not going to be based on wrongdoing.

But as I say, you know, that at the... at one or more of
10 the meetings of the 11th of March, there were discussions of allegations of wrongdoing.

And I think some of the documents prepared by Mr Linnell do refer to allegations of wrongdoing. And of course, we know that ultimately, the board did say the suspensions would not be based on any allegations of wrongdoing. Okay.

ADV SELEKA SC: Ja.

CHAIRPERSON: Mr Seleka, you might be able to
...[intervenes]

ADV SELEKA SC: Yes. No, I wanted to assist
20 ...[intervenes]

CHAIRPERSON: To throw light, ja.

ADV SELEKA SC: ...the Chairperson. In his affidavit, Mr Nick Linnell, refers to Jabu Maswanganyi who gives in documents but he says, these were mainly for unverified sources and so on.

But then specifically in regard to the executives, and I want that paragraph Chairperson, he says:

“The information was unverified and there was not going to be allegations of wrongdoing against them. They were going to step aside in order not to interfere with the inquiry and they were going to be counselled about that.”

But he does not know whether they were counselled about that. So that is his ...[intervenes]

10 **CHAIRPERSON**: But am I right about saying that some of the documents that he prepared for the meeting of the 11th, may be documents that... the memorandum maybe is one of them. That it does include some of them do include allegations of wrongdoing?

ADV SELEKA SC: He did refer to document that contains some allegations.

CHAIRPERSON: Yes. We just do not know why he would have included those allegations and circumstances where, to his knowledge, the suspensions were not supposed to be
20 based on any wrongdoing.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay. Well, we might have to ask him even if he sends an affidavit to deal with that.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: And Chair, the other point is this. Ms Klein... Mr Baloyi in his affidavit, in fact, says that you were the one who suggested that the FD be included on the list. He says:

“During Mr Tsotsi’s presentation...”

And I will go to that.

10 “...the indication was that only three executives would be suspended, namely Mr Tshediso Matona, Dan Marokane and Mr Matshela Koko. Ms Tsholofelo Molefe, the Finance Director, was not included from the start.

However, during the People in Governance Meeting on 11 March 2015, Ms Venete Klein said that Ms Molefe should also be suspended. Ms Klein mentioned that there were many issues with the finance department and that there was enough reasons to suspend Ms Molefe.”

20 **MS KLEIN:** Chairperson, I categorically deny that. In fact, to go to the... or for two reasons. Norman Baloyi was a member of Audit and Risk. He was not a member of People in Governance. So I do not know how he would have heard me say that. That is the first thing. In the recordings of the debate on the whole thing around should the FD go or should

the FD not be suspended.

I am not the person who raises the issue about many problems in the finance department. I have actually provided the Commission with the names of the peoples who were speaking there.

The one thing I was consistent about and I said it here before. The finance director had shared with us earlier on that morning that we were running a company of R 30 million an hour.

10 So I was always very cognisant that whatever decisions this board makes, we must do it and move on. But that I said that the CFO must be included, I categorically deny.

ADV SELEKA SC: Thank you, Chair. May I go to the transcript, Ms Klein?

MS KLEIN: Please do.

ADV SELEKA SC: Because I know that you have the recordings. Two things arise from what you are saying. Number one is that. Mr Norman Baloyi was not a member of P&G.

20 **MS KLEIN:** Correct.

ADV SELEKA SC: Mr Norman Baloyi says and the other witnesses have also said, he was present at the meeting of 11 March 2015, P&G meeting.

MS KLEIN: Chair...[intervenes]

ADV SELEKA SC: He was a present. He is not a member.

CHAIRPERSON: Maybe before you answer that. I was going to say. Either one of the witnesses or may have picked up in minutes or transcripts.

Somewhere I think I read something along the lines that board members who may not necessarily have been members of the P&G were not allowed or were entitled to be present at this particular P&G meeting.

Now, maybe it is not this particular. It may be at any P&G meeting if they want to attend, they are free to attend.

10 I do not know but I think I read somewhere or I heard one of the witnesses say something along the lines at that board meeting, at that P&G meeting, members of the board who may not have been members of that committee were allowed or were entitled to go and sit there.

I do not know whether that meant they could participate or they could be observers. I do not know whether it meant they could vote.

But I read something along those lines or I heard somebody say that. You might be able to enlighten me.

20 **ADV SELEKA SC:** May ...[intervenes]

MS KLEIN: I totally agree Chair. But I think let us Mr Seleka ask the question because then it is probably better to answer it then.

CHAIRPERSON: Ja, ja, ja.

ADV SELEKA SC: No, it is fine. Do you say you agree with

the Chairperson?

MS KLEIN: I agree with the Chairperson.

ADV SELEKA SC: Yes.

CHAIRPERSON: H'm.

ADV SELEKA SC: And I wanted to add to the Chairperson's, that the minute of the P&G of the 11th of March, does reflect as Mr Baloyi as present. It is Mr Khoza, the chairman, Ms Carrim, Ms Mabude, Dr Naidoo, Ms Naidoo, Mr Baloyi, Mr Tsotsi and Ms Klein present at the
10 P&G.

MS KLEIN: Can I... may I ask a question Chair just for clarity?

ADV SELEKA SC: [No audible reply]

MS KLEIN: Chairperson, are we referring to the meeting that start at 14:48? Is that what you are referring to there, Chairperson?

ADV SELEKA SC: The minute of the People in Governance Committee, 11 March 2015 at 14:58.

MS KLEIN: Alright.

20 **ADV SELEKA SC:** I can give you the page reference.

MS KLEIN: No, no. I want to... I think there are two versions here. And please, I do not want to waste time.

CHAIRPERSON: Yes.

MS KLEIN: The first meeting, the first board meeting started at nine o'clock the morning. The minister comes in.

The rest of the board meeting starts at twelve o'clock and ends at 13:30.

At that stage Chairperson, there were three people to be suspended. The meeting of 14:48 Chairperson, even though it is called a People in Governance meeting. If you read the first few lines, it is a full board meeting. It is not a People in Governance meeting.

The P&G, where this discussion was happening, and Dr Ngubane was running in and out, would have happened
10 between 13:30 and the 14:48 meeting which is when Nick Linnell gets introduced to us.

CHAIRPERSON: And that at the P&G meeting?

MS KLEIN: That then becomes a full board meeting. The P&G and the Audit and Risk meeting happened between 13:30 and 14:48.

CHAIRPERSON: Did you eat lunch on that day? [laughing]

MS KLEIN: Sorry, say that again, sir?

CHAIRPERSON: Did you not, the board members not eat lunch on that day?

20 **MS KLEIN:** We ...[intervenes]

CHAIRPERSON: I am simply asking because you are talking about finishing the board meeting at half-past one but then another meeting starting...?

MS KLEIN: At quarter to three.

CHAIRPERSON: Yes, but I heard Mr Tsotsi also say after

the board meeting that happened after the minister had left, and before the P&G meeting started, he went for lunch. When he came back from lunch, he said the P&G meeting had been running for about ten minutes.

So he came in when it had been going for about ten minutes. That is when he says, he found the meeting discussing names of people who were going to act in the positions of the executives.

And raised the issue of how can you people discussing
10 these names because you do not know these people.

MS KLEIN: Yes, yes.

CHAIRPERSON: That is what...

MS KLEIN: Yes.

CHAIRPERSON: So I am wondering whether in terms of the timing, there was not time allowed for the board members to go and half lunch and then come back?

MS KLEIN: Chairperson, I can only imagine that there would have been such a lunch-break and I am sure that others can give you more detail on it.

20 But remember the questioning being asked is. At half-past one there were three names. At ten to three, you now have four names. Something happened in between.

And the something that happened, happened at the P&G meeting which was a breakaway session between those two meetings.

CHAIRPERSON: So you locate the P&G meeting at half-past meeting to something to three?

MS KLEIN: Somewhere in between that something happened.

CHAIRPERSON: Yes.

MS KLEIN: Which is the meeting where Dr Ben runs in and out. This meeting, the one that starts at 14:48, is not the one that Dr Ben runs in and out. We would have picked that up in the transcripts.

10 **CHAIRPERSON:** Yes.

MS KLEIN: That Dr Ben is coming in with such a name or such a name. Nowhere in the transcripts does that come through.

CHAIRPERSON: Okay let us just see. So nine o'clock it is a board meeting.

MS KLEIN: Correct, Chair.

CHAIRPERSON: Somewhere after that, while that board meeting is going on, the minister arrives.

MS KLEIN: Correct, Chair.

20 **CHAIRPERSON:** And then the minister has a meeting with the board.

MS KLEIN: That is right, sir.

CHAIRPERSON: And at a certain stage, the minister leaves.

MS KLEIN: Yes.

CHAIRPERSON: And then the board continues with its meeting.

MS KLEIN: That is correct.

CHAIRPERSON: Is that right?

MS KLEIN: That is correct.

CHAIRPERSON: I think that is about twelve o'clock.

MS KLEIN: From twelve to half-past one.

CHAIRPERSON: From twelve to half-past one.

MS KLEIN: Yes

10 **CHAIRPERSON:** That is a full board meeting.

MS KLEIN: That is correct.

CHAIRPERSON: But what you are saying is that from half-past one up to what time?

MS KLEIN: Twenty... I think it is ...[intervenes]

CHAIRPERSON: Something 43?

MS KLEIN: ...14:48 or 14:58.

CHAIRPERSON: Ja, okay just before three.

MS KLEIN: Just before three.

CHAIRPERSON: There was a P & G during that time.

20 **MS KLEIN:** Yes.

CHAIRPERSON: Was that the only meeting that was going on at the time or could that meeting having been going on in parallel with another board meeting which would be without the P & G members?

MS KLEIN: Ja, Chairperson, my recollection is that there

was a discussion that took place after that three o'clock – not the three o'clock, the half past one meeting.

CHAIRPERSON: Yes.

MS KLEIN: That is where the three became four. It was in that meeting that the three became four.

CHAIRPERSON: Yes.

MS KLEIN: Because at the beginning of the meeting, which is known as the P & G meeting but when you go and you look at the actual – the Chairperson's talking about,
10 that the full board meeting at this stage.

CHAIRPERSON: H'm. Ja, what I am trying to understand is this. You see, I – when I read some things somewhere suggesting that at the P & G meeting it was said that the Chairperson of the board must chair the P & G meeting.

MS KLEIN: Yes.

CHAIRPERSON: You remember something like that?

MS KLEIN: I remember that as well, Chairperson.

CHAIRPERSON: Yes, yes. So I then asked the question was the P & G meeting chaired by the Chair of the board
20 as opposed to by the Chair of the P & G meeting? What is your recollection?

MS KLEIN: I recollect that as well. What I am suggesting is if you listen to the transcripts because somewhere at the beginning of the transcripts it starts talking about this being a full board meeting.

CHAIRPERSON: Ja.

MS KLEIN: And then towards the end of it when the executives get suspended, you know, basically get called in, that is where the aid memoire of Nicola Nel which is where, you know, Mr Tsotsi, you must now take over and run P & G yourself. That is where that comes in?

CHAIRPERSON: Ja. Okay, we might never be able to get all the details but I think we will just focus on the important issues.

10 **ADV SELEKA SC:** Yes, no ...[intervenes]

CHAIRPERSON: On Ms Klein's evidence the names at the end of the board meeting that ended at half past one, on her version, at that stage the board was talking only about three executives being suspended and that that list did not include the financial director.

MS KLEIN: Yes.

CHAIRPERSON: What she does say is that during the P & G meeting which she says started at half past one and went up to about two minutes to three, that is the meeting
20 where the financial director's name was added and ultimately the suspension involved all four executives and she says it was during that meeting which started at half past one and went up to five to three, it was during that meeting that Dr Ngubane was moving in and out of the meeting phoning, as she understood the Minister about

certain matters.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: Correct, Chairperson. And that version, Chair, has to be contrasted with what Mr Baloyi says and with what we see from the transcript because Mr Baloyi you headed or suggested the FD also be suspended.

MS KLEIN: Okay. Are you going to take me to the transcript?

10 **ADV SELEKA SC:** Yes and he says because you were saying he is not a member of the P & G but I do not think he was saying he was not present at the P & G, the meeting.

MS KLEIN: Ja. Chairperson, remember, we are talking about two different meetings here. What you are referring to is the meeting of 14.48 where Mr Baloyi is present where Mr Baloyi is present. What I am talking about is what happened in between.

20 **CHAIRPERSON:** From half past one to two minutes to three.

MS KLEIN: That is what I am talking about. Remember, the question was when was the FD's name put on. That was the question, Chairperson. When we stopped the meeting at half past one her name was not on. When we come back at 14.48 the first couple of minutes somebody

asked the question about is it three or is it four? And you could hear Mr Zola Tsotsi saying at that stage it is four.

ADV SELEKA SC: Ja. It will help, Ms Klein, if we stick to the documentation because that question was asked by Dr Ngubane and Mr Tsotsi said it is three should be suspended. The reference bundle, Chairperson, deals with that and Ms Klein, I am expecting you to know this because you were in that meeting.

CHAIRPERSON: Which one is that meeting because I
10 think that is part of what she is emphasising.

ADV SELEKA SC: Yes.

CHAIRPERSON: Are you able to tell that is the meeting that started when?

ADV SELEKA SC: I am emphasising the point Ms Klein is saying – a question is asked how many are going to be suspended and that is the question here. The question is:

“Sorry, Chair...”

Somebody is asking and that is Dr Ngubane, according to the transcript.

20 “...I just want to know, just last minute in this process...”

Then it becomes indistinct. The Chairperson then says:

“The CE, the Head of Group Capital and the Head of Commercial are the three individuals we are going to ask to step aside.”

Then Mr Baloyi says:

“Oh, because I thought maybe then the CE and the CFO are excluded.”

Mr Tsotsi says:

“No, the CE is not excluded, the CFO is excluded, that is what we have decided.”

CHAIRPERSON: Now if you look at the top of those minutes what time do they say that meeting started?

ADV SELEKA SC: This, Chair ...[intervenes]

10 **CHAIRPERSON:** Because they normally write what time the meeting was.

ADV SELEKA SC: The timestamp on this – the transcript does not indicate ...[intervenes]

CHAIRPERSON: Oh, it is the transcript.

ADV SELEKA SC: The timestamp – this is the transcript.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: But it is the board in-committee meeting.

CHAIRPERSON: Yes.

20 **ADV SELEKA SC:** Immediately after the meeting of the Minister.

CHAIRPERSON: Yes, yes.

ADV SELEKA SC: It is prior to the P & G meeting, Chair. Let me before the Chair ...[intervenes]

CHAIRPERSON: Oh, well, if you say it is prior to the P &

G meeting.

ADV SELEKA SC: Yes.

CHAIRPERSON: That might be in line with my impression but I am not feeling very certain that I am right but I have an impression that at the end of the board meeting that started after the Minister had left that there is the – that issue arises and that Mr Tsotsi insists that the Financial Director is not involved. I have that impression, I think ...[intervenes]

10 **MS KLEIN:** That is correct.

ADV SELEKA SC: This is the one.

MS KLEIN: That is correct.

CHAIRPERSON: Ms Klein confirms.

ADV SELEKA SC: Yes, his is exactly where I am.

CHAIRPERSON: Okay, then in that event what that transcript says is in line with what Ms Klein is saying because she does say at the end of the board meeting that ended at half past one, on her version, which is board meeting that started I think at twelve, after the Minister
20 had left, she says the decision of the board was that it was three executives.

ADV SELEKA SC: Yes.

CHAIRPERSON: So that is in line with what she says.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: And then what she does, she takes – she

says then there was a meeting that started at half past one and ended at something to three and she says that was a P & G meeting and she says it is during that meeting, it is at that meeting that the Financial Director's name was added and she says she cannot – I think she cannot remember who add the Financial Director's name but she does say Dr Ngubane during that meeting was going in and out making phones calls to – on her understanding, the Minister, and when one looks at that one must remember what Mr Tsotsi
10 said if my recollection is correct. Mr Tsotsi's evidence was that Dr Ngubane told him when he was saying but the Financial Director should not be included, he says Dr Ngubane said the Minister said this name, the name of the Financial Director must be included.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: So you have a situation where on the transcript, which you have read...

ADV SELEKA SC: Yes.

CHAIRPERSON: ...and on Ms Klein's evidence...

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

CHAIRPERSON: At the end of the board meeting that ended at half past one, only three names were agreed and they did not include the Financial Director and then you have this meeting where I think Mr Tsotsi says Dr Ngubane said it is the Minister who wanted the Financial Director to

be included and you have Ms Klein saying during that meeting Dr Ngubane was in and out of the meeting phoning, on her understanding, the Minister.

ADV SELEKA SC: Yes.

CHAIRPERSON: I think that part. Of course you do have – you have put to Ms Klein Mr Baloyi evidence.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: That Ms Klein is the one who put up the Financial Director's name.

10 **ADV SELEKA SC:** Correct.

CHAIRPERSON: And, of course, she has categorically said no, that is not so but that is where we are.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: And, Ms Klein, on that point because I was going to go to the point of the P & G but let me address that point because even in the board in-committee you are heard supporting, not even supporting, motivating for the suspension of the FD. You motivate for the
20 suspension of the FD along the lines which Mr Baloyi is saying that you were involved in the finances with the subcommittees, you know there are problems with finances, the FD should also be part of it.

MS KLEIN: Chairperson, I am going to have to ask that you please point that out to me.

ADV SELEKA SC: Okay.

MS KLEIN: Because when I read the transcript
...[intervenes]

CHAIRPERSON: Yes, no, no, that is fair enough.

MS KLEIN: When I read the transcripts that was not me,
that was Viroshini Naidoo who said that and in fact I
provided the Commission with the names of the different
voices.

CHAIRPERSON: No, that is fair enough, but this is what I
10 want you to think about. I mean, it may be that the
position is that as you categorically deny, that did not
happen, okay? But you said earlier on that during the
board meeting – I do not know whether it was the one
before the Minister came, the names were not mentioned.

MS KLEIN: Correct.

CHAIRPERSON: But the areas were discussed, it seems
to me that what you were saying was, a principle was
established.

MS KLEIN: Yes.

20 **CHAIRPERSON:** And the principle was if your area – your
portfolio is going to be investigated you should step aside.

MS KLEIN: That is right.

CHAIRPERSON: Now if that is so, if that is what – if that
is true and if your understanding was that the finance
portfolio was one of the areas to be investigated one could

understand if later on you would say but why leave out the FD because her area is included, would be affected. You understand what I mean? But maybe that did not happen and if it did not happen, it did not happen.

MS KLEIN: Ja.

CHAIRPERSON: So but I was just saying to the extent that a principle was established you may have understood the finance department to be affected and therefore in terms of that principle you may have expected that she
10 would be suspended as well but let us deal with it. Are you able to refer her to the ...[intervenes]

MS KLEIN: The exact wording. Because I remember on listening to it and sending through the names to the Commission, the person who said that I have worked very – on numerous committees and the finances were not in order was Ms Viroshini Naidoo. That was not me.

CHAIRPERSON: Yes.

MS KLEIN: What I did say, Chairperson, and I said is before is what the finance person or ...[intervenes]

20 **CHAIRPERSON:** The FD, ja.

MS KLEIN: The FD had said, she gave us the numbers, she said they were running short, so I was not there defending her, like for example – I think it was Mark Pamensky who was very vocal about, you know? But you cannot let the FD go because – he spoke stuff about, I

think ...[intervenes]

CHAIRPERSON: To the markets.

MS KLEIN: Downgrading, all of that.

CHAIRPERSON: Ja.

MS KLEIN: But the piece about me saying that I sit on various committees and the financials were not in order, the committee or the Commission asked me to re-listen to it and give them the names and I gave them the names and that comment came from Viroshini Naidoo, not me.

10 **CHAIRPERSON:** Okay, maybe ...[intervenes]

MS KLEIN: But maybe Mr Seleka could give it to me.

CHAIRPERSON: ...it is time for a short break.

ADV SELEKA SC: Sure.

CHAIRPERSON: That might help to find the place.

MS KLEIN: Ja.

ADV SELEKA SC: That is fine.

CHAIRPERSON: But if when we come back you have not found it, this has not been resolved, we can continue.

ADV SELEKA SC: Yes, Chair.

20 **CHAIRPERSON:** With other questions while your junior is looking.

MS KLEIN: Ja.

CHAIRPERSON: And then we can revisit it later.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Okay, we will take the tea adjournment

and resume at twenty five to twelve.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: We have spent quite some time on some of these matters but I think it was important to deal with
10 certain issues.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: But I think if you have been able to find the relevant parts of the transcript that Ms Klein wanted to be pointed out to her do that. If not, let us continue while your junior is looking for those parts of the transcript and then we can go back to that issue later.

ADV SELEKA SC: Ms Klein, I give you reference. Chairperson, on this specific issue because Ms Klein refers to one incident where Ms Naidoo is talking and there is one
20 aspect where you are also talking.

CHAIRPERSON: Has she had a chance to look at that one or not yet?

ADV SELEKA SC: I have looked at both of them, the transcript.

CHAIRPERSON: Ja. No, I mean has she, Ms Klein, had a

chance to refresh her memory on that part there where you say she is talking?

ADV SELEKA SC: No, not yet, I did not show it to ...[intervenes]

MS KLEIN: Chairperson, maybe if you can just read and then ...[intervenes]

CHAIRPERSON: Ja, if you can read it to her, ja.

MS KLEIN: Then we will see if I need to maybe ...[intervenes]

10 **CHAIRPERSON:** Ja. But if it is in the bundle before her you can tell her what page.

ADV SELEKA SC: Yes.

CHAIRPERSON: While you read she can look at what ...[intervenes]

ADV SELEKA SC: It is in the reference bundle.

MS KLEIN: Okay, maybe it is better.

ADV SELEKA SC: Ja.

MS KLEIN: Thank you, Chairperson.

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** So, Ms Klein, Ms Mabude talks about what the Minister said, just to give you context.

“Thanks, Chair, I think the Minister has indicated a whole of issues that needs to be looked at and in her speech, if you noted what she was saying, it was – it is the basis for the terms of reference, so if

we can use that speech as a way of putting the terms of reference from that speech.”

Then she carries on.

MS KLEIN: Sorry, is that Ms Mabude, Chair, or is that me?

ADV SELEKA SC: No, no, Ms Mabude.

MS KLEIN: Okay.

ADV SELEKA SC: I am just giving you the pretext.

MS KLEIN: Okay, alright, right, okay.

10 **ADV SELEKA SC:** To get to the context.

CHAIRPERSON: Yes but let us have Ms Klein have the reference bundle in front of her as well.

ADV SELEKA SC: The reference bundle.

CHAIRPERSON: That will give her the advantage [inaudible – speaking simultaneously]

MS KLEIN: Thank you. Thank you, Chair.

ADV SELEKA SC: Yes, thank Chair, I beg your pardon, Ms Klein. That is on page 356. Page 356. Against line 20 on that page, I was reading from there, Ms Klein.

20 **MS KLEIN:** Yes, sir.

ADV SELEKA SC: “...and from that speech it was indicated to me. Indicated the critical sections that needs to be looked at and in looking at this critical sections, just keep the leader in its section from what she was saying...”

And so forth. Then you turn the page to 358, the Chairperson speaks:

“Okay ...[intervenes]

CHAIRPERSON: You are referring to the red numbers now on this bundle as well?

ADV SELEKA SC: No, the ...[intervenes]

CHAIRPERSON: Black numbers.

ADV SELEKA SC: The black numbers, Chairperson, thank you for reminding me.

10 **CHAIRPERSON:** Okay, so what page?

ADV SELEKA SC: Page 358.

CHAIRPERSON: 358?

ADV SELEKA SC: 358, Chair. I am now automatically used to the black when I see them, Chair.

MS KLEIN: Sorry, Chairperson, mine has all the red numbers, hey? At the top.

ADV SELEKA SC: No, the black one in this one. In this reference at the top, top left. Yes.

MS KLEIN: Alright, thank you.

20 **CHAIRPERSON:** Okay, 358, black numbers, yes, I have got that.

ADV SELEKA SC: Yes, then the Chairperson after Ms Mabude has spoken says:

“Okay, I think based on what you are saying Chwayita...”

That is Ms Mabude.

“...there are four areas that the Minister has spoken about. She spoke about maintenance and that is engineering, maintenance is driven by engineering. She spoke about procurement and that is commercial and she spoke about new build programme, that is capital and technology and she spoke about finance.”

So Mr Tsotsi indicates that the Minister already has
10 referred to four areas.

MS KLEIN: Yes.

ADV SELEKA SC: And then Ms Naidoo speaks, at the bottom of – after the Chairperson has spoken.

“Mr Chair...”

She also spoke about the fact - that the load shedding.

Mr Tsotsi then says:

“No, no, that is once again – do not forget load
shedding is a consequence of maintenance and lack
thereof so it is still engineering, it is not
20 generations.”

Says “Okay.” Then you come in, Ms Klein:

“Chairperson, look, I think as the board we have been grappling with a whole lot of issues which, as she has correctly pointed out...”

Now, Ms Klein, bear in mind, what I am saying is, it is the

motivation you are making for the FD.

“She was concerned we are worrying ourselves about the rats and mice and burning platforms not being attacked(?) but I think as a board this is going to be one time when we must step up the plate and must make hard calls because we are being saying we have been disengaged, now we are engaged. Now the real question becomes do we now want to now delay this by going into
10 subcommittee work before we make hard calls? Sitting here today and knowing - and just not have to be proven or evidential proof, the fact that our Chairman tell us, unless we believe he is lying, we cannot ignore what is being on the table. I think this is where we need to make hard calls with a parallel process of finding the evidence on what has been - you know, what is happening but I get a bit scared, if we want to now palm off the subcommittees, number one, and number two, you
20 know, people are going to be treated like criminals. You know what, guys, today in the business world, public and private sector, people are being set aside which is why that word is quite good. It is not suspended but it is set aside while something bigger happens. This is not about you or me, this

is about the entire country and I think this is the watershed for us as a board but for the country. So if somebody can make the hard call to show we will leave no stone unturned to see if we can turn this things around and we can make a mistake – we are going to make some mistakes as we go but do not forget the board has been seen or – I certainly feel like a sitting duck from the 10 or 12 December. I have said it a number of times. Now this is one
10 thing I have got myself – I have got to challenge myself and say given what I now know, I am still going to do that.”

So that is the one part of the motivation for the suspensions, Ms Klein.

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

ADV SELEKA SC: I will then specifically refer you to ...[intervenes]

CHAIRPERSON: Well, what you read, Mr Seleka...

ADV SELEKA SC: Yes, Chair.

20 **CHAIRPERSON:** Unless I am missing something, might what you read which you said is attributed to Ms Klein, might not necessarily relate to the Financial Director, it might be a call upon members of the board or P & G, whoever we are dealing with here, to say look, we have got to make hard decisions here and we must step up and

make those decisions without necessarily – and I may have missed some things without necessarily saying I am motivating for the inclusion of the Financial Director. I may have missed something.

ADV SELEKA SC: Yes.

CHAIRPERSON: I am just saying that is the impression I got.

ADV SELEKA SC: Yes. No, correct, Chair, specifically here it is the motivation for what the Chairperson has said.

10 **CHAIRPERSON:** Yes.

ADV SELEKA SC: Ms Mabude, what I understand you to be saying, is that the Minister has identified four areas for suspension and Ms Klein in this regarding is saying yes, let us do it.

CHAIRPERSON: She is saying let us go along. Oh, okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ms Klein, what do you say about that interpretation?

MS KLEIN: I absolutely support that, Chair.

20 **CHAIRPERSON:** Sorry?

MS KLEIN: I absolutely support.

CHAIRPERSON: That that is what – yes.

MS KLEIN: That is what exactly what I was saying.

CHAIRPERSON: Okay.

MS KLEIN: You cannot be busy with rats and mice there

is bigger issue here, we have not had information before, now we do, now can we please just get on with the job of doing it. But I thought – but maybe, Chairperson, there is another reference because some – if you can just show me that other one where we talking about I have dealt with the FD before and she has not ...[intervenes]

CHAIRPERSON: That is the one that you could not remember.

MS KLEIN: That is one that I remember was...

10 **CHAIRPERSON:** Ja.

MS KLEIN: But if you could take us to there it would help us please.

CHAIRPERSON: Yes but I think just to make sure we are on the same page. Your response, your reaction to what Mr Seleka has read as attributed to you is yes, that is what you said.

MS KLEIN: That is correct, sir, yes.

CHAIRPERSON: Number one. Number two, yes you were supporting the suspensions that were being discussed.

20 **MS KLEIN:** Yes.

CHAIRPERSON: And those suspensions included the FD.

MS KLEIN: Correct.

CHAIRPERSON: Okay, alright.

MS KLEIN: At that stage that is what I was saying.

CHAIRPERSON: Yes, okay, alright.

ADV SELEKA SC: I have not checked the one, Ms Klein, you want now.

MS KLEIN: No, no, but we can do that later.

ADV SELEKA SC: But we can do that later.

MS KLEIN: We can do that, I am comfortable with that.

ADV SELEKA SC: Thank you.

CHAIRPERSON: Yes, okay. No, that is fine.

ADV SELEKA SC: Yes, Chair. Can I move on, Chair?

CHAIRPERSON: Yes please, yes.

10 **ADV SELEKA SC:** Ms Klein, the ...[intervenes]

CHAIRPERSON: Of course – maybe I should not say of course. This does not affect the answer you gave earlier on of categorically denying Mr Baloyi's evidence that you came up with the name of the FD.

MS KLEIN: No, that does not address it at all.

CHAIRPERSON: That answer stands.

MS KLEIN: Yes.

CHAIRPERSON: Okay.

MS KLEIN: Yes, absolutely, Chairperson.

20 **CHAIRPERSON:** Okay.

ADV SELEKA SC: Because it seems from what Ms Mabude is saying, which Mr Tsotsi then reiterates, that the Minister was the one who indicated four areas.

MS KLEIN: Yes.

CHAIRPERSON: Well, is it also your recollection, Ms

Klein, that the Minister indicated four areas or portfolios?

MS KLEIN: I remember the Minister's words being – I remember with the last time we spoke about it, I could not recollect it clearly but I went back and rethought a whole lot of things. The Minister said the people heading the areas considered to be the problem areas, it would be best to get them to step aside.

CHAIRPERSON: Yes.

MS KLEIN: Those were – that is how I remember it.

10 **CHAIRPERSON:** Ja.

MS KLEIN: That is why when we got into the board meeting of the – after the in-committee meeting.

CHAIRPERSON: Yes.

MS KLEIN: It was the to-ing and fro-ing, is the FD in, is she not? But the Minister I do not think said four. If I remember correctly she said the people responsible for the areas that the board considered to be problematic areas. If I remember it correctly. I speak under correction there, Chair.

20 **CHAIRPERSON:** You see, it may be that this is what happened. We certainly know that at the Durban meeting the Financial Director was not included.

MS KLEIN: Right.

CHAIRPERSON: And the finance portfolio I think was not included. That we know. We also know that ultimately four

and not three executives were suspended and they included the Financial Director. So it is a question of at what stage the Financial Director was included and part of what you have said this morning is when the Minister was speaking to the board on the 11th, she laid down a principle.

MS KLEIN: Yes.

CHAIRPERSON: And the principle was that she thought that executives who were leading portfolios that would be
10 investigated should step aside or should be suspended or she would leave it to the board but she would understand if they were suspended or something like that.

Now if that is so and if her speech or what she said to the board at that time included the finance department, it would be logical if at the P & G meeting the question arose whether the FD should be included among the executives to be suspended, it would be logical or understandable if someone from within the committee, and this time maybe Dr Ngubane, called the Minister to say,
20 you know, Minister, there is an issue about whether the FD should be included or not, you know, and you said that portfolios that are affected, people who lead them, executives who lead them, maybe should be suspended, did you mean that the FD should also be suspended and therefore if Dr Ngubane came back to the meeting and said

no, we must include the FD, one would understand if Mr Tsotsi asked him but where are you coming with this name from because we only spoke about three? Then he would answer the Minister said she must be included. So it would fall in place logically if that – that that because she seems to have laid a principle and if later on she was asked in terms of this principle you laid when you talked to us, should the FD be included? And it seems that logically she would say apply that principle and if you apply it, the FD
10 gets included.

MS KLEIN: I agree, Chairperson, and I think the only people who can answer that would be Dr Ngubane.

CHAIRPERSON: Yes.

MS KLEIN: Or Minister.

CHAIRPERSON: Ja.

MS KLEIN: Because like I said, you know, that was the level of deliberations.

CHAIRPERSON: Yes, yes.

MS KLEIN: The meeting closed with three and the next
20 one opened with four. So somewhere in between there.

CHAIRPERSON: Yes.

MS KLEIN: Maybe the calls – maybe, like you correctly point out, Minister was in the building. I do not quite know how that worked.

CHAIRPERSON: Ja, okay.

MS KLEIN: But I remember a meeting where Dr Ngubane was running in and out and then looking at the transcripts of the 14.48 meeting I could not find where he was running in and out and coming with names. So that is what led me to believe, Advocate Seleka, that must have happened in between those two...

CHAIRPERSON: Yes.

MS KLEIN: In fact, on the – in the transcript of the 12 – of the meeting that ends at one, it is actually, Advocate,
10 when you look at it – sorry, Chairperson, when you look at – we say there we are now going to break into the meeting which I would assume would have been that smaller meeting where this was going on but I think that needs to be verified with the likes of Dr Ngubane.

CHAIRPERSON: Ja.

MS KLEIN: And the Minister.

CHAIRPERSON: Ja.

MS KLEIN: I cannot say anything more than that.

CHAIRPERSON: Okay.

20 **ADV SELEKA SC:** Chair, your summation seems to bear concurrence with the documentation because Dr Ngubane says:

“When the Minister arrives, although the Minister did not direct the board to suspend the four executives...”

Now he specifically says the four. And we have read the transcript saying the Minister has identified four areas.

“She raises concerns of her own against them, the executives. The concerns related to the war room which she suggested, complained it was not received consistent information from management and therefore it could not develop strategies to turn around Eskom and stop load shedding. The Minister felt that the presence of the four
10 executives might hinder the investigation.”

Now that is Dr Ngubane.

CHAIRPERSON: Yes, so based on what Dr Ngubane says, the Minister spoke about four executives.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: So then you find that latter part you referred to, Chair, in Mr Tsotsi’s affidavit.

CHAIRPERSON: Yes.

ADV SELEKA SC: Where he says about the FD.

20 **CHAIRPERSON:** Yes.

ADV SELEKA SC: That the FD was not to be included but then Dr Ngubane phoned the Minister and when he came back he said yes, the FD – the Minister says the FD must be included.

CHAIRPERSON: Yes, yes.

ADV SELEKA SC: And that is at a P & G meeting.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Because when you look at the P & G meeting Mr Tsotsi introduces Mr Linnell and he says to him:

“Now the board has made some significant decisions and the decisions the board has made in respect of the investigation are that:

1. The investigation will proceed as soon as possible.
2. Those executives who are directly involved with the areas where the investigation will focus will be suspended.”

And he says:

“And these are four areas. This is first and foremost, chief executive, then it is the executives for Group Capital, the Executive for Commercial and the Executive for Finance and the reason for that is because it is important that the ability to carry out the investigation is not compromised.”

Then somebody asks:

“Sorry, Chair, is the Executive Finance included as well?”

Mr Chair then:

“Oh, yes. Four. And that the work that needs to be

done in respect of the investigation must not be compromised.”

He carries on:

“...must not be comprised by the presence of these particular executives. One of the two that from the work you have done, the committee would like to know and needs to be updated in terms of the operational charges that are on the table in respect of the executives and probably excludes the FD
10 because you were not briefed on the FD...”

Now he is addressing Mr Linnell.

“...as far as I know but certainly on the other three executives maybe you want to take the committee through that and also the processes that need to come into play for this to be different, to be effected, which include managing the media, the public perceptions and all of this. Nick, should we just talk about these issues then, how you see the process going forward?”

20 And so what the Chair is saying, the instruction to the – or the request to him specifically was - from Durban – was in regard to the three executives and that seems to have turned after the Minister arrived or as, Ms Klein, in between the meetings.

MS KLEIN: Can I just add, Chairperson, that voice that

you heard is Malesela.

ADV SELEKA SC: Is this – oh, okay.

MS KLEIN: Ja, so you know what, I would actually like us – I think, Chairperson, you asked me to put names next to and identify voices.

CHAIRPERSON: Yes.

ADV SELEKA SC: Can we do that exercise?

MS KLEIN: If you can because it was sent – I hope my counsel has sent it through to you because it took me a lot
10 of time to work through it.

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes.

MS KLEIN: So that was Malesela. So once again, I think what that then also shows is Malesela was part of the first meeting.

ADV SELEKA SC: Yes.

MS KLEIN: Which ended at a certain time. Here we go into a second meeting, whether we call it now P & G, we can have a difference of opinion of what it is called based
20 on a different thing, but here is the company secretary asking:

“So now it has gone from three to four now.”

So something happened in between that time and I think you should ask the people concerned how that happened.

CHAIRPERSON: Okay. No, that is fine. But also, it is

important to make sure that we know exactly who is speaking in the different parts of the transcript.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: So that we do not wrongly attribute something to somebody.

ADV SELEKA SC: Indeed.

CHAIRPERSON: Who did not say those things.

ADV SELEKA SC: Indeed, Chair.

CHAIRPERSON: Okay.

10 **ADV SELEKA SC:** Yes, we made that arrangement with one of the witnesses to identify who is speaking at any given point. Chair before – you will see the lunchtime being referred to but your recollection is correct because they do take a break and Ms Mabude says:

“Audit and risk will meet before lunch.”

Mr Tsotsi says:

“Well, we will meet after lunch.”

And Mr Baloyi says:

“Sorry, Chair, let risk meet first...”

20 That is before lunch.

“And then we will meet up with risk once we get their input.”

And this is the debate about we meet before lunch and after lunch.

CHAIRPERSON: Ja, okay, alright.

ADV SELEKA SC: Ja.

CHAIRPERSON: Okay.

ADV SELEKA SC: Ms Klein, let us move on quickly because we spent too much time there. The suspension of the FD and especially the three other executives was then done – well, we can include Mr Koko, but the other two executives write to the board and they engage with the board. They are seeking answers from the board about the actual reasons why they are suspended because they see
10 in the public media different reasons are advanced as to opposed to what they were given.

We have gone through that and we came to the meeting where there was meeting, you attended, where they talked about letters from the executives. You can recall that?

MS KLEIN: Just help me, Chair, please. Which – what are we talking about?

ADV SELEKA SC: Okay.

CHAIRPERSON: Just remember, Mr Seleka, not to bother
20 to go over the same thing that we went over.

ADV SELEKA SC: Okay, thank you, Chair.

CHAIRPERSON: Let us focus on things that were not covered but obviously if there is something we covered where you have remembered some issue that you need to raise, you may raise it.

ADV SELEKA SC: Yes. They will find the minutes of that meeting.

MS KLEIN: No problem, Chair.

ADV SELEKA SC: I remember referring you to it.

MS KLEIN: No problem, that is okay.

ADV SELEKA SC: Yes. But, Ms Tsholofelo Molefe has indicated that you were actively involved in the discussions, settlement discussions or exit negotiations with her.

10 **MS KLEIN:** Correct, Chair.

ADV SELEKA SC: Ja. Because in your affidavit you appeared not to be knowing how her situation was handled.

MS KLEIN: I am sorry if that was the indication that I gave, Chairperson, but as Chairperson of P & G I can actually go take you to a minute where, as the board we kept on getting requests, my understanding, from different executives wanting to exit. That was my understanding. In a board meeting in April, if my memory serves me well. It then says:

20 "Romeo Kumalo can continue to engage with the CEO..."

Who was at that stage – I think he had already been to the Labour Court.

"...and any further settlements or any people who want to still leave must contact Dr Ben directly."

It then – it is interesting what the last sentence says:

“Mrs Klein may also be part of a delegation.”

What was left out of that was that – and I am not trying to say I was not part of it because I was part of it, but Chairperson, I had to fight as Chairperson of People in Governance, which I was at that stage, to be part of the discussions with the people very simply because I needed to make sure that people were fairly handled and treated.

So to go back to that point, I am not sure if that is
10 the point you were making, Chairperson, but I just wanted to indicate I definitely was part. So if I – if I omitted to answer it that way, then that was an oversight but that I was part of it, I definitely was part of the exit discussions with Tsholofelo as well as for Koko, which I am sure we will get to later, as well as for Mr Matona. Dan Marokane I think had already preceded that so I was not part of that.

ADV SELEKA SC: Ja, no problem on that. Let me tell you because Ms Tsholofelo has testified that when she was met by you and the delegation on the 4 May...

20 **MS KLEIN:** Yes.

ADV SELEKA SC: You did – the delegation said to her she has been writing letters to the board asking to exit and she says she categorically denied that. She said my letters were not about me wishing to exit, it was about me seeking information from the board. Do you recall that?

MS KLEIN: Let me just go back, sorry, Chairperson. Let me just understand. Are you saying that I said?

ADV SELEKA SC: No.

MS KLEIN: Oh, sorry, I did not get the question.

ADV SELEKA SC: The delegation...

MS KLEIN: Yes.

ADV SELEKA SC: ...said to her you have been writing letters to the board seeking to exit.

MS KLEIN: Okay.

10 **ADV SELEKA SC:** She said – she denied that, her letters were not about her wishing to exit, it was about her seeking information from the board about the terms of reference and the actual reasons for her suspension and there was an issue about insurance of directors.

MS KLEIN: Yes, ja, ja.

ADV SELEKA SC: Yes.

MS KLEIN: I have got to agree with her, Chairperson, because after the last time that I was here ...[intervenes]

CHAIRPERSON: Maybe, maybe, I am sorry ...[intervenes]

20 **MS KLEIN:** I have to agree with her.

CHAIRPERSON: I think there is a part which Mr Seleka left, maybe he was going to deal with later on and I hope I am not confusing the different executives but I thought she – ja, I think she said Mr Romeo Kumalo was the one speaking.

MS KLEIN: Yes.

CHAIRPERSON: In that meeting and she says despite the fact that she told the delegation and told Mr Kumalo that she had not written to the board wanting to leave. Mr Kumalo followed up with a suggestion along the lines that the investigation or the inquiry may still take quite long, maybe we should talk about a separation package anyway. That's what Mr – Ms Molefe said, the gist of it and that is what she added, does that ...[intervenes]

10 **MS KLEIN:** That does sound correct Chairperson.

CHAIRPERSON: That's your recollection as well?

MS KLEIN: That is my recollection of what – of certainly what she said because I have read through her letters as well so I have to agree with that.

CHAIRPERSON: Yes, and do you have a recollection of Mr Kumalo having responded along the same lines that she says or do you have no recollection of that?

MS KLEIN: Chairperson I can't remember exactly what was said but I do know that Mr Kumalo, you see my
20 understanding was prior to that meeting there had been engagements between people, people talking to people, which is why the Board had ultimately then agreed that Mr Kumalo continues to talk to I think it was Tshediso Matona, and that then there was a sub-committee formed because people were getting – apparently calls were coming in. I

was led to believe that people were calling in because they were wanting to go, that was my understanding, so – but when I went back to re-read particular to Tsholofela's affidavit, not affidavit, her – the letters that she had been writing it was more questioning around process, about one letter about you know she is part of CICA, how this would affect her in the long run, I remember reading all of that.

So I have to agree with it, the exact wording I cannot account for, but definitely you know that is – it is as
10 she says.

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you Chair. So nothing much I need to pursue there but safe to ask you Dr Ngubane has said here that the Boards actually wanted them back, the executives back. What is your comment on that?

MS KLEIN: My understanding right from the start Chairperson is that people were asked to step aside to not interfere, that is what my understanding was, and that ultimately they would come back. Obviously what has now
20 happened and in listening to different people testify you kind of try and now rethink some of it, my understanding at the time was people were saying there is so much confusion, we have got professional integrity that is being questioned, you as a Board are not coming back to us, we want to leave. That is what I understood then.

Going back and rereading some of it now I must admit rereading Tsholofela's letter by the way was the one where I could she was rather asking questions than saying I want to leave. So that is on Tsholofela. If I can just add something else, I went back to go and reread Dan Marokane, because the last time I was in the chair here Chairperson, and I know we want to speed this along, but I think it is important that we clarify this, a letter was put to me that was written by Dan, correctly so, two days after his
10 suspension, I think it was the 14th or something.

ADV SELEKA SC: No it was on the 18th.

MS KLEIN: Oh, the 18th okay, and Chairperson it was presented to me but it came to P & G and it came to company secretary and to ...[intervenes]

ADV SELEKA SC: It was addressed to Mr Tsotsi.

MS KLEIN: Mr Tsotsi. I went to go and look through all my mail to satisfy myself that I did not miss it. Chairperson I could find no record, number one, of when it ever came to me as P&G, remember I wasn't chairing
20 ...[intervenes]

ADV SELEKA SC: No sorry Ms Klein, can I clarify that?

MS KLEIN: Okay, please do.

ADV SELEKA SC: No, it wasn't said that the letter came to you as P&G, the minutes of the meeting I am referring to, which I will find, the Board said there, and it is minuted,

it acknowledged, it accepted that there are these letters from the Executives and to Ms Phukubje, the Company Secretary to reply to those letters.

MS KLEIN: Okay.

ADV SELEKA SC: And that is the minute which I referred to, but not that you received the letter, no.

MS KLEIN: Chairperson thank you, that is clarified, I am so sorry sir.

ADV SELEKA SC: That is alright. Yes, thank you. But
10 my question was Dr Ngubane said the Board wanted them back, is that what you understood as well?

MS KLEIN: From the start Chairperson that was always going to be the position. My personal view I have given you on the CE, not on everybody, on the CE, I gave you a particular view on the CE, that was my view.

CHAIRPERSON: Yes.

MS KLEIN: Which remember I gave you the example of R500 000, but that was my view and it was based on a perspective from outside of Eskom. But my understanding
20 always was that these people would step aside for three months and come back into their roles after three months. Not after three months, after the investigation had been completed.

CHAIRPERSON: Yes.

ADV SELEKA SC: Now isn't it that you would have known

at the meeting with Ms Molefe ...[intervenes]

MS KLEIN: Sorry Chair?

ADV SELEKA SC: Isn't it that you would have known at the meeting with Ms Molefe already that it was not the position that she did not want to come back. On the 4th of May when Romeo Kumalo says to her you have been writing letters which we understand wishing to exit from Eskom, she says no, and you were in that meeting. So you would have known then that it is not her intention to leave.

10 **MS KLEIN:** I am not sure how to answer that Chairperson, simply because ...[intervenes]

CHAIRPERSON: I think there is a part which I think Mr Seleka doesn't articulate but I may be wrong, that is why didn't you say to Mr Romeo ...[intervenes]

ADV SELEKA SC: I was going to ask that.

CHAIRPERSON: But the Board has no problem with these people why should we talk about Ms Molefe leaving when she makes it clear she is not asking for an exit, I think that's what he is putting to you, why didn't you say that,
20 because you on your evidence you knew the Board to expect them to come back, and therefore if a particular executive says I have not asked for a separation and your colleague Mr Kumalo says no even though you haven't asked for it I think we should talk about your leaving one would expect you to say why are you saying that.

MS KLEIN: Yes.

CHAIRPERSON: So I think he is asking you why didn't you say that?

MS KLEIN: Very simply Chairperson because we went to that meeting with already prepared numbers to talk about separation, remember I have indicated to you that we had been getting feedback in the Board itself that people are wanting to disengage, so I would have had no reason to think that she still wanted to stay. I attended a meeting
10 alongside of Romeo to talk about how to use – I think it was his words or her words, no, his words, how to amicably resolve this, but at that stage, and remember we are talking about from the 13th or the 11th of March, right now to either the 4th or the 5th of May thereabouts.

ADV SELEKA SC: 4 May.

MS KLEIN: 4 May, we're talking about almost two months later, I consistently had been hearing people are wanting to leave.

CHAIRPERSON: Yes, but the point is you may have come
20 to that meeting with Ms Molefe on the understanding that she also wanted to leave but the moment she clarified the position that she had not written requesting to be allowed to leave, one would then expect you to say oh that changes the picture then, at least as far as Ms Molefe is concerned. We came here under the impression that all the executives

want to leave, she doesn't want to leave so Mr Kumalo why are you pursuing this issue of leaving, that's the point.

MS KLEIN: Ja, Chairperson quite frankly I cannot tell you why I didn't ask.

CHAIRPERSON: Yes, no, no, that is fine.

MS KLEIN: That I cannot answer.

CHAIRPERSON: Yes, okay, no, no, that's fine.

ADV SELEKA SC: Mr Baloyi yesterday testified about his view that the laptops should not be taken away from them.

10 **CHAIRPERSON:** I am sorry, Mr Seleka let's just go back to this.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Of course the question that Mr Seleka puts to you about why you didn't raise this would arise with regard to Mr Kumalo's and would arise even with more force, to say Mr Kumalo here is an executive telling you I didn't write to you wanting us to talk about my leaving, why did you then say we must talk about her leaving you know, and it raises another question Ms Klein, namely whether
20 we might not hear we're dealing with a situation where the Board as a body might not have ever taken a decision to say we don't want them back, but there may have been some individuals within the Board who may have been working on the basis that these executives must leave, you understand what I am saying?

MS KLEIN: I hear you Chairperson and what you're saying is highly – it is possible but like I said you know the question to me was that I can't answer.

CHAIRPERSON: Yes, no, no, that is fine, yes, yes.

MS KLEIN: I can't answer that.

CHAIRPERSON: Yes, yes, we have a situation where Mr Matona gave evidence and said after my suspension I was so aggrieved that I used my own money to pay lawyers to go to the Labour Court to get the suspension set aside so I
10 could go back to my job at Eskom, the Labour Court said there was some unfairness in my suspension but referred the matter to the CCMA. At the CCMA the Board delegation asked for a postponement and they said they wanted to get a mandate from the shareholder Minister, and we had two meetings. At the first meeting with the delegation of the Board, and I think Mr Romeo Kumalo was one of them if I am not mistaken, Mr Matona says one of the members of the Board who was in that delegation when I said I want to go back to my job said that is off the table.

20 So you have that situation, and then you now have a situation with Ms Molefe, a delegation of the Board is meeting with her on the understanding from what you have said that apparently the executives have been writing wanting to talk about separation. She makes it clear that I have not written to – want to talk about separation,

nevertheless your colleague Mr Kumalo wants the discussion to be – to focus on exactly that, and that is what happens.

So it may well be that it was the Board, it may well be that the Board as a body had – didn't have a problem but there were certain individuals within the Board who might have wanted the executives or some of the executives out.

MS KLEIN: That's possible Chair, I am sure you will ask
10 the appropriate people the same question.

CHAIRPERSON: Yes, no, no that's fine. We will hear all the evidence and see at the end what picture emerges.

MS KLEIN: Of course.

CHAIRPERSON: Ja, Mr Seleka.

ADV SELEKA SC: Thank you Chair, and just to strengthen the point further Ms Klein, you see that part about Mr Kumalo saying the investigation will take a while, kind of motivating, separating with the company because we are going to take a while with the investigation. Now
20 this is in May and you will recall that Dentons was appointed in April and the say in their affidavit which we have provided you with that they commenced their work on the 20th of April 2015. They detail what they did in the first week which is essentially meetings and clients who understand the terms of reference and the mandate and

that's April, May, and then on the 11th of June they say they are told please provide us with a draft report, so in their estimation they say we will – they are appointed for three months and about seven weeks into the job we were told give us a report.

Now that is on the 11th of June 2015.

MS KLEIN: July.

ADV SELEKA SC: No June 2015, you could ...[intervenes]

10 **MS KLEIN:** No that's okay Chair.

ADV SELEKA SC: But what I am testing with you is this proposition given to Ms Molefe that we are going to take a while with the investigation, but in fact because that contract is only signed on the 25th of June 2015, a settlement agreement, I beg your pardon.

MS KLEIN: With Dentons?

CHAIRPERSON: With Ms Molefe.

ADV SELEKA SC: With Ms Molefe yes.

MS KLEIN: Oh with Ms Molefe, okay.

20 **ADV SELEKA SC:** A settlement agreement is signed on the 25th, so what I am saying to you is the statement made to her when you look at it on the facts it could not have been that the investigation was going to take long and therefore you are advised to settle and separate with the company. Do you appreciate that?

CHAIRPERSON: Mmm, in other words if Ms Molefe's evidence that Mr Romeo Kumalo said to her after she had clarified that she had not written to the Board to talk about leaving Eskom if her evidence that he then said you know the inquiry or the investigation is still going to take long so maybe we should talk about a separation package, that statement by Mr Kumalo could not have been true because Dentons was about to complete its investigation and the three months that the Board had even Dentons had not
10 been extended by the Board, so he would have known that the Dentons investigation was about to be completed, so one wonders why he would have said to somebody who says I haven't asked that we discuss my departure from Eskom why he would have said you know the investigation may still take quite long, maybe we should talk about your separation, one wonders why that statement would have been made.

Of course he will come here, he will give evidence, we don't know if he will admit that he made that statement but
20 as I understand your position you say you recall Ms Molefe clarifying that she had not written to the Board wanting to talk about leaving, is that right?

MS KLEIN: That is correct Chair and I am also, like you correctly say, Mr Khumalo will come here and he will probably or for sure be asked that.

CHAIRPERSON: Yes.

MS KLEIN: I was just thinking from my own perspective would I have known at the time, remember not being a member of Audit & Risk I wouldn't have known at that time how long that would have proceeded, but I would have known, you are correct, it was supposed to be for three months.

CHAIRPERSON: Yes, that part you would have known.

MS KLEIN: Ja, so I think – I think you have cleared that.

10 **CHAIRPERSON:** Ja, that part you would have known.

MS KLEIN: Yes.

CHAIRPERSON: The other part you would have known is that the Board had not extended the three months.

MS KLEIN: Exactly, that had not come, the Dentons things I think started coming to the Board sometime in July, if memory serves me correctly, 25th of June. 25th of June was the first time Dentons did a presentation, but I think the members of Audit & Risk may have been more knowledgeable at the time as to exactly you know what the
20 position was.

CHAIRPERSON: Okay.

ADV SELEKA SC: Ja, Ms Klein the presentation was made on the 27th of May 2015.

MS KLEIN: To Audit & Risk.

ADV SELEKA SC: Yes, that's the first presentation.

MS KLEIN: Correct.

ADV SELEKA SC: And – but after that Dentons specifically says, and we have seen its report, they say in this affidavit they were told to give a draft report on the 11th of June they are told that, and that's when they stopped the investigation work. You have read Mr Kapdi's affidavit.

MS KLEIN: Chairperson I don't mean to be difficult but I mean I was given a document yesterday to read with
10 highlights, I was trying to browse as quickly as possible. Just the two areas that affected me, so if Ms Kapdi is saying about dates I am sure he is correct, I obviously couldn't cross-reference that with my own was I a member, would I have known it, would I not have known it.

CHAIRPERSON: That's fair enough.

MS KLEIN: That is all I'm saying.

CHAIRPERSON: That's fair enough.

ADV SELEKA SC: But Ms Kapdi is not saying anything that is not in the reports, the report itself documents that,
20 that we were told by Eskom on the 11th of June 2015 that we should provide them with a draft report, that is in the report itself which as the Board member he would have had it at the time, so but as you say you cannot quarrel with that, we can find the report for you but what the significance of that is this Ms Klein, at that time, at that

time, 11 June 2015 you, the delegation and in particular yourself at that time because it seems on Ms Tsholofela's version the other members did not participate any further, Dr Ngubane, Mr Kumalo, but it was you and Mr Khosa who were corresponding with her regarding the settlement discussions. You agree, I see you're nodding.

MS KLEIN: Yes, sorry Chairperson, yes I would have as Chairperson P&G I would have been at the centre of the discussions for the settlement.

10 **ADV SELEKA SC:** Yes, the proposal was sent to her and so on, so the point ...[intervenes]

MS KLEIN: Yes Dr Ngubane wasn't part of it.

ADV SELEKA SC: Yes the point I am making then just to emphasize is just that if as Dr Ngubane says the Board wanted them back, if as you say the intention has always been they will come back, you wanted them back, then you know since there is a window period then between the 11th of June to the 25th of June that you say to her look let's drop the settlement discussions you are welcome back.

20 **MS KLEIN:** Chairpersons sorry I don't mean to be difficult.

CHAIRPERSON: [Laughing]

MS KLEIN: I really don't mean to be difficult, but the Board according to me, remember there is Audit & Risk who is dealing directly with the Dentons, giving them

instructions and no instructions. According to me the first time I become aware of the Dentons report and what it says is on the 25th of June, which is when it gets presented, so if you are telling me that there was a meeting where it was agreed on the 11th of June that they must cut their report short, you are going to ...[intervenes]

CHAIRPERSON: You were not part of that meeting?

MS KLEIN: Please can you show me because I thought I had read everything in connection with Dentons, Dentons I know met with us on the 11th, on the 9th of July, sorry 25th of July, 25th of June apologies, I think it was the 2nd of July, I think it was the 14th of July, these are all the Board meetings where Dentons gets discussed, so if you can just show me the meeting where it gets cut short.

ADV SELEKA SC: Yes.

MS KLEIN: I would appreciate that.

ADV SELEKA SC: No, but I haven't referred to a meeting Ms Klein, I said Dentons says in their report and in this affidavit they received instruction from Eskom that they should provide a draft report, and the ultimate report is dated 2 July 2015, and now you are referring to meetings after the date of that report.

MS KLEIN: Yes.

ADV SELEKA SC: That doesn't bear on the point I am raising with you.

MS KLEIN: I apologise Chairperson, I misunderstood, I thought there's a meeting where this is discussed, because I am being asked to comment on why I would have not with Tsholofela fought harder if we knew Dentons was going to stop already on the 11th of June, help me sir.

ADV SELEKA SC: No, I am saying the Board, Dentons says the Board has asked me to stop, not to stop but to provide them with a draft report, and they say from that moment forward we concentrated on drafting the report and
10 not the investigation and – this is Dentons saying it is a mid-point report, you have made me not to complete my investigation, that's the Board that has instructed ...[intervenes]

CHAIRPERSON: Maybe let's take it step by step. Is your question based on an affidavit from Dentons.

ADV SELEKA SC: And a report.

CHAIRPERSON: And a report.

ADV SELEKA SC: And the report of Dentons Chair.

CHAIRPERSON: And the question relates to the
20 proposition that Ms Klein would have known at the time of the meeting with Ms Molefe that the Dentons investigation was about to end.

ADV SELEKA SC: It is based on this fact Chair, between 11 June 2015 and 25 June 2015, which is the settlement period there's a window period. If the Board says to

Dentons stop, give us a report you have said you are suspending these people until the end of the inquiry, so here you have a shortcut, you have cut it short. It is the time then you say to her okay well the inquiry has been stopped, we are now awaiting a report, let's stop these settlement discussions ...[intervenes]

CHAIRPERSON: Yes I think the starting point is do you remember such a meeting of the Board on the – or was there a meeting of the Board ...[intervenes]

10 **ADV SELEKA SC:** No, no reference to a meeting Chair.

CHAIRPERSON: There is no, ja but Dentons says on the 11th they were told by Eskom, they don't say who exactly at Eskom told them.

ADV SELEKA SC: No Chair.

CHAIRPERSON: Okay do you know whether by the 11th of June the Board had taken the position that Dentons should submit their report?

MS KLEIN: No I don't recall that Chair.

CHAIRPERSON: You don't recall?

20 **MS KLEIN:** I don't recall it.

CHAIRPERSON: Yes, okay, alright.

ADV SELEKA SC: Okay thank you Chair but that is the position. Dentons said on the 11th June 2015 the firm was requested to prepare a detailed presentation to the Board in addition to a draft report detailing the state of

investigation to date. You will find it in Mr Kapdi's affidavit and in the report itself.

CHAIRPERSON: Yes, certainly from the mere fact that Dentons had been give three months from sometime in April, is it 20 April, or sometime in April had been given three months to complete its investigation, three months from around 28 February, I believe that is the date, I don't know where I get that date from, it would be May, June, oh, it would be May, June, July, it would be about, so three
10 months would be about July.

Now the first meeting with Ms Molefe would have been what date, do you remember, it was end of May?

MS KLEIN: No I think you said 4th of May.

ADV SELEKA SC: 4 May.

CHAIRPERSON: 4 May or in May okay so that would have meant that there were still about two months to go but that period would be the same period that the executives would have known at the time of their suspension, because they were told that the investigation had been given three
20 months.

MS KLEIN: That's correct Chair.

CHAIRPERSON: That's what they would have known.

MS KLEIN: Yes.

CHAIRPERSON: So if Mr Romeo Kumalo did indeed say the investigation might take longer that could only have

been understood to mean longer than the three months I would imagine?

MS KLEIN: Correct chair, I would imagine.

CHAIRPERSON: But from your own knowledge as far as – at board level there was no basis for any member of the Board to say the investigation, the Dentons investigation would take longer than three months.

MS KLEIN: No.

CHAIRPERSON: Ja, because the Board had never
10 changed from its stipulation that three months was the period.

CHAIRPERSON: Ja.

MS KLEIN: Chair I do remember a discussion I think at ARC, and we just need to have a look at Audit & Risk Committee where apparently there was a request for additional I think if I remember correctly I think Dentons did come and say they wanted an additional three months or something, the actual date of that Audit & Risk Committee meeting I don't have, but there was such a
20 discussion from what I learnt afterwards, with the higher budget etcetera, which is why I almost think in my affidavit I address the fact that I know it was three months because of that having been the agreed timeframe, but also because of budgetary constraints. That's how I remember it.

So I know that I heard about another meeting where there was requests for an extension but I don't remember that having ever been approved or who had decided that this is where it ends. We need to go and look at minutes and things, I would also need to just – because it is not something I went to go and look at chairperson.

CHAIRPERSON: Okay, alright. Of course I think it would be fair to say to you Ms Klein apart from the fact that one would have expected you, which we have dealt with, to say
10 to Mr Kumalo why must we talk to Ms Molefe about separation when she is making it clear that that is not what she wanted to talk about and we as the Board actually want them or expect that they would come back, once he also said the investigation would take longer one would expect you to say but where from, it is not my information that kind of thing. You understand that?

MS KLEIN: I hear you Chair.

CHAIRPERSON: Yes.

MS KLEIN: But like I said the one thing that as I am sitting
20 here now grappling with the – what do I remember and what do I not remember.

CHAIRPERSON: Yes.

MS KLEIN: The one thing that was always very big at Eskom is all the noise and people talking to people.

CHAIRPERSON: Yes.

MS KLEIN: And you know then you come into a meeting and now you have heard something so the noise of the investigation taking longer I had heard.

CHAIRPERSON: Yes.

MS KLEIN: But did I ever see it; was I part of a meeting where it was said that you have got – I cannot remember that.

CHAIRPERSON: No that is fine.

MS KLEIN: And I can only talk to what I knew. Unless of
10 course I am given the chance to go back and reconsider my minutes.

CHAIRPERSON: No, no that is fine. That is fine. Mr Seleka.

ADV SELEKA SC: Thank you Chair. By the way Ms Klein I see from Mr Kapdi's affidavit that in fact the presentation on the 27 May 2015 was done to the board. He says a presentation was made to the board on 27 May 2015 setting out some of the issues identified by investigation team at the point. Obviously we received this affidavit yesterday and we
20 were able to provide you with it only yesterday. So that is what he says there.

MS KLEIN: I cannot – I cannot argue that.

CHAIRPERSON: You cannot remember.

MS KLEIN: My recollection is – sorry did he say that he made a presentation? Just help me again there Sir.

ADV SELEKA SC: A presentation was made to the board on 27 May 2015 setting out some of the issues identified by investigation team at a time. A presentation to the board.

MS KLEIN: And I am going to go as far as saying to you Chairperson without being difficult I want to have an opportunity to go and con – take the affidavit and compare it.

CHAIRPERSON: No, no that is ...

MS KLEIN: Because Chairperson the first presentation that I have got in the board in committee minutes made by – by

10 ...

CHAIRPERSON: Dentons.

MS KLEIN: Sorry by Dentons was on the 25 June. When I was asked by the committee to go and check. He may very well have made that presentation to Audit and Risk and I think so .

CHAIRPERSON: Yes.

ADV SELEKA SC: We can – we can verify that.

MS KLEIN: Ja you can clarify it.

ADV SELEKA SC: Because he says to the board we can

20 verify that.

MS KLEIN: Please.

CHAIRPERSON: But also minutes can be sought.

MS KLEIN: Yes absolutely chair.

CHAIRPERSON: To see whether ...

ADV SELEKA SC: Indeed.

CHAIRPERSON: There was any meeting of the board on that date.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: And what was the content of the discussion.

MS KLEIN: Absolutely Chair.

CHAIRPERSON: Or whether it might have been a meeting of committee of the board.

MS KLEIN: Audit and Risk.

10 **CHAIRPERSON:** Ja. Okay.

ADV SELEKA SC: Yes. And on the extension quickly because he does deal with it. But this is what he says: He says they came across a meeting – a minute of the board dated 31 March 2015 in which the board itself was saying there is a note there that the investigation could take up to twelve months. And then he says:

20 “In the firm’s view – Denton’s view it was pos... – it was not possible to exhaustively investigate the matters set out in the TOR and a task order within the three month investigation period. The firm’s investigation team met at an early stage to discuss the planning of the investigation and the investigation methodology in order to satisfy the requirements of the TOR within the

applicable three month period.”

So it seems to – from the reading of this that even though they see the board itself saying this investigation could take up to twelve months they endeavoured and planned their efforts to complete it within three months.

MS KLEIN: I remember reading exactly that Chair so I cannot state that is one hundred percent accurate. I have read that.

CHAIRPERSON: Ja.

10 **ADV SELEKA SC:** Ja.

CHAIRPERSON: Okay. Continue.

ADV SELEKA SC: And then he does say:

“As it would subsequently unfold the firm was not afforded the – the agreed three month period to complete the investigation. The firm was instructed to seize further investigatory activities after a period of about seven weeks. In the circumstances the firm was requested to prepare its report reflecting – what he says is a mid-point investigation period.”

20

But that is in the report already.

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you. So the – I think you get the point we were saying that that window period more so than

when the investigation is cut short and shall I add that the investigation was not seeking to determine any wrongdoing on their part. You recall that?

MS KLEIN: Correct Chair.

ADV SELEKA SC: Ja. And quickly on that because then you will – you have seen what Mr Kapdi says about your averment that you approached him. Let me see. In regard to the return of Mr Koko. Sorry Chair I am – I hope you will not lose me because I am cutting to the chase.

10 **CHAIRPERSON:** Ja no I am hoping we can – we can finish with her evidence by one o'clock but I might have forgotten some of the parts that need to be covered.

ADV SELEKA SC: Yes.

CHAIRPERSON: It is important that we cover everything that is important that should be covered with her.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** So if we have to come – continue after lunch with her in order to do justice to the issues so be it.

ADV SELEKA SC: Yes.

CHAIRPERSON: But let us do the best we can to do as much as we can within the time available.

ADV SELEKA SC: Thank you very much Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you very much Chair. Ms Klein as I was going there the Chair is talking reminds me something. And I want to draw the parallels between at least Ms Molefe and what you are going to tell us here regarding Mr Koko. On your version you say Mr Koko – it was only Mr Koko who wanted to come back and you went to find out from Dentons with regards to Mr Koko.

He was the one executive who was not interested in leaving the employ of Eskom. He indicated that he wanted
10 to come back. In this regard I contacted Mr Noor Kapdi of Dentons who indicated that they had not found any evidence of wrongdoing by any of the suspended executives.

Now you not saying when did you do this but we see that you had all the meetings with the suspended executives on the 4 May according to Ms Daniels because she was present. So she says you have these meetings one after the other even a meeting with Mr Molefe on that day at the Protea Hotel.

To me it seems and you will correct me Ms Molefe is
20 in exactly the same position as Mr Koko. She wants to come back; she lets you know that March. You know that there is no wrongdoing investigation to be done against her.

How is it that that situation is different when it comes to her as opposed to when it comes to Mr Koko? It justifies his return but it is not used for her return.

MS KLEIN: Can I answer Chair.

CHAIRPERSON: Yes.

MS KLEIN: Chairperson the significant difference between the two was we went in and there were numbers prepared for everybody to discuss the possible separation. Because my understanding was people wanted to leave. Now fair enough Mr Koko's name had never come up. The name that I had heard – names I had heard come up was Dan Marokane and Tsholofelo.

10 **ADV SELEKA SC:** May I – sorry – sorry Chair. May I interrupt you Ms Klein? And I beg your pardon. Forget prior – the lead up to the meeting with Ms Tsholo gets cancelled by her at that meeting. So whatever you heard prior to your meeting with her she is telling you that is not true. Now take us from that moment onwards where you know as a matter of fact Tsholo says I do not want to leave.

The reasons for my letters is not what you the delegation – I mean the delegation is not just Mr Khumalo. It is all of you there. Forget about prior to that. Now you
20 have this situation; you have a fact the executive here he is interested to get his job back. There are not wrongdoings, findings against him. This is exactly Ms Tsholofelo Molefe explain to the Chairperson how is it that she gets treated differently to Mr Koko?

MS KLEIN: Chairperson I do not believe that she was

treated differently at all. We had the sets of numbers there. Tsholofelo in her introductory mark said what she did and Romeo said what he did.

I have explained I cannot tell you why I did not ask Romeo why he did not – why he is saying what he was saying. But she looked at the numbers. She took the numbers and she had a problem with various things on the numbers. She took it and she looked at it.

Mr Koko refused to even look at the numbers. He sat
10 in the chair which is what I said in my affidavit here and I said it at Parliament. He would not – when we started the discussion we said what we were there for. Explained to him that we are here to have a look at how we can get to a common ground.

He started off by saying to us my blood is blue and I am going nowhere. I sat with the numbers. I did not even have an opportunity like with – with Tsholofelo to even give him the numbers – he would not look at it. He just said guys I have grown up in Eskom I want my job back. I am not
20 prepared to look at numbers I am going nowhere.

CHAIRPERSON: But do you – do you dispute the proposition that on the understanding or maybe let me put it this way. Do you dispute the proposition that

ADV SELEKA SC: Sorry Chair.

CHAIRPERSON: If – if you knew the board's position to be

that it wanted Ms Tsholofelo Molefe like the other executives back after the investigation. Once she said she was not asking to talk about her separation with – with you then you should not have pursued any separation discussions with her. Do you dispute that proposition?

In other words if you were part of a board that you knew wanted her back or at least had no problem with her coming back once she had indicated that she is not one of those who had written to say I want to talk a separation you should not have pursued with her any separation discussion.

MS KLEIN: Chairperson you would remember me saying to you that – and I know that I have been told do not go back. In my mind she was one of the people in fact her name was mentioned that she wanted a settlement. So coming into the meeting I mean if I knew that she did not want to talk to discussion or talk settlement there would have no numbers on the table.

CHAIRPERSON: No, no. I understand that prior to your meeting her your understanding based on what you had been told was that she also wanted to talk separation.

MS KLEIN: Yes.

CHAIRPERSON: Okay. But the proposition is once you were at the meeting with her and she clarified her position and her position was no I have not written to the board to talk about separation. I am actually happy to continue at

Eskom. Maybe she did not put it expressly like that but once she had made it clear that she was not one of those who may have written to say let us talk separation. Then you had no business pursuing separation discussions with her as a delegation. What do you say to that?

MS KLEIN: I totally agree with you Chairperson.

CHAIRPERSON: Hm.

MS KLEIN: I totally agree with you. And remember your question was, so why did we continue?

10 **CHAIRPERSON:** Yes.

MS KLEIN: And why did Romeo Khumalo say

CHAIRPERSON: Yes.

MS KLEIN: I cannot answer that

CHAIRPERSON: No you did ja you said that.

MS KLEIN: I cannot answer that.

CHAIRPERSON: Yes.

MS KLEIN: But to come back to Mr Koko. And why you know why was – the man would not even take the paper. He would not look at it.

20 **CHAIRPERSON:** You see the difference on your evidence the difference between Ms – the position adopted by Ms Molefe and the position adopted by Mr Koko – I mean the position may have been the same but the articulation of the position might have been different in that maybe Mr Koko was much more emphatic and maybe did not even want to

look at the figures but the fact does remain it seems that they both contemplated that they should go back. Maybe one was more emphatic than the other and then as I say one would have expected that representatives of a board which wanted these executives back would have said: oh then that is fine so there is no need for us to talk separation. You accept that?

MS KLEIN: I accept that.

CHAIRPERSON: Ja.

10 **MS KLEIN**: Chairperson.

CHAIRPERSON: Okay.

ADV SELEKA SC: Ms Klein you saying to the Chairperson Mr Tsotsi would not even want to look at the figures.

MS KLEIN: Mr...

CHAIRPERSON: Mr Koko.

ADV SELEKA SC: Oh Mr Koko. I beg your pardon.

MS KLEIN: Chairperson that is how I remember it. He came in...

20 **ADV SELEKA SC**: No that is alright. Okay you want to carry on speaking.

MS KLEIN: No, no. The one thing that stood out for me was that I do not even think that much of a chance to speak you know he came in and went for my blood is blue, I grew up in this organisation, I am not going to go anywhere. And I even remember then I say asking him the question about but do

you trust this board? Because I remember with the suspensions he was the one executive who was the most – almost not aggressive maybe but annoyed with the suspensions. So now I am saying to him, okay your blood is blue, you want to come back do you even trust – I mean this is the same board you going to work with. Can – will you be able to work with this board? Something to that effect is my recollection Chair.

ADV SELEKA SC: Ms Klein Mr Koko has submitted an
10 affidavit to this commission he has told in his affidavit how – what happened in the meeting and in addition to that he has attached what he says was a document signed by yourself titled Proposed Terms for Settlement and it shows the amount. The document is dated 11 May 2015. And I can show you the document. So he did it seems look at the document, was in fact provided with it, did go away with it and he has attached it to his affidavit.

MS KLEIN: I cannot argue with that Chairperson. What I am
20 saying to you is where with everybody else you would have had a discussion with it. Mr Koko was adamant he is coming back he wants his job. I do not remember him taking it but if he has got it then he must have been given the document like everybody else. That is all I can say.

CHAIRPERSON: The proposition obviously that Mr Seleka is making to you is what Mr Koko says in his affidavit seems to

be in conflict with what you said earlier on. You remember you said you did not even get a chance to show him the figures. But he seems to suggest that you actually did and he took the document away bla, bla, bla. That was one of the – that was the reason you advanced to say the manner in which he responded to your approach as the delegation of the board was different from the manner in which Ms Molefe responded because you said Ms Molefe was prepared to look at the figures but Mr Koko was not. But Mr Koko seems to
10 say I was given the numbers, I looked at them as well.

MS KLEIN: He did – like I explain to you Chairperson my recollection was before we could even talk he was not prepared to look at anything. I may very well have given him the document to take with him for consideration afterwards. I cannot remember but that is the only way he would have had the actual document.

CHAIRPERSON: Ja. Hm Okay.

ADV SELEKA SC: Thank you Chair. Ms Daniels tells this commission in her affidavit and Ms Molefe herself says

20 “At the beginning of the meeting the board delegation tried to – tried a different strategy. Mr Kumalo led the discussion and said that they understood that I had written numerous letters to the chairman Doctor Ngubane asking to part ways. I denied this

outright emphasising that the purpose of my letters which had not been responded to was to establish when the so called inquiry would commence and to get access to the Terms of Reference so that I could start preparing for the interviews with the investigation.”

I will give you a chance to respond.

CHAIRPERSON: Is that Ms Molefe?

ADV SELEKA SC: That is Ms Molefe Chair.

10 **CHAIRPERSON:** Ja.

ADV SELEKA SC: Ms Daniels who is present there says:

“Ms Molefe highlighted to the board members present that there was a clear contradiction to what had been communicated to them and what was reported in the media. She emphasised that in the eight weeks since her suspension she had not had any communication from the board or a response to correspondence. She had enquired as to
20 what was the position of the board at that point in time.”

Then Mr Kumalo according to Ms Daniels says to her directly without prejudice and reserving the rights of Eskom the Terms of Reference for the review were developed by the Audit and Risk and this was a separate discussion.

“Can we find a way of amicably parting ways?”

But she says herself:

“I made it clear to them I am not asking to go away.”

CHAIRPERSON: And who is saying can we find a way of amicably parting ways.

ADV SELEKA SC: That is Mr Khumalo.

CHAIRPERSON: Saying to Ms Molefe?

10 **ADV SELEKA SC:** To Ms Molefe.

CHAIRPERSON: Yes.

ADV SELEKA SC: This is Ms Daniels writing in her affidavit.

CHAIRPERSON: Yes. Okay. So you have that situation and maybe there is not much you might be able to say about it. You have a situation where the executive concerned Ms Molefe says, I did not write to talk about a separation. But it is a member of the board who says; let us talk amicably parting ways.

20 So the question is, why was he adopting that attitude if the board to his knowledge had no problem with these executives coming back? Was the position he was adopting reflective of the position of the board as a body or is the position that he was adopting a position that did not reflect the position of the board but reflected the position of either himself or of himself and a few other members of the board.

That is the question.

And if so what was the underlying basis for this in circumstances where when these executives were suspended they were told it is not on the basis of any wrongdoing. And they were told you would come back after three months when the investigation is finished. When did this change? Those are the issues.

MS KLEIN: And – and ja Chair and I said to you you know for the benefit of hindsight I should have questioned it at
10 that stage I cannot answer you at this stage.

CHAIRPERSON: Yes.

MS KLEIN: But I am sure Mr Khumalo will give you additional information.

CHAIRPERSON: Yes. Yes. Of course with regard to Ms Molefe it – the matter goes further. She has testified that she even threatened to go to court against Eskom. Now I cannot remember whether she said she made that threat at a meeting that she had only with Mr Khumalo because she said there was a meeting that she had with Mr Khumalo where Mr
20 Khumalo had said to her he was there in his personal capacity.

And of course one has got to ask why – why he needed to go and see her in his personal capacity because he was supposed to deal with her as a representative of the board. But she says at some stage in her interactions either

with Mr Khumalo alone or in a meeting with Mr Khumalo and other members of the board who were delegated to talk to her she threatened to go to court and she says Mr Khumalo said something like, you do not want to take on the state or you do not want to litigate against the state.

In the end what we see is that her settlement, the payment is actually much more than the limit that had been put by the board. As I understand the position the board had said the executives should not be paid more than twelve
10 months salary.

MS KLEIN: Correct.

CHAIRPERSON: But she – she said here that no ultimately she was paid I think something like one year six months or something like that. But certainly more than twelve months you know. And then one asks the question which of course you and I dealt with last time. But more with her now to say why must the board go over even the limit they had put to pay her so much if they want her back?

MS KLEIN: Chairperson if I may? Firstly I do not remember
20 in the meeting when we were in that she spoke about litigating so I think it must have been.

CHAIRPERSON: Yes.

MS KLEIN: Maybe in another meeting.

CHAIRPERSON: Ja.

MS KLEIN: Regarding the settlement for Ms Molefe I think I

heard Counsel asking earlier that it was between myself and Mr Khoza. I was not a party to Ms Molefe's settlement.

CHAIRPERSON: You were –

MS KLEIN: I was ...

CHAIRPERSON: You had nothing to do with the figure?

MS KLEIN: With the – the actual settlement.

CHAIRPERSON: Oh the whole settlement.

MS KLEIN: The settlement.

CHAIRPERSON: Okay.

10 **MS KLEIN:** So – so I was not a party to that. That was concluded between I think you will probably get that in her affidavit.

CHAIRPERSON: Okay.

MS KLEIN: Between herself and I think Mr Khoza.

CHAIRPERSON: Okay.

ADV SELEKA SC: Ms Klein.

CHAIRPERSON: Yes Sir.

20 **ADV SELEKA SC:** I am not – I am not referring to the signing of the agreement. Ms Molefe has presented evidence that shows that you were involved throughout up until when she signed somebody else would have signed not you personally but the build up to that conclusion that you were part of it.

MS KLEIN: Chairperson I am going to – I am going to disagree.

CHAIRPERSON: You do not recall.

MS KLEIN: I – no not do not recall I was the Chairperson of People In Governance and that was the one her and Dan Morakane where I was not a party to the actual signing off of the figure. So when you tell me that it is eighteen months I must say I am a little bit surprised because I was of the view twelve months was the maximum.

CHAIRPERSON: Well the settlement – her settlement agreement is in one of the bundles. It was produced when
10 she gave evidence. But the point I think Mr Seleka is making and I just want to make sure whether you take issue with that is that his understanding of the evidence is that you were part of the first meeting with Ms Molefe.

MS KLEIN: Yes.

CHAIRPERSON: And to the extent that there may have been further meetings you were part of that. Obviously you may not have been part of the meeting that she had separately with Mr Khumalo where Mr Khumalo said he was – he came in his personal capacity. But the point he is making is you
20 might not have signed but it would appear like you were part of the people who were involved in negotiating the settlement.

MS KLEIN: No that I agree with Chairperson.

CHAIRPERSON: That you accept?

MS KLEIN: No I agree with I was part of the people but

when you tell me it is eighteen months now I go okay.

CHAIRPERSON: So is the position that as far as you are concerned is your recollection that she had accepted twelve months or is your recollection that you do not remember what figures were discussed with her or you do recall that she did not want twelve months she wanted more but you ended up not knowing how much more she got.

MS KLEIN: I think it is the latter.

CHAIRPERSON: It is the latter.

10 **MS KLEIN:** I saw communication you now regarding her paying legal fees and something to do with the house and something like that but the rest – the actual figure whatever that became that I was not aware of. Because I was not part in that last discussion to conclude the final figures with her.

CHAIRPERSON: But of course there would not have been any discussion of legal fees on her part because she had not gone to court, is it not?

MS KLEIN: No but I think she was seeking support for some legal – if memory serves me well.

20 **CHAIRPERSON:** ja.

MS KLEIN: There was some discussion about legal costs; there was some discussion about a home in security.

CHAIRPERSON: Okay.

MS KLEIN: Or something like that.

CHAIRPERSON: Okay.

MS KLEIN: So what I am saying to you I certainly saw – sorry Chairperson.

CHAIRPERSON: Yes, yes.

MS KLEIN: I certainly saw communication around that but what that ultimately became I must say I was a little disappointed that I was not part of the ultimate sign-off of but I think we have – I am not sure whether we are saying the same thing. There was a toing and froing so it was not a straight ja I am accepting this.

10 **CHAIRPERSON:** What you are saying is that whereas you were a member of the delegation representing the board that was mandated to negotiate with her ...[intervenes]

MS KLEIN: Yes.

CHAIRPERSON: ...somehow you were excluded when it came to what amount was to be paid to her. Is that what you are saying?

MS KLEIN: That is what I am saying.

CHAIRPERSON: Yes.

20 **MS KLEIN:** I was privy Chairperson to some of the communication.

CHAIRPERSON: Yes.

MS KLEIN: But when it came to what it was... I mean, if you are to... when you told me the other day when we were here about it was R 18 million ...[intervenes]

CHAIRPERSON: H'm, h'm.

MS KLEIN: ...I could... you know, the thing is. As People in Governance, you must make sure that governance is followed.

CHAIRPERSON: H'm.

MS KLEIN: But if something happens outside of what I have actually seen ...[intervenes]

CHAIRPERSON: H'm, h'm.

MS KLEIN: ...I cannot attest to that. That is something whoever was... whoever else was involved must come and
10 give you the breakdown as to the why.

CHAIRPERSON: Ja.

MS KLEIN: I remember, like I say, that the proposal put to her the first time, she questions certain things.

CHAIRPERSON: H'm.

MS KLEIN: About why certain things would not be included.

CHAIRPERSON: H'm, h'm.

MS KLEIN: So that is where I am objecting.

CHAIRPERSON: Okay alright. We are six minutes past one. You want to follow up ...[intervenes]

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

CHAIRPERSON: ...a few questions?

ADV SELEKA SC: Very quickly.

CHAIRPERSON: H'm.

ADV SELEKA SC: Ms Klein, it is not being put to you that she was paid R 18 million.

MS KLEIN: No, no. Not her.

ADV SELEKA SC: Yes.

MS KLEIN: No, I think Chairperson said all together
...[intervenes]

CHAIRPERSON: Not eighteen months ...[intervenes]

ADV SELEKA SC: Ja, it is 18-months the Chairperson was
referring to.

ADV SELEKA SC: No, no, no. Have we talked about
R 18 million last time?

10 **MS KLEIN:** Yes.

CHAIRPERSON: Ja, for all of them.

MS KLEIN: Oh, that is what I was referring to.

ADV SELEKA SC: Yes. But it cannot... sorry, let me say
this ...[intervenes]

CHAIRPERSON: It might have been a wrong figure
...[intervenes]

ADV SELEKA SC: So we would not know because we do
not have her ...[intervenes]

CHAIRPERSON: A breakdown.

20 **ADV SELEKA SC:** An annual. Ja, the breakdown.

CHAIRPERSON: Ja, ja.

ADV SELEKA SC: Ms Klein, you would have requested the
figures from Anton Nienaar.

CHAIRPERSON: Ja.

ADV SELEKA SC: That is what he says in his affidavit.

MS KLEIN: Absolutely.

ADV SELEKA SC: You requested the settlement figures from Anton Nienaar.

MS KLEIN: Yes.

ADV SELEKA SC: You have sent an email to Ms Molefe on the 11th of June 2015.

MS KLEIN: Yes.

ADV SELEKA SC: You say:

10 “Hi, Tsholofelo. Herewith our settlement agreement.
 Having taken your mail of earlier today into account,
 kindly revert to me with your input or questions.”

 You asked for that. And I remember, I ...[intervenes]

CHAIRPERSON: What date is that?

ADV SELEKA SC: That is 11 June 2015, Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: So the first meeting is the 4th of May.

CHAIRPERSON: Yes.

20 **ADV SELEKA SC:** Then they have a meeting on the
 8th of May. And you sent her a proposal Mr Klein. Is it on
 the 8th or the 11th of May, where... are your second meeting?

MS KLEIN: I am not... No, I think I would have given her a
proposal ...[intervenes]

ADV SELEKA SC: Correct, yes.

MS KLEIN: ...at the first meeting.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

MS KLEIN: And then... are you saying there was a
...[intervenes]

ADV SELEKA SC: I have it. I have it.

MS KLEIN: Okay.

ADV SELEKA SC: It is the 8th of May.

MS KLEIN: Alright?

ADV SELEKA SC: It is exactly like... the tabulation is
exactly like Matshela Koko's one with your signature at the
10 end of it.

MS KLEIN: Okay.

ADV SELEKA SC: And a provision for the executive to sign.

MS KLEIN: Yes.

ADV SELEKA SC: It has an amount. An amount is
reflected in there.

MS KLEIN: Alright.

ADV SELEKA SC: The 11th... 8th of May. But that gets
overtaken by events.

MS KLEIN: Alright.

20 **ADV SELEKA SC:** Because we can see your email on the
11th of June 2015.

MS KLEIN: Alright.

ADV SELEKA SC: More than a month later.

MS KLEIN: H'm.

ADV SELEKA SC: The 8th, the 11th of June. And you are

saying:

“Herewith our settlement agreement having taken your mail of earlier today into account. Kindly revert to me with your input or questions.”

MS KLEIN: H’m.

ADV SELEKA SC: And she writes back to you. So you would have known about the inputs or questions that she had. You would have been involved in the negotiations of the terms and the figures.

10 **MS KLEIN:** But I did not argue that I was.

ADV SELEKA SC: Okay.

MS KLEIN: I indicated ...[intervenes]

CHAIRPERSON: Yes. Ja, she... I think she accepts that she ...[intervenes]

ADV SELEKA SC: Okay.

CHAIRPERSON: ...that she was involved in the negotiations. But all she is saying is. When the amount was offered or agreed, she was not part of that.

MS KLEIN: The actual signature.

20 **CHAIRPERSON:** The actual amount.

MS KLEIN: Yes.

CHAIRPERSON: Or the final amount that was agreed.

MS KLEIN: But it would be interesting Chairperson. I would like to, maybe just for clarity? Was that number, that one that was on the final proposal, is that the same number that

was ultimately paid? Because that I do not know. And I guess, that is what I am saying. I took cognisance of all of her... the input she made which was security and various other things.

CHAIRPERSON: There is ...[intervenes]

MS KLEIN: What I am not sure of ...[intervenes]

CHAIRPERSON: Yes, there is a reference where you were reading.

ADV SELEKA SC: Yes, Chair.

10 **CHAIRPERSON:** Her email to where Ms Molefe said. It says: Here the proposal after taking into account your ...[intervenes]

MS KLEIN: Yes.

ADV SELEKA SC: Yes. She says here where ...[intervenes]

CHAIRPERSON: So let us go back to her... Ms Molefe has made and see what she has said there if we have it.

ADV SELEKA SC: Ja, she did not attach a response to this Chair.

20 **CHAIRPERSON:** Oh, okay.

ADV SELEKA SC: Ja.

MS KLEIN: And Chairperson, if I may? Is that... do you have a list of what she was ultimately paid out? Does that proposal give you an amount? And is ...[intervenes]

ADV SELEKA SC: Ja.

MS KLEIN: I am not sure if it bears any relevance. I am just ...[intervenes]

CHAIRPERSON: No, no, no. You ...[intervenes]

MS KLEIN: I must say, I felt left out.

CHAIRPERSON: Just let him to make him to check.

ADV SELEKA SC: Yes. No, I will let you know.

MS KLEIN: Please.

ADV SELEKA SC: I can let you know what I see from the documentation.

10 **MS KLEIN:** Okay.

ADV SELEKA SC: What Eskom ultimately paid ...[intervenes]

MS KLEIN: Was ...[intervenes]

ADV SELEKA SC: ...I do not know.

MS KLEIN: Oh, okay.

ADV SELEKA SC: So the settlement proposal ...[intervenes]

MS KLEIN: Yes.

20 **ADV SELEKA SC:** ...which he has given to us along with this email ...[intervenes]

MS KLEIN: Yes.

ADV SELEKA SC: ...has an amount.

MS KLEIN: Okay.

ADV SELEKA SC: And that amount ...[intervenes]

MS KLEIN: But let me just check it....

ADV SELEKA SC: ...that amount...

MS KLEIN: Ja.

ADV SELEKA SC: That amount, it is said to... the total separation payment... should I mention the amount Chair?

MS KLEIN: Yes.

ADV SELEKA SC: The amount is there.

CHAIRPERSON: I think you can mention it.

ADV SELEKA SC: Yes. It is a little over R 4 million.
R 4 032 945,00.

10 **CHAIRPERSON:** H'm.

ADV SELEKA SC: Your proposal, however, on the 11th...

MS KLEIN: H'm?

ADV SELEKA SC: On the 8th of May, had other items to this.

MS KLEIN: H'm?

ADV SELEKA SC: And the total amount was a little over R 5 million.

MS KLEIN: Okay.

ADV SELEKA SC: I can read it to you.

20 **MS KLEIN:** So I offered more than what was originally... I am trying to just get my ...[intervenes]

ADV SELEKA SC: No, no. It is not ...[intervenes]

CHAIRPERSON: What we can do. Let us take the lunch break. During the lunch break ...[intervenes]

MS KLEIN: Ja, please Chair.

CHAIRPERSON: ...look at those things.

ADV SELEKA SC: Yes.

CHAIRPERSON: When we come back, there may be a resolution.

ADV SELEKA SC: That is right, Chair.

CHAIRPERSON: And it may be that somebody in your team could even phone Ms Molefe. She might be available. She might not be available.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** She might clarify some of the things that we talked about.

ADV SELEKA SC: Yes.

CHAIRPERSON: To say, you know ...[intervenes]

ADV SELEKA SC: The actual amount paid.

CHAIRPERSON: Ja, ja.

ADV SELEKA SC: Ja, that is... if anything turns on that, Ms Klein.

MS KLEIN: Ja. I am not ...[intervenes]

20 **CHAIRPERSON:** Ja, in the end, what remains is that, certainly on her evidence, she was paid as part of the settlement more than the 12-months' salary that the board apparently had set as a maximum.

And Ms Klein confirms that at the first meeting with her, she did make it clear that she had not written to the board to invite discussions about separation.

And of course, she testified here that she even threatened litigation at some stage. And I asked: What would you have achieved with litigation?

And she said: Well, the suspension would be set aside and I could go back. You know. That is what she said.

So let us take the adjournment. And let us come back at quarter past two.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Okay we adjourn.

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

INQUIRY ADJOURNS

INQUIRY RESUMES:

CHAIRPERSON: Let us continue.

ADV SELEKA SC: Thank you, Chairperson. Ms Klein, thank you. You are still under oath.

VENETE KLEIN: (s.u.o.)

ADV SELEKA SC: Chairperson, we managed to... Is it resolved or clarified? Rather, more clarified. The issue about the payment. In fact, the settlement agreement gives
20 you a breakdown of the amounts.

So you have the main amount, which is what has been mentioned, the six point something. Then you have the other small amounts, which I think when Ms Molefe testified, said the main amount excluded certain items relative to her.

So those items are broken down with the specific

amounts. So she was paid more than the figure we have been referring to.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: So that is...

MS KLEIN: Thank you.

CHAIRPERSON: Thank you. You confirm it got it right?

MS KLEIN: Yes, Chair.

10 **CHAIRPERSON**: Okay alright.

MS KLEIN: Got it right.

ADV SELEKA SC: Thank you, Chairperson. Ms Klein, so there is this correspondence leading up to the settlement and we accept you were not part. You were not the person who signed this settlement agreement. Mr Dan Marokane also has shared emails with the Commission where you were sending the settlement agreement to him.

MS KLEIN: [No audible reply]

ADV SELEKA SC: Just speak to the microphone.

20 **MS KLEIN**: Sorry. Yes, Chairperson.

ADV SELEKA SC: Yes. So we know that the agreement with him was signed by doctor... Mr Zethembe Khoza, I think.

MS KLEIN: Yes, Chairperson. If I remember correctly. I think Mr Zethembe Khoza or Dr Ngubane ...[intervenes]

ADV SELEKA SC: Or Dr Ngubane.

MS KLEIN: ...would have signed all of this. Yes.

ADV SELEKA SC: Yes. At this stage, you were the Chairperson of P&G?

MS KLEIN: Correct, Chair.

ADV SELEKA SC: People in Governance.

MS KLEIN: [No audible reply]

ADV SELEKA SC: Would this settlement agreement not have come back to the People in Governance before they go to the board?

10 **MS KLEIN:** Not necessarily Chairperson. What would technically happen is. You would get all the information from your executive remuneration department being Anton Minnaar.

And when it was then signed off, if the agreement was reached, it would then be signed off by the chairman who was the head of the board and that would have been acceptable. It did not necessarily have to come back to People in Governance.

20 **ADV SELEKA SC:** Yes. I want to read from the affidavit, your affidavit. It talks about, you know, the mandate given to the... you talk about yourself, Dr Ngubane, Mr Romeo Khumalo who were mandated to negotiate the settlement and the terms on which you were to negotiate. Do I have your affidavit here?

MS KLEIN: [No audible reply]

ADV SELEKA SC: And there is a further item in that mandate that the chairperson of the P&G... Why do I not have it? Oh, yes here it is.

“That the chairperson of the P&G Committee be authorised with the power to delegate further. To take all the necessary and all immediate steps to give effect to the above including the signing of any agreements or either documentation necessary or related thereto.”

10 Now that is page, here in your bundle, that is page 15 but it starts on the page 14, paragraph 51. The red numbering, this time around Chairperson.

MS KLEIN: Sorry. Are we talking about the red page 51 of my ...[intervenes]

ADV SELEKA SC: No, 14.

MS KLEIN: 14.

ADV SELEKA SC: No, it is paragraph 51.

MS KLEIN: Paragraph 51.

ADV SELEKA SC: Paragraph 51, page 14.

20 **MS KLEIN:** Okay I have got on page 14, I have got paragraph ...[intervenes]

CHAIRPERSON: Are you still on Eskom Bundle 02?

ADV SELEKA SC: Eskom Bundle 02, Chairperson.

CHAIRPERSON: Oh, that is the letter from the minister at page 51, red 51?

ADV SELEKA SC: Not the page, paragraph 51. Page 14.

CHAIRPERSON: Page one, four?

ADV SELEKA SC: Page one, four.

CHAIRPERSON: Okay.

ADV SELEKA SC: P14.

MS KLEIN: Yes, I have got that.

ADV SELEKA SC: Paragraph 51 by me.

CHAIRPERSON: Okay.

ADV SELEKA SC: So you... that is where you deal with
10 what the board had authorised.

“The authorisation provided for the acting chairman, Dr Ngubane myself and Mr Khumalo to enter into exit negotiations with each of the executives, Mr Matona, Molefe, Koko and Marokane.”

And then you detailed what was the mandate to you. Then the next page, settlement agreement shall set out the terms.

And then paragraph C says that:

20 “The chairperson of the P&G commit the authorise with the power to delegate further to take all the necessary and all immediate steps to give effect to the above including the signing of any agreements or other documentation necessary all related thereto.”

So that power was invested in you.

MS KLEIN: Yes, Chairperson.

ADV SELEKA SC: How did you deal with this now that we see it was your fellow colleagues who signed these agreements?

MS KLEIN: Chairperson, what I can say to you is that, this was what was given to me to be done but as I have indicated earlier.

There was just so much going on all around us that if you say to me know, was it wrong for Dr Ngubane not to
10 have signed it?

Or let him because whoever and it was for me to delegate it to them. I am going to have to say to you, you are correct. Because that did happen.

It was for to have delegated it but I have said to you in front of Chairperson, what was happening all around us. Remember, at that stage also, we were quite new.

I was still quite new as well. So a lot of what I felt happening, I now today know is not what ought to have happened. But then ...[intervenes]

20 **ADV SELEKA SC:** Yes.

MS KLEIN: ...I would have thought that, you know... because remember, we also have an executive remuneration team who would have guided. Or a secretariat who would have guide. So.

ADV SELEKA SC: Yes.

MS KLEIN: I can just... all I can say to you is. I need to take accountability that that was not according to mandate ...[intervenes]

ADV SELEKA SC: Yes.

MS KLEIN: ...which was mine.

ADV SELEKA SC: So the settlement agreement may have been signed by persons who were unauthorised. Thus the authority was explicitly in terms of your affidavit vested in you.

10 **MS KLEIN:** Chairperson, I would go as far as saying to you, the point is valid. But I would argue that the people who find it, were senior people in Eskom. Both Mr Khoza, as well as Dr Ben .

And I am not trying to... I said to you, I except that because I was new because there were other what should have been almost catch-nets to make sure that it came through the right delegated power.

ADV SELEKA SC: H'm.

20 **MS KLEIN:** But the fact that it was Dr Khoza... ag, Dr Ngubane and Mr Khoza who signed it and not somebody outside. I had no reason at the time to go and object to it.

CHAIRPERSON: Do you know, and maybe Mr Seleka was still going to come to this. Do you know whether the board either before the signing of the settlement agreement involving Mr Molefe or after was alerted to the fact that her

amount was higher than the amount specified in the authorisation?

In other words, was the full board ever told: We are going to give Ms Molefe more than what you specified? We are going to go outside the mandate.

Do... are you happy for us to do that. Or if they did not do it before the signing.

Do you know whether after the settlement agreement had been signed with Ms Molefe, the board was ever told:
10 Actually, we exceeded our mandate in regard to Ms Molefe and maybe these are the reasons. And the board said: No, it is fine.

MS KLEIN: Chairperson, I would have to say I do not recollect that because ...[intervenes]

CHAIRPERSON: You do not recall it. Yes.

MS KLEIN: Because if it did happen, I would have been a little more vigilant on the amount having been increased.

CHAIRPERSON: H'm, h'm, h'm.

MS KLEIN: I am not aware. It may very well be that it can
20 turn out that it was somewhere but I do not remember that. It is not my recollection, sir.

CHAIRPERSON: H'm, h'm. Do you have any recollection whether after the settlement agreements have been signed with these three executives, there was a time when these settlement agreements were circulated among all board

members to say: Here are the settlement agreements that we signed because you, the board, mandated us to go out and settle with them within certain parameters. Here is what we have done.

MS KLEIN: Chairperson, I do not remember that ever having been done. I remember feedback being given to the board to say settlement has been reached with individuals. But the actual distribution of the ...[intervenes]

CHAIRPERSON: The terms.

10 **MS KLEIN:** ...the terms. I do not think that that did ever go to the board.

CHAIRPERSON: You see, it is... it may be quite significant if the position is that one, at least in regard to Ms Molefe, the delegated authority of the board was exceeded in terms of the settlement and the board was never told even after.

MS KLEIN: H'm.

CHAIRPERSON: Because that was a very material issue to bring to the attention of the board. One would have expected that if the board had said the maximum is 12-
20 months as it did say and the delegation that was mandated to negotiate felt that there would be no settlement with Ms Molefe if that maximum was not exceeded.

One would have expected that the delegation would go back to the board and say: We are reporting back. We have reached settlement with the following two, Mr Matona and Mr

Dan Marokane.

But we have not reached a settlement with Ms Molefe because she wants much more and we do not have a mandate to give her more.

You must decide whether we should allow this to be the end of the negotiations or whether you are giving us a mandate to go beyond the 12-months.

That is what one would have expected. And you accept that, is it not?

10 **MS KLEIN**: I accept that, Chairperson.

CHAIRPERSON: Yes. Now, if for some reason maybe there was a good reason or some explanation why things were not done that way. One would have expected that at least after the settlement agreement with Ms Molefe had been signed and the person who signed it knew that that exceeded their mandate.

One would have expected that they would take the first opportunity to go back to the board and say: Board, I exceeded my mandate but these were the reasons. I ask
20 you to ratify what I have done.

And if that person did not do that, it may well be that he intended or she intended to conceal these fact from the board.

And the question would arise: Why did that person exceeded clear mandate of the board authority? And why

having done so he or she decided not to disclose this very material fact to the board?

Is it possible that this person was so keen that Ms Molefe should go that he or she decided to exceed the mandate of the board and conceal that fact from the board as long as Ms Molefe left Eskom.

Those are the questions that would arise. You understand?

MS KLEIN: I do understand what you are asking to, Mr
10 Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: And may I add to that, Ms Klein? Chair, it is not only exceeding the amount in terms of this, the mandate but it is also going beyond the authority given into the person. Because the authority was given to you as the chairperson of P&G but we see that it is somebody else...[intervenes]

CHAIRPERSON: Oh, yes. Yes.

ADV SELEKA SC: ...that signed this document.

20 **CHAIRPERSON:** Yes, yes. And then, if your evidence is correct that you did not know the final amount that was agreed with Ms Molefe, then it is very strange because one ask oneself the question.

Why did another member of the delegation of the board authorised to negotiate with these executives? Who knew

that the person authorised by the board to sign settlement agreements was you.

Why did he sign those... that settlement agreement instead of asking you to sign it because you were the person who had the authority? And why did he not tell you about the amount?

Of course, it does raise the question also from your side to say, when you knew that you were the person authorised by the board to sign settlement agreements.

10 How did you allow somebody else to sign the settlement agreement in regard to Ms Molefe?

And if you did allow, how did it come about that you did not want to see the settlement agreement after when you know it was signed by somebody other than you as the authorised person? Do you understand that?

MS KLEIN: I hear you, Chairperson.

CHAIRPERSON: Yes, yes.

MS KLEIN: But Chairperson, there is one point that I also want to raise and maybe Mr Seleka can help us with the date
20 but... it is in my affidavit.

I did not remain the chairperson of P&G right through the process. In fact, on the 2nd of July's meeting, I was not the chairperson of P&G.

Everything was moving all the time. So I want us to please just go and check that on that date when... 25 June

...[intervenes]

CHAIRPERSON: Whether you were still the chairperson?

MS KLEIN: ...whether I was the chairperson of P&G.

CHAIRPERSON: Okay. So ...[intervenes]

MS KLEIN: Can we please just have a look at that?

CHAIRPERSON: ...it might have to be checked. But if you cannot get it now ...[intervenes]

MS KLEIN: We can do it afterwards.

CHAIRPERSON: Ja, ja.

10 **MS KLEIN**: Please check for me.

ADV SELEKA SC: Yes. No. We will do so Ms Klein.

MS KLEIN: Yes.

ADV SELEKA SC: Because from your proposals, those proposals you presented to them.

MS KLEIN: Yes.

ADV SELEKA SC: You were still designated as the acting chairperson of P&G?

MS KLEIN: Correct.

ADV SELEKA SC: Yes.

20 **MS KLEIN**: Correct. But like I said, you know, in that time. One month you were P&G. The next month you were not. I remember specifically on the meeting of the 2nd of July, I was not the chairperson of P&G any longer. It was Chwayita Mabude. So.

ADV SELEKA SC: By that time, the settlement... the last

one was Ms Molefe's.

MS KLEIN: Which was ...[intervenes]

ADV SELEKA SC: The other ones had already been signed Done and dusted.

MS KLEIN: It happened.

CHAIRPERSON: Yes, but I think the point she is making is. She is not sure whether on the 25th of June when the settlement agreement with Ms Molefe was signed, she was still the chairperson of P&G. What she says she is clear
10 about is that on the 2nd of July, she was no longer chairperson of P&G.

She wonders whether there is a chance that she might have seized to be chairperson of P&G before the 25th. I am sure from your side, there is some checking that you can do.

MS KLEIN: Absolute, Chairperson.

CHAIRPERSON: Ja, so do your own checking as well ...[intervenes]

MS KLEIN: I will do that.

CHAIRPERSON: ...with Eskom.

20 **MS KLEIN:** Yes.

CHAIRPERSON: Because if you were still chairperson, it has a certain significance.

MS KLEIN: I hear you, Chair.

CHAIRPERSON: If you were not, then it also takes a certain perspective. Because it may be that... and if you are

no longer chairperson, then the issue does arise as to how you allowed somebody else to sign because you were not the person who authorised anymore.

MS KLEIN: I agree, Chairperson.

CHAIRPERSON: Ja.

ADV SELEKA SC: H'm.

MS KLEIN: Chairperson, just one last point. On the 14th of July, I know that I get reappointed as the chairperson of P&G. So when I was the last... I am just saying, in
10 reference to Ms Tsholofelo Molefe's signing of documents, it may very well be that that was discussed with the chairperson if I was not the chairperson.

CHAIRPERSON: Yes, yes.

MS KLEIN: But say I was the chairperson, I have got to take full accountability.

CHAIRPERSON: Yes.

MS KLEIN: That I was squarely in the feet.

CHAIRPERSON: Ja.

MS KLEIN: And it was my accountability.

20 **CHAIRPERSON:** Ja.

ADV SELEKA SC: H'm.

CHAIRPERSON: You being moved from being chairperson of P&G, is that something that would have been discussed at a board meeting? Because then it is a question of checking board minutes.

MS KLEIN: Chairperson, I know the one thing that I did see was on the 14th of July, if we can check that, I become the chairperson of P&G again.

CHAIRPERSON: Yes, yes.

MS KLEIN: But when I was taken off, I have not got that date because you know, one month you were... and I actually allude to it in my affidavit that things were moving all the time.

CHAIRPERSON: H'm. Okay.

10 **MS KLEIN:** So if we can just please check that.

ADV SELEKA SC: Chair, we will do so.

MS KLEIN: Thank you.

ADV SELEKA SC: I see from Ms Klein's affidavit that she says:

"I am not certain of the exact date of my appointment as chairperson of P&G but believes it was on or about 15 March 2015.

Later, in about June 2015, I was replaced as chairperson of the P&G Committee by Chwayita Mabude, only to later be reinstated as chairperson."

20

Here it said in and or about August.

MS KLEIN: No.

ADV SELEKA SC: But you are saying 14 July.

MS KLEIN: No, on the 14th, I was reinstated as chairperson of P&G.

ADV SELEKA SC: Yes.

MS KLEIN: Is that what that is?

ADV SELEKA SC: Ja, that is what ...[intervenes]

MS KLEIN: Okay.

ADV SELEKA SC: It says that but it just gives a different month. But you say, in or about?

MS KLEIN: When I was taking out.

ADV SELEKA SC: August.

CHAIRPERSON: Ja, I think what she is saying is
10 ...[intervenes]

ADV SELEKA SC: But it is fine.

CHAIRPERSON: In March, from what we are reading. In March, she was made chairperson of P&G.

ADV SELEKA SC: That is right.

CHAIRPERSON: Sometime in June, she believes, she was taken off as chairperson of P&G but on the 14th of July, she was reinstated as chairperson of P&G.

ADV SELEKA SC: Yes.

CHAIRPERSON: So the question what she does not know
20 ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: And what we do not know at this stage ...[intervenes]

ADV SELEKA SC: Is the same.

CHAIRPERSON: With effect from when ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...in June.

ADV SELEKA SC: Yes.

CHAIRPERSON: ...did she seize to be chairperson of P&G

ADV SELEKA SC: Correct.

CHAIRPERSON: Ja.

ADV SELEKA SC: Correct, Chair. Because we see on the 11th of June, you are still writing to Ms Molefe.

MS KLEIN: Okay.

10 **ADV SELEKA SC:** In that capacity.

MS KLEIN: Yes.

ADV SELEKA SC: And in her affidavit, she gets replaced, not by Mr Zethembe Khoza or Dr Ngubane by Ms Chwayita Mabude.

CHAIRPERSON: Yes.

MS KLEIN: Yes.

ADV SELEKA SC: Who also still, did not sign the settlement agreement.

MS KLEIN: Ja.

20 **CHAIRPERSON:** Yes, but that might... your point might be addressing the question of whoever signed ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...does not appear to have been authorised to sign. But she is addressing the point of ...[intervenes]

ADV SELEKA SC: I accept, Chair.

CHAIRPERSON: while she is still the chairperson of P&G
...[intervenes]

ADV SELEKA SC: I accept.

CHAIRPERSON: ...on the 25th of June.

ADV SELEKA SC: Of June. Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: I accept, Chair. Ms Klein, then the
version in regard to Mr Koko because we have dealt with Ms
10 Tsholofelo Molefe.

And I have drawn the parallels between the two with Mr
Koko. Ms Daniels who was again present, talks about how
the exchange or negotiations with Mr Koko was different.
And she says in her affidavit:

“Unlike the previous two meetings, Mr Koko was
given time to express his sentiments on the issue of
his suspension quite in length. He works lyrical. I
do not understand. And shocked and surprised.
Permeated his speech. And the new legendary
20 Eskom is my veins was part of his rendition of his
position at that moment.

He also portrayed his relationship with the previous
chairperson, Mr Zola Tsotsi, as acrimonious and he
had attributed this acrimonious relationship as the
reason for him finding himself on suspension.

Mr Khoza thanked him for his submission and Ms Klein started her conversation with an opening question of: Could you truly trust this board again? Once again, Koko emphasised that he believed that the reason for his present situation was the acrimonious relationship he had with Mr Tsotsi which led to incriminate between him and the previous board.

At this point, Ms Klein then asked: Could you come
10 back and work with this board? Mr Koko...”

Now may I pause to say. I mean, that is a language different from what we hear, at least from Ms Tsholofelo Molefe. So far as I have read Ms Klein is that a correct reflection of what you would have told Mr Koko?

MS KLEIN: Chairperson, I am having a hard times with the words here. I have got no recollection ...[intervenes]

ADV SELEKA SC: Oh, okay.

MS KLEIN: ...of asking Mr Koko would he come back.

CHAIRPERSON: What I think you do recall because you
20 said it earlier, is that you did ask him whether he could... he still trusted this board or whether he could still trust this board. Is that correct?

MS KLEIN: Yes, Chairperson. You are a hundred percent.

CHAIRPERSON: You remember that part?

MS KLEIN: And remember I had actually explained why I

asked that question.

CHAIRPERSON: Yes.

MS KLEIN: Because at the suspensions of the four, Mr Koko was the one who seemed the most hostile, if you were. So it was in the context of that that I asked the question.

But I do not remember asking Mr Koko if he would come back. That would not be congruent with me offering him the papers which we had discussed earlier.

So I do not... I cannot remember but I would be surprised if those were my words. That is all I am saying.

CHAIRPERSON: Well, maybe you and Mr Seleka have a certain understanding of that sentence that he read as being attributed to you by Ms Daniels, namely, could you still come back or... because ...[intervenes]

ADV SELEKA SC: Chair ...[intervenes]

CHAIRPERSON: ...to my inclination is to see it as very much in line with the statement that you recall having made: Could you still trust this board?

As I see it, and maybe I should see it differently. As I see it, it is like: Can you work with this board after what has happened?

Now, my immediate inclination is not to look at that as inviting him to come back but it is just to put the question given what has had happened.

Maybe I should not look it this way but I do not see it as

very different from what you admit you said. Mr Seleka, do you ...[intervenes]

ADV SELEKA SC: Yes, Chair that part ...[intervenes]

CHAIRPERSON: Ja.

ADV SELEKA SC: ...which Ms Klein admits she said, is what Ms Suzanne Daniels says as the very first part. She says:

“Mr Khoza thanked him...”

That is Mr Koko.

10 “...for his submission and Ms Klein started her conversation with an opening questioning: Could you fully trust this board again?”

That is the opening.

CHAIRPERSON: H’m. Yes. Now, what I am saying and I just want you to have the... both of you have the benefit of what is going on in my mind.

Is that, my inclination is that, you asked that question when you do not expect the person to say: Yes, I can trust this board again.

20 It is like your expectation is that this person is going to say: I cannot trust this board anymore. But of course, if the person says: No, I can trust them. That is it. That is what is in my mind.

ADV SELEKA SC: Chair, may I put what is in my mind?

CHAIRPERSON: Yes, ja.

ADV SELEKA SC: Ja, I think what is my mouth(?). What is in my mind is this, Chair.

CHAIRPERSON: Ja, yes.

ADV SELEKA SC: If the question is: Can you trust that I will give you what you want or that you can work with me?

CHAIRPERSON: H'm.

ADV SELEKA SC: It is an invitation on my part that I want you to work with me.

CHAIRPERSON: [laughing] And I think Ms Klein may be
10 understanding it that way too and she agrees.

MS KLEIN: No, no. No, Chairperson, now I have got to be careful what I am agreeing with.

ADV SELEKA SC: Okay.

CHAIRPERSON: Okay, it is two against one. But I could take a chance and ask Ms Klein's counsel, maybe he would be on my side. [Laughter] Okay, alright.

MS KLEIN: Chair, can I just clarify something? I just want Mr Seleka, just remind me again.

ADV SELEKA SC: Yes.

20 **MS KLEIN:** You said at the beginning of the meeting he got given opportunity to wax lyrical?

ADV SELEKA SC: No. Ms Daniels, right:

“Unlike the previous two meetings Mr Koko was given the time to express his sentiments on the issues of his suspension quite in length.”

MS KLEIN: Okay.

ADV SELEKA SC: Then she used her own words.

MS KLEIN: No, of course.

ADV SELEKA SC: That he waxed lyrically and so on.

MS KLEIN: Okay.

ADV SELEKA SC: But the question is asked:

“Could you fully trust this board again?”

But, you know, he has already said I am not going anywhere, Eskom is in my veins, was part of the rendition,

10 Ms Daniels says, of his submission to you. Then you say:

“Could you fully trust the board? You really want to come back?”

CHAIRPERSON: I am tempted to ask Ms Klein’s counsel. He might be wishing not to commit himself. No, that is fine, we understand. Let us continue.

ADV SELEKA SC: If I was in his position, Chair, I will also keep quiet. [Laughter]

CHAIRPERSON: You never know, it is still a long way before we come to – I come to writing the report. Who
20 knows, maybe by the time I write the report I will have come around and...

ADV SELEKA SC: Come to one position.

CHAIRPERSON: Yes.

ADV SELEKA SC: And she goes on to say:

Could you come back and work with this board?”

That is the question she says you asked.

“Mr Koko retorted that he heard horror stories relating to Zola Tsotsi and not the current board. Ms Klein thanked him for his honesty and took note that he had said I will come back to Eskom.”

And it is in that context that I understand your opening questioning to him.

CHAIRPERSON: Can I have that affidavit by Ms Daniels.

ADV SELEKA SC: Ms Daniels.

10 **CHAIRPERSON:** The disadvantage of not having it and relying on you, Mr Seleka, is that there if there was something else I could pick up then I cannot pick it up because I do not see – I do not have it. And Ms Klein should actually have her own as well so that she can see where you are reading. She might pick up something on the next line which you do not read because you have stopped somewhere.

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

20 **CHAIRPERSON:** So everything that will be referred to we should all have, hey? You were reading from page – oh, from paragraph 69.

ADV SELEKA SC: Correct, Chairperson.

CHAIRPERSON: Yes, has...?

ADV SELEKA SC: I will ...[intervenes]

MS KLEIN: I do not have a copy in front of me.

CHAIRPERSON: Do you not have a copy for Ms Klein.

ADV SELEKA SC: We want to provide a copy for Ms Klein.

CHAIRPERSON: Ja, please. Just make sure that we all have the same thing.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ms Klein, do you remember – do you remember that Mr Koko was given quite some time to express his sentiments on the issue of his suspension
10 because Ms Daniels says he was given a lot of time to do that, the other two had not been given that time.

MS KLEIN: I do not remember just him being given time, Chairperson. I remember the man starting to talk about his career at Eskom and how he was - his blood is blue, he is going nowhere but if you ask me did he get more time than anybody else, it did not occur to me at the time that I was giving him more time. It was part of a discussion with the person. So I am not sure that I would agree that he got given more but if it was more because somebody was
20 timing it, I cannot argue with that.

CHAIRPERSON: Have you found something for her?

ADV SELEKA SC: They are still looking, Chair. Sorry, they are still looking for it. Yes, we may be able to...

CHAIRPERSON: Of course, according to Ms Daniels, Mr Koko went to great lengths imparting to the board members

that they had been misled and that he would not make it difficult for the board if the board says you do not fit, he would accede and leave Eskom. Now that does not seem to be consistent with your evidence that he was adamant that he was not going anywhere. That is at paragraph 70 on page 16 of Ms Daniels' bundle.

ADV SELEKA SC: Yes, Chair, she will – she has a different bundle but the same affidavit so the paragraph numbers – you see “Unlike...” there at the top of the page?

10 **MS KLEIN:** Yes.

ADV SELEKA SC: Do you see it?

MS KLEIN: Are we talking about the same page? I think we are on the same page.

ADV SELEKA SC: Yes, yes.

MS KLEIN: Chairperson, my only comment on this would be, I went into that meeting in the same way that I went into the meeting with Tsholofelo. Tsholofelo said she did not want to leave and then the discussions carried on about various other things.

20 This gentleman literally came in, sat himself down and started telling me about – was not telling me, started telling the committee about how his blood blue, about how he was going nowhere and he used somebody else's term, waxing lyrical about it.

At the end of it, in spite of how I may have felt

personally about the person, I just knew that this is somebody who did not go anywhere. So if you are saying to me that he said he would not make it difficult for the board decides he must go, I cannot remember that comment. He may very well have said it but if you are asking me today, I cannot remember him saying those words. I cannot remember.

CHAIRPERSON: Well, it may – ja, this is Ms Daniels who says he said he would not – and she puts this in quotations
10 “would not make it difficult for the board” if the board says “you do not fit”, then she says he said he would accede and leave Eskom.

So that part, if it is true, gives me the impression of somebody who says I do not want to go but if the board says I do not fit into their plans, I will not fight, I will not make it difficult for them, I will accede and leave Eskom. That is what – that the impression I get from what Ms Daniels says Mr Koko said. Does that seem inconsistent with your impression of the position Mr Koko took in the
20 meeting?

MS KLEIN: That certainly does not sound like what I heard, Chairperson, I would have remembered that. I would have remembered if Mr Koko I would not make it difficult for you because I had my own views on Mr Koko, which I shared publicly before. I would have grabbed at

that opportunity to say to the guys, hold on, this person – sorry, Chairperson, I would have grabbed at the opportunity to say this person is ready to leave, let us talk about leaving, so I do not remember that. That is the one part of this thing. The fact that he was talking a lot, the fact that he says his blood is blue, the fact that I knew he was very – I do not know if the word is aggressive but when he left the night when he was suspended he was very angry with the board. I remember all of that. So I just
10 cannot remember him saying if the board says that, you know, I am not required, I will not make it hard. I do not remember that, sir.

CHAIRPERSON: But I think there is something interesting in what you have just said. If he said I do not want to go but if the board wants me to go, I will not make it difficult for them, I will leave, why would your reaction to that have been to say this person wants to go, let us talk about him leaving because you were representing a board which I am told wanted these people back, why would your attitude,
20 your reaction not have been no, no, no, the board wants every executive who is happy to continue to continue? Why would you have grabbed that and say okay, let us talk your departure?

MS KLEIN: Chairperson, I have been on oath in parliament as well stating that of the executives, when I

became People in Governance Chair, Mr Koko seemed to have had difficulty with a lot of the members of Eskom and there were many complaints about it. I did not know Mr Koko from a bar of soap but one of the things that I learned was that he had difficulty with a lot of relationships with some of the people there.

So if there was any one person who was asking to go, I would probably have encouraged it. I would have encouraged it. That is why I cannot believe that I would
10 have – that that was said because I did not hear that. I would have remembered that.

CHAIRPERSON: Okay. What does Mr Koko say about his meeting, does he – in his affidavit, Mr Seleka, does he say whether – does what he say reflect what Ms Daniels says here?

ADV SELEKA SC: Sorry, Chair. He says he rejected outright the proposal that was given to him. Now I need to find what he – essentially, it is a rejection of what was being presented to him and he would not accept it.

20 **CHAIRPERSON:** There is no indication in his affidavit that if the board insisted that he should go he would not make it difficult for them?

ADV SELEKA SC: No, he does not go into the details.

CHAIRPERSON: It does not – it is more consistent with what Ms Klein says in terms of his attitude?

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes.

ADV SELEKA SC: In terms of the first part with what Ms Daniels also says there.

CHAIRPERSON: Ja.

ADV SELEKA SC: It is consistent with that, I do not want a proposal, I am rejecting it out of hand.

CHAIRPERSON: Ja.

ADV SELEKA SC: But then he does not go into
10 ...[intervenes]

CHAIRPERSON: Into more details.

ADV SELEKA SC: Even that his blood is blue, I want to come back.

CHAIRPERSON: Ja.

ADV SELEKA SC: He does not say those things.

CHAIRPERSON: Okay, alright. Okay. Well, I think Mr Seleka probably was still going to put this to you, if he has not already done so. I see that Ms Daniels at paragraph 73 of her affidavit says:

20 “The board delegation met on 19 May 2015 and I was in attendance. Mrs Klein opened the discussion by emphasising the need to find settlement with the parties and clear the decks. She also confirmed that the shareholder has approved to get rid of the people and make the

necessary concessions if it sorts out the problem. She stressed that the priorities to get the people off and away. The meeting further discussed the various settlement arrangements as the Minister had a ceiling of R12 million to negotiate and the guiding principles were full cost to the company up to 12 months, payment of tranche 8 iii, payment of tranche 9 iv, contribution to legal cost and communication plan around the suspended executives, the settlements with Mr Marokane and Ms Molefe were mentioned as those that needed to be finalised.”

Do you want to comment on what Ms Daniels says in that paragraph?

MS KLEIN: Chairperson, I have no idea what Ms Daniels is talking about, very simply because the Minister had never spoken to me about any ceiling on any settlement. The Minister had never spoken to me about who has got to leave when. I honestly do not know, unless I can see a minute which says that but I do not remember any of that. What I will say is, and I think I have said this time and time again through the inquiry, is that I was always cognisant about a board making decisions to turn the company around.

CHAIRPERSON: Yes.

MS KLEIN: But clearing the decks, Minister talking about a 12 million [indistinct] 15.15 I do not know who the Minister would even have known what the people were earning. So I have got no idea what Ms Daniels is talking about.

CHAIRPERSON: Okay. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. Ms Klein but we know from the evidence of both Dr Ngubane and Mr Matona that when they met at the CCMA Mr Matona was told let us
10 adjourn the proceedings, see whether we cannot reach an amicable separation and he was told that they need to get the mandate from the shareholder so the proceedings were adjourned so that they could engage with the shareholder and that seems to be in line with what Ms Daniels is saying there, that your mandate, as the board, ultimately came from the shareholder.

CHAIRPERSON: And I think Dr Ngubane did not dispute that part.

ADV SELEKA SC: No.

20 **CHAIRPERSON:** Of Mr Matona's evidence.

ADV SELEKA SC: Correct, Chair.

MS KLEIN: Chair, I am not disputing any of what Advocate Seleka has just said. What I am disputing is that the minutes that told – or unless I am reading it wrong again, because I tend to do that – the 12 million

...[intervenes]

CHAIRPERSON: I think one of the things you said a few minutes ago seemed to suggest that you were wondering how the Minister could come into these types of matters, into this settlement, talking about amounts and so on and I think what Mr Seleka is saying but that should not be surprising because Mr Matona said Dr Ngubane or somebody from the board at the CCMA said please, let us postpone your matter because we need to get a mandate
10 from the shareholder Minister so – and if that is factually true, and Dr Ngubane did not dispute it, it may well be therefore that the Minister did get involved into amounts and so on.

MS KLEIN: That is very possible, Chair.

CHAIRPERSON: Ja.

MS KLEIN: Very possible but I guess I read that what Ms Daniels was saying is that I said those things. So maybe I was reading it incorrectly.

CHAIRPERSON: Okay, okay. Mr Seleka?

20 **ADV SELEKA SC:** Thank you, Chair. Ms Daniels (sic) do I understand you to be saying that paragraph 71 where you are quoted for the second time:

“At this point Ms Klein then asked could you come back and work with this board?”

That you did not say that?

MS KLEIN: No, Chairperson, I have already said that I have – I have explained that I actually did ask that.

ADV SELEKA SC: Oh, you did.

MS KLEIN: No, I actually have already acknowledged that I said it, right at the very beginning.

ADV SELEKA SC: Oh, sorry. Ja, I understood it differently. Okay. But that one was not asked of Ms Tsholofelo, could you come back and work with this board?

MS KLEIN: Chairperson, as I have said earlier, the
10 reason for asking that question of Mr Koko was because of what happened the day of his suspension. He was very angry with the board. He walked out there, he was so cross with us, hence my question. That was the only reason I asked him that question.

ADV SELEKA SC: Yes. Can I go back to that paragraph 73. Oh, you know, if I conclude – sorry, Ms Klein, if I conclude in regard to your explanation to the Chairperson why you asked that question, the reasons would similarly have applied to Ms Molefe who had indicated she wants to
20 come back and I appreciate you were not in Mr Dan Marokane's negotiations, he also had expressed interest to come back. This meeting which Ms Suzanne refers to in paragraph 73, did it take place?

MS KLEIN: Chairperson, I have no idea. I do not know what meeting we are referring to here and as I am saying,

you know, if I had minutes of it or some indication but I do not know what meeting they are referring to here.

ADV SELEKA SC: But we also do not have minutes of your settlement discussions with these executives and you have agreed that Ms Daniels correctly reflects what you have even said in these meetings.

MS KLEIN: I have acknowledged that some of what she said is correct.

ADV SELEKA SC: Yes.

10 **MS KLEIN:** Not all of it. So if you asked me if this happened, it may have happened. Did I say those things? I do not know.

ADV SELEKA SC: No, just the meeting itself, no what you said.

MS KLEIN: Okay, I have no recollection of that meeting, Chairperson.

ADV SELEKA SC: Because she does say in paragraph 74 that she was then asked to prepare a brief to the Minister from the Chairman on the status of the suspended
20 executives and then she attaches a copy and she links that to the meeting the delegation had on the 19th.

CHAIRPERSON: Maybe the - one could ask the question this way. When you see that – a brief – that document which she says was document she was asked to prepare for the Minister, do you recall it as a document that your

committee or you and your colleagues had asked her to do?

MS KLEIN: Very definitely, Chairperson.

CHAIRPERSON: You recall that?

MS KLEIN: I do recall that.

CHAIRPERSON: Okay, alright.

MS KLEIN: I do recall that.

CHAIRPERSON: Okay. And is it possible that it was at the meeting that Mr Seleka refers to where she was asked
10 to prepare that document? It is possible?

MS KLEIN: It is possible, Chairperson.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Thank you, Chair. Then, Ms Klein, we can put aside that file. I wish to go back to the reference file, Chair.

CHAIRPERSON: Yes. There is then correspondence that seems to confirm what you say was your statement to Mr Koko, could you come back, and it seems as if – and you will correct is in that regard, that the board or maybe the P
20 & G committee, I would not know, if fact did decide to have Mr Koko back.

MS KLEIN: Yes, Chairperson.

ADV SELEKA SC: And in paragraph 57 page 16 you talk about – paragraph 57 you talk about your meeting with Mr Koko, he was the one executive who was not interested in

leaving the employment of Eskom and you then say you enquire from Dentons whether they have made any evidence – whether they have found any evidence of wrongdoing by any of the suspended executives.

MS KLEIN: Correct, Chairperson.

ADV SELEKA SC: Now before I go to my point let me deal with this quickly because you have seen Mr Kapdi's affidavit again.

MS KLEIN: Yes.

10 **ADV SELEKA SC:** He says he has no recollection of you asking him this.

MS KLEIN: Right [inaudible – speaking simultaneously]

ADV SELEKA SC: Yes, you can comment.

MS KLEIN: To respond?

ADV SELEKA SC: Yes, please.

MS KLEIN: Chairperson, I do not know if Mr Kapdi is confusing me with Miriam who was the Chairperson of audit and risk. I spoke to Mr Kapdi myself. In fact I want to go a step further. In the discussion with Mr Kapdi he told me
20 categorically that there was no evidence of wrongdoing.

CHAIRPERSON: Of course the question arises, why was it an issue for you or for you and the board whether Dentons had found any wrongdoing on the part of Mr Koko because Mr Koko, together with the other executives, had been suspended on the basis that there were no

allegations of wrongdoing on their part, number one.

Number two, the brief given to Dentons excluded them looking into any wrongdoing on the part of the executives. So why was this an issue? Why had this to be checked when you and your board knew that you never asked Dentons to investigate any wrongdoing on the part of Mr Koko or any of the executives? Why now when there was a discussion about any one of them coming back or Mr Koko coming back was there an issue to say let us check if
10 there is any wrong wrongdoing on – found by Dentons?

MS KLEIN: Can I respond, Chair? May I respond?

CHAIRPERSON: Ja. Yes, yes.

MS KLEIN: Chair, early in the Dentons' inquiry I got a call from Dr Ben Ngubane who told me that Suzanne Daniels had been interrogated, I think was the word used, by the Dentons' investigators and they were very hostile towards her. So hostile she was apparently in tears and Dr Ben, because I was Acting People in Governance, asked me please would you meet with Ms Daniels to find out what is
20 happening.

I met with Ms Daniels and she told me that the Dentons investigator had told her that they had found enough evidence on her to have her dismissed, whatever the word, but she was very, very, very distressed by this. Based on that, Dr Ngubane at one of the meetings that

followed and I cannot quite – I know that I found the minutes a week or so ago but I could not find it last night, would not even allow Ms Daniels into the meeting because of what supposedly Dentons had found and it was with that in mind, Chairperson, bearing in mind that Ms Daniels, at the time, worked for Matshela Koko.

So in my heart of hearts when I was told that – and we can listen to the recording of the 2 July where there is such a motivation to bring Mr Koko because somebody had
10 died in his department and the acting people were not coping, so it would be great to bring Mr Koko. I said only on condition that I can make a call to Dentons because of what had happened to Ms Daniels. I needed to satisfy myself that in the inquiry, whilst it was not focusing on the executives, if anybody could be this rough on Ms Daniels, surely she was not working alone, she was working for Matshela Koko. That was the reason that I made the call to Dentons.

CHAIRPERSON: Okay. If they said they had found
20 something – some wrongdoing, would that have made you to take the position that Mr Koko should not be allowed back or what – how would that have affected your judgment?

MS KLEIN: It would absolutely have meant that Mr Koko could not be allowed because – and I am sure we are going

to deal with Dentons' reports in a while, but Dentons was going to continue – not Dentons, but there was going to be another process afterwards for a lot of allegations that were made. I wanted to make very sure in my heart of hearts that what had happened to Ms Daniels had nothing to do with Mr Koko before allowing him back in.

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you, Chair. Ms Daniels, do you recall – Ms Klein, I beg your pardon. Ja, the – obviously
10 the Chairperson does not have and the Commission does not have that information in your affidavit.

CHAIRPERSON: Well, Mr Seleka, did you address you as Ms Daniels ...[intervenes]

ADV SELEKA SC: No, I changed it, Chair.

CHAIRPERSON: And asked her whether she recalls Ms Klein. It has been a long day.

ADV SELEKA SC: It has been a long...

CHAIRPERSON: Yes, continue.

ADV SELEKA SC: Yes. What was my question now?

20 **CHAIRPERSON:** You confused her with Ms Daniels, that was your question.

ADV SELEKA SC: Oh, I was saying, Ms Klein, that the Commission does not have the benefit of that information in your affidavit, we also get the version of Ms Daniels and Dr Ngubane because you say it was Dr Ngubane who said

that. So would you – would you provide us with an affidavit?

MS KLEIN: Absolutely.

ADV SELEKA SC: We will liaise with you after this.

MS KLEIN: Absolutely Chairperson.

ADV SELEKA SC: Ja, because let me read what Dentons is saying, Mr Kapdi says:

“I have no recollection of being contacted by Ms ...”

And you have read this.

10 “...by Ms Klein to enquire whether findings of wrongdoing had been made against Mr Koko. I do however recall being contacted by Ms Carrim.”

This is one of the board members.

MS KLEIN: Yes, she was the Chairperson of audit and risk.

ADV SELEKA SC: She was the Chairperson of audit and risk being contacted by Ms – is it Cassiem or Carrim?

20 “To enquire whether the firm had made any findings of wrongdoing against the suspended executives. I was not involved in the drafting of the firms report and referred this query to Mr Sulaiman[?]. Mr Sulaiman[?] has informed me as follows.”

Now that first part does not impress on me as a person who is confusing you as somebody else. He seems to be clear about who he is talking about. The distinction

between you and Ms Carrim.

MS KLEIN: Chairperson all I can say to you is I spoke to Mr Kapdi, Mr Kapdi did not refer me to Mr Sulaiman[?].

ADV SELEKA SC: Well Chair it carries on:

“Mr Carrim asked Mr Sulaiman[?] to confirm whether any findings of wrongdoing about the suspended executives were made in the firm’s report.”

Mr Sulaiman[?] responded:

10 “That the investigation was not into wrongdoing about the suspended executives and therefore no findings were made in respect of wrongdoing by any specific persons.”

Which is what the Chairperson is saying to you, that Mr Sulaiman[?] also responds by saying:

“But that is not in our mandate.”

MS KLEIN: Chairperson I stick to my version which is I would have had absolutely no reason to go back to the board and say that I have spoken to Dentons if in fact I did not and if on reading - and if I look at what because in
20 fairness the investigators and the advocate did give me a copy of it yesterday. He says he has no recollection he does not say he did not speak to me. He says he cannot, because I mean it is five years ago. One thing I will say is when I spoke to him he did not say to me that he is referring me to Mr Sulaiman[?], that he never did that.

ADV SELEKA SC: Ms Klein there is in fact letters addressed to Ms Carrim on this issue. So he is clear he does not recall you calling but he does recall being called by Ms Carrim but your version is your version we can leave it at that.

MS KLEIN: Chairperson I do want to ask the letter because remember I did not have the benefit of the response from Mr Sulaiman[?] to Ms Carrim.

ADV SELEKA SC: Yes.

10 **MS KLEIN:** May I have a look at that?

ADV SELEKA SC: Yes, please, yes certainly.

MS KLEIN: Because that would help me.

ADV SELEKA SC: Yes, they were emailed after the affidavit had been sent.

MS KLEIN: And I just want to just be clear because I have had no interaction with Mr Sulaiman[?].

ADV SELEKA SC: Chairperson may I beg leave to hand it up?

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** They are – this are annexures specifically referred to in those two paragraphs Annexure N12 and N13 which is referred to in the next paragraph. The affidavit Chairperson has been inserted at the end of the reference bundle, right at the end of the reference bundle.

CHAIRPERSON: Okay.

ADV SELEKA SC: It only came in yesterday.

CHAIRPERSON: Do we not have Mr Romeo Kumalo's affidavit by now?

ADV SELEKA SC: Chair should I place it on record Chair? He was given a deadline of last week Friday, 2 October 2020.

CHAIRPERSON: Yes.

ADV SELEKA SC: He did not meet the deadline and I
10 reminded him by email he subsequently responded and in
his email it is a message to the effect that his
attorney...[intervene]

CHAIRPERSON: Your voice has gone down.

ADV SELEKA SC: Has it gone down oh sorry Chair.

CHAIRPERSON: Ja, raise it ja.

ADV SELEKA SC: His attorney is on holiday, school
holidays and upon his return they will engage and attend to
the drafting of the affidavit.

CHAIRPERSON: But we cannot wait for somebody who is
20 on holiday.

ADV SELEKA SC: I have indicated that myself.

CHAIRPERSON: Yes.

ADV SELEKA SC: And so I have not received a
subsequent response but I will follow up with him.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Thank you Chair.

MS KLEIN: Thanks very much Chair I have noted that but I stand by my version...[intervene]

CHAIRPERSON: Yes, okay.

MS KLEIN: Where Mr Sulaiman[?] did not write to me and I got the answer from Noor Kapdi and it was on the basis of the affidavit that I will provide about Ms Daniels.

ADV SELEKA SC: Yes, thank you.

CHAIRPERSON: Yes, okay.

10 **ADV SELEKA SC:** So Chair let me just place on record because the letters that are annexed to Mr Kapdi's affidavit are respectively dated 13 July 2015 and 14 July 2015. It is a letter from Dentons under the author is Mr Shahied Sulaiman[?], the attention Ms Mariam Carrim, Eskom Holdings and the letter reads:

20 "Dear Ms Carrim investigation into the affairs of Eskom Holdings SOE Limited. I refer to the above I know that the terms of reference in respect of the investigation do not require that misconduct by any specific individual be investigated. Accordingly, as you will have seen from our draft preliminary report you have seen it already we make no recommendations in relation to any specific individual."

CHAIRPERSON: Yes.

ADV SELEKA SC: Just to place that on record.

CHAIRPERSON: Ja, I do not think the issue can be taken further.

MS KLEIN: No.

CHAIRPERSON: Ja, okay let us proceed.

ADV SELEKA SC: Then Ms Daniels you say after you made the Ms – oh my word sorry Ms Klein.

CHAIRPERSON: I think next time he makes this mistake he must pay Ms Klein.

10 **MS KLEIN:** Thank you Chair.

CHAIRPERSON: And you know counsel can afford you know so he will understand if you demand quite a high amount. Yes, let us continue.

ADV SELEKA SC: Yes, Ms Klein then related to that paragraph of your allegation that you approached to Mr Kapdi is there a subsequent paragraph:

“In order to address my discomforts, I decided to engage with Mr Gerry Kapou[?].”

But what was your discomfort?

20 **MS KLEIN:** My discomfort was twofold here you have got three people who you settling with in the three-month period that they were supposedly being given to get everything you know for the investigation to be done and here is a possibility that one person comes back, that was the first discomfort that I had. Legally you know am I

exposing, are we the board exposing the company to any kind of legal for litigation. Secondly if there then is no wrongdoing because remember I stick to my version which is I spoke to Noor Kapdi based on what I had experienced with Ms Daniels and Noor Kapdi tells me there is no wrongdoing. I wanted to make sure what would happen if I as the board member said to the other board members I am not going to allow Mr Koko to come back. I needed to understand what the consequences of that would be for the
10 organisation.

ADV SELEKA SC: Mr Sulaiman[?]'s letter says:

“As we have already indicated in our draft report there are no findings of wrongdoing against anybody.”

Why is it your concern and not the boards concern?

MS KLEIN: Chairperson that is a very interesting question because you are going to have other board members who's going to come here and I hope that you are going to put this question to them.

20 **ADV SELEKA SC:** No I am putting it to you.

MS KLEIN: No, no and I am going to answer you.

ADV SELEKA SC: No listen let me it says you saying in your affidavit which nobody had said...[intervene]

CHAIRPERSON: Or maybe Mr Seleka maybe please do not, do not take your eyes away from what you are looking

at but maybe let us ask this question which related to the question that Mr Seleka is asking. Do you know whether your concern was shared by the other members of the board?

MS KLEIN: Chairperson to a large degree it was not.

CHAIRPERSON: It was not to a large degree.

MS KLEIN: It was not.

CHAIRPERSON: Yes, okay do you know why you would have this concern but the other members of the board or
10 some of them would not have that concern or is that something you do not know?

MS KLEIN: I cannot explain it Chairperson.

CHAIRPERSON: Yes.

MS KLEIN: All I know is that in more than one meeting I indicated guys we cannot do this there is one or two things coming out that is of concern to me and I think that was part of the reason I was asked to go and get an opinion from Noor Kapdi as well as go and get a legal opinion because of my reservations which I was raising.

20 **CHAIRPERSON:** Okay.

ADV SELEKA SC: My discomfort not the boards discomfort but anyway. So Ms Klein what was your discomfort?

MS KLEIN: As I have explained earlier my discomfort was based on what happened to Ms Daniels and I was afraid

that there may be something underlying which could come at us afterwards. Sorry are we still talking about the same thing Chairperson? Just help me quickly I maybe off the point.

ADV SELEKA SC: Yes, in order to address my discomfort so you say you have received a response from Mr Noor Kapdi he says he does not recall you contacting him but you further say:

10 “In order to address my discomfort I decided to engage with Mr Gerry Kapou[?].”

And my question was what did you say was your discomfort?

MS KLEIN: My discomfort at that stage was now that Gerry Kapou[?] has said not Gerry Kapou[?], sorry Noor Kapdi.

ADV SELEKA SC: His going to make you pay.

20 **MS KLEIN:** Noor Kapdi, now that Noor Kapdi has told me there is no – all these things that I have been worried about with Ms Daniels is it out of the way. Then I was concerned that here you have got three executives literally who’s according to me by now accepted that they are going to be leaving. What does bringing a fourth one back do to the company. Do we not open the company to litigation was the first concern? Secondly if like I am saying to you I was told by Mr Kapdi there was nothing else there. What

would be, what would we be exposed to if we kept him out, so it was twofold. So that was my discomfort the litigation which could possibly open ourselves to by this other three now that his coming back and the second thing was keeping him out after supposedly there is nothing which was confirmed by Noor Kapdi. What does that mean? Those were the opinions that I was asking Gerry Kapou[?] for.

ADV SELEKA SC: Yes:

10 “So my discomfort I decided to engage with Gerry Kapou[?]who decided that Eskom could not keep someone on suspension if the enquiry did not find any evidence of wrongdoing.”

So you have had the benefit obviously of looking at the reference bundle and the letters that were exchanged between you and Mr Kapou[?], the advice you received from him.

MS KLEIN: Yes, yes.

ADV SELEKA SC: You further say Dentons also provided
20 a letter confirming the above.

MS KLEIN: That was picked up in one of the minutes I never personally saw the letter it was a minute of a meeting where Chwayita Mabude gives feedback and says there was a letter from Dentons I never physically saw the letter from Dentons myself.

ADV SELEKA SC: Sure.

CHAIRPERSON: Let me while Mr Seleka prepares to ask you his next question let me go back to your – his comfort that relates to the fact that three of the executives had left or were leaving and you were looking at the possibility that the fourth one could be allowed back. What do you say to the proposition that that discomfort – you said your discomfort was twofold 1, are related to Ms Daniels the other one related to the fact that three of the executives
10 were leaving but you were faced with the possibility of allowing back the fourth. What do you say to the proposition that that discomfort you had is not consistent with somebody who knows that with regard to the three executives who were leaving they were leaving because that was there choice that discomfort is more consistent with somebody who knows that in regard to this three we may be accused of having pushed them out of not having wanted them back. What do you say to that proposition? In other words, if having negotiated with the three
20 executives and you are clear in your mind that you wanted them back and they know that but they chose that they wanted to leave you would have no discomfort when you come to the fourth executive you adopt the same attitude. The fourth executive say I want to come back because you would know that we have been consistent with all of them

we are saying from our side we are happy for to come back but if you choose to go it is fine as well.

We are adopting the same attitude to Mr Koko if he chooses to come back we cannot be accused of anything because we are consistent but if the position is that with regard to the other three you think you may have acted inconsistently. You may have not wanted them back or acted in a manner that seems to suggest you wanted them out then that discomfort would be there when you are faced
10 with the possibility of allowing the fourth one back. What do you say to that proposition?

MS KLEIN: Chairperson I think what you saying is probable because you will remember Mr Matona saying that you know he felt like he was pushed out.

CHAIRPERSON: Yes, yes.

MS KLEIN: You know so what you saying is probable but that is certainly not what was in mind at the time.

CHAIRPERSON: Yes, yes.

MS KLEIN: I wanted to make sure that legally bringing
20 one out of four back is not going to create a problem for the organisation.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: And that was a mandate given to you by the board?

MS KLEIN: By people in governance on behalf of the

board.

ADV SELEKA SC: So that mandate for you to do this exercise of finding out was given to you by people in governance?

MS KLEIN: Correct on behalf of the board yes.

ADV SELEKA SC: So your affidavit say:

“I was mandated by the board.”

CHAIRPERSON: That might because the board mandated the P&G basically to do whatever the board had a mandate
10 to do.

MS KLEIN: Correct.

CHAIRPERSON: Is that fine, I am saying that maybe that, you might say no it is not but...[intervene]

MS KLEIN: But Chairperson but that is exactly the point the board had mandated people and governance and people and governance had instructed me because I think of various push backs for me to do certain things.

CHAIRPERSON: Yes.

ADV SELEKA SC: We will find out from the board.

20 **CHAIRPERSON:** But you can pursue it does not mean you must pursue your question Mr Seleka if you want but I do not know in the end whether it makes much difference whether it is P&G or the board.

ADV SELEKA SC: That is fine Chair what I wanted to – Ms Klein the letters that Dentons has provided they have

not provided it any other in regard to the request. You cannot dispute that this was the response given by Dentons to Ms Mariam Carrim?

MS KLEIN: Chairperson I can only say to you I see it here, these are the letters that was sent to Ms Carrim, Ms Carrim would have to give you that assurance I never got the letter from Dentons at all.

ADV SELEKA SC: Yes.

CHAIRPERSON: Mr Seleka sorry I think we are at twenty
10 to four. I would like us to go beyond 4 o'clock with Ms Klein if possible I would like us to finish with her.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: But you if there are important issues that you will not have covered by that you can tell me.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: But I would like us to try and wrap up with her by four.

ADV SELEKA SC: Thank you Chair. So Ms Klein I was going to refer you to the correspondence between you and
20 Mr Gerry Kapou[?] which you have had sight of that is in the reference bundle. There is a letter there on page 21 which is addressed to yourself by Mr Kapou[?] you have seen or read it and I am interested in the mandate given to Mr Kapou[?] the instructions. So you had first gone to Dentons.

MS KLEIN: Yes.

ADV SELEKA SC: The you go to Mr Kapou[?] and his writing on 2 July 2015 or the letter is dated 2 July 2015. Suspension of Mr Matshela Moses Koko and paragraph 1 says:

10 “In March 2015 Eskom suspended four of its executives. Eskom has since entered into settlement agreements with three of these four executives in terms of which the parties agreed to mutually terminate. From Eskom is now considering uplifting the suspension of the fourth executive Mr Koko. Eskom has therefore requested that we advise it on whether the uplifting of Mr Koko suspension will impact on the settlement agreements entered into with the other three executives.”

So you confirm that you are being with the instruction to Mr...[intervene]

MS KLEIN: I agree, yes.

20 **ADV SELEKA SC:** And so he gave his advice about the impact of your decision to return Mr Koko with the agreements.

MS KLEIN: Of course.

ADV SELEKA SC: You said there will be no impact.

MS KLEIN: Yes.

ADV SELEKA SC: And you wrote back to him on 2 July the same date 2015 and you say:

“Gerry can you please include a para on the consequences of not bringing Koko back. Can I please have this before 13h00 – you are writing at 10:25 – before 13h00 as I need it for the board meeting which starts then, regards.”

So you wanted a paragraph included regarding the consequences whether there are consequences of not bringing him back, what are they.

MS KLEIN: Yes, correct Chairperson.

ADV SELEKA SC: So by this time the board has resolved to bring him back.

MS KLEIN: Yes.

ADV SELEKA SC: Ja, now the curious note here to me.

CHAIRPERSON: That one yes.

MS KLEIN: Sorry?

CHAIRPERSON: The answer was yes?

MS KLEIN: Yes.

20 **CHAIRPERSON:** Ja, okay I just wanted it to be captured.

MS KLEIN: So P&G had agreed to bring him back, ja not the board P&G – there was going to be a P&G meeting later on, on the 2nd I think there is a problem with the date because I think the date of the P&G meeting that we have got there is on the 1st. The P&G meeting happened later

the day on the 2nd where I gave feedback in terms of what both Mr Kapou[?] and Mr Kapdi had said.

CHAIRPERSON: Well going back to the mandate of the board to the delegation of three yourself, Dr Ngubane and Mr Khumalo you were the people who were authorised to negotiate settlements. Now I seem to remember that the board had said something to the effect that we understand that these executives who have been suspended want to leave we are mandating you to negotiate settlements and
10 they set out the parameters of that settlement and that that mandate did not include having anybody come back. Is that correct?

MS KLEIN: That is correct Chairperson.

CHAIRPERSON: Yes, so did your committee this group of three or the P&G but the mandate was given to the group of three. Did this group of three go back to the board or to P&G at some stage and say in regard to Mr Koko the mandate you gave us cannot be effected because he wants to come back we have the authority to bring him back. Did
20 that happen?

MS KLEIN: That did Chairperson after P&G which is dated the 2nd which we sent you the clip of as well where I give feedback to P&G as to what happened with my discussion with Mr Kapou[?] and with Mr Kapdi. After that it then went back to the board to say to the board look this

is our proposal and the board then based on in the information they then received were comfortable that this could happen bearing in mind we have now checked it off with the enquiry, with Kapdi as well as with the legal people.

CHAIRPERSON: No that is fine just as a matter of interest do you know whether the board was ever told that Ms Molefe at the first meeting with the representatives of the board had made it clear that she wanted to come back?

10 **MS KLEIN:** Chairperson I...[intervene]

CHAIRPERSON: Even though ultimately a settlement was reached. Do you know whether the board was ever told of that situation?

MS KLEIN: Chairperson I am not aware of that I do not think so.

CHAIRPERSON: Okay.

MS KLEIN: I do not think so.

20 **CHAIRPERSON:** Maybe to get this out of the way Mr – both Mr Dan Marokane and Ms Molefe if I remember correctly testified that they felt unwanted by the board. Do you have any comment on that they felt unwanted? You know Mr Marokane said he wrote I think a letter on the 18th of March after the suspension had begun and raised a number of issues and indicated his preparedness to contribute to solutions and so on and set out what he had

done and he told me that actually around the 6th of March his portfolio had reached a milestone that had not been reached in 20 years or something.

I have even said so unbeknown to you in two days' time your name would be among those who have been discussed for suspension in a Durban meeting. So he said in that letter of the 18th he talked about what he had done and so on but there was no response from the board. I think he sent another letter about himself or through his
10 attorneys so he was not getting a response. At a certain stage he thought you know I am not wanted and he reached out to Dr Ngubane to say it looks like there is no trust here anymore can we talk parting of the ways separation and from what he said Dr Ngubane did not make any attempt to say no, no actually the board wants you back or anything like that but he maybe thought that is Mr Marokane that interestingly whereas when he had been sending these letters over this period to the board there was no response, there was no acknowledgment of receipt
20 of the letters. Once he talked about separation there was an immediate response in a day or two.

Dr Ngubane made sure that he could you know he went back to him or whatever. So they said they felt unwanted, I don't know if you want – if you are able to make any comment.

MS KLEIN: Chairperson I can't make a comment other than to say that I can understand why they would have felt that way.

CHAIRPERSON: Yes, okay, alright.

ADV SELEKA SC: Thank you Chair. Ms Klein, just to complete on this, Mr Koko you had said earlier that if there was one person you wouldn't want to take back it would have been him because of the issues that were raised against him. At this time, when you were asking for this
10 legal opinions when the Dentons making it clear that we – you haven't given us a mandate to investigate any wrongdoing, why didn't you commission an investigation into his – these allegations about Suzanne Daniels, issues you alluded to earlier about Mr Koko himself?

MS KLEIN: Chairperson, let me answer that this way, the man was not back yet, let me say this to you, should the four have come back on my watch there would have been an investigation into all of the allegations that had been made prior to them leaving because me we've dealt fairly
20 with various allegations and things like that, so when people did come back we would have had to have them looked at various things. The difficulty that I had, or I think that the Board faced, Chairperson, was we were on a burning platform with so much going on. We had load shedding, going concern problems and all of the rest of it,

so, if you say to me why didn't I then institute an investigation against Mr Koko, that just wasn't a top priority for me at the time. We were wanting to get this business stabilized, that was my perspective.

I wanted to make sure that we had dealt with the four Executives in a way that the Board would not be exposed, legally and I had done what I thought were the checks and balances required.

ADV SELEKA SC: Ms Daniels' version in regard to the
10 Dentons report, and you know the draft which you refer to in your affidavit as a draft which was destroyed, he says, in fact – and we've seen the minutes of the meeting where the Board resolves that copies be collected and that you be the one to destroy them and that, that decision was made in because there were allegations in the report regarding how Mr Koko had concluded certain transactions which was not above board.

MS KLEIN: Chairperson, when it comes to the Dentons, as I hope I'm not going to go too wide, you must just help me
20 here Mr Seleka because remember because we're talking about various versions but I think they're all...[intervenes].

ADV SELEKA SC: Let's talk the first.

MS KLEIN: First one?

ADV SELEKA SC: Yes.

MS KLEIN: First one, the first version of the Dentons

report was given, presentation was made to the Board on the 25th of June, that version had no – according to my recollection, no names of individuals but names of companies. I remember the Board asking the question, how much of this has been verified and how much of this are just allegations because we were very cognisance – certainly I was, of the fact that we had three months for this thing to run. They gave us, this was verified, and these were allegations. The Board decided that the
10 allegations could be looked at afterwards but in order to get a base line which is what I thought we were needing to do, that we would work with the version which was verified, that was the first version. The Board then, asked Dentons to go away and take out the names of companies, once again, Ms Daniels – let me not talk about Ms Daniels, I do not recall any names of individuals in that report. So, when the report, the second report came on the 14th of August, that was the report that the Board accepted and signed off. Regarding the question about me, collecting
20 them and shredding them...[intervenues].

ADV SELEKA SC: Not you collecting, there's a minute in the Board meeting saying, the company secretary should collect copies give them to you and that you will destroy the copies.

MS KLEIN: Can I just go back?

CHAIRPERSON: Ja.

MS KLEIN: Right, so the first presentation was made on the 25th of June, the meeting of the 2nd or the 3rd of July, the Board gets given this first draft which is with all the names of the different companies in it. On the meeting or at the meeting of the 14th of July the company secretary is asked to get all of those versions back from Board members because Board members are now walking around with documents which the Board agreed it would rather not
10 have because we could be sued because there wasn't proper investigations done on it. So, at the meeting of the 14th of July the company secretary asked, please can we have all the documents back, that's the first version, with all of the names in it. On the 14th of August, Chairperson, when we get the final draft, the one where the Board is now happy, we've taken out the names of people, we can't get sued, by this time quite a few of the Board members had still not given back the documents in spite of having been asked for it a month before. It is at that point, that
20 I'm asked as Chair of People and Governance, please can you help us to collect these documents from the Board members so that they can do shredding and, Chairperson, I certainly did not shred any documents myself. I would have worked with company secretary where people had not brought their copies in, to maybe make a call to say,

please can we have your cooperation because it was an entire month later that Board members had still not complied with the request from the secretary.

ADV SELEKA SC: Two things, Ms Klein, one is that in your affidavit you say, the report, the first one included, allegations against individuals and companies. I hear you now tell the Chairperson, it was only the names of the companies that were mentioned.

MS KLEIN: And if I said that it's individuals and
10 companies then I'm wrong here because as far as I remember it was against companies and I was afraid that we would be sued.

ADV SELEKA SC: But then, Ms Daniels is consistent with your affidavit, says the names were mentioned, of individuals and it was shredded for that reason, not only companies but individuals.

MS KLEIN: Chairperson, as I sit here today, my concern at the time was about companies. I can't remember individual names even being mentioned in that first
20 document.

ADV SELEKA SC: Ja, and I don't want to be difficult with you but how would it get into your affidavit? It's page 22 paragraph 84.

CHAIRPERSON: Mr Seleka, despite what I said about finishing with Ms Klein at four, the bottom of line is the

issues – we must do justice to the issues. So, if you feel that there is still a few issues that are important to be dealt with, it's fine but we might have to take a short break at four and then come back and continue.

ADV SELEKA SC: Yes, can I pursue a little more, Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: Ms Klein, the question was, then how did it get into your affidavit which is a sworn statement?

MS KLEIN: Chairperson, all I can say to you is, with the
10 benefit of looking at it now, I really believe it was companies, I cannot believe that there were individual. Sitting here now, if that's what I wrote there, then I can – then I have to say to you, hand on heart, then it was a mistake because it was definitely companies and I cannot remember seeing individual names on it.

ADV SELEKA SC: You have seen, again, the affidavit of Dentons, and this is the second point, Dentons says, you're saying you gave the request, you requested them to remove the names of the companies and the – well you say
20 the companies. Dentons says there was no request from Eskom to effect any specific changes to that draft preliminary report. The amendments to the draft preliminary report were made for the reasons set out in the abovementioned email to Ms Carrim. The sequence of events in relation to the preparation of the final report is

set out above.

“We have furthermore provided to the commission a compared copy of the firms report so that the changes can be readily identified.

So, I may not show you – I may not do the exercise now but perhaps for the benefit of the Chairperson, but let me deal with the first part, which is, there was no request from Eskom to make any specific changes to the draft preliminary report.

10 **MS KLEIN:** Chairperson, that is news to me. My understanding, and there’s a letter which we have, I’m not sure, I think was given in my pack the last pack to the Commission, was where Ms Carrim actually wants to understand what’s the difference between the first and the second report and they actually then say, the corroborated version was, what was then, the final version, the uncorroborated or the allegations was all removed. So, I must say I’m not sure, I mean, obviously not having had sight to what it is that you’re referring to, I can only go on
20 what the Chairperson of ARC told us, which was to say, this was the first version, this is the second version, so what is the difference and the difference – one of the first things, point number one, on the letter which she got from Dentons was to say that all uncorroborated names of companies had been removed. I think that’s something,

Chairperson, that we'd need to then ask Ms Carrim because I can't really respond to that any further. My version is, there were names of companies in there and I was – my personal concern was that they could sue us which is why they were asked to be removed.

CHAIRPERSON: Let's take the short adjournment, during the adjournment, maybe Mr Seleka, you could let Ms Klein see what you are reading from it might assist her. So, when we come back then we will continue. We will resume

10 at quarter past four.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV SELEKA SC: Thank you Chair. Ms Klein the – the paragraph we read just before the adjournment is 8.6 in that affidavit. Chairperson the – the disadvantage is that the affidavit was received yesterday. What I think I would like to

20 arrange with Ms Klein is to look at some of these annexures where Ms Kapdi says:

The explanation for making amendments to the draft preliminary report was mentioned in the email to Ms Carrim. The email is here but the report itself runs up to over 100 pages and she will need to do a comparison of where there

are names and how it evolved from the first draft to the next and the next. We can do that exercise.

CHAIRPERSON: But what is the point about the presence or absence of names of individuals in the report? Whether there were names or there were no names? What is the point about it?

ADV SELEKA SC: Yes the – it was – we were putting to Ms Klein the version which we see in her affidavits visa vie what we see in Ms Daniels' affidavit that the report was destroyed
10 because it had certain allegations made against Mr Matshelo Koko.

CHAIRPERSON: Oh okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay. Okay.

ADV SELEKA SC: So I think she needs to have the opportunity to look at it Ms Klein. We also need to have an opportunity to look at that because...

CHAIRPERSON: Okay.

ADV SELEKA SC: We only received them yesterday.

20 **CHAIRPERSON:** Okay no then I understand.

ADV SELEKA SC: Yes Chair.

MS KLEIN: Chair just to be clear am I going to get a copy of that first report from you so that I can look at it because I do not have?

ADV SELEKA SC: Yes that is what I am saying.

MS KLEIN: Oh alright thank you.

ADV SELEKA SC: Yes.

MS KLEIN: Thank you Chair.

CHAIRPERSON: Okay. Okay.

ADV SELEKA SC: Thank you Chair. Chair that – Ms Klein you may want to answer this question and I want to make my concluding remarks. Because what we see is the – of the four executives only one comes back in circumstances that would have allowed all four executives to come back.

10 And when he comes back Mr Koko he is alleged to have then engaged in certain transactions that facilitated the awarding of contracts to Tegeta to McKinsey, Trillian and that that was the purpose for him coming back. What is your comment to that?

MS KLEIN: Chairperson that is certainly is not how I understood it at the time.

ADV SELEKA SC: Yes.

MS KLEIN: That certainly is not how I understood it and why I understood him coming back.

20 **ADV SELEKA SC:** No that is fine. On the one hand on the other hand is that this is the very person who was in fact behind the suspensions. Ms Daniels says she met with him at Melrose Arch in fact having been called by him. Ms Nonkuleleko Dlamini testified yesterday as well that Mr Koko had called her said provide me with your CV. This is before

the day of the suspension and they meet ...

CHAIRPERSON: I am sorry to interrupt you Mr Seleka. I think – I think you did not complete the first part relating to Ms Daniels with the part that is really important.

ADV SELEKA SC: Okay.

CHAIRPERSON: Ms Daniels testified that she was called by Mr Koko to meet with him at Melrose Arch and she says they met I think at a certain restaurant but from there Mr Koko took her to certain offices where the two of them met Mr
10 Salim Essa who said to Ms Daniels something along the lines what does one do if one wants to suspend an executive at – at Eskom? Or what is the procedure for suspending executives at Eskom?

And actually went on to tell both Ms Daniels and Mr Koko that there were certain executives who were going to be suspended the following day at Eskom. Because I think they were meeting on the 10th if I am not – the 10th March and that I think the names may have been mentioned or their portfolios but one of the things that Ms Daniels ...

20 **ADV SELEKA SC:** The names were mentioned Chair.

CHAIRPERSON: Ms Daniels said is that Mr Koko's name was mentioned by Mr Salim Essa as also one of the people to be suspended. And she says she looked at Mr Koko and Mr Koko did not show any reaction of being concerned or surprised or anything. And then Ms Dlamini gave evidence

and said on the 10th March she got a call from Mr Koko who wanted him or her to go to meet with him I think at Melrose Arch as well if I am not mistaken.

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Yes at Melrose Arch and she was not available to go there because she was occupied in a certain session but he then asked her to give him her CV. And then later in the evening the two of them did meet and because Mr Koko had not received her CV he asked her to send it to
10 a certain email address and he did say to her that there were certain executives who would be suspended and she that is Ms Dlamini could be asked to act in one of the positions.

So the person that on the 11th meets with you that is Mr Koko who seems very surprised and angry at the news that he may be suspended is not exactly accordingly to this evidence the same person that is not the same reaction that he seemed to have shown the day before when he and Ms Daniels met with Mr Salim Essa and Mr Salim Essa said he would be suspended.

20 So have that scenario. So when Mr Seleka puts this to you that you end up allowing Mr Koko back whereas the other executives go it is against that background. Okay.

MS KLEIN: I completely understand Chair and I completely understand and all I can say is...

CHAIRPERSON: Yes.

MS KLEIN: I think somebody is going to write a book about us one day.

CHAIRPERSON: Hm. Hm. Well Ms Molefe also corroborates in a certain way Ms Dlamini's evidence about her having received a call from Mr Koko because she says they were in the same session that day on the 10 March and at some stage I think around about lunch time Ms Dlamini approached her and told her that Mr Koko had phoned her asking that she should go to a meeting at Melrose Arch and
10 she said that is Ms Molefe no you cannot go because we are busy tell Mr Koko to phone me if he wants to talk to me about it. Or something to that effect. You understand.

MS KLEIN: I hear Chairperson and ja.

CHAIRPERSON: Yes. Okay Mr Seleka I might not have put your question the way you wanted to – the angle so feel free to put in – put it to her in the angle you wanted.

ADV SELEKA SC: Yes. Well I think the Chair has done it and Ms Klein confronted with these facts and the commission having been established because of some of these facts.
20 You look at that and as I said the circumstances that lead to him coming back are no different from Tsholofelo Molefe's circumstances. Dan Marokane circumstances. Mr Matona who actually is taking it to court says I want a relief to reinstate me. But none of that shakes the board to do what it does in regard to Mr Koko. Do you have any comment to

the Chairperson on that?

MS KLEIN: Chairperson all I want to say is and I am sure you are going to have other people coming I am not sure on the same topic but I would like you to test please with the other board members who pushed the hardest for Mr Koko not to come back. I would like you to please test them going forward.

CHAIRPERSON: Yes. You remember I said to you earlier on it is possible that we may – I mean Eskom may have had a
10 board which as a body wanted the executives back or had no problem if the executives came back but had had individuals within the board who did not want the executives to come back. That is one scenario.

Another scenario could be that the entire board or the majority of the board at least did not want them back. So there are those possible scenarios.

MS KLEIN: Agree. Agree Chairperson.

CHAIRPERSON: Ja.

MS KLEIN: Agree.

20 **ADV SELEKA SC:** Thank you Chair. And ja and one really needs to understand the fiduciary duties of the board. What role does the board play in this regard? Because we see yourself in your affidavit saying to the Chairperson I was mandated to get these opinions.

But you say it was your personal discomfort so it is a

little bit confusing there. But that is what you do nonetheless. But you do so only in respect of Mr Koko. And the question is, exactly what was going on in your mind when you go out of your way in your discomfort to have this man accommodated and ensure that there are no legal repercussions to Eskom visa vie the other members?

MS KLEIN: Chairperson at the time when the calls were made when I was asked because of my discomfort which I am sure you will navigate or interrogate with other witnesses
10 at that time there had already been conclusions reached with every one of the other three.

CHAIRPERSON: You know Ms Klein on the evidence that I have heard and on some of the things that I am reading affidavits and so on one gets the impression maybe it is not it is more than an impression that actually probably it is not an impression. The decision or the idea that there should be an inquiry at Eskom and that certain executives must be suspended came from outside of Eskom. It seems quite clear. You know.

20 **MS KLEIN:** I agree with that Chairperson.

CHAIRPERSON: Ja. Now the question that arises is with whom did it originally originate? Who came up with this idea and to whom did he or she sell this idea until it came to the Durban meeting – until it came to the board on the 9th and on the 11th? Who outside of Eskom originally came up with this

idea and what was his or her agenda?

It is possible that some of the members of the board knew quite well by the meeting of the 11th where the idea came from and who was really behind this idea but they had no problem pursuing that idea.

It is possible that among the board members there were some who did not know these things. Who did not know where this idea really came from. Who only knew what was said at the meeting and what they were told by Mr Tsotsi
10 and by Mr Nick Linnell.

And it is possible that among the board members there may have been some who were misled. There may have been some who may have genuinely thought that – that there was no other agenda other than trying to fix problems at Eskom.

But the moment you hear that on the 10th Mr Koko called Ms Daniels and took her to a meeting with Mr Salim Essa. Now if that part of Ms Daniels' evidence is true then it paints a different picture. And if the evidence that – her
20 evidence that Mr Salim Essa told her that there were some executives who would be suspended then he seems to have known the names already and was asking what procedure should be followed at Eskom if they wanted to suspend – if you want to suspend an executive.

All this is very worrying. And of course you have if

Ms Dlamini's evidence is correct then you have Mr Koko approaching Ms Dlamini and asking her to go to meet him at Melrose Arch.

And of course I think Mr Seleka read Mr Koko's affidavit where he denies I think having called Ms Dlamini on the 10th as alleged by Ms Dlamini. But the investigators have found cell phone records from which it would appear that – or that day alone Mr Koko tried numerous times to reach Ms Dlamini and ultimately reached her only twice. But
10 the other times he seems to have tried and not succeeded. If that – is those cell phone records are correct.

And then I have heard evidence when Doctor Ngubane was giving evidence here that when he was acting Chairperson or Chairperson at some stage he received from Mr Salim – I do not know whether it was Mr Salim Essa or Mr Howa – Howa who sent a document to Doctor Ngubane at Eskom in which they were – if he was effectively saying the board should make the following resolutions.

And the resolutions were about how the board should
20 – what position the board should take with regard to certain newspapers which had written certain articles. And Doctor Ngubane admitted that he put that to the board and the board went along.

So you may well have heard a board here which was being controlled from outside and was not acting in the best

interest of Eskom. And in that context it may be that there were some members of the board who were – who knew exactly what was happening – who knew the agenda and there may well have been other members who were not privy to all of those agendas but who went along for whatever reason.

So that – that is a picture that seems to be emerging. Did you want to say anything about it?

MS KLEIN: No Chairperson I cannot add to that. I think
10 everything that we have heard so far I cannot add – I cannot disagree with anything that you have said.

ADV SELEKA SC: Chairperson Mr Koko in fact admits:

“I called her on the day and we met for dinner in the evening at Midrand.”

CHAIRPERSON: He seems to admit the call that led to the meeting but my recollection is that he did not seem to admit the earlier call during the day or does he?

ADV SELEKA SC:

20 “I deny that I called her to Midrand – to Melrose Arch.”

CHAIRPERSON: Oh he – but on his version does it look like he only admits one call to her?

ADV SELEKA SC: You could say that from here.

CHAIRPERSON: Ja.

ADV SELEKA SC:

“I called her on the day and we met for dinner in the evening at Midrand.”

CHAIRPERSON: Yes.

ADV SELEKA SC:

“I deny that I called her to come to Melrose Arch.”

CHAIRPERSON: Oh okay, okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: So it may be that what he is saying is I
10 called her once but the purpose of the call was to invite her
for dinner. It could mean that I am not saying I called her
once I am saying whatever times I called her it was not for
asking her to go to Melrose Arch but it was for dinner.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: But of course Ms Dlamini has said that he
never called her for dinner and they did not have dinner.

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Correct.

20 **CHAIRPERSON:** They met for about twenty minutes at KFC
or McDonalds and that was all.

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: May I add to that Ms Klein because in
regard to the acting appointments.

MS KLEIN: Yes.

ADV SELEKA SC: The board itself you will recall the minute it makes that the acting appointment seemed to have been – seemed to have had a meeting beforehand with the acting CE which at the time is Mr Zethembe Khoza I believe before the suspensions were made. Before they could be appointed to act. You recall that night?

MS KLEIN: Are you asking me if I recall that?

ADV SELEKA SC: Ja recall the minute – what is recorded in
10 that minute. I think it is the 19 March.

MS KLEIN: Just help me Chairperson?

ADV SELEKA SC: I will help you.

MS KLEIN: Ja please.

ADV SELEKA SC: I will help you.

CHAIRPERSON: Are you asking whether she recalls having seen something along those lines in the minutes or are you asking her whether she recalls that that is what is happened or are you asking her whether she recalls both?

ADV SELEKA SC: I am asking in fact for both and the
20 question – obviously you could answer on a step by step basis. The first thing is you recall there had been minuted by the board in a board meeting and secondly that you recall that that is said to have happened.

MS KLEIN: No I do not recall. So if you can just read it to me please because I went through quite a lot of the minutes

but I do not recall a meeting – if I understood it correctly where people met prior to – is that in what you say is in a board minute?

ADV SELEKA SC: Okay let us see whether you can answer the second question.

MS KLEIN: Okay.

ADV SELEKA SC: Do you know that that had happened?

MS KLEIN: No I am not aware that there was a meeting.

CHAIRPERSON: What is that?

10 **ADV SELEKA SC:** Which is that...

MS KLEIN: Prior meeting.

ADV SELEKA SC: That the people who were subsequently appointed to act had had a meeting beforehand with the acting CE.

MS KLEIN: Chairperson..

CHAIRPERSON: With who?

ADV SELEKA SC: With the acting CEO Chairperson I...

CHAIRPERSON: Who was the acting CE again?

ADV SELEKA SC: That was Mr Zethembe Khoza.

20 **CHAIRPERSON:** And what date would that have been when they met with her – with him?

ADV SELEKA SC: The...

CHAIRPERSON: I thought they were supposed to have met with somebody at Melrose Arch on the 10th March.

ADV SELEKA SC: Oh correct Chairperson that – that is the

allegation made.

MS KLEIN: Okay.

CHAIRPERSON: Okay. Do you know...

MS KLEIN: No Chairperson.

CHAIRPERSON: Of anything along those lines?

MS KLEIN: No I do not. That is why I am saying just read to me the minute because I do not remember being at a meeting where that was discussed.

CHAIRPERSON: Yes okay.

10 **ADV SELEKA SC:** No Ms Klein you were there again the 19 March 2015. That is where the board decides to take disciplinary action Mr Tsotsi.

MS KLEIN: Yes.

ADV SELEKA SC: Yes.

MS KLEIN: Okay.

ADV SELEKA SC: There in that meeting it is noted the people who were acting in place of the suspended executives were allegedly called into a meeting and knew beforehand that they would be acting.

20 **CHAIRPERSON:** Well that does not say with – with whom they allegedly met. Does it say?

ADV SELEKA SC: Ja, no I can carry on Chairperson.

CHAIRPERSON: Ja, ja.

ADV SELEKA SC: That is the first line.

“The board needed to find out how this

happened. They were apparently called into
a meeting and the acting CE met with them.”

So we put this to you Ms Klein.

CHAIRPERSON: Ja that would be – that would certainly be different from what I understood to have happened on the 10th. I understood that the people who were going to act in the positions of the executives were called to a meeting at Melrose Arch.

I am under the impression maybe wrongly that they
10 would have met with Mr Salim Essa there maybe with Mr Koko as well but that might not necessarily be so. But I do not remember having heard or noted that they had had a meeting with the acting CE.

But if – but if people are going to be appointed to act in a position it is – it is not unusual that they would be informed ahead of other people.

If Mr Seleka I think I am going to fire you tomorrow. I would need to know whether I will have somebody to take your position and therefore I might talk to that person before
20 I tell you about firing you. Because I do not want to be in a situation where I fire you and then I cannot find somebody to act in your position.

So on the face of it if they were – if they were meeting with the CE let us say for example the day before their acting appointments were to be announced that would

not – that would not be of concern to me because I would take it that the board asked the CE to – to tell them.

But if they were meeting with people from outside of Eskom – outside of Eskom with outside people that is different.

ADV SELEKA SC: Yes Chair. Chair I would have allowed Ms Klein to explain to you who is the acting CE.

CHAIRPERSON: Oh okay.

ADV SELEKA SC: Because Ms Klein explain to the Chair as
10 at 11 March 2015 before the suspensions who is the CEO?

MS KLEIN: Before the suspensions it is Tshediso Matona
...[intervenes]

ADV SELEKA SC: Yes.

MS KLEIN: ...it was suspension, it became Zethembe Khoza.

ADV SELEKA SC: He became acting CE?

MS KLEIN: That is correct, Chair.

ADV SELEKA SC: So Chair, when they are saying there was a meeting, now they are now on the 19th of March. They
20 are talking, looking backward and said people who were earmarked to that, meet beforehand.

And when they were meeting, they were meeting with the person who is now the acting CE. At that time, he was also earmarked to act in the position of Mr Matona.

So this meeting is taking place and the board wants to

know but how does this happen that these people meet beforehand and they are told, which is not explicitly spelt out here. Ms Klein, if you could assist the Chairperson.

MS KLEIN: H'm.

ADV SELEKA SC: And the chairperson, there might have been that meeting, which is the chairperson referring to, at Melrose Arch. The Chairperson will recall Mr Baloyi yesterday, referred to Mr Zethembe Khoza saying he meet with officials of the DPE.

10 And now, somebody has to explain to the Commission what were the facts before the board at this stage, when this minute was recorded.

It may be a shorthand minute but you had more information that could be minute here.

CHAIRPERSON: Well, let me first say. If Mr Zethembe Khoza met with the people earmarked for appointment to act in positions, if he met with them before he was told that he would be acting CE, that gives a different picture.

20 But if he met with them after he had been told that he would be acting CE and after he had been told that maybe these are the other people who would act in the different positions, then I would not have any problem with that.

But from what you say and from the reaction of the board, it looks like the board had not told him that he would be acting CE at the time he met with them. Is that right?

From what you read in the emails.

ADV SELEKA SC: Ja. Yes, from the impression from the minute Ms Klein, because this seems to be a concern of the board. It seems to be that Chairperson that ...[intervenes]

CHAIRPERSON: They were surprised.

ADV SELEKA SC: That the board itself is surprised.

CHAIRPERSON: Yes. Did you remember anything like that in the meeting?

MS KLEIN: Chairperson, on the 19th... I must admit, the
10 one thing that stands out for me on the 19th were... it is a couple of things.

Remember, this is now not a normal situation. There is noise. There is all kinds of stuff you are dealing with. So I must admit Chairperson that for me was not something that stuck in my mind.

The one thing that stuck in my... there are two things. In my mind in that meeting, was the one that Mr Tsotsi was going to be talking to me about something that I as a board member refused to sign on the 19th.

20 And the other thing is, was the whole issue around the leakage of the information in the media that was coming at us.

So if it was something that I ought to have paid more attention to, I did not. I mean, we are talking about five years ago now. So I cannot remember...

Look, if I am in the meeting. But remember, Eskom at that stage, there were allegations flying all over the place. You did not know what to deal with first.

So maybe if I had, you know, a recording of that particular meeting it would maybe make it a little bit easier for me to responds to. A little bit more conclusively to what ...[intervenes]

CHAIRPERSON: So you cannot deny that that was said but you simply say, you cannot remember hearing that being
10 said.

MS KLEIN: I cannot remember what to react to something like that ...[intervenes]

CHAIRPERSON: Ja.

MS KLEIN: ...at that particular time. That is what I am saying.

CHAIRPERSON: Okay.

MS KLEIN: I am not saying it was not because if it is in the minute, it clearly was there.

CHAIRPERSON: H'm.

20 **MS KLEIN**: But how it got there, who said it, what the reaction was, how much time was spent. That is the part I am struggling to be able to answer at this stage Chairperson.

ADV SELEKA SC: H'm. Ja, this is by the way, the same meeting where the board referred to the letters of the suspended executives including the CE and that the

company secretary should prepare responses to those letters. It was the same meeting.

MS KLEIN: Ja.

ADV SELEKA SC: But this is what we were saying to you. It is... the documentary evidence, the evidence of the witnesses who say: I was called. I went there. The board minutes this. Ms Dlamini is told beforehand by Mr Koko:

There is a possibility that you will act. I, possibly, going to be suspended along with other executives. This is before
10 the board meets on the 11th of March.

This is before the board meets with the minister. This is before the board makes its decisions after the meeting with the minister.

The board engages after making these resolutions with Mr Nick Linnell to draft the media release, to draft the terms of reference.

He is invited by Dr Naidoo to the Build Programme. He meets with Ms Mabude in regard to the terms of reference. He is said to... he is asked to assist P&G and...

20 Well, shortly thereafter, of course, he gets terminated. And it is said to be, he is going to coordinate an inquiry on the 11th, on the 12th, on the 13th, 14th.

On the 17th, Ms Klein he refers to the Chairperson to an email he received that says to him: We no longer need you to come to this meeting.

Now that terms of reference he had prepared, he says he is being rejected. This is in March. 20 April, you have appointed Dentons as the board to conduct, again what you say, it is an inquiry.

It has nothing to do with the conduct of the executives. The inquiry is set to, it will run for three months.

However, Dentons says: We have stopped about seven weeks into the job. And we get a letter from the board saying: We are satisfied with your report. Give us... this
10 will be accepted as the final report.

They say their report is a mid-point report. You cannot rely on these things because they have not finalised their findings.

You bring back Mr Koko despite you, on your version, the Dentons' report finds nothing, no wrongdoing. You say you go ahead, you take a step further to confirm with Dentons.

And they say no wrongdoings against any of the executives but it is a fact you knew beforehand. Only one
20 person comes back.

The three are separated from Eskom despite their requests to come back. One is even fighting legally. Litigation to come back.

How is that the board could not have realised that something must be amiss in this whole thing? How is that

you did not realise something is amiss?

MS KLEIN: Chairperson, when you are in a situation where you have got bombs going off all around you. You have got load-shedding, you have got no money. You have been told by your shareholder representative that you got to move things along because things cannot continue as they are.

You have got the media shouting at you about stuff that... decision that you have made which are wrong. It is very difficult to look at anything outside of what you are
10 sitting with in front of you.

So to ask me if there was anything that was obviously wrong, I would say: Yes, there were a lot that were obviously wrong. For myself. I cannot talk for the board members, for myself.

ADV SELEKA SC: Are you saying, this was wrong?

MS KLEIN: Yes.

ADV SELEKA SC: This what I have narrated to you, are you saying that was wrong?

CHAIRPERSON: Maybe, let her continue.

20 **MS KLEIN:** Ja.

CHAIRPERSON: We will see at the end whether she is talking about that.

ADV SELEKA SC: Yes.

CHAIRPERSON: She says: Yes, there was a lot that was ...[intervenes]

MS KLEIN: There was a lot that was wrong.

CHAIRPERSON: At some stage, she will tell us whether it includes what you have said.

MS KLEIN: We have to then make decisions based on what you have got in front of us. Remember, there are all kinds of things that have now come out of the woodwork about who knew what and who spoke to who and who did what.

At that stage, for those of us who were keeping our heads down and trying to solve the problem, that is what we
10 thought. That... not, we. Let me talk for myself. That is what I thought we were doing.

Obviously, with everything that I have heard up to now, affidavits and what has come out of the reports and what has come out of the parliamentary inquiry.

Maybe I could have been a little bit more vigilant. But let me say this to you Chairperson. My family hardly ever saw me. It is not indicated in the minutes. But I most nights went home at twelve o'clock. Because you became so involved in operational, trying to solve different problems.

20 So should we have been more vigilant Chairperson? I suppose the answer is today, absolutely yes. Should we have seen more? Yes.

Did we know that there were strings being pulled from maybe one agenda, two agenda? I do not know. All I can say to you is.

I believe that with what I had at that stage, I believe we were... I thought we were busy with the right thing.

CHAIRPERSON: Now, having heard some of the evidence that has come out here, some of it came out in the Portfolio Committee in parliament and maybe based on whatever else you may have read.

Looking back, do you not believe that there probably were people outside of Eskom who were influencing decisions that were being taken by the Board of Eskom?

10 **MS KLEIN**: Chairperson, I have no doubt of that based on what I know today.

CHAIRPERSON: Yes.

MS KLEIN: Based on what I know today, I have no doubt of it.

CHAIRPERSON: Yes, yes. The report, the Dentons' report... Mr Seleka was reading from somewhere that Dentons say they were told they had three months to investigate.

I guess it probably means investigate and submit their
20 report. But they say seven weeks into that three months, they were told to stop and prepare a report.

Now, do you know what justification the board had for asking Dentons to stop their investigation after only seven months(sic) of investigation when the investigation...

When the same board had thought the investigation

warranted three months? Do you know what justification the board had for stopping them so early into their investigation?

MS KLEIN: Chairperson, I can only tell you what I have heard from Arc(?) at the time because I was not a member of Arc at that stage. What I was told or what the board was told is that whatever was coming out of the inquiry, the...

You know, the investigations at the time, were not matters that were unknown to Eskom. These were matters that were known to Eskom.

10 My understanding is that that is when the board said and the board, I believe was Arc, but we can confirm that. That then take out the uncorroborated pieces because if we were to come out with a report which was not fully ventilated and fully investigated, we could find ourselves being sued by those people mentioned based on just an allegation. That is my understanding from Arc.

So if you ask me why were they stopped within seven weeks, I can only tell you what the board was told and the board was told that there was nothing coming out from the
20 investigation other than the stuff the board already knew. That is why it was cut short.

CHAIRPERSON: You see, that is worrying to me because one of the executives who were suspended, it may have been Mr Dan Marokane.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: He says, I think in one of the letters he wrote to the board or to the chairperson of the board or maybe he said so in his evidence but I think he said so in one of his letters.

He says but there have been a lot of investigations before. Maybe it is not him but one of the executives said: When I heard about this thing that we are going to be suspended because there was to be an inquiry or an investigation, my reaction was but there had been lots of
10 investigations at Eskom. We know, you know.

So you have a situation where one, this new board goes along with an idea which comes from outside of Eskom to have an inquiry.

They do so at a time when one is tempted to say, they probably still need some time to understand exactly what is going on at Eskom because Eskom is quite, I think, a complexed, you know, entity.

So this idea comes from outside of Eskom. It gets sold to them. They are still new. They go along with it. People
20 who have worked at Eskom for a long time, people with technical know-how of Eskom.

These executives or at least one of them, thinks but: Hang on. There have been... we have got reports. There have been investigations before. But this board goes on and it says, we will need three months for this investigation.

But seven weeks into the three months they say stop. That is strange. But here is another angle. And I have not looked.

Mr Seleka might have looked how in terms of the timeframes, the timing. One wonders whether the idea that the investigation should be stopped seven months(sic) into the investigation, does not coincide with the fact that the board members know that the three executives are going. The three executives are going.

10 And maybe this whole idea of an inquiry was an excuse to get rid of these executives. Pretend as if Mr Koko is also being suspended.

He is being put in the same position as the three executives. But actually, that is not the case because he knows about the whole plan if Ms Daniels' evidence is true about that meeting on the 10th. If Ms Dlamini's evidence is true.

20 He knows about the whole plan and actually he seems to be part, if that evidence is true, of plans as to who should act, who should not act.

And the three executives are kicked out even when some of them say: I actually, I am not wanting to talk about leaving Eskom.

Somehow, they are told: No, let us talk about you leaving. They are get giving a lot of money. Mr Koko

remains.

Then, after some time, maybe a month or so, after that Mr Brian Molefe from Transnet is brought to Eskom to be CEO, acting CEO. And that is about April 2015.

MS KLEIN: H'm. That is correct, Chairperson.

CHAIRPERSON: October 2015... October 123, 2015, I have heard evidence from Mr Jonas that at that time when he had a meeting with somebody from the Gupta's who seemed to have been Tony Gupta, that person told him, Mr Jonas,
10 then Deputy Minister of Finance, that we have a number of people who are working with us.

And he mentioned some of them. And Brian Molefe is one of them. Ms Lynne Brown is another one. I think he mentions one or two others.

Mr Jonas says to me when he gave evidence here. He says: The Gupta brother who met with me in that meeting, he told me that these people are working with them.

And he even said: Mr Brian Molefe's career is well-taken care of or something to that effect. Or words to that
20 effect. He is well-taken care of.

And then Mr Anoj Singh who was CFO at Transnet, gets also moved to Eskom after he follows Mr Brian Molefe. Dr Ben Ngubane says in his affidavit before this Commission.

He says he knows how Mr Brian Molefe got seconded to Eskom but he says he does not know how Mr Anoj Singh

ended up at Eskom.

So you have a situation where the chairperson at the time does not know how the CFO, somebody who was taken from Transnet to be CFO at Eskom, how he got there.

So you have this situation that people seemed to be pushed out when there is no wrongdoing alleged against them. They get given a lot of money.

One person gets... remains behind. And within a month or six weeks or whatever or two months, people are taken
10 from another entity, SOD and brought in here who take certain positions.

Of course, I have heard evidence of some of the things that are alleged to have been done by them at Eskom. They will still come and give evidence put their side of the story. Maybe when they have given their side of the story, one would get a different picture.

But on the evidence that so far has been given, that is part of the picture that seems to emerge. I know I have said too many... [laughing] too much.

20 But you might wish to say something. But it just does seem to say to one when one looks at this picture. This whole issue about an inquiry may have been simply and excuse to get rid of certain executives so that they would make way for certain individuals to be brought in.

And maybe once the board knew of those of the

members who knew what was... what the agenda was. Once they knew that these executives were going, there was no point in continuing with the investigation.

So it could be stopped before it could really finish its job.

MS KLEIN: Ja, Chairperson I think you have said a lot and one does not want to take anything away from who you view it at this point in time.

Short of saying that, obviously, if one was not in the know and you were doing the best job that you could, that is what you did.

And load-shedding was a big thing for us at that stage. Everybody wanted load-shedding to end and...

But I am sure... I am not going to add to it. You have given us where you, you know, where your thoughts are right now.

CHAIRPERSON: H'm, h'm. Mr Seleka.

ADV SELEKA SC: Thank you, Chair. Chair, that reason for cancellation of Dentons' investigation. Ms Klein, it is a very significant one.

And the Chairperson is addressing this issue by reference to Mr Marokane. It is, in fact, him who writes on the 18th of March 2015 and specifically what the Chairperson recalls is that:

"I implemented performance management to include

lower levels to ensure that everyone is doing what is required and priorities where necessary.”

Now the board had celebrated the first achievement of Medupi Power Plant. What is it? The Medupi achieved its first integrated project schedule since the project was started in 2007.

He says he gets suspended, nonetheless. There is a minute where the board says the minister would like to be invited to occasions like this so that they can celebrate with
10 the board. I am paraphrasing.

But this is the point the Chairperson is saying. He says in the next paragraph:

“All of the above elements were identified as crucial by a number of independent reviews conducted by external parties which reviews were done on behalf of the board.

During my term as Group Capital Executive, I created meaningful and tangible progress in the execution of various projects which saw in particular
20 the delivery of the first unit of Medupi achieved one week prior to my suspension.”

But the Chairperson was emphasising the recusal already done by external persons. And then he says when he concludes:

“If the board has an absolutely genuine desire to get

to the heart of all of Eskom's problems, understand how those programmes came about and how they were over time handled and mishandled and what Eskom needs to do in order to overcome the challenges, I am willing to cooperate with independent investigation."

When he is here, he says to the Chairperson but the board did not know the issues. I knew the issues. I have been here. There was nothing new.

10 Mr Matona himself says that. And it is so interesting when you say Ms Klein, the basis for the board to stop the investigation is that the board said nothing new is coming out of it.

CHAIRPERSON: And it goes back to a question that I raised both with you and I think with Mr Matona and Dr Ngubane if I am not mistaken earlier on, to say. I do not understand the need for the suspension of the executives in circumstances where the board says the investigation is not into any allegations of wrongdoing on their part.

20 And I was saying, if there is a genuine desire to find a solution, how do you exclude the people who have... who worked with this all the time, who are the leaders? How do you exclude them? Of course, I was told: Well, they would still be interviewed ...[intervenes]

MS KLEIN: H'm.

CHAIRPERSON: ...even if they were outside but it goes back to that question. So you then say, seven months(sic) into the investigation, it is stopped by the board. It is stopped because it is said what is coming out is nothing new.

And one of the executives seems to have thought exactly that, that really there are reports. There have been investigations. We know what you are going to find.

But because they were pushed out in the way in which they have simply been pushed out, this is what happened.

10 And then the board realises, really there is nothing new.

So we should stop. But maybe the board realised or some of those members of the board who may have known what the agenda was ...[intervenes]

MS KLEIN: H'm.

CHAIRPERSON: ...realised: Look, the whole point of the inquiry was so that we could suspend these and get them out. They are out now. Why should we waste time with this... with this? So we can stop it. It is not like that but one cannot resist the temptation to think along those lines.

20 **MS KLEIN:** Chairperson, I just want to add one thing. I mean, I cannot take any from anything that either you or Advocate Seleka said. I cannot because, I mean, I cannot argue what is developing. I want to, however, just add that the idea of the inquiry, not the suspension, the idea of the inquiry also came from the war room. It think it has got to

be – one has got to under - for me, in any event, you were getting inputs from various groupings. I mean, here we have heard from Mr Linnell about stuff that happened much higher up, we have heard about other people being involved but you had a war room and the war room, Chairperson, I must say in their minutes also called for an inquiry.

Sure, I mean, it did not talk about the stages but also called for an inquiry. Now I am not sure what the
10 basis of that was but there was also a call for an inquiry from the war room. I just – that is really the only thing I can add on ...[intervenes]

CHAIRPERSON: Yes. No, it would be important if one could find minutes to that effect because I certainly have not had that part.

MS KLEIN: Yes.

CHAIRPERSON: But Mr Tsotsi did say that when he was told at the Durban meeting about the idea that there should be an inquiry as into the affairs of Eskom, that resonated
20 with him because he had himself thought about the idea of an inquiry, that is what he said, you know? So it was easy for him to go along with that part.

The part which he said he found difficult was the suspension of the executives but whatever – what we do know is that Mr Tsotsi was called to a meeting in Durban by

Ms Myeni, according to Mr Tsotsi's version, to meet with the former President, Mr Zuma, and he came and at that meeting the idea of an inquiry was raised as well as the suspension of the executives.

Whether either the then President or Ms Myeni had got the idea of an inquiry from the war room or from somebody who was assisted with the war room, we do not know but I have also seen Ms Lynne Brown's affidavit who makes it clear that he knew nothing about the Durban
10 meeting. She makes that clear. And that is strange if the Minister responsible knew nothing about the plans for that meeting but Ms Dudu Myeni, who had nothing to do with Eskom, was the one coordinating and calling everybody to the meeting and, of course, according to Mr Tsotsi and Mr Linnell, when they met with Mr Zuma in that meeting, according to them it was clear that Mr Zuma knew the issues that were being discussed. So the idea of an inquiry that was being pursued by the board was the idea that was raised at the Durban meeting. Whether before it
20 went to the Durban meeting it had been to the war room or it came from somewhere else, we do not know. Okay.

ADV SELEKA SC: Yes. Ms Klein, the war room issue, yes, the Chairperson is correct, you are raising it for the first time that the war room also had contemplated an inquiry and it is very strange because when Mr Tsotsi met

with the board on the 9 March, Mr Matona says I am confused, you are telling us that the President wants an inquiry into Eskom's affairs but cabinet, which is headed by the same President has decided that there should be a war room and it is conducting essentially an investigation to help Eskom turn around its situation. So he says how can the President, when he is in cabinet, speak with one voice, when he is out of it, he speaks with another voice?

So it is difficult to say, I mean, that the war room itself
10 would have wanted an inquiry when Mr Matona spoke along those lines.

MS KLEIN: Let me respond this way to you, Chairperson, I am actually making the comment on the war room based on the minute of the 9th. Remember I was not there on the 8th. My understanding of what Mr Matona said, unless I read it wrong, was that here was – I did not understand him to mean that here is an inquiry, I understand him to mean but the war room has also called for an inquiry. So there may be – then Chairperson, then let me just go and
20 reread and maybe, Chairperson, come back to you on that because the point I made on the war room was specific to my reading of the minute of the 9th.

CHAIRPERSON: Yes, okay.

MS KLEIN: But let me rather just go – remember you have given me a recording as well, so let me go and re-

read it and read that.

ADV SELEKA SC: Yes. No, you do have the recording, you do have the transcript, so it is there in the transcript, in the record.

MS KLEIN: Do you want me to do it now or do you want us to...?

ADV SELEKA SC: No, you do not have – you can do it now ...[intervenes]

MS KLEIN: No, I will come back to it.

10 **CHAIRPERSON:** Ja, that is fine.

MS KLEIN: I may have misunderstood what I read there.

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes.

MS KLEIN: So I understood that to mean Mr Matona is saying this.

CHAIRPERSON: Ja, no, you can come back to it.

MS KLEIN: But I can come back to you, let me clarify and then I can [inaudible – speaking simultaneously]

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Yes, maybe it might be in an affidavit way, that is fine.

MS KLEIN: Ja, ja, I will do that.

ADV SELEKA SC: That is the one thing but I want to come specifically to you, Ms Klein. You said in your affidavit and you have said this to the Chairperson when

you were here before that you supported the departure of Ms Matona because he did not have a plan. He did not have a handle on the turnaround. In your affidavit you say that but to the Chairperson, he did not have a plan.

MS KLEIN: Yes. Yes, Chairperson.

ADV SELEKA SC: But, Ms Klein, you were in the meeting of the 11th prior to the meeting with the Minister. You were in that meeting. Mr Matona presented his report and the minutes read:

10 “The CE had developed a turnaround...”

Had, past perfect tense.

 “...developed at turnaround plan which was being updated and put onto a firm foundation. The initial presentation had been used at the board induction and presented to the Deputy President. The CE was in the process of engaging labour and the trade unions, staff morale was a serious challenge that was being explored. He stated that the turnaround strategy considered all initiatives and tabled them

20 at the war room for consideration. At the last war room meeting with the Deputy President Eskom had advised that they had responded to all requests for information from the war room and had requested that management be advised of any gaps. At this point the Chairman was excused from the

meeting...”

That is Mr Tsotsi.

“...to meet with the Minister of PE. Ms Klein took over as Acting Chairman.”

This is mentioned just before you take over as Acting Chairman.

MS KLEIN: Chairperson, I maintain my position, which is I had no confidence in the CEO. Can I just quickly just complete?

10 **CHAIRPERSON:** Yes.

MS KLEIN: I completely support what you say because that is exactly what is minuted. However, the full turnaround strategy had never been presented to the board. In part it is saying there he had developed it and he was updating it. The first time the full strategy gets presented to the board is at the next board meeting. So the full strategy had not been presented to the board.

So I am still sitting here, and I have given you my views.

20 **CHAIRPERSON:** Yes.

MS KLEIN: Not everybody else’s, about that I had no confidence in the CEO.

CHAIRPERSON: Yes, but I think Mr Seleka’s point is this. When the Minister arrived on the 11th, as I understand the position, Mr Matona had not finished presenting his plan,

he was interrupted by the fact that the Minister had arrived and the board had to meet with the Minister. That is my understanding, at least. In other words, therefore:

1. He had not finished.
2. The board had not had a chance to digest his plan and engage him.

Now against that background, the question that arises is how could you not have confidence in him at that stage before you could listen to the whole plan?

10 **MS KLEIN:** Chairperson, my understanding of what Mr Matona was presenting that day was the CEO update, it was not the turnaround strategy.

CHAIRPERSON: But even if it was not the turnaround strategy, he had begun – he had been appointed as Group CEO I think with effect from sometime in October or beginning of November, I cannot remember – or beginning of October, beginning of November, that is when he was appointed. So would this not be a situation where even if he had not yet come up with a turnaround strategy, given
20 the shortness of the period within which he had been at Eskom, that would be understandable and he should therefore be given a chance to come up with a turnaround strategy?

MS KLEIN: Chairperson, I think I have explained myself, my perspective to you the last time. The world I come

from, a CEO earning R500 000 a month, comes in, does not look at all the problems of the past and starts immediately turning things around.

The piece that Advocate Seleka read is one hundred percent correct, I referred to it the last I was here to say that he was in the process of it, he was developing it, which was – it does not take away – you may have a different view on it, but my position, where I was at, given that we were on a burning platform, we needed to move but
10 I felt that we were not moving fast enough.

CHAIRPERSON: You see, I – you may be saying in your view even that period that I say was short was long enough or somebody who is paid so much money if he was worth that amount to have prepared a turnaround strategy and have it ready, you might be saying that – and I cannot necessarily say that is not true, I am not sure - but on the face of it, it just seems to me that given the fact that he was appointed so late in the year and given the Christmas, December, January holidays, it maybe that it is unfair to
20 expect that be early March he would have completed a turnaround strategy particularly because I imagine that if a strategy was to be successful, he would had to get a buy-in from various units within Eskom and maybe even stakeholders, I am not sure, there had been no board which maybe could have approved that strategy if he

needed to present to approve it before he could use it, I am not sure. This board had its induction mid-January. They were appointed in December. It seems to me that there may be room for saying given all of this maybe it was not – it would not be fair to expect that by early March he would have had a strategy that had had the buy-in of all concerned. But you might say the world in which you have operated is different, forget about holidays, when there is a job to be done, you get into the job, he should done, a, b, c, d and have the turnaround strategy read by the induction of the new board.

MS KLEIN: Yes.

CHAIRPERSON: So feel free to say that is...

MS KLEIN: That is what I am saying.

CHAIRPERSON: That is what you are saying. Okay.

ADV SELEKA SC: Thank you, Chair. Well, that has raised a new concept which is that you do not have confidence in him but what you were saying to the Chairperson is that he did not have a turnaround strategy and I was showing you that minute which actually says the contrary.

MS KLEIN: Then, Chairperson, my point last time round was to say that he did not have a completed strategy – did I say completed?

ADV SELEKA SC: No.

CHAIRPERSON: No, you did not say completed, ja.

MS KLEIN: I said completed – said he was busy developing a strategy, that those were my words.

CHAIRPERSON: Oh, ja, you said that, ja.

MS KLEIN: Those were my words.

CHAIRPERSON: Ja.

MS KLEIN: So which you just read now, that is exactly what is in there as well. But I think the question that I was asked was that he was stopped when the Minister came in.

10 He was busy giving us his CEO update at the time.

CHAIRPERSON: Yes, yes, okay.

MS KLEIN: Which had to do with the development of the strategy.

CHAIRPERSON: Of the strategy, okay, okay.

ADV SELEKA SC: Yes. Then to the Chairperson's point – well, so he has not given a chance to do that. The settlement agreement with Mr Matona and Dan Marokane are both in May 2015, respectively Matona 15 May 2015, Dan Marokane 28 May 2015. And here is the narrative, Ms
20 Klein. Now the board knows these people are out of the way. No suddenly the board realises the investigation has nothing – it is not about anything new, we know this thing, we are in June, we do not need this investigation. The impression is the board now knows. They have achieved their objective.

They go along with Mr Linnell, they dump him after seven days. A month later they appoint Dentons. The executives are on suspension about ...[intervenes]

CHAIRPERSON: But surely – please do not forget your line of thought, Mr Seleka.

ADV SELEKA SC: Yes.

CHAIRPERSON: The one part which you are not mentioning even before you come to the appointment of the Dentons, which I was going to raise with you in due
10 course, is Mr Tsotsi is himself kicked out by this board and Mr Tsotsi testified before me to the effect that around about beginning of February around the days of the State of the Nation Address 2015, he was called by Minister Lynne Brown to a meeting where she said to him Chairperson, I am getting complaints that you are interfering in operational matters, or something like that, you must stop that or otherwise I will find somebody else to do your job. Mr Tsotsi says later that day, same day, maybe a few hours later, he got a call from Mr Tony Gupta,
20 I think he asked him to come for a meeting with him, and at that meeting Mr Tony Gupta said to him Chairperson, you are not assisting us, we are the ones who put you into this position, we can take you out.

Within two month thereafter this board has kicked Mr Tsotsi out. It has kicked out these three executives, it

has kept Mr Koko, it kicks out Mr Tsotsi, against this background of this evidence, which has at least not so far been denied, and it stops the investigation. It stops the investigation and, of course, I mean, there is the issue of Mr Brian Molefe and Anoj Singh being taken from Transnet and brought to Eskom. And, of course, later I have had evidence about some of the things they are alleged to have done at Eskom which are alleged to have benefited certain people.

10 So, I said do not forget your line but I thought you may have forgotten the Tsotsi matter.

ADV SELEKA SC: Yes.

CHAIRPERSON: He has been kicked out against the background of what had been told by him by Minister Brown, according to his evidence, and by Tony Gupta, according to his evidence.

ADV SELEKA SC: Yes. Yes, Chair, thank you. Yes, the Chair has added the foreground to that because along with Mr Linnell this deep dive investigation, that he is removed.
20 He cannot even finish his terms of reference. He talks about his meeting with Ms Mabude at Mr Tsotsi's house and Ms Mabude, this time around, has a cooling – shows a cooling of enthusiasm, according to Mr Linnell. But the executives are suspended.

The board then, a month later, appoints Dentons. It

stops that investigation, midpoint, Dentons says. It pays Dentons over 17 million for working a little over six weeks but Ms Klein – and I have stopped there because I am putting a pause. Because, you see, this was a company without money and here you sat on the board that approved the payment of a little over six weeks' work, which you stop midpoint, of R17 million and then the executives are paid a total and we have not touched on whether they were paid for their pensions, which is not
10 mentioned. So these figures we are talking, might be even more.

CHAIRPERSON: Well, the executives it seems are paid not less than R18 million, all of them, the three. So if you say R18 million to the executives, R17 million to Dentons, you are going to what, 35 million? This is the board of an entity that is said to be in serious financial trouble and this investigation, for which they pay so much, is stopped immediately, within seven weeks. Lots of money is even to the executives. For what? To allow them to go. To allow
20 them to go, that is what it seems to be.

MS KLEIN: Chairperson, all I can say to you is that we were running an operation of about – what did we call it? R4 billion, with a buffer of 4 billion which was one month's turnaround. The Eskom numbers are huge. It was costing us R30 million a day – sorry, an hour, to run that business.

There was a budget received of R20 million for running Dentons' inquiry.

For you to ask me why we stopped it after seven weeks, I have given you the answer that I know. If there was a different answer, maybe you need to bring different people to give that answer. The only answer I know, which is the answer that was provided by audit and risk, was that what was coming out of Dentons was nothing new.

And now, remember, I am not Chairperson of audit
10 and risk but when we talk about 20 million for a company that does not have money and 18 million for suspended executives, Chairperson, we were running a business with a turnover of 340 billion. These were huge numbers, so whilst in the context of the discussion today, it is big. If you had looked at Eskom's complete salary bill, for example, it was – numbers we spoke about was negligible. I suppose what you are asking me, is do we feel that we wasted the money? Maybe is that the point?

CHAIRPERSON: It ends up – it goes back to was there a
20 good reason? Was there a good reason to get rid of the executives? Was there a good reason to pay the executives the amount that they were paid and then you ask yourself the question were there good reasons to bring in this investigation and spend R17 million or was all this simply and excuse – was it part of an agenda to achieve

certain things? Some people – that some people might have known about, maybe others might not have known about, that that is the context.

MS KLEIN: And I cannot add to anything you have said, Chairperson.

CHAIRPERSON: Yes, yes.

MS KLEIN: I did think that – I have been asked the question and I have given you the best answer I can give you.

10 **CHAIRPERSON:** No, you have, you have and I think you cannot add. I think the reason why one keeps on coming back to this, because the more you think about it, the more you really get very concerned.

MS KLEIN: I understand.

CHAIRPERSON: Ja, ja. But at some stage, Mr Seleka, I think I would like to hear what Ms Klein has to say about whether the charges that were preferred against Mr Tsotsi and that whole thing, whether that was justified, that was genuine or whether charges had to be found because he
20 needed to go, according to certain people and, of course, maybe not everybody in the board might have been privy to any agenda.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: So but I just mention that at some stage you might deal with it.

ADV SELEKA SC: Yes, so that I do not forget it, Chair. And we heard to these costs, Ms Klein, the legal costs that would have been incurred, Bowmans being sought to give a legal opinion about keeping somebody – whether or not to keep somebody on suspension or whether or not there is wrongdoing against him when the board knew – the board knew that Dentons was not investigating any wrongdoing against them.

But, if I got to the main thing, is that the impression
10 created is that the investigation was a sham because it was never in fact undertaken. There was a purpose, ulterior, to Eskom that was being pursued. Your comment on that?

MS KLEIN: Chairperson, I was part of a board who had agreed the inquiry. I was not part of audit and risk when it was stopped. I have given you the only answer I have which was what I was told as a board member is that things that were coming out were not unfamiliar, which is why at a time that was the view. But I do feel, Chairperson, that
20 you would need to bring the people who made the decision to stop that.

CHAIRPERSON: Yes, no, no, that is fine.

MS KLEIN: To properly interrogate it, as I mean I cannot give you more.

CHAIRPERSON: Ja.

MS KLEIN: And it may not be the answer that is being sought right now.

CHAIRPERSON: Yes.

MS KLEIN: But I cannot say to you I stopped it and this is why because I do not have that answer.

ADV SELEKA SC: Okay.

CHAIRPERSON: Okay, no that is fine. Let me ask this question. Was the Dentons' report used to any useful effect in the end by the board?

10 **MS KLEIN:** Absolutely, Chairperson. In fact I have included in my affidavit the findings. Then, what happened to the findings is it was broken up by different divisions and how the board on a regular basis, through audit and risk used to get feedback on how progress had happened in each of the areas identified. I sit it under correction, but I think there were like 72 areas identified and each of those had to then go to different executives for plans to be put in place and that was tracked on a regular basis by the board.

20 **CHAIRPERSON:** Now I assume that if that is correct, if that is true, it may be that its recommendations that they made that may have been used like that as opposed to what they unearthed, because you have told me that seven weeks into the investigation they were told to stop because what they were unearthing was what was known, is that

correct?

MS KLEIN: That is correct Chairperson.

CHAIRPERSON: Ja, so it may have been just recommendations.

MS KLEIN: Correct, what the Board was working with was the recommendations out of the work that Dentons had prepared.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Thank you Chair. Can I ask you a
10 question on this Ms Klein because it is very ironic that the Board says ultimately that's the Board making that decision, what we are getting from Dentons is nothing new, but you want to assert to the Chairperson that there were recommendations that the Board could use from that report, which gave you nothing new.

MS KLEIN: Chairperson the recommendations that came
20 out of Dentons, to answer your question, was taken, broken up into different departments and that was then established as this is what the Board is going to track. If that is considered to be nothing new that we need to ask the executives, I am a Board member, I get given something which I am told by my ARC colleagues who looks at this, and I do feel Chairperson that you need to get the Chairperson of ARC in here to ask these questions because I am answering this as a Board member who didn't

serve there at the time but to the best of my recollection this is the recommendations, I am told from ARC there was nothing new but these are the recommendations, the Board then wants to see that these recommendations are now on a monthly basis tracked and that we get through to conclusion on the outstanding matters, but for me to sit and say to you now there was nothing new but therefore the recommendations – I can't respond to that Chairperson, I apologise.

10 **CHAIRPERSON:** Yes.

MS KLEIN: I think this is not where, I was not on Audit Risk that you need to ask them.

CHAIRPERSON: Yes but of course what you would have – what you would be expected to have been interested in as a Board member is whether the work of Dentons made any difference at Eskom, whether the investigation or the recommendations ended up making a difference at Eskom because you would want to know did the people we brought in as a Board add value, you know to Eskom, if they made
20 recommendations, it is one thing to say different units must use those, but you would go beyond that one would expect, in due course say give us a report. The implementation of those recommendations how does it work practically, how – has it been helpful, you know that's the kind of thing one would expect Board members to want a report on at some

stage or another. Is that something you are not able to say?

MS KLEIN: No, no I can respond to that Chairperson.

CHAIRPERSON: Yes, yes.

MR KLEIN: That is what I had attached to my affidavit, was to say these were the findings and on a monthly basis Audit & Risk used to sit on a monthly basis or six weekly to say now executives give us feedback on each of these, but to reconcile that point back to – these are things that was
10 known before, I cannot respond to that, because I don't know what was before, I am talking about the recommendations that went out and that those were tracked, by the time I left Eskom I know that there were only two matters that had come out of the recommendations that were I think still open.

CHAIRPERSON: Okay.

MS KLEIN: But what it was and was it a duplication of before I think you would need to ask that of the people who were involved directly with that.

20 **CHAIRPERSON:** Okay.

ADV SELEKA SC: If the Board did not interrogate what was given to it Ms Klein as it sounds ...[intervenes]

CHAIRPERSON: We are at ten to six.

ADV SELEKA SC: Ja, as it sounds to be from your explanation to the Chairperson, it sounds, it gives the

impression that the Board would have failed in its fiduciary duties.

MS KLEIN: Chairperson I do not agree with that, the question that I am being asked is did the recommendations, were those recommendations if it was no, was it the same and I am saying to you I do not have the answer, we would need to go back to the people, number one, who wrote the letter to say stop this because there is nothing new here.

10 **CHAIRPERSON:** And you didn't know what was known before?

MS KLEIN: I don't know what it was before. What I know was that the recommendations that came out here was then tracked on a monthly basis. It would be interesting, I mean if Counsel is asking me was it the same as before I would suggest bring in the Chairperson of ARC and let him give you the answer because I cannot.

I believe my fiduciary duty was fulfilled by here were recommendations, here was value for money
20 according to me and this is how we track the progress.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes, then this narrative continues Ms Klein because then we see after the Board had acted together with Mr Tsotsi.

MS KLEIN: Yes.

ADV SELEKA SC: Before the month ends on the 19th of May, that's 11 March you acted with him after the Minister came there, Dr Ngubane says after the Minister left it was now clear that is the shareholder who wants the inquiry ,the shareholder who wants the executive to step aside. Nine days later you are sitting in a meeting of the Board where you are resolving that Mr Tsotsi must be charged, the first charge is that he procured the services of an external consultant Mr Nick Linnell to provide consultant
10 services to the company without following the company's prescribed procurement processes or informing the Board – or informing the Board of his actions, but you agreed with him. Mr Nick Linnell was invited to the P&G, to ARC by Dr Pat Naidoo to Build Programme Committee, how is it that the Board charges Mr Tsotsi with the very thing or conduct the Board itself took part in it?

MS KLEIN: Chairperson with due respect my view I don't believe that we invited Mr – look I can't talk about the meetings he was invited to outside of the 11th, but on the
20 11th Mr Linnell came into that board meeting under false pretences, my view.

We were told that Nick Linnell had done work into the on-goings of Eskom for months before, which could help us with the suspension, which is – and Nick Linnell came to the 14.48 meeting, in that transcript you can hear

me ask Mr Linnell questions like Mr Linnell you have told us, or we've been told, not you, we have been told at the earlier meeting Nick Linnell has been doing this work, he has got all the answers and he is going to help us with this investigation. I asked Nick Linnell, I said please explain to me you know your role and how long you have been doing this and he gives me a hypothetical answer and I go as far as saying Mr Linnell please this is not hypothetical, we were told that you had been doing this for six months and
10 you could provide us with a report.

Lots of toing and froing and pushing and ultimately his *aide memoire* is accepted, so if you ask me Nick Linnell was brought into that meeting Chairperson, with due respect, under false pretences.

ADV SELEKA SC: Yes and what happens thereafter?

CHAIRPERSON: Let – maybe that is so and Mr Seleka will deal with that, but what do you say to the proposition that he was presented to you as the Board and for whatever reasons you embraced him, you embraced his
20 role, you did not object, you didn't say no, no, no Mr Tsotsi have you followed procurement procedures, what, what, what, you didn't say that as the Board. You allowed him to take part in the meeting, actually when one reads the transcript one sees that he was allowed to play a very active role in the making, he was being asked these

questions and he was allowed to play that active role, so the question arises how does the Board allow somebody to do this, to play this role, they embrace him and then afterwards seek to charge Mr Tsotsi alone and say you procured the services of this man without processes, that is the question.

MS KLEIN: Chairperson I am saying my understanding was he is coming there to fill us in because he had done all this previous work which was going to help us with the
10 inquiry.

CHAIRPERSON: That I understand up to a certain point when you make the point that as far as you are concerned it looks like he was brought in under false pretences, that might be a separate issue. The charge as I understand what Mr Seleka is saying, the charge didn't seek to talk about him being brought in under false pretences, it sought to say Mr – to allege that Mr Tsotsi did something, brought him in without the Board's approval, without following processes, and yet the Board embraced him, that is the
20 question that is being put to say how could you as the Board see it as right to charge Mr Tsotsi or bringing Mr Linnell into the Board to play this role and yet you had embraced him, and you had embraced his role, rightly or wrongly but you had embraced him, why do you then charge Mr Tsotsi now.

MS KLEIN: Chairperson all I can say to you is that at Eskom there were very rigid rules about how to go about procurement, so if maybe after all of this we're saying the entire Board should have been charges because of this, then I will accept that. I however do maintain that if we knew who Nick Linnell was from the very beginning that he had done three days worth of work, not six months, because we were told six months worth of work, in fact I go a step further and you would pick that up in the transcript,
10 I asked Mr Linnell the question, I said are you here today based on the fact that you knew that there was going to be a piece of work done or is there something that you have been a part of for a long time and that is when the Chairman says to me just Nick let's just tell them as it is, because I think that was very hard for him as well.

But if you are saying to me that I let – by listening to Mr Linnell we should accepted accountability and not just Mr Tsotsi, you know what then as a Board member ...[intervenes]

20 **CHAIRPERSON:** That is what I am saying.

MS KLEIN: Then as a Board member Chair I will accept that. I am talking for myself, I am not talking for other members.

CHAIRPERSON: Yes, yes, no that is what I am saying because the charge is not about whether he was qualified

to do the job, it is not about whether he was brought in under false pretences, it says Mr Tsotsi you brought in this person without the Board's approval or without following processes and yet if the Board had an objection to how Mr Tsotsi brought him in the Board had an opportunity to say hang on Mr Tsotsi we can't let Mr Nick Linnell play this role without following procurement processes. Have they been followed? They didn't say that, they embraced him, they embraced his role and then turned around and said we are

10 charging Mr Tsotsi, and that is difficult to understand for a Board that acts like that, and when you add all these other things that we have been talking about, decisions being – seemingly being taken outside of Eskom, being pushed to the Board to take and to rubber stamp, that kind of thing, you get worried to say what exactly was going on here, and then of course you remember Mr Tsotsi's evidence. I was told by Mr Tony Gupta that they put me into this position, they could take me out because I was not assisting them, and of course sitting here Ms Klein I can't not remember

20 also Mr Jonas' evidence that the Gupta brother who met with him on the 23rd of October 2015 at the Gupta residence, who seems to have been Tony Gupta, told him, according to Mr Jonas, that Mr Nene was going to be fired as Minister of Finance because he was not working with them, and indeed Mr Nene was fired in six weeks time, and

Mr Nene was fired under very strange circumstances, he was fired in circumstances where the President himself was saying in the media statement that was issued that Mr Nene had done a sterling job as Minister of Finance, so the question arises how do you fire your star minister who you say has done a sterling job, that has been the media statement that was issued, that is before the Commission, and then you say you are firing him because he is your candidate for a certain position that has not been
10 advertised and he sits at home for more than a year, nobody ever contacts him about this position and of course I have heard evidence from one of the people at the bank where he was supposed to get a job saying no the rules of that bank would not have allowed this. Mr Nene himself has said here before me that reason given by Mr Zuma was a fabrication, that's what Mr Nene said under oath here.

So when one looks at these things questions arise, and sitting here and looking at evidence that I have been hearing from a lot of witnesses I also remember that Mr
20 Themba Masego gave evidence and said Mr Ajay Gupta told him that Ministers who don't want to work with them they report them to President Zuma, that is what Mr Themba Masego said Mr Ajay Gupta told him. That evidence remains un-contradicted.

So I am bound to think about all of these things as I

hear what was happening at Eskom.

MS KLEIN: I hear you Chairperson.

CHAIRPERSON: Ja okay thank you.

ADV SELEKA SC: Yes Chair. Chair the reference to what I am reading is in the reference bundle Ms Klein, the minute of 30 March 2015, it says on page 228, Ms Klein you will know these charges, page 228, let me just read them to you. The second charge is that the Chairperson will see how Mr Tsotsi responds to these charges in that
10 minute. The second charge is the consultant commenced with his word to the knowledge of the director and without the Board of Directors being informed that work had commenced within the company. The director was aware that no contract of engagement for the consultant had been concluded, thus exposing the company to non compliance with applicable statutes and procedures, but Dr Ngubane is heard saying Nick we are contracting with you, do you recall that?

MS KLEIN: Yes I do Chairperson, but what I also
20 remember is in – on the evening, I think you are reading from the 30th.

ADV SELEKA SC: Yes, the 30th.

MS KLEIN: 30th of March, when the charge is put to Mr Tsotsi, Mr Tsotsi said there was no contract with Nick Linnell, I think there are two things here Chairperson,

there was no contract with Nick Linnell, what you are saying is by us letting him into the meeting we by definition contracted him. I think that, I think they're all saying the same thing.

CHAIRPERSON: There was no formal written contract but he was allowed to play a role in the affairs of Eskom, of the Board for the duration of a certain time.

MS KLEIN: Time that's it, I can't argue with that.

CHAIRPERSON: Yes, ja.

10 **MS KLEIN:** I think we're saying the same thing now.

CHAIRPERSON: Mmm.

ADV SELEKA SC: Yes, charge 3 is that the director authorised the commissioning of a media statement in relation to an inquiry into the affairs of the company with the assistance of the consultant without the knowledge and/or consent of the Board. The media statement consequently fell into the public domain.

Now you know Mr Tsotsi's response to that/.

20 **MS KLEIN:** I think I heard him say, if I remember correctly you can help me, that it was leaked.

ADV SELEKA SC: Yes, you say that much in your affidavit.

MS KLEIN: Yes I think that was what we were told.

ADV SELEKA SC: And that he didn't know how it got leaked. Mr Baloyi in fact testified yesterday ...[intervenes]

MS KLEIN: I heard.

ADV SELEKA SC: Exactly to that effect, that apparently the leaks were on the part of the DPE ...[intervenes]

MS KLEIN: Very hard for me to comment, was it DPE, wasn't it, I can just tell you as a Board member what was of concern to me on the charge, if you will.

ADV SELEKA SC: This charge?

MS KLEIN: On that charge, of the media statement.

CHAIRPERSON: Ja.

10 **MS KLEIN:** Okay, here we are the Board, we are sitting and we're discussing this whole thing about the inquiry which already is so contentious, and there were so many diverted views. Do you suspend, don't you suspend you know, do you need the inquiry, don't you need the inquiry. Nick Linnell drafts a memorandum or a media statement, which I think he attested to.

ADV SELEKA SC: Yes.

MS KLEIN: That something about is it Edward Nathan Sonnenberg I think was the group, or some group together
20 with ...[intervenes]

ADV SELEKA SC: Ja, he did use the firm ENS.

MS KLEIN: Ja, together with a retired judge etcetera. Here we're sitting as a board member knowing how porous Eskom is, you talk about something in a Board meeting which affects people's lives and five minutes later it is on

the wire somewhere so that is why I think there was an issue of bugs etcetera.

Now that communication, to the best of my knowledge never came to the Board, and I think that is what infuriated, personally me, I can't talk about anybody else. How is it that something that is this prescriptive gets into the media domain and the Board hasn't signed this thing off, at a time when we are going through all the volatility within Eskom that we are. So I mean, I talk for
10 myself now, that is actually, that was for me very, very upsetting to read about that in the media.

CHAIRPERSON: But how – on what basis did you take the view that he was responsible for the statement reaching the media at the time that it did?

MS KLEIN: Chairperson I can only answer you this way, none of us had it, if it was a DPE like Mr Baloyi said yesterday I don't know about that. So for me as an individual, and I am not talking for anybody else, you will have to ask them, this was in the hands of the Chairperson
20 and in fact if I remember correctly I even, I said in my last testimony here that the person in the Chairperson's office, Leo Dlamini, I think had a copy of it.

So somehow it got out, so who leaked it I don't know. The fact that it was in the public domain and the fact that it was in the Chairperson's hands is I think what

infuriated me as a person. You may not agree with me, but that's my ...[intervenes]

CHAIRPERSON: I can tell you that there are affidavits of witnesses that have been submitted to the Commission that have found their way into the media in circumstances where they should not be in the media and that is something that is of great concern to me and sometimes when they do, when that happens a copy might be with me because I have been given it so that I can work on it, a
10 copy might be with a member of the legal team, a copy might be with an investigator. Investigations have been done by the commission to see how do these leaks happen, but somebody outside of the commission may well be having a copy as well, and they happen, so one wonders whether a Board that had no agenda to get rid of Mr Tsotsi wouldn't have handled that differently in circumstances where they didn't have anything to say he was responsible for that because what would he be seeking to achieve by leaking that prematurely. You know, I don't know, maybe
20 somebody in the Board might have had an answer to say this is what he would have wanted to achieve, I don't know, so ja, okay.

ADV SELEKA SC: But Ms Klein here is the point, the Chairperson raised, not raise in itself but added to what Mr Baloyi was saying yesterday, and it is here in this minute.

The minute says Mr Tsotsi stated that, the Chairperson is page 229:

“Mr Tsotsi stated that he was unaware as to how the media statement had got into the public domain before it had been approved.”

He reported that the P&G had reviewed the media statement of which you were part, P&G, and had asked Mr Dlamini to review it further after some members had made further changes. In the interim Mr Kumalo had
10 recommended that the media statement also be reviewed by a media specialist, Mr H Ntsingela. A long session had been held with Mr Ntsingela after the P&G input at Bryanston City Lodge before the media statement was released the next day.

The P&G had suggested that Dr Ngubani, the Acting CE, and Ms Klein in her capacity as Chairman of P&G should accompany Mr Tsotsi to the media briefing which had been done. Mr Tsotsi reiterated that he was unaware as to how the media statement got into the public domain.
20 If not approved at least that media statement passed under your careful eye.

MS KLEIN: And Chairperson I want you to please give me the copy that I approved where we spoke about a retired judge, where we spoke about the stuff Nick Linnell put in, because those were not things that were ever put in front

of me at P&G. There may be more than one version of it, but what was discussed at P&G did not have the retired judge, it did not have – there were a couple of factual problems with it, so Chairperson if you can give that to me I would be very happy.

CHAIRPERSON: So the point you are making is that there is a media statements, a proposed media statement that passed through you but you say that one did not have these things and you are saying the one that found its way
10 into the media had these things.

MS KLEIN: That is what I am saying Chairperson.

CHAIRPERSON: Yes, of course one would come back to the question why would the Chairperson of the Board leak a statement to the media that had not yet been approved by the Board in circumstances where everybody knew, including him that the Board had to approve. What would he have been rushing to achieve that could not wait until t
he Board had approved?

MS KLEIN: I cannot answer that for you Chairperson, that
20 is something only he can answer.

CHAIRPERSON: Well it is the kind of question that I am saying the Board before charging him with this ought to have asked itself to say if we are saying we are charging the Chairperson for this what are we saying he would have wanted to achieve, why would he have done this? He is

the Chairperson of this Board, he would have known that there was a media statement being prepared, which would have had to be approved by this Board then it could be sent to the media. What is it that he would have been in a rush to achieve by sending out actually a statement that has not been approved?

Why would he do that? I am suggesting to you is the board should have said but it does not make sense to think it was him.

10 **MS KLEIN**: Chairperson, possible not.

CHAIRPERSON: Yes.

MS KLEIN: But I think it is important to note that the very document that Nick Linnell, the media statement Nick Linnell put together or helped to craft, is the one that found its way into the press, not what was discussed with the board.

CHAIRPERSON: Yes.

MS KLEIN: And I think that may be... your question about, what did he stand to benefit?

CHAIRPERSON: H'm.

20 **MS KLEIN**: I do not know. If one is to assume that Mr Tsotsi was taking instructions, maybe Mr Tsotsi was under pressure to get exactly what he was instructed to do, out there. I do not know. I cannot respond.

CHAIRPERSON: You see, if the board's thinking was that it was Mr Linnell, maybe there would have been no basis for

thinking along those lines. Maybe there would have been for present purposes, I leave it at that.

But I have more difficulty with the board thinking that the chairperson would prematurely release such a statement. I am inclined to think the board should have thought but why would it have...

Why would he really have done that when he knew the time before he gives us the media statement and then we approve it and then it can go out?

10 **MS KLEIN**: I hear you Chairperson.

CHAIRPERSON: H'm.

MS KLEIN: I am giving you my perspective.

CHAIRPERSON: Yes, yes.

MS KLEIN: But I do hear you.

CHAIRPERSON: No, thank you.

MS KLEIN: Yes.

CHAIRPERSON: Mr Seleka, we are at quarter past... fifteen minutes past six. I would like us to finish at half-past six if we can.

20 **ADV SELEKA SC**: Before that.

CHAIRPERSON: I am mentioning that because if we are not done by that time, we might have to adjourn and unfortunately, Ms Klein might have to give us another.. might have to come back. But I would have liked us to finish with her.

ADV SELEKA SC: Yes.

CHAIRPERSON: She was here already yesterday.

ADV SELEKA SC: Yes.

MS KLEIN: Yes.

CHAIRPERSON: And there really kindly had no objection to coming back today and she has been on the witness stand for the whole day. But also, I am thinking ...[intervenes]

MS KLEIN: It is the second day Chairperson.

CHAIRPERSON: H'm?

10 **MS KLEIN:** It is the second day.

CHAIRPERSON: Oh, ja. [laughing]

MS KLEIN: [laughing]

CHAIRPERSON: But I do not know. What is your own assessment of how far we are to finishing issues? But as I said, you know, the issues we are dealing with are important.

ADV SELEKA SC: Yes, they are.

CHAIRPERSON: If we have to arrange for her to come back, we might have to do that.

ADV SELEKA SC: Ja.

20 **CHAIRPERSON:** But if we are about to finish, then it is fine.

ADV SELEKA SC: I think we are about to finish, Chair.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Let me just pace myself.

CHAIRPERSON: Okay. Well, I must say to Ms Klein. Just

remember that even if come half-past, we say we are finished. We might think of something later.

ADV SELEKA SC: Yes.

MS KLEIN: Yes.

CHAIRPERSON: And ask you to come back. [laughing]

MS KLEIN: Ja-no, I understand.

ADV SELEKA SC: She already owns us a supplementary affidavit, Chair.

CHAIRPERSON: [laughing]

10 **MS KLEIN:** [laughing]

CHAIRPERSON: Ja, okay alright.

ADV SELEKA SC: Ms Klein, in the minutes, it is clear that the person who chaired the meeting, I think it is mister ...[intervenes]

MS KLEIN: Pamensky.

ADV SELEKA SC: He gives the opportunity to the members to come. It says:

20 “The acting chairman thanked Mr Tsotsi for his presentation and asked members if they wanted clarity on any items.”

The only question we see there is about Sumitomo Corporation. No one else raised the concerns you are raising now, not even yourself.

That, we are charging you because you leaked a statement that did not pass through us, the P&G. As he has

explained in himself here.

But this comes five years later from you. More than five years later. How should the Commission deal with that? Because it is not on the day when you are given the opportunity.

Do you have any comments? I mean, members are... ask members if they want to clarity on any items.

MS KLEIN: Chairperson, I know we are mindful of time. I am not sure what is the question. I mean, what is
10 ...[intervenes]

ADV SELEKA SC: The question is ...[intervenes]

MS KLEIN: What is five years later?

ADV SELEKA SC: No, let me clarify. The question is. You have said to the Chairperson. Mr Tsotsi... give me this... you say to us. Give me the media statement that was leaked so I can show you it does not...

Essentially, you are saying, it does not... it is not the same that passed before us as the P&G. I said, Mr Tsotsi told you the media statement that was leaked is exactly the
20 one that passed before you as the P&G.

He is saying that here. The chairperson gives you the opportunity to clarify. If you have any questions of clarity with Mr Tsotsi.

The only question we are seeing in the minutes, it is about Sumitomo Corporation. Your concerns which you have

now laid out before the Chairperson are not here. More than five years later.

MS KLEIN: Chairperson, I am not even sure how to answer that question.

CHAIRPERSON: Well, the first question is in effect. How can you now, more than five years later, say that the statement that was leaked to the media was not the same as the statement that went through the P&G Committee, because...

10 I guess, it is Mr Tsotsi, who said in your presence, the statement that went to the media is the same statement that went through the P&G Committee.

And at that stage, you all did not say: No, that is not true. That is the first question. What do you say to that?

MS KLEIN: Chairperson, all I can say to you is. I cannot answer that.

CHAIRPERSON: Yes, yes.

MS KLEIN: I mean really.

CHAIRPERSON: Yes.

20 **MS KLEIN**: If you are asking me, why did I not say it that night?

CHAIRPERSON: Yes. And the idea is simply that, if at that time, your knowledge was that the statement that was leaked to the media was not the one that went through the P&G Committee, you would have raised that to say: No, no, no.

These are two different statements.

But if you did not raise it, it suggests that your knowledge may have been the same as his, namely it is the same statement that went through the P&G Committee that was leaked.

MS KLEIN: Okay. Chairperson, I am not sure that I... I want to disagree with that.

CHAIRPERSON: H'm.

MS KLEIN: The very purpose of the charge was that what
10 was agreed with us was not what was in the media.

CHAIRPERSON: Yes.

MS KLEIN: So to say that why I am raising it five years later. The very charge was it was a different...

CHAIRPERSON: H'm, h'm. But remember that Mr Seleka is reading where he says Mr Tsotsi said in effect, I am putting it in my words now, but: What are you people talking about? It was the same statement.

Now what he is saying is. If you did not agree with Mr Tsotsi that it was the same statement, you would have said
20 there and then: But Mr Tsotsi, what... your... that is not true. The statement that went through the P&G Committee is not the statement that founds its way to the media.

But because you did not say that, one tends to think it must be because what Mr Tsotsi was saying was in accordance with your knowledge of the facts.

MS KLEIN: Chairperson, where I am struggling here.

CHAIRPERSON: Is about the charge?

MS KLEIN: It is... that was the actual charge.

CHAIRPERSON: Yes.

MS KLEIN: The charge is, it was a different thing. What was I going to add on ...[intervenes]

CHAIRPERSON: Yes.

MS KLEIN: ...if that was the actual charge? The charge is ...[intervenes]

10 **CHAIRPERSON:** Yes.

MS KLEIN: ...that this is not the statement. So not raising it at another time, I am not sure what benefit that would have been.

CHAIRPERSON: But remember, that if the charge was: Mr Tsotsi, you leaked to the media a statement that had not gone through the P&G or the board. It was an excellent... it would have been an excellent defence for Mr Tsotsi to say to the charge, to say: But actually, it is the same.

MS KLEIN: H'm.

20 **CHAIRPERSON:** You must acquit him on the charge because if he says it was the same statement, the one that was leaked or that went to the media, is the one that went through the P&G Committee.

So now, when he confirms you or when he says that, if you know that not to be true, you are expected to say: No,

no, no. Mr Tsotsi, you are not... that is wrong. The statement that went to the media is not the same as the statement that went through the P&G Committee.

But you do not say that. How could you not say that if your knowledge was that what Mr Tsotsi was saying was false?

MS KLEIN: Chairperson, the way I understood it was. That was the charge that it was leaked. Now if it was exactly the same, why is the fact that it was leaked such a big issue? I
10 mean, I do not, unfortunately, have the benefit of having that minute in front of me.

CHAIRPERSON: Ja.

MS KLEIN: Because Mr Tsotsi's minute... actually, can you just give me that? Because he responds to that.

CHAIRPERSON: Ja.

MS KLEIN: Maybe it is just interest... can we just read what Mr Tsotsi's response...

CHAIRPERSON: Mr Seleka knows the ...[intervenes]

ADV SELEKA SC: Ja, the reference bundle.

20 **MS KLEIN**: Where is it?

ADV SELEKA SC: The reference bundle.

MS KLEIN: Ja?

ADV SELEKA SC: Page 228.

CHAIRPERSON: Just assist her in terms of where to find what.

MS KLEIN: Yes, just give me some time. Please, Mr Chair.

ADV SELEKA SC: Yes.

MS KLEIN: Just hang on.

ADV SELEKA SC: And Chair, might I add ...[intervenes]

MS KLEIN: Is it 341(?)?...[intervenes]

ADV SELEKA SC: ...Ms Klein is looking at that. Ms Klein, you will see the beginning of the charge is that he commissioned a media statement in relation to an inquiry into the affairs of the company with the assistance of the
10 consultant. And here is the charge: Without the knowledge and/or consent of the board. Now that first part has nothing to do with lead.

CHAIRPERSON: [Indistinct] [microphone not switched on.]

ADV SELEKA SC: Yes. Page 228.

MS KLEIN: Chairperson, can I in the interest of time?

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes.

MS KLEIN: Can I ...[intervenes]

ADV SELEKA SC: Okay, I have read this.

20 **MS KLEIN:** Can I help the Commission?

CHAIRPERSON: Yes.

MS KLEIN: If your view is that I have done something wrong here, then let me take the punishment.

ADV SELEKA SC: Not you ...[intervenes]

CHAIRPERSON: I am sorry. Just come closer to the

...[intervenes]

MS KLEIN: No, no, no. I know what you are saying.

CHAIRPERSON: Come closer to the mic and face this side.

MS KLEIN: Sorry, Chairperson.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes.

MS KLEIN: I say, if your view is that I have done something wrong, then let me take the responsibility for that.

CHAIRPERSON: No, at this stage, one is not necessarily
10 saying you have done something wrong. At this stage, one
is trying to understand why the board behaved the way it
behaved.

One... under charge one, it charges Mr Tsotsi with
bringing Mr Linnell without following processes or without
the board's approval and yet it embraced Mr Linnell.

So one does not understand this kind of behaviour. Two,
it now charges him with leaking or sending out a media
statement without the knowledge or consent of the board.

ADV SELEKA SC: Let me assist the Chair. The second
20 charge, actually, flows from the first.

CHAIRPERSON: Yes.

ADV SELEKA SC: Which is, Mr Linnell commenced work
without the board being informed.

CHAIRPERSON: Ja, without the board being informed. But
that is that part.

ADV SELEKA SC: Yes.

CHAIRPERSON: But that is not what you have asked her for now.

ADV SELEKA SC: No ...[intervenes]

MS KLEIN: No, it is when ...[intervenes]

ADV SELEKA SC: ...it is where the first charge ...[intervenes]

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: The first charge is what the Chairperson
10 has in mind.

CHAIRPERSON: Yes.

ADV SELEKA SC: That is he is commissioned the drafting of the media statement ...[intervenes]

CHAIRPERSON: Yes.

ADV SELEKA SC: ...without the knowledge or consent of the board.

CHAIRPERSON: Of the board. So one is simply saying. Is this a case where the board genuinely had a reason to act against Mr Tsotsi or could it be that Mr Tsotsi was not
20 wanted as chairperson of this board anymore and something had to be found to kick him out?

And when one thinks about that Ms Klein, one has got to also think about who replaced Mr Tsotsi when he has been kicked out.

MS KLEIN: H'm.

CHAIRPERSON: He is replaced by Dr Ngubane as Chairperson. And Dr Ngubane had an existing relationship with Mr Salim Essa. He acknowledged that when he gave evidence here. Number one.

Number two, later on as chairperson of this board, Dr Ngubane has the kind of relationship with Mr Salim Essa that he seems to allow Mr Essa to send him documents, indicating what decisions must be taken by the board. And Dr Ngubane places those before the board and the board
10 takes those decisions.

So you then go back to saying, early February, Mr Tsotsi says: Mr Tony Gupta said, we put you into this position. We can take you out.

Is it a coincidence that on the evidence that one has heard so far? Maybe there will be other evidence about Mr Tsotsi that might change the picture.

But on the evidence that one has said, it appears as if Mr Tsotsi was not cooperating with the Guptas and he was kicked out.

20 Somebody was put in as chairperson of the board in the place of Mr Tsotsi, who was prepared to allow Mr Salim Essa...

I do not know whether Mr Howard(?) too, to basically influence what decisions the board was taken. At least in regard to the newspapers that ...[intervenes]

MS KLEIN: Sure.

CHAIRPERSON: ...were dealt with in in a particular document. Is it a coincidence or was this... was the whole thing part of a larger plan? We will get rid of these three executives.

Maybe because we know that they are not the type of people who are going to cooperate with us. Or because we do not know whether they will cooperate or they will not. Once we have got rid of them, we will get rid of Mr Tsotsi
10 because he is not cooperating.

Then we will push somebody into the position of chairperson of the board that we know will allow us to influence what the board is doing.

And then, we will go... we will then say, let us bring in Mr Brian Molefe from Transnet and Anoj Singh and they will then be brought to Eskom.

So one asks the question where it was part of a bigger plan or whether it was a coincidence that these three executives were left.

20 That Mr Tsotsi left or was kicked out. That it was Mr Brian Molefe and Mr Anoj Singh who were brought in. Whether all of these were coincidental.

MS KLEIN: Chairperson, maybe just one comment from my side and I know we are pushing time.

CHAIRPERSON: H'm.

MS KLEIN: You know everything that you have said now is probable. You know, like you say, if you take it all into account and you have had the benefit of looking at all of the affidavits. But when the board was replaced, surely that would have been a good time if the idea was to get rid of Mr Tsotsi, and I am not talking about suspensions and this.

CHAIRPERSON: Yes, yes.

MS KLEIN: But in terms of the bigger plan.

CHAIRPERSON: Yes.

10 **MS KLEIN**: If it was that.

CHAIRPERSON: Yes.

MS KLEIN: You know, because the board was only appointed in December.

CHAIRPERSON: December 2014.

ADV SELEKA SC: 2014.

MS KLEIN: Ja, 2014.

CHAIRPERSON: Ja.

20 **MS KLEIN**: But... anyway... but look, that is not my job. I am not here to ask questions. Sorry. I am not here to ask questions.

But I mean, based on what you have just said. I... that is all I could think, you know, if it was part of a bigger scheme, rather than going through all of the pain of doing all of this.

I mean, that would have been probably... if I were the

one pulling the strings, first... But Chairperson, I cannot respond to that.

CHAIRPERSON: No, no. I understand what you are saying and one does... I mean, one of the questions that arose with me is. Both in regard to... well, firstly in regard to Mr Matona.

MS KLEIN: Mister? Sorry?

CHAIRPERSON: Mr Matona.

MS KLEIN: Matona.

10 **CHAIRPERSON**: To say, but this man was appointed ...[intervenes]

MS KLEIN: I know.

CHAIRPERSON: ... to this position at Eskom only in October.

MS KLEIN: H'm.

CHAIRPERSON: Why do you want to get rid of him so quickly? It does not seem to make sense.

MS KLEIN: H'm.

20 **CHAIRPERSON**: He had not been allowed, it seemed to me, to show himself, his capabilities, put together his plans and test them and see whether they worked. And when he is got rid of, it is not on the basis that he is being confronted to say: You cannot do this job. It is too much for you. Or, your performance is poor. No, it is not that. But he is got rid of.

MS KLEIN: H'm.

CHAIRPERSON: Then you come to Mr Tsotsi and you say:
Why was he allowed to continue with the new board?

MS KLEIN: H'm?

CHAIRPERSON: And then he gets... got rid of like this. But of course, the person who allowed him to continue is the minister. And on the face of it, it is not the minister who got rid of him. It is the board. This board was new. It had not worked with him for a long time and suddenly seems to be so intolerant of him and get rid of him.

10 Then Dr Ngubane takes over and Brian Molefe is brought in. Then Mr Anoj Singh is brought in. And of course, we know later in 2015, certain things happened with regard to optimum coal and better and so on. Ja, okay.

MS KLEIN: Thank you, Chair.

ADV SELEKA SC: Ja. Chair, that is why I cannot control the time. [laughing]

MS KLEIN: [laughing]

CHAIRPERSON: [laughing] Ja-no, I think if...

ADV SELEKA SC: [laughing]

20 **CHAIRPERSON**: I think we have to stop.

ADV SELEKA SC: I have one or two ...[intervenes]

MS KLEIN: Please.

ADV SELEKA SC: Let us...

CHAIRPERSON: One or two questions?

ADV SELEKA SC: Ja. Let us see ...[intervenes]

CHAIRPERSON: But we... after that... but I do not want us to not do justice on issues.

ADV SELEKA SC: Yes, okay.

CHAIRPERSON: If you ask those two, will you be comfortable that we have covered them or we should arrange for Ms Klein to come back later? I do not want us to...

ADV SELEKA SC: Ja. Miss... Yes, it will... I will be restricting myself.

CHAIRPERSON: Ja.

10 **ADV SELEKA SC:** If I say to... I will be restricting myself.

CHAIRPERSON: Yes.

ADV SELEKA SC: So...

CHAIRPERSON: Well, maybe we should adjourn. Maybe we should adjourn.

ADV SELEKA SC: Ja.

CHAIRPERSON: If obviously, you note where you were.
[laughing]

ADV SELEKA SC: I know.

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** No, I am know.

CHAIRPERSON: But when she comes back, how much time do you think you need?

ADV SELEKA SC: Thirty minutes.

CHAIRPERSON: H'm?

ADV SELEKA SC: Thirty minutes.

CHAIRPERSON: Thirty minutes.

ADV SELEKA SC: I personally thirty minutes. [laughing]

CHAIRPERSON: [laughing] Oh, well ...[intervenes]

ADV SELEKA SC: He is laughing at me Chair.

MS KLEIN: Can we not find ...[intervenes]

CHAIRPERSON: This gets slapped to me all the time.

[laughing]

ADV SELEKA SC: [laughing]

MS KLEIN: Chairperson, can we not try to finish now,
10 please? I am becoming a permanent feature here. I prefer
not to.

CHAIRPERSON: Sorry?

MS KLEIN: I am feeling I am becoming a permanent feature
here. I prefer to get this done.

ADV SELEKA SC: No, it is to seven.

CHAIRPERSON: Ja-no, we must adjourn. If at all possible,
I was thinking. Maybe... I think Dr Ngubane is coming on
Tuesday, is it not?

ADV SELEKA SC: Tuesday, next week.

20 **CHAIRPERSON**: If at all possible, we could start with her
...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...before Dr Ngubane.

ADV SELEKA SC: Tuesday, the 13th.

CHAIRPERSON: How is your... do you know whether that is

doable?

MS KLEIN: Let me see on my phone and I will quickly tell you Chair.

CHAIRPERSON: And ...[intervenes]

MS KLEIN: Just a minute.

CHAIRPERSON: And your counsel?

ADV MAHON: I beg your pardon, Chairperson.

CHAIRPERSON: Yes.

ADV MAHON: I am unfortunately involved in an arbitration
10 that is running the whole of next week.

CHAIRPERSON: The whole of next week?

ADV MAHON: [No audible reply]

CHAIRPERSON: Mr Seleka, says he needs about 30-
minutes. I doubt if I will have a lot of questions. I give no
guarantee but I doubt.

ADV SELEKA SC: [laughing]

MS KLEIN: [laughing]

CHAIRPERSON: I am wondering whether it might be
possible, depending on when your arbitration starts and
20 when it finishes, whether it might be possible to start early
with her on one of the days next week.

And you come and then we give that 30-minutes or
whatever and then you can proceed.

Or we... she comes in the afternoon late, like, four
o'clock or five o'clock. We take 30-minutes. You might be

out of that arbitration. Is that doable?

ADV MAHON: I think so Chair. My preference then would be the afternoon because ...[intervenes]

CHAIRPERSON: For the afternoon, yes.

ADV MAHON: ...then we have no risk of any ...[intervenes]

CHAIRPERSON: No, no. That is fine. I think what should happen then. Mr Seleka will talk to you and obviously Ms Klein, which of the days next week we will see but let us find a day where she can come, four o'clock or five o'clock. And
10 you... when your arbitration might be done for the day.

ADV MAHON: Yes, Chair.

CHAIRPERSON: Then we finish. Is that alright?

ADV MAHON: Yes, thank you Chair.

CHAIRPERSON: Okay. Would that be fine with you Ms Klein?

MS KLEIN: Not my first choice Chairperson but thank you very much.

ADV SELEKA SC: [laughing]

CHAIRPERSON: [laughing]

20 **MS KLEIN**: It does not look like that I have got too much of choice.

ADV SELEKA SC: [laughing]

CHAIRPERSON: [laughing] Okay alright.

ADV SELEKA SC: Sorry.

CHAIRPERSON: Okay alright. Thank you very much to

everybody who... everybody has cooperated. Thank you very much.

ADV SELEKA SC: Yes.

CHAIRPERSON: We are going to adjourn for the day. And tomorrow ...[intervenes]

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: ...I will hear an application at nine and after that, there will be another witness who will be coming in.

10 **ADV SELEKA SC:** There is two more ...[intervenes]

CHAIRPERSON: There is two more?

ADV SELEKA SC: ...witnesses, Chair.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay. Thank you. We adjourn for the day. We adjourn.

ADV SELEKA SC: Thank you, Chair.

INQUIRY ADJOURNS TO 9 OCTOBER 2020