

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

**09 OCTOBER 2020**

**DAY 280**



**Gauteng Transcribers**  
**Recording & Transcriptions**

22 Woodlands Drive  
Irene Woods, Centurion  
TEL: 012 941 0587 FAX: 086 742 7088  
MOBILE: 066 513 1757  
[info@gautengtranscribers.co.za](mailto:info@gautengtranscribers.co.za)

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 09 OCTOBER 2020**

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

**ADV PRETORIUS SC:** Good morning Chair.

**CHAIRPERSON:** Are you ready?

**ADV PRETORIUS SC:** Yes we are Chair.

**CHAIRPERSON:** Yes let us start.

**ADV PRETORIUS SC:** Set down for this morning Chair is an application to authorise the issue of summons in respect  
10 of the former President Mr Zuma.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** Long heads have been prepared and they have been delivered to you.

**CHAIRPERSON:** Hm.

**ADV PRETORIUS SC:** We have prepared a note for oral argument which summarises the major points to be made and if I could take a few minutes to put those before you?

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** Notice of this application was given  
20 by email to Mr Zuma's attorneys on Friday 18 September 2020. That appears at page 781 of the bundle that you have.

The application its time and date was also announced publicly on the 21 September 2020 that appears at page 790 of the bundle.

In response to those notices Mr Zuma's attorneys addressed a letter to the Chair giving notice of application for the Chair's recusal. That is at page 791 of the bundle.

Paragraph 12 of that letter at page 794 says the following:

10           “Until this application for your recusal is finally determined President Zuma will take no further part in this commission and the Chairperson is entitled to take any such step as he deems lawful and appropriate. We reiterate that President Zuma has questioned the lawfulness of the establishment of this commission; he persists with this issue and reserves all his rights in this regard.”

That is clear notice that this application will not be opposed at least through any attendance before you Chair.

20           Chair this application was originally brought in January 2020. It was postponed. It has now been brought and the facts supporting the application have been updated to the present time and there is an amended notice of application to cater for the new dates.

All these papers have been served on Mr Zuma's attorneys.

At page 715 this may become controversial at a

later stage Chair of the bundle before you the terms of the postponement of the application in January 2020 appear.

**CHAIRPERSON:** What is the page?

**ADV PRETORIUS SC:** 715.

**CHAIRPERSON:** I see there is a handwritten pagination as well as a red pagination with the right numbers.

**ADV PRETORIUS SC:** Yes we looking at the red numbers today Chair.

**CHAIRPERSON:** Oh 715 I have got. Yes.

10 **ADV PRETORIUS SC:** Where you stated as follows from line 10.

“The commission’s legal team will deliver a replying affidavit on or before close of business Friday 24 January. That is 1.

20 With regard to what is going to happen in regard to this application that is the application for a summons in January 2020 Chair and the further appearance before the commission of the former President what has been agreed in the discussion involving myself and counsel on both sides is that this application is to be adjourned to a date to be arranged and I hasten to say arranged does not mean agreed.”

So by your directive Chair you recorded an

agreement between the legal representatives of both parties that the application for a summons would be adjourned to a date to be arranged and this is the date so arranged.

**CHAIRPERSON:** Well I must just say also that that emphasis there where I say:

“I hasten to say arranged does not mean agreed.”

**ADV PRETORIUS SC:** Yes.

10 **CHAIRPERSON:** Has a context.

**ADV PRETORIUS SC:** Correct.

**CHAIRPERSON:** And the context is that I think on the same day if I am not mistaken but at some stage early this year when there was appearance for Mr Zuma his counsel argued that previously it had been said that dates – he would appear – that is Mr Zuma on dates to be arranged and they had construed that to mean it would be days that would be agreed with them.

**ADV PRETORIUS SC:** Yes.

20 **CHAIRPERSON:** I made it clear on that occasion when they were they appearing that that is not what was meant.

**ADV PRETORIUS SC:** Correct.

**CHAIRPERSON:** What was meant was the dates would be arranged within the commission and that I – I decide dates.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** I have occasion to look at the transcript of that – of that date and counsel for Mr Zuma accepted and understood that explanation and had no problem with it.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** He just said that previously they had understood it differently. So the question of this commission not agreeing dates with the lawyers and witnesses was dealt with at that time. And it was accepted  
10 that the commission will fix dates and obviously if Mr Zuma has a problem with the particular dates that have been fixed he could bring an application and show that he has got good reasons not to be available and then if I am satisfied obviously I would change the dates. So that is the context.

**ADV PRETORIUS SC:** Yes Chair and that – that position is confirmed in the Rules of the Commission.

**CHAIRPERSON:** Yes, yes.

**ADV PRETORIUS SC:** Where the rules and the consistent  
20 practice I might add is that you as Chair determine the dates, the order of appearance and in fact who will or will not give evidence.

**CHAIRPERSON:** Yes. Yes.

**ADV PRETORIUS SC:** So Chair the rules, the record as well as the consistent practice are all confirmed by the

arrangement now that you determine the dates.

**CHAIRPERSON:** Hm.

**ADV PRETORIUS SC:** Chair the power of the commission lest there be any doubt certainly in the public mind to issue summons is set out in Section 31 of the Commission's Act which states very clearly that you as the commission have the power of a court of law to compel attendance by way of summons.

10 So that is a statutory power that you have and it is a power equivalent to that of the High Court. That section is quoted in the long heads before you Chair at Footnote 2.

Chair insofar as there may be any dispute as to whether this application for the authorisation for the issue of summons can and should be granted it can be resolved by reference to legal principle and by reference to what are incontrovertible facts.

There are in our submission grounds to issue the summons.

20 **CHAIRPERSON:** Yes I think – I think it is important for you to read that section that gives me that power.

**ADV PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** For the benefit of everybody.

**ADV PRETORIUS SC:** Section 3 of the Commission's Act deals with the commission's powers as to witnesses. Section 3.1 reads:



“For the purpose of ascertaining any matter relating to the subject of its investigations”

That is quite a wide remit Chair.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:**

10 “A commission shall in the union now the republic have the powers which a Provincial Division of the Supreme Court of South Africa has within its Province to summons – to summon witnesses. To cause an oath or affirmation to be administered to them. To examine them and to call for the production of books, documents and objects.”

Section 3.2 reads:

20 “A summons for the attendance of a witness or the production of any book, document or object before a commission shall be signed and issued by the Secretary of the Commission in a form prescribed by the Chairman of the Commission and shall be served in the same manner as a summons for the attendance of a witness at a criminal trial in a Superior Court at the place where the attendance or production is to take place.”

Two points Chair the – that arise out of that for present purposes at least is that the issue of a summons may in terms of that section be affected for the purpose of ascertaining any matter relating to the subject of its investigations.

And that is a matter within your discretion in terms of the Act and our submission will be at the end of our short address Chair that the issue of summons in this matter is a reasonable exercise of that discretion.

10 **CHAIRPERSON:** On – on the wording of that section it seems quite clear that as long as a summons – as long as there is a summons is issued for the purposes – for the purpose of ascertaining a matter relating to the subject of the commission’s investigations. That is enough.

**ADV PRETORIUS SC:** That is the qualifying...

**CHAIRPERSON:** That is the only requirement.

**ADV PRETORIUS SC:** Requirement yes Chair.

**CHAIRPERSON:** For example it does not have to be shown that the person who is being summoned does not cooperate  
20 or cooperates. It is enough if...

**ADV PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** There is a matter that the commission seeks to ascertain that relates to a subject of its investigation. Obviously if a person is not cooperating there is even stronger ground.

**ADV PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** For that. But it seems that even without knowing whether somebody will cooperate or will not cooperate if the commission is satisfied that that person has information that relates to a matter that is the subject of its investigations the commission may summon that person.

**ADV PRETORIUS SC:** Correct Chair.

**CHAIRPERSON:** Ja.

10 **ADV PRETORIUS SC:** If there is any issue to be raised.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** Or if on a particular date which the summons authorises for the appearance a person who is subject to such a summons has every right.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** To deal with those matters.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Either before you or in a court of law.

20 **CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** So there is no question of any legal infringement of anybody's rights here.

**CHAIRPERSON:** Yes. Yes.

**ADV PRETORIUS SC:** Quite simply Chair you exercise your discretion on the qualifying requirements.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** And that then authorises the lawful issue of a summons.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Chair I might add that the procedural device under Section 3 of the Act is not an uncommon recourse for commissions and especially this commission. So this commission has issued over 2500 summonses and those are summonses which include  
10 summonses to appear and summonses to produce documents. 99 summonses have been issued for witnesses to appear.

So Chair it is not an uncommon procedural mechanism.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** And in fact it is a necessary mechanism for this commission to do its work.

**CHAIRPERSON:** Yes. Yes. Of course if one says, is there a matter that this commission seeks to ascertain from Mr  
20 Zuma that relates to the subject of its investigation we have got to deal with that as well.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** Because – to show whether this requirement of the statute is complied with – is present. And one way of doing so I guess would be to go to the

Terms of Reference.

**ADV PRETORIUS SC:** Yes we will do that Chair.

**CHAIRPERSON:** Ja okay.

**ADV PRETORIUS SC:** The – we can read the Terms of Reference if you wish.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** We have them here.

**CHAIRPERSON:** I think – I think we should – we should do that – you should do that at least those that may appear  
10 relevant.

**ADV PRETORIUS SC:** Yes. There are two points there Chair. The first is that insofar as Mr Zuma's evidence is subject to the investigation of the commission one could have reference to the Terms of Reference themselves but also to the witnesses who have come before the commission. 34 witnesses have implicated Mr Zuma.

Now over and above the requirement of the Section 3.1 and the requirements of the Terms of Reference which delineates the mandate on your Chair for your investigation  
20 there is a duty at common law and it is being emphasised in a number of recent judgments that obliges the commission to call Mr Zuma to answer those allegations.

If I may just read one passage of a judgment in the matter of Msiza versus Advocate Motau and the Prudential Authority of the South African Reserve Bank. Paragraph 55

of that judgment reads:

“In my view where an investigator of  
forturea a commission knows or is expected  
to foresee that his findings, remarks and  
conclusions will have consequences for the  
party on whose behalf an investigation is  
conducted and for the party against whom  
findings will be made he is obliged to listen  
to both sides and the party who is likely to  
10 be affected by adverse findings is entitled  
to demand the right to be heard before an  
adverse remark or finding conclusion or  
decision is made against him or her.”

So quite apart from the mandate contained in your  
Terms of Reference Chair and quite apart from the  
Provisions of Section 3 of the Commission’s Act the  
qualifying provisions there is a duty in law to hear the  
other side.

20 It is not a choice Chair that you have. You have a  
duty to do so.

**CHAIRPERSON:** Well of course the passage that you read  
relates to the observance of the Audi Alteram Partum Rule.

**ADV PRETORIUS SC:** Correct Chair.

**CHAIRPERSON:** Now one should not take that part too far  
because the Audi Alteram Partum Rule is there for the

benefit to – for the benefit of the person who may be adversely affected by my decision. He has a right to wave that right to say well I do not want to be heard. That he has a right to do and I cannot force him for purposes of observing that right but where I can force him as I understand the law is where I believe that he has information that may assist the commission in its investigation but then in that case I am forcing him not for purposes of hearing his side of the story I am forcing him  
10 in order to do my work to investigate the issues that I am supposed to investigate.

So as I understand the position

1. I need to observe the Audi Alteram Partum Rule until such time that I am satisfied that he is not interested in being afforded that opportunity. But the fact that he is not interested in being afforded that opportunity does not preclude me from saying come I want to know certain issues that you appear to have knowledge about.

20 **ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** And it is in regard to that certain part it seems to me where he cannot say leave me alone I am not interested in being heard by you.

**ADV PRETORIUS SC:** Yes Chair the – that in our view is accurate subject to one qualification which I will come to in

a moment.

Of course there is distinction between the duty on the commission to give every opportunity to an implicated person who states his or her side of the case. And the implicated person then has an election whether to exercise that right to speak or not to speak.

The duty of the Chair to investigate arising out of the Terms of Reference and that is a duty in respect of which the Chair has no discretion. You must investigate  
10 and we will come to the grounds upon which we submit Chair and you have said that there is a duty on this commission to explore those to investigate those issues where the former President has evidence or can give evidence to inform your findings.

**CHAIRPERSON:** I mean there can be no doubt that if on information available to me or evidence submitted to the commission by other witnesses there can be no doubt that if I form a view that a particular person may have knowledge or does have knowledge of matters that are  
20 relevant to what I am investigating I must take steps to get that person to come and testify.

**ADV PRETORIUS SC:** That is correct Chair.

**CHAIRPERSON:** If I do not do that I would be failing in my duty.

**ADV PRETORIUS SC:** Yes. Chair in correspondence and



this is the qualification I have to the propositions that have been put now.

The former President has asserted that he is exercising a right not to participate in the matters of the commission and by exercising that right he is in fact participating.

There is no right not to respond to a 3.3 Notice implicating a witness. That witness has an election. He may say or she may say, I am not going to respond or I am  
10 going to respond. But there is no right not to deal at all with the matters which are the subject of the commission's Terms of Reference if the commission determines that a person must come.

So insofar as there is alleged by Mr Zuma's legal representatives to be a right not to respond that is incorrect. It is not a right not to come to the commission. There is no such right.

There is an election not to answer a Rule 3.3 Notice to put a version or to cross-examine a witness. But there  
20 is no right to say I am not coming to the commission at all.

**CHAIRPERSON:** It seems to me that the position is if Mr Zuma or anybody who is said to be implicated by a witness, a certain witness is served by the commission with a Rule 3.3. Notice to say here is a statement from a witness who seems to implicate you in wrongdoing that the commission

is investigating. I mean that notice in terms of the Rules of the Commission advises the recipient of a Rule 3.3 Notice that you have a right to apply to the commission for Leave to Cross-examine this witness. You have a right to apply to the commission for Leave to give evidence yourself and contradict whatever the witness is saying. You have a right to apply to the commission for Leave to call witnesses who can corroborate what you say – your story.

It explains all of those things. But you are not  
10 forced to make those applications.

**ADV PRETORIUS SC:** Correct.

**CHAIRPERSON:** You are free to say I am not going to make that application – those applications. Those people can implicate me as much as they want, that is fine. But once the commission says we are aware that you do not think you are implicated; we are aware that you have chosen not to apply for Leave to Cross-examine these witnesses but nevertheless we want you to come and answer questions provided the commission has grounds to  
20 believe that you may have knowledge of matters that are – that it is investigating you cannot refuse lawfully.

**ADV PRETORIUS SC:** Correct. Correct.

**CHAIRPERSON:** Obviously if there is a specific reason why you cannot appear on a specific date that is different then you put your case before the commission to say, on

that date – on that date I have to see a doctor. I am not well bla, bla, bla. If the commission is satisfied that it is a genuine reason it will give another date.

But of course with reference to the recent correspondence from Mr Zuma's attorneys one of the reasons that have been given recently why Mr Zuma was not prepared to come to the commission on the 21 to

**ADV PRETORIUS SC:** 25.

**CHAIRPERSON:** 25 September is this one. It appears in  
10 he – the letter of his attorneys dated Tuesday September 1  
2020 paragraph 5.

“Further we wish to point out that President Zuma is preparing for his much anticipated criminal trial the importance of which cannot be over emphasised. It is rather unfair to expect President Zuma to simultaneously consider evidence and affidavits of more than 30 witnesses in order to make himself ready to appear  
20 before the commission on 21 to 25 September 2020.”

And then later on in – in the same letter at paragraph 2 they say:

“In the circumstances we are instructed to inform the commission as we hereby do that

for all the reasons mentioned above President Zuma will not be able to attend the proceedings scheduled on the dates of 21 to 25 September 2020.”

In other words one of the reasons that they advance as to why Mr Zuma would not be attending – able to attend the hearing on 21 to 25 September 2020 is that he was busy preparing for his criminal trial. Is that a good enough reason not to appear before the commission?

10 **ADV PRETORIUS SC**: Well in our submission no because the – the point about that – that paragraph in that letter is that is a situation that will prevail for the life of the commission.

And the commission must conclude its evidence by September and one of the reasons procedural reasons for the issue of summons is to enable the commission to consider the former President's evidence before the commission ends which is in December. Certainly the evidence must end by December to enable you Chair to  
20 write your report by March next year.

So in the circumstances – particular circumstances of this case our submission is that it is not a good enough reason to – to refuse to appear. But if the former President does believe it is you Chair will exercise your discretion in terms of your mandate and you will exercise your discretion

in terms of the directives that govern your chairing of the commission. If he believes there are grounds not to appear on a particular date he is free to – to raise those with you.

**CHAIRPERSON:** Well on the information...

**ADV PRETORIUS SC:** But not in those general terms.

**CHAIRPERSON:** Provided – on the information provided this is not a case where he was saying the dates that you have given me on which to appear before the commission  
10 fall – are the same dates when I must – I am supposed to appear in the High Court for my criminal trial. That would be different. That would be different.

But that is not what the letter was saying. It was simply saying he is busy preparing for his criminal trial. It does not say when the criminal trial is going to happen. But in the end even if the criminal trial was going to happen soon he would have to appear before the Commission and then apply for more time with the criminal trial and say: I have been busy with the Commission.

20 **ADV PRETORIUS SC:** Correct.

**CHAIRPERSON:** I am now asking for you to give me more time in order to prepare for the trial

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** Not to say: I am not going to appear before the Commission because I am preparing for a criminal

trial that is going to come at some stage on some dates that maybe have not even been determined.

**ADV PRETORIUS SC:** Yes, Chair. Quite frankly, Chair. The Commission has a job to do. It is obliged to do it. The fact that there are other matters that the former president must attend to may or may not be relevant, but it is certainly no basis for a blanket refusal to come on those grounds at all and frankly on any date.

**CHAIRPERSON:** Ja. And you see, as I see it, that  
10 particular statement in the letter means that that is a belief that he holds that because he is preparing for this criminal trial, he does not have to come to the Commission.

And if that is so, if he has that believe, how can he come before the Commission at any stage before his trial happens?

Because the closer the... as he approaches the trial dates of the criminal matter, the more time he would want to spend preparing for that criminal trial.

**ADV PRETORIUS SC:** Correct, Chair.

20 **CHAIRPERSON:** So the question is. Can that person ever come before the Commission voluntarily before his criminal trial happens?

**ADV PRETORIUS SC:** Not on what is contained in that letter.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** So whilst the requirement to appear in another forum may be a reason to ask for particular dates to be changed, certainly not as it appears there, grounds for a blanket refusal to come before the Commission.

**CHAIRPERSON:** H'm, h'm. Yes.

**ADV PRETORIUS SC:** Chair, the issues that we have covered in our written submissions, therefore covered two principle contentions.

The first is to say that Mr Zuma's evidence is both  
10 necessary and desirable for the work of the Commission. That we will establish and have dealt with in detail in the written submissions.

The second is why it is necessary that summons be issued to secure Mr Zuma's appearance at the Commission to give evidence.

Now Chair, that is an added reason but it is not a necessary reason. In regard to the first issue, if I may refer to paragraph 12.1 of the written submissions.

In summary Chair, Mr Zuma's evidence is a necessary  
20 part of the Commission's work for at least the following reasons.

Firstly, much if not most of the corruptions, an act which might constitute State Capture occurred during his term of office as President of the Republic.

Secondly, the Commission's Terms of Reference refers

to Mr Zuma directly in a number of paragraphs. If I may just ask you, Chair, to look at page 808 of the bundle.

**CHAIRPERSON**: Well, I am going to... I was going to go straight to the Terms of the Reference.

**ADV PRETORIUS SC**: Yes, they are there.

**CHAIRPERSON**: Yes. Well, you could read the relevant parts that refer to him.

**ADV PRETORIUS SC**: I will do that. The Terms of Reference are... they are included in the bundle.

10 **CHAIRPERSON**: Okay.

**ADV PRETORIUS SC**: Paragraph 1.2 reads:

“Whether the president...

And that is a reference to the former president.

“...had any role in the alleged office of cabinet positions to Mr Mcebisi Jonas and Ms Mentor by the Gupta family as alleged.”

Terms of Reference 1.3:

20 “Whether the appointment of any member of the National Executive Functionary and/or office bearer was disclosed to the Gupta family or any other authorised person before such appointments were formally made and/or announced and if so, whether the President or any member of the National Executive is responsible for such conduct.”

Terms of Reference 1.4:



“Whether the President or any member of the present or previous members of this National Executive including deputy ministers or public official or employer, any state owned entities breached or violated the Constitution or any relevant ethical code or legislation by facilitating the unlawful awarding of tenders by SOE’s of any organ of state to benefit the Gupta family or any other family, individual or corporate entity doing business with government of any organ of state.”

Terms of Reference 1.5. Sorry, 1.9.

“The nature and the extent, if any, in the awarding of corruption, if any, in the awarding of contracts and tenders to companies, business entities or organisations by government department, agencies and entities.

In particular, whether any member of the National Executive (including the President), public official, functionary of any organ of state or influenced the awarding of tenders to benefit themselves, their families or entities in which they held a personal interest.”

Those are direct references to the former President, Chair. Terms of Reference 1.1 and 1.7 contain indirect references to the former President.

Terms of Reference 1.7 reads:

“Whether any member of the National Executive...

Which will include the president.

“...and including deputy ministers, unlawfully or corruptly or improperly intervened in the matter of the closing of banking facilities for Gupta owned companies.”

And then 1.1:

10 “whether and to what extent and by whom attempts were made through any form of inducement or for any gain of whatsoever nature to influence members of the National Executive...

Which would include the former President.

“...including deputy ministers, office bearers and/or functionaries employed by office bearers of any state institution or organ of state or directors of boards of SOE’s.

20 In particular, the Commission must investigate the veracity of allegations that the former Deputy Minister of Finance, Mr Mcebisi Jonas and Ms Mentor were offered cabinet positions by the Gupta family.”

Now the offer of cabinet positions is a matter which caused directly with the... but all those Terms of Reference, obviously, obliged you Chair to investigate matters, related

to the conduct directly or the former President.

**CHAIRPERSON:** I think if you go back to... or maybe I can just have a look. One point one, among others, that is of the Terms of Reference:

“Among others, requires this Commission to investigate the veracity of allegations that former Deputy Minister of Finance, Mr Mcebisi Jonas and Ms Mentor were offered positions by the Gupta family.”

10 Now, one of the matters on which Mr Zuma may assist the Commission is this. Mr Jonas gave evidence that on the 23<sup>rd</sup> of October 2015, he met with one of the Gupta brothers and Mr Duduzane Zuma and Mr Hlongwane at the Gupta residence.

And he said the Gupta brother who appears to have been Tony Gupta, told him that Mr Nhlanhla Nene was going to be fired as Minister of Finance because he was not working with them and they wanted Mr Jonas to agree to the Minister of Finance and then if he would work with them.

20 Six weeks after that, Mr Nhlanhla Nene was fired. And the media statement that was issued by Mr Zuma said that Mr Nhlanhla Nene had done a stunning job as the Minister of Finance.

And it was said that Mr Nhlanhla Nene was dropped from cabinet because he was to be the government’s candidate for

a position in the ...[intervenes]

**ADV PRETORIUS SC:** Brics Bank.

**CHAIRPERSON:** Brics Bank, I think. But the job never happened. And I have heard evidence from somebody from the bank who said that is not how the bank... that bank operates. It has got policies and procedures and Mr Zuma had no say, had no power to force the bank to take Mr Jonas.

Mr Jonas himself said the... his position as Minister of Finance was higher than the position that Mr Zuma was  
10 talking about in the bank.

And Mr Nene said, actually, the... Mr Zuma's reason for dropping him, that he was to go to that job, was a fabrication. That is what Mr Nene said before me under oath here.

So the question is. How come somebody from the Gupta family knew in advanced that Mr Nene was going to be fired? Then Mr Nene gets fired. The President says: This man has done a stunning job. But he fires him, nevertheless.

The man goes and stays at home. The job that has...  
20 that the President talked about, does not materialise. And Mr Nene said: He never even phoned me after I had left and sitting at home and to check whether anybody had contacted me about this job.

And then, when Mr Jonas gave evidence, he said the Gupta brother who was in that meeting, among others things,

said to him: If you need advisors or you need support staff when you become Minister of Finance, we will provide.

And the replacement of Mr Nene, Mr Van Rooyen - I have heard that evidence – comes to National Treasury on the first day of his appointment, comes with certain advisors and those advisors seem to have connections with the Gupta family.

**ADV PRETORIUS SC:** Correct.

**CHAIRPERSON:** And Mr Jonas says, at that meeting, the  
10 Gupta brother also told him that there are people that they work with and he says one of them is Mr Brian Molefe, another one is Ms Lynne Brown, Minister of Public Enterprise at that time.

And when Mr Gordhan gave evidence before the Commission he said he heard that when he was fired in 2017 by Mr Zuma, Mr Zuma told the Top Six of the ANC that he wanted to replace him with Mr Brian Molefe.

And the Commission subsequently asked some members of the Top Six, Mr Gwede Mantashe, Dr Zweli Mkhize and Ms  
20 Duarte, Jessie Duarte to depose to affidavits to say: Do you know anything about this?

And the Commission has got affidavits from them. They did not give any problems. They supplied affidavits.

And those affidavits do say, indeed Mr Zuma did suggest to the Top Six that he wanted to replace Mr Gordhan with Mr

Brian Molefe. The same Mr Brian Molefe that Mr Jonas says he was told by the Gupta brother worked... was working with the Gupta's.

And then of course, we all know, it is in the public domain that Mr Brian Molefe resigned from Eskom after the Public Protector's report.

I think he said he wanted to clear his name of whatever but later went to parliament. I think he went to parliament about a month or two before Mr Gordhan was fired. And then  
10 Mr Gordhan was fired. Mister...

I think the three members of the ANC Top Six who have provided affidavits, said that the Top Six rejected Mr Zuma's suggestion to replace Mr Gordhan with Mr Molefe.

And then what we do know is that Mr Gordhan was then succeeded by Mr Gigaba.

And what we do know, it is in the public domain, is that it did not take long after that before Brian Molefe resigned from parliament.

**ADV PRETORIUS SC:** Correct.

20 **CHAIRPERSON:** And Mr Zuma must enlighten the Commission on all of these matters.

**ADV PRETORIUS SC:** Yes, Chair. Chair, there are, apart from those Terms of Reference, there are other Terms of Reference where Mr Zuma's evidence would be necessary for the Commission to complete its investigations adequately.

The 1.6 which talks about government advertising in the New Age Newspaper and other undue benefits to the Gupta family.

There has been evidence directly implicating the former President. Mr Sundaram's evidence, for example, where you have asked for information from the former President which has not been forthcoming.

So there are a number of... there is the evidence, for example, of the exchange and the study of the former  
10 President at his residence in Pretoria, Chair. Where the Gupta's demanded "favours" from the then Minister Shabangu in relation to mining licenses.

All those issues are issues that need to be addressed. And the evidence to date is replete with such examples where it is necessary for you Chair to investigate these matters as a matter of your Terms of Reference.

**CHAIRPERSON:** H'm. I mean, I am hearing evidence these days relating to Eskom. And hearing evidence from Mr Tsotsi and from Mr Nick Linnell. It is to the effect that, Ms Dudu  
20 Myeni called Mr Linnell to Pretoria and said you... I need you to come and meet with the president. He came.

The president did not meet them then but then he was told: Go to Durban. They have been meeting at the President's official residence on Sunday the 8<sup>th</sup> of March. He went there. Mr Tsotsi was called there.

And a discussion took place which was to the effect that there should be an inquiry into the affairs of Eskom and certain executives must be suspended.

Ms Lynne Brown, I have read her affidavit that she has given to the Commission. If I understood her evidence in the affidavit correctly. She says she knew nothing about that meeting in Durban and yet, she was Minister of Public Enterprises.

And both Mr Linnell and Mr Tsotsi say that President  
10 Zuma took part in that meeting. I have seen the statement by Ms Dudu Myeni who denies that Mr Zuma took part in that meeting.

I have heard evidence that in regard to Eskom and a board meeting that was supposed to happen on the 26<sup>th</sup> of February, was cancelled because Mr Zuma called the chairperson of the board the night before and called the acting DG of the Department of Public Enterprises and said that meeting must be cancelled.

**ADV PRETORIUS SC:** Yes.

20 **CHAIRPERSON:** And the acting DG at the time says, when the President called her because he said he could not find the minister or deputy minister.

When she said: But we cannot interfere. Or something to that effect. He says, Mr Zuma said: Well, that meeting must be cancelled and dropped the phone.



Now with regard to Eskom. The evidence that is unfolding and there are more witnesses who will come and maybe the picture will change when everybody has given evidence.

But at this stage, the evidence that seems to emerge suggest that there may well be credence to the proposition that certain decisions that were made by the Eskom Board were dictated to the Exco Board from outside Eskom.

And certain executives were removed. And then Mr  
10 Brian Molefe and Anoj Singh from Transnet were then seconded to Eskom to take some of the positions of the executives who were suspended and then allowed to leave or kicked out.

And I have heard certain evidence about allegations relating to Mr Brian Molefe and Anoj Singh of Transnet, who were leading evidence of some of the people who the board had asked to Mr Brian Molefe and to Mr Anoj Singh when they were at Transnet, about money that they say they have got from the Gupta's in the night and so on.

20 Of course, they will come and give their evidence and maybe one will get a different picture and maybe one would come to the conclusion that nothing like that ever happened. But these, all of these things cannot be ignored.

**ADV PRETORIUS SC:** Correct.

**CHAIRPERSON:** I cannot ignore these things when I asked

the question: Should I call Mr Zuma to appear? I cannot ignore those if I am going to do my job properly.

**ADV PRETORIUS SC:** H'm, h'm. And you have been cautious to say that no findings have been made.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** But you have evidence before you ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** ...which requires investigation.

10 **CHAIRPERSON:** H'm.

**ADV PRETORIUS SC:** And as night follows day, evidence implicating the former President must be examined, including through the evidence of the former President himself.

**CHAIRPERSON:** H'm.

**ADV PRETORIUS SC:** There are other examples. Chair, the record is ...[intervenes]

**CHAIRPERSON:** Ja, is replete.

**ADV PRETORIUS SC:** ...replete of such evidence.

**CHAIRPERSON:** Yes.

20 **ADV PRETORIUS SC:** Direct interference in the activities of law enforcement agencies.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Appointments and dismissals.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** The meeting with Gavin Watson

...[intervenes]

**CHAIRPERSON**: Yes.

**ADV PRETORIUS SC**: ...in relation to the BOSASA prosecution.

**CHAIRPERSON**: Yes.

**ADV PRETORIUS SC**: Those sorts of issues ...[intervenes]

**CHAIRPERSON**: Yes.

**ADV PRETORIUS SC**: ...need to be dealt with.

**CHAIRPERSON**: I mean, there was evidence by some of  
10 the people who were senior officials within the Intelligence  
community that their departments had... or units had  
conducted certain investigations of criminal nature.

And the minister serving under Mr Zuma or State Security, Dr Cwele called one of them to a meeting at the airport where he told them, according to the evidence placed before me that President Zuma had said that the investigation should be stopped. I need to look to all of those things.

**ADV PRETORIUS SC**: Correct.

20 **CHAIRPERSON**: How can I ignore those things?

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

**CHAIRPERSON**: How can I ignore all of those things? And all I am doing, I am doing my job to establish exactly what happened.

**ADV PRETORIUS SC**: Correct.

**CHAIRPERSON:** So that I can prepare reports that is based on evidence that has been presented by cross-section of people. And if he is implicated, I am giving him an opportunity to come here and clear his name.

But I want to know what he has to say about those things. He might he does not want to clear his name. That is fine.

But I want to know what he knows about the things that have been said.

10 **ADV PRETORIUS SC:** Yes. Chair, in summary then. In evidence before you and to date, and I stress to date, because there is more to come.

Mr Zuma has been or may be implicated by the evidence of at least 34 witnesses. That perhaps is enough to qualify, certainly under Section 3(1) of the act.

Chair, in relation to the second issue that is why there is an added reason that it is necessary and desirable for a summons to be issued.

20 The Commission, quite apart from its mandate, the law, but as a practical consideration, requires certainty in regard to the fact of Mr Zuma's appearance and the dates of his appearance.

We are simply so close to the end of the Commission's hearings that the proper and efficient functioning of the Commission would be rendered impossible unless we have

that certainty and you are entitled to take that into account in the exercise of your discretion.

The history of Mr Zuma's cooperation or lack thereof with the Commission, is set out in the written submissions. Paragraphs 18 and 19, Chair, you during 2018, requested Mr Zuma through his legal representatives to provide a response to the evidence of Ms Mentor and Mr Maseko. That has not been forthcoming.

You will recall the well-known areas of interest  
10 undertaken. There have been and this... the paragraphs of the heads and perhaps, I should just mention one or two.

The most recent undertaken. Just to put that in its context. At the last appearance of the former President where he seized to answer questions, to put it at its lightest.

An arrangement was made and an agreement was reached that the legal team would provide a document containing areas of interest.

There was an agreement and repeated promises that that areas of interest document would be responded to. It  
20 has not been responded to.

In his opposing affidavit dated the 13<sup>th</sup> of January 2020, that is the opposing affidavit to this application, Mr Zuma stated:

"I will be sending the Commission my responses to the areas of interest sent to me. This was already

prepared but could not be completed when I fell ill.”

Now we are ten months later Chair. That document still has not been forthcoming.

**CHAIRPERSON:** Well, in terms of the agreement that was reached on the 19<sup>th</sup> of July, when he was before the Commission, you were... the legal team of the Commission were required to furnish his lawyers within, I think, two weeks with a document that would indicate the areas of interest in the various affidavits that he had to focus on and  
10 responding.

And the agreement was that, as far as I can recall, once you had furnished his lawyers with such a document, which you did around, I think, on the 30<sup>th</sup> of July.

**ADV PRETORIUS SC:** It was slightly later.

**CHAIRPERSON:** Oh.

**ADV PRETORIUS SC:** It was in the first week.

**CHAIRPERSON:** Or first week, ja.

**ADV PRETORIUS SC:** Of the following month.

**CHAIRPERSON:** Yes. Once you had done that...

20 **ADV PRETORIUS SC:** I am told it was the 30<sup>th</sup>, Chair.

**CHAIRPERSON:** Yes, I think it was.

**ADV PRETORIUS SC:** But there were some administrative hiccup.

**CHAIRPERSON:** Ja, I think a lot of ...[intervenes]

**ADV PRETORIUS SC:** In any event, it was delivered.

**CHAIRPERSON:** Ja. Once you had done that, you and Mr Zuma's counsel were supposed to agree a date by when they would file his affidavit or affidavits.

And if the two of you did not agree, the arrangement was that you would then bring that issue to me and I will decide the timeframe.

Now from what I read, one, they did not file affidavits. Two, they did not... they do not seem to have reached any agreement with you.

10 And they promised at some stage, I think from what I read in the correspondence exchanged between yourself and them, that Mr Zuma's affidavit or affidavits would be filed on the 13<sup>th</sup> of September, last year. That did not happen.

Subsequently, they kept on promising that they would be filed. They have never been filed.

And no condonation application has been filed and no explanation, as far as I recall, has been proffered to say what is the difficulty to the extent that he may be saying in his affidavit, at a certain stage he fell ill and that impacted  
20 the preparation.

It seems that that was long after the deadline had happened. And there was simply nothing coming from them.

**ADV PRETORIUS SC:** Well, Chair there were repeated undertakings.

**CHAIRPERSON:** H'm.

**ADV PRETORIUS SC:** On 12<sup>th</sup> September 2019, Mr Zuma’s attorneys confirmed that he would provide his answers to the areas of interest document previously provided to him. And then Chair, on the 30<sup>th</sup> of September, Mr Zuma’s attorneys requested a “indulgence” to provide the Commission with the answers to the areas of interest by 20 October 2019 and simply after that nothing has been forthcoming.

Even in January this year, in opposition to the application it said the document is ready, I just cannot  
10 finalise it. Ten months later we still do not have the document here.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** So the import, let alone the implications of that are clear.

**CHAIRPERSON:** Of course, Mr Zuma’s might not be here today but they had filed his affidavit opposing this application. One of the issues that arises is this, when I invited Mr Zuma last year to appear before the Commission from the 15 to the 19 July, they criticised me for inviting  
20 him saying that that is not provided any rule saying in terms of what rule are you inviting our client, you know? And when it was – you know, it was just a courtesy, you know, to say let us not issue a summons because he has promised to cooperate with the Commission, they seemed to have an objection to say why are you not acting in terms



of the rules ...[intervenes]

**ADV PRETORIUS SC:** Of which led to summons.

**CHAIRPERSON:** Now the legal time has now applied that I should authorise a summons, then they oppose that and say you make it as if he is not cooperating. So when you act and show courtesy and say come and appear before the Commission without issuing a summons, you are criticised. When you say okay, let us issue a summons, then you are criticised.

10 **ADV PRETORIUS SC:** Then you not being polite.

**CHAIRPERSON:** I mean, there are many people who have been requested by the Commission to appear before the Commission and they have never had any hesitation. We have told, you know, Mr Zuma's attorneys before – I was looking at the correspondence here, that I told the President, current President that before the Commission finishes its work it would be important that he comes and gives evidence before the Commission because the matters that the Commissioner is looking at, state capture, 20 happened at a time when he was Mr Zuma's deputy. The current President had no hesitation, he said you are right, I am going to come. You tell me when I must come and I will come and I said the ANC must also come and I was told the ANC has no hesitation to come.

The Commission has approached other leaders of

the ANC, Mr Mantashe, and asked them to file affidavits without compelling them and they responded by filing affidavits. Mr Mantashe, Dr Zweli Mkhize, Ms Jessie Duarte, the President himself was asked, without being compelled, to file an affidavit about whether had had any interactions with the Guptas. He filed his affidavit, he did not have to be compelled.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** He did not complain that there was no  
10 rule for making such a request.

**ADV PRETORIUS SC:** Yes. Chair, I must stress that the application by the legal team has not been prompted by the notion, which is a preposterous notion, frankly, that you are not allowed to issue polite invitations because the law does not expressly say, you know, you may do so. There are good legal and factual grounds quite apart from that. But the proposition that you are not entitled by law to issue a polite invitation to witnesses to come before the Commission to give evidence voluntarily cannot stand.

20 **CHAIRPERSON:** Ja, I mean, all it seems is I am not supposed to ask him to come, I am not supposed to authorise a summons to be issues to compel him to come, so ...[intervenes]

**ADV PRETORIUS SC:** But when you do...

**CHAIRPERSON:** So I guess I am supposed to just fold my

hands and not do anything.

**ADV PRETORIUS SC:** Yes, Chair. The test, of course, is you have a duty, you have a discretion, you have a mandate and you have the power and that must be exercised reasonably in terms of discretion and all the facts that are incontrovertible, Chair, and I will deal with some more now and make it certainly beyond, in our submission, any doubt that that discretion would be reasonably exercised.

10 **CHAIRPERSON:** I think the one question that I think you will need to deal with is to the – it is two questions, one is whether when the point Section 3.1 says that the Commission has got power to summon witnesses, we know that this Act is a 1947 Act, it is very old, at that time there was only one way of summoning that could happen. One question is whether that summoning in this day and age would include summoning a witness to appear and give evidence by video link or in any other way that may be done with technology. I raise that because you will  
20 remember that in his attorney's letters one of the things they say is that because of his age and Covid-19 his doctors have advised him to limit his movement.

So the normal way of – when a summons is issued in any court to be served on somebody to appear before that court, it means that that person must physically come

to the court.

Now the question of Covid-19 may well be something that needs to be looked at. I do not have a problem if – I will not have a problem if he were to say for Covid-19 reasons I would prefer to give evidence via video link. As long as he does so within the borders of the Republic and not from outside, I would not have a problem, I have indeed authorised the giving of evidence by some witnesses via video link. I think one of them was Mr  
10 Mkhwanazi who asked when – I do not know which level, at level we were in, said for Covid-19 reasons he was reluctant to travel and he asked if he could give evidence via video link, I authorised that, it happened. So I could do the same with Mr Zuma if he has a legitimate reason that because of his age.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** So – but the question is whether summon witnesses as used in Section 3.1 is wide enough to encompass that meaning.

20 **ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** Of course maybe if it does not, if it not wide enough to encompass that meaning, it may be that the summons might include something to which we will say if he wishes to give evidence via video link and he advises the Commission timeously on those dates then his

appearance, via video link, will be deemed to be compliance with the summons. I am not sure. What do you say about that issue?

**ADV PRETORIUS SC:** Yes, Chair. The section has a timeless element to it because it says you, as a Commissioner, have the powers that the High Court has and that power has been interpreted and applied over time. In fact the legal team has done an opinion on this which we can let you have, obviously, but I do think it is somewhere  
10 in your own archives as well, the many files that you have. I am told that there is no sound, Chair.

**CHAIRPERSON:** Oh.

**ADV PRETORIUS SC:** Perhaps it is important that there should be sound.

**CHAIRPERSON:** No, it is important.

**ADV PRETORIUS SC:** Purely coincidental, Chair.

**CHAIRPERSON:** Well, maybe I should adjourn while they are attending to it.

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

20 **CHAIRPERSON:** Yes. We will adjourn for a few minutes. Hopefully they can sort out the sound quickly. We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** I understand the sound is back.

**ADV PRETORIUS SC:** Yes thank you Chair. Chair we

were dealing with the import and meaning in today's technological age of the provisions of Section 31 of 1947 Commission's Act. The powers of the Court ...[intervenes]

**CHAIRPERSON:** I am sorry Mr Pretorius, I just wanted to say – I just wanted to say that the regulations of this Commission, which were promulgated by Mr Zuma when he was President include Regulation 10[6] and Regulation 10[6] says:

10           “For the purposes of conducting an investigation the Chairperson may direct any person to submit an affidavit or affirmed declaration or to appear before the Commission to give evidence or to produce any document in his or her possession or under his or her control, each has a bearing on the matter being investigated and may examine such person.”

**ADV PRETORIUS SC:** Yes Chair and those regulations have been promulgated under the amended 1947 Act, which says that the President may issue regulations to expand the powers of the Commission.

20           **CHAIRPERSON:** Yes, yes.

**ADV PRETORIUS SC:** Chair the 1947 Act, which gives powers to the Commission which are equivalent to the powers of the High Court is instructed, because the powers of the High Court have been developed over time through the application of the summons provisions and the giving of

evidence provisions to take account of technology. There is the judgment of Satchwell, J, the technology of the video link is now accepted both in other jurisdictions and South Africa as an efficient and effective way of providing oral evidence both in chief and in cross-examination and that this is simply another tool for securing effective access to justice.

We have the example of children giving evidence via video link, we have the example of *in camera* witnesses, or witnesses who don't give evidence directly but over video and sound links, so there is no reason why a person whose immunity is threatened by Covid conditions shouldn't also be catered for under the expanded technological rubric of the giving of evidence.

Of course you make the qualification which is important that the witness must be within the jurisdiction of the Court, so that the evidence that is given can be accounted for in terms of the law within the borders of the country.

20 **CHAIRPERSON:** Yes, the one approach may be to take the summoning to be wide enough to include a video link, another approach might be what I said earlier on to have the summoning as it would be in a summons but to have something that says either maybe in the summons that says if the witness, if Mr Zuma through arrangements with

the Commission appears via video link on the days that are specified that will be deemed to be compliance with the summons.

**ADV PRETORIUS SC:** Yes Chair. In fact I think that has been provided for in other cases specifically *in camera* witnesses.

**CHAIRPERSON:** Yes, because then it gives him an opportunity that if he has no problem giving evidence but he has a problem because of his age and Covid 19 then  
10 that is taken care of, it can't be advance as a reason for not appearing whereas if that is not done he might say the Covid situation is a good enough reason for me not to appear so but if one – if that is dealt with that way then he can't advance that, that reason.

**ADV PRETORIUS SC:** Okay, yes. And the powers that you have are based in statute as well as in regulations which have been empowered by statute expressly, as well as the general power that during the charge of the procedures, and this is essentially given the authority is a  
20 procedural matter.

Chair if I may just finish the list of issues where the former President has been requested to assist you in your investigations.

You requested the President to respond to the application made by Ms Reddy Tlabe that was an



application made by her to give evidence and to cross-examine the former President, arising out of his own evidence and in that respect a request was made and there has been no response to that.

You have issued at least two 10.6 directives, the provision to which you have just referred Chair, requiring him to respond, and this is more than an invitation Chair, this is an exercise of the compulsory power, to respond to the evidence of Messrs Tsotsi, Linnell and Matona and to  
10 respond to the evidence of Mr Popo Molefe in the Eskom and in the PRASA matters respectively. Those have not been complied with.

**CHAIRPERSON:** Well one of those, I forget which one, was I signed the regulation 10.6 directive, I think on the 28<sup>th</sup> of August. That may have been the one relating to the affidavit of Mr Tsotsi and so on, or it may have been the one relating to Mr Popo Molefe's affidavit in evidence about PRASA issues and subsequently I signed another directive requiring Mr Zumato file affidavits.

20 So this is different, in the past there was a request in 2018, that request has never been complied with, there was an undertaking that the he would file an affidavit dealing with responding to General Maseku's evidence and Ms Mentoor's evidence. That has never been filed.

Then last year when he appeared before the

Commission there was an agreement, you referred to it  
...[intervenes]

**ADV PRETORIUS SC:** Yes followed up by several  
promises.

**CHAIRPERSON:** Yes, and agreement that was concluded  
with him through his lawyers, and which I announced  
publically and I remember after announcing the terms of  
that agreement I called upon you and his counsel to  
confirm that I had correctly recorded the terms and both of  
10 you confirmed and he had agreed through his lawyers to  
file an affidavit, or affidavits responding to various  
affidavits of witnesses who ...[intervenes]

**ADV PRETORIUS SC:** The areas of interest documents?

**CHAIRPERSON:** Yes, that affidavit, those affidavits have  
never been furnished, so whether you request him to file an  
affidavit you request him nicely, you don't get an affidavit.  
Whether there is an agreement with his lawyers or an  
affidavit he will file affidavits, you don't get those affidavits  
and now when you issue a directive, because  
20 ...[intervenes]

**ADV PRETORIUS SC:** Which came as a criminal sanction.

**CHAIRPERSON:** Sorry?

**ADV PRETORIUS SC:** The directive now carries a  
criminal sanction.

**CHAIRPERSON:** Yes, now the last time I heard was that

the directive that I issued on the 28<sup>th</sup> of August compelling him to file an affidavit I cannot remember whether it was in regard to the Eskom matter and the Durban meeting or whether it was in regard to PRASA, but the deadline which had been given the last time I had it had come and gone and he had not filed any affidavit and in regard to another one I suspect that the deadline has come and gone, but I don't – I haven't been told whether he has filed an affidavit.

10           So whether you make a request nicely he won't file an affidavit. Whether you reach an agreement with him and he undertakes to file an affidavit he won't file it. When I issue a directive in terms of the regulations, at least in regard to one he did not file an affidavit within the time that was given and to my knowledge he did not file an application to request an extension of time and in terms of the regulations as amended failure to comply with a directive issued by the Chairperson in terms of Regulation 10[6] failing to comply with it without sufficient cause is a  
20 criminal offence.

**ADV PRETORIUS SC:** Correct. Chair there were two further invites of a less formal nature to respond to Mr Human's affidavit dealing with the evidence of Mr Sunderam and an invitation to respond to the affidavits of Mr Megwe and Ms Pillay also dealing with the evidence of

Mr Sunderam, those have not been complied with either.

Importantly for the question of an appearance Chair you have set aside at least five separate weeks in the calendar of the Commission for the appearance of Mr Zuma, which have not been adhered to and what you directed Chair was that if he wasn't to appear or had good reason not to appear he should make formal application, that hasn't been received either.

**CHAIRPERSON:** It was never done.

10 **ADV PRETORIUS SC:** There has never been a formal application, we have always had to deal with allegations and correspondence, and of course that is more than just a formal requirement because if Mr Zuma's legal representatives were to come before you to make an application not to appear in any one of those five weeks you would have the opportunity of interrogating that. If it is just simply sent to you in a letter you don't have that opportunity at all, so it is more than just a procedural requirement it is a substantive requirement.

20 So Chair in summary then, unless there is any further issue you want to raise the two questions really before you are would it be a reasonable exercise of the power that you have to issue summons in these circumstances, given the terms of reference, given your duties, given the provisions of Section 31, given the

provisions of Section 10[6] that must be answered in the affirmative. There are the added considerations that we have just outlined that make it practically necessary for summons to be issued and we therefore ask for an order in terms of the amended Notice of Application.

**ORDER**

Having read the affidavits placed before me and having listened to submissions made by counsel representing the Commission's legal team I am satisfied that this is a matter  
10 in which I should grant the application.

I am satisfied that a proper case has been made out for an order authorising that the Secretary of the Commission should sign and issue a summons against Mr Jacob Gedleyihlekisa Zuma, former President of the Republic of South Africa to appear before the Commission at ten o'clock on the 16<sup>th</sup> to the 20<sup>th</sup> of November 2020 in this venue on each one of those days, therefore I am going to make the following order:

20

1. The Secretary of the Commission is hereby authorised and directed to sign and issue a summons in terms of Section 3 [1] read with [2] of the Commissions Act H of 1947 requiring Mr Jacob Gedleyihlekisa Zuma, former President of the Republic of South Africa to

appear before the Commission at ten o'clock on the 16<sup>th</sup> to the 20<sup>th</sup> of November 2020, both days inclusive for purposes of giving evidence before the Commission and being questioned in order to ascertain certain matters relating to the subject of the investigations of the Commission.

10 2. Should Mr Jacob Gedleyihlekisa Zuma make appropriate arrangements with the Commission prior to the dates referred to above to give evidence via video link and he subsequently gives evidence on those days via video link that will be deemed to be sufficient compliance with the summons, and the Secretary of the Commission should include advice or words to this effect in the summons so that Mr Zuma will know that such appearance will be deemed to be sufficient compliance with the summons.

Is there something that I am ...[intervenes]

20 **ADV PRETORIUS SC:** No Chair that is – we will assist the Secretary in the drafting of the summons in accordance with your order.

**CHAIRPERSON:** Yes, yes. That is the order I am making.

**ADV PRETORIUS SC:** Thank you Chair. May we be excused.

**CHAIRPERSON:** Yes, you are excused. We will take a

short adjournment and once the witness here for today is ready then I will be called.

We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

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

**ADV SELEKA SC:** Morning Chair.

**CHAIRPERSON:** Are you ready?

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

**CHAIRPERSON:** Thank you. I see Mr Tsotsi is back.

**ADV SELEKA SC:** Indeed Chairperson the first witness is Mr Tsotsi this morning.

**CHAIRPERSON:** Welcome back Mr Tsotsi.

**MR TSOTSI:** Thank you.

**ADV SELEKA SC:** Mr Tsotsi may be sworn in Chairperson.

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

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

**MR TSOTSI:** Zola Andile Tsotsi.

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

**MR TSOTSI:** No.

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

**MR TSOTSI:** Yes I do.

**ADV SELEKA SC:** Do you swear that the evidence that you will give will be the truth; the whole truth and nothing else but the truth; if so please raise your right hand and say, so help me God.

**MR TSOTSI:** So help me God.

**CHAIRPERSON:** Thank you; you may be seated.

**ADV SELEKA SC:** Thank you Chair. Chairperson the main bundle we will be using this morning for Mr Tsotsi is Eskom Bundle 07[A].

10 **CHAIRPERSON:** Yes I got it.

**ADV SELEKA SC:** Mr Tsotsi – thank you Chair. Mr Tsotsi you will have it also there in front of you.

**MR TSOTSI:** Yes I do.

**ADV SELEKA SC:** That bundle will contain Mr Tsotsi your affidavit on the first – okay we will use the pagination on the left hand side top corner – the black pagination instead of the red. Okay. Ja.

20 Mr Tsotsi yesterday we ended on a note and I want to continue on that note. We ended on that note with a different witness before us a former member of the board. And the main issue with which I want to start is the apparent uncertainty about how the Financial Director got onto the list of the suspended executives.

By the way for the purposes of background we will be dealing Chairperson with Mr Tsotsi with the end of the



suspension issues.

**CHAIRPERSON:** Yes I thought you need to ...

**ADV SELEKA SC:** Explain that.

**CHAIRPERSON:** Get him to explain for the public.

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

**CHAIRPERSON:** Just because Mr Tsotsi has been here I think he is coming to testify for the commission for the third time now – if not fourth time. So you have called him especially to deal with certain matters relating to Eskom that  
10 he might not have dealt with sufficiently; previously or that you might not have covered or that may have arisen from other witnesses in the meantime.

**ADV SELEKA SC:** Correct Chair.

**CHAIRPERSON:** And you want to put to him some of the things that other witnesses say about him.

**ADV SELEKA SC:** That is correct Chair.

**CHAIRPERSON:** Or about some of the matters that he has covered. I think that is the purpose Mr Tsotsi.

**ADV SELEKA SC:** Yes.

20 **CHAIRPERSON:** Why you are back.

**MR TSOTSI:** Alright.

**ADV SELEKA SC:** Yes. Now Mr Tsotsi has been informed Chairperson accordingly.

**CHAIRPERSON:** oh okay.

**ADV SELEKA SC:** So – so that – that will not take him by

surprise.

**CHAIRPERSON:** Hm.

**ADV SELEKA SC:** Mr Tsotsi I want to start with the apparent uncertainty and it may not be an uncertainty from the evidence we saw yesterday. The inclusion of the Financial Director Ms Tsholofelo Molefe on the list of those who were to be suspended.

Now as you have testified the – you went to a meeting in Durban on the 8 March 2015.

10 **MR TSOTSI:** Right.

**ADV SELEKA SC:** That is a Sunday afternoon. You meet there with Ms Dudu Myeni, Mr Linnell, the President joins you later. There is Dudu – Ms Dudu Myeni's son as well and Mr Nick Linnell recalls that there was a gentleman called Jabu Maswanganyi. You had followed that explanation? You follow the – the narrative explanation?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** I will not go into the details but in that meeting the request to you was that three executives should  
20 be suspended. Correct?

**MR TSOTSI:** Correct.

**ADV SELEKA SC:** Those three executives did not include Ms Tsholofelo Molefe.

**MR TSOTSI:** Correct.

**ADV SELEKA SC:** But we understand from another witness

Ms Suzanne Daniels that she has a meeting – she is called to a meeting by Mr Matshela Koko on the 10 March two days after your meeting. The 10 March 2015 at Melrose Arch and that there she is made to meet with a gentleman called Mr Salim Essa. You would have heard that from her testimony at the Parliamentary Portfolio Committee and her affidavit before this commission.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** The meeting at Melrose Arch 10 March  
10 2015 has a commonality with your meeting in respect of the three executives. Correct?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** But they add one more. They add the Financial Director. But what is interesting Mr Tsotsi is how Mr Salim Essa according to Ms Daniels introduces himself to Ms Daniels. He according to Ms Daniels he says I am the Minister's advisor.

**CHAIRPERSON:** Oh I missed that did – did Ms Daniels say that?

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

**CHAIRPERSON:** Oh I missed that. How could I miss that? Is it in another bundle?

**ADV SELEKA SC:** It is in...

**CHAIRPERSON:** I would like to see that.

**ADV SELEKA SC:** Yes, no correct Chair. It is in Ms Daniels'

bundle. I will open the page to it.

**CHAIRPERSON:** Ja have I got it here? I would like to see it.

**ADV SELEKA SC:** Chair I – I used a different file – let us see. Oh here is my file. Because mine is marked and I can easily get the page which I want. That is on page – that is page 9 Chairperson.

**CHAIRPERSON:** What bundle?

**ADV SELEKA SC:** That is bundle – Eskom Bundle 08.

10 **CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Eskom Bundle 08. It helps to re-read these things Chairperson and you see these things.

**CHAIRPERSON:** There is a lot to read and sometimes you miss something.

**ADV SELEKA SC:** Yes. Paragraph.

**CHAIRPERSON:** What paragraph.

**ADV SELEKA SC:** Paragraph 22 Chairperson.

**CHAIRPERSON:**

20                    “As we were chatting a gentleman walked  
                         into the board room and introduced himself  
                         as Salim Essa advisor to Minister Brown.”

I had missed that. But apart from the significance that you may attach to it for purposes of these – there is another significance that you might not be aware of that – but that I am aware of that is that if I recall correctly when Minister

Mosebenzi Zwane went to Switzerland and met with the CEO of I think Glencore Mines in order when Tegeta wanted to – wanted to preclude some agreement with Glencore it is said that Mr Salim Essa attended that meeting and Mr Ephraim who gave evidence before the commission last year said that he had been told that Mr Salim Essa had intro – or rather that Mr Salim Essa was introduced to the CEO of Glencore as an advisor to Minister Mosebenzi Zwane.

Mr Ephraim's evidence or affidavit it was not clear  
10 whether it was Mr Mosebenzi Zwane who said to the CEO of Glencore this is my advisor or whether it was Mr Salim Essa who said I am the Minister's advisor. We have pursued that and obtained an affidavit from the CEO of Glencore in Switzerland who has provided an affidavit to confirm that Ms Salim Essa was introduced to him in that meeting as Minister Mosebenzi Zwane's advisor.

Although it is not clear I think whether it was Mr Mosebenzi Zwane who said this is my advisor Salim Essa who said this is – I am the Minister's advisor. But there is  
20 that piece of evidence. I think that Mr Mosebenzi Zwane has been asked to comment on it. So that is – that is interesting.  
Ja.

**ADV SELEKA SC:** Indeed Chair. So Mr Tsotsi ...

**CHAIRPERSON:** Of course I think Mr Salim Essa officially was – I am not aware that he was – he had been appointed

as advisor to Minister Mosebenzi Zwane.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** But maybe the public does not know but he had been appointed so we will see.

**ADV SELEKA SC:** Yes, no – neither do I know whether there was an official appointment Chair. Mr Tsotsi do you know?

**MR TSOTSI:** No I do not know.

**ADV SELEKA SC:** Whether Mr Salim Essa was the advisor to Minister Brown.

10 **MR TSOTSI:** No I do not know Chair.

**ADV SELEKA SC:** We are talking here 10 March 2015. You are the Chairperson of the board. Did you know who is the advisor to Minister Brown?

**MR TSOTSI:** I have met a gentleman who was said to Minister Brown's advisor I just forget his name now.

**ADV SELEKA SC:** Was it Salim Essa?

**MR TSOTSI:** No it was not Salim Essa.

**ADV SELEKA SC:** No that is alright. This is what happens Mr Tsotsi. You come from a meeting with the President; you  
20 come out of there with three names; do the enquiry and these other three names of the executives that should step aside or be suspended.

The Melrose Arch meeting has identified four names by a man who says I am the advisor to Minister Brown. You come to the board on the 9<sup>th</sup> the day after your meeting and

you need to explain to the Chairperson because from the memorandum and your proposal whether it is yours or – as drafted by Mr Nick Linnell at the very least one is unable to determine whether the suspension of the executives is explicitly – well that is mentioned or referred to we have determined it is not explicitly mentioned.

So we do not know from the memorandum and the proposal who is going to be suspended. But we know from you – you have testified before the commission that these  
10 are the executives you said to the board should be suspended or step aside. And in your words you said it was the three executives. We have looked at the transcript where you say:

“The Financial Director’s position is different.”

You recall that?

**MR TSOTSI:** Yes I do Chair.

**ADV SELEKA SC:** But then the board goes into a meeting with the Minister. In the meeting with the Minister the board  
20 discusses amongst others the inquiry and we will see from the affidavit of Ms Nkolo it discusses the executives.

Doctor Ngubane writes to the Chairperson in the affidavit that the Minister raised concerns about four executives. The four executives are the ones who get to be suspended. And she expressed the view that the executives

if present their presence will hinder the inquiry. Could that be a coincidence that the Minister and you had different understandings of who exactly should be suspended?

**MR TSOTSI:** Chairman I guess I should start with my understanding at the Durban meeting which Mr Seleka has pointed out that ...

**CHAIRPERSON:** Yes.

**MR TSOTSI:** The understanding was that ...

**CHAIRPERSON:** Ja well I am sorry. The Durban is quite  
10 clear as far as I am concerned.

**MR TSOTSI:** Right.

**CHAIRPERSON:** On the three executives I mentioned.

**MR TSOTSI:** Correct.

**CHAIRPERSON:** Ja. So I think leave the Durban meeting. Nobody has talked about a fourth director to be suspended.

**MR TSOTSI:** Now the point I want to make about the Durban meeting is that the President said he would inform the Minister of the outcome of this meeting.

**CHAIRPERSON:** Yes and asked you to talk to the board.

20 **MR TSOTSI:** So clearly – yes and I will talk to the board. So when I left the meeting my understanding was that the Minister will also be told of three executives.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** Now it came as a surprise to me that there are four areas that were mentioned by the Minister.



**CHAIRPERSON:** Hm.

**MR TSOTSI:** And at the time I did not know about this meeting which occurred on the 10<sup>th</sup>. So I – I am – I can only arrive at a conclusion that there must have been some discussion with somebody where the Minister was either informed or was participating in a discussion which then introduced a fourth person meaning the FD.

So is it two things I – I cannot reconcile them because the understanding in Durban was three and the  
10 indication at the board meeting before the Minister arrived was still three. The Minister comes in and she indicates that there is a – there are four areas to be looked into and then the name of the FD emerges. Now in the subsequent meeting and in the P&G meeting.

So somewhere along the line it seems as though the Minister knew about the addition of – of the fourth executive. Whether it occurred at that meeting of the 10<sup>th</sup> or as a result of that meeting on the 10<sup>th</sup> I cannot really say. I do not know. But there has been you know there is this  
20 transformation of the – of the issue.

**CHAIRPERSON:** Well I think the – what Mr Seleka picked up is quite important about Mr Essa introducing himself as advisor to the Minister. But it is also quite important that Ms Daniels says Ms Essa told her about four executives to be suspended and that included the Financial Director.

Because what it means is that on the evidence that has been presented to me so far about the – this issue of the inquiry into the affairs of Eskom and the suspension of executives it is that the first time that anybody seems to have added the Financial Director as one of the executives to be suspended is Mr Essa when he spoke to – he had a meeting with Ms Daniels and Mr Koko.

And the point you make Mr Tsotsi is also quite important that at the end of the Durban meeting the agree –  
10 the position was that only three executives were talked about and that the President said Mr Koko – Mr Tsotsi please test this idea with the board and I will talk to the Minister. Talking to the Minister would have meant that he would have told the Minister about the discussions at the Durban meeting namely that there should be an inquiry at Eskom and that there should be a suspension of three executives.

And you gave evidence previously and said the President even – the former President asked you Mr Tsotsi do you know who the executives are that are to be  
20 suspended?

And you confirmed because you said Ms Dudu Myeni had told you. So there was clarity at the Durban meeting that there were three executives to be suspended. There was clarity who they were and they did not include the Financial Director. And the former President undertook to convey that

to the Minister and then you have the 9<sup>th</sup>. On the 9<sup>th</sup> the board had a meeting. Nobody at that meeting mentioned anything about the fourth director.

Some witnesses I think may have said there was not mention even of suspensions on that meeting because it was short. But then now – so according to Ms Daniels on the 10<sup>th</sup> before the meeting of the 11<sup>th</sup> Mr Salim Essa tells her it is four executives to be suspended. And indeed ultimately four executives are suspended.

10           It goes back to an issue I raised yesterday with Ms Klein that it looks like certain people were outside of Eskom were making decisions relating to Eskom matters and were making decisions that the board was required to rubber stamp and it would seem that at least in some cases it did rubber stamp some of those decisions.

          And it may well be that the persons who were outside of Eskom who were making these decisions were not in government. But they were deciding who is to be suspended at Eskom; who is going to stay. I mean you were at the  
20   Durban meeting; you met with the former President and there were three executives to be suspended. Now it may well be that even the former President did not know about this addition of the fourth – fourth director. Maybe he only heard after.

          It may well be that he never knew about the fourth

director until the suspension had happened. You do not know. We do not know. Because one could have expected that since in the Durban meeting which you attended with the former President the agreement was that three executives would be suspended.

One would expect that if the President subsequently was subsequently persuaded that there should be a fourth director to be suspended one would have thought that he would have wanted to convey that to you so that you would  
10 know that the addition of this other director is with his knowledge.

**MR TSOTSI**: That did occur to me Chair.

**CHAIRPERSON**: And he never told you about the fourth director.

**MR TSOTSI**: Not at all.

**CHAIRPERSON**: No. Yes Mr Seleka.

**ADV SELEKA SC**: Thank you Chair. Chairperson indeed Mr Tsotsi in your affidavit and I will read it to you that is page  
17 Chairperson paragraph 12.6. It is explicit.

20 “We immediately began a discussion of what was going to be presented to the President. This discussion was led by Dudu Myeni. She explained that the situation of Eskom’s financial stress and poor technical performance warranted that an enquiry into

the company be instituted. She further elaborated that in the course of the said enquiry three executives”

Page 17 paragraph 12.6

“Three executives namely Chief Executive Tshediso Matona, Group Executive for Commercial Matshela Koko and Group Executive for Capital Dan Marokane are to be suspended.”

10 So it cannot be any clearer than that.

**MR TSOTSI:** Yes.

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

**MR TSOTSI:** Yes, yes I can.

**ADV SELEKA SC:** Doctor Ngubane tells us in his affidavit what the Minister said to the board. He says:

“Although the Minister did not say that

**MR TSOTSI:** I want to find it.

**ADV SELEKA SC:** Sorry he says that:

20 **CHAIRPERSON:** I am sorry Mr Seleka. I just want to mention something Mr Tsotsi.

**ADV SELEKA SC:** Okay Chair.

**CHAIRPERSON:** You may comment on it; you might not comment on it if you want. It is interesting that how the Financial Director was added to the list of executives to be suspended. It seems like a mystery even among the board

members you know.

But also I mentioned yesterday how Mr Brian Molefe was – was seconded to Eskom is dealt with in a certain way in Doctor Ngubane’s affidavit. But interestingly he says he does not know how Mr Anoj Singh got added to be seconded to Eskom too as CFO. So there are lots of things that you do not understand how they would happen. Ja anyway.

**ADV SELEKA SC:** So on – on his version Doctor Ngubane who would later replace you as the chairperson of the board  
10 he says in his affidavit.

“Although the Minister did not direct the board to suspend the four executives.”

Now there you hear the four executives. Not the three.

“She raised concerns of her own against them and in the end the Minister felt that the presence of the four executives might hinder the investigation.”

You hear that?

**MR TSOTSI:** Yes.

20 **ADV SELEKA SC:** And Ms Nkolo says:

“The Minister said the board must make a decision I am going to hang around.”

You know that.

**MR TSOTSI:** Yes I do.

**ADV SELEKA SC:** And where did the Minister go? Where

did she hang around?

**MR TSOTSI:** The Minister was escorted to a what would be an almost like a cafeteria that belonged to Eskom within the building.

**ADV SELEKA SC:** Within the building?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** So she is waiting for you – the board to make those decisions?

**MR TSOTSI:** Correct.

10 **ADV SELEKA SC:** So there the four gets introduced. So let us see from the transcript of your meeting because Ms Mabude says which we read yesterday Chairperson.

“Thanks Chair I think the Minister has indicated a whole lot of issues that needs to be looked at.”

And in her speech if you noted what she is – what she was saying 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 and from that speech it was indicated to me  
20 indicating the critical sections that sections that needs to be looked at. We do not have that speech. Was it in writing; was it verbal?

**MR TSOTSI:** No it was verbal there was nothing written.

**ADV SELEKA SC:** Yes. Mr Tsotsi are you able to confirm that? No let me not ask you that question because the

answer to it is ja. So the areas are indicated according to Ms Mabude by the Minister in her speech. Needs to be looked at and she says:

“We need to look at that speech in order to formulate the Terms of Reference.”

And then you say in response to her because it is a long winded talk - okay, I think based on what you are saying to her there are four areas that the minister has spoken about. She spoke about maintenance and that is engineering.

10 Maintenance is driven by engineering.

She spoke about procurement and that is commercial. She spoke about the new Build Programme. That is Group Capital and Technology. And she spoke about finance.

So I would have asked you: Do you remember what areas did the minister identify? But there is your answer.

**MR TSOTSI**: Correct.

**ADV SELEKA SC**: Now ...[intervenes]

**CHAIRPERSON**: So was the minister the first person to include Finance in the list of areas that were to be  
20 investigated?

**MR TSOTSI**: That is correct, Chairman.

**CHAIRPERSON**: Nobody else before that had included that portfolio?

**MR TSOTSI**: No one else.

**CHAIRPERSON**: Yes, okay. and in the areas that were



discussed at the Durban meeting, Finance was not one of them?

**MR TSOTSI**: No.

**CHAIRPERSON**: Yes.

**ADV SELEKA SC**: Thank you, Chair. And in fact, Mr Tsotsi. In the P&G meeting, when you introduced Mr Linnell, you do say to him: So Nick, the purpose of what we have been here... what we have here, Nick. Is basically the board members. We had the sub-committee meetings earlier but  
10 the rest of the board is here.

And basically, I explained to the board that you had been asked to support Eskom in this whole exercise of this investigation, this inquiry, so that, certainly, the governance issues and taking care that this thing is done properly.

And is done in a manner that cannot be challenged and cannot be referred vaguely on the issues. But I want to take you to, you wanting to address the board on. And he says... you say, sorry.

20 “Now the board had 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 in the areas where the investigation will focus, will be

suspended.”

And you say: “And these are four areas.”

This is after your meeting with the minister. Now you are able to say four. Correct?

**MR TSOTSI**: Yes.

**ADV SELEKA SC**: Because you have met with the minister.

**MR TSOTSI**: Correct.

**ADV SELEKA SC**: And Dr Ngubane says, after your meeting with the minister, it was then clear that the shareholder  
10 wants this to be done.

**MR TSOTSI**: Yes.

**ADV SELEKA SC**: The four areas are identified  
...[intervenes]

**MR TSOTSI**: Because he is the one who told me when I objected.

**ADV SELEKA SC**: Say again?

**MR TSOTSI**: Chair, I just need to make a point here. After the minister had left, I got out of from lunch and I was a little late. I came into the meeting, maybe what, ten minutes or so  
20 minutes late, and I found two discussions going on. Well, a discussion going on about two issues.

One was the number of executives to be suspended and secondly, the people to replace them in the acting positions. Now in respect of this matter, I heard the name of the FD motion(?) and I raised objections.

And I said: No, we never agreed on the FD. Why is she being suspended? Then there was reference to the fact that there is a discussion with when the minister was present about the financial ...[intervenes]

**CHAIRPERSON:** The finance portfolio.

**MR TSOTSI:** The Finance portfolio. And then I said: Look, that does not leave or result in us to suspend the FD. So Mr Ngubane, Dr Ngubane then said to me: No, the minister said the FD must be included.

10 So I said: No, I do not agree and I am going to call the minister. So I walked out of the meeting, picked up... took my phone and I called the minister

And I said: Minister, why are we including the FD? She was never part of the rest of the executives to be suspended.

And the minister just simply said to me: This is what we have to do and that is what you need to do. She must be part of that list.

I was infuriated to be honest with you. And so I rather than argue with her because I am not sure what I would have  
20 said to her because of the state I was in, I just decided to just back off. So I went back into the meeting.

So I am just trying to point out the fact that indeed the arrival of the FD on that list was a very contentious issue from my perspective.

**CHAIRPERSON:** But it seems that irrespective of what Ms

Daniels says Mr Essa told her on the 10<sup>th</sup> of March. It seems on your evidence that the inclusion of, as far as you know, the inclusion of the financial director in the list of executives to be suspended, is linked to the minister at two levels.

One, because – and you must say if that is not your recollection in terms of what happened – one, because when the minister spoke to the board on the 11<sup>th</sup>, she mentioned four areas to be investigated and included Finance which had not been included at the Durban meeting.

10 And she spoke on the basis that the executives leading those portfolios, those areas, the board should consider suspending them. That is what at one level.

She is the one who included the Finance portfolio amongst the portfolios to be investigated. And then two. Dr Ngubane, on your evidence, told you that it was the minister who wanted the FD to be included.

And you called the minister to verify this and she did not say to you: I never said the FD should be included. She did not say she should not be included, that is the FD.

20 And she said instead that the... she should be included, in effect. She might not have used those words but that was that the effect of what she said to you. Is my understanding of your evidence correct?

**MR TSOTSI**: It is quite correct, Chairman.

**CHAIRPERSON**: Yes. Okay.

**ADV SELEKA SC:** Thank you, Chair. What I wanted to read Mr Tsotsi whilst you were addressing or rather explaining to the Chairperson about Dr Ngubane, is that statement he makes in his affidavit. He says:

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

10 **CHAIRPERSON:** Who is speaking there?

**ADV SELEKA SC:** That is Dr Ngubane, Chair.

**CHAIRPERSON:** Yes, okay.

**ADV SELEKA SC:** In his affidavit.

**CHAIRPERSON:** Oh, okay.

**ADV SELEKA SC:** Yes. But look at the contrast because you introduced Mr Nick Linnell with your knowledge of the Durban meeting, what was conveyed to you by the... back in Durban.

20 You have mentioned because after the meeting with the minister, you know there is now four areas. But Nick has to address you. But Nick only knows three.

And somebody asked you: Sorry, Chair. Is the Executive for Finance also included?

And Mr Venete Klein yesterday said, that is the voice of the company secretary, Ms Malesela Phukubje. And your

answer was:

“Oh, yes four. And that the work that needs to be done in respect of the investigation must not be compromised 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 of the potential charges that are on the table in respect of the executives and probably...

10 This is the point.

“...and probably exclude the FD because I was not briefed on the FD as far as I know.”

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Because your briefing... that is the Durban briefing.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** The FD was not included. But certainly on the other three, maybe you want to take the committee through that and also the processes that need to come into  
20 play for this to be effected which include them and so on.

Mr Nick Linnell himself said to the Chairperson: I do not know how the third... the fourth, the FD was included. I know that three executives needed to be suspended.

**MR TSOTSI:** That is correct.

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

**MR TSOTSI:** Yes, I do.

**ADV SELEKA SC:** And the question is. Why is the FD included? Now the FD came and testified here Mr Tsotsi. And just before I go there. Chairperson, yesterday in your summary, you could not recollect... you could not recall whether at Ms Daniels' meeting at Melrose Arch the names were mentioned. In her affidavit Chairperson, she says:

“He seemed to accept this.”

Now Ms Daniels has been asked: What is the process?

10 And she says my response was that:

“I could not suspend someone at the whim and needed a very good reason to do that.”

And then she says:

20 “He seemed to accept this and then proceeded to tell me that in the upcoming days, four executives at Eskom would be suspended, namely, Tshediso Matona, Tsholofelo Molefe, Dan Marokane and Matshela Koko. I looked at Koko in shock and he appeared to have knowledge of this, as his demeanour remained composed. They are the four, exactly the four.”

And the question is, why the FD? We will come to the other ones because Mr Matona, as you know Mr Tsotsi, was only appointed with effect the 1<sup>st</sup> of October 2014. So he is about five months before he gets suspended. Correct?

**MR TSOTSI**: Correct.

**ADV SELEKA SC**: October. One thing we have overlooked about Mr Dan Marokane is that he was even appointed in this position he occupied, Group Executive. What was it?

**MR TSOTSI**: He was Group Executive for ...[intervenes]

**ADV SELEKA SC**: Commercial?

**MR TSOTSI**: Capital.

**ADV SELEKA SC**: Oh.

**MR TSOTSI**: To Group Capital.

10 **ADV SELEKA SC**: Group Capital?

**MR TSOTSI**: Yes.

**ADV SELEKA SC**: That appointment was in fact made in November 2014.

**MR TSOTSI**: Yes.

**ADV SELEKA SC**: So he is even fewer months in this position than Mr Matona himself. So he would be four months about in this position. Correct?

**MR TSOTSI**: Correct.

20 **ADV SELEKA SC**: And the board, in the minutes, he... we went through the minute with him when he was here. How he -and you will help me with the correct terminology - in regard to the Medupi Power Plant. What was the milestone achieved or ...[intervenes]

**CHAIRPERSON**: Yes, the milestone achieved.

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



**CHAIRPERSON:** Ja, the milestone ...[intervenes]

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** ...that he had achieved.

**MR TSOTSI:** Yes, Chairman. What was happening was that we were experiencing delays in the commissioning of the first unit at Medupi which would have been the first unit of the new Build Programme.

Now, with him coming onboard, he was successful in accelerating the commissioning of this unit and actually  
10 managed to commission that unit sometime and I think it was in January of 2015.

Now it is a milestone from the perspective that the last time when Eskom commissioned one of those so-called thermal units was with the... would have been with ...[intervenes]

**CHAIRPERSON:** More than 20-years before.

**MR TSOTSI:** Ja, about 1985 ...[intervenes]

**ADV SELEKA SC:** Almost 27-years, Chairperson.

**CHAIRPERSON:** Yes, about 20-years.

20 **ADV SELEKA SC:** About 27-years.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** So how do you suspend somebody like that when you say he has done nothing wrong but you suspend him, nevertheless?

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** It just difficult to understand.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Yes, it is. But... are you done, Mr Tsotsi?

**MR TSOTSI:** Yes, sir.

**ADV SELEKA SC:** Of course, it puzzles... it boggles the mind why you do that. And we went through the evidence with Ms Klein. Her testimony yesterday to the Chairperson was that, she personally had no confidence in Mr Matona.

10 But Mr Matona...

The Chairperson put to her, she did not give him a chance. He is hardly six months there or even short of five months.

He is called for suspensions when he had presented a turnaround strategy to the board. Do you know that?

**MR TSOTSI:** Yes, I recall that.

**ADV SELEKA SC:** Chair, let me just correct. The 27-years is actually 20-years. It says:

20 "With regard to Group Capital and the Build Programme, it was noted that the board had visited Medupi. It was reported that Medupi Unit 6 had been synchronised which was a significant event in Eskom's history and was the first time such an event had taken place in the last 20-years. It was noted that in future the Minister of PE wanted to be

included in successful events like this.”

That is the minute of the first meeting of 11 March 2015, before the minister comes there and says: Suspend him.

But let us see. Let me go back to the position of Ms Molefe, doctor.. you are becoming a doctor, Mr Tsotsi.

**CHAIRPERSON**: [laughing]

**ADV SELEKA SC**: [laughing]

**CHAIRPERSON**: Your voice went down so I could not hear you but now I have a good idea of what you have just done.

10 [laughing]

**ADV SELEKA SC**: [laughing]

**CHAIRPERSON**: You have just done to Mr Tsotsi what you did to Mr Klein yesterday. [laughing]

**ADV SELEKA SC**: [laughing] Okay the evidence of Ms Molefe which you will be aware of because it involves you in some part. She is appointed into this position as Financial Director in January 2014. You would know because you had been the chairperson of the board since 2011?

**MR TSOTSI**: Correct.

20 **ADV SELEKA SC**: And shortly after her appointment, she says the CEO, Brian Dan has resigned.

**MR TSOTSI**: Yes.

**ADV SELEKA SC**: And there is an acting CEO, Mr Collin Matjila.

**MR TSOTSI**: Correct.

**ADV SELEKA SC:** And I will come to him in a moment Mr Tsotsi so that we can see how you feature in that regard. But Ms Molefe has explained to the Chairperson, giving her testimony that shortly after her appointment, she is called to the office of the Chief of Staff of the Minister of the DPE.

Mr Msomi calls her to a meeting in his office, congratulating her and says to her: I hope you are going to help us with transformation issues in the area of procurement.

10 You will not know this yourself but later on, she comes to you and say: Mr Msomi is on my case. He wants to know... he wants feedback from me because...

And I am jumping but I will come back to the facts. And she reported to you what is the DPE protocol that should be followed in this regard. Do you recall that?

**MR TSOTSI:** Yes. Yes, I do Chair.

**ADV SELEKA SC:** What was your response to her?

**MR TSOTSI:** Chair, she was essentially looking for protection, can I say. If I can use that word. Because this  
20 was somebody who was sitting in the shareholder's office and she felt that it was inappropriate for her to get that sort of pressure from that person.

And of course, I knew Mr Msomi. Now, the protocol is such that I as chairman speaks to the minister and the chief executive speaks to the ...[intervenes]

**CHAIRPERSON:** DG.

**MR TSOTSI:** DG.

**CHAIRPERSON:** H'm.

**MR TSOTSI:** Now I recall mentioning this to Mr Matjila and that I have got this feedback from the FD that she is being pressured to meet with some contractors, some light(?) contractors who are experiencing difficulties in accessing some parts of the organisation. I think it was Primary Energy, if I remember.

10 And I then told Ms Molefe that I will speak to someone at the department. Now I what I ended up doing was instead of speaking to the minister, I just spoke to the DG because I realised that in essence it is easier for the DG to deal with that sort of thing because essentially these people report to him.

And as it happened, the DG was at the time Mr Matona and I had a very good working relationship with him. So I found it easy to address the issue with him.

20 So I left it at that. I was not... I do not know what exactly what Mr Matjila did it about it at the time but that is what I did.

**ADV SELEKA SC:** Yes. So here is the important part. Should I proceed, Chair?

**CHAIRPERSON:** Yes, proceed but I do not want to forget this.

**ADV SELEKA SC:** Okay.

**CHAIRPERSON:** It might be something in your plan to the extent that we might not have covered previously with Mr Tsotsi the allegations being made against him by Mr Koko about somebody that Mr Koko says had been suspended and ...[intervenes]

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

**CHAIRPERSON:** ...Mr Tsotsi wanted the suspension to believe that as well as the allegations of interference in  
10 certain tenders or some operational matters. I think we may have covered them.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** But I just want to make sure that if they are not covered, we must make sure that they are covered so that he deals with them.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Ja, we did ...[intervenes]

**CHAIRPERSON:** You can do that later.

20 **ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Just wanted not to forget it.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Ja. You can carry on with your plan in terms of the questions that you are asking.

**ADV SELEKA SC:** Thank you, Chair. Mr Tsotsi, there is an

important aspect here in the testimony and evidence of Ms Molefe. And this is where it is. She says consistently with what you have just said. She is now in the office of Mr Msomi and she writes:

10                    “He indicated to me though there are number of black suppliers that complaint about not being awarded contracts and would like to meet and discuss their complaints. I indicated to him that I relinquish my role as chairperson of Eskom Committee.”

But she says: Well, I am willing to take the details and pass them over to the new person at procurement. And then says:

                  “Indeed Mr Msomi did arrange such a meeting.”

And guess with who, Mr Tsotsi?

**MR TSOTSI:** [No audible reply]

**ADV SELEKA SC:** Did he tell you with whom?

**MR TSOTSI:** No, I do not recall that she told me.

**ADV SELEKA SC:** With Mr Salim Essa.

20 **MR TSOTSI:** Oh, okay. Alright.

**ADV SELEKA SC:** And she explained to the Chairperson, the meeting with Mr Msomi at the Baron the filling station because she was washing to catch a flight, going to the airport and it was a brief meeting where the details were exchanged and Mr Salim Essa was meeting her for the first

time.

**MR TSOTSI**: H'm.

**ADV SELEKA SC**: And that is where Mr Msomi was following up whether you are doing what you are doing. And I want to surmise to you Mr Tsotsi, and you may come into this. When she failed to do what was requested, it became a red flag.

**MR TSOTSI**: IN all probabilities, yes. I see the picture, yes.

10 **ADV SELEKA SC**: But it does not end there. Then comes Colin Matjila. She testified about her having to develop a financial sustainability plan. So there you were told Mr Tsotsi that... That is then Chairperson...

This is in April 2014. She has just been appointed, January 2014. We are in April 2014. The financial plan has to be developed and there is a meeting and where she has to present it to the board.

Mr Tsotsi, you will recall, you said to her: This plan is not robust enough.

20 **MR TSOTSI**: H'm.

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

**MR TSOTSI**: Yes. Yes, I do.

**ADV SELEKA SC**: Do you know what happened thereafter? Mr Colin Matjila is the acting CEO and he says: I will help. Get external service providers.



**MR TSOTSI:** I do not remember... Ja, I guess he must have indicated that herself. I do not recall that she ...[intervenes]

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

**MR TSOTSI:** But I recall what happened subsequent to that.

**ADV SELEKA SC:** Yes, tell the Chairperson.

**MR TSOTSI:** Okay. Chair, the issue was that, you know, because of the growing deterioration financial position of the company, particularly because of the consumption of large amounts of diesel and the load-shedding programme or  
10 programme designated, designed to counter load-shedding.

Our financial position was declining and so there was some anxiety about what is going to happen, what is likely to happen.

And I think the... if I recall what the minister had wanted to get a financial position and here given us a certain timeframe. I think in that meeting, the FD must have present.

**ADV SELEKA SC:** Was that at the end of June 2014?

**MR TSOTSI:** Probably around the middle of... yes, it was  
20 about that time.

**ADV SELEKA SC:** Yes.

**MR TSOTSI:** Or maybe two or three months that we were given to come with up something. And I think also, Treasury people were, you know, were also in the loop on this particular issue. Anyway.

**ADV SELEKA SC:** But in the light of what I want you to tell the Chairperson.

**MR TSOTSI:** Ja.

**ADV SELEKA SC:** Yes.

**MR TSOTSI:** Okay so what happened then Chairman is that. Ms Molefe at some point came to me and she said to me that she is experiencing some difficulty working with Mr Matjila who was the acting Chief Executive. And that he was demanding things of her which she could not do.

10 And this had to do with waiving procurement process to enable the company called Regiment to do this project that was on the table.

Then I... then she also spoke to some board members in that regard and Mr Kunasa[?] was one of them, if I remember, people who were involved in the committees that were relevant to this.

**ADV SELEKA SC:** Yes.

**MR TSOTSI:** And I then decided: Okay, let us hear her out. So I asked these board members to have a meeting with her  
20 to hear what out what the problem is including the acting Chief Executive. And the outcome of that meeting was that, they were required to follow the due processes. In other words, not ...[intervenes]

**CHAIRPERSON:** To follow the law.

**MR TSOTSI:** Yes, to follow the law. And there was some - I

think – I do not want to call it an altercation but there was still some argument between herself and the Acting Chief Executive. Who I then discovered was the one who were bought these Regiments people on board. That is when I found out that Salim Essa was part of this business. I did not know until I hear from Mr Matjila. So...

**ADV SELEKA SC:** Yes, you want to carry on?

**MR TSOTSI:** Ja. No, at the end of the day, Chair, the proposal and the suggestion from the board was that we  
10 cannot get into an involved exercise, then these people can only some sort of a desktop exercise. I think that is – if my recollection is right, that is where the issue ended.

And then I then had a meeting with the two of them because I realised that they were not working well together and what I said to them was, people, you know, let us – the important thing is to get a result because there is a result that is required by the Minister, so let us get on with the work and let us not create tension between us.

**ADV SELEKA SC:** Yes.

20 **CHAIRPERSON:** Well, what we will see what ultimately, when all the evidence is in, what will emerge from that evidence.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** But at this stage it seems that it is important to note that subject to what Mr Matjila might see

if and when he might give evidence here, it seems that he, as Acting CEO of Eskom prior to Mr Matona coming in was amenable to bringing in Regiments to Eskom and seemed to have had some relationship with Mr Salim Essa. Then comes in Mr Matona in October 2014 succeeding Mr Matjila. I do not know whether we will hear any evidence about whether Mr – what Mr Matona's attitude was to Mr Salim Essa and Gupta associates, but he gets removed as Group CEO and a month after he has been removed, the  
10 board of Eskom brings in Mr Brian Molefe as Group CEO of Eskom.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Thank you, Chair. There is an important detail, Mr Tsotsi, in regard to that issue of the corporate plan and get external service providers to assist because Ms Tsholofelo Molefe says verbally here and in her affidavit that Mr Matjila arranges a meeting with her at Monte Casino and they talk about a service provider that  
20 has the skills, can help, can do the what - cash, unlocking at Eskom.

**MR TSOTSI:** Oh, yes.

**ADV SELEKA SC:** Yes.

**MR TSOTSI:** Balance sheet optimisation, ja.

**ADV SELEKA SC:** Say again?

**MR TSOTSI:** It is called the balance sheet optimisation exercise.

**ADV SELEKA SC:** Optimisation, yes. And they were soon joined by a gentleman whom she recognised but the gentlemen appeared not to recognise her and that is again, Mr Salim Essa. Says:

10 “Essa reintroduced himself to me, clearly not remembering our first encounter a couple of months before. It became clear to me that he was very well briefed on the strategy planning session and the financial qualms of Eskom. He appeared to have prepared very well to meet with us and proposed his solution. As I indicated, that he knows a company, Regiments Capital that can assist with unblocking cash on the balance sheet. He said that they had done work successfully at Transnet, SAA and City Power. Matjila, who appeared to be very interested, asked Essa how soon could he arrange a meeting with Regiments Capital. Essa replied: As early as  
20 tomorrow, almost as if this was prearranged. At this stage I assumed Essa was a shareholder of Regiments Capital. The next day it is Monday, there is a meeting at Eskom arranged with CEO of Regiments Mr Eric Wood at Eskom’s offices.”

You are not placed in the meeting, it is Mr Matjila, Dr

Steven Lennon and Ms Tsholofelo Molefe. Let me fast forward because Regiments then say we will provide you a proposal in five days. She says they did not do that. You were provided with a document more than two weeks – about two weeks later and this was not a proposal but she says it was an agreement. Do you know that?

**MR TSOTSI:** That could have – would have been discussed in the meeting we had with her and the other board members, yes.

10 **ADV SELEKA SC:** Yes. And she was refusing to sign that agreement because Mr Matjila was saying you will sign that agreement. She said no, I will not.

**MR TSOTSI:** I remember one of the complaints she had, Chair, was the fact that Eskom was being charged for work that should not have been charged for having [inaudible – speaking simultaneously].

**CHAIRPERSON:** In terms of the – in terms of the proposed agreement?

20 **MR TSOTSI:** Exactly, in terms of that proposal she was being asked to sign.

**ADV SELEKA SC:** And that is another red flat on her.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** So Mr Salim Essa knows this.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** She has met with – I mean, he has met

with her, now is the second time. Mr Eric Wood has been introduced, Regiments, the email came from Mr Eric Wood with the proposal which is an agreement and she has refused to sign.

It is interesting what she says Mr Matjila tells her, she says – Mr Matjila now is reprimanding her.

10 “We met the following mornings at Tintswalo, Waterfall Equestrian Estate. At the meeting he expressed concern that I was not supporting him, stating that he had no aspirations of becoming the CEO of Eskom but that he had a mandate from the shareholder to fulfil certain urgent matters within three months and that we do not have time to be following our longwinded procurement processes. He stated that he would do no such thing, which is follow a process, as he had a mandate from the shareholder.”

**MR TSOTSI:** Yes, Chair, you will recall, Chair, that Mr Matjila is by this time – was already – had already signed  
20 off on the TNA contract and I think it emerged around this time ...[intervenes]

**ADV SELEKA SC:** That is exactly what Mr Molefe is saying.

**MR TSOTSI:** ...that there was that problem. So already, if he was embroiled with something to do with, you know, with

the Guptas.

**CHAIRPERSON:** With the Guptas, h'm.

**MR TSOTSI:** Now here he is bringing Salim Essa through the back door. So is tenure probably had some sort of relationship with the Gupta family, somehow or other. Ja, I think he – I get the impression that he must have had not only mandate from the shareholder he might have had a mandate from them, I do not know.

**ADV SELEKA SC:** He must have been what?

10 **MR TSOTSI:** He might have a mandate from the Guptas as well, I do not know, because it looks like he was, you know, introducing their participation into the company.

**ADV SELEKA SC:** Yes. Thank you, Mr Tsotsi, because the TNA is also one of the issues, signed for R43 million. Ms Molefe raised that and said in fact that Mr Matjila did not even have the authority to sign that agreement and Mr Matjila again reprimanded her, according to Ms Tsholofelo Molefe:

20                    "...called me to say that he was well-aware of what he had signed and told me stop questioning his authority."

That is the third red flag. But the Gobodo forensic auditors flagged this issue of Mr Matjila's TNA agreement.

And Mr Tsotsi, then we come to that board meeting. We are still in 2014 about which Ms Tsholofelo says to the



Chairperson this board meeting was arranged, we were to approve the financials in order to do a road show for international bond. The meeting was scheduled, Mr Tsotsi phones me and says that he is going to cancel the meeting as he was receiving pressure from outside to cancel the meeting. Now this is not the meeting of 26 February 2015.

**MR TSOTSI:** H'm. H'm.

**ADV SELEKA SC:** We are in 2014. I think you wrote that in your affidavit, Mr Tsotsi. This is about TNA.

10 **MR TSOTSI:** Yes.

**ADV SELEKA SC:** Do you recall this?

**CHAIRPERSON:** Mr Seleka, please do not forget your line of thought and Mr Tsotsi, do not forget the issue but I just want to interpose and say now that Mr Seleka has reminded us of the interaction between – or the interaction involving Ms Molefe, the Financial Director, with Mr Koko as well as Mr Salim Essa and Regiments and Ms Molefe refusing to sign that agreement.

20 **ADV SELEKA SC:** You meant to say Mr Matjila, Chairperson.

**CHAIRPERSON:** Mr Matjila, no, I am sorry, ja, ja, not - you know, one is Mr Matjila, the other one is Matshela Koko, is it not?

**ADV SELEKA SC:** H'm.

**CHAIRPERSON:** So, sorry, so you can – no, I mean Mr

Matjila, not Mr Koko.

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

**CHAIRPERSON:** Mr Matjila. It seems to me that there is a possibility that that – her conduct, Ms Molefe’s conduct, in refusing to sign that agreement and to cooperate with regard to what Mr Salim Essa wanted and what Mr Matjila wanted and what Mr Eric Wood wanted in terms of Regiments may well be the reason why Mr Salim Essa included her in the list of executives to be suspended to  
10 the extent that Ms Daniels is correct when she says at the meeting that she had with Mr Koko and Mr Salim Essa at Melrose Arch on the 10 March 2015, Mr Salim Essa included the Financial Director, Ms Molefe, among those to be suspended.

So it is possible that he may have had something to do with the inclusion of her name because of that experience that Ms Molefe had not cooperated when Mr Matjila wanted her to sign that agreement.

**MR TSOTSI:** Chair, I cannot agree with you more, that  
20 just seems to be the pattern, the picture that is emerging.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** And, of course, it does not end there because their long gain was to eventually replace the FD with someone who is agreeable, Chair.

**CHAIRPERSON:** Yes, yes, yes.

**MR TSOTSI:** So this was the – you know, the totality of the picture.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** Hence she had to be ...[intervenes]

**CHAIRPERSON:** She had to be included.

**MR TSOTSI:** Because that is the only opportunity they would have had of being able remove these people.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** So if she was not part of that team to be  
10 suspended initially, they would have had it difficult to try  
and raise some or other idea or method of trying to get rid  
of her.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** Just so they can put in their own people.

**CHAIRPERSON:** Ja, because to the extent that they had  
an agenda to loot some money from Eskom, the FD was  
critical.

**MR TSOTSI:** Correct.

**CHAIRPERSON:** Because if the FD does not authorise  
20 payments, does not sign, then you will not get money and  
they may have remembered that the current FD is the type  
of person who will not agree to the things that we want,  
therefore she cannot be allowed to remain.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** She must be added and then they may

have shared that with the Minister of Public Enterprises hence when she speaks to the board she is the first person to include the finance portfolio as one of the areas to be investigated and she articulates the principle according to one or more of the witnesses who have given evidence here. Although she says she cannot direct the board or instruct the board to suspend these executives, she speaks in support of a principle that says the executives who lead the portfolios that will be investigated, the board should  
10 consider suspending them. I cannot tell you to suspend them, but I will be around. I will be around, that is what we understand she is says.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** And then when – if you then accept the principle that she introduces namely the executives who lead the areas that are going to be investigated, you should consider suspending them, board.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Of course, if finance is going to be  
20 investigated as well, the FD must also be suspended.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** And that is how it seems the FD comes in.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** But on what one hears here, the first

person to mention the inclusion of the FD is Mr Salim Essa, somebody who is not at Eskom, somebody who is not in government.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** And according to Ms Daniels he presents himself to Ms Daniels as adviser to the Minister of Public Enterprises. So then the Minister comes to the board with this inclusion of finance as one of the areas to be investigated and therefore the FD must also be suspended.

10 **MR TSOTSI:** Yes.

**CHAIRPERSON:** Then she gets suspended. When she has left – when the delegation of the board meets with Ms Molefe during her suspension she gave evidence here and said Mr Romeo Kumalo representing the board started off my saying something to the effect that they understood that she had written to the board wanting to discuss a separation package and then she said here under oath she immediately told Mr Kumalo, that is not what I wrote about, my letters did not say that. I wrote to find out the reasons  
20 for this and that and that and that, that is what I wrote about. I did not write to want to talk about a separation.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Then interestingly on her evidence, Mr Kumalo, despite hearing that she did not write to invite discussions on separation, says to her, according to her,

no, you know what, maybe we should talk about separation because this investigation could still take a long time and that is how they end up talking about separation.

Ms Klein, who was here yesterday, said to her knowledge, the board wanted to keep these executives, wanted them to return after the investigation. So I asked her, when you heard Mr Kumalo saying this to Ms Molefe, who clearly was not talking about leaving and you see your colleague wanting to talk about her leaving, why did you  
10 not say what are you talking about?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** She could not remember why she did not say that. So they end up talking about that. She ultimately after some numerous meetings and exchanges she leaves and then, of course, we know that about two months later or so, Mr Anoj Singh from Transnet gets brought to take her position.

**MR TSOTSI:** Ja. Alright, about this meeting, I cannot remember – what time was this?

20 **ADV SELEKA SC:** This meeting, Mr Tsotsi, let me give you more information on it. The Gobodo Forensics has flagged the TNA.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Matjila has no authority and there are financials – let me see what Ms Molefe says. She says:

“What was important about these financial statements was that we were preparing to go, therefore it was very important that the board approved the financial statements. However, what happened on the day that the board was meant to sign the financial statements, that flagged the issue of Mr Matjila.”

A few days before the board was meant to do so, you call her and you say cancel the meeting. She was able, she  
10 says, to persuade other board member to have the meeting in your absence. They agreed to meet, they agreed to approve the financials and then you called her after that to tell her look, I have obtained advice, the meeting was irregularly constituted, the resolutions you have taken are invalid. You remember that?

**MR TSOTSI:** Okay, what I recall, Chair, is that at that time there was a big problem with security of information at the board meaning that there were reported leaks of communications coming out of the board and we were – I  
20 was advised that we should bring in people to come and sweep the boardroom and in the interim, if I recall well, there was a concern that came from the Minister where she was saying that we should not hold board meetings until we have cleared the security issue with boardrooms in the organisation.

So the boardroom was not available for use at the time and I understood that there was – then I said look, we cannot have a board meeting until we are ready to have it and then I understood that there was a meeting of audit and risk to discuss this issue of Matjila's signing of this contract because that matter was being addressed by them.

Of course, I do not attend audit and risk but apparently some of the board members went for that meeting and they decided, because they had enough  
10 members to form a quorum, to make this decision about this financing of ...[intervenes]

**ADV SELEKA SC:** But here is what we need to get to, Mr Tsotsi.

**MR TSOTSI:** Ja.

**ADV SELEKA SC:** Her saying that you say you want to cancel because you are receiving pressure from outside to cancel the meeting. We had been thinking that this related to the meeting to the 26 February, that it was pressure from the President. When you were here you said she  
20 would have been polite, you said to the Chairperson. What I said to her is that I am receiving pressure from the President.

Then it was explained by her, no, no, no, that is not the meeting.

**MR TSOTSI:** Yes, yes.



**ADV SELEKA SC:** It was about this TNA matter.

**MR TSOTSI:** It was about TN – but I do not – Chair, I do not recall receiving pressure from anybody not to have a meeting.

**CHAIRPERSON:** Do you recall a meeting where you and Ms Molefe were not in agreement that it should be held, which was ultimately held without you because she spoke to board members and said it is urgent because that is what she – that is the evidence she gave. She said you did  
10 not want the meeting to be held and you – on that day you – I think you had initially agreed – ja, you had initially agreed that the meeting be held – I think it was going to be held on a Sunday.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** If I am not mistaken. And but at a certain stage on Sunday, which is when the meeting was to take place you – well, either on Sunday or Saturday, maybe the day before, you said no – you called her to say no, the meeting should not continue and she disagreed. You said  
20 you were having a lot of pressure from outside. I think she did not say that you explained what you meant.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** So she did not know what you meant but she ultimately had to talk to other members of the board and the meeting was held without you. Do you not recall

anything like that?

**MR TSOTSI:** I recall the fact that that meeting actually happened without me. I was told by my executive in the office. Because I had suggested that the meeting should be held over to the next day, which is the Monday because of this – to my recollection, the problem was with the pouresness of the board, boardrooms and that information ...[intervenes]

**CHAIRPERSON:** That is because of...?

10 **ADV SELEKA SC:** Of the pouresness of the board.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** That information was leaking out of the boardroom.

**CHAIRPERSON:** Yes, ja.

**ADV SELEKA SC:** And the only time to have them swept would have been a weekend or at night. That, Chairman, is what I remember. I could not have said I was getting pressure because I was not getting pressure from anybody outside. No, I certainly do not – I did not get any pressure  
20 from outside. I would not have cancelled the meeting in any case irrespective of that. Not for that reason, no.

**CHAIRPERSON:** Well, of course you did cancel the one for the 26 February.

**MR TSOTSI:** Yes, Chair.

**CHAIRPERSON:** Because of outside pressure.

**MR TSOTSI:** Well, Chair, if we are talking about people who are internal to government, that is a different situation.

**CHAIRPERSON:** No, what I am ...[intervenes]

**MR TSOTSI:** Against people who are external to government.

**CHAIRPERSON:** Yes, what I am saying is that to the extent that Ms Molefe says based on her discussion with you, you wanted to cancel the meeting because of outside  
10 pressure, there could be an argument that with regard to the meeting of the 26 February you did cancel a board meeting because of outside pressure.

**MR TSOTSI:** Yes, I hear you.

**CHAIRPERSON:** Yes. Yes, that is the only point I was making.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Ja, ja, ja. But you say your recollection as far as the other meeting, the meeting that Ms Molefe was talking about, your recollection is that the reason why  
20 you wanted to cancel the meeting was because you wanted that the venue be swept first.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** To make sure that there will be no leaks. That was the reason.

**MR TSOTSI:** Yes. To the extent actually I recall that we

even had to change the venue.

**CHAIRPERSON:** Is that so?

**MR TSOTSI:** We actually had to hold a board meeting outside of Eskom.

**CHAIRPERSON:** Okay, okay.

**MR TSOTSI:** Because of this problem.

**CHAIRPERSON:** She did say that you subsequently – the meeting had to be held again because there was an argument that the meeting that they had held, the one you  
10 did not attend, was unlawful and she says the one that they held – I do not know whether it was on Tuesday or Monday, but one or two days after the one you did not attend, she said you did attend that one.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** And one may expect that maybe in the minutes of that meeting, the one you attended, that there may be something that may have been said about why you were against ...[intervenes]

**MR TSOTSI:** Yes.

20 **CHAIRPERSON:** You wanted to cancel this one, those minutes should be sought because I think it would be surprising if at the beginning of that meeting there was no discussion of why that meeting was being held in circumstances where it had been held a day or two before it had to be held, so if those minutes are found one might

find that there is something said there.

**MR TSOTSI:** It will certainly help Chair.

**CHAIRPERSON:** Ja, okay.

**ADV SELEKA SC:** Yes thank you Chair, indeed Ms Tsholofelo Molefe says Mr Tsotsi that they went to meet with the Minister, herself and Mr Matona, and you sent her a text message saying I am with the Minister, when in fact she was with the Minister together with Mr Matona.

**MR TSOTSI:** Meaning with the Minister meaning what?

10 **ADV SELEKA SC:** They were going to complain to the Minister that you cancelled the meeting, the meeting which is so important the financials have to be approved and it was the Minister who said go and have that meeting the next day and so they laughed off your SMS which says you were with the Minister when in fact you were not.

**MR TSOTSI:** I am not aware of that Chair, I am not aware of that I think if either we will have to look and find that SMS or something but I am not aware.

**ADV SELEKA SC:** But here is the point we want to come  
20 to Mr Tsotsi we understand that Mr Howa was the CEO of TNA.

**MR TSOTSI:** Yes, yes.

**ADV SELEKA SC:** Ms Molefe and the Chairperson stopped her from signing this and I will not say it but I am going to go to your affidavit. That she heard through the

grapevine much later what the pressure came from.

**MR TSOTSI:** Who?

**ADV SELEKA SC:** That was brought to bear on you - let us go to your affidavit page 10.

**MR TSOTSI:** Page 10?

**ADV SELEKA SC:** Yes because it was interesting when you were saying if we talk about people outside of government and you contrasted that to people inside of government when the Chairperson was talking about  
10 pressure. So I wondered why you will be saying that so page 10 you relate the...[intervene]

**CHAIRPERSON:** Page 10, red or black numbers?

**ADV SELEKA SC:** The black numbers Chairperson.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** I am sticking to the black numbers.

**MR TSOTSI:** Yes, page 10.

**ADV SELEKA SC:** Ja, from page 9 you talk about your interaction with Mr Tony Gupta:

20 “Tony Gupta generally asked me for assistance on matters they were experiencing some problems with Eskom as well as situations where they could advance their business interest. My response depended on how much knowledge I had on the matter in question if I did I would respond.”

6.6:

“Tony Gupta explained that they had an interest to supply gas to the Western Cape and saw Eskom’s open site of gas turbine plant as an anchor tenant for that business. Consequently, they were looking for exclusivity and wanted to sign an MOU with Eskom. It transpired that this MOU had already been negotiated by another company and at that juncture was with the Department of Energy for signature by the Minister as was the practice. I explained to him that not only was the MOU agreed with another party but it was also beyond the jurisdiction of Eskom. After he discovered who the beneficiary of the MOI was he promptly accused me of working with barber’s enemies.”

And maybe that was a red flag on you Mr Tsotsi but then comes the next paragraph.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** “During that the impulse of the TNA contract when the award of the contract by acting CEO Colin Matjila was under scrutiny for irregularity I was requested by Tony Gupta to make this problem go away. I responded that this I could not do as there were processes in place that must take their course but for the first time in my encounter with him he showed visible signs of anger and frustration

as he kept insisting that I was not interested in assisting him.”

Another red flag from you.

**MR TSOTSI:** I would say so yes, right.

**ADV SELEKA SC:** Could the pressure has come from this, Ms Tsholofelo Molefe said through the grapevine she understood this to be the position. So we said we will wait for you to confirm it Mr Tsotsi.

**MR TSOTSI:** I actually Chair to be honest I do not recall  
10 Tony Gupta never asked me to you know to cancel a meeting. I do not – no he has never asked me to cancel a meeting.

**ADV SELEKA SC:** But he asked you to take away the problem.

**MR TSOTSI:** This was now the problem with Matjila.

**ADV SELEKA SC:** Now explain to the Chairperson Mr Tsotsi because the Gobodo Forensics had flagged that issue as a reportable irregularity.

**MR TSOTSI:** Right.

20 **ADV SELEKA SC:** So the board in approving the financials would have had to include that in their approval.

**MR TSOTSI:** Correct.

**ADV SELEKA SC:** Yes, so when he is saying to you make this problem go away he does not want it to be in the books as a reportable irregularity.



**MR TSOTSI:** Yes, I would imagine that is the case yes because Mr Matjila would have to have had – well he was on the way to being disciplined for this had he stayed on in the company. I think we traversed this during the TNA...[intervene]

**CHAIRPERSON:** Yes, we did.

**MR TSOTSI:** Yes, that was my presentation yes.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** I am only pointing out for a different  
10 reason there are red flags but I am going to explain why people are moved from their positions.

**MR TSOTSI:** Alright, yes.

**ADV SELEKA SC:** You are also flagged.

**MR TSOTSI:** That is right yes I can see that.

**ADV SELEKA SC:** Yes.

**MR TSOTSI:** And of course it culminated in Cape Town I think that was the – it was like I was being warned and I was not taking the hint if I can call it that but then in Cape Town it became very explicit.

20 **ADV SELEKA SC:** Yes because that is a subsequent encounter.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** That we have placed you in this position.

**MR TSOTSI:** Correct.

**ADV SELEKA SC:** You are not assisting us and we can remove you.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Should I carry on Chair?

**CHAIRPERSON:** Yes, carry on what is your estimate of time that you need Mr Tsotsi to be here?

**ADV SELEKA SC:** When I get to putting the versions of other witnesses to Mr Tsotsi I think we should go faster once we have the grand picture of the reasons leading to  
10 that. If we adjourn at, if by one and I think I will not be finish by 1 o'clock and we start with Mr Tsotsi at two I should be able Mr Tsotsi on my side Chair I think personally I will need about 45 minutes.

**MR TSOTSI:** I told Mr Seleka that I would have lunch at home today Chair.

**CHAIRPERSON:** Sorry?

**MR TSOTSI:** I told Mr Seleka that I would have lunch at home today.

**CHAIRPERSON:** Oh okay.

20 **MR TSOTSI:** I see he is talking about 2 o'clock.

**CHAIRPERSON:** Now he wants to spoil your plans.

**MR TSOTSI:** Exactly.

**CHAIRPERSON:** And what are your plans with regard to the other witness?

**ADV SELEKA SC:** Ms Mokholo is here.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** She is here Chairperson.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Oh no we should be able to finish today.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Is that the Chairpersons question.

**CHAIRPERSON:** We might have to release her if you are going to take as long as I think you will with

10 Mr...[intervene]

**ADV SELEKA SC:** Tsotsi.

**CHAIRPERSON:** Tsotsi because we will not be able to sit up to normal time today but was she here yesterday as well?

**ADV SELEKA SC:** No she was not here, yesterday it was the company's secretary.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Should we...[intervene]

**CHAIRPERSON:** It is just that my recollection was that  
20 because I think was it not that Mr Tsotsi meant to be next week, was he meant to be today?

**ADV SELEKA SC:** Mr Tsotsi?

**CHAIRPERSON:** Yes.

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

**CHAIRPERSON:** Oh today.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Together with her.

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

**CHAIRPERSON:** It was the two witnesses?

**ADV SELEKA SC:** It was the two witnesses.

**CHAIRPERSON:** Okay I know that she is not supposed to be long, is it?

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

**CHAIRPERSON:** Ja, okay no that is alright I  
10 think...[intervene]

**ADV SELEKA SC:** But she might have interesting information for you Chair.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** She might have interesting information for you.

**CHAIRPERSON:** Ja, no, no obviously she would be welcome to stay and listen but I think we will not be able to get to her because we will not sit the whole day.

**ADV SELEKA SC:** Should we attend to it at lunchtime  
20 Chair?

**CHAIRPERSON:** Ja, we can attend to that at lunchtime.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** We will have to arrange another day when she can come. What is your estimate of how many hours we need with her?

**ADV SELEKA SC:** If we do it in the morning Chairperson I think you need her for the morning.

**CHAIRPERSON:** Your morning is how many hours?

**ADV SELEKA SC:** Ja, it can be short from ten to – one hour to 1 o'clock.

**CHAIRPERSON:** Yes, so what we can do I mean if she is one hour it is easy to fit her into a morning before the witness of that day like we could start at nine if it is one hour. If it is two hours we could bring her in the late  
10 afternoon after the witness for the day has finished and she could come in at four or half past four or five then we could sit until six, until seven to try and finish with her. So I think during lunchtime you can attend to that.

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

**CHAIRPERSON:** Ja, okay let us continue we will take the lunch adjournment at one and then I would like us to – after lunch you said you might need how much time with Mr Tsotsi?

**ADV SELEKA SC:** About 45 minutes but can I expedite  
20 that Chair?

**CHAIRPERSON:** If you can do 30 minutes that would be much better.

**ADV SELEKA SC:** Okay.

**CHAIRPERSON:** So we finish about half past two.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** But we will not be able to go beyond three.

**ADV SELEKA SC:** Okay Chair.

**CHAIRPERSON:** Ja, okay alright, okay let us continue in the meantime. Mr Tsotsi I do not know about your lunch at home.

**MR TSOTSI:** No he is going to have to buy it Chair.

**CHAIRPERSON:** Maybe he should buy you a lunch, yes please continue.

10 **ADV SELEKA SC:** Thank you Chairperson. So Mr Tsotsi those are in our observations in indicators of what happens the underlying reasons for the removal of this executives but you are also removed Mr Tsotsi in circumstances where the board had agreed with you to do the suspensions.

Coming to you Mr Tsotsi you testified under re-examination something that was new to the Commission when your lawyer the attorney re-examined you, you mentioned to the Chairperson that you had had a meeting with the President Mr Zuma during that conversation or at  
20 the end of it he told you that if you need to speak to me go through Ms Myeni. Do you recall that?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Yes, and Ms Myeni has provided this Commission with a statement ah she did not provide the Commission we obtained a statement which she submitted

at the parliamentary portfolio committee which the Commission has shared with you. In her statement she says what you are saying is not true. You were the one contacting her and I am linking this to what you say the President told you. You are the one contacting her because you were concerned that the board was about to pass a motion of no confidence in you if you did not suspend the executives and you needed her advice.

10 It was all about you the meeting in Durban was all about you the President was not involved. Why would the President be involved and not give a written direction to either the Minister or to yourself as a Chairman of the board, and that is her version.

**CHAIRPERSON:** And she says it is not true that she called you and asked you to go and attend the Durban meeting to meet with the President. She says in effect you have been pestering her with calls seeking advice from her on Eskom matters and she says if I am not mistaken Mr Seleka she says there is a third party that you were also  
20 using. She does not disclose the identity of the third party but Mr Seleka is right she says the meeting in Durban was about you and she says Mr Zuma did not attend that meeting. What do you say to all of these things?

**MR TSOTSI:** Chair I think her version is completely wrong it is incorrect. First of all, I would have no basis for

looking for advice from Ms Myeni. She had nothing to do with Eskom and for all intents and purposes she would not be in a position to engage with me on issues of Eskom. So my looking for advice from her I think is just untenable. Secondly she indeed is the one who called to say that the President would like to have an audience with me at the President's residence in Durban and she called me I think it would have been either the Thursday or Friday or Saturday, no Friday I think it was which would have been  
10 the 6<sup>th</sup> I think and Mr Linnell in his evidence I listened to confirmed to that he was also asked by Dudu, Ms Myeni to go and attend a meeting at the Presidency.

Now she did not disclose to me at the time she called  
me what the discussion was about notwithstanding the fact that I asked her what is it that the President wants to talk about. Whereas with Mr Linnell apparently she did disclose based on the fact that she and Mr Linnell had, had a meeting on the 6<sup>th</sup> from what we gathered from his  
20 evidence. So all in all Chairman that is a complete distortion of the facts and I think it is fair to say that the whole exercise of us going to see the President is well corroborated by what Mr Linnell also had to say. So I do not know where Ms Myeni gets all of this understanding about what happened. But from my perspective it certainly



is not true.

**CHAIRPERSON:** She says that the reason she brought Mr Linnell to the Durban meeting is because the assistance you needed from her was of a legal nature. You needed a lawyer to deal with the problems relating to you at Eskom particularly that your board wanted to remove you. At that stage had there been any indication from any board member or from anybody that the board wanted to remove you as far as you know.

10 **MR TSOTSI:** No Chair there was no such indication whatsoever.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** I had never heard of that and I do not know of anybody who was aware of it.

**CHAIRPERSON:** And of course Mr Linnell also made it quite clear when he gave evidence here that he was disputing Ms Myeni's version that the Durban meeting was about you. He also said that is not true.

**MR TSOTSI:** Correct.

20 **CHAIRPERSON:** Yes, but that is the version that emerges from Ms Myeni's statement that she seems to have submitted to parliament. Yes, Mr Seleka.

**ADV SELEKA SC:** Thank you Chair. Mr Tsotsi on this vote of no confidence against you, you say you know of no one who knows of that but remember you asked Mr Linnell

to give you or your lawyers a statement or affidavit which he did when you were charged by the board.

**MR TSOTSI**: Correct.

**ADV SELEKA SC**: You would have seen that statement then and now it speculates at the end of it that he learned through rumours and I am asking you this because you are here you can clarify to the Chairperson that the board – when the meeting of the 26<sup>th</sup> of February was cancelled by the Minister it was because the board apparently wanted to  
10 discuss your removal.

**MR TSOTSI**: Chair I recall that appearing in Nick's statement and I think he and I talked a bit about that. Obviously at the time when Dudu Myeni alleges that I was trying to avoid myself being – a motion of no confidence being passed on me. At that time, we should have been before the 26<sup>th</sup> of February. There was no basis upon which I could even speculate that there could have been a motion of no confidence against me on the 26<sup>th</sup>.

So subsequent to that when Nick told me about this  
20 alleged rumour or information that in fact the board was intending to pass a motion of no confidence in me on that day the 26<sup>th</sup> of February. I then started to think possibly that was the reason why the meeting was stopped because somebody obvious it would have to have been the Minister because she is the one who wanted the meeting to be

stopped would have then known that I would have had to face a vote of no confidence from board members. So if anybody should have information should this be the case it would be the Minister.

**CHAIRPERSON:** I am sorry Mr Seleka I missed something what did – is it a statement by Mr Linnell which included something along the lines that the board wanted to remove Mr Tsotsi.

**ADV SELEKA SC:** It is a statement he submitted at the  
10 time when Mr Tsotsi was subjected to this disciplinary charges but he speculates it on the end of that statement Chair. Due to time constraints we never got to it. He said he heard after, through rumours that the meeting of the 26<sup>th</sup> of February 2015 was cancelled because the board wanted to have Mr Tsotsi, to vote on Mr Tsotsi's no confidence, to pass a vote of no confidence.

**CHAIRPERSON:** Well okay no that is fine. I know that even in your removal your being charged later in March seems something very strange to me but it would be even  
20 stranger if before the first meeting of the new board if we leave out the induction if before the first meeting of the new board new members wanted to remove the Chairperson who had been part of the previous board. It would really show that there is really something very strange that was going on. I mean even before the first meeting of the

board they are talking about removing the Chairperson who had been part of the previous board but maybe there were those plans already in place but it would be strange if the former President knew about those rumours or rather it would be strange if the reason why the former President wanted that meeting cancelled because of he had heard about those rumours it would be strange that he would not tell you.

**MR TSOTSI:** Yes.

10 **CHAIRPERSON:** And one would have thought that he would rather have left that issue to the board and to you how you handle it and not interfere. If the Minister knew anything about it, it would be strange if even after she never said anything and when one reads the affidavit of the acting DG who called you about the cancellation of the meeting her evidence and her affidavit suggest that you were very opposed to the cancellation you wanted reasons why and she says she could not give you reasons and she did not want to tell you that it was the President who  
20 wanted the meeting cancelled but ultimately she had to say that that is what she says in her affidavit.

Now if you were aware that the meeting was going to  
be used by the board or some board members to seek to remove you one would have thought that you would not

have been so opposed to a cancelation of that meeting particularly if maybe you were concerned that they could succeed but the way she says you were insisting wanting reasons that is not consistent with somebody who knew anything along the lines that if that meeting was not cancelled there would be a vote of no confidence in you.

**MR TSOTSI:** I agree.

**CHAIRPERSON:** Ja, okay.

**ADV SELEKA SC:** Yes, thank you Chair I thought I would  
10 put that very question to Mr Tsotsi.

**CHAIRPERSON:** Yes, no I think you were doing the right thing to put these things to him.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Because I saw Mr Linnell said it was a rumour he heard after the fact. Mr Tsotsi this is what Ms Dudu Myeni says further she says:

20 “Why should Mr Tsotsi agree to such instructions she says a verbal instruction at the level of the President it should be in writing. What was being hidden here does this mean that Mr Tsotsi became a Chairman of the board without understanding the roles and responsibilities of a Chairman or at least a director. Can we simply believe that anyone at his position could simply be instructed while having

no role in any entity such as Eskom. Why did Mr Tsotsi be naive and get misled.”

What do you say Mr Tsotsi?

**MR TSOTSI:** Chair I have no answer to that I mean I think she is off the wall completely if I can use that expression. So I really cannot even begin to address that.

**ADV SELEKA SC:** But her comment may still be valid or questions may still be valid in the context of the meeting you actually had.

10 **MR TSOTSI:** Explain?

**ADV SELEKA SC:** Do you agree you had a meeting with the President and Ms Myeni they told you go suspend the three executives. Go start an enquiry. It was not in writing, why were you naive, why were you misled, why did you accept such instructions as a Chairperson of the board.

**MR TSOTSI:** Chair what I said in my affidavit is that I did not accept any instructions from the President because I do not take instructions from him, but I had a relationship with  
20 him but what I needed to do was to test the idea with the board with whom I have a relationship and that the board did the right thing by establishing the opinion of the shareholder. So the process through which we went to deal with this matter was very different from what she is in her mind alleging that I was naive and that I took

instructions from the President, no that was not the case.

**CHAIRPERSON:** Well I think your evidence last time is consistent with what you are saying in the sense that you never said that at the meeting in Durban you were instructed to go and do anything, yes. Indeed, you actually said towards the end the President, the former President said you go and test this idea with the board.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** And he said he would talk to the Minister  
10 that you made clear that the evidence of Mr Linnell also does not reflect that there was an instruction that was given to you whether by Mr Zuma or Ms Myeni. What one gets the picture that emerges is that Ms Myeni and probably Mr Zuma had an idea that there should be an enquiry into the affairs of Eskom and that certain executives should be suspended.

Whether that idea emanated from one of them or both

or whether it was an idea that originated from somebody  
20 else we do not know but that is the idea that was the subject of the Durban meeting and in that Durban meeting they put these proposals these ideas and they were discussed. You said that you were not opposed to the idea of an enquiry because independently of them you had thought that an enquiry might be a good idea but you said

you were opposed initially at least you opposed to the suspension of executives and I think Mr Linnell confirmed that at the Durban meeting you were certainly initially opposed to the idea of the suspension of the executives. But certainly the evidence does not suggest that you were instructed but you agreed to take these ideas to the board. Is that right?

**MR TSOTSI:** That is correct Chair.

**CHAIRPERSON:** Ja.

10 **ADV SELEKA SC:** Chair I might also say that Mr Linnell did say that the President said go do it, well go do it but that is Mr Linnell who said that.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Yes, Mr Tsotsi I am putting this to you so that Ms Myeni does not say but they did not tell him about my statement. Do you understand?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Yes, so I am not necessarily saying that I agree with what she is saying I am just saying you  
20 have a chance to respond to it.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Yes, but what you are also doing is testing his own evidence.

**ADV SELEKA SC:** Correct.

**CHAIRPERSON:** When he denies Ms Myeni's version you



are testing his own evidence because in the end I want to see who is telling the truth.

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

**CHAIRPERSON:** And it is right that you should test his evidence just as you will test Ms Myeni's evidence...[intervene]

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

**CHAIRPERSON:** When she comes here...[intervene]

**ADV SELEKA SC:** So you understand.

10 **CHAIRPERSON:** Or you or somebody else from the legal team but I think we must take the lunch adjournment now.

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

**CHAIRPERSON:** We will take the lunch adjournment and we will resume at five past two.

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

**CHAIRPERSON:** We adjourn.

### **INQUIRY ADJOURNS**

### **INQUIRY RESUMES**

**CHAIRPERSON:** Okay let us continue.

20 **ADV SELEKA SC:** Thank you Chair. Mr Tsotsi I read from Ms Myeni's statement just before the adjournment and having had a look again at what she is saying it seems to me that she is essentially saying to the Chairperson about the – meaning you – I am now referring to you the Chairperson at the time that the Chairperson did not understand his

fiduciary duties.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** You are not the culprit Mr Tsotsi. You are not the culprit somebody else is the culprit.

**MR TSOTSI:** I thought it was mine.

**ADV SELEKA SC:** Remember her allegations about instructions you – why would you take instructions like that and seems to suggest that now this is what I am saying to you. Seems to suggest that you failed in your fiduciary  
10 duties.

**MR TSOTSI:** Chair I think we dealt with this a bit earlier before the break when I was saying that my interpretation is that I was not taking instructions from the President or anyone else for that matter. I was simply wanting to test this idea that he had with the board which is precisely what I did. So I disagree with assertion that I do not understand my fiduciary duty.

**ADV SELEKA SC:** Yes. In the meeting of the 9<sup>th</sup> Mr Tsotsi you say – you say to the board:

20 "I have been summoned by the President."

Now this is from the transcript of that meeting.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:**

"I have been summoned by the President."

And you say three times.

“And the most recently was yesterday.”

Now this is the 9<sup>th</sup> you are referring yesterday being the 8<sup>th</sup> March.

“Where he has finally made up his mind about what he wants to do about the situation of Eskom. Both Minister and I have been summoned by the President separately on several occasions where he has expressed his view about the situation that finds – that  
10 he finds at Eskom.”

These are the min – the transcript of the audio recording of 9 March 2015.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** And I was intrigued by summoned three times. You and the Minister summoned separately the President because we did not see – we do not see that in your affidavit. Are you able to explain to the Chairperson why?

**MR TSOTSI:** Why that statement is not in my affidavit?

20 **ADV SELEKA SC:** No why [00:03:14] one three times so and whether in fact you had been summoned three times by the President?

**MR TSOTSI:** No Chairman this goes back quite a long way even during Mr Gigaba’s term of office. On the occasions when the President wanted to understand what is happening

at Eskom he would ask to see the Minister and the Minister would ask me to accompany him. And this happened a few times over a period of maybe two – over two years maybe. So you know it is sort of intermittently there was no particular pattern. There is just the last one being when on this occasion.

**ADV SELEKA SC:** So is your explanation to the Chairperson that in respect of this particular issue the enquiry and the stepping aside of the executives the summoning of you by  
10 the President happened three times.

**MR TSOTSI:** No, no, no. I was meaning that the concern that as – President has expressed about the situation at Eskom had been raised with by him in my presence and in the presence of the Minister as well before. But there was no discussion about an enquiry. There was no discussion about suspensions or anything like that. It was just you know an opportunity for him to express his concern about the situation in the company.

**ADV SELEKA SC:** Did you know that he had in fact spoken  
20 to the Minister separately about the situation at Eskom?

**MR TSOTSI:** No I did not know. I did not mean in all those occasions that he had spoken separately to the Minister.

**ADV SELEKA SC:** Sorry just repeat that. You did...

**MR TSOTSI:** I did not mean – like I said some of the occasions I was with the Minister when the President raised

the issues.

**ADV SELEKA SC:** But let us confine ourselves to the issue here.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Because you say the last of the three occasions was last night.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** I am sure you would have met with the President many other times not only three times at the time  
10 you were the Chairperson of the board.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** But it seems to me that the statement is specific to the issue you are bringing to the board. I am bringing this before you.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** He is now made up his mind about what he wants to do. That is what you added.

**MR TSOTSI:** Yes, yes.

**ADV SELEKA SC:** So was this raised with you on three  
20 different occasions and you say the Minister has also been summoned separately by the President. You are referring to this enquiry.

**MR TSOTSI:** No. No I am referring to the concern that the President had about the performance of the business. When I say he has finally made up his mind I am referring now to

the – to the attitude he has taken of an enquiry and of a – you know the action that he is talking about there.

**ADV SELEKA SC:** Could you please address the Chairperson because what it happens here is the impression again it brings back to memory that impression that there seems to be a consistent effort by outside – somebody outside of Eskom whether even in government to control what the board in fact is supposed to be doing. They controlling the board as opposed to the board itself  
10 controlling the affairs of Eskom. Your comment on that?

**MR TSOTSI:** Chair that could be the case. I – it is quite common that you hear from you know the shareholder representative the things that they think should happen in the organisation. It happens quite a lot with the SOE's anyway. And I think this is something that I notice that you are very concerned with because you know the need for the board to be independent but there is undoubtedly quite a lot of interference may construed as political interference. But it happens. Yes it happens quite a lot.

20 **ADV SELEKA SC:** Hm.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** So is that an acknowledgement that it happened here when we talk about the enquiry, the suspension of the executives.

**MR TSOTSI:** It happens yes. It is in essence a reflection of

– of political authority you know engaging.

**ADV SELEKA SC:** Bringing its muscles to bear on you.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** And SOE?

**MR TSOTSI:** Yes. Oh yes.

**CHAIRPERSON:** Actually I think there are many people who believe that the failures that we see in a number of SOE's are precisely because government or politicians continue to interfere in how those SOE's are run.

10           If the politicians were to leave the boards and managers of SOE's to do their job properly and if they were to make sure that that people who are appointed to the boards and the people who are appointed to senior positions in the SOE's are people who have the expertise and the independence with integrity and leave them alone to run these as businesses as they would run a business. There – a lot of these SOE's would perform very well.

**MR TSOTSI:** Chairman that is the SOE the Eskom I found in 1995 when I joined the company. The company was making  
20 its own decisions and – and simply had a you know a normal shareholder liaison relationship. But even the Chairman made very – made it very clear that he will not broker any interference by government. And I mean for those early years since the dawn of democracy certainly as far as Eskom is concerned that was the case of the company was extremely

efficient. It was a world class institution.

**CHAIRPERSON:** Ja well you know I think you may have been one of the witnesses but there have been other witnesses who made it quite clear that in the first years of our democracy and for quite some time after that Eskom was the envy of other similar entities worldwide. It was held in high regard that is no more.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** And – and a lot of people will say it is  
10 because politicians interfere in the affairs of these SOE's and largely they do not allow the managers and the boards to run the businesses of the SOE's the way they consider appropriate and of course getting the people with the right skills, right experience, integrity and independence is critical you know. And they are all – so many of the SOE's are all on the verge of going under.

**MR TSOTSI:** Yes, correct.

**CHAIRPERSON:** You know you talk of SAA, you talk of Eskom, you talk of PRASA, you talk of Denel it is – I mean  
20 even Denel I heard evidence that once upon a time Denel was also highly regarded internationally. Ja. Mr Seleka.

**ADV SELEKA SC:** Thank you Chair. Mr Tsotsi a little bit on that meeting and I am moving on. There is Mr Jabu Maswanganyi Mr Linnell has touched on and on an aspect which we were not aware of before. That he amongst other



things he assisted in drafted the letter that you wrote to the Minister saying dissolve this board.

He and you know actively in that meeting according to Mr Linnell participated actively providing documentation to Mr Linnell in regard to issues at Eskom. But all Mr Linnell says unverified, unidentified sources. But he is actively involved. According to Mr Linnell Jabu Maswanganyi may have been the one who told him and I am giving you all distinctive view in not – in no particular order. But I want to  
10 show you the level of his involvement that he is not a once off figure according to Mr Linnell.

He might be the person who told Mr Linnell when Mr Linnell received an email saying you are no longer needed on the 17 March. That is six days after the 11 March some eight days after your meeting at the President's place on the 8 March.

So it is fairly soon – fairly close to the beginning of the events. That when he – after he received that email he connected the email to the meeting he said he learned took  
20 place on the 16 March 2015, the evening of the 15 March. A secret meeting between some board members and some suspended executives. This first deal with Jabu – Mr Jabu Maswanganyi. Here he has a hand in the drafting a letter that ultimately you put together to the Minister. And this meeting of 16 March is referenced in that letter. We shown

you that letter. Who is Mr Maswanganyi?

**MR TSOTSI:** Chair I must first of all indicate that the issue of my not recalling Jabu really bothered me for quite a while.

**CHAIRPERSON:** It is maybe Mr Seleka you started too far back because Mr Tsotsi did testify about Mr Maswanganyi last time. He said he knows him quite well but he said he did not remember him as having been present at the Durban meeting and he said he thought he would have remember if Mr Maswanganyi had been in that meeting. That was your  
10 evidence. Is that correct?

**MR TSOTSI:** Exactly that Chair, exactly that.

**CHAIRPERSON:** Yes so – so I am just saying you started too far back. You should start somewhere else.

**MR TSOTSI:** No but it is fine Chair.

**CHAIRPERSON:** Ja.

**MR TSOTSI:** It is fine because there is some – a point I wish to make around exactly that.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** Like I said it bothered me that I could not  
20 remember him. So I decided look why do I not just ask Jabu if he was there. So I called him and I asked him and he said yes he had been at the Presidency at the same time we were there.

**CHAIRPERSON:** Oh.

**MR TSOTSI:** For whatever he had been there for. And as I

said to him look it is funny that I did not remember you being there.

**CHAIRPERSON:** But did he admit that he was at the meeting?

**MR TSOTSI:** Now what he says is he had an encounter with Nick and myself in the anti-room so to speak in the – waited to get...

**CHAIRPERSON:** In the passages or what?

**MR TSOTSI:** To get into the meeting but he says he did not  
10 participate in the meeting with the President. Look this is what I recollect.

**CHAIRPERSON:** Well you know Mr Linnell said something which you did not say not necessarily because you – you would have sought to conciliate but it is something that I was going to ask you. Mr Linnell said in effect there were two meeting in Durban. He said the first meeting did not involve the former President. He said it was himself, Ms Dudu Myeni, yourself and he said and Mr Maswanganyi. And he said he indicated what Mr Maswanganyi's contribution was  
20 mainly with documents and so on at that meeting. But he said later on you were asked to move to another meeting which is the room where the President joined you. And he said you must have waited for about five minutes in that other room and then the former President came in. I asked him whether everybody who had been in the earlier meeting

moved to the other room and I think he said yes. I do not know if he makes – he – Ja I remember I asked him whether Ms Myeni's son Thalente had also moved and he said yes if I recall correctly.

**ADV SELEKA SC:** Yes Chair.

**CHAIRPERSON:** And I think we asked him about Mr Maswanganhi as well and I think he said yes.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** So

10       1. I want to check with you whether you remember the position as having been that you – there were like two meetings or not?

**MR TSOTSI:** Yes Chair that is definitely correct.

**CHAIRPERSON:** Okay.

**MR TSOTSI:** The session before we met the President where Dudu was – Dudu Myeni was outlining the – outlining the issues. And then we moved into the sitting room.

**CHAIRPERSON:** Another room ja.

20       **MR TSOTSI:** Yes where then the President came in and joined the meeting.

**CHAIRPERSON:** Okay so I just – I just wanted to...

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Indicate that but also to say that according to Mr Linnell everybody who had been in the first meeting moved into the second meeting ja. Ja. But you are right it is

funny that you would not remember.

**MR TSOTSI**: Yes it is strange.

**CHAIRPERSON**: Having seen somebody that you know so well.

**MR TSOTSI**: Yes. Very strange.

**CHAIRPERSON**: But he denies having taken part in the meeting.

**MR TSOTSI**: Ja he said no he did not participate in the main meeting with the President.

10 **CHAIRPERSON**: Oh he denied participating in the meeting where the President was sitting?

**MR TSOTSI**: Where the President was present yes.

**CHAIRPERSON**: But the other meeting...

**MR TSOTSI**: But yes he was there.

**CHAIRPERSON**: Oh he admits that he was there?

**MR TSOTSI**: Yes.

**CHAIRPERSON**: Oh okay.

**MR TSOTSI**: No he admits he was in that part.

20 **CHAIRPERSON**: Well it may well be that Mr Linnell might not have been emphatic about his presence in the second meeting I am not sure. But at least if Mr Maswanganyi admits that he was – he took part in the first meeting.

**MR TSOTSI**: Yes.

**CHAIRPERSON**: That resolves quite something.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON:** Ja.

**MR TSOTSI:** Yes it does.

**CHAIRPERSON:** Actually it might not matter whether he was...

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

**CHAIRPERSON:** In the second meeting or not.

**ADV SELEKA SC:** Ja. My recollection of Mr Linnell is that he did not speak in the meeting with the President.

**CHAIRPERSON:** Yes I think you are right.

10 **ADV SELEKA SC:** That he did not speak.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** That Mr Jabu Maswanganyi.

**CHAIRPERSON:** Yes. But in the end it..

**ADV SELEKA SC:** It does not matter.

**CHAIRPERSON:** Whether he spoke or he did not speak or I think what is important is that he admits having been in the first meeting.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** That resolves quite a large portion.

20 **MR TSOTSI:** Maybe I was very uptight Chairman so maybe I did not notice he was in the second one.

**CHAIRPERSON:** Sorry.

**MR TSOTSI:** I said maybe I was very uptight and I did not notice that he was in the second meeting.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Ja, no Mr Linnell did say you were very uncomfortable in the meeting.

**CHAIRPERSON:** Yes, ja Mr Linnell said that. He said – he said you seemed an unwilling participant in the meeting.

**MR TSOTSI:** Yes.

**CHAIRPERSON:** Ja. But of course according to Ms Myeni one would not have expected you to look like an unwilling participant because this was a meeting that you had wanted.

**ADV SELEKA SC:** Thank you Chair. Ms Myeni of course  
10 also says her son was not there.

**MR TSOTSI:** No Chair the son was there.

**ADV SELEKA SC:** Ms Tsotsi I have a few points then I am over.

**CHAIRPERSON:** Have you got anything to say about Ms Myeni's version that there was no meeting with the President?

**MR TSOTSI:** Chairman that is blatantly false. That is putting it as mildly as I can – as I can. It is blatantly false. Yes.

20 **CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Thank you Chair. There is no particular order to this point Ms Tsotsi. These are just versions we get from the commission – from the other witnesses. We understand from the other witnesses I think Doctor Ngubane in particular to some extent Ms Venete Klein that you had

made when you presented the report you made allegations of misdemeanours against the four executives. So you told the board these people must be suspended and these are the reasons why they should be suspended.

**CHAIRPERSON:** And your reason – the reasons you gave in regard to each one and I think at least the first three. The reasons you gave related to allegations of misconduct.

**MR TSOTSI:** Chairman I do not – what happened was that Nick and in preparing whatever he wanted to present  
10 apparently had somehow got hold of some information regarding whatever might have been going on with each of those people. I am not sure exactly where he got it from I really did not even ask him. And what happened was when I was making the point I was saying Nick had said to me there are some issues around these people. And I said, well look if there are issues around them you can raise them it is not an issue. But the understanding is that these people are not in the position we had wanted to put them in because of them being having committed some misdemeanours. That is  
20 not part of what the intention is. So I – I think at some point I gave over to Nick and I think Nick must have said something about those things. I do not believe that I – or if I said them myself it would have been stuff which I got from him.

**CHAIRPERSON:** Well you see that is an important issue that



you need to deal with. Because it starts off with I think both Doctor – with Doctor Ngubane and maybe Ms Klein as well saying that actually you were pushing for the suspension of the executives. I hope I am not misrepresenting anything. But I am – that is my recollection certainly from Doctor Ngubane's evidence.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** That they – they were questioning you. I do not know whether it is on his version that is what  
10 happened on the 9<sup>th</sup> or but at a certain stage either on the 9<sup>th</sup> or the 11<sup>th</sup> I think he portrays you as somebody who was pushing for the suspensions and my impression was that bringing in these allegations of misconduct against them may have been misunderstood by them as your way of pushing for their suspension. Now that is strange when one has regard to the fact that you said when you gave evidence here at the Durban meeting when this idea of the suspension of executives was raised you were opposed to it at least initially. You were opposed to it. And Mr Linnell has  
20 confirmed that you were opposed to it – the idea of the suspension of the executives. So – so that is 1. But then secondly I would say it would be as strange as to why Mr Linnell would go and seek to dig allegations of misconduct against these executives in circumstances where he knew that at the Durban meeting everybody was agreed that it –

the suspensions were not going to be based on allegations of misconduct.

Even if he did that for a reason that you – we do not know it seems to me that it would be – that is strange if you even entertained them whatever they are particularly coming from him. He is not an Eskom person.

**MR TSOTSI**: Yes.

**CHAIRPERSON**: He is being brought from outside. He was at the Durban meeting where it was made quite clear that  
10 wrongdoing is not the basis of the suspension of these executives.

**MR TSOTSI**: Yes.

**CHAIRPERSON**: So why – why is he going digging up things? I would have expected your attitude when he – if he told you about such to say, but that has got nothing to do with the suspensions you know that so why are you bringing them in? What is the relevance?

**MR TSOTSI**: Yes.

**CHAIRPERSON**: You see.

20 **MR TSOTSI**: Yes.

**CHAIRPERSON**: So now if he told you about them and you go – you went ahead and entertained them and shared these allegations with the board that seems strange to me to say, why are you doing that because you know that the suspensions are not based on allegations of wrongdoing so

what is the relevance of these allega – of telling the board about these allegations?

**MR TSOTSI**: Yes that is correct Chairman. That is why I am – I am a little surprised because first of all in – on the meeting of the 9<sup>th</sup> there was no discussion about...

**CHAIRPERSON**: Suspensions.

**MR TSOTSI**: Suspensions.

**CHAIRPERSON**: Ja. May – I think I am – I think some witnesses have or maybe – I think Mr Linnell might have ...

10 **ADV SELEKA SC**: No it is Doctor Ngubane. It was Doctor Ngubane Chair who said Mr Tsotsi mentioned misdemeanours and suspensions on the 9<sup>th</sup>.

**CHAIRPERSON**: Oh is that so.

**ADV SELEKA SC**: Ja.

**CHAIRPERSON**: Okay. Ja.

**ADV SELEKA SC**: And I sought to – I sought to put..

**CHAIRPERSON**: Oh ja.

**ADV SELEKA SC**: Sorry I sought to put to him that the audio does not reflect that.

20 **CHAIRPERSON**: Yes.

**ADV SELEKA SC**: I do not want to help you Mr Tsotsi but that is the recording of the meeting does not reflect that.

**CHAIRPERSON**: Yes.

**MR TSOTSI**: Chairman it also to me smacks of some agenda of some kind. I mean why would someone say that I

discussed these issues on the 9<sup>th</sup> when you know there is evidence that I never raised any issue about suspensions on the 9<sup>th</sup>. And I think the meeting of the 11<sup>th</sup> any such discussion about whatever the people were supposed to have done would only have come out I think at the time when Nick was being introduced. I cannot remember very well. That could have – but that discussion did not persist in the meeting.

**CHAIRPERSON:** Yes.

10 **MR TSOTSI:** Because that was not the purpose of what we wanted to do. I do not even remember whether Nick actually stated that the – as a result I do not even remember some of these – so called misdemeanours are. So I think...

**CHAIRPERSON:** I think last time you did testify about them if I am not mistaken. Mr Koko, I know what the allegations – or was it another witness?

**ADV SELEKA SC:** It was Dr Ngubane and Ms Klein.

**CHAIRPERSON:** Oh.

**ADV SELEKA SC:** He was trying to recall ...[intervenes]

20 **CHAIRPERSON:** Oh, no, no. Ja ...[intervenes]

**ADV SELEKA SC:** Try to recall what were the allegations. And Chair, they... one allegation against Mr Koko, Mr Tsotsi was in relation to sexual escapade captured in a CCTV at the Arcade Parking Lot.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** The one regarding the FD, the Financial Director. It was about her allegedly interfering with tenderers during the bidding process.

**CHAIRPERSON:** Oh, or talking to ...[intervenes]

**ADV SELEKA SC:** No, that... no, that was ...[intervenes]

**CHAIRPERSON:** Or talking to service providers.

**ADV SELEKA SC:** Yes, that is right.

**CHAIRPERSON:** Something like that.

**ADV SELEKA SC:** To... to...

10 **MR TSOTSI:** But that was put to bed as far as I know.

**CHAIRPERSON:** Well, she has testified that you investigated that.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** She asked that it be investigated. You investigated and you came back to her and said that the allegations were baseless and ...[intervenes]

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

**CHAIRPERSON:** But Dr Ngubane, I think said, mentioned that that was the allegation against her ...[intervenes]

20 **ADV SELEKA SC:** Yes.

**CHAIRPERSON:** ...as mentioned at the meeting.

**MR TSOTSI:** So I am just a little bit mystified as to how it is that I could have been pushing for the suspensions to happen when I was in effect opposed to the suspensions.

**CHAIRPERSON:** Well, Mr Seleka you might have

...[intervenes]

**ADV SELEKA SC:** Should I assist?

**CHAIRPERSON:** ...refresh our memory of our Dr Ngubane said. But I seem to think that he said it was... Mr Tsotsi was pushing for the suspensions.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** And I got the impression that he was saying, some of the board members were not happy with that. I think that part, at least where which he says was on  
10 the 9<sup>th</sup>. I think, certainly, on the 9<sup>th</sup>, he says Mr Tsotsi was pushing for the suspensions and the board members were against this.

**ADV SELEKA SC:** Against it. Yes. Your recollection is correct Chair.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** That is exactly what Dr Ngubane testified.

**CHAIRPERSON:** Yes, but what you have said is the audio  
...[intervenes]

20 **ADV SELEKA SC:** Yes.

**CHAIRPERSON:** ...recordings of the meeting of the 9<sup>th</sup>  
...[intervenes]

**ADV SELEKA SC:** Yes, it is not ...[intervenes]

**CHAIRPERSON:** ...does not support what Dr Ngubane say.

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

**CHAIRPERSON:** Okay and so you put that to him when he comes back?

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

**CHAIRPERSON:** H'm.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** But I thought that, I may be mistaken, but I thought that when I read the transcript of the meetings of the 11<sup>th</sup>, I thought I did also come across parts which seemed...

10        You know, sometimes you cannot be sure who is talking but I thought I came across parts which seemed to reflect that the chairperson, who I thought would have been you, was talking to these... talking about these allegations of misdemeanours and so on. Mr Seleka, is my memory...?

**ADV SELEKA SC:** Mr Tsotsi, you will recall. There is one where there is a to-and-fro about whether the FD should be suspended. And Mr Tsotsi says: No, the FD's position is different. Somebody says: It not different, chair.

20        And they are asking but what is wrong with the FD? It was a male voice which we are seeking to identify there, which says, the FD... there is an allegation that the FD met with bidders during the tender process.

And Mr Tsotsi says: No, was that reported? Another person also ask. Mr Baloyi. In fact, Mr Baloyi asked whether was that reported. You did ask the same similar

question.

And I cannot recall what was the answer going forward. That is the only time, according to my recollection, I see somebody seeking to motivate the suspensions of the executives along the lines of misdemeanour allegations.

**CHAIRPERSON**: Yes. So your recollection is. Mr Tsotsi does not get involved in talking about the allegations of misconduct during the meetings of the 11<sup>th</sup>?

**ADV SELEKA SC**: No.

10 **CHAIRPERSON**: To the extent that anybody might have mentioned, then it would not have been him on your recollection?

**ADV SELEKA SC**: My recollection, it is not.

**CHAIRPERSON**: Okay. No, that is fine. So I may be mistaken here.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: Okay.

**ADV SELEKA SC**: Yes.

20 **CHAIRPERSON**: Then it maybe it might have been Mr Linnell in one or other meeting because I do know that there is somewhere where somebody mentioned and talks about that.

**ADV SELEKA SC**: And at the ...[intervenes]

**CHAIRPERSON**: Or unless I am... I think I am talking about what was in the transcripts but actually it was in the



memoranda.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Or correspondence that Mr Linnell prepared.

**ADV SELEKA SC:** Correct, correct.

**CHAIRPERSON:** Which was... which had that was... that part, also I remember, his correspondence whether it was a memo.

**ADV SELEKA SC:** Yes.

10 **CHAIRPERSON:** Or he raises a document ...[intervenes]

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** A document where he goes to town about these allegations.

**ADV SELEKA SC:** Correct. Chair, he does.

**CHAIRPERSON:** Ja, ja.

**ADV SELEKA SC:** He certainly does. And I think he alludes to them when he is with the P&G. He alludes to them but does not specifically deal with them.

20 **CHAIRPERSON:** But also, it is just that one, you know, a witness comes and goes. You remember afterwards ...[intervenes]

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** ...what you probably should have asked.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Because one should have asked where he

was getting it from.

**ADV SELEKA SC:** H'm. I think I did ask the question how the charges came about. My impression is, he was relying on what was given to him by Mr Jabu Maswanganyi.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Those unverified and unidentified.

**CHAIRPERSON:** But also it is strange. Why would you want to take those allegations and bring them to the board meeting, bring them to Mr Tsotsi when he knew that the  
10 meetings had nothing to do with allegations of wrongdoing and the suspensions had nothing to do with them? Why was he doing that?

**ADV SELEKA SC:** Well that's correct, because his rationale, remember, his principle was. He considered that:

“I would consider key-areas of business that the inquiry would focus on and also whether anyone in particular in those areas may have a propensity to interfere or have such a presence as to create perception of potentially impeding the investigation.”

20 And he was saying:

“As a matter of life...”

And he was saying to you, Chair.

“It does not happen in life. When you have these people then they will interfere with the subordinates.”

And he gave the analogy of two bankers who robbed the bank and if the police find the other one, you know it can only be your colleague.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** So his rational is one thing, but he actually went and did is another. But then the board still decided, this is not about wrongdoing.

**CHAIRPERSON:** H'm, h'm, h'm. Okay so maybe he sought to rely on those to say these people have a propensity to  
10 misconduct themselves. So there is a good chance they will interfere with the investigation. [laughing]

**ADV SELEKA SC:** [laughing]

**CHAIRPERSON:** Okay alright.

**ADV SELEKA SC:** When Ms Klein said there was no shred of evidence that they had interfered with previous investigation. But Mr Tsotsi, that is what has been said about you.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** That you motivated. You gave  
20 allegations of misdemeanours as the reasons why. And they say that four, on the 9<sup>th</sup> of March, that you said that the four should be suspended.

**MR TSOTSI:** Chairman, one of the things that would have been, I think, disrespectful to those executives who are concerned, would have been to talk about them being

suspended in their presence in a meeting. So, yes.

Quite honestly, they were sitting there. Mr Matona was sitting there. Ms Molefe was sitting there. How on earth would you in a meeting of that nature, you know, start embarrassing them with suspensions?

**CHAIRPERSON**: To say: I just have just come from Durban and the President said you must have an inquiry and these must be suspended.

**MR TSOTSI**: Exactly.

10 **ADV SELEKA SC**: [laughing]

**CHAIRPERSON**: [laughing]

**MR TSOTSI**: It does not...

**ADV SELEKA SC**: Yes, Ms Molefe did say exactly this Chairperson.

**CHAIRPERSON**: Ja.

**ADV SELEKA SC**: Denying. Because we have also put it to her.

**CHAIRPERSON**: Ja.

20 **ADV SELEKA SC**: Did you, Mr Tsotsi, say to them there is an inquiry and the suspension of the executives? He said the suspensions was not mentioned.

**MR TSOTSI**: Yes, of course.

**ADV SELEKA SC**: And she referred us to the proposal that had their names ...[intervenes]

**CHAIRPERSON**: Yes, the memorandum. Ja.

**ADV SELEKA SC:** And she was saying: How could we sign a resolution to suspend ourselves?

**CHAIRPERSON:** Yes, yes.

**MR TSOTSI:** Yes, absolutely.

**CHAIRPERSON:** Ja, okay.

**ADV SELEKA SC:** But Mr Tsotsi ...[intervenes]

**CHAIRPERSON:** We are ten to three.

**ADV SELEKA SC:** Yes, I am going...

**CHAIRPERSON:** [laughing]

10 **ADV SELEKA SC:** Ja. Mr Tsotsi, Mr Baloyi was opposed throughout, to these suspensions.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** And he asked about the urgency. What is the urgency about? Where is the report you are talking about or background information or background research?

And in regard to the issue of the urgency. You are having the ordeal. Or shall I say? Giving you the tongue lash.

20 And you were saying: If you do not realise the urgency of this matter, then you are not supposed to be a member of the board. Do you recall that?

**MR TSOTSI:** Yes, I recall this.

**ADV SELEKA SC:** And he was opposed to this, right to the very end of the P&G meeting.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** And he still requested that report.

**MR TSOTSI:** [No audible reply]

**ADV SELEKA SC:** And Dr Ngubane also says to him dismissively: We do not have this report. There may be a report existing somewhere but that is not our report. We have taken the decision. It is our own decision.

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** And I am referring to it because I think he was red-flagged.

10 **MR TSOTSI:** Yes.

**ADV SELEKA SC:** I think he was red-flagged.

**MR TSOTSI:** [No audible reply]

**ADV SELEKA SC:** The next thing is Mr Tsotsi. You are already out but he raises concerns. He testified here to some extent, not in so many words, but he has testified about the T-Systems contract. You may not know about it.

**MR TSOTSI:** [No audible reply]

**ADV SELEKA SC:** The T-Systems contract which kept on being extended and extended. He deals with it in his  
20 affidavit and he was querying why a contract of an IT was...  
the IT contract had reached some... what was the amount?

**MR TSOTSI:** R 5 billion.

**ADV SELEKA SC:** Ja, R 5.2 billion. When it did not... the Audit and Risk had made queries on it, negotiations on the price. The issue could be dealt with by the Executive

Committee but the Board Tender Committee decided to... decide on the matter and that Board Tender Committee was chaired by Dr Ngubane. But you would not know about that because ...[intervenes]

**MR TSOTSI:** Not that specific aspect but I do know about the very dubious issue that occurred around the T-Systems contract. Chair, this contract came up for renewal and everybody who put in their bids were interested including T-Systems.

10 And at some point, I get to hear that T-Systems did not qualify. So they were taken out of the running. And I believe - this is what I am being told now because I would not get involved in these issues.

But I was told that the contract and the bidders who are under consideration for the contract, there were some negotiations that were going on already to see which one should be selected.

All of a sudden, the whole process collapsed. And a proposal came to say: Look, we have to start this thing from  
20 scratch but in the meantime, let us extend T-Systems contract.

Now this is... by the time we were dealing with what Mr Seleka is talking about, it is nine months since the beginning of the very appointment of T-Systems.

So that whole IT contract had some very funny behaviour

that was associated with it. I just thought I mention that because I was aware of it from the onset.

**ADV SELEKA SC:** And he says that when he inquired... made inquiries with Dr Ngubane, Dr Ngubane shouted at him.

**MR TSOTSI:** Yes. Chairman, I must apologise how it related to Norman. He is a very pleasant person. I guess I got very impatient with him for whatever reason.

But it is true what the evidence leader is saying about him, having been opposed to the contract(?).

10 Particularly the concern about the pace at which things were happening. And I have a great deal of sympathy for that view because I had a particular problem myself with the suspensions.

So I understood where, you know, where he was coming from in terms of his objections. And when I spoke to him much later, after he himself had been removed from Eskom.

He recalled that his objection to the process that was then going on at the time, he believes must have had something to do with the way the board turned on him. So,  
20 yes I do recall that. Ja.

**CHAIRPERSON:** Ja, because both the way in which the board acted towards you to remove you and the way in which it seemed to have acted towards him to remove him, is strange. It is... there is a level of intolerance that is unlike unheard of.



You have just begun to work with everybody because you are new. Let us assume that the chairperson has made some mistake but to then really say let us charge him.

And of course, would want and look at charges that were used, remove him. Then here is another board member. Something has happened and suddenly he must be removed. He gets removed.

It is all very suspicious to say the least. It is not the way you would expect board members to behave.

10 **MR TSOTSI**: Chairman, things that seemed to take a completely turn after that alleged meeting of this... that night meeting or the secret meeting.

**CHAIRPERSON**: Yes.

**MR TSOTSI**: Of the 16<sup>th</sup>.

**CHAIRPERSON**: H'm.

**MR TSOTSI**: And my subsequent letter in regard to that meeting with the minister, I think must have unsettled some people and they acted very quickly to turn the gun on me.

20 **CHAIRPERSON**: It is all very strange. All very, very strange. It is not the way you would expect a board to act. I think that is not even the way you would expect a political party to act, politicians to act. The speed with which they sought to remove the chairperson. The speed with which they sought to remove Mr Baloyi.

**MR TSOTSI**: Yes.

**CHAIRPERSON:** It is very strange. It calls for some explanation to say: What was going on?

**MR TSOTSI:** Yes.

**ADV SELEKA SC:** Yes, Mr Tsotsi. Tell the Chairperson a little about this meeting. We have heard about deceit(?) in Mr Linnell's affidavit that there was a secret meeting. He linked his emails, the email he received about you are no longer needed.

And we have asked him who were some board members?  
10 Who were some suspended executives who met that evening in a secret meeting on the 16<sup>th</sup> of March 2015? Can you enlighten us on that?

**MR TSOTSI:** Chairman, I myself at the time when this meeting took place, I had no idea until the following day where upon I was told by Nick that there had been this meeting.

And that he believes that this meeting was in fact a decision to terminate his involvement in the process and that it was working against the decisions that the board had  
20 taken.

So he then volunteered to draft a letter to the minister from me indicating that, you know, there was this allegation of this meeting and this would have been in contravention of what the board had wanted to do and that there was ...[intervenes]

**ADV SELEKA SC:** Mr Tsotsi, may I... sorry, may I intervene?

**MR TSOTSI:** [No audible reply]

**ADV SELEKA SC:** Do you know who were the “some” board members and “some” suspended executives who were at that meeting?

**MR TSOTSI:** Well, I asked... at the time I asked Nick. He did not know. He was not aware of who were in that meeting. But I subsequently asked Jabu because apparently  
10 Nick had worked with Jabu to draw up this letter.

**CHAIRPERSON:** The letter?

**MR TSOTSI:** Yes.

**CHAIRPERSON:** H’m.

**MR TSOTSI:** And Jabu indicated that there was... Romeo Khumalo was there.

**CHAIRPERSON:** He knew about the meeting having taken place?

**MR TSOTSI:** He knew that the meeting had taken place.

**CHAIRPERSON:** Yes?

20 **MR TSOTSI:** And he mentioned Romeo Khumalo.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** He also mentioned Zethembe Khoza.

**CHAIRPERSON:** Yes.

**MR TSOTSI:** And then I asked who the executives were in that meeting or suspended executives.

**CHAIRPERSON**: H'm.

**MR TSOTSI**: That he did not know.

**CHAIRPERSON**: Okay.

**MR TSOTSI**: So I only heard of these two names having been present in that meeting.

**CHAIRPERSON**: Did you establish whether he was there himself?

**MR TSOTSI**: No, he says he got it from his sources.

**CHAIRPERSON**: Oh.

10 **MR TSOTSI**: So I presumed that ...[intervenes]

**CHAIRPERSON**: Okay.

**MR TSOTSI**: ..you know that he was not there.

**CHAIRPERSON**: H'm.

**MR TSOTSI**: Ja.

**CHAIRPERSON**: Okay. I am sorry, we will have to stop here.

**ADV SELEKA SC**: We will have to stop here, Chair.

20 **CHAIRPERSON**: I know you have not finished. Mr Tsotsi, I apologise that we are not able to finish with your evidence when you have come back for the third time. I apologise. We will have to ask you to come back again.

I hope it will be for the last time. But that will be arranged. So I apologise. We have to stop. Now I had hoped we would stop at half-past two but the issues that need to be covered are important and they are not few. So

arrangements will be made. I apologise.

**MR TSOTSI**: No, I understand.

**CHAIRPERSON**: Yes.

**MR TSOTSI**: My invoice will follow, Chairman.

**CHAIRPERSON**: Sorry?

**MR TSOTSI**: My invoice will follow shortly.

**CHAIRPERSON**: [laughing] I thought that you would have sent you invoice to the evidence leader.

**ADV SELEKA SC**: [laughing]

10 **MR TSOTSI**: [laughing] That is a good idea.

**CHAIRPERSON**: [laughing]

**ADV SELEKA SC**: Chair ...[intervenes]

**CHAIRPERSON**: I do not know how long you were going to still be but I think we have to stop. You will have to continue on some other day. But it should be... there is no reason why it should not be one of the mornings or one of the afternoons in the next two weeks.

**ADV SELEKA SC**: Yes.

20 **CHAIRPERSON**: There is no reason why there cannot be a day where... because probably you will not need more than an hour or two.

**ADV SELEKA SC**: No, shorter than that Chair.

**CHAIRPERSON**: Ja, shorter than that.

**ADV SELEKA SC**: I literally have one, two, three, four, five questions ...[intervenes]

**CHAIRPERSON**: Ja. [laughing]

**ADV SELEKA SC**: ...to put to him.

**CHAIRPERSON**: No, but sometimes we...

**ADV SELEKA SC**: No, I know.

**CHAIRPERSON**: ...finding myself and ...[intervenes]

**ADV SELEKA SC**: I know. [laughing]

**CHAIRPERSON**: Ja. So but we certainly should not need more than hour.

**ADV SELEKA SC**: Yes.

10 **CHAIRPERSON**: So we could start at nine o'clock. By ten his is done.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: Or we could ask him to come at four. By five he is done.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: Or come at five. By six he is done. So you can explore that with him.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: And then we can take it from there.

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

**CHAIRPERSON**: Okay. Is that fine Mr Tsotsi?

**MR TSOTSI**: Yes, Chair.

**CHAIRPERSON**: That should be fine?

**MR TSOTSI**: Yes, Chair.

**CHAIRPERSON**: Okay. Alright. Let us stop here then. On

Monday, we the Commission will start at two and not at ten and I will hear evidence. We adjourn.

**INQUIRY ADJOURNS TO 11 OCTOBER 2020**