

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

13 OCTOBER 2020

DAY 282



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 13 OCTOBER 2020

CHAIRPERSON: Good morning Mr Seleka, good morning everybody.

ADV SELEKA SC: Morning DCJ.

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

ADV SELEKA SC: We are ready.

CHAIRPERSON: Yes.

ADV SELEKA SC: We are ready Chairperson.

10 **CHAIRPERSON:** Okay. Let us just administer the oath or affirmation again?

ADV SELEKA SC: Dr Ngubane please switch on your microphone.

REGISTRAR: Please state your full names for the record.

DR NGUBANE: Baldwin Siphon Ngubane.

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

DR NGUBANE: No.

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

DR NGUBANE: Yes.

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

DR NGUBANE: So help me God.

REGISTRAR: Thank you.

CHAIRPERSON: Thank you. Let us continue then.

ADV SELEKA SC: Chairperson [00:01:12]

CHAIRPERSON: Thank you for coming back Dr Ngubane.

DR NGUBANE: Thank you Chair.

CHAIRPERSON: I note that you are coming back to the commission for the second time in regard to Eskom but you are actually coming back to the commission for the third
10 time if one counts when you came for the SABC last year.

DR NGUBANE: That is correct Chairperson.

CHAIRPERSON: Yes, yes but thank you for coming back.

DR NGUBANE: Thank you.

CHAIRPERSON: Thank you.

ADV SELEKA SC: Thank you Chair. Chairperson Mr Ngubane's legal represented.

CHAIRPERSON: Oh just to place himself on record.

ADV SELEKA SC: Thank you yes.

CHAIRPERSON: Okay. Please do so.

20 **ADV MKHABELA:** Good morning Chair the name is Mkhabela I represent Dr Ngubane.

CHAIRPERSON: Thank you very much Mr Mkhabela.

ADV SELEKA SC: Thank you Chair. Well Chairperson for Dr Ngubane we are still using Eskom Bundle 09[A].

CHAIRPERSON: 09[A].

ADV SELEKA SC: And 09[B].

CHAIRPERSON: Sorry 09?

ADV SELEKA SC: And 09[B]

CHAIRPERSON: [A]

ADV SELEKA SC: 09[A]

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: Mainly 09[A].

10 **CHAIRPERSON:** Ja okay.

ADV SELEKA SC: Dr Ngubane you will have the same bundle in front of you – Eskom Bundle 09[A]

DR NGUBANE: That is correct.

ADV SELEKA SC: That is correct.

CHAIRPERSON: Okay.

ADV SELEKA SC: The – that is the bundle that contains your affidavits and annexures thereto. Dr Ngubane we are going to try to finish off on the suspensions today because you did testify on your – on the last occasion on the
20 suspensions but we could not finish it off. Is that alright?

Oops – and just to recap in regard to your evidence given in your affidavit and testimony on your last appearance and I want to start off with what you say were your relations with the Gupta members – family members, Mr Salim Essa and Mr Nazeem Howa.

So we understand from you evidence that you came to know Mr Howa if I may start with him during the TNA breakfast meetings when you were at the SABC.

DR NGUBANE: That is correct Chairperson.

ADV SELEKA SC: And that we find on just by way of reference Chairperson for the record on page 40 of Mr Ngubane's affidavit and page 40 I am using the black pagination Chairperson.

CHAIRPERSON: 14 or 40?

10 **ADV SELEKA SC:** 40.

CHAIRPERSON: Okay. Yes.

ADV SELEKA SC: So it reads:

“I knew Mr Salim Essa and Mr Nazeem Howa from past interactions with each of them before I was appointed to the Eskom board. I came to know Mr Howa when attending the New Age breakfast meetings during my time as chairman of the South African Broadcasting Corporation.”

20 And Mr Ngubane you could confirm to the Chairperson that the time that you were the chairperson at SABC was it from 2010 to 2013?

DR NGUBANE: 2010 to – no 2103.

ADV SELEKA SC: To 2013?

DR NGUBANE: Yes.

ADV SELEKA SC: 10 to 13 – 2010/2013. So you would have come to know Mr Howa at the time during that time?

DR NGUBANE: That is correct.

ADV SELEKA SC: Ja. And in regard to Mr Salim Essa you say:

10 “I also knew Mr Essa prior to my appointment at Eskom. I had met him for the first time during 2011 or so when I was at the SABC. Mr Essa was on the board of Broadband Infraco SOC Limited. I used to attend meetings with various state owned entities including BBI which is Board of Broadband Infraco as I attend meetings with the various state owned entities including that as part of the SABC delegation where we were discussing digital migration for the country. There were some of the occasions during which I interacted with Mr Essa.”

20 And then in 2013 you talk about meeting him at JB Rivers at Melrose Arch. That is where the oil deal gets to be discussed which leads to you and him becoming 50% partners in a company called Gade Oil Gas, correct?

DR NGUBANE: That is correct Chairperson.

ADV SELEKA SC: Then you have your interaction with the Gupta families. You deal with that on page 42 of your

affidavit.

“I knew members of the Gupta family”

Paragraph 8.7 Chairperson.

“I knew members of the Gupta family when I was chairman of the SABC. I often met members of the Gupta family together with officials of the New Age Newspaper at the business breakfasts. Business breakfasts which were arranged by the New Age and broadcast on the Morning Live Program of the SABC. My relationship with them was social but not business related. I used to receive invitations for social events at their home in Saxonwold and attended some.”

Then you talk about your invitation to the wedding at Sun City that you were – you were invited and you attended and you were still at the time a member and chairman of the SABC board.

DR NGUBANE: That is correct Chairperson.

20 **ADV SELEKA SC:** Ja. So there is lots of interactions between you and Mr Howa, the Gupta – you say members of the Gupta family. Will that be the three brothers or is it beyond the three brothers?

DR NGUBANE: Well at different events they would be there. Not always together.

ADV SELEKA SC: Okay. Okay. Now it seems to me as I was taking you – now thinking back about your testimony last time and you can tell the Chairperson because what is – what emerges from the documentation and I want to go specifically to the email that are prepared – well the emails that I exchanged between Mr Howa and Mr Essa putting together a draft statement that was meant to be read out by you or released by yourself.

Mr Howa exchanged a document with Mr Salim
10 Essa. I think it is in Bundle – Eskom Bundle 09[B] the smaller bundle. The page reference is 764.1.

DR NGUBANE: It that U19?

ADV SELEKA SC: Ja are you on page 764.1? I am using the black pagination on the left hand corner – top left hand.

DR NGUBANE: Sorry just say that again please.

ADV SELEKA SC: It is page 764.1 you will see an email from Mr Howa on the 31 March 2015.

DR NGUBANE: No I do not think I find this.

20 **ADV SELEKA SC:** Can you assist Dr Ngubane please.

DR NGUBANE: Thank you.

ADV SELEKA SC: You are there Dr Ngubane?

DR NGUBANE: I have got it now.

ADV SELEKA SC: Yes. So this email is from Mr Nazeem Howa sent on Tuesday 31 March 2015 at 07:46 and it is

sent to Mr Salim Essa. Subject line is Statement from New Board March 31 Salim Bhai he writes:

“Salim Bhai – B-h-a-i as amended version for your approval the statement is on the next page.”

And the Chairperson did go through the statement last time but this statement – the contents of the statement are remarkable. And if you turn the page to page 764.2 it says:

10 “Statement by Dr Ngubane Chairperson of Eskom on behalf of the board.”

You see that statement?

DR NGUBANE: I see the statement yes.

ADV SELEKA SC: Yes. The statement and details what is happening within Eskom and this is you would recall after the – what is it the resignation of Mr Tsotsi on the 30 March 2015. And so it reads:

20 “Nearly a month has passed since we took the decisive step to ask four of our most senior executives to step down from the day to day roles to allow the board to appoint independent persons to assist us to develop a plan to ensure that Eskom is able to deliver a sustainable, secure and efficient supply of its consumers.”

And it says:

“Yesterday. At a meeting of the board it was decided – it was decided...”

CHAIRPERSON: I am sorry Mr Seleka and I am sorry Dr Ngubane.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: I just want to ask something about that first paragraph before Mr Seleka continues. You will see Dr Ngubane that in that first paragraph the statement says
10 the executives were asked to step down. Now when I read that term ‘step down’ I remember ‘step aside’ as opposed to ‘step down’.

DR NGUBANE: Yes Sir.

CHAIRPERSON: Now Mr Tsotsi when he was giving evidence talked a lot about stepping aside as opposed to suspension you know. Saying – he was saying he saw suspension as implying some wrongdoing and he preferred to say they should be asked to step aside.

I wonder whether one should attach any
20 significance to the fact that whoever prepared this statement thought that the board had asked the executives to step down as opposed to step aside.

Or maybe one is just reading too much into the term. Do you have some comment to say? It is like they have been asked to leave.

DR NGUBANE: Ja. Well Chairperson we counselled against suspension. We said they should take special leave. We were told this cannot be done for investigation purposes so we decided that they should step aside.

CHAIRPERSON: Yes, yes.

DR NGUBANE: For three months.

CHAIRPERSON: Yes. Yes. And – and you used step aside not step down?

DR NGUBANE: That is correct.

10 **CHAIRPERSON:** And is your understanding of the difference between step aside and step down the same as mine namely you step aside if it is temporary – you step down if you are leaving?

DR NGUBANE: That is correct Chair.

CHAIRPERSON: Yes. So – so in your mind this person writing here is not correctly describing what you – your decision about the executives at the time.

DR NGUBANE: That is correct Chairperson.

CHAIRPERSON: Yes okay alright. Thank you.

20 **ADV SELEKA SC:** Thank you Chairperson. The statement then carries on Mr Ngubane.

“Yesterday at a meeting of the board it was decided – accepted it.”

Now that is the wording of the statement decided – accepted.

“The resignation of Mr Zola Tsotsi as both chairperson and a director.”

Now that is remarkable because that indeed did happen the night before on the 30th Dr Ngubane. The acceptance of Mr Tsotsi’s resignation in fact did happen the night before on the 30 March.

DR NGUBANE: That is correct Chair.

ADV SELEKA SC:

10 “The board has once again reaffirmed its approach around its board – its broad ranging investigation and the request for key individuals to stand down in order for the process to take place without fear or favour. We are convinced on the basis of information we have gathered so far that this approach is the only way forward to provide a long term strategy to resolve the current issues at Eskom.”

CHAIRPERSON: Just one second again Mr Seleka.

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

CHAIRPERSON: Dr Ngubane just remind me I seem to think that the meeting at which Mr Tsotsi resigned was one held in the evening or in the night?

DR NGUBANE: Of the 30th?

CHAIRPERSON: Of the 30th.

DR NGUBANE: That is correct Chair.

CHAIRPERSON: Is that correct?

DR NGUBANE: Yes.

CHAIRPERSON: What is your recollection of how late in the evening or how late in the night? Around six, around eight, around ten?

DR NGUBANE: No it was some minutes after twelve midnight.

CHAIRPERSON: Some minutes after twelve midnight.

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

CHAIRPERSON: Okay so that – it is quite remarkable that this person the following morning already knows that something that happened so – so late. Yes.

DR NGUBANE: Well Chairperson.

CHAIRPERSON: You might be – you might wish to say something in response?

DR NGUBANE: Ja. Chairperson those days with the SABC information was leaking like a sieve?

CHAIRPERSON: You mean at Eskom?

20 **DR NGUBANE:** At Eskom.

CHAIRPERSON: Yes.

DR NGUBANE: So SMS's were doing the rounds. So this person being a media person I am sure he had source of information.

CHAIRPERSON: He [00:19:09] way. Ja. Okay thank you.

Mr Seleka.

ADV SELEKA SC: Yes.

CHAIRPERSON: I interrupted you I am sorry.

ADV SELEKA SC: No, no, not at all Chair. And just on that Dr Ngubane in fact the meeting of the 30 March 2015 according to the minutes took place at 20:00 – eight o'clock at night and it ended at 22:00 that night. The email is exchanged at 19:46 even before the meeting could start at eight o'clock that night.

10 **CHAIRPERSON:** I am sorry, I am sorry. I am not sure that I follow you.

ADV SELEKA SC: Okay.

CHAIRPERSON: Just repeat that.

ADV SELEKA SC: The Reference Bundle Chair. The meeting starts according to the minute eight at night.

CHAIRPERSON: Right 8:00 pm.

ADV SELEKA SC: 8:00 pm.

CHAIRPERSON: Yes. And according to the minutes it ends at...

20 **ADV SELEKA SC:** It ends at 22:00.

CHAIRPERSON: At 10 pm.

ADV SELEKA SC: At 10 pm.

CHAIRPERSON: Yes.

ADV SELEKA SC: The email – this email we are looking at Chairperson.

CHAIRPERSON: The one sending the statement?

ADV SELEKA SC: Correct.

CHAIRPERSON: Yes.

ADV SELEKA SC: The time stamp it is 7.40 is it 46 – yes 7.46. So that is even before the meeting could start.

CHAIRPERSON: Oh. Where do you get that from?

ADV SELEKA SC: The time stamp on the email Chair. Tuesday 31 – oh I beg your pardon – I beg your pardon. That is after – that is on the 31st.

10 **CHAIRPERSON:** Ja no that is the following morning yes.

ADV SELEKA SC: Yes sorry.

CHAIRPERSON: Ja no it is the following morning.

ADV SELEKA SC: Yes that is the following morning.

CHAIRPERSON: Ja no that is he following morning.

ADV SELEKA SC: Sorry Dr Ngubane.

CHAIRPERSON: Ja. But you just mentioned that according to the minutes the meeting ended at 10 pm. Dr Ngubane recalls the meeting as having ended a few minutes after midnight on the 30th.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Midnight 30th into the morning of the 31st. Dr Ngubane you seem to be – to be something to have a clear recollection of that? And maybe because of the events of the evening you – it would remain in your mind.

DR NGUBANE: No, no Chairperson. Probably the official

meeting might have ended at that time.

CHAIRPERSON: Okay yes.

DR NGUBANE: But the discussions...

CHAIRPERSON: Continued.

DR NGUBANE: Carried – continued.

CHAIRPERSON: Oh.

DR NGUBANE: Because at one stage I went – I think it was with Mr Pamensky or Romeo Khumalo to actually talk to Mr Tsotsi.

10 **CHAIRPERSON**: Yes.

DR NGUBANE: Not to force a vote.

CHAIRPERSON: Yes.

DR NGUBANE: Of loss of confidence.

CHAIRPERSON: No confidence.

DR NGUBANE: Because he had said if you do that then you are destroying my chances with other boards.

CHAIRPERSON: Yes. Yes.

DR NGUBANE: Because my only source of income.

CHAIRPERSON: Yes.

20 **DR NGUBANE**: Is earning board money.

CHAIRPERSON: Yes.

DR NGUBANE: On different boards.

CHAIRPERSON: Yes.

DR NGUBANE: So we were saying to him is unanimity in the board that a vote is going to be passed against you.

Now to save the situation that you complain about just resign.

CHAIRPERSON: Yes, yes.

DR NGUBANE: And then there is no vote.

CHAIRPERSON: Yes.

DR NGUBANE: And that is what happened.

CHAIRPERSON: Okay.

DR NGUBANE: But that took a very long time.

CHAIRPERSON: Yes okay. So – so the minutes might
10 reflect the formal meeting as having ended at ten.

DR NGUBANE: Yes.

CHAIRPERSON: But there were discussions which continued up to – just after midnight.

DR NGUBANE: That is correct.

CHAIRPERSON: And ultimately he resigned.

DR NGUBANE: That is right.

CHAIRPERSON: Okay alright. Mr Seleka.

ADV SELEKA SC: Thank you – thank you Chair. I think
my – my time allocation was confusing this meeting with
20 another meeting which we will come to later. So the statement then carries on with remarkable detail which reflects what transpired at Eskom – reflecting it with astounding accuracy. It says:

“The board has once again reaffirmed its approach around its broad ranging

investigation.”

I have read that.

“We are convinced on the basis of information we have gathered so far that this approach is the only way forward to provide a long terms strategy to resolve the current issues at Eskom. We are relieved too by the recent decision of the Labour Court on their appeal of the suspended
10 CEO. None of the board’s decision are taken lightly but rather in the spirit of meeting our obligations.”

Mr – Dr Ngubane you know I am reading fast. But it seems to me that paragraph I read about the recent decision of the Labour Court and the appeal of the suspended CEO can only refer to Mr Matona.

DR NGUBANE: That is correct Chairperson.

ADV SELEKA SC: There is one of the board.

CHAIRPERSON: [00:24:24] suspended CEO

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

“None of the board’s decisions are taken lightly but rather in the spirit of meeting our obligations as the board’s response – the board responsible for the utility which needs to support our country’s economic

10 growth and the overall wellbeing of our nation. The board spent much time over the past few weeks to discuss and debate the process around the investigation and to finalise the key areas of work to be delivered as a matter of urgency by the team we have appointed. As a board we have spent time since our appointment to assess the business and to get some understanding of some of the key issues facing Eskom. We were saddened by the recent decision of SNP to downgrade Eskom.”

So indeed Eskom was downgraded?

DR NGUBANE: Correct.

ADV SELEKA SC: We believe this decision – Ms Klein has said that much as well.

20 “We believe this decision is based on a lack of understanding of the current conditions at Eskom and our comprehensive plan to ensure a stable and reliable supply. However the board will redouble our efforts to meet the ...”

CHAIRPERSON: You do not intend reading the whole statement Mr Seleka do you?

ADV SELEKA SC: Yes Chair let us ...

CHAIRPERSON: You can just go to the main features that you want to...

ADV SELEKA SC: I do not have to Chair. I do not have to Chair.

CHAIRPERSON: Hm.

ADV SELEKA SC: Ja Dr Ngubane I do not have the read the whole statement because I think you deal with this in our affidavit.

10 **DR NGUBANE:** Yes.

ADV SELEKA SC: And if I may refer you to that affidavit in Eskom 9 – Eskom Bundle 9[A] from page 21 to page 22. You deal with the – you go back to the thicker bundle. T21 Chairperson.

DR NGUBANE: It is a document.

ADV SELEKA SC: No your affidavit. I am referring you – in the file. In the file.

DR NGUBANE: Okay.

ADV SELEKA SC: Alright. Page P21.

20 **DR NGUBANE:** Sorry.

ADV SELEKA SC: 21

CHAIRPERSON: 221?

ADV SELEKA SC: P21 to 22.

CHAIRPERSON: P?

ADV SELEKA SC: Page.

CHAIRPERSON: You are confusing us Mr Seleka.

ADV SELEKA SC: Sorry Chair.

CHAIRPERSON: Page – what page?

ADV SELEKA SC: Page 21.

CHAIRPERSON: Page 21.

ADV SELEKA SC: Sorry Chair.

CHAIRPERSON: In my language we would say [African language].

DR NGUBANE: Sorry, sorry page 21?

10 **ADV SELEKA SC:** 21. Ja the black numbers. Is this – is the dictation Chair that...

CHAIRPERSON: You see Mr Seleka I do not know how good your IsiZulu is but what I just said.

ADV SELEKA SC: Yes.

CHAIRPERSON: Means that you speaking English in such a way that we cannot hear now. Maybe – maybe speak it like the real English people.

ADV SELEKA SC: Okay. Ja page 21.

CHAIRPERSON: Yes.

20 **ADV SELEKA SC:** Dr Ngubane it starts from paragraph 5.

CHAIRPERSON: Have you found it Dr Ngubane? Page – black numbers – black numbers.

ADV SELEKA SC: I will give you the paragraph.

CHAIRPERSON: Page 21.

DR NGUBANE: Oh.

CHAIRPERSON: Black numbers ja.

DR NGUBANE: Yes.

ADV SELEKA SC: If you – if you are at page 21 that is fine because it begins – I am not going to read all of them but paragraph 5.7 it starts there. It starts before that but we could pick it up from 5.7 the minutes that accepted Mr Tsotsi’s resignation.

10 “And during the AGM held on 31 March 2015 the minutes they announce Mr Tsotsi’s resignation.”

So you deal with that in the preceding paragraphs. These paragraphs and let us go to page 22. Page 22 paragraph 5.9 then you say:

20 “On the 31 March 2015 I issued a press statement on my appointment as acting Chairman. In it I also thanked Mr Tsotsi for his service to Eskom. I did not personally prepare this statement it was provided to me by the Company Secretary Mr Phukubje Malesela.”

Mr Phukubje Malesela was the Company Secretary at the time. Then you go on to say:

“I hasten to...”

CHAIRPERSON: I am sorry for convenience you – do we have the statement – the media statement that Dr Ngubane

ultimately issued as per paragraph 5.9 in the bundle because of – I seem to think that it was different from the one that was sent that we were looking at but I would like to see it if it is here.

ADV SELEKA SC: Yes Chair there is a...

CHAIRPERSON: But I do not want to disturb what you are planning.

ADV SELEKA SC: Yes.

CHAIRPERSON: But I would – if you know that it is at
10 page so and so I can just go there while you ...[intervenes]

ADV SELEKA SC: Okay, Chair. Page 764.5.

CHAIRPERSON: Seven... page 764 ...[intervenes]

ADV SELEKA SC: Point 5.

CHAIRPERSON: Point 5. Okay.

ADV SELEKA SC: And as you... that needs to be clarified
Chair.

CHAIRPERSON: That cannot be the same bundle, h'm?

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

CHAIRPERSON: H'm?

20 **ADV SELEKA SC:** It is bracket B.

CHAIRPERSON: It is this one?

ADV SELEKA SC: Yes, bracket B.

CHAIRPERSON: 764 ...[intervenes]

DR NGUBANE: This file? The second file?

ADV SELEKA SC: The second file.

CHAIRPERSON: 764.5.

ADV SELEKA SC: Yes. The Chairperson is going ahead of us, Dr Ngubane.

CHAIRPERSON: [laughing] Yes ...[intervenes]

ADV SELEKA SC: This is needs to build line-by-line, Chair.

CHAIRPERSON: H'm?

ADV SELEKA SC: We need to build it line-by-line.

CHAIRPERSON: No, no, no. That is fine.

ADV SELEKA SC: [laughing]

10 **CHAIRPERSON:** That is just for my purposes. Then you can go back to your plan.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: So the affidavit then Dr Ngubane is:

“I hasten to add that as a matter of practise, I did not prepare my own speeches or press statements at Eskom.

They would be provided to me by the company secretariat or Corporate Affairs Division.

20 I did not have a meeting or conversation with Mr Salim Essa regarding Mr Tsotsi’s resignation from Eskom, nor did I have any correspondence with Mr Essa regarding any appointments and resignations and movement of any employees within Eskom.”

CHAIRPERSON: No, but I am sorry.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: This cannot be the... it does not look to me as the chairperson's media statements.

ADV SELEKA SC: Yes.

CHAIRPERSON: It looks like an article.

ADV SELEKA SC: Hence, I was going to say Chair. We need to build it line-by-line.

CHAIRPERSON: [laughing]

10 **ADV SELEKA SC**: [laughing]

CHAIRPERSON: But if there is a statement, you should have directed me to the statement, not to the article.
[laughing]

ADV SELEKA SC: Well, there is a reason for that Chair.

CHAIRPERSON: Oh, okay alright.

ADV SELEKA SC: Yes.

CHAIRPERSON: I am must be patient.

ADV SELEKA SC: There is a reason for that.

20 **CHAIRPERSON**: Okay alright. Okay alright. Okay let us go step-by-step.

ADV SELEKA SC: Because ...[intervenes]

CHAIRPERSON: No, no. I understand.

ADV SELEKA SC: Yes.

CHAIRPERSON: I understand, ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay. I was just too curious for my own purposes.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay continue.

ADV SELEKA SC: So Dr Ngubane, you would recall what you are dealing with in these paragraphs of the affidavit?

DR NGUBANE: Yes.

ADV SELEKA SC: Because it was questions in relation to this, Mr Howa and Mr Salim Essa's email and the statement
10 there attached.

DR NGUBANE: That is correct.

ADV SELEKA SC: Yes. And this is the only statement we have and you could tell the Chairperson whether was this statement ever published or was it simple read because you do say. You say:

20 "I issued a press statement on my appointment as acting chairperson. In it, I also thanked Mr Tsotsi for his service to Eskom. I did not personally prepare that statement. It was given to me by the Company Secretary, Mr Phukubje."

And then you go on to explain:

"Well, I did not have a meeting or conversation with Mr Essa regarding Mr Tsotsi's resignation.."

Because that is what they are dealing with there. So could you explain to the Chairperson whether was this an

issued statement or simply a read-out statement? It is in... it is unclear to me.

DR NGUBANE: Well, Chairperson in my last appearance here, there was a shorter statement.

CHAIRPERSON: I thought I had seen it too.

DR NGUBANE: Yes, there was a shorter statement which was shown and that is the statement that I used, not this statement.

CHAIRPERSON: Yes. No, I thought I had seen it too.

10 **DR NGUBANE**: Yes.

CHAIRPERSON: And I thought I had noticed or somebody had said that it is shorter ...[intervenes]

DR NGUBANE: Yes.

CHAIRPERSON: ...than the one that was sent.

DR NGUBANE: Yes.

ADV SELEKA SC: We can go into it, Chairperson.

CHAIRPERSON: Are we both mistaken, Mr Seleka?

ADV SELEKA SC: No, we can go into it.

CHAIRPERSON: Okay alright.

20 **ADV SELEKA SC**: That page reference I gave to the Chairperson, Dr Ngubane which is page 77.

CHAIRPERSON: [Indistinct] [microphone not switched on]

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

CHAIRPERSON: That looks like an article.

ADV SELEKA SC: That is correct, Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: 764.5.

CHAIRPERSON: H'm?

ADV SELEKA SC: You need to assist Dr Ngubane.

DR NGUBANE: Yes, I have got it.

ADV SELEKA SC: You have got it, Dr Ngubane?

DR NGUBANE: Eskom ...[intervenes]

ADV SELEKA SC: Now ...[intervenes]

DR NGUBANE: “Eskom Board and chairperson agreed to
10 part ways.”

ADV SELEKA SC: Yes.

DR NGUBANE: Alright.

ADV SELEKA SC: Now Dr Ngubane, this is exactly what
the Chairperson was pointing out. This is not a statement. I
know in your appearance previously you referred to this as
the statement you issued when the Chairperson asked you
that question.

DR NGUBANE: This short one?

ADV SELEKA SC: Yes.

20 **DR NGUBANE:** Yes.

ADV SELEKA SC: But in fact, it is not a statement. It is a
report by a media person, talking about what you and Mr
Tsotsi addressed the people to be saying. Let us read it. It
says ...[intervenes]

CHAIRPERSON: It says dated 30 March.

ADV SELEKA SC: 30 March 2015. It says:

“Tuesday, 30 March 2015. After much deliberation, the Eskom Board today accepted...”

Now that is a significant indication of the difference between the two statements. It does not say yesterday. It says today. And you finished nearly, as you say, nearly about twelve o'clock.

“The Eskom Board today accepted the presentation made by the Chairperson, Mr Zola Tsotsi.

10 The board and the chairperson, thereafter, held a constructive discussion about charting a way forward for the power utility.

Following this discussion, Mr Tsotsi agreed to step down as a director and chairperson of the board. Speaking after the meeting, Mr Tsotsi indicated that the board had unity of purpose and that his decision to step down was in the interest of the company and the country and was done in order to allow the board to focus on the core issues facing Eskom.

20 This step, the board believes, will ensure that Eskom can focus on the challenges facing it and sets the company on a new path to regain the confidence...”

And so on. Let us read the next... the last paragraph. It says:

“...speaking on behalf of the board...”

So somebody is reporting ...[intervenes]

DR NGUBANE: Yes.

ADV SELEKA SC: ...about what you and Mr Tsotsi are saying. Now it is you speaking on behalf of the board.

“Dr Ngubane thanked Mr Tsotsi for the selfless decision he has taken been placing the interest of the company and the nation first.

10 Dr Ngubane also thanked Mr Tsotsi for his valuable service to Eskom over the years and wished him well in his future endeavours.”

So you see the differences? It is a media reporting, reporting here as opposed to you giving a speech.

DR NGUBANE: Ja.

CHAIRPERSON: And maybe it is something that appeared or that was intended for an internal publication at Eskom. I do not know. It might not be an article in the newspaper.

20 Maybe it could be an internal magazine within Eskom. Whoever is writing, is maybe writing for that kind of publication to tell everybody, you know, current news or important news. That is how it comes across to me.

ADV SELEKA SC: Yes.

DR NGUBANE: But Chairperson, the session with the evidence leader and the Commission investigators. During the break, I asked Mr Kopatha(?) to please scan the media

and find out exactly what statement I released.

When we met again, they said there was none. That is why at the last meeting, I said I thought this matter was off the table.

CHAIRPERSON: Yes.

DR NGUBANE: Because they have said there was none.

CHAIRPERSON: Yes.

DR NGUBANE: I never received the statement from Mr Howa.

10 **CHAIRPERSON**: Yes, yes.

DR NGUBANE: So I am not sure if it was sent to someone in Communications or...

CHAIRPERSON: Yes, yes. But let us just get to finality about whether there is another... there is as media statement in the bundles that we have got here because I also was under the impression that last time we did... our attention was drawn to a statement that was shorter.

DR NGUBANE: Yes.

CHAIRPERSON: That was said to have been issued by you
20 and it was said that... I think you said you did not issue this long statement that had been sent.

DR NGUBANE: No.

CHAIRPERSON: So now, both Dr Ngubane and I seem to remember that part of last... his last appearance.

ADV SELEKA SC: I ...[intervenes]

CHAIRPERSON: Do you have the same recollection or are you saying that which what we were talking about, what we saw was this and not something else?

ADV SELEKA SC: Correct, Chair. So we ...[intervenes]

CHAIRPERSON: That is ...[intervenes]

ADV SELEKA SC: Your recollection Chairperson is correct.

CHAIRPERSON: Yes.

ADV SELEKA SC: That there was reference to two statements and Dr Ngubane said he accepts this shorter one
10 to be his statement.

CHAIRPERSON: Yes.

ADV SELEKA SC: But that is the only shorter statement. So there is not another statement. You have the long one which see you attached to the email of Mr Howa and Salim Essa.

And then, Chairperson specifically asked: Oh, but you accept this one? Which is on page... the shorter one. Dr Ngubane then said yes. As though to convey that that is his statement.

20 **CHAIRPERSON:** Yes, yes.

ADV SELEKA SC: So those are the only two, to answer your questions.

CHAIRPERSON: Okay, okay, okay.

ADV SELEKA SC: So your recollection is correct.

CHAIRPERSON: Yes.

ADV SELEKA SC: And the clarification is only in respect of which one is the shorter statement.

CHAIRPERSON: Yes, yes, yes.

ADV SELEKA SC: Is it this one or is there another one?

CHAIRPERSON: Ja, ja. Yes.

ADV SELEKA SC: This is the only one Chair.

CHAIRPERSON: Yes. Well, what is your recollection Dr Ngubane? Is your recollection that there was a statement that... a media statement that you issued and it was not this
10 article we are looking at here? Or is that you have no recollection whether you did issue a media statement on this occasion?

DR NGUBANE: Chairperson, when I go before the media for official purposes, there is always a statement.

CHAIRPERSON: That you bring with you?

DR NGUBANE: Yes.

CHAIRPERSON: Yes. There would... it was important, you know, event, the resignation of the chairperson.

DR NGUBANE: It is correct.

20 **CHAIRPERSON:** So the media had to be told.

DR NGUBANE: That is correct. But not this, no.

CHAIRPERSON: It was not the one that appears at 764.5?

DR NGUBANE: No.

CHAIRPERSON: Okay. And you also accept that when last time you appeared here, what we saw was this one that we

thought was the media statement?

DR NGUBANE: That is correct, Chairperson.

CHAIRPERSON: Yes, okay alright. But you said something earlier on. Was it to the effect that you previously asked some people to look for the media statement that you issued and they said they did not find, they could not find it?

DR NGUBANE: Ms Seko(?) and I think Mr Riley, we talked about that.

CHAIRPERSON: Yes. Are those people from the
10 Commission or...?

ADV SELEKA SC: Those are the... Dr Ngubane is referring to investigators ...[intervenes]

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: ...in the Eskom, were extreme Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: Chair, I will have to deal with that aspect and... but maybe to do so, I need to canvass the point with my learned friend for Dr Ngubane.

CHAIRPERSON: No, that is fine.

20 **ADV SELEKA SC:** Is that fine?

CHAIRPERSON: I give it to you to ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...to deal with it in a way you see it.

ADV SELEKA SC: Yes. Ja.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Ja. It ...[intervenes]

CHAIRPERSON: But I just want us to be on the same page.

ADV SELEKA SC: Yes.

CHAIRPERSON: As to where we are.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Because there is correspondence which may have to be brought to your attention in regard to that.

CHAIRPERSON: Okay alright.

10 **ADV SELEKA SC:** Ja.

CHAIRPERSON: Okay.

ADV SELEKA SC: So but ...[intervenes]

CHAIRPERSON: Of course, I noted that in your statement... Dr Ngubane did say that you normally did not prepare these statements yourself. They would be prepared by, I think, Communications. You need in Eskom and so on. Is that right?

DR NGUBANE: That is correct, Chairperson.

20 **CHAIRPERSON:** Yes. So I assume that attempts were made to talk to that unit to see whether they could find anything. So. But I am sure at the right time I will be told.

ADV SELEKA SC: Ja. Chairperson, can I give you a hint?

CHAIRPERSON: [No audible reply]

ADV SELEKA SC: If you look at the affidavit of Dr Ngubane, that page 22, paragraph 5.9. Dr Ngubane says to

the Commission:

“On 31 March 2015, I issued a press statement.”

I issued it.

“On my appointment... (and so on). I also thanked Mr Tsotsi for his services. I did not personally prepare the statement.”

Now that gives you the impression that Dr Ngubane is aware of the statement he is talking about.

CHAIRPERSON: Yes.

10 **ADV SELEKA SC:** He did not prepare the statement.

CHAIRPERSON: Yes.

ADV SELEKA SC: “It was provided to me by the Company Secretary, Mr Phukubje.” Mr Phukubje was the Company Secretary at the time. And then he goes on to say in 5.11:

“I did not have a meeting or conversation with Mr Salim Essa...”

So Dr Ngubane is answering certain questions there Chairperson and that is why I want to canvass ...[intervenes]

CHAIRPERSON: Yes, okay.

20 **ADV SELEKA SC:** ...Dr Ngubane’s attorney so that we can overcome this issue.

CHAIRPERSON: That is fine.

ADV SELEKA SC: Yes.

CHAIRPERSON: That is fine. And I take it that all concerned in regard... in this regard have been interviewed

or if not, they have been interviewed including the company secretary what he knows and so on and so on.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Okay alright. Let us continue.

ADV SELEKA SC: Thank you. So Dr Ngubane, you will recall that the issue regarding the removal of Mr Tsotsi, it comes, at least formally, for the first time in the boarding meeting of 19 March 2015.

DR NGUBANE: [No audible reply]

10 **ADV SELEKA SC:** I think you were present in that meeting.

ADV SELEKA SC: I think you were present in that meeting. You remember that?

DR NGUBANE: That is correct.

ADV SELEKA SC: So the 19th of March... actually, may I enquire whether the attorney for Mr Ngubane has been provided with the Reference Bundle?

COUNSEL: [No audible reply]

ADV SELEKA SC: He says yes.

CHAIRPERSON: Ja, okay.

20 **ADV SELEKA SC:** Thank you. Yes, because the minutes are in that Reference Bundle Chairperson.

CHAIRPERSON: Have you got the page number?

COUNSEL: Excuse me Chair.

CHAIRPERSON: Yes.

COUNSEL: I think I have responded rather prematurely. He

understood that the bundle that miss ...[intervenes]

CHAIRPERSON: Oh.

COUNSEL: ...was speaking to.

CHAIRPERSON: Yes.

COUNSEL: Or may I just clarify that?

CHAIRPERSON: Oh, you do not have?

ADV SELEKA SC: Okay.

CHAIRPERSON: You do not have the one called Reference Bundle?

10 **COUNSEL**: I have only one bundle that ...[intervenes]

CHAIRPERSON: Oh.

COUNSEL: ...we have been running with presently. I am not sure there is another...

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes, Chair we can use the minutes as they appear in Dr Ngubane's bundle as well Chair.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Ja. That should resolve that.

20 **CHAIRPERSON**: So we do not need to go the Reference Bundle?

ADV SELEKA SC: We do not need to go to the Reference Bundle.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Ja. So the minutes in Dr Ngubane's bundle, the one of the 19th of March are on page 297.

DR NGUBANE: What paragraph?

ADV SELEKA SC: 297... okay ja, the minutes already Dr Ngubane, yes. I will go the paragraphs. So the members present are there. So you are the second on the list of those present. Mr Zola Tsotsi at the time is still the chairman. Then go please to page 299. 299. Turn the page, Dr Ngubane.

DR NGUBANE: [No audible reply]

ADV SELEKA SC: Yes. So after the paragraph: Resolve
10 that. There is the bolded part where Mr Romeo Khumalo joins the meeting. You see the middle of the page?

DR NGUBANE: Resolutions. Yes.

ADV SELEKA SC: Ja, do you see when Mr Khumalo joins the meeting?

DR NGUBANE: [No audible reply]

ADV SELEKA SC: Just above ...[intervenes]

CHAIRPERSON: Just above Resolutions by the Board.

ADV SELEKA SC: Resolution by the Board.

DR NGUBANE: Yes.

20 **ADV SELEKA SC:** Yes. Then there is a break and resumed at twenty to twelve, before midnight.

“The chairman was excused from the meeting. Dr Ngubane was elected to chair the meeting.”

And then followed deliberations about Mr Tsotsi and the board’s intention to bring charges against him. You will

recall? I do not want to read it.

DR NGUBANE: Yes, yes.

ADV SELEKA SC: Yes.

DR NGUBANE: Yes.

ADV SELEKA SC: Ja, at the bottom of it, you will see it was agreed that:

“- Supporting documents or should put to... should be put together to indicate failure to get a board approval.

10 - Matters considered as aggravating actions of the chairman.

- Preparing and distributing media statement in the name of the board without board approval.

The board resolved that Mr Khumalo is the delegated media person in the ARC, which is Audit and Risk Committee and Dr Ngubane is appointed as acting chairman of the board.

The board must be prepared to take risk of whatever the minister might decide.”

20 And then the chairman came back to the meeting at twenty-three minutes to one. This is after midnight.

DR NGUBANE: Sure.

ADV SELEKA SC: This board was working out. [laughing]

CHAIRPERSON: This board was hard at working Dr Ngubane. [laughing]

DR NGUBANE: [laughing] Well, these were monumental events Chairperson.

CHAIRPERSON: [laughing]

ADV SELEKA SC: And what we have found Dr Ngubane. It is a remarkable pattern in regard to the issues pertaining to Mr Tsotsi and the board's resolution. There is another email on the 19th of May. 19 March. I beg your pardon. 2015.

And this email, it is also exchanged between Mr Howa and Mr Salim Essa. Also talking about the board's
10 acceptance of the resignation of Mr Tsotsi. You are aware of that?

DR NGUBANE: No, not that email.

ADV SELEKA SC: And it was again a statement... Chairperson, this one I have to go to the Reference Bundle. So I will have to provide my learned friend with the Reference Bundle.

CHAIRPERSON: Ja. Thank you, Chair.

DR NGUBANE: Is it in my bundle?

ADV SELEKA SC: It is in... I think you... Dr Ngubane will
20 have the Reference Bundle. It is not in your bundle. It is page 434. 434 in the Reference Bundle.

CHAIRPERSON: Have you told us what page?

ADV SELEKA SC: Yes, page 434.

CHAIRPERSON: 434?

ADV SELEKA SC: 434. The black pagination.

CHAIRPERSON: Now you are still on the point that is connected with the minutes on the 19th?

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Because... so what I am saying to Dr Ngubane. We kind of see the same pattern in regard to the resignation of Mr Tsotsi.

Mr Howa and Mr Salim Essa exchange a draft statement that details the events within Eskom in anticipation or as
10 though... wait. Either in anticipation of Mr Tsotsi' resignation or after the month of his resignation.

CHAIRPERSON: This time it might be in anticipation ...[intervenes]

ADV SELEKA SC: In anticipation. Chair, ja.

CHAIRPERSON: It looks like it. Ja.

ADV SELEKA SC: This is the one. You see Dr Ngubane? So the email on page 434, it is from Nazeem Howa.

CHAIRPERSON: That is 434 on the... on Eskom Bundle 13 which is the Reference Bundle.

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

CHAIRPERSON: You must keep on saying bundle.

ADV SELEKA SC: Thank you, Chairperson.

CHAIRPERSON: Eskom Bundle 13 because that is the official one, ja.

ADV SELEKA SC: I am indebted to you, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: So there is an email on page 434 in that bundle. It appears to be... to have been from Nazeem Howa at nazeemh@tmamedia.co.za.

ADV SELEKA SC: H'm.

CHAIRPERSON: It was sent on Thursday, 19 March 2015 at 19:46 addressed to Mr Salim Essa and the subject is: Statement from New Board. And attachments, Statement
10 from New Board docs or docx docs.

ADV SELEKA SC: Yes.

CHAIRPERSON: It says:

“Sirs, a first draft. Let me have your thoughts and I will work to polish further.”

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Yes, okay. Continue Mr Seleka.

ADV SELEKA SC: You see that Dr Ngubane?

DR NGUBANE: [No audible reply]

ADV SELEKA SC: And then... you see that?

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

ADV SELEKA SC: You see that email?

DR NGUBANE: Yes, but I am trying to see how it differs from the previous one.

ADV SELEKA SC: Oh, okay.

CHAIRPERSON: Okay, okay.

DR NGUBANE: Yes.

ADV SELEKA SC: Yes. Are you looking at the statement itself?

CHAIRPERSON: Well, actually. When you say the previous one, you mean the previous one that we have dealt with because in terms of time ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...this one comes first.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** [laughing] The other one comes later.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay. Well, I think the one we saw in regard to the 31st of March, relating to the departure of Mr Tsotsi from Eskom, if I am not mistaken and it seems to be a final.

ADV SELEKA SC: It is, Chair.

CHAIRPERSON: It seems to be attaching a final statement.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Whereas, this one says it is a first draft. The statement that seems to have been attached, it was meant as a first draft and not a final draft.

ADV SELEKA SC: Yes.

CHAIRPERSON: Because Mr Howa seems to say: Let me

have your thoughts and I will work to polish further. He says sirs but he addressed it to one person. So, ja. Okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Thank you. Mr Seleka.

ADV SELEKA SC: Yes, Chair. Dr Ngubane, ja you are busy reading the statement itself?

DR NGUBANE: Yes.

ADV SELEKA SC: Yes. Is there anything that you want to tell the Chairperson about it?

10 **CHAIRPERSON:** Well, I do not know whether maybe before you ask that questions, we need to note the main features of the statement that was addressed ...[intervenes]

ADV SELEKA SC: Of the statement, yes.

CHAIRPERSON: I think let us rather do that. So ...[intervenes]

ADV SELEKA SC: Let me place it on record, sir. Dr Ngubane, so the statement itself is on page 435. It says state... the heading is:

20 "Statement from New Board represented by its chairperson on behalf of the board.

It is now a week since we took the decisive step to ask four of our most senior executives to step down from their day-today roles to allow the board to appoint independent minds to assist us to develop a plan to ensure that Eskom is able to deliver a

sustainable, secure and efficient supply to its consumers.”

So this person writing, knows about the executives. The next paragraph it says:

“Yesterday at a meeting of the board it was decided to release Mr Zola Tsotsi of the chairpersonship due to growing lack of confidence in his leadership and increasing discomfort particularly around the grain of his role as a non-executive the tension it was causing within the business.”

So then again ...[intervenes]

CHAIRPERSON: I would allow you to read further, you know?

ADV SELEKA SC: Oh.

CHAIRPERSON: In the other one I stopped you but I will allow read a little further.

ADV SELEKA SC: Thank you, Chair. But then, again, Dr Ngubane, this person knows with remarkable precision the details within the board:

“The board once again reaffirmed its approach around the investigation and the request for key individuals to stand down and it is convinced on the basis of information they have gathered so far. But this approach is the only way forward to provide a long term strategy to resolve the current issues at

Eskom. None of these decisions were taken lightly, Rather in the spirit of the meeting our obligations as the board responsible for a utility which needs to support our economic growth and the overall wellbeing of our nation. The board spent several hours yesterday to address...”

And that is also remarkable, Dr Ngubane, is it not, the use of the words several hours yesterday.

10 “...to address the process around the investigation and to finalise the key areas of work to be delivered as a matter of urgency by the team we appoint.”

I could go on but I am interrupted by that thought and the question which I need to ask you, Dr Ngubane, is that this person is not drafting a media report so I am informed by Mr so and so that this is what the board has done.

DR NGUBANE: Right.

ADV SELEKA SC: Like we see in regard to the shorter one where he says:

“Dr Ngubane said..”

20 **DR NGUBANE:** Sure.

ADV SELEKA SC: “Mr Tsotsi said...” This person is writing a statement for the Chairperson who would read it, the Chairperson of the board. Is this not remarkable? Where would this person get all this information from to enable him to prepare such a detailed statement? What

can you tell the Chairperson? Is it not remarkable to you?

CHAIRPERSON: Well, I am sorry, Mr Seleka, I am going to be inconsistent. I think read the whole statement.

ADV SELEKA SC: Should I read the whole statement?

CHAIRPERSON: Yes, read the whole statement.

ADV SELEKA SC: Sure.

CHAIRPERSON: At least this one is one and a half or two pages. That other one was like four pages. I think read the whole statement.

10 **ADV SELEKA SC:** Yes. Should he not come in first, Chair, before ...[intervenes]

CHAIRPERSON: Sorry?

ADV SELEKA SC: Should Dr Ngubane come in before I move on?

CHAIRPERSON: Well, Dr Ngubane, you can read it, it might refresh your memory as well, if you want to.

ADV SELEKA SC: Okay, let – I will read it.

CHAIRPERSON: Are you happy to read it?

ADV SELEKA SC: Let me read it, Chair, let me carry on.

20 Yes:

“As a board we spent the time since our appointment to assess the business and to get some ...[intervenes]

CHAIRPERSON: You are now starting somewhere in the middle. Maybe just start from the beginning so that even

in the transcript here is a place where one finds the complete statement.

ADV SELEKA SC: Okay.

DR NGUBANE: Well, Chairperson...

CHAIRPERSON: Ja?

DR NGUBANE: I have read quite a bit of it.

CHAIRPERSON: You have read quite a bit, ja. Okay, no that is fine. But I think I just want it to be in the transcript because it might – this statement and the one of the 31st
10 might prove to be quite important.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: So the statement reads, I am starting at the beginning again:

20 “Statement from new board represented by its Chairperson on behalf of the board. It is now a week, a week since we took the decisive step to ask four of our most senior executives to step down from their day-to-day roles to allow the board to appoint independent minds to assist us to develop a plan to ensure that Eskom is able to deliver a sustainable, secure and efficient supply to its consumers. Yesterday at a meeting of the board it was decided to relieve Mr Zola Tsotsi of the Chairpersonship due to a growing lack of

confidence in his leadership and increasing discomfort particularly around the growing of his role as a nonexecutive chair and the confusion it was causing within the business. The board once again ...[intervenes]

DR NGUBANE: Sorry, Chairperson.

CHAIRPERSON: Sorry, yes?

DR NGUBANE: This email is 19 March.

CHAIRPERSON: Yes.

10 **DR NGUBANE:** Mr Tsotsi had not been removed as Chairperson.

CHAIRPERSON: It is one of the remarkable things.

DR NGUBANE: Yes, that is the point.

CHAIRPERSON: In other words, the email, if it is true that this statement was attached to the email, the email is sent and a statement has been prepared before Mr Tsotsi is removed.

DR NGUBANE: Right.

20 **CHAIRPERSON:** But it is already talking about him having been removed so it is one of the remarkable things. I think he will be asking for your comments on that.

DR NGUBANE: Alright.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Yes, that is exactly the point. Where do I start again? Should I carry on? The second

paragraph ...[intervenes]

CHAIRPERSON: Well, I said start at the beginning.

Okay, I will not disturb you now.

ADV SELEKA SC: No, it was not you, Chair.

CHAIRPERSON: Where were you reading?

ADV SELEKA SC: It was Dr Ngubane.

CHAIRPERSON: Okay, just continue where you were when you...

ADV SELEKA SC: Okay.

10 **CHAIRPERSON:** Ja.

ADV SELEKA SC: The second paragraph says:

20 “Yesterday at a meeting of the board it was decided to relieve Mr Zola Tsotsi of the Chairpersonship due to a growing lack of confidence in his leadership and increasing discomfort particularly around the growing of his role as a nonexecutive chair and the confusion it was causing within the business. The board once again reaffirmed its approach around the investigation and the request for key individuals to stand down and is convinced on the basis of information they have gathered so far that this approach is the only way forward to provide a long term strategy to resolve the current issues at Eskom. None of these decisions were taken lightly, rather, in the spirit of meeting our obligations as

the board responsible for a utility which needs to support our economic growth and the overall wellbeing of our nation. The board spent several hours yesterday to address the process around the investigation and to finalise the key areas of work to be delivered as a matter of urgency by the team we appoint. As a board we have spent the time since our appointment to assist the business and to get some understanding of some of the key issues facing Eskom. We were saddened by the decision of S & P to downgrade Eskom. While we believe their decision is based on a failure to understand the current conditions at Eskom and our comprehensive plan to ensure a stable and reliable supply the board will use this opportunity to redouble our efforts to meet the challenges faced by Eskom. The board once again confirmed the key challenges impacting on Eskom and its ability to provide a sustainable secure and efficient electricity supply. These are, as constraints at the utility, an overburdened energy system leading to unprecedented load shedding; an aging fleet and a seriously flawed maintenance programme rapidly increasing price of electricity, delays and cost overruns of the new-build programme; overpaying

for major procurement items and consumables. It was against this backdrop that we took the step to launch the inquiry so that we, as a board, are able to understand what has caused this sad state of affairs and to develop strategies to begin to remedy the situation. As part of this process it is planned to benchmark costs and structures required to run Eskom efficiently. It is our express desire that the investigation determines whether the current situation was exacerbated by incompetence, ill-informed decision-making, mismanagement or untoward actions. We will also look into the current operating policies and processes and the business structure to understand how we can introduce further efficiencies and best practices to get Eskom to be the utility we all wish it to be. Our aim of this element of the investigation is to secure the supply of our primary energy inputs so we can align our outputs to the demands of our economy. We will use this investigation to:

To plan ...[intervenes]

CHAIRPERSON: I think read 1, 2, 3s as well.

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

“We will use this investigation to:

1. To plan and correlate a holistic fleet management

programme to ensure operation efficiency of our current fleet.

2. To review and analyse our new-build programme to ensure energy is generated soonest. This will include all contracts and performance agreements.
3. Introduce checks and balances to mitigate any fraud and manipulation within our operations.
4. Analyse and restructure of our balance sheet and all our incumbent debt instruments.
5. Realign key performance indicators for senior leadership to ensure better performance aligned to the board's current strategy.
6. Introduce an effective demand site solution aimed at reducing the need for load shedding.
7. Review current noncore assets and look to sale and lease options to fund further requirements at the utility."

10

New paragraph:

20

"The board spent many hours yesterday reviewing our strategy so far and confirming the way ahead. We know that there is no alternative but to implement several radical solutions and we call on all South Africans to assist us in dealing with the challenges at Eskom. The board has adopted the

position that it will not tolerate incompetence, tardiness, any dereliction of duty from any member of the Eskom team. Our priority is to deliver an efficient and reliable service to our consumers and we will expect each of our executives to step up to plate to deliver on this commitment.”

CHAIRPERSON: That is the end of the statement.

ADV SELEKA SC: And that is the end of the statement.

CHAIRPERSON: Okay, I think we should take the tea
10 adjournment and when we come back then we can deal with it. Okay, we adjourn.

ADV SELEKA SC: Thank you, Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: It looks like you might be too far from the mic that seems to work, Dr Ngubane. I wonder whether there is a way of moving out of the way some of the files that he might not be needing immediately? I see you do not have a lot of space in front of you, Dr Ngubane and
20 then they can be brought back as and when they are needed.

DR NGUBANE: Alright.

CHAIRPERSON: I think the one that we are at is the one with the statement that was read just before the break.

ADV SELEKA SC: Correct, Chairperson. We are still in –

that is the reference bundle, Dr Ngubane.

DR NGUBANE: Sorry? I think we took away the wrong one.

ADV SELEKA SC: The reference bundle was open.

DR NGUBANE: Okay. Thank you.

ADV SELEKA SC: Yes, we have read through up until page 436 which is the last page of the statement. Do you see that, Dr Ngubane?

DR NGUBANE: That is correct.

10 **ADV SELEKA SC:** And yes, my question was with such remarkable detail about the fact relative to Eskom and the board decisions it is astounding that this person would have known this information from nowhere.

DR NGUBANE: Well, it does sound like that because these events predate when actually it happened. So I mean there were documents I presume that the consultant had drawn up.

CHAIRPERSON: Mr Linnell?

20 **DR NGUBANE:** Mr Linnell. I do not have those documents but he said he had drawn up documents so I am not sure about the originals.

CHAIRPERSON: Yes.

ADV SELEKA SC: Ja and these ones are specifically drafted for the Chairperson in regard to the removal of Mr Tsotsi so they could not have been drafted for Mr Tsotsi

otherwise it will not make – it will be double irrational that Mr Tsotsi would cooperate and act in concert with these people to have a statement like this drafted about him.

DR NGUBANE: Well, the charges against Mr Tsotsi were drafted by the audit and risk committee.

CHAIRPERSON: Yes.

DR NGUBANE: But I do not think [inaudible – speaking simultaneously]

CHAIRPERSON: This was before? The meeting of the
10 19th, when it took place, the charges had not been drafted yet or had they been?

DR NGUBANE: I think the charges were there.

CHAIRPERSON: Oh, they were already there.

DR NGUBANE: But they are not this what is written here.

CHAIRPERSON: Ja, ja, yes, yes. And – yes. Well, I think the first point is the one that Mr Seleka raises which you have recognised. This is somebody who seems to prepare prior to the meeting of the board a statement that is intended to be issued after the meeting and that is
20 intended to reflect what the meeting would have decided by the time it is issued.

DR NGUBANE: That is correct.

CHAIRPERSON: Yes and the first thing, in the second paragraph he says:

“Yesterday at a meeting of the board it was decided

to relieve Mr Zola Tsotsi of the Chairpersonship due to a growing lack of confidence in his leadership...”

Blah, blah, blah, blah.

DR NGUBANE: Yes, sir.

CHAIRPERSON: Now we do know that when the meeting did happen, that did happen, is that correct?

DR NGUBANE: That is correct.

CHAIRPERSON: Now if that is correct as well as maybe other points that in the statement, it seems that the person
10 or persons drafting the statement were either told by somebody what the board was going to decide before it decided, before it even met or this person or the persons who were working on the statement were the ones making decisions that they believed the board would make or would go along with. Would you agree with that reasoning?

DR NGUBANE: Yes, Chairperson, I do. However, it is just that I do not have the charge sheet.

CHAIRPERSON: Yes, Mr Seleka should be able to assist.

20 **DR NGUBANE:** Because that probably would throw light on it.

CHAIRPERSON: Yes, Mr Seleka, do you want to help Dr Ngubane and tell him where the charge sheet seems to be ...[intervenens]

ADV SELEKA SC: Certainly, Chair.

CHAIRPERSON: So that he can make his point with the advantage of seeing the charge sheet.

ADV SELEKA SC: Yes. Dr Ngubane, we have the charges listed in the minute of 30 March 2015. We do not have the charge sheet itself but the minutes are on page – we have the next – page 301 in Dr Ngubane’s bundle, Chair. They follow after the minutes of the 19 March, 301 and the charges are listed on page 303.

CHAIRPERSON: Will that assist you Dr Ngubane, just
10 seeing what the charges were?

DR NGUBANE: Page 1:

“Director procure the services of an external consultant Mr Nick Linnell, a consultant to provide consulting services to the company without following the company’s prescribed procurement processes or informing the board of his actions. In doing so, the director crossed the line from being a nonexecutive director to exercising executive power without the requisite authority.”

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: I understood you to want to see the charges in order to make a certain point in response to my questions.

DR NGUBANE: Yes.

CHAIRPERSON: If this does assist you that is fine.

DR NGUBANE: Ja, it does not seem that this document or letter was translated into the charge sheet. That is what I was trying to say.

CHAIRPERSON: Oh, you talk about the letter?

DR NGUBANE: No, the email ...[intervenes]

CHAIRPERSON: Oh, oh, the statement?

DR NGUBANE: That we have been reading, yes.

CHAIRPERSON: The statement.

DR NGUBANE: It does not seem that it translated into the
10 charges.

CHAIRPERSON: Yes, yes. I do not think it talks about the charges. It does not talk about charges but it does say Mr Zola Tsotsi was removed from his position as Chairperson because of dissatisfaction with leadership, blah, blah, blah, blah. It does say that but as I recall, it does not say anything about charges.

DR NGUBANE: Well, I was coming to the point, Chairperson...

CHAIRPERSON: Yes.

20 **DR NGUBANE:** ...that this email seems to have no effect in terms of what actually happened in [inaudible – speaking simultaneously]

CHAIRPERSON: In terms of the charges.

DR NGUBANE: Yes.

CHAIRPERSON: Yes, okay, no, no, no. No, it certainly

does not refer to charges as far as I recall. But the – you said you accept the reasoning that when you look at that statement prepared by Mr Howa it reflects either somebody who had been told what was going to happen at the meeting of the board or somebody who knew – who had made a decision together with whoever he made certain decisions that he expected the board to go along with. That part you accept.

DR NGUBANE: I accept that.

10 **CHAIRPERSON:** That seems to be the case, one of the two.

DR NGUBANE: I agree, Chairperson.

CHAIRPERSON: Now obviously that raises a concern, you know, to say if somebody told Mr Howa and Mr Salim Essa, whoever, in advance of the meeting of the board what the board was going to decide, who was that and how did he know or how did she know that the board would make those decisions? Of course we know what happens in any organisation, sometimes you can have a situation
20 where prior to a meeting a committee – members of a particular committee or organisation lobby one another on matters that are going to be discussed and so that by the time the meeting takes place, whoever wants a certain decision to be taken knows that when I propose this route I will have support.

So it is possible that somebody who may have wanted the board to make certain decisions including the decision to remove Mr Tsotsi as Chairperson might have gone around and canvassed enough support and having canvassed enough support among board members felt confident that he or she could tell Mr Howa or whoever that this is what the board will decide and maybe that is where Mr Howa got the information from before the meeting took place. But that would be very concerning.

10 **DR NGUBANE:** Yes.

CHAIRPERSON: That would be very concerning if somebody within the board or from within Eskom and I guess it can only be somebody within the board because somebody who is not part of the board, how is he going to know what the board will decide? Maybe it is possible, I am not sure, but it would be very concerning, you know, that somebody goes and tells people who are outside of Eskom who are not in even in government about decisions that are likely to be taken by the board and why would they
20 be telling them that, what must they do with the knowledge, you know?

Of course, it is even more worrying if the position is that Mr Howa and Mr Salim Essa and whoever else were making decisions outside of Eskom that they wanted the board to take and they had an expectation that the board

would take those decisions because it would then mean that the board is not acting independently, it is now being manipulated by people from outside of the board of itself. You understand my thinking?

DR NGUBANE: I do, Chairperson.

CHAIRPERSON: Yes, yes. Yes and you would have the same concern I would imagine?

DR NGUBANE: Absolutely.

CHAIRPERSON: Yes, yes. You have no idea how this
10 could have happened?

DR NGUBANE: No, Chairperson.

CHAIRPERSON: Yes.

DR NGUBANE: Except to say that at Eskom very strange things happen, you know, but the distance between 19 and 30 March is too wide a gap for this – for someone to have known. You know, that is what ...[intervenes]

CHAIRPERSON: Yes, yes. Yes, yes. Mr Seleka, do you want to pursue anything?

ADV SELEKA SC: Yes, thank you, Chair. But the point is
20 this, Dr Ngubane. On the 19th the board is making the decision.

DR NGUBANE: Yes.

ADV SELEKA SC: In regard to Mr Tsotsi. So what we see here, it is a media statement drafted in anticipation of that decision succeeding on the 19th. It comes before the

meeting, from a time point of view it precedes the meeting of the 19th where the board resolves to have these disciplinary charges against Mr Tsotsi and that is the point I think the Chairperson trying to – to bring it to your attention.

DR NGUBANE: But this is why, Chairperson, I was pointing to the lack of congruence between the email and the charges because if the charged were informed by this email, then there will be real congruence, you know? That
10 is what my concern is.

CHAIRPERSON: No, I understand what you are saying. The difference, however, I think is that if this media statement was talking about the ultimate removal of Mr Tsotsi as a director but without talking about the charges that would be brought against him which led to his resignation, I would understand your point but this email does not, as I understand it, talk – this media statement does not say that Mr Tsotsi is going to be removed as a director. As I understand, it seemly talks about him being
20 removed as Chairperson. You understand?

DR NGUBANE: That is correct.

CHAIRPERSON: So it reflects that the person drafting it knew before even the meeting started that the board would take the decision to remove Mr Tsotsi as Chairperson, it says nothing about him being removed as a director which

happened – which came after the charges. You understand that?

DR NGUBANE: I do.

CHAIRPERSON: Ja. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. And, Dr Ngubane, many things are running in my head but one remarkable difference between the two statements is this. In the first one, you are not identified as the Chairperson on the 19 March because Mr Tsotsi is still the Chairperson and I
10 assume the drafter of the document does not know who is going to be Chairperson but on the 19 March, in your meeting, we read that resolution where Dr Ngubane is appointed as the acting Chairman of the board.

DR NGUBANE: Yes.

ADV SELEKA SC: On the 19 March. The statement now drafted on the 31 March indicates you explicitly as the Chairperson of the board. Now how would they have known that?

DR NGUBANE: Well, I do not get the correlation because
20 ...[intervenes]

CHAIRPERSON: I think – remember, Mr Seleka, that the one relating to the 19th, that is the one that precedes the meeting of the board.

DR NGUBANE: Yes, Chair.

CHAIRPERSON: The one on the 31st comes after the

board meeting. So whoever it is who would have told the person who prepared that one, that media statement, would have told them about even holding you Chairperson.

DR NGUBANE: Yes.

CHAIRPERSON: Was – well, I do not know whether ...[intervenes]

DR NGUBANE: No, that is ...[intervenes]

CHAIRPERSON: I am just thinking from Dr Ngubane being elected Chairperson but now I am thinking being
10 made acting Chairperson might another decision made by somebody else at a certain time but I thought I would just mention that with regard to the media statement of the 19th, that one precedes the meeting of the board at which decisions that it talks about are to be taken. So the author knows the decisions in advance.

ADV SELEKA SC: Yes.

CHAIRPERSON: The one – the media statement of 31 March happens after the board meeting when decisions have been taken, nevertheless quite early, about 7.45 or
20 something.

ADV SELEKA SC: 7.46.

CHAIRPERSON: Quite early, so it is quite interesting but one cannot say there was not enough time for somebody who wanted to tell that person what the board had decided to say this is what was decided.

ADV SELEKA SC: Yes.

CHAIRPERSON: But you may be having a certain point.

ADV SELEKA SC: Yes.

CHAIRPERSON: Feel free to pursue it, ja.

ADV SELEKA SC: Yes. May I just add to the Chairperson's point because, you see, when the document is exchanged, it is already drafted. So when it is exchanged at 7.46, seven hours forty six minutes, the person is not busy drafting this statement, he has already
10 drafted the statement, he is emailing the statement at that time.

CHAIRPERSON: So as long – he has had the conversation ...[intervenes]

ADV SELEKA SC: Beforehand.

CHAIRPERSON: The report back from somebody, has drafted. This person must have woken up quite early.

DR NGUBANE: Or was at the meeting.

CHAIRPERSON: Well ...[intervenes]

ADV SELEKA SC: By extension, Chairperson, he was at
20 the meeting.

CHAIRPERSON: Yes, yes.

DR NGUBANE: Ja.

CHAIRPERSON: H'm.

ADV SELEKA SC: Ja. So, Dr Ngubane, the minutes of 19, while the Chairperson is still mulling over this, that

minute on that page. I refer you to page 299. I think what the board deliberates on is significant, page 299, where the Chairperson is excused – let me wait for you to get there.

DR NGUBANE: Yes.

ADV SELEKA SC: 299, after the Chairperson is excused, it says:

10 “The view as that the boards need to make a call about the actions of the board and the Chairman. The Chairman was an ordinary member of the board and given the severity of the matter and what happened to the company due to the downgrade...”

Now that downgrade is referred to also in this last statement.

20 “...that the downgrade occurred purely on governance and this was a reflection on the board. “Members felt that the decision of 11 March 2015 to institute an inquiry was correct given what the company was going through. The matter should now stay fully nonexecutive and that is how it must be done. The board cannot go back on decisions which have been made but the one thing the board had control over was the independence of the inquiry.”

Sounds like double talk, you know, because the

downgrade, because of there are governance issues, this is reflection on the board.

“The decisions we took about the suspensions are correct...”:

But we can go back to those decisions. We blame ourselves that - you know, we also think what we did was a correct decision. You see there? You see that Dr Ngubane?

CHAIRPERSON: Well, can I start with this question? I
10 see Dr Ngubane, that you signed those minutes on the 18
November 2016, that is more than...

DR NGUBANE: Yes.

CHAIRPERSON: ...a year and a half later.

DR NGUBANE: Yes.

CHAIRPERSON: Now what did you rely on to help you ensure that the minutes were reasonably accurate in terms of what was discussed?

DR NGUBANE: Well, Chairperson, there was a whole lot
of minutes that were signed post facto, it was the
20 inefficiency of the secretariat because they should have
presented this to the Chairperson at the time, Mr Tsotsi.
Now comes the company secretary and says in order these records to be in the file they need to be signed. So the reliance was on the audios, that the audios capture the minutes. If there are contradictions of conflicts we can

always go back to the audios but I realise now that even the audios, you cannot rely on them.

For instance, the meeting of the 11th, after the meeting with the Minister, I have listened to the audio, it skips a whole lot of the meeting and starts somewhere in the meeting. So now I am saying actually although one thought one could rely on the audio, I do not think we can because of what I have heard regarding the minutes of the 11th.

10 **CHAIRPERSON:** But in terms of the minutes that you signed, did you rely on somebody such as the company secretary saying I have listened to the audio, these minutes reflect what is in the audio or did you yourself listen to the audio before signing to say they are correct?

DR NGUBANE: No, I relied on the company secretary.

CHAIRPERSON: You relied on the company secretary. Okay, alright. It is just that for example where it says on 299 the view was that the board needed to make a call about the actions, it seems a very strange way of starting
20 after the break, you know?

DR NGUBANE: That is correct.

CHAIRPERSON: You would expect that the minutes would tell you what is the issue first that is being discussed and then what were the main points raised, where it says:

“The view was that the board needed to make a

call..”

Does not say where that view came from about the actions of the board and the Chairman, we do not know what actions. So when you read there – of course, maybe when we go down we will get to see some of them but anyway, that is fine.

DR NGUBANE: Well, Chairperson, we – at least I knew what the actions were.

CHAIRPERSON: You knew what...[laughs] It is just that
10 not everybody who reads the minutes would have the benefit of you being around. Yes, Mr Seleka?

ADV SELEKA SC: Thank you, Chair. Well, quickly on the recording, Dr Ngubane, because it is one thing what is recorded, is another thing that was not recorded. So insofar as something was recorded we can rely on it.

DR NGUBANE: Yes, ja.

ADV SELEKA SC: Ja. We do not know who would have paused the recording when some critical issues are discussed because they did not want them to be on record.

20 **DR NGUBANE:** Right.

ADV SELEKA SC: And then press the play button or the recording button as the meeting went on further.

DR NGUBANE: Well, this is why, Chairperson, I say I always thought one could rely on the audio recordings of minutes but now I have been proven wrong.

ADV SELEKA SC: But we can rely on the recorded part.

CHAIRPERSON: I do not know but whenever in a meeting that is being mechanically recorded – normally, the recording will not be stopped without the Chairperson knowing. If somebody wants the recording to be stopped they would say please stop the recording and the Chairperson would know and the Chairperson can say no, no, no, no, why? You know? Or, otherwise, the Chairperson could say please stop the recording, we will
10 tell you when to resume.

DR NGUBANE: Except, Chairperson, if the Chairperson himself or herself wants it stopped, he could do it.

CHAIRPERSON: Ja, that is true, that is true.

DR NGUBANE: Or alternatively get a technician to erase afterwards.

CHAIRPERSON: Yes, Mr Seleka?

ADV SELEKA SC: We won't know, so let me just carry on to the end of this minutes Dr Ngubane, the board cannot go back on decisions which have been made but the one thing
20 the board had control over was the independence of inquiry, it was therefore very important how the process going forward was managed by the board, at the end of the process the board either goes down with the process or survives the process.

What would you say happened, did you go down or

did you survive?

DR NGUBANE: Well we went down.

ADV SELEKA SC: You went down, thank you Dr Ngubane.

CHAIRPERSON: Well maybe Mr Tsotsi went down first, you followed much later. Of course Mr Baloyi went down too. But Dr Ngubane let us come back to this issue. This is the meeting where the Chairperson, Mr Tsotsi, is asked to leave the meeting, and then when you look at the minutes, the minutes already then say that he is an
10 ordinary member of the board that is in the same page 299 if I understand it correctly. Is my understanding the same as yours?

DR NGUBANE: That was a proposal Chairperson.

CHAIRPERSON: That was a proposal?

DR NGUBANE: That we – he is only removed as Chairperson.

CHAIRPERSON: Ja, he remains as a member.

DR NGUBANE: Yes.

CHAIRPERSON: Yes, okay but the actual removal of him
20 as Chairperson happened in that meeting.

DR NGUBANE: Well it is somehow I presume with a long discussion the board unit must resolve that it has lost confidence in the Chairman as a director.

CHAIRPERSON: Yes, you see at the bottom of page 299 it says:

“The board unanimously resolves that it has lost confidence in the Chairman as a director of the board and recommended his removal as a director.”

So at this stage it is dealing with him being a director. So I think earlier on in the previous paragraph they talk about him being removed as Chairperson. Am I right?

DR NGUBANE: That is correct Chair.

CHAIRPERSON: So in this meeting he was removed as Chairperson and then the board said that it has lost
10 confidence in him even as an ordinary director.

DR NGUBANE: That is correct Chair.

CHAIRPERSON: And then it was agreed it says:

“That supporting documents should be put together to indicate failure to get board approval matters considered as aggravating actions of the Chairman, preparing and distributing a media statement in the name of the board without board approval.”

So I guess that is what ended up being the charges against him. Is that right?

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

CHAIRPERSON: Ja, so effectively in this meeting of the 19th the board asked Mt Tsotsi to excuse, to leave the meeting and then it removes him as Chairperson of the board and it expresses lack of confidence in him as a director and recommends that he be removed as a director

and the say in effect charges must be prepared against him. Why was he removed as Chairperson because when I read these minutes here it is not very clear to me what the minutes say he had done wrong as Chairperson?

DR NGUBANE: Well Chairperson that comes out in the charges.

CHAIRPERSON: Yes.

DR NGUBANE: But I can say Mt Tsotsi's handling of the board turned the board against him. I think that was the
10 general feeling that was permeating all the board members thinking.

CHAIRPERSON: Well we know that one of the charges Mr Seleka directed us to where we find the minutes which has got the charges.

ADV SELEKA SC: Page 303 Chair.

CHAIRPERSON: 303?

ADV SELEKA SC: Yes.

CHAIRPERSON: The first charge was that he procured the services of an external consultant Mr Nick Linnell:

20 "The consultant to provide consultant services to the company without following the companies prescribed procurement processes or informing the board of his actions. In doing so the director crossed the line from being a non-executive director to exercising power without the requisite authority."

“Charge 2, the consultant commenced with his work to the knowledge of the director and without the board being informed that work had commenced within the company, the director was aware that no contract of engagement for the consultant has been concluded thus exposing the company to non-compliance with applicant’s statutes and procedures”

And then 3, Charge 3 says:

10 “The director authorised the commissioning of a media statement of a commission of an enquiry to the affairs of the company with the affairs of the company with the assistance of the consultant without the knowledge or the consent of the board.”

And 4, Charge 4:

 “The company is in the process of establishing the enquiry and the director’s actions put the integrity of the process of the enquiries it itself at risk. The director’s conduct has undermined the reputation of
20 the board.”

5:

 “The director’s actions did not meet the minimum requirements of the standard of care expected of him as a director of the company and a member of the board.”

Those were the charges, now at some stage I think we will deal with those in terms of how justified the board was in preferring these charges Mr Tsotsi but I want us to complete the other part relating to people outside of Eskom making decisions for the board.

ADV SELEKA SC: Yes.

CHAIRPERSON: Now Mr Seleka do you want to take that further?

ADV SELEKA SC: Yes, let me carry on, on that
10 Chairperson. So Dr Ngubane I had asked a question this people are outside of Eskom with inside the board within the premises of Eskom, the confines of the boardroom. This decision gets to be made on the 19th that you will be the acting Chairperson of the board. Mr Howa does not sit on the board, correct? Is that correct Mr Ngubane?

DR NGUBANE: Of course Chairperson.

ADV SELEKA SC: Mr Salim Essa does not sit on the board?

DR NGUBANE: Absolutely.

20 **ADV SELEKA SC:** I did not see anywhere that after the 19th you made the media statement that you are the acting Chairperson.

DR NGUBANE: Well I made the statement ...[intervene]

ADV SELEKA SC: On the 31st of March.

DR NGUBANE: Yes.

ADV SELEKA SC: But before then you do not talk about you making a media statement.

DR NGUBANE: Well Chairperson this was just a decision of my colleagues to say you have become acting Chairman. It has not gone to the Minister, ja.

ADV SELEKA SC: And that is the reason for my question. How would the two gentlemen have known that you are now the Chairperson?

CHAIRPERSON: Where does that come from Mr Seleka?

10 **ADV SELEKA SC:** When they make...[intervene]

CHAIRPERSON: Does it come from the media statement of the 19th?

ADV SELEKA SC: The one of the 31st Chairperson.

CHAIRPERSON: Okay, where will I find it again?

ADV SELEKA SC: Just go further still on – you will find that also in the reference bundle Chair.

DR NGUBANE: But Chairperson can I answer this without bothering you?

CHAIRPERSON: Yes.

20 **DR NGUBANE:** The minute I was acting Chairman everybody knew, everyone knew.

CHAIRPERSON: That you were the acting Chairperson?

DR NGUBANE: Yes, although the Minister had not pronounced it.

CHAIRPERSON: Yes.

DR NGUBANE: But everyone knew.

CHAIRPERSON: Ja, but are you saying everyone knew that you have been elected by your colleagues as the acting Chairperson or are you saying everyone knew that the Minister would endorse that?

DR NGUBANE: No Chairperson I should have brought probably the newspaper clips. Right from the beginning the newspapers gave the accounts of what happened.

CHAIRPERSON: In the board meetings?

10 **DR NGUBANE:** I mean in the fact that Mr Tsotsi the board had voted – taken a vote of no confidence and he has resigned and that I was acting Chairperson.

CHAIRPERSON: Oh you mean that people outside of the board got to know quite quickly because the media was reporting that?

DR NGUBANE: Yes, that is right.

CHAIRPERSON: Okay but let us go to the statement I want to see...[intervene]

20 **ADV SELEKA SC:** Ja, Chairperson if you are in the reference bundle you just page further to page 3...[intervene]

CHAIRPERSON: That is Eskom Bundle 13?

ADV SELEKA SC: Eskom Bundle 13.

CHAIRPERSON: Ja, what page?

ADV SELEKA SC: Page 438.

CHAIRPERSON: 4?

ADV SELEKA SC: 438.

CHAIRPERSON: 438.

ADV SELEKA SC: So you have it?

CHAIRPERSON: Yes, okay so this statement, this media statement from Mr Howa says statement by Dr Ben Ngubane Chairperson of Eskom on behalf of the board, and your point Mr Seleka?

ADV SELEKA SC: My question is Chair how would they
10 have known that Dr Ngubane was at the time then the Chairperson or even acting Chairperson of the board?

CHAIRPERSON: Maybe let us start with this when did you become Chairperson of the board as opposed to acting Chairperson? I thought that was months later.

DR NGUBANE: That was later much later.

CHAIRPERSON: Much later?

DR NGUBANE: Yes.

CHAIRPERSON: As at the 31st of March and during April of 2015 you were acting Chairperson?

20 **DR NGUBANE:** From the 19th?

CHAIRPERSON: From the 19th of March.

DR NGUBANE: Yes, to the 31st I was the...[intervene]

CHAIRPERSON: Acting Chairperson.

DR NGUBANE: Nominated by the board.

CHAIRPERSON: Ja.

DR NGUBANE: From 31st I think the Minister had agreed with that.

CHAIRPERSON: Okay and then you became Chairperson much later.

DR NGUBANE: Much later.

CHAIRPERSON: Okay alright, Mr Seleka.

ADV SELEKA SC: Thank you Chair, because you see Dr Ngubane in your affidavit you specifically refer to you making or issuing a media statement on the 31st of March
10 2015. Do you recall that we read that part?

DR NGUBANE: Yes.

ADV SELEKA SC: And I take it is at that point that your statement will apply that everybody then came to know that you have been appointed as the acting Chairperson?

DR NGUBANE: Well as I say...[intervene]

ADV SELEKA SC: Or did they know before that.

DR NGUBANE: Chairperson I should have brought the paperclips, newspaper clips which had a number of stories about these events. So I do not think they only knew after
20 the 31st. I think as soon as the – I was elected by my colleagues as acting I think that word went out.

ADV SELEKA SC: Okay so yes your statement says, I mean your affidavit says:

“On 31 March 2015 I issued a press statement on my appointment as acting Chairman. In it I also

thanked Mr Tsotsi for his service to Eskom. I did not personally prepare the statement; it was provided to me by the company secretary Mr Phukubje Malesela at the time.”

DR NGUBANE: But Chairperson is that not normal practice? I mean I could not call myself acting Chairperson before the 31st because Mr Tsotsi was still there.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** Well you could call yourself acting Chairperson on the basis of your colleague’s decision, is it not?

DR NGUBANE: Which was not official Chairperson.

CHAIRPERSON: Which may not have been official but certainly you did not appoint yourself as acting Chairperson there was a decision by the board members rightly or wrongly that you be the acting Chairperson since we have removed the Chairperson we cannot not have a Chairperson but you will be acting Chairperson.

20 **DR NGUBANE:** Well actually I think one must nuance that I was acting Chairperson for the meeting.

CHAIRPERSON: Oh yes, oh okay for the duration of the meeting.

DR NGUBANE: That is correct.

CHAIRPERSON: Not outside of the meeting.

DR NGUBANE: Absolutely.

CHAIRPERSON: But once the Minister had endorsed you were acting Chairperson not just during the meetings but throughout.

DR NGUBANE: Yes, exactly.

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

ADV SELEKA SC: Yes, Dr Ngubane I will ask one more question on this I think what you are saying strengthens the point I want to raise with you which is how did Mr Salim
10 Essa and Nazeem Howa know that you were either the Chairperson or the acting Chairperson prior to you being officially endorsed by the Minister?

DR NGUBANE: Well I mean do not know.

ADV SELEKA SC: You do not know?

DR NGUBANE: Ja.

ADV SELEKA SC: Okay.

CHAIRPERSON: Well let me ask this question I think last time when you were here Mr Seleka referred you to a document, a document that was sent through to the – I do
20 not know whether to Ms Daniels but for your attention it was meant for you that I think either came from either Mr Salim Essa or Mr Howa which reflected decisions or resolutions that it seems they wanted the board to pay with regard to certain newspapers which had published certain articles. Do you remember that document?

DR NGUBANE: It came from Businessman Chairperson.

CHAIRPERSON: Oh from Businessman.

DR NGUBANE: Yes.

CHAIRPERSON: Oh from Businessman and of course who Businessman is, is an issue but it came from Businessman.

DR NGUBANE: Right.

CHAIRPERSON: Ja, I think the Fundudzi report you mentioned that they concluded that that email address was probably used by Mr Salim Essa. It is important to look at
10 the basis for that conclusion you know why did they come to that conclusion for our purposes we need to look at that. But you indicated that you had been told Ms Daniels I think that it was an email address used by Mr Richard Seleke?

DR NGUBANE: That is correct.

CHAIRPERSON: Now and you did say that you put that document to the board and the board went along. Is that right?

DR NGUBANE: Yes, Chairperson but there was a context for this.

20 **CHAIRPERSON:** Yes.

DR NGUBANE: the Sunday Times had produced an article about being favourites in the Delmas area and the board had ordered an investigation of that allegation in order to find grounds for coming back to the Sunday Times. Subsequent to that this email came addressed to Transnet,

Eskom and I think Denel to take a resolution to break an association with this newspaper.

What of course was probably not recognised by the sender of that email was that about R3.6 billion had already been voted for media houses. So there was no way of saying we now breaking off because the decision has long been taken to fund advertisements and all sorts of things with business houses but they originally complaint was that we need to confront the Sunday Times on its article but
10 first of all do an investigation to find the truth of the allegations.

CHAIRPERSON: Okay now I just want to check is my understanding incorrect that last time your evidence was to the effect that the board did make decisions along the lines indicted in that document that came from that email address?

DR NGUBANE: Because it was accompanied by a ladle purportedly from the Minister.

CHAIRPERSON: Oh but the answer is yes.

20 **DR NGUBANE:** Yes.

CHAIRPERSON: It made those decisions the reason why it made them maybe that it was accompanied by a letter purportedly to come from the Minister.

DR NGUBANE: That is correct.

CHAIRPERSON: Yes okay, alright. Now you see one has

got to see what is happening here to try and establish the facts. Now we know you told us you knew Mr Salim Essa from previous interactions. I think you said he was not your friend but you had, had some business interactions but the project that you had agreed to be partners in collapsed.

DR NGUBANE: Yes, right.

CHAIRPERSON: Yes, and you said also that you knew Mr Howa I think as well.

10 **DR NGUBANE:** Yes.

CHAIRPERSON: You knew him from the TNA breakfast which you use to attend or some of which you use to attend when you were at SABC.

DR NGUBANE: That is correct.

CHAIRPERSON: Is that right, ja. Now it would seem that certainly from the statement of the media statement that was prepared similarly by Mr Howa for the 31st of March that his understanding of your relationship must have been that you would welcome this media statement that they had
20 prepared. Did you want to say anything about that?

DR NGUBANE: Well then it would have sent...[intervene]

CHAIRPERSON: Rightly or wrongly.

DR NGUBANE: Well Chairperson in that case it would have sent it directly to me.

CHAIRPERSON: Yes, yes.

DR NGUBANE: Which never happened.

CHAIRPERSON: Yes, but I am wondering why somebody who knows me would prepare such a detailed statement as a statement that I must issue or for me to consider to issue when I can prepare that statement myself or ask my office my organisation to prepare that.

Why would he think that it will be acceptable to me? that he being outside of my organisation must prepare a media statement in my name send it to me as a statement
10 that I must consider issuing. So when I think about that I am saying whether rightly or wrongly it would seem that he thought that your relationship maybe such that you would not have a problem with that because otherwise he would not do that.

DR NGUBANE: Well he could have prepared it for the new age newspaper.

CHAIRPERSON: Yes, yes.

DR NGUBANE: You know but I do not remember seeing that article in the new age. That is why I asked Mr
20 Riley...[intervene]

CHAIRPERSON: Yes, to try and find.

DR NGUBANE: To track the media.

CHAIRPERSON: Ja.

DR NGUBANE: To see if that statement...[intervene]

CHAIRPERSON: Did come out.

DR NGUBANE: Was published.

CHAIRPERSON: Yes.

DR NGUBANE: And they said they did not know.

CHAIRPERSON: They could not find it, yes.

DR NGUBANE: They said they did not know.

CHAIRPERSON: They could not find it.

DR NGUBANE: But just to remind you Chairperson.

CHAIRPERSON: Yes.

DR NGUBANE: Ms Daniels spoke of meetings that she
10 went to at Nautilus House whether those meetings had any
outcome ...[intervene]

CHAIRPERSON: Those ones at Melrose Arch?

DR NGUBANE: Yes, but I am saying there were lot of
influence and intrusion into...[intervene]

CHAIRPERSON: Eskom matters.

DR NGUBANE: Yes.

CHAIRPERSON: Yes.

DR NGUBANE: So I am saying I will not be surprised if
people who are wanting to influence hat I say out of the
20 statement.

CHAIRPERSON: Yes.

ADV SELEKA SC: Thank you Chair. Dr Ngubane you see
the email of well if I go back to the Richard Seleke issue
because you were saying that Richard Seleke is the person
behind the email address in the portal and I showed you

last time the email you produced to the Commission the emails of June 2016 and you were saying to the Chairperson this are the first emails I received from him and then we showed you the emails of 28 September 2015.

DR NGUBANE: Right.

ADV SELEKA SC: Now we got confirmation I do not know whether you were provided in terms of Rule 3.3 with the affidavit Ms Matsiese Mokolo the acting DG at the time.

DR NGUBANE: No Chair.

10 **ADV SELEKA SC:** In the Department of Public Enterprises. She specifically says there that she was acting in that position of DG in September 2015 Mr Seleke was not there.

DR NGUBANE: But I did acknowledge Chairperson that I had not made the link in terms of time when this info-portal address was used, I did indicate that.

ADV SELEKA SC: Okay, and that Mr Seleke only commenced his appointment was with effective from 1 December 2015. The Minister signs the letter for his
20 appointment on the 27th of November 2015 but that is an appointment with effect from 21 December 2015. But the email exchange with you in regard to contact termination with media houses it says to you here with as discussed.

DR NGUBANE: Yes.

ADV SELEKA SC: Yes, and I asked you the question

which I do not think it was answered when Businessman says as discussed who did you discuss with?

DR NGUBANE: But Chairperson I said quite emphatically I never did discussions on that document. So I passed it on to the company secretary.

ADV SELEKA SC: So you are saying...[intervene]

CHAIRPERSON: I am sorry I missed which document is that Mr Seleka?

ADV SELEKA SC: That is the email Chairperson, let me
10 take the Chairperson to...[intervene]

CHAIRPERSON: Media statement or email?

ADV SELEKA SC: No these are the emails from
Businessman.

CHAIRPERSON: Oh okay.

ADV SELEKA SC: About a document drafted for the board first of all on terminating contact and commercial relations with media houses.

CHAIRPERSON: Oh okay, yes okay.

ADV SELEKA SC: That document became the draft
20 became the resolution that was made by the board.

CHAIRPERSON: Yes, what month and year is that again?

ADV SELEKA SC: That is 28 September 2015.

CHAIRPERSON: So part of the point you want to make to Dr Ngubane which I think he seems to accept is that could not have been Mr Richard Seleke at that time. You accept

that?

DR NGUBANE: The probability.

CHAIRPERSON: The probability.

DR NGUBANE: Yes.

CHAIRPERSON: Yes, we cannot be 100% because nothing is 100% in this world. The probabilities are that it was not him.

DR NGUBANE: Exactly.

CHAIRPERSON: Yes okay.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Take it from there.

ADV SELEKA SC: Yes Chair. And – and the findings you would have seen from Ms Suzanne Daniels Ruling – disciplinary ruling and what the Chairperson has indicated to you in the Fundudzi Report is that because at the hearing of Ms Suzanne they led expert evidence and concluded that the email address most probably belonged to Mr Salim Essa.

At least on the evidence we have insofar as you say that Businessman was – who was communicating with you
20 here was Mr Richard Seleke. On the evidence we have it cannot be correct.

DR NGUBANE: But I have considered that.

ADV SELEKA SC: Okay.

CHAIRPERSON: Yes you have – you have accepted that.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Now if indeed it was to be found that it was Mr Salim Essa on the probabilities that would reflect would it not that he expected you to go along with what was written in the – in that email, is that right?

DR NGUBANE: That is correct Chair.

CHAIRPERSON: Your – is it correct. Of course you said there was a letter that purported to come from the Minister that came with that email, is that right?

DR NGUBANE: Yes.

10 **CHAIRPERSON:** I do not remember it. I see Mr Seleka shakes his head. I understood you a while ago maybe ten minutes ago to say the board went along with those resolutions or that – those decisions reflected in that email because there was a letter that came with that email which purported to be a letter from the Minister.

DR NGUBANE: That is correct Chair.

CHAIRPERSON: So – I am saying I cannot remember it. Mr Seleka shakes his. Are you sure that there was such a letter?

20 **DR NGUBANE:** Well I would have to look in the files but that...

CHAIRPERSON: Yes.

DR NGUBANE: That resolution was accompanied by a letter according to the Company Secretary.

CHAIRPERSON: Yes.

DR NGUBANE: From the Minister.

CHAIRPERSON: Yes. And is it a letter that you – you did see or you may have been told what it says and so on?

DR NGUBANE: No, no Chairperson it formed the basis.

CHAIRPERSON: It formed the basis of the decision?

DR NGUBANE: Yes.

CHAIRPERSON: Of the board.

DR NGUBANE: That is correct.

CHAIRPERSON: Okay alright. Mr Seleka you say no such
10 letter has been found.

ADV SELEKA SC: There is no such a letter in the documentation provided to us Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: But it only makes the matter even worse. If Businessman sends the boards of SOE's this letter that is a proposal Dr Ngubane accompanied by a letter from the Minister. So that means Businessman is working with the Minister to tell the board what to do.

CHAIRPERSON: Of course Mr Seleka you will remember
20 and well Dr Ngubane who was not here I do not know if he was listening but you did last week refer to Ms Daniels' affidavit where she said that when she met with Mr Salim Essa and Mr Koko on the 10th March 2015 at Melrose Arch Mr Salim Essa introduced himself to her as advisor to the Minister. I do not know if you – you heard that Dr Ngubane?

DR NGUBANE: I saw that in some document.

CHAIRPERSON: Yes, yes. So I am just saying there is that evidence.

ADV SELEKA SC: I got you Chair. I got you Chair. So it would not be surprising but anyway we do not have the letter. But if there is a letter like that Dr Ngubane ...

DR NGUBANE: I will have to find it and give it to my legal representative.

ADV SELEKA SC: Yes, no it is correct. It gives all the more
10 credence to Ms Daniels' evidence that Mr Salim Essa introduced himself as Minister Brown's advisor. Because now you see even on the version of the letter which accompanies Businessman's proposed resolution to be taken by the board and that was Transnet, Eskom and Denel. You remember the document?

DR NGUBANE: Yes.

ADV SELEKA SC: All these boards are streamed along by Businessman as he advisor to the Minister.

DR NGUBANE: Well Chairperson I think there is enough
20 expertise in this country to determine the domain of any email address. So I wish that can be done.

CHAIRPERSON: Yes. Yes.

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes. No. We need to do whatever can be done to establish exactly what [00:06:09]. But I think it is

important Dr Ngubane to address this issue fully from your side.

The issue being that it may be that at some stage either Mr Seleka or some other lawyer will say to me Chairperson when you assess the evidence in regard to what happened here the evidence is such that you must find that there were people outside of this board who were making decisions for this board or who were manipulating this board. Or somebody might say you must find that this whole saga
10 about an enquiry and the suspension of the executives their removal or resignation of the charging Mr Tsotsi and his resignation did not just happen out of the blue. It was planned somewhere.

Maybe outside of Eskom but maybe some people within the board and within Eskom who might not be in the board but within Eskom.

Maybe some of the – some people within the board or within Eskom knew about this agenda or about this plan. But maybe others did not know about this agenda and they went
20 along thinking they were making decisions that they thought were in the best interest of – of Eskom but actually they assisted people who had a certain agenda.

And I might be told that that agenda was for capturing the board as well as key executives in the management of the company so that they would be the

people who would be in the board or the majority of people would be in the board or the key people – there would be key people in the board even if it is not the whole board those that they considered influential in the board would be people that would go along with the decisions that these people from outside of Eskom wanted to be taken.

And the argument might be that you see if Mr Tsotsi's evidence is true that around the – the day of SONA in early in February he was called to – by the Minister – Minister
10 Brown and told that if he did not stop interfering in operational matters the Minister would find another person to do his job and a few hours later same day Mr Tsotsi was called by Mr Tony Gupta to a meeting and Mr Tony Gupta said to him Chairperson you are not assisting us.

We are the people who put you in that position we can take you out. And that this happened after he had – Mr Tsotsi had had some interactions with Mr Tony Gupta and I think at some stage with Mr Salim Essa as well. Where attempts were made for him to facilitate certain things at
20 Eskom and he had not facilitated them according to him.

And then the argument would be that it was important – it may have been important to those people that the board at least had certain people who would be quite influential and critical in the agenda that they had. And that Mr Tsotsi had to be removed because he did not want to play along

and that it was important that the – the three executives who was – who were ultimately allowed to go or removed was important that they should go because they occupied key positions – strategic positions including CEO and Financial Director.

And that the plan was to bring other people that maybe those who were pursuing this agenda were comfortable with and that they – they made sure that the board got rid of Mr Tsotsi. You were made Chairperson.

10 Then after the executives – the three executives had left Mr Brian Molefe from Eskom was brought in to take the position of CEO – Group CEO.

Mr Anoj Singh from Eskom was brought to take the position of CFO and then at that stage those people would have felt that we are able to get the board to make whatever decisions we want. We will make decisions; send emails get the board to go along.

And in the position of CEO we have got Brian – Mr Brian Molefe and in the position of Financial Director we
20 have got Mr Anoj Singh. And Mr Brian Molefe according to the evidence of Mr Jonas who gave evidence before me Mr Jonas was told by a Gupta brother on the 23 October 2015 that Gupta brother seems to have been Tony Gupta if Mr Jonas' evidence is correct.

Mr Jonas says he was told by this Gupta brother that

they were as a family – they were working with certain people and Mr Brian Molefe was mentioned as one of them.

Ms Lynne Brown was mentioned as another one. There might have been a third one. And Mr Jonas says this Gupta brother said Mr Molefe's career I do not know what words he used but it is like it is taken care of. Like he does not have to worry you know.

So – so there is a good chance that I will be urged to look at all of this and adopt the position that these things did not just happen out of the blue. They were part of a certain
10 plan, a certain agenda and what happened ultimately at Eskom may be reveals that agenda if so you having been chairperson after Mr Tsotsi it is important that you say what you are able to say.

Whether you think if that if I am urged to take that line you think there is no basis for it. You think I must look at these other facts along these lines which show that that cannot be true. Or you say look maybe at that time I did not see it but with what has happened I can understand
20 somebody who argues goes along those lines.

DR NGUBANE: Well Chairperson I would have to make a very long statement.

CHAIRPERSON: Yes, no, no. It is fine. And if you say you – you would like to – to prepare something I would be amenable. But you – but you can say what you can now.

DR NGUBANE: If you can allow me?

CHAIRPERSON: Yes.

DR NGUBANE: For the sake of public listening purposes.

CHAIRPERSON: Yes.

DR NGUBANE: We know the origin of the decision to suspend executives. We know. Mr Tsotsi told us precisely what he was instructed to do – who was going to do this.

Mr Tsotsi told us that there was a big thick document in the Presidency about how this enquiry must be conducted.

10 Although he never gave us or showed us that document.

Mr Tsotsi was involved in the suspension which we were opposing. There is ample evidence that even on the 9th I was one of the people who spoke about not approving the resolutions that he was given to make the board to accept. And other board members joined in that.

And that we demanded that the shareholder comes to address us on this matter because we were not convinced. But when the shareholder came she emphasised that there was a need for an inquiry. And she counted the areas where
20 the inquiry should focus and that the people in those positions had to step aside.

We – now that is the part if there was a coordination with someone else we do not know. But this is the fact that we know how it originated.

But we also know that from what Suzanne Daniels

said there were other actions on the side like the meeting at Melrose and so on.

In terms of myself being appointed acting Chairman it was a spontaneous decision by members of the board. Now if someone had canvassed you would have had to convince all the members of the board because they were unanimous about that and I accepted such.

Going forward after the suspension of Mr Matona I told him at the CCMA please wait three months and come
10 back to your job. He rejected. Later on we were given a report that the executives were suspended want to come back now to their positions or else they will go to the Labour Court and CCMA and force that.

Now Chairperson the difficulty with that for us was that we had set up the inquiry. There was no funding for this inquiry. So what the Minister herself directed the Audit and Risk Committee to supervise the appointment of the investigators and the drawing up of the Terms of Reference.

The Terms of Reference were drawn up but the
20 investigation would depend on the task orders that would come from Audit and Risk.

So the first task order commissioned dealt with the systemic problems, the failure of Generation, the failure of maintenance, the financial challenges Eskom faced and so on and so on.

So under task order 1 Denton says:

“The board has indicated that it is important for the information to be tested by an independent party without EXCO’s involvement particularly those members of Eskom whose areas will be directly impacted by the inquiry so as to lend credence to the reports that the independent party would produce.”

10 Now the issue of the suspended executives coming back before the end of three months was a serious problem for us. Because it would scuttle the whole investigation and we had already committed to paying huge sums of money. I think probably it was R26 million or something for this investigation.

 This was the reason why we thought we tell them that they cannot come back before the end of three months. If that is difficult for them let us settle so that we remove this problem.

20 So in this I do not see any machination. It was a response to a reality that we faced. Unfortunately there were consequences.

 We put in Mr Zethembe Khoza against the GE for Generations that Mr Tsotsi wanted to make the acting GCO. We said we cannot take another GE and put them instead of

the suspended CEO.

So we suggested and proposed to the Minister that Mr Zethembe Khoza was the – a non-executive director of Eskom becomes the acting GCO. But obviously that had limitations. Limitations in that he had no experience with power systems or with the power industry.

So we asked the Minister we said we look to you to help us find someone who can understand financial management but also understand technology. Understand
10 the turning around of ailing organisations. And the Minister came up with the name of Brian Molefe.

We said oh ja excellent you know we know his history. He worked well at PIC. He took that organisation from an asset base of R1 billion to an asset base of R800 billion within I think five or seven years. Fine let him come.

He came and we saw the difference. The whole of South Africa knows that we had no load shedding for fifteen months – him having come there.

So came the issue of the Financial Director – the
20 acting Financial Director Mr Velete Dlamini – Ms Velete Dlamini. She got a job with ITC. She gave her notice that she was going and the next thing was for People In Governance to say how would we replace this – this FD?

It was at a board meeting I am sure I have got the documents somewhere in my pile where the board said we

task the acting chairman to enter into discussions with Transnet and the Minister to bring in Mr Anoj Singh.

I do not know who recommended Anoj Singh as such but we knew that he had worked with Brian Molefe at Transnet and they had done well. That is how the whole process of bringing Anoj Singh unfolded.

I told you last time that when I started preparing my affidavit I was locked down in Durban. I did not have all the documentation. But last time I gave to the evidence leader
10 those documents about secondment of Mr Molefe as well as Mr Singh.

CHAIRPERSON: Okay. Okay.

DR NGUBANE: Now I am trying to say the issue of being a master plan behind all of this could have been but what we acted on were documents that management had prepared for the board. And those documents on the surface of it probably were in perfect order.

Take for instance the issue of the guarantee to Tegeta. Ms Suzanne Daniels came with the documents. Mr
20 Koko had written the DG of DMR saying there was a real threat to Hendrina to Arnot and Komati Power Stations because OCM – Optimum Coal Mine was under business rescue. Anything could happen.

Could go into liquidation, could be bought by somebody else. So he wanted the intervention of DMR to

make sure that whatever happens the supply of coal to Hendrina, Arnot and Komati will be secured.

The DMR responded by saying then pre-purchase the coal. That locks in your coal supply. Ms Daniels came with a memorandum saying there must a Round Robin Resolution to authorise the pre-payment – pre-purchase of coal from Optimum Coal Mines.

There was no mention of the guarantee or anything like that. Even further the recommendation was there will be
10 no upfront payment for the coal from Optimum Mine. Instead the purchase will be financed through inventory working capital reduction from 54 months to 40 months.

In other words if we still had the coal they would not bring extra coal. But as the coal stock depletes we will [00:26:41] pay them. In other words we will be reducing the working capital for the inventory.

Very sound, very sound documentation. I said okay call a Round Robin. We did a Round Robin and this was approved. The IFC which is the Investment Finance
20 Committee which decides on emergency procurements and purchases had already taken a Round Robin to approve the pre-payment or the pre-purchase of coal.

So it – our board resolution – I mean Round Robin Resolution was merely confirming what the IFC had recommended.

The issue about the guarantee I only came to know it very late. That instead of the inventory working capital redaction method there had been issued a guarantee to Tegeta via ABSA Bank.

When I dug into this I got to know that Ms Daniels had extracted from the minutes of the Resolution and gone to Treasury – Eskom Treasury and they had proposed that ABSA – I think the financial – the FD Mr Singh I think he was there as well that there would be this guarantee.

10 So I am trying to say I am not saying there might not be other power players in between but the documentation that the board relied on was always sound and very clear.

So I am just responding to...

CHAIRPERSON: Yes. Yes.

DR NGUBANE: The scenarios that you have drawn.

CHAIRPERSON: Ja. No, no that is fine. I mean it is – it is possible theoretically speaking that you could have a situation where people outside of the board whether some of them inside Eskom others outside of Eskom – it is possible
20 that there could even be a manipulation of situations so that when something is put before the board it appears to be in order nobody can quibble with it you know.

But they are working on some agenda but when you look at the document you say no this makes sense. But they know what they are doing.

DR NGUBANE: Sure.

CHAIRPERSON: So that is also possible.

DR NGUBANE: But Chairperson.

CHAIRPERSON: Yes.

DR NGUBANE: If I can add?

CHAIRPERSON: Yes.

DR NGUBANE: A mammoth organisation like Transnet will always have people who benefit from procurement of services, procurement of products. It will always be there.

10 So I do not know what mechanisms can be put in place to stop this.

CHAIRPERSON: Yes, yes.

DR NGUBANE: I mean for instance the first thing we did when Brian Molefe came was a decision to stop – in amounts that were being used by the Tsotsi board of R1 billion a month. That was a decision we took. We said we will maintain our old coal fired power stations. Give them – get them back to order. From a probably R67 billion budget for diesel it was a few million rands.

20 A decision we took on gist. Now who was benefitting from the diesel purchases? Today who is benefitting from burning diesel to keep the lights on?

So there are issues that will always be there with such a big organisation. So I presume you will have a lifetime work unfolding all.

CHAIRPERSON: Yes well talking about Mr Brian Molefe and Mr Anoj Singh of course as you said when they came to Eskom they were coming from Transnet.

DR NGUBANE: That is right.

CHAIRPERSON: And you did say – you say the reports or what you had heard as a board was that they have done very well or at Transnet.

DR NGUBANE: Correct.

CHAIRPERSON: Now they are yet to come and give
10 evidence before me and deal with all kinds of allegations that have been made against them. But part of the evidence I have heard which they will deal with you know and I do not know what the finding will be but part of the evidence that I have been told by persons who say they were their body guards or protectors is evidence that they would visit the Gupta residence and get money which they – they took. I think maybe one or both of them went to keep it in a certain place a thing called Knox – Knox something.

Now if that is true and I – and as I emphasise that
20 they are still to give evidence and deal with that.

DR NGUBANE: Sure.

CHAIRPERSON: But if in the end I were to find that that is true then it would not be surprising if somebody were to say they had a hand that is the Gupta's in them being moved to Eskom. But as I say if that were to be true I do not know if it

is true they will still give evidence. I have not made any finding I will hear everybody.

But I am just saying if it proves to be true you now one may have to look whether the Gupta's or their associates might not have had a hand in what happened at Eskom. Oh I did not realise that we have gone past one o'clock. We are at ten past one. I think we must take the lunch break. We will come back at ten past two and then we will continue. We adjourn.

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

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES:

CHAIRPERSON: Okay let us continue.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Before we continue. I just want to mention this. Dr Ngubane, you... one of the things you said, I think, in response to the scenario that I painted. Was that Mr Tsotsi was in effect pushing for the suspension of the executives already at the meeting of the 9th. Is that correct?
20

DR NGUBANE: Yes.

CHAIRPERSON: Yes. I... that was put to him when he came back last week. And he denied that at that meeting the... even the... that there was even a discussion of the suspensions.

He said the suspensions were only discussed at the meeting of the 11th. And he said that in support of that, I think he said, one, either the executives or some of the executives who were to be suspended were in attendance at that meeting of the 9th.

So that issue should not have been discussed in their presence. And I think I did see in the minutes or transcript, I am not sure, that Ms Molefe was definitely or seems definitely to have been present at the meeting of the 9th.

10 But I think Mr Seleka also indicated that the audios, if I am not mistaken, the audio recording in relation to the meeting of the 9th do not reflect that discussion of the suspensions.

Mr Seleka must just confirm whether there is something attributed to him that is not correct before Dr Ngubane response.

ADV SELEKA SC: At the top of my head. Chair, you are correct in your summation. In fact, both the executives were present at the meeting of the 9th, Mr Matona and Ms
20 Tsholofelo Molefe.

CHAIRPERSON: Yes.

ADV SELEKA SC: And ...[intervenes]

CHAIRPERSON: Is your recollection correct Dr Ngubane or do you want to refresh your memory by looking at some document?

DR NGUBANE: Yes, I am trying to look at the minutes of the 9th.

ADV SELEKA SC: The minutes of the 9th are on page 279 of Dr Ngubane's bundle, Chairperson.

CHAIRPERSON: Of which bundle?

ADV SELEKA SC: Doctor...

DR NGUBANE: No, I have got it Chair.

CHAIRPERSON: The one that has got his affidavit?

ADV SELEKA SC: Correct, Chairperson. That is Eskom
10 Bundle 09(A).

CHAIRPERSON: Okay and what is the page?

ADV SELEKA SC: 279.

CHAIRPERSON: Okay.

ADV SELEKA SC: So page two, seven... the Chairperson is there.

CHAIRPERSON: Sorry?

ADV SELEKA SC: I was saying if you are there Chairperson, you will see the names of those who were present in the meeting.

20 **CHAIRPERSON:** Yes, I am there now.

ADV SELEKA SC: Yes. So Mr Tsotsi, Baloyi, Carrim, Xhosa, Chwayita Mabude and then the other two executives.

CHAIRPERSON: Yes, I see the reference to the FD at page 279.

ADV SELEKA SC: And to the chief executive.

CHAIRPERSON: But also it does reflect the financial director in the list of people who attended the meeting as well as Mr Matona, Ms Molefe and miss... Dan Matona(sic) (Marokane). They are reflected as having been present.

DR NGUBANE: Sorry. I think Chairperson the confusion which arose ...[intervenes]

CHAIRPERSON: Ja.

DR NGUBANE: ...comes from this statement.

CHAIRPERSON: H'm?

10 **DR NGUBANE:** “He had been requested to request the board to authorise a mandate, an independent external inquiry to establish the facts of the current difficulties.

CHAIRPERSON: H'm?

DR NGUBANE: “This inquiry would have to be unvetted by management.”

I think that is how I ...[intervenes]

CHAIRPERSON: That is what... ja.

DR NGUBANE: Ja.

20 **CHAIRPERSON:** Yes, but you ...[intervenes]

DR NGUBANE: I agree.

CHAIRPERSON: ...accept that ...[intervenes]

DR NGUBANE: I accept that.

CHAIRPERSON: ...it might not have been a discussion of suspensions ...[intervenes]

DR NGUBANE: Nothing, Chair.

CHAIRPERSON:as such. Ja.

DR NGUBANE: Correct.

CHAIRPERSON: Okay alright. Okay thank you. I thought let us clear that, ja.

DR NGUBANE: Yes.

CHAIRPERSON: Okay. But having accepted that. Do you say that at the meeting of the 11th ...[intervenes]

DR NGUBANE: Yes.

10 **CHAIRPERSON**: ...you did push for the suspensions or you thought it was just on the 9th? You are not shifting back to the 11th? Because you are saying, he did not push as such for the suspensions.

DR NGUBANE: Well ...[intervenes]

CHAIRPERSON: Or you might not recall?

DR NGUBANE: No, I do recall because at that meeting, after the meeting ...[intervenes]

CHAIRPERSON: Of the 11th?

DR NGUBANE: Of the 11th.

20 **CHAIRPERSON**: Yes.

DR NGUBANE: The ...[intervenes]

CHAIRPERSON: And Mr Seleka can tell us where to find it because he might assist you in case there is something that you think will refresh your memory?

ADV SELEKA SC: I thought we were still on the 9th, Chair?

CHAIRPERSON: No, we have gone passed.

DR NGUBANE: We have moved?

CHAIRPERSON: We have gone passed the 9th.

ADV SELEKA SC: Okay.

CHAIRPERSON: Dr Ngubane has said he is not insisting at the meeting of the 9th Mr Tsotsi pushed for the suspensions.

ADV SELEKA SC: Yes.

CHAIRPERSON: But he says he thinks what may have caused him some confusion is the statement that says the
10 investigation should be unvetted or something like that.

ADV SELEKA SC: Yes, so it is.

CHAIRPERSON: Ja, so with regard to the 9th that is clear.

ADV SELEKA SC: That is clear.

CHAIRPERSON: So I only asked him the question whether on the statement that Mr Tsotsi pushed for the extensions of... or the suspensions of the executives, I only asked him whether that statement in his evidence falls away now that he realised that no that is not on the 9th. Or whether he says no it did happen but it happened ...[intervenes]

20 **ADV SELEKA SC:** On the 11th.

CHAIRPERSON: ..on the 11th.

ADV SELEKA SC: Yes.

CHAIRPERSON: So that is what I was asking.

DR NGUBANE: I was going to read what ...[intervenes]

CHAIRPERSON: What you say, yes.

DR NGUBANE: Yes.

CHAIRPERSON: You are reading from the minutes of the meeting of the 11th?

DR NGUBANE: That is right.

CHAIRPERSON: Yes okay.

DR NGUBANE: Chairman, I highlighted the view that:

“It may be necessary for employees whose areas are implicated to be requested to step aside whilst the inquiry was proceeding.

10 So there was a trust deficit and that people who may be to blame would not want the truth to be found and findings made.”

For me that was pushing for suspension.

CHAIRPERSON: Okay so that is what you would be ...[intervenes]

DR NGUBANE: Yes.

CHAIRPERSON: ...relying on to say he was pushing for suspensions.

DR NGUBANE: Yes, that is right.

20 **CHAIRPERSON:** Okay alright.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Just to make... ja. But I wanted us to ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...deal with that because I remembered it

like, ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes. No, that is important Chair because it should pointed out that in the minutes of the 9th of March, the statement says:

“This inquiry would have to be unvetted by management and the board and other policy stakeholders.”

10 Which is on page 280.

DR NGUBANE: H’m.

ADV SELEKA SC: So it is not just management. Well, in fact, executives are not mentioned there. It says management, the board and other policy stakeholders. Just to complete the statement which Dr Ngubane was reading.

DR NGUBANE: Sorry, Chairperson. Not to split hairs.

CHAIRPERSON: Yes.

DR NGUBANE: Who is the management of Eskom?

CHAIRPERSON: That would include the executives, I would
20 imagine. [laughing]

ADV SELEKA SC: Sorry, Dr Ngubane. So the board will have to be suspended as well, Dr Ngubane. [laughing]

CHAIRPERSON: [laughing]

DR NGUBANE: But Chair that is why he wanted us to vote to have a three men sub-committee.

CHAIRPERSON: Yes.

DR NGUBANE: ...that will oversee the whole thing.

CHAIRPERSON: Ja.

DR NGUBANE: He would have no role in that.

CHAIRPERSON: Yes, yes.

DR NGUBANE: And that is what we objected.

CHAIRPERSON: Yes.

DR NGUBANE: One of the things, we objected.

CHAIRPERSON: Ja, ja.

10 **DR NGUBANE**: H'm.

CHAIRPERSON: Well, I must say Dr Ngubane that when Mr Tsotsi was here last week and this issue about him... about you having said he pushed for the suspensions of the executives was raised and he denied and there was a question what was said at the meeting of the 9th and so on.

I think there was also reference to the meeting of the 11th. Now I think I did ask Mr Seleka whether there was not something that he had said or may have said.

20 I seem to have read either in a transcript of minutes something that did suggests to me that he may have at one stage or another spoken in a manner that can be seen as pushing for the suspensions.

But I think Mr Seleka had not recollection that he had seen anything like that. But I think since then, there is somewhere where I have seen at least one sentence which

seemed to be consistent with him pushing. It is just that now I cannot ...[intervenes]

ADV SELEKA SC: I will find that for you Chairperson.

CHAIRPERSON: Ja, ja. So I thought I would mention just that.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes. No, that is in order Chair because the response given from my side was in relation to the
10 9th of March.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Because that has always been Dr Ngubane's version that ...[intervenes]

CHAIRPERSON: Yes.

ADV SELEKA SC: ...on the 9th of March, Mr Tsotsi ...[intervenes]

CHAIRPERSON: Yes, okay, okay.

20 **ADV SELEKA SC:** If we go to the 11th, of course, the situation is different on the 11th.

CHAIRPERSON: Yes.

ADV SELEKA SC: The issue of difference on the 11th, relates to the FD.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes.

CHAIRPERSON: H'm.

ADV SELEKA SC: But Mr Tsotsi had “instructions” or a “request” in regard to the three executives. There he does not dispute that.

CHAIRPERSON: Ja.

ADV SELEKA SC: Ja.

CHAIRPERSON: Ja.

ADV SELEKA SC: He does not dispute that.

10 **CHAIRPERSON:** Yes, yes.

ADV SELEKA SC: So he would have been motivated ...[intervenes]

CHAIRPERSON: Ja.

ADV SELEKA SC: ...for these people to be suspended on the basis of what he had been instructed in Durban.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay alright. You may proceed Mr Seleka.

20 **ADV SELEKA SC:** Thank you, Chair. So Dr Ngubane, I will come to that because I did not... I finished off on something I wanted to finalise with you. That Reference Bundle with the statements prepared between Mr Howa and Mr Salim Essa.

Ultimately, the one of the 31st, we obtained an email which shows that that document was ultimately forwarded to Mr Tony Gupta and that we find on page 442 of the

Reference Bundle.

DR NGUBANE: Which document?

ADV SELEKA SC: The one of... we dealt with the 19th of March draft.

DR NGUBANE: Ja.

ADV SELEKA SC: Now I am at the 31st of March draft.

DR NGUBANE: Right.

ADV SELEKA SC: Mr Tsotsi has resigned. He tendered his resignation the night before and this is now the 31st. The
10 draft is exchanged between Mr Howa and Mr Salim Essa.

DR NGUBANE: H'm.

ADV SELEKA SC: About what should be the chairperson's statement to the public. And that draft of the 31 March 2015, ultimately finds its way to Mr Tony Gupta and that is on page 442. Now you are not copied in the email.

DR NGUBANE: Okay.

ADV SELEKA SC: I am just point out to you.

DR NGUBANE: Okay.

ADV SELEKA SC: So that if you have any knowledge of it,
20 you can say yay or nay.

DR NGUBANE: Nay. [laughing]

CHAIRPERSON: [laughing]

ADV SELEKA SC: [laughing]

CHAIRPERSON: Well, I did not follow all of that Mr Seleka because I am still trying to find the page. But I see at 442 in

the Reference Bundle ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...that it is an email from Nazeem Howa.

ADV SELEKA SC: Yes.

CHAIRPERSON: nazeemh@tmamedia.co.za at 08:17 in the morning on the 31st of March 2015 and it is addressed to Tony Gupta and the subject: Statement from New Board, March 31. And it says:

“Thank you, sir.”

10 It says:

“Nazeem Howa, Chief Executive the New Agent, African News Network 7.”

That is ANN7, I guess. And then at the bottom of that page ...[intervenes]

ADV SELEKA SC: Yes, Chair. It is ...[intervenes]

CHAIRPERSON: 31 March 2015 at 08:19 in the morning.

ADV SELEKA SC: Yes.

CHAIRPERSON: Tony Gupta seemed to write, using the email address tony@sahara.co.za, wrote: “Okay.”

20 **ADV SELEKA SC:** H’m.

CHAIRPERSON: And then it says on 31 March 2015 at 07:50. Nazeem Howa wrote from nazeemh@tmamedia.co.za: “Salim by an amended version for your approval.” And then ...[intervenes]

ADV SELEKA SC: So that is ...[intervenes]

CHAIRPERSON: Ja, I guess the bottom one came first and then the ...[intervenes]

ADV SELEKA SC: Yes, correct Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: You got it right.

CHAIRPERSON: The one 08:19 ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...which said okay.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** Which might be meaning the statement is okay.

ADV SELEKA SC: That is right.

CHAIRPERSON: Its approval.

ADV SELEKA SC: Yes.

CHAIRPERSON: That is from Tony Gupta.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay alright. You wanted Dr Ngubane to comment if he has got anything to say about that statement?

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** It seems to... that media statement seems to have ultimately gone to Mr Tony Gupta for approval.

ADV SELEKA SC: That is right, Chair.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: And ...[intervenes]

CHAIRPERSON: And he said he has no knowledge. Is that

right?

DR NGUBANE: That is correct.

CHAIRPERSON: Yes.

ADV SELEKA SC: That is correct Dr Ngubane?

DR NGUBANE: Yes.

ADV SELEKA SC: So Dr Ngubane did having painted the picture for us in your affidavit of your knowledge, interactions and the likes with Mr Howa, with Mr Salim Essa, with the Gupta brothers. Were you aware of any member of
10 the Board of Eskom which you were part of giving such level of interaction with them?

DR NGUBANE: No, even the company secretary never told me that she had been called to a meeting. So I was not aware.

ADV SELEKA SC: Yes. Well, but I am speaking specifically about the board members. Misses ...[intervenes]

DR NGUBANE: [Indistinct]

ADV SELEKA SC: Yes, Ms Klein, Dr Naidoo, Ms Carrim.

DR NGUBANE: No.

20 **ADV SELEKA SC:** Mr Vente Klein.

DR NGUBANE: No.

ADV SELEKA SC: Norman Baloyi.

DR NGUBANE: No. Well, the Mail & Guardian once published an article, trying to link all board members, you know. But I mean that was them. I did not have knowledge

of that.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes.

CHAIRPERSON: You do not have any information?

DR NGUBANE: No.

ADV SELEKA SC: Yes. Okay. So as far as you are concerned, the level of interaction with the persons I have mentioned, Mr Howa, Mr Salim Essa and the Gupta family members, as far as you knew, you were the person who had
10 that type of a relationship with them previously.

DR NGUBANE: That is right.

ADV SELEKA SC: And so on.

DR NGUBANE: Absolutely.

ADV SELEKA SC: Ja.

DR NGUBANE: Correct, Chair.

CHAIRPERSON: Yes, thank you.

ADV SELEKA SC: Well, I did not want to make that conclusion Mr Ngubane but that leaves one with what could be a conclusion that the only way they interacted or got
20 insight into the board... maybe I should... ja, I put this to you. Who got insight into the board's affairs could be by their previous associate.

DR NGUBANE: Well, that is a ...[intervenes]

ADV SELEKA SC: I am putting it to you so you can respond.

DR NGUBANE: Well, that would be quite as serious allegation because I have had business links with many people.

ADV SELEKA SC: H'm.

DR NGUBANE: As I said, at one stage, I was seeing about 23 companies. That does not, therefore, entitle people to be... to make me a puppet.

I mean, if those associations are going to be linked with undue influence, that is wrong, you know. I knew Howa
10 because he was a media man. I was not in the media industry, you know.

So, but that does not create then the condition that he will run Eskom through me, you know. Just like many other associates would not do that.

ADV SELEKA SC: Ja. And along with that proposition I am putting to you is the fact that behind the email info portal and the name Businessman, is most probably Mr Salim Essa with whom you had business dealings and met with him at SOE Boards in your previous time prior to coming to Eskom
20 Board.

DR NGUBANE: If I knew Businessman prior to coming to Eskom Board?

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

CHAIRPERSON: I think just repeat the question Mr Seleka.

ADV SELEKA SC: Shall I repeat it?

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you, Chair. So I am saying, along with the proposition I put to you about, if the level of knowing the people, interacting with them. It is only confined to you within the board.

DR NGUBANE: Yes. Well, sorry.

ADV SELEKA SC: You want ...[intervenes]

DR NGUBANE: I did not say it was only confined to me.

CHAIRPERSON: Yes, yes, yes.

10 **DR NGUBANE:** I was talking in terms of knowledge.

ADV SELEKA SC: Yes, oaky.

CHAIRPERSON: Ja, in terms of what you know. Ja.

DR NGUBANE: Ja.

ADV SELEKA SC: Okay so according to your knowledge ...[intervenes]

DR NGUBANE: Yes.

ADV SELEKA SC: ...that you were the person who had interacted with them at a level you have disclosed in your affidavit. So I am saying, along with that, that you could be
20 the only person then giving them insight into the board.

I am putting again another proposition, so you can respond to the Chairperson. That the face behind the email address info portal or Businessman is not... that the conclusion that it is most probably Mr Salim Essa seems to give credence to that proposition.

That the only person who would have succeeded in making Mr Salim Essa, have enrolled into the board, will be Dr Ngubane because the emails are exchanged directly with him, Businessman.

DR NGUBANE: But ...[intervenes]

ADV SELEKA SC: It is a proposition.

DR NGUBANE: Ja-no ...[intervenes]

ADV SELEKA SC: Just respond to the Chairperson.

DR NGUBANE: It is a dangerous proposition because if you
10 appear at the Zondo Commission and something is said
about you, then that becomes the living truth in the public
domain. So this is a dangerous proposition you are making
and therefore I reject it.

ADV SELEKA SC: Yes. No, that is fine. Because
remember, we are looking at the documentation before us
and we have to test what is here with what you are telling to
the Chairperson.

DR NGUBANE: Anyway, to the Chairperson I should add.

CHAIRPERSON: Yes?

20 **DR NGUBANE:** When I came to Eskom, Salim Essa – I
think it was Fabian and McKenzie ...[intervenes]

CHAIRPERSON: Yes.

DR NGUBANE: ...were very active in Eskom.

CHAIRPERSON: Yes, already.

DR NGUBANE: They were doing on Majuba Power Station,

on the Top 100 Engineers Consulting Programme, on the corporate plan for Eskom.

CHAIRPERSON: H'm.

DR NGUBANE: And that is what they claimed money for.

CHAIRPERSON: H'm.

DR NGUBANE: Which later on became disputed. So if I say, I cannot name a board member who knew Essa, it does not mean that Essa did not have contact with other board members.

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

DR NGUBANE: Because he was at Eskom.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes. I am only confining ...[intervenes]

CHAIRPERSON: Of course ...[intervenes]

ADV SELEKA SC: Sorry.

CHAIRPERSON: ...apart from the fact that the Commission must look at other board members as well to see what interactions they may have had with them.

We also do know that if Ms Daniels' evidence is true,
20 there seems to have also been some relationship between Mr Salim Essa and Mr Koko.

And maybe also Mr Salim Essa and Ms Daniels as well. There have been some evidence. Mr Koko, of course, has not testified as yet but there has been that as well.

DR NGUBANE: Ja.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes. No, do not be upset Dr Ngubane. I ...[intervenes]

CHAIRPERSON: But Dr Ngubane. Ja, he is right to say do not be upset. [laughing] It will be unfair of him if he thinks that there may be an argument that goes along a certain line and he does not give you... put it to you and give you a chance to deal with it. Only later on to come and argue before me that that is what I should... that is the finding I should make.

10

DR NGUBANE: Right.

CHAIRPERSON: So he is duty bound to say what do you say if somebody was to think along those lines or what do you say about this?

DR NGUBANE: Correct.

CHAIRPERSON: So that you can deal with it.

DR NGUBANE: Well, Chairperson I fully accept that.

CHAIRPERSON: Ja.

DR NGUBANE: However, there are investigators.

20 **CHAIRPERSON:** Yes.

DR NGUBANE: His investigators ...[intervenes]

CHAIRPERSON: Yes.

DR NGUBANE: ...should check the role of Essa and McKenzie at Eskom ...[intervenes]

CHAIRPERSON: Yes.

DR NGUBANE: ...who they interacted with.

CHAIRPERSON: Yes, okay.

DR NGUBANE: He must not rely on me giving names.

CHAIRPERSON: Yes, yes, yes. No, no, no. That is fine.

And in fact, there will be evidence related to McKenzie and...

ja, there are still going to be a lot of evidence in the future.

Ja, about Eskom. Ja.

ADV SELEKA SC: No, that is fair enough Dr Ngubane. At this stage, looking at the documentation that we have, the
10 emails of the 28th of September 2015, they are between Businessman and you.

The emails you attached in your affidavit of June 2016 is between you and Businessman. They do not involve any other person. So it is on the basis of those emails.

The email also of – we are cutting ties with media houses, City Press, Mail & Guardian and Sunday Times, is between you and Businessman.

So when you look at that, is what I have to put to you. I cannot put it to Mr Tsotsi or to Ms Venete Klein.

20 **DR NGUBANE**: Correct.

ADV SELEKA SC: You understand?

DR NGUBANE: [No audible reply]

ADV SELEKA SC: When they come here, they now have their other aspects I need to deal with them with which do not concern you. They cannot say: Well, why do you not

ask Dr Ngubane about it? You understand? It is in that context.

DR NGUBANE: Correct. Chairperson, I explained that email commenting on my media statement. It was sent to Suzanne Daniels and copied to me. So I was not the only one who received emails from Businessman. But the advocate is insinuating that all Businessman emails were coming directly to me. That is not true.

CHAIRPERSON: But the important thing about the fact that
10 he puts it to you is that you get a chance to correct him.

ADV SELEKA SC: That is right.

DR NGUBANE: Alright.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja, you get a chance to correct them.

DR NGUBANE: Okay.

CHAIRPERSON: If he did not put it to you and you would not have got this chance.

DR NGUBANE: Alright.

CHAIRPERSON: Ja.

20 **ADV SELEKA SC**: Yes, correct. In fact, Dr Ngubane, the email of June is sent to you and then you forwarded it to Ms Daniels.

DR NGUBANE: Yes, correct.

ADV SELEKA SC: It came from you. It came to you.

DR NGUBANE: Yes.

ADV SELEKA SC: Yes. So just to clarify that because you were saying to the Chairperson it went to Ms Daniels who forwarded it to you.

DR NGUBANE: No, no, no. Certain emails that I remembered Chair.

ADV SELEKA SC: Okay.

CHAIRPERSON: Yes.

DR NGUBANE: And that is the only one until you showed me that one.

10 **ADV SELEKA SC:** Yes, yes.

DR NGUBANE: I had not remembered that email.

ADV SELEKA SC: Okay.

CHAIRPERSON: Yes.

ADV SELEKA SC: Okay.

CHAIRPERSON: Yes, yes. So the position is that the first one came to you.

DR NGUBANE: Yes.

CHAIRPERSON: And then you copied Ms Daniels.

DR NGUBANE: That is right.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: But the second one went to her.

DR NGUBANE: Right.

CHAIRPERSON: And she copied you?

DR NGUBANE: That is right.

ADV SELEKA SC: Yes. Thank you, Chair. Dr Ngubane,

then let us deal with other matters. I think the Chairperson has already dealt with the suspension of the executives in regarding the version of your version, Mr Tsotsi raised the issue on the 9th of March *vis-à-vis* his version.

I will leave that aside because Ms Molefe testified here and said but how could... that board meeting of the 9th had a proposed resolution. Remember, it was prepared by Mr Nick Linnell.

DR NGUBANE: Yes.

10 **ADV SELEKA SC:** and at the end of it, it had a list of board members who had to sign the resolution. Both of them, the names were there, Mr Matona and Ms Tsholofelo Molefe. She said: How could we have signed to suspend ourselves?

DR NGUBANE: So but ...[intervenens]

CHAIRPERSON: Ja, he has accepted ja that one, the 9th.

ADV SELEKA SC: Yes.

CHAIRPERSON: The suspensions were not discussed.

ADV SELEKA SC: Ja.

20 **CHAIRPERSON:** But I think the one point that I... another point that needs to be raised about the suspension of executives Dr Ngubane, is the question of the suspension or the question of the addition of the financial director's name in the list of executives to be suspended.

Now, you did... I think you did give evidence before about it, if I am not mistaken. But in the... at the Durban

meeting which Mr Tsotsi attended, there were only three names that were discussed.

It was Mr Koko, it was Mr Matona and Mr Marokane. Mr Marokane, ja. The FD was not included. So the question that has arisen is, when exactly was the Financial Director, Ms Molefe added? Now Mr Tsotsi said previously before you came to give evidence and I think repeated when he came last week, if I am not mistaken, that he said that you told him that the Minister wanted the name of the FD to be
10 included or something to that effect and he said he was opposed to the inclusion of the FD in the list of executives to be suspended so much so that he says he even called the Minister himself, Minister Brown, to say – to confirm that she was the one who wanted the FD to be included and I guess why, you know? And he gave evidence that when he phoned – I cannot remember what he said the Minister said but it amounted, as I understood his evidence, to saying give effect to that, or something like that. So he was not denying that he had given – yet she
20 wanted the FD to be included. So he said he did not want to take it too far because he was quite unhappy about it.

And, of course, Ms Klein also gave evidence which might in a way be seen to maybe give credence to what Mr Tsotsi was saying but not maybe exactly. But Ms Klein said that although she cannot say who introduced the name

of the FD to the list of executives to be suspended, she remembers that at the PMG meeting on the 11th you were going in and out of the meeting making calls, she understood to the Minister or ministry. I think that is how far she took it. I do not remember that she said she heard you say that the Minister wanted the FD to be included.

So but I cannot recall what your evidence was previously when you came here about when the FD's name was included, if we had come to that point. What is your
10 recollection of how and when the FD was included?

DR NGUBANE: Well, Chairperson, then Mr Tsotsi must tell us why he bad-mouthed the FD saying that she was talking to potential suppliers when tenders were being evaluated. It is a very serious charge for any accountant, accountant must uphold procurement principles. He is one who introduced that.

Secondly, what the Minister said was on the four areas that will be a focus of investigation must step aside. That was directly including the FD.

20 **CHAIRPERSON:** FD?

DR NGUBANE: Yes.

CHAIRPERSON: Okay.

DR NGUBANE: Without her spelling it out.

CHAIRPERSON: Okay, okay.

DR NGUBANE: As for me going in and out of the meeting,

it was because some names that Mr Tsotsi raised and claimed that the Minister was aware and was happy with them was not acceptable to other board members. Then someone asked me to see if I can verify this and I went out and phoned the Minister and the Minister said her only interest - by the way, Mr Tsotsi had also talked about Mr Sekhasimbe who was in suspension already.

CHAIRPERSON: Mr Cassim? Mr?

DR NGUBANE: Sekhasimbe.

10 **CHAIRPERSON:** Oh, Mr Sekhasimbe, ja.

DR NGUBANE: Was already in suspension, to come back and replace Mr Koko as technology and commercial.

CHAIRPERSON: Yes.

DR NGUBANE: Those two names that she suggested could not be accepted by board members. So I went out to check on that. I think the first time I did not get the Minister but probably the second time I did and the Minister said her only interest was that we consult her on who should be the acting Group Chief Executive.

20 **CHAIRPERSON:** Yes.

DR NGUBANE: That is what I conveyed.

CHAIRPERSON: Yes.

DR NGUBANE: So Mr Mongezi Ntsokolo was the GE for generation was not accepted as the replacement for Mr Matona. That was the conversations that I was having with

the Minister.

CHAIRPERSON: Well, what you have said is quite important. In part, the – your confirmation that when the Minister talked about the portfolios on which the investigation would focus, that she mentioned four.

DR NGUBANE: Ja.

CHAIRPERSON: And that included finance.

DR NGUBANE: Yes.

CHAIRPERSON: And, as you say, the idea was that
10 executives who were leading the portfolios that would be investigated should step aside.

DR NGUBANE: That is right.

CHAIRPERSON: Therefore, even if she did not mention the FD by name, the fact that she said there were four portfolios or areas and they included finance it followed that as far as the Minister is concerned if there was a basis for suspending the other three executives, then there was a basis as far as she was concerned to suspend the FD as well because her portfolio would also be the subject
20 of investigation.

DR NGUBANE: That is correct, Chairperson.

CHAIRPERSON: Yes. Okay, alright. I think that is helpful. Thank you.

ADV SELEKA SC: Yes, thank you, Chair because Dr Ngubane in your affidavit – and I have read this repeatedly

to other witnesses:

“Although the Minister did not direct the board to suspend the four executives, she raised concerns of her own against them. The concerns related to the war room which she suggested the complaint was not receiving consistent information from management and therefore it could not develop strategies to turn around Eskom and stop load shedding, the Minister felt that the presence of the four executives might hinder the investigation. After the meeting with the Minister it was clear to the board that government, as shareholder of Eskom, required the inquiry to proceed and that the four executives had to step aside whilst the inquiry was underway.”

That is page ...[intervenes]

CHAIRPERSON: That is the minutes – or is that the affidavit of ...[intervenes]

ADV SELEKA SC: That Dr Ngubane’s affidavit, page 13.

20 **CHAIRPERSON:** yes.

ADV SELEKA SC: Paragraph 4.17 and 4.18.

DR NGUBANE: Correct.

ADV SELEKA SC: So it cannot be any clearer than that.

CHAIRPERSON: Ja, it seems in line with your evidence.

DR NGUBANE: That is right.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Yes, thank you, Chair. But, you see, even after the meeting with the Minister – because I just want the facts to be right to the Chairperson because Mr Tsotsi comes from Durban with a request or instruction, call it what you may,. that three executives should be suspended. .

DR NGUBANE: Three?

ADV SELEKA SC: Three executives should be
10 suspended. When he introduces Mr Nick Linnell to the board, this is after the meeting with the Minister, you get insight into what he says to Mr Linnell, recall you then said to Mr Tsotsi, Chair, can Mr Linnell please introduce himself fully to the board?

DR NGUBANE: Ja.

ADV SELEKA SC: Yes, then he starts introducing himself as attorney and so on and so forth and then Mr Tsotsi says please address the board, he says on the executives the board has resolved should be suspended but he adds, but
20 maybe on the three because you were not briefed on the fourth one.

And the discussion unfolds after that where Mr Tsotsi says the position of the FD he thinks is different. He does not want the FD to be suspended but certainly the three should be suspended. Can you recall that.

DR NGUBANE: Ja, well I have not seen the minutes of that meeting. No, it is the transcript because the minutes do not reflect correctly what was discussed at the meeting.

DR NGUBANE: Okay. So it is possible.

CHAIRPERSON: Yes, I think if you can refer him to the relevant part of the transcript, that would help him.

DR NGUBANE: Ja. Chairperson, that could well be.

CHAIRPERSON: Yes, yes.

DR NGUBANE: However, we had received marching
10 orders from the shareholder.

CHAIRPERSON: Yes.

DR NGUBANE: And we would be in contravention of the shareholder [indistinct – dropping voice] if we rejected what she said so we had no choice but to include the four.

CHAIRPERSON: But I think the – I may be wrong but I think the reason why Mr Seleka makes the point to you may well be your earlier statement that it was Mr Tsotsi who introduced the FD's name and he even made allegations of misconduct for meeting with service providers and so on.
20 It may be that he is putting it in to say but from transcript it would appear that Mr Tsotsi was opposed to the suspension of the FD. I think that is the point he seeks to make and he is going to refer you to the relevant part of the transcript and then we take it from there.

ADV SELEKA SC: Yes.

DR NGUBANE: Well, he could very well have said he does not believe – if he was taking his instructions from Linnell, probably that is what he said.

CHAIRPERSON: Yes.

DR NGUBANE: However, he himself on the 11th said four areas had to be...

CHAIRPERSON: Yes.

DR NGUBANE: The people in charge of the four areas which were the focus had to step aside.

10 **CHAIRPERSON:** Yes. I think I have seen – whether it is at the board meeting that happened after the Minister had left or at the P & G meeting. I have seen either minutes or a transcript where Mr Tsotsi does appear to take different stances in regard to either the FD or the suspension of executives. So I have seen something that gave me that impression at least.

ADV SELEKA SC: Ja. I am going to assist and ...[intervenes]

20 **CHAIRPERSON:** But I think we are on the FD at the moment.

ADV SELEKA SC: Correct.

CHAIRPERSON: Ja.

ADV SELEKA SC: And that is the point.

CHAIRPERSON: Well, with regard to the FD, what at least appears to be clear from Dr Ngubane's evidence is

that when the Minister spoke to the board, addressed the board, she talked about four areas on which the investigation would focus and that included finance and she - and the understanding, to say the least, was that the executives who were leading those areas would have to be suspended or step aside. That is clear from what Dr Ngubane has said and I think another witness has said something similar, maybe Ms Klein, I am not sure but [inaudible – speaking simultaneously]

10 **ADV SELEKA SC:** No, Ms Klein was not forthcoming on that one, Chair.

CHAIRPERSON: Or maybe Mr Tsotsi, I am not sure.

ADV SELEKA SC: But I read to them the transcript where Ms Mabude is speaking.

CHAIRPERSON: Yes.

ADV SELEKA SC: And then Mr Tsotsi responds and says to Ms Mabude:

20 “Okay, what I understand from you, Chwayita, is that there are four areas that the Minister has spoken about.”

CHAIRPERSON: Ja, ja. Well, you see, as to who introduced the name or the idea that the FD should be included in the list of executives to be suspended, unless I can find that before the Minister spoke about four areas, unless I can find that somebody either in the earlier

meeting of the board, or whatever, had spoken about either the FD being included or four areas being investigated, it seems to me that until the Minister comes and denies, I will take it for now that it is the Minister who introduced the fourth area, namely finance because the other three were there in Durban and you must remember that the board had meeting before the Minister came and I think my – I think I have looked at – whether it is the minutes of transcript, I did not seem to find anybody talking about the finance
10 being one of the areas or the FD being included.

So it would therefore seem that the first person to include finance as one of the areas to be investigated is therefore the Minister. If she comes and denies then we will take it from there.

So once we have got that, it seems to resolve it to me because once there was that anybody who wanted to go along with what the Minister was saying, would say the FD is included because finance will be investigated as well. So for now it seems to resolve that part for me.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Namely of who introduced the notion that the FD should be included.

ADV SELEKA SC: Ja. In fact, Chairperson, the Minister did not name the people by name.

CHAIRPERSON: Yes, ja, she talked about the areas.

ADV SELEKA SC: She talked about the areas.

CHAIRPERSON: Yes, yes, I accept that, I accept that, but you made the point earlier as well that when you say finance will be investigated it was obvious that the executive who leads finance would have to be suspended just like the other executives.

DR NGUBANE: But also, Chairperson, when next you meet Mr Tsotsi ask him why he badmouthed that FD with the board.

10 **CHAIRPERSON:** Yes. Well, there is - Mr Tsotsi will still come back. I remember that.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Mr Seleka is there but is your point that Mr Tsotsi wanted the FD to be included and to that end he talked about allegations that she had met with service providers and so on?

DR NGUBANE: Exactly.

CHAIRPERSON: Ja. Okay, alright.

DR NGUBANE: Ja.

20 **CHAIRPERSON:** Yes.

ADV SELEKA SC: Yes. Dr Ngubane, you were paging through the reference bundle. Let us go to the reference bundle very quickly, page 356, Eskom bundle 12, page 356. Now, Chairperson, to make sense of this, you could quickly look at page 353 and I will skip other pages. Page 353,

that is the black pagination.

The Minister arrives – yes it is reference bundle, Eskom bundle 12. They made a reference bundle continuation.

CHAIRPERSON: Ja, then you must just go back to saying Eskom bundle what, what, what because I thought there was one reference bundle.

ADV SELEKA SC: Yes.

CHAIRPERSON: So I was looking another one. I think
10 speak to Eskom bundle 12 of Eskom bundle 14 or whatever.

ADV SELEKA SC: Yes.

CHAIRPERSON: So that it is even for the transcript.

ADV SELEKA SC: Yes, Chair. Yes, Eskom bundle 12, I am trying to see how is the continuation marked so that...

CHAIRPERSON: I have got it.

ADV SELEKA SC: Yes, page ...[intervenes]

CHAIRPERSON: What page?

ADV SELEKA SC: 353.

20 **CHAIRPERSON:** 353. Ja, I have got it.

ADV SELEKA SC: You have got it, Dr Ngubane?

DR NGUBANE: 353, yes.

ADV SELEKA SC: Oh. Chair, the continuation is Eskom bundle 13, so I will distinguish between the two. Thank you, Chair. This is the arrival of the Minister which

interrupts the first meeting on the 11 March.

“I apologise to the board and to everyone. You see, this is what happens when you talk too much. Morning, Minister, morning everybody, please. Chairman, I am sitting in your house.”

No, no, no.”

That is Dr Ngubane.

Ja, I will sit next to the CE. I will sit here.”

Then there is no further recording. The recording stops.

10 The Minister has arrived and goes into a meeting with the board. The recording picks it up at the next meeting after the Minister has left and it continues here, Chair.

And you turn the page, the page proceeding the zoom, and Dr Baloyi is going to ask for a document which is being referred to by Mr Tsotsi. Let us go to page 356. So Dr Ngubane is talking:

20 “Yes, I must make – probably make use of the term, forensic implies criminal act. I would say suspending the top layer of the organisation while you investigate the courses of the present problems is probably less accusatory than us trying to find facts about what has happened.”

So essentially, Dr Ngubane, the allegations of misdemeanours you were saying put them aside, let us do a fact finding before we accuse these people.

Then comes the point we are debating where Ms Mabude is talking:

“Thanks, Chair, I think the Minister has indicated a whole lot of issues that needs to be looked at in her speech. If you noted that she was saying it was – it is the basis for the terms of reference. So if we can use that speech as a way of putting the terms of reference and from that speech it was indicated to me, indicating the critical sections that needs to be
10 looked at an in looking at those critical sections, just keep the leader in each section from what she was saying and if we can, if the company secretary can give us a summary of the first part, of the first five minutes of her speech which was more elaborate on what she wants to say to us.”

It goes on on other things, the focal points, focal areas.
You turn the page ...[intervenues]

DR NGUBANE: Sorry, just...?

ADV SELEKA SC: Okay?

20 **DR NGUBANE:** Which paragraph are you on now?

ADV SELEKA SC: I am on page 357 at the top of the page.

DR NGUBANE: Okay.

ADV SELEKA SC: So Ms Mabude has indicated the Minister has indicated the issues and the four areas. You

turn the page, Dr Ngubane, to page 358. 358 Mr Tsotsi responds to Ms Mabude, says:

“Okay, I think, based on what you are saying, Chwayita, there are four areas , there are four areas the Minister has spoken about.”

And he goes on to say she spoke about maintenance – so now he has established that the Minister spoke about four areas. It is consistent with your affidavit. That is the first point.

10 Here is the next point. What was Mr Tsotsi’s position? You will find it – we are going to go further here. Turn the page. Let us go to page 369. This is in the same meeting and this exercise is just so that the correct facts go into the record. Right at the beginning of page 369:

“Okay, so my understanding is quite clear.”

This is Mr Tsotsi talking.

20 “:First of all, this exercise is to be termed an inquiry in the status quo of Eskom, right? Number one. Number two, this inquiry, for it to be effective requires us to ask specific executives to take forced leave or whatever you call it, to be removed from then from the situation. This is not an investigation into individuals or wrongdoing by individuals so that the media has to get right.”

Meaning get it right.

“It is the status quo of Eskom because there are definitely situations that one has to look into. What is actually happening the organisation and we are asking that this done by non-Eskom entities, an independent inquiry, right? And then we are then saying that the specific executives are also directly – who are directly involved here would be a Group Capital executive, Commercial Executive and the Chief Executive. Well, we said the FD’s situation is
10 different, is it not?”

Then somebody says:

“No, not necessarily.”

It is incorrectly written Chairperson.

CHAIRPERSON: Chairperson, but you say that is wrong?

ADV SELEKA SC: It is wrong, Chair.

CHAIRPERSON: You say that based on having listened to the audio?

ADV SELEKA SC: Correct, Chairperson.

CHAIRPERSON: It is not Mr Tsotsi speaking there.

20 **ADV SELEKA SC:** He is not answering himself.

CHAIRPERSON: Ja, okay. So but something needs to be done to make sure ...[intervenes]

ADV SELEKA SC: So we are going to correct that. Dr Ngubane, can you see that?

DR NGUBANE: yes.

ADV SELEKA SC: And this is after the meeting with the Minister. Mr Tsotsi says:

“Well, we said the FD’s situation is different.”

I am going to take you to another reference. Then I will take you to what the Chairperson has in mind where Mr Tsotsi seems to suggest that all four should be removed but you will see what he says still. So you see this part?

DR NGUBANE: Ja.

ADV SELEKA SC: And if you go on further, I will give you
10 the page reference, page – let us go to page 388. 388, the Chairperson says:

“Okay, you meet before lunch, we will meet after lunch.”

“Chair, what happens to the board meeting?”

And Mr Baloyi speaks:

“Sorry, Chair, let risk meet first then we will meet up with risk once we get their input.”

Then you speak and then the Chairperson says:

“Oh, I think the question is being asked here.”

20 “Sorry, Chair, I just wanted to – just want last minute...”

And it is indistinct.

“...in this process.”:

So he answers the question:

“The CE, the head of Group Capital and the head of

Commercial are the three individuals we are going to ask to step aside.”

Then Mr Baloyi:

“Because I thought maybe then the CEO and the CFO are excluded.”

And the Chairperson’s responds:

“No, the CEO is not excluded, the CFO is excluded. That is what we have decided. Okay, can I just make it...”

10 Then there is an intervention.

Now that is as far as Mr Tsotsi’s position was. Even after the meeting with the Minister. But when he introduces Nick, Mr Nick Linnell, which is now on page 397, and perhaps that is where the Chairperson talks about – I had another reference here where - page 397. You are there? So page 397, against line 10 – you are there, Dr Ngubane?

DR NGUBANE: H’m.

ADV SELEKA SC: You say:

20 “So, Nick, the purpose of what we have here, Nick, is basically the board members. We had the subcommittee meetings earlier but 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 it is done in a manner that cannot be challenged and cannot reflect badly on this issue. Now the board has made some significant decisions and the decisions the board has made in respect of the investigation at that:

1. The investigation will proceed as soon as possible.
- 10 2. Those executives who are directly involved ...[indistinct] will be suspended and these are four areas.”

Now that is clear from what we read that is after the Minister had been there.

This is first and foremost the Chief Executive and then it is the Executive for Group Capital, the Executive for Commercial, and the Executive for Finance and the reason for that is because it is important that the ability to carry out the investigation is not compromised in any kind of
20 way, and somebody asked, Ms Klein has said this is the Company Secretary, Mr Phukubje:

“Sorry Chair is the Executive for Finance included as well.”

And the Chairperson responds, he says:

“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 in terms of the potential charges that are on the table in respect of the Executives.”

And Chair if I pause there you will recall the document drafted by Mr Nick Linnell had only three names, do you
10 remember Dr Ngubane?

DR NGUBANE: Yes.

ADV SELEKA SC: And here it carries on and probably excludes the FD, because you were not briefed on the FD as far as I know but certainly on the other three Executives, maybe you want to take the Committee through that and also the processes that need to come into play for this to be effected, which included managing the media and public perceptions and all those things, Nick – should we just talk about those issues then, how you see the process
20 going forward. Then Mr Nick Linnell responds,

“Certainly, Chair”,

Then Dr Ngubane comes in, you say,

“Sorry Chairperson, I think Nick should introduce himself fully to us”,

And then he does the introduction.

CHAIRPERSON: Well you want to put the proposition or question to Dr Ngubane arising out of these excerpts or have you already put it, I've just missed it? Do you want to tell him what you – you're putting a proposition to him or you are putting a question to him?

ADV SELEKA SC: Yes, Dr Ngubane from the transcripts, from the transcripts we can see that – well we fail to see, there's no evidence of Mr Tsotsi motivating for the suspension of the FD, if anything...[intervenes].

10 **CHAIRPERSON:** Well maybe, let's put it this way. From the parts of the transcript that he has read, do you accept that those parts do not reflect Mr Tsotsi as pushing for the suspension of the FD, those parts?

DR NGUBANE: Except in this bit, if we could play the first part of the audio, of the 11th you will find that he said that but that has been erased.

CHAIRPERSON: Oh, okay so, the erased part, was what's there?

20 **DR NGUBANE:** Yes when he talked about the misdemeanours of the Executives.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Sorry Chair, can I give you the page reference, Dr Ngubane. If you go back to where the Minister comes into the meeting, go back to page 353, maybe you are referring to that part because that's – that

was the third point which I thought, maybe, is in the Chairperson's mind. So, the Minister comes, the recording stops, it says,

“No further recording on audio file 9.1 continued on audio file 911 proceedings resume”,

Then the Chairperson starts talking for...[intervenes].

DR NGUBANE: Sorry what page is this?

ADV SELEKA SC: Page 353.

10 **DR NGUBANE:** Alright.

ADV SELEKA SC: At the bottom of the page, the Chairperson's talking,

“4. If anybody wants to interfere with that, they will stop them from doing so. So, there are some serious misdemeanours that are going on in the business, that's serious”.

DR NGUBANE: Yes, but that is where the audio starts.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Yes, I think what Mr Seleka is saying, is that you see before, where it says, Chairperson, at the bottom of that page before that, it says,

“No further recording of audio file 9.1”,

So I think what he's saying to you is that, maybe this is the part where you say Mr Tsotsi talked about misdemeanours in relation to the FD because when the

recording resumes, here, under Chairperson, he refers to serious misdemeanours which might suggest that he was talking about some misdemeanours and the recording resumed while he was continuing talking about misdemeanours and that's why there's a reference to him saying some misdemeanours. The point is, he just wants to say, could it be, this is the part you are talking about where there is no recording but when the recording resumes, Mr Tsotsi is referring to serious misdemeanours?

10 **DR NGUBANE**: That's correct, Chairperson.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Thank you Chair. So, are you then saying to the Chairperson that Mr Tsotsi, off record, he would taken one position and on record took a different position?

DR NGUBANE: I'm almost convinced, Chairperson.

ADV SELEKA SC: And nobody told him, but why are you changing our position?

20 **DR NGUBANE**: Well it comes out later on when he's being charged.

CHAIRPERSON: Well, the reference to, no further recording could mean that at the time of the proceedings the record was stopped for a certain period of time and then it resumed but it could also mean that the people who were preparing the transcript, when they were listening to

the recording, came to a point where there was no recording and then later on the recording resumes but you are saying, you know that, at a certain stage there was – this record which is said not to be there, was there?

DR NGUBANE: Yes.

CHAIRPERSON: You listened to it, you know but it's no longer there?

DR NGUBANE: But minutes of 11th also state what was said about the FD.

10 **CHAIRPERSON:** Yes, so the minutes of the meeting of the 11th also support what you are saying, namely, Mr Tsotsi did push for the suspension of the FD.

DR NGUBANE: Yes, at that stage.

CHAIRPERSON: At that stage yes, at another stage he might not but there was a stage where he was pushing for it.

DR NGUBANE: Yes.

CHAIRPERSON: Okay, alright.

20 **ADV SELEKA SC:** Thank you Chair. Yes, and I was asking the question, Chair, could he have said something, one thing off the record and another thing on record?

DR NGUBANE: Well, he did.

ADV SELEKA SC: And then I ask you Dr Ngubane, why didn't somebody tell him, but why are you changing your version?

DR NGUBANE: Yes, but the minutes show that something was said about the FD, in the minutes.

ADV SELEKA SC: Yes.

DR NGUBANE: Yes.

ADV SELEKA SC: That come more than a year later, these recordings are during the time of the meeting.

DR NGUBANE: I agree.

ADV SELEKA SC: And he says, the position of the FD is different.

10 **DR NGUBANE:** Well, it was total economics, you know, he was using a spacious argument that the woes of Eskom were not the result of inefficiency it was the result of the tariff not being given.

ADV SELEKA SC: Yes, you are correct.

DR NGUBANE: But he doesn't say, why did you spend a billion rand every month buying diesel to burn it on open cyclic distributor, that was the question that should be asked. Why did finance and treasury continually pay money which was out of budget? When we came, we were
20 being asked to appeal to the Department and to treasury for a bailout, which we didn't do. Those are questions – he's talking here in general terms but the real fact that the audit, in March 2015, the audit of the previous year put the emphasis of matter in the findings of the auditors which meant that Eskom was not a going concern. Those are the

issues that the Minister was concerned about, about finance not the theoretical things about, you know, the treasury and the finance department is only a recipient of money. The question was, how do you spend this money, how prudent is the expenditure of money? When we went to the RCA, that is the Regulated Clearing Account, wanting to claw back the money that was spent on diesel, NERSA said you did not spend your money prudently. That was the decision of NERSA. So, this issue of not wanting
10 the FD to be part of the investigation is eyewash as far as I'm concerned.

CHAIRPERSON: Well, I was going to ask the question, as to what difference it makes whether he wanted the FD to be suspended or not. Now that we seem to accept that the notion that the FD should also be suspended seems to have a reason when the Minister said there were four areas to be investigated and they included finance. So, I'm not sure whether it makes any difference whether he wanted it or he wanted the FD to be suspended or not, but you might
20 be able to enlighten me, Mr Seleka. From your point of view, Dr Ngubane, is there a point to be made that you want to make about it or not really?

DR NGUBANE: There was serious challenge in the finance department. At one stage the Minister told us when she sat down to have her Christmas dinner, Mr

Matona and Mr Tsotsi phoned her to say there'll be no money to pay salaries at Eskom, in fact, the report of the CEO stated that Eskom was in the red, to about 3 billion rand but if the loans came worth 4 billion rand, then at least they will have space to function. So, Eskom was in serious, serious trouble and it's there in the documentation. So, this is what, I think, motivated the Minister to say, include finance as well.

CHAIRPERSON: Now, I understand that if one seeks to
10 answer the question, why was the FD added. I understand that there were problems in the finance department that's why – at least according to the Minister that's why the Minister wanted the finance portfolio to be investigated as well but my question was, whether, from your point of view, there is any significance in determining whether Mr Tsotsi was for or against the suspension of the FD?

DR NGUBANE: Well, I think he was ...[intervenes].

CHAIRPERSON: Whether there's any significance to
20 either to whether he was for or against, whether it makes any difference?

DR NGUBANE: I think he was defending his administration because he didn't want to admit, like an ostrich head in the sand that there was failure under his leadership, that is how I took it.

CHAIRPERSON: Ja, okay, alright Mr Seleka?

ADV SELEKA SC: Thank you Chair. Dr Ngubane to my question, whether somebody challenged him, but why do you change your version, you said that came later at the charges you levelled against him?

DR NGUBANE: Ja, well...[intervenes].

CHAIRPERSON: I thought you said later in the minutes of the meeting of the 11th?

ADV SELEKA SC: No, he said that the charges that comes later, the charges against him.

10 **CHAIRPERSON:** Oh, Dr Ngubane?

DR NGUBANE: [Inaudible 15.24].

CHAIRPERSON: Do you want to put the question again, maybe or – ja let's put the question again.

DR NGUBANE: We want to withdraw that Chair... [laughter] but it was a serious consideration, ja.

CHAIRPERSON: Okay, looks like the two of you are having some [indistinct laughing] so what is the outcome of these negotiations between the two of you?

20 **ADV SELEKA SC:** Dr Ngubane, yes, the Chairperson wants to be drawn – that we pull him into our circle by informing him, what are we saying. I had asked the question, Chairperson, if he said something off the record and went on the record, said something different, why didn't somebody challenge him and say, but Chair, you are changing the version. Dr Ngubane's response was, okay

but that came later when we brought the charges against him, but Dr Ngubane now says, no, he's withdrawing that statement.

CHAIRPERSON: Okay, I just wanted all of us to be on the same page.

DR NGUBANE: Well, let me put it this way, there was a feeling that the Chairperson of Eskom was protecting certain people.

CHAIRPERSON: Executives?

10 **DR NGUBANE:** In fact, if I can read what Mr Baloyi wrote, it doesn't say this exactly, but it has that undertone.

CHAIRPERSON: Tell us first, who – from which Bundle on what page are you reading.

DR NGUBANE: No, no, I'm just reading my own things.

ADV SELEKA SC: Did you say it's Mr Baloyi?

CHAIRPERSON: Is it an email or a letter?

DR NGUBANE: The emails that we are going between Baloyi and the Board members.

CHAIRPERSON: Oh okay.

20 **DR NGUBANE:** I'm just going to bring this undertone...[intervenes].

CHAIRPERSON: Well, it will have to be admitted then so that everybody has...[intervenes].

DR NGUBANE: To the questions, Chair, why we did not challenge him.

CHAIRPERSON: Okay.

DR NGUBANE: Mr Baloyi says,...[intervenes].

ADV SELEKA SC: Just stop, sorry Dr Ngubane please identify the email for us, the date, who is writing to who and so on.

CHAIRPERSON: And the subject matter.

ADV SELEKA SC: Yes.

DR NGUBANE: It is 24 March 2015 from Norman Baloyi to Mark Pamensky and Venette and all of us ...[intervenes].

10 **CHAIRPERSON:** And the subject matter?

DR NGUBANE: On the issue of the charges against Mr Tsotsi.

CHAIRPERSON: Oh, okay, alright okay.

DR NGUBANE: Well...[intervenes].

CHAIRPERSON: If it is not a long email maybe you could read the whole of it.

DR NGUBANE: It's a bit long sir.

CHAIRPERSON: Oh, it's long.

20 **DR NGUBANE:** But I just want to say the closing remarks by Baloyi.

CHAIRPERSON: Okay.

DR NGUBANE: You know,

“I see, well done for taking him out, my additions would have been 1. The allegations of meddling with operational issues such as dealing with or

writing to service providers. 2. Inconsistencies or misrepresentations of information that he presented to the Board in relation to the suspension of Executives and possible conflict of interest. When acting capacities were handled, e.g. Generation is one of areas on inquiry, he said nothing regarding Generation. The Executive who is not suspended and he raised that the Generation Executive be the acting CE. He also wanted the person who was allegedly suspended for co-signing a contract with the Chairman, a contract of the service provider to be reinstated to take the acting role of commission. For him to release the report that was allegedly done about/against the suspended Executives”.

10

These are the issues that Mr Baloyi raises.

CHAIRPERSON: Yes.

DR NGUBANE: To strengthen the charges against the Chairman.

CHAIRPERSON: Yes.

20 **DR NGUBANE:** I’m saying, to answer you, why we did not challenge him, there was an undertone of lack of trust towards the Chairman *per se*.

CHAIRPERSON: Okay, alright well 1. You’ll have to make that email available – oh do we have it, oh okay alright okay. Mr Seleka says we have got it.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: What Bundle is it in?

ADV SELEKA SC: Eskom Bundle 10, Chairperson.

CHAIRPERSON: Okay, and what's the page?

ADV SELEKA SC: The page number – there's a string of emails, Dr Ngubane should refer you to, Chair. The email of the 24th is on page – from Mr Baloyi, is on page 333 but the string of emails, Chairperson, starts...[intervenes].

CHAIRPERSON: Let's just get to that page first.

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

DR NGUBANE: Sorry Chairperson I didn't mean to deviate you, I was just explaining why, sometimes you don't challenge people directly but there's an undertone inside.

CHAIRPERSON: Yes, that's fine, it's just that I had thought we don't have – we didn't have the email address and the email and then I would have wanted us to make sure we have got it but now that we have got it I wanted to have a look but Mr Seleka continue.

20 **ADV SELEKA SC:** So, Chairperson, page 333 the email Dr Ngubane is reading from, I believe, is the one – the second last email from the bottom of the page, Norman Baloyi, 24 March 2015, the time stamp is 12:11pm.

CHAIRPERSON: It can't be that one because the one he was reading from – because he said the one, he was

reading from was rather long, this one is not long.

ADV SELEKA SC: Let me see.

CHAIRPERSON: He's giving you a copy so if you can make copies.

ADV SELEKA SC: Which one is it Dr Ngubane, is it 24 or 23?

DR NGUBANE: 24 I think, it's there at the beginning – what I was reading was right at the end it's part of that whole email.

10 **CHAIRPERSON:** Maybe you can go to – you can approach Dr Ngubane, he can indicate exactly which one he was reading so that we are sure.

ADV SELEKA SC: Thank you Chair. No, just show her Dr Ngubane which one were you reading from.

CHAIRPERSON: Just show which one you were reading and maybe, from where.

DR NGUBANE: This one, yes sorry it's from Norman Baloyi to Mark and other Board members, subject re: backup of notice of meeting, removal of Director.

20 **CHAIRPERSON:** Yes.

DR NGUBANE: The date was 23 March.

CHAIRPERSON: Oh 23 March.

ADV SELEKA SC: Then it's page 338.

CHAIRPERSON: 338?

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: That's where you read the words,

"I see, well done for taking him out",

I think somebody had said,

"Please note the Chairman is on the mails, so please commit in Committee",

So, there's a communicating Committee.

DR NGUBANE: No, no it was just – he was sending it to all Board members.

10 **ADV SELEKA SC:** Oh, so he wanted to have the Chairman excluded from that communication.

CHAIRPERSON: Okay, alright but the point you were simply making was that you may not – other Board members may not have contracted – challenged him when on record he spoke as if he was opposed to the suspension of the FD in circumstances where, during, the off record part of the meeting he had spoken in favour of the suspension of the FD, you might not have – the Board members might not have challenged him because there
20 was, already, this undertone of lack of trust and you say, it can be seen from, among others, this part of Mr Baloyi's email, that lack of trust?

DR NGUBANE: That's correct Chairperson.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Yes, and Dr Ngubane I've just gone

through the email, under paragraph two there's specific references to examples of what is said or alleged to have been what Mr Tsotsi said, Generation is one of the areas of inquiries, he said nothing regarding Generations Executive who is not suspended, he raised a Generations Executive be the acting CE, he also wanted the person who was allegedly suspended for co-signing a contract with the Chairman. Contract of the service provided to be reinstated to take the acting role of Commercial. For him
10 to release the report that was allegedly done about or against the suspended Executives. I was looking to see whether the issue of the FD is mentioned here. That he said one thing about the FD off record and another thing on record.

DR NGUBANE: But, Chairperson, as I said, this summarises the undertone of mistrust and in such situations at time, you let the people just go on and you say nothing.

CHAIRPERSON: Okay.

20 **ADV SELEKA SC:** Let's go into these emails now that we're at them because Mr Baloyi referred us to some of them during his testimony. They come from that page...[intervenes].

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Keep an eye on how much time you want to spend...[intervenes].

ADV SELEKA SC: I will go into the charges.

CHAIRPERSON: Ja okay, alright, because I'm sure Dr Ngubane would like to at least finish on the suspensions today.

ADV SELEKA SC: Yes Chair.

DR NGUBANE: Certainly, and I would like to ask for a break.

10 **CHAIRPERSON:** Yes, okay well, I have been thinking of a break for quite some time, so let's take the break, ten minutes we'll be back at ten to.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV SELEKA SC: Thank you Chair. Chair we were talking just during the adjournment about correcting a statement – a factual position about whether it was Regiments or Trillian that was doing work for Eskom before 2015. I think Dr
20 Ngubane you had said Trillian was already there in 2015 I cannot recall I did not capture it but you could ...

DR NGUBANE: Ja well I said Trillian but I agree Trillian came later. It was Regiments.

CHAIRPERSON: Oh it was Regiments. Okay alright.

ADV SELEKA SC: Thank you. Thank you Chair.

CHAIRPERSON: Well before you proceed let us talk about the way forward. You said soon you will be moving on to the charges against Mr Tsotsi?

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Right

ADV SELEKA SC: Yes.

CHAIRPERSON: What other topic – is there another topic after that or is that the last topic?

ADV SELEKA SC: The – let me see what I have. Then I
10 need to put to Dr Ngubane the versions of other witnesses.

CHAIRPERSON: Ja.

ADV SELEKA SC: And that I will simply put to him.

CHAIRPERSON: Ja.

ADV SELEKA SC: What they saying.

CHAIRPERSON: So – so what is your estimate of when we might be able to finish – five o'clock or half past five? I just want to make sure all...

ADV SELEKA SC: Yes.

CHAIRPERSON: All of us have an idea of ...

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: How the road ahead looks like.

ADV SELEKA SC: Chair given the – off the mark estimations of the past I will put it at five.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes.

CHAIRPERSON: But you suspect you might be early – you might finish earlier?

ADV SELEKA SC: Correct I think I might be finished.

CHAIRPERSON: Yes but you do not want to raise expectations.

ADV SELEKA SC: That is right Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: Thanks a lot Chair.

CHAIRPERSON: Let us work on that basis.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: What is important is that I think we finish with Dr Ngubane in relation to suspensions.

ADV SELEKA SC: Yes.

CHAIRPERSON: What is important is that you are able to do justice to the various issues and to put to him.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Some things that some of the witnesses may have said about him.

ADV SELEKA SC: Yes

20 **CHAIRPERSON:** Ja. Okay.

ADV SELEKA SC: Yes. Dr Ngubane we were at those emails of Ms Baloyi because that leads us right into the charges of Mr Tsotsi.

DR NGUBANE: Okay.

ADV SELEKA SC: Do you see – and I see you have the trail

of those emails and I would like you to turn to – now Chair this is Eskom Bundle 10. We will have to provide Dr Ngubane with Eskom Bundle 10.

DR NGUBANE: Sorry page.

ADV SELEKA SC: Ja we were on page 338. I want us to go to 337. It is in reverse order of the emails. Thank you. Because you will see – are you on page 337 Dr Ngubane? It follows after the emails you referred to us on page 338.

ADV MKHABELA: Excuse Mr Chairman.

10 **CHAIRPERSON:** Sorry – yes.

ADV SELEKA SC: You need that file – that bundle.

ADV MKHABELA: If you have – I have the bundle of emails. If you do not have an extra bundle you could refer to them by their dates I should be able to follow.

CHAIRPERSON: Oh is this a bundle that you do not have?

ADV MKHABELA: Yes I have got 13 I have got 9.

CHAIRPERSON: Oh you do not have 10?

ADV MKHABELA: Ja.

ADV SELEKA SC: So you do not...

20 **CHAIRPERSON:** And –

ADV SELEKA SC: 5.

CHAIRPERSON: Is it possible to lend him for – to lend him a bundle temporarily?

ADV SELEKA SC: Yes.

ADV MKHABELA: Sorry what page did you say?

ADV SELEKA SC: 337.

CHAIRPERSON: Page 337 black numbers.

ADV MKHABELA: Okay.

ADV SELEKA SC: Sorry Mr Mkhabela.

ADV MKHABELA: I have 36 not 3 – oh okay sorry.

CHAIRPERSON: Black numbers.

ADV SELEKA SC: With Dr Ngubane going into this. I do not need to read them – these emails but Mr Baloyi was concerned about the charges that the board was bringing
10 against Dr – Mr Tsotsi. So if you pick it up from the email of the 23rd on page 337 the second email from the bottom. It is an email dated 23 March 2015 at 12:04.

Because the email you referred us to on page 338 is the same date but at 10:58 pm.

DR NGUBANE: Okay.

ADV SELEKA SC: He comes back at 12:04 on the same day. He says:

20 “Good day, I have already spoken to Ms Klein. The allegation in the letter may not stick in the court of law.”

And we know the answers already.

“Unless we make additions with concrete evidence like last Friday’s one otherwise the board may be found wanting and acted irrationally. If there happen to be a change

of days/time due to 7 day notice proposal
please note that I am not available in the late
afternoons/evenings of Mondays to
Wednesdays and possibly this Wednesday if
I do not excuse myself to the other
engagements.”

Then there is an email from Ms Klein.

“Norman we have spoken I concur you are
free to call me again to discuss.”

10 Then there is his email the page before because the
emails are in reverse order. Page 336. Now he is writing Mr
Baloyi on the same date but at 2:25 pm. And he says:

“Thanks I took out Company Secretary. So
first Nick was endorsed by the board and
there is no formal process of how media
briefings of the board decisions are handled
and there is a leak of information from DPE
to the media. Can we still pass a vote to the
chairman or the proper way will be to define,
20 develop proper process. This is why I am
saying that none of the charges/allegations
will stick.’

Chairperson may I pause there? You will recall he
talked about this but without having to refer to the email.

CHAIRPERSON: Yes.

ADV SELEKA SC: That the leak was from the DPE and Mr Tsotsi did not know how the leak happened and he said that much in the meeting of the 30 March. You know he was charged about the media statement which got leaked? So he is referring to this and he is expressing concern about it.

10 “So this is why I am saying that none of the charges or allegations will stick because I know there was an endorsement of Nick on Wednesday afternoon of the 11 March 2015 by the board and there was every right by the chairperson to consult with Nick and the shareholder as there is or was no proper defined process that has been developed such as board first then Nick then shareholder. Unless we add more charges/allegations we facing a losing battle and this will be a huge embarrassment to the board and Eskom. There is no final decision by the board hence there must be

20 representations by the chairman. And we have every right to add any serious allegation – to add any serious alleged transgression before we do final voting on Wednesday. Let us revise it. Add allegations. Set a new date and reconvene

before end of the week. I hope you understand our reputation is on the line.”

So this is I think what you need to tell the Chairperson so that he gets a whole picture of where Mr Baloyi was coming from. So he is trying to help the board craft charges against Mr Tsotsi that if I use his words would stick.

CHAIRPERSON: And if one goes back to the email that you read earlier on.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: From Mr Baloyi Dr Ngubane it seems that what he said there is reconcilable with what he is saying here on the face of it. Because the part that you read he seemed to be saying good riddance. And saying if he had a chance he would add certain allegations. But when you look at this email it seems that his position was the charges that you are bringing against Mr Tsotsi will not stick.

DR NGUBANE: Yes.

20 **CHAIRPERSON:** We will be embarrassed if he takes us to court.

DR NGUBANE: Yes.

CHAIRPERSON: But I am not saying you should not get rid of him.

DR NGUBANE: Yes.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: I am saying choose what charges you are going to bring against him so that we are not embarrassed if he takes to court. So he seems to have an idea what charges should be brought. But he is saying the ones that you are bringing will not stick.

DR NGUBANE: You are right

CHAIRPERSON: You – is your understanding the same as mine that the two are reconcilable?

DR NGUBANE: Correct Chairperson.

10 **CHAIRPERSON:** Yes okay.

ADV SELEKA SC: And in fact he was even suggesting that we have every right to add any serious alleged transgression. If you have got a serious one you can add it. But if I look at these ones you have forget it.

CHAIRPERSON: Do you remember this at the time?

DR NGUBANE: I do.

CHAIRPERSON: Yes.

ADV SELEKA SC: Chair these are the emails Dr Ngubane has separately with him.

20 **CHAIRPERSON:** Sorry.

ADV SELEKA SC: These are the emails Dr Ngubane has separately with him. This trail of emails.

CHAIRPERSON: Oh he furnished them?

ADV SELEKA SC: No it is what he has separately with him.

CHAIRPERSON: Oh okay yes, yes, yes.

ADV SELEKA SC: It was this trail of emails.

CHAIRPERSON: Yes but we – you are saying we have got them?

ADV SELEKA SC: We have got them.

CHAIRPERSON: Ja okay.

ADV SELEKA SC: And let me close with this one on this Chair. Go back to page 335. Because some – Dr Ngubane you will recall this is a communication between board members. Some of them are kicking and scratching about
10 whether Nick was endorsed or not endorsed.

DR NGUBANE: Yes.

ADV SELEKA SC: And Dr – Mr Baloyi comes on the second last Chairperson – the second from the bottom. He says it is again on the 23 March 2015 at 20:26. Now this is a busy day on emails on the Monday the 23rd and he says:

“True the obvious thing is that Nick’s presentation was well received.”

I think we did read this one.

20 “Was well received and there was every reason to endorse him. I wish this part is not recorded. Even if it is recorded the board can always rescind improper decisions but most of all we need to ask a labour specialist if we can add because my little labour knowledge is that you can always add a

charge or allegation as long as there is still a relationship before the final decision is made.”

And he say:

“Thanks.”

Now I am not reading any further Dr Ngubane. So that was the exchange. And I think this in my consideration of what was happening this became a red flag against Mr Baloyi. And I think it was the third red flag.

10 The board flagged this man you understand what I mean?

DR NGUBANE: Chairman – Chairperson.

CHAIRPERSON: Yes.

DR NGUBANE: Baloyi is a man of extremes. I think this email brings it out. He works his warm then he becomes very cold. I understand that – let me put it this way.

I think Nick Linnell would have been endorsed if we had handled the procurement process. But because the Minister sent it to Audit and Risk I think they took a different
20 view. I think this is what he refers to.

ADV SELEKA SC: Ja but remember Dr Ngubane it was the board itself that said Nick you will assist TNG and Audit and Risk.

DR NGUBANE: Sure.

ADV SELEKA SC: True?

DR NGUBANE: Yes.

ADV SELEKA SC: Yes. And after that he gets invited to what is that the board program committee and the P&G.

DR NGUBANE: Yes.

ADV SELEKA SC: He has meetings at Mr Tsotsi's house with Ms Chwayita Mabude the chairperson of Audit and Risk.

DR NGUBANE: Right.

ADV SELEKA SC: He has – he is called into a meeting of the 20 top executives with Dr Pat Naidoo and Ms Mabude on
10 the day of the suspensions.

DR NGUBANE: Yes.

ADV SELEKA SC: And he is introduced to them and he is asked to address them on what has just happened. And he is asking the top executives to give their input into the drafting of the Terms of Reference. When he meets subsequently with Ms Mabude at Mr Tsotsi's house he says Ms Mabude the chair of Audit of Risk was now cold refusing to give him input from the top executives – 20 top executives and essentially rejecting his draft Terms of Reference
20 because it included the retired judge.

Now given those facts you cannot brush off that easily the fact that the board was actually working with him at least a couple of days from the 11th to the 17th March when he got the email that he is no longer needed.

DR NGUBANE: Chairperson he did all those things, without

a contract in his hand. So his position was not finalised. As I say we were in the process of looking at this with the tender board. But then the responsibility was shifted. So I cannot really talk of the Audit and Risk.

CHAIRPERSON: But I think the – the first point Dr Ngubane and this goes to I think the first charge against Mr Tsotsi. I do not know whether also the second charge I am not sure.

ADV SELEKA SC: Both of them Chair.

CHAIRPERSON: Ja. This is the point. Mr Tsotsi comes to
10 the board and introduces Mr Nick Linnell to the board and indicates what he – his role would be. The board understands what the chairperson says as I understand the position. The board has an opportunity if it does not want Mr Nick Linnell to be involved with it or to be involved in any of its committees or to have anything to do with the – with Eskom affairs. It has an opportunity to say, no, no, no we do not want this man here. Or if it says we do not want this man to get involved or do any work until A,B,C,D has happened. The board has a chance to say that. But on what
20 I have read the board does not say that. On the contrary the board seems to embrace Mr Nick Linnell as well as its committee – some of its committees and then it becomes strange when that same board turns around now and seeks to charge Mr Tsotsi about this when it was party to it in the sense that he was introduced to it. It had an opportunity to

say Mr Tsotsi we do not want this man here or have you followed processes before bringing him otherwise we will not have anything to do with him. But does not do that and instead seems to embrace him and together with it's – some of its committees wants his input on certain issues. That is what makes certainly the first charge – I am just not looking maybe the second charge very strange to me.

ADV SELEKA SC: They are related Chair.

DR NGUBANE: Chairperson unfortunately Mr Linnell ran out
10 too fast forward like saying the retired judge, some companies like ENS and putting that in the media. I think this is what changed the attitude of the board.

CHAIRPERSON: But – but now that is different from saying it is wrong to allow him to work. In other words you do not like the suggestions as a board that he is making which obviously he cannot impose on you as a board, you are free to reject them and go along with whatever suggestions you like. So – so that goes to the – the objection being to what I
20 guess he brings to the table after he has been embraced to say we can listen to you.

We can let you make suggestions about these issues. So my question is more about the board seems to allow him to get involved without raising issues of whether procurement processes have been followed and whatever. They seem not to have an issue with that but then they turn

around and charge Mr Tsotsi and say it was without our approval or it was without following procurement processes. That is what I have difficulty understanding.

DR NGUBANE: Well Chairperson probably the audit people might answer that. However from my point of view he started committing Eskom into expenses with the companies that he was now negotiating with without prior authorisation. I mean also these companies charge an arm and a leg for any work they do. I think that is where the problem came in.

10 **CHAIRPERSON**: From what you are saying it seems to me that you do not take issue with the proposition that the board did not have a problem with him getting involved or assisting in whatever way. The problem is how he went about it.

DR NGUBANE: I think so Chair.

CHAIRPERSON: Is that right, ja.

DR NGUBANE: Yes.

CHAIRPERSON: Okay. Now until the point that the board may have heard that he had contacted ENS or whatever, whatever or whoever the board would have had no problem,
20 is that right?

DR NGUBANE: I think so.

CHAIRPERSON: Yes. Mr Seleka.

ADV SELEKA SC: And – well Dr Ngubane costs if you talking costs of Mr Linnell I think they had already been incurred by the time he came to the board. He drafted the

memorandum which you saw. He drafted the proposed resolution which you saw. You decided to make decisions based on those documents and you invoked his services in the drafting of the media statement. He says during the time you were on the phone Dr Ngubane saying Ronnie has a person – he will give us a name of a person who will draft the media statement. Remember that?

DR NGUBANE: But Ronnie had already been appointed as the media person.

10 **ADV SELEKA SC:** Yes but – no you were on the phone at the board meeting because that one is on record where you are telling them Ronnie is going to give us the name of a person to draft the media statement. And you go out, you come back, somebody asked you but who is Ronnie you say Romeo Khumalo.

DR NGUBANE: But that was a board decision.

ADV SELEKA SC: That is my point. And at that – at that...

CHAIRPERSON: Maybe you should just say who is Ronnie Khumalo or whoever?

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Is that from somebody from ENS or what?

DR NGUBANE: He was a board member Sir.

CHAIRPERSON: Oh he is a board member okay, alright.

ADV SELEKA SC: Yes.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: And at that very point Mr Linnell says, I have a draft and everybody is oh do you have a draft, let us see. And he has put together a draft media release. And he took you through that.

DR NGUBANE: That draft ...

CHAIRPERSON: Except before I am not sure that I follow the point because I expect your point to be that by that time I thought you said by that time the board knew that he was using ENS or whoever. Because Dr Ngubane's point is as a
10 board we did not have a problem with Mr Linnell playing whatever role he was playing. Our problem arose when he contracted certain service providers. So I am trying...

ADV SELEKA SC: Yes.

CHAIRPERSON: To follow your point here.

ADV SELEKA SC: No correct. Because my point was and I understand what the Chairperson is saying. My point was insofar as you are saying he was incurring costs and you could not allow that I am saying costs had already been incurred by Mr Nick Linnell because he rendered the drafting
20 of documents prior to meeting with the board. When he meets with the board they are told this is how the documents he has drafted.

If costs was a concern before you endorsed his services – the invocation of his services I would expect you say to the chairperson, well Chair we even stopped him right

there when he gets introduced to us. We stopped him right there saying, how dare you draft the documents when you have not been endorsed by this board?

DR NGUBANE: Well probably I must say in hindsight one can come to those conclusions. But every time you know Linnell looked acceptable until came the actions that implied that he was already employed. You know the statement that was agreed was not the same statement – media statement that went out. That was another gripe that the board had
10 against the chairman. Because certain things were agreed but what was published was not what they had agreed.

CHAIRPERSON: Yes I think we – we will get to that charge – that charge. Well I would – I think the point that Mr Seleka is making is when the board allowed Mr Linnell to do some work starting with him producing his draft media – the draft statement or media statement or whatever one would have expected that if there was an issue about costs the board would raise the issue to say okay now are we starting to incur financial costs from this moment or are we not going to
20 be charged for this? Or something like that. At what stage do we incur costs? That is one approach.

Another approach is where you know that there will be costs but you think you know in the scheme of things the costs will really be minimal because you are dealing with very important issues here so therefore you are saying

whatever costs relate to today cannot be too much. So you do not bother to ask or to stop him because you have in mind that whatever costs really in the light of the important issues maybe urgent issues that must be discussed you need the assistance of this person and you do not think that the cost will be too much. So that is what I can think of you know. Either you think there will be no cost or you think there will be cost but look that can be dealt with later because it cannot be R1 million.

10 And I think Ms Klein said R18 million in the context of Eskom really is nothing.

DR NGUBANE: No we are not rich – we were not so rich.

CHAIRPERSON: So – so I can imagine I mean if I put myself in the position of that meeting I can – I can understand if somebody said, look I do not – I thought that at that stage we would not be charged for that day because there was still to be some further discussion about what was the rates and that was not going to be dealt with at the board level. It would be dealt with by somebody else or a smaller
20 committee. That I can understand but then the understanding would have to be both sides - Mr Linnell and the board.

But another one is to say, we did not expect him to work for nothing so we knew he – there would be costs but it was not going to be a big issue. I mean whatever amount

could not be too much you know. So that is why we did not bother to ask – to stop him and ask. That is what I can think of.

DR NGUBANE: Chairperson, I am not too familiar with this area. However, from what I understood from the Chairman of Audit and Risk is, that Mr Linnell was already contracting a company in England in London. But she can explain those ...[intervenes]

CHAIRPERSON: Ja, ja.

10 **DR NGUBANE**: ...those quarrels which happened.

CHAIRPERSON: Ja, ja, ja.

DR NGUBANE: Yes.

CHAIRPERSON: But I think what, at least for me... Mr Seleka, where do we find the charges? I want to go to the charges so I can... you see, I understand the first charge Dr Ngubane against Mr Tsotsi.

ADV SELEKA SC: Page 303, Chair.

CHAIRPERSON: Of which bundle?

20 **ADV SELEKA SC**: The Eskom Bundle 9(8). Eskom Bundle 9(8).

CHAIRPERSON: 9(8)?

ADV SELEKA SC: 9(8).

CHAIRPERSON: At what page?

ADV SELEKA SC: Three, o, three.

CHAIRPERSON: Three, o, three?

ADV SELEKA SC: Yes. The board minutes of 30 March 2015.

CHAIRPERSON: Okay alright. So like the first charge is:

“The director, that is Mr Tsotsi, procured the services of an external consultant, Mr Nick Linnell, the consultant to provide consulting services to the company without following the company’s prescribed procurement processes of informing the board of his actions. In doing so, the director crossed the line from being a non-executive director to exercising executive power without the requisite authority.”

10

Based on the exchange that I have had with you and your responses to some of my questions, it seems to me that what you say was really a problem with Mr Linnell.

It is not what is written here. What is written here, is what you have not articulated as problematic to the board, namely without following the company’s prescribed procurement processes or informing the board of his actions. So, what do you say to that?

20 In other words, this appears to be saying, the board was kept in the dark about this man that the chairperson, namely Mr Tsotsi who services the chairperson procured whereas it is common cause that he introduced the man to the board. What do you say?

DR NGUBANE: Well, I presumed the impression that he

imposed Mr Linnell on the board.

CHAIRPERSON: Yes, but how could he do that? The board was how many members?

DR NGUBANE: In other words, he should have first said: Send a memo to the BTC or Tender Committee and say, I need to employ this man. Can you do a process of procurement whether it is sole source or it is an open tender. You know. Here was a person without any procurement process, just suddenly working for Eskom.

10 **DR NGUBANE**: That is what I think was the motivation or formulation of this.

CHAIRPERSON: Yes but let us take it step-by-step.

DR NGUBANE: Ja.

CHAIRPERSON: In terms of what you articulated earlier on ...[intervenes]

DR NGUBANE: Yes.

CHAIRPERSON: ...as what was problematic about Mr Linnell to the board. You agree that it is not reflected in this charge. Maybe it is reflected in another charge but I am just
20 talking about this one.

DR NGUBANE: No, I am trying to explain Chairperson.

CHAIRPERSON: Yes, yes.

DR NGUBANE: That the way Linnell came, I would say it is like a Spaza Shop, you know. Something just happens without proper processes. I think that is what I reflected

here.

CHAIRPERSON: Yes but that maybe what is reflected here.

DR NGUBANE: Yes.

CHAIRPERSON: But that is not what you said to me prior.

DR NGUBANE: No, I agree Chairperson.

CHAIRPERSON: You agree?

DR NGUBANE: I agree.

CHAIRPERSON: Yes, okay alright.

DR NGUBANE: But ...[intervenes]

10 **CHAIRPERSON**: Yes?

DR NGUBANE: You know, on reflection. I cannot just bring a consultant in an organisation and say carry on working. So I think Audit and Risk must have seen it from this light whereas to us, generally, he was a fine gentleman. He was really knowledgeable. He was contributing good thinking. You know. So let us go on with it. But they are taking it from the straight and narrow.

CHAIRPERSON: But now you are referring to the Audit and Risk Committee and I think it is not the first time.

20 **DR NGUBANE**: They are the ones who formulated these things.

CHAIRPERSON: They are the ones who formulated the charges?

DR NGUBANE: That is right.

CHAIRPERSON: Oh, okay. But they came to be involved

with Mr Linnell after the board?

DR NGUBANE: Well ...[intervenes]

CHAIRPERSON: Mr Linnell was introduced to a full board meeting.

DR NGUBANE: That is correct.

CHAIRPERSON: Yes. And he participated in that board meeting, in the discussion on certain issues..

DR NGUBANE: That is correct, Chairperson.

CHAIRPERSON: And then, at a certain stage, was it said
10 that the Audit and Risk Committee should be assisted by
him?

DR NGUBANE: No, sir.

CHAIRPERSON: The board did not say that?

DR NGUBANE: The ministers appointed the Audit and Risk.

CHAIRPERSON: Yes.

DR NGUBANE: As responsible for employing the
investigator.

CHAIRPERSON: Okay, okay, okay.

DR NGUBANE: I think that is when this whole thing...

20 **CHAIRPERSON:** Okay, okay. But at the time when the
meeting, at which he was introduced, that is the meeting of
the board, when it came to an end.

DR NGUBANE: Yes.

CHAIRPERSON: What is your recollection of what the basis
was on which the meeting ended as far as his role was

concerned?

DR NGUBANE: We were busy trying to fix the procurement process.

CHAIRPERSON: Yes.

DR NGUBANE: We had not gone far.

CHAIRPERSON: Yes.

DR NGUBANE: And then the minister came. I mean, we... Sorry. Probably... let me just speak for myself. I was quite happy with Mr Linnell.

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

DR NGUBANE: You know, we interacted and so on.

CHAIRPERSON: Yes.

DR NGUBANE: But then came this change.

CHAIRPERSON: Yes.

DR NGUBANE: And then it left my lap, as it were.

CHAIRPERSON: Ja.

DR NGUBANE: Ja.

20 **CHAIRPERSON:** Well, as far as I remember, he was only introduced in the board meeting that happened after the minister had left.

DR NGUBANE: Yes.

CHAIRPERSON: Yes, that is your recollection too?

DR NGUBANE: Yes.

CHAIRPERSON: Yes. So maybe Mr Seleka might assist. My understanding was that, in terms of the transcript and the

minutes, was that by the end of that meeting of the board, either the decision of the board or the contemplation of the understanding of the board was that Mr Linnell would assist one or other committee in regard to matters connected to this investigation. Is your understanding the same?

DR NGUBANE: It is the same but this was an informal discussion ...[intervenes]

CHAIRPERSON: Informal, yes. No, no. That is fine. So now, to the extent that anybody could blame Mr Tsotsi in
10 terms of processes at that stage, then the board would be equally to blame, would it not be?

Because he brought this man to the board and it was up to the board to say to him: Mr Tsotsi, this is not the way. If you want this man to help us, go to whatever committee or write a letter. Or: We do not want to have anything to do with him at all. But it did not say that.

So what do you say to the proposition that if Mr Tsotsi was to blame for not following any procurement processes, then the board must be blame too because it did not object
20 and it did not say to him use proper procedures.

DR NGUBANE: Except Chairperson that, as I say, it was an informal discussion. We did not have the power, except through the Tender Board Process, or later on after the minister had assigned it to Audit and Risk, we did not have the powers to employ him.

CHAIRPERSON: No, no. But what you did have the power to say as a board, is to say: We will not deal with Mr Linnell and we will not allow him to be involved in the board until there has been a formal process complied with for him to be employed. You did have power to say that, is it not? And that was not said.

DR NGUBANE: Well, I agree.

CHAIRPERSON: Yes.

DR NGUBANE: I presume this is what Mr Phule was talking
10 about.

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

ADV SELEKA SC: And to the extent... Well, let me get one thing out of the way as well. That Mr Linnell was imposed. So that also falls away. He was a fine gentleman, knowledgeable and we said as the board: Let us get on with it.

CHAIRPERSON: The board... [laughing]

ADV SELEKA SC: [laughing]

CHAIRPERSON: The board, at least insofar as Mr Tsotsi is
20 concerned, this board was not weak towards him. It could take him on. That is why it was able to charge him. So how could he impose somebody on this board?

DR NGUBANE: Well, he came and said to the presidency: I want this man to do the work.

CHAIRPERSON: [laughing] Well, if you say Dr Ngubane.

Well, because he said the president said this is the person we must use. That might be different if that... if he did say that but that certainly is not him imposing. Then it... [laughing] So do you accept that, it cannot be said to have imposed him?

DR NGUBANE: No.

CHAIRPERSON: Yes, you accept? Okay.

DR NGUBANE: Yes.

ADV SELEKA SC: Then here is an important, other point.

10 Mr Ngubane, you are saying the minister mandated or instructed Audit and Risk to appoint an investigator?

DR NGUBANE: That is correct, Chair.

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

CHAIRPERSON: Or investigators?

DR NGUBANE: Correct.

ADV SELEKA SC: Investigator, Chair.

CHAIRPERSON: Ja. Oh, ja.

DR NGUBANE: Well or any entity.

20 **ADV SELEKA SC**: Any entity investigator. Now, that reminds me of something. What Ms Suzanne Daniels says in her affidavit about the Melrose Arch meeting.

CHAIRPERSON: I am sorry, Mr Seleka. I am terrible sorry.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Please, do not forget what you wanted to say. Based... Dr Ngubane, based on the discussion we have

had in regard to the first charge. It seems to me that the second charge would be affected by the same answers. Now the facts... the second charge says:

“The consultant commenced with his work to the knowledge of the director and without the Board of Directors being informed that work had commenced within the company.

10 The director was aware that no contract of engagement for the consultant have been concluded.

Thus, exposing the company to non-compliance with applicant’s virtues and procedures. Mr Tsotsi stated that there was no contract with Mr Linnell and no payments have been made.”

That is okay. But that first part of the charge, that would also apply to the board when the board, basically, embraced Mr Linnell. It new that that at time there was no contract.

DR NGUBANE: That is correct, Chair.

20 **CHAIRPERSON**: Yes. So you would accept that what you said in relation to the first or your concessions in relation to the first would apply to this one?

DR NGUBANE: But of course, Chairperson. Let us not forget that Mr Tsotsi claimed that the presidency had done all governance and legal work.

CHAIRPERSON: Yes.

DR NGUBANE: On this process.

CHAIRPERSON: Yes, yes.

DR NGUBANE: But that document was not forthcoming.

CHAIRPERSON: Yes, ja.

DR NGUBANE: The exact... the lack of trust then coming up.

CHAIRPERSON: Yes, yes, yes. But in terms of saying that the board had not been informed of a contract or it started work without the contract. The fact of the matter is that
10 when he was introduced the board knew that there was no contract yet. That the board embraced him until he began to come up with certain ideas that the board was not happy with.

DR NGUBANE: Yes, sir. But I am saying, behind all this ...[intervenes]

CHAIRPERSON: Ja.

DR NGUBANE: ...is the lack of trust.

CHAIRPERSON: Yes. No, no, no. I understand that. I understand that. I am just looking at for now.

20 **DR NGUBANE**: Ja.

CHAIRPERSON: I am just looking at what was the... what was... how strong were these charges? What was the...? Or was there a strong basis for the charges? Were they...? Was there no basis for the charges?

That is what I am looking at. So that is how I look at it.

But I understand what you are saying the lack of trust which you emphasised even much earlier.

DR NGUBANE: Ja.

CHAIRPERSON: Ja. Okay. Mr Seleka.

ADV SELEKA SC: Yes, Chair. Quickly on this. The transcript Dr Ngubane shows, Eskom Bundle 12, page 424. For Dr Ngubane. 424 is captured there, saying:

10 “Well, can I suggest that we have taken a decision to suspend the people. And you then lead the committee that is dealing with these matters. What is the way forward?”

I mean, arguing all these things, whether it is voluntarily or what. We have taken the decision to suspend the individuals.”

Then Mr Linnell comes in and you addressing him when you say:

“Can you then lead the committee that is dealing with these matters?”

That is one. Number two ...[intervenes]

20 **CHAIRPERSON:** That seems to link with what I was saying earlier on.

ADV SELEKA SC: Yes.

CHAIRPERSON: When I said, my impression was that at the end of the board meeting, the contemplation was that Mr Linnell would continue assisting or would assist other

committees.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja, okay, okay.

ADV SELEKA SC: Yes, Chair. And it is confirmed by the chairperson. Then he specifically mentions the committees. He mentions P&G.

“There is also people in Governance Committee which committee would be doing the suspension issues.

10 Audit and Risk will be doing the operational work around the investigation itself but the People in Governance has to do the substantive HR issue.

In other words, recall each of the executives. Tell them, is there any reason not to suspend you?

That process, we would like you to assist as well.

Mr Linnell says: Certainly, I can. And to you he... You know, his response to you. That is where he explains his reputation as an individual versus a lawyer who will still get clients elsewhere. And you say to him:

20 “But Nick, we are contracting with you.”

CHAIRPERSON: [laughing]

DR NGUBANE: Oh.

CHAIRPERSON: [laughing]

ADV SELEKA SC: [laughing]

DR NGUBANE: Well, I was saying that as an individual.

[laughing]

CHAIRPERSON: [laughing] But of course, you appreciate that, at least part of the reason why I am looking into these charges in a way that I am doing and that is part of why I think Mr Seleka is doing the same, is because for me it does look quite strange how the board turns on Mr Tsotsi, you know.

We will look at the other charges but if you take these first two. You have a situation where he did not do things
10 behind the board's back. He brought the man to the board, introduced him and the man spoke. The board was happy with this man. Was happy to work with this man.

And then, but now the board turns around a few days later and says: You brought this man without procurement processes, without the approval of the board. It sounds strange. [laughing]

DR NGUBANE: Well, I presume that is how families break up.

CHAIRPERSON: [laughing] Continue Mr Seleka.

20 **ADV SELEKA SC:** Chair, we can come to charge three in a short while.

CHAIRPERSON: Ja.

ADV SELEKA SC: But look at how Mr Tsotsi addresses charge four and five.

CHAIRPERSON: Charge?

ADV SELEKA SC: Charge four and five.

CHAIRPERSON: Yes. Well, let us hear first what charge four says.

ADV SELEKA SC: Yes. Charge four says:

“The company...

That is page 304.

“The company is in the process of establishing the inquiry and addendums...

Or:

10 “...and the director’s actions, put the integrity of the process in the inquiry itself at risk. The director’s conduct has undermined the reputation of the board.”

And that is how he addressed you, Dr Ngubane. He says:

“Mr Tsotsi stated that the idea of the inquiry had been accepted by the board.

20 Therefore, he did not understand what this accusation was about as well as all the internal actions around it.

He had never done anything alone and had only introduced Mr Linnell. All other actions had been done by the board.

He had voluntarily consulted the board with the view that he was carrying out the instruction of the

Minister of DPE.”

DR NGUBANE: But I presume that will come clearer when they discuss the media statement, in that, people’s names were mentioned in the media statement which had not been approved by Audit and Risk and this created an expectation.

On top of that, Mr Linnell had said that Mr Tsotsi would oversee the inquiry. Those are some of the issues that came up in that discussion.

CHAIRPERSON: But now that you have talked about charge
10 four.

DR NGUBANE: Yes, Chair.

CHAIRPERSON: Let us deal with it. Ja.

DR NGUBANE: So ...[intervenes]

CHAIRPERSON: Because I want to be clear. I do not want to say you said this if you did not say that. So charge four says:

“The company is in the process of establishing the inquiry and the director’s actions put the integrity of the process and inquiry itself at risk. The director’s
20 conduct has undermined the reputation of the board.”

What conduct on the part of or what actions on the part of the director and what conduct on part of the director, that is Mr Tsotsi, is being talked about in this charge?

DR NGUBANE: The fact that he is going to oversee the

inquiry.

CHAIRPERSON: Yes.

DR NGUBANE: When it is very clear that no board member
...[intervenes]

CHAIRPERSON: Ja.

DR NGUBANE: ...must ...[intervenes]

CHAIRPERSON: Oversee.

DR NGUBANE: ...interfere or oversee.

CHAIRPERSON: Yes.

10 **DR NGUBANE**: It must be an external independent
investigator.

CHAIRPERSON: Yes, this is what this charge is talking
about?

DR NGUBANE: That is what it is.

CHAIRPERSON: Okay is that only that or something else
as far as you recall?

DR NGUBANE: Even the Department of Public... I think the
Communication people in Public Enterprises called him about
this.

20 **CHAIRPERSON**: Ja.

DR NGUBANE: That is was endangering the credibility
...[intervenes]

CHAIRPERSON: Yes.

DR NGUBANE: ..of the investigation.

CHAIRPERSON: Okay, okay, okay. Basically, there is the

idea that he would oversee the investigation.

DR NGUBANE: Absolutely.

CHAIRPERSON: But he could not oversee the investigation unless it was the board which decided that he was going to oversee the investigation, is it not? He could not take it upon himself.

DR NGUBANE: But he never asked the board about that authorisation.

CHAIRPERSON: Yes, but he had this idea. And what did
10 he do? Did he act on this idea?

DR NGUBANE: No, no. The problem is that this went out into the public space.

CHAIRPERSON: Yes. Well, which might mean, it might be a duplication of the other charge then that talks about the releasing of the statement because of the media statement.

DR NGUBANE: That is right.

CHAIRPERSON: So it may be that it is a splitting of charges. I am not sure. But Mr Seleka, you take it from there.

20 **ADV SELEKA SC**: Yes, thank you Chair. Well, the problem with charge four is that, it is completely silent on what are the actions of the director that put the integrity of the process at risk. It is completely unclear as to what is the conduct of the director that has undermined the reputation, allegedly undermined the reputation of the board.

DR NGUBANE: Well, Chairperson. This is the danger of trying to craft documents like this without a lawyer, you know. Because I am quite certain if it was a legal document, it would have been taken care of all those.

CHAIRPERSON: Ja.

ADV SELEKA SC: H'm.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Then ...[intervenes]

CHAIRPERSON: Did the Audit and Risk Committee included
10 Ms Klein, is it not?

ADV SELEKA SC: It include ...[intervenes]

CHAIRPERSON: Or not?

ADV SELEKA SC: No. But it included ...[intervenes]

CHAIRPERSON: Because she was P&G. Ms Klein.

ADV SELEKA SC: She was P&G, Chair. I beg your pardon for speaking over ...[intervenes]

CHAIRPERSON: Was she not an ordinary member at Audit and Risk?

ADV SELEKA SC: There was a lawyer at Audit and Risk,
20 Ms Naidoo. Revashnee Naidoo. She is an attorney.

DR NGUBANE: Oh, alright.

CHAIRPERSON: H'm.

DR NGUBANE: Probably ...[intervenes]

CHAIRPERSON: Well, maybe she was not there on the particular day. [laughing]

ADV SELEKA SC: [laughing]

CHAIRPERSON: Okay alright. But on what... on your understanding Dr Ngubane of what charge four entailed. It seems that it was a duplication of the charge, charge three or a splitting of charges in relation to the one where he was being charged with sending out a media statement.

DR NGUBANE: It is correct, Chairperson. It says the same thing.

CHAIRPERSON: The same thing, ja. Okay.

10 **ADV SELEKA SC:** Let us go into that one then which is charge 3. Dr Ngubane, that is page 303.

“There is the director authorised the commissioning of the media statement in relation to an inquiry into the affairs of the company with the assistance of the consultant without the knowledge and/or consent of the board.”

That is the first part of the charge.

20 **DR NGUBANE:** Well, that statement was not what had been worked through with P&G and Audit and Risk. It was a different statement that went out.

ADV SELEKA SC: Yes.

DR NGUBANE: That is... that was the problem.

CHAIRPERSON: Well, when you say that. Are you saying what the P&G Committee said? Or is it what you know for sure? I am asking because Ms Klein was asked this

question because she also said, the media statement that went out ...[intervenes]

DR NGUBANE: Yes.

CHAIRPERSON: ...was different from the media statement that the P& G Committee had approved. But Mr Seleka drew her attention to the relevant statement or statements. I cannot remember.

But in the end, it seemed that the statement that went out was or may have been the statement that was approved.

10 So I am just asking whether, when you say the two were different. Is it what the P&G Committee reported to the board and the board then worked on that basis?

Or is something you know for sure that the two were different?

DR NGUBANE: Well, I was told Chairperson.

CHAIRPERSON: You were told? Ja, okay. Mr Seleka, do you want to take it from there?

ADV SELEKA SC: Thank you, Chair. So that first part that he commissioned a media statement in relation to the inquiry
20 into the affairs with the assistance of the consultant without the knowledge and/or consent of the board.

It cannot be true that statement standing alone. The next one is what you have been talking about Dr Ngubane which is the statement which gets ...[intervenes]

CHAIRPERSON: I am sorry, Mr Seleka. I am not sure why

you say the first one cannot be true?

ADV SELEKA SC: Yes, I want to hear mister ... Dr Ngubane's ...[intervenes]

CHAIRPERSON: Or you are putting the questions ...[intervenes]

ADV SELEKA SC: Yes, I am putting that to Dr Ngubane because I have related that, as you were going in and out saying you are speaking to Romeo about the person who should draft the statement, Mr Nick said: I have one.

10 **DR NGUBANE:** Yes.

ADV SELEKA SC: I have drafted one.

DR NGUBANE: Yes.

ADV SELEKA SC: And then everybody said: Oh, let us see which one it is. Let us see here. You can work through that statement. That the board then knew, had knowledge and crafted the statement with him. That standing alone cannot be correct.

DR NGUBANE: But the statement that they put out was different. That is what I was told.

20 **ADV SELEKA SC:** Ja.

DR NGUBANE: It is not what had been agreed.

ADV SELEKA SC: Okay but that is the second part of the charge.

DR NGUBANE: They ...[intervenes]

CHAIRPERSON: Well, why do you say second part?

Because the first part also refers to the commissioning of a media statement or you... the commissioning in that context means approving?

ADV SELEKA SC: That is ...[intervenes]

CHAIRPERSON: As oppose to releasing?

ADV SELEKA SC: Briefing him to do a media statement.

Yes, Chairperson.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** Okay I think that is what... so you are saying that first statement in charge three says the director authorised...

ADV SELEKA SC: So it can be him authorising in the first place because the board did that. Two, the commissioning, which is the drafting of the statement, the Board does it with him. Now 3, the charge is not saying the statement that you drafted is different from the one we told you to draft, agreed with you to draft, on the drafting side. Those are the drafting side.

20 **CHAIRPERSON:** Okay, maybe let us put it this way. Do you accept that the board did approve or direct that a media statement be prepared?

DR NGUBANE: That is correct.

CHAIRPERSON: That is correct, okay. Do you accept that the board contemplated that Mr Linnell would play a

role in the preparation of that statement.

DR NGUBANE: That is true.

CHAIRPERSON: You accept, okay.

ADV SELEKA SC: Then, Chair, we can go to the next point. Thank you, Chair.

10 “This media statement consequently fell into the public domain. The media statement contained numerous inaccuracies and misinformation which may lead to the company facing potential legal action from third parties named therein.”

Dr Ngubane, the first part is, the emails exchanged between – that you referred us to, between the board and Mr Baloyi, he talks about the leak coming from the DPE side. Ms Klein testified – I think she writes that also in her affidavit, that the media statement was leaked. Mr Baloyi says the leak was from the side of the DPE and he concerns about this charge.

20 **DR NGUBANE:** If someone leaks a wrong statement, well it does not matter who leaks it. If I draft a statement that claims things that are not true, when someone leaks it, I am still responsible.

CHAIRPERSON: Well, you see, you have to be clear in your mind what the objectionable conduct is on the part of the person concerned. Are you charging the person with including in the statement certain things that he should not

have included? That is one thing. Or are you charging the person with leaking the document to the media? That is another thing. Or are you charging the person with both? You see? So I could include certain things in a statement which has not been approved but because I think they are good things to include but I intend to take it to the board and get – and see if they approve and then once they have approved I can then send out to the media but I could include things that have not been approved by the board in
10 the statement with a view that I will release it without the board having approved these other things that I have included and I will release it to the media for whatever purpose, having approved these other things that I have included and I will release it to the media for whatever purpose, you know, if I have a purpose, that is that.

Now it is also possible that having included in a draft statement certain things that I was still going to take to the board, I get out of the office for 30 minutes, 15 minutes, somebody comes in, sees the statement, takes it,
20 makes a copy, goes out and then decides this is what they will do, leak it. That is just for argument's sake.

So it is possible that somebody other than the drafter might leak it. It just depends who had access to it, when. So if also you want to charge the drafter with negligence, that is also one thing. If you want to charge

the drafter with intentional conduct in leaking it, that is another thing. You might say you were negligent, you should never have left the office without locking it if it had this kind of important document when you knew people come in and out of your office. That is something.

So the question is, which one was he being charged with?

DR NGUBANE: Well, the issue comes with a level of trust because I can draw up a statement and leak it myself, so...

10 **CHAIRPERSON:** But, of course, you have got to have a purpose of reason. One of the questions I asked Ms Klein, when she was saying the Chairperson, Mr Tsotsi, leaked the statement was but why would the Chairperson do that? Chairperson of the board, he knows that the board needs to approve the statement, why would – what would he be seeking to achieve because it might be a matter of a few minutes or an hour or two, then the board will have approved and what he sent out is what has been approved by the board. What is it that he would have been in a rush
20 to achieve and do something like that?

DR NGUBANE: Well, I cannot really say this, but in my opinion, the board did not believe this was an accidental leak.

CHAIRPERSON: But if the board did not believe it was an accidental leak, I would have expected it to at least apply

its mind to say - before it concludes that it was intentional, I would have expected it to apply its mind to say but this is the Chairman of the board why would he do that? If they can find a rational explanation then they can accept that conclusion. But if they cannot think of a rational explanation, I would expect somebody to say no man, but why would he do that, what would he be seeking to achieve?

DR NGUBANE: Well, I think the board would never have
10 allowed a statement which said Mr Tsotsi would oversee the investigation to go out.

CHAIRPERSON: But the one sure way of making sure that he had no chance of ever doing that would be to leak such a statement to the media without the board having approved. In other words, his chances of him overseeing the investigation are better if he takes this suggestion to the board than if he leaks this suggestion to the media without the board having looked at it because then the board would be furious with him. So what would he be
20 wanting to achieve?

DR NGUBANE: Well, egos work in different ways. That is all I can conclude.

CHAIRPERSON: That is all you can say. Okay, thank you. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. The one thing, Dr

Ngubane, is that the emails which are the 23rd, seven days before 13 March, this meeting of 13 March. Mr Baloyi asks a rhetorical question in the email of 28th, one of those emails, he says suppose Nick was endorsed by the board and there is no formal process of how media briefings of the board decisions are handled and there is a leak of information from DPE to the media, can we still pass a vote to the Chairman, or the proper way will be to define, develop a proper process? That is what he asked.

10 **DR NGUBANE:** Well, I think that process had been developed because Mr Romeo Kumalo was put in charge of the press issues. So think the process was there.

CHAIRPERSON: I am sorry, Mr Seleka, what process was that? I think I missed that, what was your question?

ADV SELEKA SC: No, there was no process, Chair.

CHAIRPERSON: What was your question?

ADV SELEKA SC: Mr Baloyi is asking a question.

CHAIRPERSON: Ja?

20 **ADV SELEKA SC:** He is saying suppose we do not have a process on how we do media briefings,. on how we handle decisions of the board and then there is a leak at the DPE, can we still pass a vote of no confidence or should we first rather develop a process and put it in place? That is what he is asking. Dr Ngubane ...[intervenes]

CHAIRPERSON: What is the relevance of that process he

is talking about in relation to the charge that he, that is that is Mr Tsotsi, either commissioned a media statement in relation to the inquiry without the knowledge of the board or consent of the board or that he leaked an unauthorised media statement. What is the relevance of Mr Baloyi's question?

ADV SELEKA SC: Remember - well the relevance is this, Chair, he is saying that allegation, he is referring to this allegation, may not stick because one, and his question
10 seems to suggest that but we do not have a process in place how we handle media statements to brief the media and suppose the leak was made at DPE's side, can we still say Mr Tsotsi is to blame? Can we still charge him or do a vote of no confidence in him?

CHAIRPERSON: Well ...[intervenes]

ADV SELEKA SC: That is his question, Chair.

CHAIRPERSON: Yes but if the charge is Mr Tsotsi authorised the commissioning of the media statement without the knowledge or consent of the board, that is the
20 commissioning part.

ADV SELEKA SC: Yes.

CHAIRPERSON: So that question, on your understanding of the commissioning part is not relevant to that.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: It is relevant to the question of leaking.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes.

CHAIRPERSON: Now he is saying if we do not have a process for handling media, the releasing of media statements...

ADV SELEKA SC: Yes.

CHAIRPERSON: ...can you still charge..

ADV SELEKA SC: And that the leak was not from Mr
10 Tsotsi but from the DPE.

CHAIRPERSON: You see, that part I understand.

ADV SELEKA SC: Okay.

CHAIRPERSON: It is the process that I do not understand.

ADV SELEKA SC: Okay, okay.

ADV SELEKA SC: Okay, okay.

CHAIRPERSON: Because if he says what if the statement was leaked from DPE, how can we charge Mr Tsotsi?

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** How do we know?

ADV SELEKA SC: Yes.

CHAIRPERSON: That I would understand.

ADV SELEKA SC: Yes, yes.

CHAIRPERSON: It is the process that I do not understand in that context because ...[intervenes]

ADV SELEKA SC: Yes. No, I understand it, Chairperson.

CHAIRPERSON: Yes, if you say – I mean, I have had an exchange with Dr Ngubane on the question of if you say Mr Tsotsi leaked the statement...

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: You know, for what purpose?

ADV SELEKA SC: Yes.

CHAIRPERSON: You know? If you say well, there is a possibility somebody else other than him leaked it
10 therefore we cannot be sure that it is him, that I understand.

ADV SELEKA SC: Yes, yes.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: No, I read the entire paragraph.

CHAIRPERSON: Yes.

ADV SELEKA SC: Where Mr Baloyi asked a question.

CHAIRPERSON: Ja.

ADV SELEKA SC: Dr Ngubane can then make whatever he wishes to make in regard components of that paragraph,
20 that statement that Mr Baloyi made.

CHAIRPERSON: I thought this one about the leaking I thought Dr Ngubane has rested his case. Ja, I think he has rested his case on that one.

DR NGUBANE: Then that is fine, Chair. I am not sure what evidence Mr Baloyi had that the DPE had leaked the

statement.

CHAIRPERSON: Yes. No, no, that is fine. We have dealt with the leading allegation, ja.

ADV SELEKA SC: That is right. Ja because that touches on the board's prior knowledge even before they make decisions on the charges on the 30th, prior knowledge that the possibly is that the leak could not have come from Mr Tsotsi's side, could have come from somewhere else.

CHAIRPERSON: It goes the question of who else except
10 Mr Tsotsi had a copy of the statement. Do we know? Do the minutes and the transcript reveal anything, Mr Seleka?

ADV SELEKA SC: No, they do not, Chair.

CHAIRPERSON: I think we can move to charge 5.

ADV SELEKA SC: Yes. But, Chair, you find Mr Tsotsi – we read quite extensively how he deals with the media issue.

CHAIRPERSON: Sorry?

ADV SELEKA SC: I say when Ms Klein was here we read that portion on page 304 where he addresses the charge 3,
20 that paragraph 2 on that page:

“Mr Tsotsi reported...:

Then he goes into it, Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: And that is where he shows Dr Ngubane that he consulted with P & G.

CHAIRPERSON: That charges has a lot of things written under it, it is a whole story.

ADV SELEKA SC: But that is Mr Tsotsi's address.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: Yes. So he is responding to the charge, Chair.

CHAIRPERSON: Ja, let is hear what the charge is first then we can talk about who says what about the chair.

ADV SELEKA SC: Oh.

10 **CHAIRPERSON:** It says:

“The director’s actions did not meet the minimum requirements of the standard of care expected of him as a director of a company and member of the board.”

“Without looking at the specifics of the charge...”

Okay, that is Mr Tsotsi responding. Dr Ngubane, are you able to tell me what actions on the part of Mr Tsotsi are being referred to here, under this charge, 5.

20 “The director’s actions did not meet the minimum requirements of the standard of care expected of him as a director of a company and member of the board.”

DR NGUBANE: Well, trying to bring in a suspended official to replace an official that we had suspended was not proper behaviour.

CHAIRPERSON: But is that what charge 5 was about or...?

DR NGUBANE: It was also interfering with management and ordering management to do certain things.

CHAIRPERSON: Operational matters?

DR NGUBANE: Ja.

CHAIRPERSON: Okay, Mr Seleka?

ADV SELEKA SC: Dr Ngubane, do you recall Mr Tsotsi's – how he dealt with that? Because that you find on page
10 305 and I believe you are talking about Mr Sekhasimbe.

DR NGUBANE: Yes.

ADV SELEKA SC: Yes. At the bottom of page 305 Mr Tsotsi says:

“In respect of the nomination of Mr Sekhasimbe as acting CE, Mr Tsotsi stated that although Mr Sekhasimbe was a good candidate, he could not be considered because he was on suspension.”

I cannot be any more direct than that.

DR NGUBANE: No, but he is lying, I am sorry to say. He
20 did raise the issue of Mr Sekhasimbe.

CHAIRPERSON: Okay, so ...[intervenes]

ADV SELEKA SC: Chair, sorry. Sorry, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: This is not Mr Tsotsi talking, this is the minutes taken and records what was discussed at the

meeting and you will see on the next page, Dr Ngubane, the Chair gives:

“The Acting Chairman thanked Mr Tsotsi for his presentation and asked members if they wanted to clarify on any items.”

And nobody says to him but you are lying.

CHAIRPERSON: I may be I misunderstanding, I thought what Dr Ngubane is saying when he responded before you came in. Just want to follow because I was going to have
10 a question. I want to make sure we are all on the same page.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: I though Dr Ngubane was saying this charge insofar as it related to Mr Sekhasimbe sought to charge – the board sought to charge Mr Tsotsi for raising the idea that somebody who is in suspension should be considered for an acting appointment. Is that what you were saying?

DR NGUBANE: What I am saying, Chairperson, the
20 nomination of the GE for generation would be Acting Chief Executive. When you suspend other GEs, the nomination of Mr Sekhasimbe to head technology and commercial, spoke of an agenda on the part of Mr Tsotsi.

CHAIRPERSON: Okay, let me try and understand now. As you understand the position, Mr Tsotsi nominated Mr

Sekhasimbe.

DR NGUBANE: Yes.

CHAIRPERSON: For a certain position and what position was that?

DR NGUBANE: To replace Mr Koko.

CHAIRPERSON: To replace Mr Koko.

DR NGUBANE: As the acting GE for commercial and technology.

CHAIRPERSON: During Mr Koko's suspension?

10 **DR NGUBANE:** During Mr Koko's suspension?

CHAIRPERSON: Yes.

DR NGUBANE: And the GE for generation to replace the CEO who was suspended.

CHAIRPERSON: Yes, yes. And who was the GE for generation, do you remember?

DR NGUBANE: Mr Mongezi.

CHAIRPERSON: Mr Mongezi?

DR NGUBANE: Ja.

CHAIRPERSON: So did Mr Tsotsi nominate two people?

20 **DR NGUBANE:** That is right.

CHAIRPERSON: Namely Mr Sekhasimbe to take Mr Koko's position in an acting capacity.

DR NGUBANE: Ja.

CHAIRPERSON: And Mr Mongezi to take the position of acting GCE?

DR NGUBANE: That is correct.

CHAIRPERSON: Okay. Now are you saying there was nothing wrong with him raising those names or nominating them, as such, the problem was that the board saw his conduct as part of a certain agenda?

DR NGUBANE: Because it could not be done.

CHAIRPERSON: Because it could not be done.

DR NGUBANE: So there should – there would be reasons behind those nominations.

10 **CHAIRPERSON:** Yes, yes. Now what was the agenda that the board thought he was pursuing in nominating these two men?

DR NGUBANE: Sekhasimbe was involved with the Chairman ...[intervenes]

CHAIRPERSON: With Mr Tsotsi?

DR NGUBANE: With Mr Tsotsi. In some issues, probably the Sumitomo transformers issue. I am not too sure, I do not have the document in front of me.

CHAIRPERSON: Ja.

20 **DR NGUBANE:** He had just promoted Mr Ntsokolo to be head of generation.

CHAIRPERSON: But not including among the Group Executives that were being suspended and this was raised why not exclude him when generation is very directly responsible for load shedding. So those were those

elements.

CHAIRPERSON: But to the extent that there was somebody who was not included among the executives to be suspended which the board thought he should be suspended, why would the board not on the 11 March when it was discussing the areas that would be investigated, why did the board not say but what about generation, let us include generation to be investigated as well because if it did so then the executive leading generation would also be
10 suspended?

DR NGUBANE: That issue was raised, Chairperson, and he defended it.

CHAIRPERSON: Yes.

DR NGUBANE: Yes.

CHAIRPERSON: But the board should have overruled him.

DR NGUBANE: Well... I agree. But he defended it so I am sure on the audio that should be there, that defence.

CHAIRPERSON: But if he defends it and you, as the
20 board, acquiesced to it, why then charge him about this because at the meeting it means you, as the board, created the impression that you were accepting that - his view.

DR NGUBANE: But we stopped that, Chairperson.

CHAIRPERSON: No, what I am saying is, it was like –

okay, no, maybe I am not putting it correctly. He defended it and you left it at that.

DR NGUBANE: No but we refused to accept it.

CHAIRPERSON: You refused to accept it.

DR NGUBANE: Yes.

CHAIRPERSON: But effectively, if you, as the board, wanted any particular area to be added among the areas that would be investigated, it was within your power to add that area and if you added that area, the executive leading
10 that area would have been suspended as well.

DR NGUBANE: Well, that is true, Chairperson.

CHAIRPERSON: Yes, okay, alright. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. Then, Dr Ngubane, there is an allegation that ...[intervenes]

CHAIRPERSON: Are you moving to put certain things to him?

ADV SELEKA SC: Ja, arising from this, Chair.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: But I am moving on to another point,
20 they are related, about the acting appointments, that you were on the phone the Presidency and ...[intervenes]

CHAIRPERSON: Well, let – if you are moving to another one, I want to finish off with this.

ADV SELEKA SC: You want to finish off this.

CHAIRPERSON: You see, Dr Ngubane, my impression

and – it is not a final impression, witnesses can still come and put their evidence and I can change my impression. My impression seems to be that these charges against Mr Tsotsi had no basis really, the board just came up with some charges and put them to him and got rid of him. Or rather, Dr Ngubane, they put some charges together, scared him a little bit. [laughs]

DR NGUBANE: Well, I wish Chairperson would say...

CHAIRPERSON: And then sent you and was it Mr
10 Pamensky or somebody else, sent the two of you to talk to you?

DR NGUBANE: Well, it would be better, Chairperson, if you said the reasons for suspending the four executives had no basis.

CHAIRPERSON: Well, that too. I have – I think I expressed that *prima facie* view to other witnesses to say, you know, including Mr Linnell, who defended the suspension, but I think I put to him and to – ja, I put to him and I think to Ms Klein that I have got some difficulty with
20 the soundness of the reason for suspending the executives and I said I have some difficulty with the soundness of the charges against Mr Tsotsi and I said well, there seems to be something also about the removal of Mr Baloyi, you know? So this board was quite busy during this time.

So I do not know if you want to say anything but I

am just giving you the benefit of what is going on in my mind when I look at this charges and I look at Mr Tsotsi's departure and you might wish to say something.

DR NGUBANE: Well, the climate created by the suspension of the four executives became very toxic and I think Mr Tsotsi suffered from that toxicity.

CHAIRPERSON: Yes. Well, you were saying earlier on it would be better if I said the suspension of the executives had no basis. Is that what on reflection you have come to?

10 **DR NGUBANE:** Absolutely.

CHAIRPERSON: Okay, thank you.

ADV SELEKA SC: No, he has told us that in his previous appearance, Chair.

CHAIRPERSON: H'm?

ADV SELEKA SC: He said that in his previous appearance.

CHAIRPERSON: Oh, okay, no. I must have missed it then.

20 **ADV SELEKA SC:** That is why I am not asking him about it, Chair.

CHAIRPERSON: Oh, I ...[intervenes]

ADV SELEKA SC: Because it might change.

CHAIRPERSON: Oh, I must have missed it. No, no, no, thanks, let us continue. I mean it is important to look at things as far as possible objectively even if you were

personally involved.

ADV SELEKA SC: Yes.

CHAIRPERSON: Especially when there has been some time to reflect, it is important to be able to say look, here I think there was a problem, here, you know, here we feel strong but here we can see that there was a challenge, you know, maybe this should have been handled differently. Ja, okay, thank you.

ADV SELEKA SC: You would recall, Chair, that is where
10 Dr Ngubane said to you if they went to court the board would lose the matter. If the executives went to court, they board would lose the matter.

CHAIRPERSON: I remember him saying when we were talking about why the board the executives the amounts that they paid.

ADV SELEKA SC: Correct.

CHAIRPERSON: I remember him saying well, if they went to court they could win and come back but I did not understand that to mean he was saying he accepted that
20 there was no basis for the suspension. I thought he was saying look we might have thought we are on strong grounds but we accepted that if they went to Court we were at risk, the court could go this way or that way, therefore it was better to settle you know so that's the context in which I understood it, ja.

Okay, Mr Seleka.

ADV SELEKA SC: Thank you Chair. Dr Ngubane I won't deal with the veracity or otherwise of the charges, the Chairperson has dealt with that but here there was an allegation – there is one that you on phone and now moving onto the Acting Executives, those who were appointed to act, that you were on the phone apparently saying that you are with the Presidency's office on the phone and you came with the names A should not act, he is
10 not suitable, D should be the one who ...[indistinct – laughing] and you went down the list identifying who was the preferred candidate to act and who was not.

DR NGUBANE: Chairperson that is a total exaggeration, I only consulted the Minister on the issue of the acting CEO, as well as the proposed GE for Commercial and Technology that's what I wanted to – in fact the Board asked me to ascertain this. I might have taken long because you know getting through to the Minister is not easy.

CHAIRPERSON: Yes, yes.

20 **DR NGUBANE:** You know we have to make a number of tries to get him.

CHAIRPERSON: Okay.

DR NGUBANE: It wasn't about names that we were coming from the Minister, it was to clarify the doubts that we had about the nomination of these two people.

CHAIRPERSON: Where did the names of the people who were going to be – who had been proposed to act in the Executive position come from?

DR NGUBANE: Well what I remember whether these two people that I went to phone about, the there was Ms Venete and Mr Masangu, I cannot remember how those names came but I know about these two.

CHAIRPERSON: Yes and those two came from where, those names?

10 **DR NGUBANE:** I think Mr Tsotsi you know if I remember well, because we didn't even know them, you know we ...

CHAIRPERSON: Okay, because Mr Tsotsi said when he came to testify on, well when he came last time, before last week if I recall correctly he said he arrived at the P&G meeting after lunch when he was coming from lunch, he arrived when the P&G Committee had been going on for something like ten minutes discussing and he found the committee discussing names of people who were going to act in the positions of the executives. He says he was
20 surprised that the P&G committee was discussing names because only he and Ms Mabude if I recall correctly knew the people who could act, new executives or managers or whatever because the rest of the board members were new people and he said he raised this to say how can you discuss names of people that you don't know, you know,

because I think he said I am the only one who can talk about people who are going to act, or about these people. He then said if I remember correctly, Mr Seleka will help me, he said Dr Ngubane responded by saying these names came from the Minister, the Minister said these are the people who should act. That – is my recollection the same as yours Mr Seleka.

ADV SELEKA SC: Chairperson it is as if you have read his response and you are repeating it.

10 **CHAIRPERSON:** Oh, okay.

ADV SELEKA SC: That – those minutes of the 30th of March where the charges are Chairperson, page 305, he says:

“With respect ...”

This is now Mr Tsotsi responding to the charges.

“With respect to the appointment of an acting Chief Executive Mr Tsotsi reported that when he had joined the P&G meeting ...”

Now this is ...[intervenes]

20 **CHAIRPERSON:** But if what he says is essentially the same as what I have said then you don't have to repeat it, but if there is something important then you can repeat it.

ADV SELEKA SC: I don't have to Chair, he does at the end say he was advised that Dr Ngubane had engaged with the Minister of DP who had suggested the people that is

the people, the acting people, and Dr Ngubane has that paragraph there in front of him.

So this will not be news.

CHAIRPERSON: Except that it is important to distinguish between two things, I said that he said Dr Ngubane responded at the meeting and said the names came from the Minister, but from what you are reading it seems that he said he was told that it was Dr Ngubane who said the Minister provided these names.

10 **ADV SELEKA SC:** Yes, the Minister he says he was advised.

CHAIRPERSON: Yes, what do you say to that?

DR NGUBANE: This is totally not true Chairperson, as I say I phoned the Minister to deal with the issue of people we did not want to see in acting positions.

CHAIRPERSON: Ja, yes. So the phones that you mentioned, two, were they people that ended up acting or was it people who the Board did not want to allow them to act?

20 **DR NGUBANE:** They were people that we said Tsotsi proposed for those positions.

CHAIRPERSON: Ja.

DR NGUBANE: And the Board would not accept this.

CHAIRPERSON: Oh, okay, ja. Mr Seleka?

ADV SELEKA SC: Thank you Chair. So Dr Ngubane the

two positions of the Acting CEE was you say you knew about that one.

DR NGUBANE: No, no, no we disputed that and therefore I could call the Minister to ask if he had authorised that this happened and she said she hadn't and she said she was only interested in not being consulted on the name of the acting CE, but she had not authorised that the CE for Generation should become the Acting CE.

ADV SELEKA SC: So who decided who should be the
10 acting CE?

DR NGUBANE: CE?

ADV SELEKA SC: Yes, CFO.

DR NGUBANE: We nominated Mr Sithemba Khosa[?].

ADV SELEKA SC: Okay so the Board nominated him?

DR NGUBANE: Ja.

ADV SELEKA SC: Then who nominated the person to act in the place of Mr Dan Marokane? Is that Edwin Madelane or ...[intervenes]

DR NGUBANE: Ja, ja Dan Marokane was replaced by
20 ...[intervenes]

ADV SELEKA SC: Or Edwin Mahlangu?

DR NGUBANE: Yes, that is why I am saying that one I am not too clear how it happened.

ADV SELEKA SC: Yes, not it is fine. You don't – then Edwin Madelane, the board nominated him.

DR NGUBANE: No.

ADV SELEKA SC: Who nominated?

DR NGUBANE: I can't remember that. I presume he was nominated during the meeting, but I can't remember who came with him.

ADV SELEKA SC: Then the last one we are left with is Ms Nonkululeko Dlamini, you say about you don't know also how she came about?

DR NGUBANE: No didn't.

10 **ADV SELEKA SC:** Do you know that – sorry, did you want to say something?

DR NGUBANE: I say there was no dispute or discussion about her name.

CHAIRPERSON: Yes.

DR NGUBANE: So with Abraham Massau as well there was no discussion.

CHAIRPERSON: Okay.

ADV SELEKA SC: So whatever Mr Tsotsi might have tried to do he was overruled?

20 **DR NGUBANE:** In terms Acting CE?

ADV SELEKA SC: Yes.

DR NGUBANE: Ja, and Technology and Commission.

ADV SELEKA SC: Yes, because he has dealt with it there and this is where I want to go to, Nonkululeko Velete has testified here provided an affidavit that she had been

called the day before by Mr Koko to provide her CV to Mr Koko, Mr Koko who we understand from Ms Velete was at that time at Melrose Arch.

In fact asking Ms Velete or Dlamini to come to him at Melrose Arch.

DR NGUBANE: Well I don't know anything about that.

ADV SELEKA SC: That later that day in the evening they met while Ms Dlamini/Velete was going back home and Mr Tsotsi said to her I may be suspended tomorrow along with
10 other executives, and there is a possibility that you will act in the position of the FD. It wasn't Mr Koko, but you didn't correct me. So Mr Koko meets and he says to her tomorrow I may be suspended along with other executives and there is a possibility that you will act in the position of the FD.

DR NGUBANE: But the suspensions for the three came with Mr Linnell and Mr Tsotsi.

CHAIRPERSON: I think Mr Seleka you need to clarify what point you want to make and I think it may be that you
20 just want to hear whether Dr Ngubane knows anything about those meetings.

ADV SELEKA SC: Correct Chair.

DR NGUBANE: Sorry sir, what I am trying to get at if the President according to Mr Tsotsi had named the people to be suspended, how then does somebody else come in on

that issue, because it is coming from above via the Chairperson of the Board to the Board, so ...[intervenes]

CHAIRPERSON: I think where Mr Seleka is going is here, and he is going to later come in if I am not identifying his point correctly. Ms Dlamini, Velete, Dlamini?

ADV SELEKA SC: She said Dlamini, she was previous Velete, now Dlamini.

CHAIRPERSON: On the 10th, that is now before the date of the meetings where the suspensions were decided, on
10 the 10th she says she was called by Mr Koko to a meeting in – she said Mr Koko told her and asked her to come to a meeting at Melrose Arch, but as I understand the position she was busy in another strategic session with Ms Molefe, the FD, and other people, so he told Mr Koko that he would not be able to and then Mr Koko asked her to send him her CV. What I can't remember is whether at that stage in that – now I think he didn't tell her then but later in the evening after work the two met at a cafe or McDonalds according to Ms Dlamini's evidence and they met for about 20 minutes
20 and Mr Koko had not received a CV from Ms Dlamini, even though Ms Dlamini thought she had sent it so she sent it to him, they talked and he then told Ms Dlamini at that meeting after work that they were – he was going to be suspended – there were other executives to be suspended the following day or in the next few days, I can't remember,

following day, there was a possibility that Ms Dlamini could be asked to act in the position of FD.

Is that – do you have any idea how Mr Koko could have known before the meeting of the Board on the 11th that there were people who were to be suspended he was one of them and already talking about who could be acting in one of the positions?

DR NGUBANE: Well what intrigues me Chairperson Mr Tsotsi got names given according to him by the President,
10 how did Koko know that he was one of the people to be suspended, because this whole thing came through the Chairman and Linnell.

CHAIRPERSON: Well the other part which Mr Seleka was still going to put to you is this Dr Ngubane that Ms Daniels has also testified within Parliament and here that on that same day, the 10th, she was called to a meeting at Melrose Arch by Mr Koko and they – she waited for him in a restaurant, he came after an hour or so and then paid the bill and then took her or led her to certain offices at
20 Melrose Arch where they met Mr Salim Essa, and Mr Salim Essa according to Ms Daniels asked Ms Daniels what the procedure at Eskom is if you want to suspend an executive and Ms Daniels says she responded after she looked at Mr Koko and got the impression that Mr Koko was giving her the go-ahead that she should respond and then after that

Mr Salim Essa according to Ms Daniels told her that there were four executives to be suspended, either the following day or in the next few days at Eskom and mentioned them actually by name, including Mr Koko.

Mr Daniels says when I heard this I looked at Mr Koko but he was cool, he was calm, he was not shocked or anything and then she continues, but the gist of it is that according to Ms Daniels Mr Salim Essa on the 10th of March already knew that they there were to be suspensions
10 of certain executives but interestingly his list of people to be suspended already on the 10th had a fourth person, namely the financial director, whereas according to Mr Tsotsi and Mr Linnell the two of them had come from Durban with three names from that Durban meeting.

Now if or rather Mr Marokane confirmed that that day he was called by Ms Daniels and - to a meeting and they met and she shared this information with Mr Marokane of what had happened at Melrose Arch, so Mr Marokane has confirmed that much.

20 So now if this evidence is true of Ms Daniels and of Ms Dlamini it would appear that Mr Koko may have known about the suspensions for the 11th and it seems that Mr Salim Essa, somebody from outside of the Board, knew about the impending suspensions, but also was the first person that we hear about who had the FD included in the

list so when the Minister comes to the Board on the morning of the 11th and talks about four areas that must be investigated and includes finance that is already in line what according to Ms Daniels Mr Salim Essa told her then.

So Mr Seleka wanted to put this to say here is some evidence we have had, do you have some comments but if it is true this evidence it would suggest that certain people may have known about the suspension, certain people, or somebody outside of Eskom might have known about the
10 suspensions even before certain members of the Board got to know about it.

DR NGUBANE: Well the only person probably who can clarify this is Mr Linnell, how the information of suspension oh, and the Chairman himself, how the information of suspension then got to other people, I don't know.

CHAIRPERSON: Well one of the things that Ms Daniels says with regards to that meeting with Mr Salim Essa is that she says Mr Salim Essa introduced himself to her as an advisor to the Minister. So you have Salim Essa, if it
20 is true, introducing himself to Ms Daniels as an advisor to the Minister and already having a list of executives to be suspended that includes the Financial Director then you have the Minister coming to the Board the following morning and saying the areas to be investigated are the following and for the first time finance is included because

in Durban it was not included. That is part of the evidence.

Mr Seleka I hope I covered what ...[intervenes]

ADV SELEKA SC: You have covered that chair, you have covered that. May I add something to that because you see Dr Ngubane Ms Daniels goes further to say that this man who has introduced himself as the Minister's - the advisor to the Minister she says Mr Essa proceeded to tell me that there would be an investigation by an independent
10 firm into the affairs of Eskom. An independent firm into the affairs of Eskom, and you said the Minister said to the Board the Minister instructed Audit & Risk to appoint an investigator.

Here is another point of similarity between what Ms Daniels is saying she heard the day before and what the Minister says the next day at the meeting because we know that ultimately Dentons, a law firm, gets to be appointed.

DR NGUBANE: It is too complicated.

ADV SELEKA SC: It is too complicated.

20 **CHAIRPERSON:** And talking about the addition of Ms Molefe's name among the executives to be suspended evidence was led some time back – no, no even recently by her that actually recently not some back, was led that at some stage she had met with Mr Salim Essa when she had a meeting with Mr Koko, I think they were at a meeting at a

restaurant or some place and they were discussing a certain issue relating to work, I think Ms Molefe had made a certain presentation to either the Board of Chairperson, that was I think before your time, with the previous Board, and the Chairperson was not happy with the presentation so Mr Koko said he and Ms Molefe would work on it, but then ...[intervenes]

ADV SELEKA SC: That's Matjilla Chair, Collin Matjilla.

CHAIRPERSON: Oh I am sorry, I am terribly sorry yes, it
10 is the second time. It is not Mr Koko, it is Mr Matjilla.

ADV SELEKA SC: Collin Matjilla.

CHAIRPERSON: Who was acting CEO at some stage.

ADV SELEKA SC: That is right.

CHAIRPERSON: I am sorry, it is the second time, it is just that the one is Mr Matjilla the other one is Machella Koko so I think I get confused. So Mr Matjilla, so Mr Salim Essa had spoken to Mr Matjilla and arrangements had been made for Regiments, Mr Eric Wood had come and put a proposal or an agreement that they wanted to
20 conclude with Eskom and Ms Molefe rejected that because they said there was no compliance with procurement processes, and there was quite an issue between her and Mr Matjilla about that. Mr Tsotsi got to know about it I think at some stage also had discussed it, but ultimately it would seem Mr – Ms Molefe's rejection of that may well

have caused the agreement not be proceeded with, but it may well be that if it is true that Mr Essa in his list had Ms Molefe added as one of the executives to be suspended in circumstances where at the Durban meeting her name was not included it may well be that Mr Essa remembered that this financial director was problematic previously, so she needs to be suspended.

You might not able to say anything but we are mentioning all of these things, certainly I am mentioning
10 them because they may go to the point of whether there were people outside of Eskom, outside of the Board who were influencing decisions or who were ...[indistinct] certain decisions to be taken inside Eskom, we are mentioning it because it is part of their picture, yes, okay.

ADV SELEKA SC: Dr Ngubane in your time, let's deal with this because the terms of reference by Mr Linnell they had a retired judge as proposed. The proposition to have a law firm doesn't have that aspect so the retired judge seemed to have come from Mr Linnell, his terms of reference are
20 rejected ultimately and he says one of the reasons is on the basis that he proposed the retired judge. I don't know whether you know or not know about that.

DR NGUBANE: No, I know that was in his statement, in the written statement but I don't think that was the reason why he was not confirmed.

ADV SELEKA SC: Yes, so he says Ms Mabude indicated that the Minister said you can appoint a retired judge, that's what he says, but at Melrose Arch the meeting of the 10th of March ...[intervenes]

DR NGUBANE: Sorry?

ADV SELEKA SC: Oh, you want to comment on it?

DR NGUBANE: Just a question, is it not only the government that can appoint a retired judge?

CHAIRPERSON: Oh you are asking?

10 **DR NGUBANE:** I am asking.

CHAIRPERSON: Well I know that in the documents Mr Linnell said the Minister said only the President can appoint a judge, I think, I don't know whether on the recommendation of the Minister of Justice or whatever and whatever and Mr Linnell seemed to think that was not a valid reason blah-blah-blah, well I know that there are judges who, retired judges who get appointed to do private arbitrations, and when they do private arbitrations they don't get appointed by the President, they get appointed by
20 the parties who do those applications or by arbitration organisations but if you are going to for example do a commission you have got to be appointed by the President if it is a presidential commission. I think you can – there are provincial commissions as well in that case I am not sure if – I think there have been judges who have done

what I consider to be provincial commissions, but I don't know – I know that if a judge is going to perform what is called a service or render an assistance in terms of Section 7 of the Judges Remuneration and Terms and Conditions of Employment Act that requires the Minister of Justice and I think the President as well.

So though I – maybe it depends how it would be done but that kind of investigation would have been I think for me a bit unusual for a judge to be involved in, but ja
10 that's all I can say.

ADV SELEKA SC: But I am going there, the differences between the two approaches in the sense that the one approach you have the terms of reference which has a presiding person, envisaged to be a judge, on the other hand at Melrose Arch a law firm is envisaged. So three people, four people, a retired judge a law firm. You see the distinction between the two?

DR NGUBANE: You are right.

ADV SELEKA SC: But there is a commonality of purpose.

20 **CHAIRPERSON:** Was a law firm mentioned by Mr Salim Essa?

ADV SELEKA SC: He says law firm Chair.

CHAIRPERSON: Oh okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay. So he already knows that it is going

to be a law firm even before the board meets?

ADV SELEKA SC: An independent – may I read:

“Independent firm”.

CHAIRPERSON: Oh he say independent firm?

ADV SELEKA SC: Ja into the affairs of Eskom.

CHAIRPERSON: Yes. Ja it does not make a difference.

ADV SELEKA SC: Ja.

CHAIRPERSON: Ja.

ADV SELEKA SC: So this – but what succeeds seems to be
10 the advice of the Minister’s advisor. The plan that succeeds.
You understand what I am saying?

DR NGUBANE: Well I do I mean.

ADV SELEKA SC: Okay.

DR NGUBANE: The Audit and Risk I am not sure what
process they followed. I think it was an open tender. If I
remember.

ADV SELEKA SC: It was not.

CHAIRPERSON: For the appointment of Dentons?

DR NGUBANE: Yes.

20 **ADV SELEKA SC:** It was not.

DR NGUBANE: It was not?

ADV SELEKA SC: It was not. There is – these law firms
were approached say they solicited request for proposals
from them.

DR NGUBANE: But is that not an open – that should be an

open tender.

CHAIRPERSON: Yes I mean that...

DR NGUBANE: They solicit proposal.

CHAIRPERSON: That seems to have been irregular itself.
Ja.

DR NGUBANE: I mean ten people can come with proposals.

ADV SELEKA SC: And Dentons because I do not have much
time Dr Ngubane Dentons was disqualified twice by your
Audit and Risk. The meeting of the 10th April 2017 is
10 disqualified because it lacked technical specifications or
does not comply with it. The meeting of the 12th or 14th April
2015 again the person who were conducting this
solicitization of proposals they recommend that Denton not
be appointed. They say Joost – what is that law firm?
Adams.

DR NGUBANE: Adams ja.

ADV SELEKA SC: And – should be the one appointed. So
on the minutes they say Dentons response was evaluated
the results of which indicated that there was insufficient
20 information to determine that the supplier was technically
acceptable. That is the 10th April 2015 minutes – minutes of
Audit and Risk Committee. Mr Khumalo is there, Ms Carrim
and Ms Mabude is the chairperson. Four days later the
same committee meets and here they say:

“The committee stated that they needed to

understand”

Oh I must read – first read this.

“Dentons the contract conditions were not accepted. The price quoted is not fixed. The total price quoted and resources provided may increase based on clarification sought from Eskom with regard to the Terms of Reference. The scope of work may not be concluded in three months period as indicated.”

10

So their contract conditions are not accepted.

“The committee stated that they needed to understand”

I am reading fast – I am skipping a paragraph which is important.

“Commercial reported that on based on the above negotiations outcomes they recommended the following that the rates based contract be concluded with Savage Jooste and Adams. The Chief Executive be authorised with the power to delegate further to take all necessary steps including the signing of the agreements, consents and other documentation necessary related thereto. The committee that – the committee

20

stated that they needed to understand the following – following the previous meeting held on 10 April 2015 wherein Dentons was recommended as the supplier of choice why Commercial was now recommending Savage Jooste and Adams Commercial reported that Dentons stated that they cannot cap their prices they needed to – they needed to foremost understand the scope of the work.

10 Dentons also submitted their own proposed Terms and Conditions and stated that they were not comfortable with the Eskom NEC type contract. Commercial sent an urgent email to Dentons.”

Now despite the recommendation this committee decides that Dentons – negotiations must be pursued with Dentons so that Dentons can adjust its price and so on and so forth.

After being disqualified two times. Did you know
20 about that as the board?

DR NGUBANE: No. Well the board committees have delegated approval authority.

CHAIRPERSON: Do they not report back on the full board or their chairpersons. Do they not report back to their full board from time to time on their activities to say this what we

have been busy with, this is what we are doing, this is what we should – we will be busy within the next few months or something like that?

DR NGUBANE: The practice Chairperson is that they report quarters.

CHAIRPERSON: Yes okay.

DR NGUBANE: When we prepare the shareholder's report.

CHAIRPERSON: Yes.

DR NGUBANE: But even then it is not a full ...

10 **CHAIRPERSON:** Report.

DR NGUBANE: Process it is just a matter of this contract was granted or you know.

CHAIRPERSON: Okay.

DR NGUBANE: That sort of.

CHAIRPERSON: Okay. And then they might not tell you whether they followed processes or not.

DR NGUBANE: No.

CHAIRPERSON: You would assume them to have followed the processes.

20 **DR NGUBANE:** With the delegation of authority no.

CHAIRPERSON: Ja. It is their decision.

DR NGUBANE: Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: And then Dr Ngubane Dentons gets appointed by letter dated 17 April 2015. They say they

commenced their work on 20 April 2015. But that first week you will recall is a meeting with some of the board members and in fact the board in Cape Town to understand the scope of work.

DR NGUBANE: Yes.

ADV SELEKA SC: You recall that?

DR NGUBANE: Yes.

ADV SELEKA SC: Dentons starts the work which essentially gets stopped six weeks into their job. And this is what we
10 came to understand from Ms Klein. The reason why you stopped Dentons work is because the board or Audit and Risk ultimately came to the board said what we are receiving from Dentons is nothing new – nothing we do not know from their investigation. You know that?

DR NGUBANE: No.

ADV SELEKA SC: You know that you wrote a letter to the Minister.

DR NGUBANE: No, no, no.

ADV SELEKA SC: To that effect.

20 **DR NGUBANE:** No. Scope – I mean the – the whole investigation was structured in task orders. Task order number 1 would start and it researched or reported on all the areas particularly the issue of correctness of information that comes to the board. That work was done.

And when they reported they had covered all those

areas and actually proved that the information coming to the board was substantially correct.

Now there was no budget for the Dentons work. They could have moved to Task order number 2 if there was a budget as far as I understood it. But because they had produced sufficient information on the issues that were pressing at Eskom, financial challenges, failure of Generation and maintenance, the delay in bringing to stream the new build. You know all those areas were covered.

10 There was no way we could go on without getting a budget for it. But we are satisfied that what they have covered would help us to change the organisation. And it did change.

ADV SELEKA SC: Yes. Over the weekend because we went and did a search Dr Ngubane after we heard the testimony of Ms Klein. Ms Klein's testimony was unequivocal and she repeated this to the board – to the Chairperson that the view was that there was no new information coming from the investigation.

20 There is a letter we have obtained and I – I see it has not been included Chairperson in the second – Eskom Bundle 13 which is the Reference Bundle. I will provide you with that letter because there you write to the Minister and you talking about –

“There is nothing unfamiliar coming out of Dentons

investigation. Nothing that we are not familiar with.”

DR NGUBANE: Well I would like to see that letter.

ADV SELEKA SC: Yes.

CHAIRPERSON: [Mumbling and talking over one another].

ADV SELEKA SC: No I will show it to you.

CHAIRPERSON: Ja. Is it – is it here?

ADV SELEKA SC: It is – a copy is here.

CHAIRPERSON: Oh somebody was looking for it.

ADV SELEKA SC: They will print it out Chairperson.

10 **CHAIRPERSON:** Okay. We are at four minutes past six.

ADV SELEKA SC: Yes.

CHAIRPERSON: And I am alive to the fact that it has been a long day Dr Ngubane.

ADV SELEKA SC: To Dr Ngubane.

CHAIRPERSON: Where are we in relation to finishing?

ADV SELEKA SC: Ja let us – Chair I could finish off in fifteen minutes.

CHAIRPERSON: And basically those parts where you just want to let him comment if he has a comment.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: He might not have a comment you can ...

ADV SELEKA SC: Just put it to him.

CHAIRPERSON: Ja.

ADV SELEKA SC: Ja.

CHAIRPERSON: Go through it – put it to him.

ADV SELEKA SC: Yes.

CHAIRPERSON: If he has a comment he will comment if he does not he does not have a comment he will not have.

ADV SELEKA SC: Yes. So I should finish then quickly. So Dr Ngubane the impression that gets created here is

1. The appointment – well the engagement of Mr Linnell is phased out. He gets removed.

Dentons gets appointed and Dentons the intention is to appoint it for three months but Dentons only works for six
10 months and a bit.

CHAIRPERSON: Six weeks.

ADV SELEKA SC: Six weeks thank you Chair.

CHAIRPERSON: Or seven weeks.

ADV SELEKA SC: They say about seven weeks and according to how – what I have seen it is even hardly seven weeks and they are stopped. And they are stopped the timing of the stopping is interesting because they are stopped on the 11 June 2015 and they are told please provide us with a report. From then on they say they
20 concentrate on drafting the report. By that time you had signed a settlement agreement with Mr Matona and with Mr Dan Marokane.

Mr Matona 15 May 2015 then Mr Dan Marokane I think is 25 May 2015. You are still negotiating with Ms Tsholofelo Molefe.

DR NGUBANE: Well you know if I remember well Dentons officially stops somewhere in July.

ADV SELEKA SC: Yes but in their report they explain. You, the board said on the 11 June 2015 received instructions from you that provide us with a draft report. Then they no longer do the investigation. They concentrate on drafting the report.

CHAIRPERSON: So they – after the six week – seven weeks they were preparing their report until sometime in July?

10 **ADV SELEKA SC:** In July.

CHAIRPERSON: So in other words what they are saying is initially you as the board said three months.

DR NGUBANE: Yes.

CHAIRPERSON: And I guess that three months would be part investigation and part preparation of the report? But they say within six or seven weeks of them having started investigations the board told them to stop and prepare their report. And now that is like that – the investigation they had done had taken less than half – or maybe it had taken half

20 the period...

ADV SELEKA SC: Well [00:14:14]

CHAIRPERSON: It had taken less than half the period.

ADV SELEKA SC: Yes.

CHAIRPERSON: Of three months. Am I right? My mathematic might be.

ADV SELEKA SC: Ja but your thought – the principle in your idea Chair is correct.

CHAIRPERSON: Ja.

ADV SELEKA SC: The investigation took less than half of the period that was agreed with them which is three months.

CHAIRPERSON: Ja.

ADV SELEKA SC: That is what the Chair is saying.

DR NGUBANE: But they finished Task order number 1 – they completed that.

10 **CHAIRPERSON:** Well the –

DR NGUBANE: The report they produced.

CHAIRPERSON: I think the idea would be that if you had told them you have three months to finish this job. Finishing the job included submitting their reports. You as the board would have no business going to them within that period saying stop what – stop what and prepare the report. Because the period you would have given them your interest would simply be we want a report by the expiry of three months. So whether they used most of the three months
20 investigating and less of the time in preparing the report or most of the time preparing the report and less time investigation you said to them you have three months to do the job and the job means investigating and submitting a report. But now you as the board came back to them and said, stop investigating now, prepare your report.

DR NGUBANE: Well, it is difficult to answer that without going back to the documentation.

CHAIRPERSON: Yes.

DR NGUBANE: They were not reporting to the board directly.

CHAIRPERSON: Ja, ja, ja.

DR NGUBANE: You know.

CHAIRPERSON: Yes.

DR NGUBANE: They were reporting to Audit and Risk.

10 **CHAIRPERSON:** Ja, I think Ms Klein's evidence was along the lines that I am suggesting, namely... or that Mr Seleka is saying but at the end of seven weeks after they had started, whether it is the board or Audit and Risk on behalf of the board but one of them said stop the investigating now. Prepare your report. And then they prepared their reports.

DR NGUBANE: Chairperson, if I remember well. I think there was also the issue of money.

CHAIRPERSON: Okay.

DR NGUBANE: I am not sure about that.

20 **CHAIRPERSON:** Yes.

DR NGUBANE: But I think Audit and Risk can answer that.

CHAIRPERSON: Yes, okay.

DR NGUBANE: Yes. Seemingly, somewhere the issue of money crept in.

CHAIRPERSON: Okay, okay. Mr Seleka.

ADV SELEKA SC: Yes, I did not want to belabour the point about Dentons' report but according to Dentons in the Reference Bundle, Eskom Bundle 13, the affidavit is contained there. And Mr Noor Kapdi specifically says that:

“We were not able to full investigate aspects of the terms of reference relating to national key points. IN addition, we were not able to corroborate and verify certain information provided to us in the course of interviews and in certain reports that were provided to us.”

10

But we have dealt with the contents of the report when you were here the first time.

DR NGUBANE: Ja.

ADV SELEKA SC: That it was a mid-point report.

DR NGUBANE: Sure.

ADV SELEKA SC: Ja. You remember the deep-dive-shallow-dodge scenario?

DR NGUBANE: Yes.

ADV SELEKA SC: But this is the impression that is created Mr Ngubane. The impression is that the investigation was never the intention of the board or whoever wanted the board take an investigation. Mr Linnell is struck out. Six weeks into the job, Dentons is struck out.

20

CHAIRPERSON: I guess you can add... you can add to that what Dr Ngubane also said. Dentons is given the job to do

this investigation when there is no budget for this job.

ADV SELEKA SC: Indeed, Chairperson.

DR NGUBANE: Exactly.

ADV SELEKA SC: Exactly.

CHAIRPERSON: Ja.

DR NGUBANE: I mean, we were ordered to do the investigation.

CHAIRPERSON: Yes.

DR NGUBANE: But no budget was provided.

10 **CHAIRPERSON:** Yes.

DR NGUBANE: And Eskom was in dire financial strains.

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

ADV SELEKA SC: Yes. And the stoppage of the work by Dentons, as directed by the board, comes conveniently after the settlement agreements have been achieved.

DR NGUBANE: No. No. No, I really do not think that was the case.

CHAIRPERSON: Well, you need to say something about it.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Because if one seeks to test the proposition that there were people who were outside of Eskom who had a certain agenda at Eskom and wanted to have certain people removed and certain people brought in.

And if you test that proposition and say: Well, in the board there may have been people who knew about that

agenda but there may have been people who did not know about that agenda who thought they were just doing their job in making certain decisions.

Then you do say, it is quite strange that these executives gets suspended on the basis that there is a need for a three-months' investigation. It is very serious. They get suspended.

And then two, six or seven weeks into the investigation, the investigation gets stopped. There was no budget in the
10 first place for this investigation.

So why did Eskom embark on an investigation without a budget? Did not somebody say: Hang on! We cannot do this. We do not have a budget.

And then the next thing you say. So even the investigation appears not to have ended up being a full investigation that was contemplated at the beginning.

And then you say, the way the executives, those three executives depart from Eskom has question marks too.

And then you think about Mr Brian Molefe who comes in,
20 Mr Anoj Singh who comes in against the background of the evidence that I said I have heard about them which I say they have not yet dealt with because they have not come here. They will come and deal with it.

You wonder whether this idea of an investigation was not where it originated. Was not simply an excuse to make it

look like there was a good reason for the suspensions and ultimately the removal of the executives and then bring in other people.

And some of the people made within the board might not have been party to this but maybe others were party to this. You think about the role of Mr Salim Essa. If Ms Daniels' evidence is correct. Meetings on the 10th of March.

You say: How come he knows about this because as at the 8th of March, the people that we know to have known
10 about these suspensions of the executives where, according to Mr Tsotsi and Mr Linnell... Just Mr Tsotsi. It was not Mr Linnell it was Ms Dudu Myeni. It was former President Zuma at the time. It was Mr Jabu Maswanganyi who was at the meeting.

Those are the people who knew about the suspensions of executives but at that stage only three, not three. And that at the end of that meeting, according to both Mr Tsotsi and Mr Linnell, the former President said to Mr Tsotsi: You go and test this idea with the board. I will talk to the
20 minister.

You know. So then that is the 8th. Then there is the 9th. On the 9th, at the meeting of the board on the 9th, the question of the suspension of the executives does not get discussed. And then on the 10th.

That means that the board members might have not

been told yet about the suspension of the executives at the time before the meeting of the 11th.

But on the 10th, if Ms Daniels' evidence is correct. Mr Salim Essa knows about this thing. He even knows a friend that would or that the investigation will be conducted by a friend. He might not know the identity of the friend.

So you... it might not be very farfetched to think maybe somebody somewhere or a group of people were working on something that they sold to the, you know, to key-
10 stakeholders or key-people within Eskom. Sold to the president to Dudu Myeni and to Mr Tsotsi.

And Mr Tsotsi came back. Well, the president, after buying into it, told the minister and Mr Tsotsi after buying into it, told the board and then the board made decisions.

So you might not be able to say anything but it is important that you should know what is going on in one's mind.

DR NGUBANE: Yes.

CHAIRPERSON: So that you can, if you have something,
20 you can say. If you do not, you do not.

DR NGUBANE: Well, what I can definitely say Chairperson. I do not remember a single board member on the 9th wanting to approve those resolutions.

CHAIRPERSON: Yes.

DR NGUBANE: And that was the reason a meeting with the

minister was demanded.

CHAIRPERSON: Yes, yes, yes.

DR NGUBANE: And it is only after the minister confirms.

CHAIRPERSON: Yes, yes, yes.

DR NGUBANE: So it cannot be the board members
...[intervenes]

CHAIRPERSON: Yes, yes, yes.

DR NGUBANE: ...who were generating this stuff.

CHAIRPERSON: Yes. No, no. It might not be the board
10 members because they might not have known about the
suspensions at that time.

DR NGUBANE: Ja.

CHAIRPERSON: They might have been told about the
investigation but not the suspensions yet.

DR NGUBANE: Yes.

CHAIRPERSON: So the question is. The people who knew
about suspensions as at the 10th, as far as we know. It was
Mr Tsotsi. It was Mr Linnell. It was Mr Zuma. It was Ms
Myeni. It was Mr Jabu Maswanganyi.

20 **DR NGUBANE**: Ja.

CHAIRPERSON: Ja. But we do not know also whether the
idea of an inquiry and suspensions came from Mr Zuma or
Ms Myeni or whether those ideas came from somebody else
who put these ideas to them and then they liked the ideas
and ran with them. We do not know.

DR NGUBANE: Well, it is a pity that the executives did not want to wait for three months.

CHAIRPERSON: Yes.

DR NGUBANE: Because that would have created a totally different scenario.

CHAIRPERSON: Yes, yes. Well, actually it is good you have mentioned that because, you know, when you were here last time, we talked about the idea of what the position was about them. You said as far as the board was
10 concerned, the board had no problem with them coming back ...[intervenes]

DR NGUBANE: That is right.

CHAIRPERSON: ...after three months. Mr Marokane told me about the letters that he or emails that he wrote to the board soon after he had been suspended, trying to get to understand why he was suspended and so on and so on.

Talking about a milestone that he had helped achieved, Eskom achieved under his portfolio on the 6th of March, two days before his name was included in the Durban meeting.

20 He said, ultimately, when the board did not respond to his letters – I think there may have been two – he came to the conclusion that he was not wanted.

And he said because he knew you, he decided to reach out to you and say: Look... I do not know whether he said. He said it looks like one is not wanted or whatever but he

talked about separation or an exit.

He says you adopted a positive attitude towards it. And I think within two days or so or within a day or so, there were discussions being held with him.

Ms Molefe said that she wrote to the board and Mr Romeo Khumalo and Ms Klein - I do not know whether plus Mr Zethembe Khoza or yourself, I am not sure, met with her.

ADV SELEKA SC: Was Dr Ngubane.

10 **CHAIRPERSON:** Dr Ngubane.

ADV SELEKA SC: Mr Kumalo and Ms Klein.

CHAIRPERSON: Okay, ja.

ADV SELEKA SC: Ms Daniel was also there.

CHAIRPERSON: Ja, she says Mr Romeo Kumalo was the first one to raise the matter of why the meeting took place and he said the board – something to the effect that the board understood or they understood that she had written letters to the board wanting to negotiate or discuss a separation package or something like that and she said
20 she immediately told him no, no, no, that is not what the letters I wrote were saying, I did not write letters that say that and therefore made it clear that she had not approached the board to talk about separating or leaving Eskom but she said Mr Kumalo said look, something like even though you might not have written with that purpose,

you know, the investigation might take quite some time, maybe we should talk about a separation and that is how they ended up talking about a separation. That is what he said she said but she said at some stage Mr Kumalo met with her privately and said he was meeting with her in his personal capacity but the idea was to try and talk to her about accepting settlement or reaching an agreement to leave and she says she threatened to go to court to challenge the suspension and Mr Kumalo said something

10 like you do not want to take on the state of litigate against the state or something like that. But ultimately, she seems to have been paid much more than the maximum of 12 months' salary that the board seems to have given as the maximum to the committee to negotiate with and she was given about I think one year six months or something like that in terms of ...[intervenes]

ADV SELEKA SC: Yes, 18 months.

CHAIRPERSON: 18 months' salary to leave, then she left. So you might wish to say something but it does not give

20 the impression of a board that wanted them back. To say the least it seems to give the impression of a board that was happier if they left but, of course, in the case of Mr Matona you remember that it was put to you that he said he certainly wanted to go back to his job but he was told that was off the table. So we have Ms Molefe who says I

have not said I have not said I want to talk about separation but Mr Kumalo pushed that line, so we ended up talking.

DR NGUBANE: Well, Chairperson, what we knew was that all the suspended executives wanted to come back – well, not all, the three wanted to come back immediately, which was not possible because of the process that had started and that is the understanding I had with going into those settlement negotiations.

10 **CHAIRPERSON:** Of course if they wanted to come back immediately and they went to court because you did not want them to come back immediately, you could have been advised that if they won you could appeal and the three months for the finalisation of the investigation would happen in no time and even if you had to appeal then you could say now we can settle, you can come back because we have no need to kick you out of Eskom anymore, it would not have been a big problem it seems to me.

20 **DR NGUBANE:** Well, Mr Dan Marokane said that he could not miss other opportunities and wait for three months. That was the gist of our discussion. So I said well, I will arrange that we finalise your settlement so you can move on. That was a very amicable discussion. I do not remember very well with Tsholofelo but I think it was again the same issue that we could not get her to come back

before end of three months. Well, she is saying something else but that was not my understanding.

CHAIRPERSON: Ja, ja. Of course what does remain is if the board – if the board's position was look, we are paying you, you are not suffering any financial prejudice and it is only three months and we are happy to have you back, if the court decided that they should come back then it would be the court that would have decided that and it would have decided that having heard everybody. It would have
10 had your reasons for wanting to keep them away but if it did not regard those reasons as sound, that would be the court's decision.

DR NGUBANE: Ja.

CHAIRPERSON: You accept that?

DR NGUBANE: I do.

CHAIRPERSON: Ja. Okay.

ADV SELEKA SC: Ja, Chair, thank you.

CHAIRPERSON: Are we ready to finish?

ADV SELEKA SC: Ja, Chair, and we are at a critical
20 moment in our session. I would like us to finish this.

CHAIRPERSON: Can we take five minutes?

ADV SELEKA SC: Well, I do not know about five minutes, Chair, let me see if I ask one question ...[intervenes]

CHAIRPERSON: Is there one question that you might ask and then that might dispose of everything? If so, ask that

question.

ADV SELEKA SC: I do not think so.

CHAIRPERSON: Or you are not sure?

ADV SELEKA SC: No, I do not think so.

CHAIRPERSON: Okay, what do you want to deal with?

ADV SELEKA SC: I will paint a picture to Dr Ngubane and he can comment on that picture.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** But would that be the last...?

ADV SELEKA SC: That should then end everything, Dr Ngubane.

CHAIRPERSON: Yes, okay, do that.

ADV SELEKA SC: Ja, as I do that, Dr Ngubane, the one ...[intervenes]

CHAIRPERSON: You will put whatever proposition you want to put.

ADV SELEKA SC: Yes. The one executive who went to court immediately was Mr Matona. Mr Matona then went to
20 the CCMA.

DR NGUBANE: Yes.

ADV SELEKA SC: At the CCMA – Chair, I am building up to that, it is taking – getting off the way these other issues. You write in your affidavit that:

“Prior to that...”

Dealing with the CCMA.

“...I had been asked by the board to attend the CCMA proceedings which Mr Matona had instituted against the board.”

So remember last time it was whether you were authorised to go there by the board or whether you went there on your own, you sat in the gallery. Well, in your affidavit in fact you had said – or have said the board asked you to do it.

DR NGUBANE: Yes.

10 **ADV SELEKA SC:** Mr Kapu writes letters and he writes letters at your instance. Before going to the CCMA, advising of the strategy and after coming to the CCMA and he places you at the scene of the CCMA, that he was there with you. Mr Jerry Kapu. I want to be quick – do you want to see the letters?

DR NGUBANE: Well, I do not remember that.

ADV SELEKA SC: Okay, please get the letters. Then ...[intervenes]

DR NGUBANE: But I mean, look, I am not disputing it.

20 **CHAIRPERSON:** Well, maybe tell him what the proposition is in the end and he might say that is not true or that is true.

ADV SELEKA SC: Yes.

CHAIRPERSON: Or he might say I am unable to respond until I see the letters.

ADV SELEKA SC: Yes. All I am saying is, you were involved in that process regarding Mr Matona's labour dispute, so I am correcting what you had said last time by the evidence which is in your bundle.

DR NGUBANE: Okay.

ADV SELEKA SC: And then the letter from ...[intervenes]

DR NGUBANE: Was it not P & G that was dealing with Mr Kapu?

CHAIRPERSON: Well, maybe Mr – I am not sure how
10 important Mr Kapu is because you have accepted - Dr Ngubane has accepted that he was asked by the board to go to the CCMA in regard to Mr Matona's matter.

DR NGUBANE: Yes.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: So he has accepted that.

ADV SELEKA SC: Okay.

CHAIRPERSON: Ja.

ADV SELEKA SC: That is alright. Now this is where I am
20 getting to, Dr Ngubane. The executives – negotiations with them were taking place in May. The first negotiations is on the 4 May 2015.

DR NGUBANE: Yes.

ADV SELEKA SC: The next – well, that is in respect of Ms Tsholofelo Molefe in respect of then Mr Marokane says he called you around about 20 May 2015, after a silence

from the board in respect of his letters. Around about 20 May 2015 his contract is signed on the 25 May and it makes him effective separation on the end of May and he said he leaves on the 1 June.

If you say to the Chairperson the executives wanted to come back immediately, at least you can say that only in respect of one executive, who took you to court, which is Mr Matona.

DR NGUBANE: Matona.

10 **ADV SELEKA SC:** But you cannot say the same about Ms Molefe and Mr Marokane. In fact they requested information from you especially about the terms of reference, we want to know what is going on ...[intervenes]

DR NGUBANE: Sorry, Chair ...[intervenes]

ADV SELEKA SC: We want the terms of reference.

DR NGUBANE: Sorry, Chairperson. Those letters never came to me, I do not know who they wrote the letters to.

ADV SELEKA SC: Yes and ...[intervenes]

CHAIRPERSON: Well, at least Mr Marokane seems to
20 have written to the Acting Chairperson or Chairperson or not?

ADV SELEKA SC: Chairperson, that not till – the first letters are written on the 18 March.

CHAIRPERSON: Oh.

ADV SELEKA SC: They are addressed to Mr Tsotsi.

CHAIRPERSON: Okay.

ADV SELEKA SC: And Mr Phukubje.

CHAIRPERSON: Ja.

ADV SELEKA SC: But that is neither here nor there, Chairperson.

CHAIRPERSON: Ja.

ADV SELEKA SC: Because on the 19 March the board is sitting in a meeting and they accept that they have received these letters from the executives.

10 **CHAIRPERSON:** Yes, okay.

ADV SELEKA SC: It is neither here nor there who they wrote to. Ultimately, it is to you, the board.

CHAIRPERSON: So but the point that Mr Seleka is making, Dr Ngubane, is the only time that Ms Molefe and Mr Dan Marokane are communicating with the board or with Eskom with a view to going back or whatever, it is in May, is that so?

ADV SELEKA SC: It is in May, yes.

20 **CHAIRPERSON:** Ja, in May. So what he is suggesting is that there is no evidence that soon after they had been suspended, apart from Mr Matona, who went to court, there is no evidence that they demanded to be allowed back. What do you say about that?

DR NGUBANE: Well, I can only talk about the reports that we ...[intervenes]

CHAIRPERSON: Yes, that you received.

DR NGUBANE: That they wanted to come back.

CHAIRPERSON: Yes.

DR NGUBANE: And not wait for three months.

CHAIRPERSON: Yes.

DR NGUBANE: Which would have meant, if they went to court and won the case, then the whole investigation would be over.

CHAIRPERSON: Those reports, who was giving the board
10 those reports? Is it ...[intervenes]

DR NGUBANE: I think it was P & G, I am not sure.

CHAIRPERSON: H'm.

DR NGUBANE: Because essentially I was a member of P & G but I was not always at the meetings.

CHAIRPERSON: Ja, okay.

DR NGUBANE: But the whole settlement thing was run through P & G.

CHAIRPERSON: Ja. But at least in terms of what one
20 has heard it does not look like at this stage there is evidence supporting those reports namely that Ms Molefe and Mr Dan Marokane wanted to come back soon after they were suspended. At this stage there seems to be no evidence, maybe somebody from P & G, maybe Ms Klein. She did not tell us that either.

ADV SELEKA SC: Her evidence ...[intervenes]

CHAIRPERSON: Well, what she did say actually – this is interesting, Dr Ngubane, what Ms Klein said was that the reports that the board was getting – I think she said the board, maybe she meant – she said the P & G, I do not know, but she said the reports that they were getting was that the suspended executives actually wanted to leave, not that they wanted to come back [laughing]

DR NGUBANE: No.

CHAIRPERSON: And I said to her now but you may have
10 said the same thing to Dr Ngubane when you were here last time, because I said to her but now if they want to leave on their own why do you give them so much money, it doesn't make sense to me, because in any company if somebody wants to leave they put a resignation and they leave, so why give them money.

DR NGUBANE: Sir I said we knew that if they went to court they will win.

CHAIRPERSON: Ja, that is what you – ja you did say that you know and I did say something but I might not
20 remember exactly what I said but part of it might have been to say but you knew from your side that if you knew that you had not done anything wrong number one, number two, you were paying them while they were on suspension their salaries, so what is the worst that could happen if they come back, if the court says they must come back. Well I

have just said now you could appeal and while the appeal was on the investigation would continue, the investigation ends you say now we now need to keep you away, we withdraw the appeal and you can come back, and I said well apart from the threat of them coming back it is unlikely there would be any financial implications for Eskom, in other words any award of compensation from the court or CCMA because they were not financially prejudiced, they were being paid, so why would you want to spend so much
10 money when really all of this could be handled?

DR NGUBANE: Well Chairperson ...[intervenes]

CHAIRPERSON: But of course some of this you might say well – a lawyer might say look at it that way, but you would have had access to lawyers?

DR NGUBANE: Well our concern was not getting problems with the investigation.

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

ADV SELEKA SC: And then – thank you Chair, Dr
20 Ngubane if you say they refused to wait, let's look at Ms Tsholofelo Molefe, when you stopped the investigation on the 11th of June 2015 you are still in negotiation with her. You only signed the agreement with her on the 25th of June 2015, so you had a window of opportunity to say look Ms Molefe you know we have stopped the investigation, there is no wrongdoing in any event in the scope of the

investigation against the suspended executives, come back.

CHAIRPERSON: In other words at that stage, because the investigation had been stopped, all that was left was the writing of the report, they couldn't have investigation if they came back, even before the end of three months.

DR NGUBANE: Yes but as far as I remember the real stoppage happened in July and we had to submit that report to the Minister.

10 **CHAIRPERSON:** Yes but in order for the report to be submitted in July the investigation would have had to stop at some stage, for the preparation of the report, so there were – that's just speaking in general but we have evidence from Ms Klein who says no six weeks into the investigation or seven weeks into – within seven weeks after they have been investigating we stop them, so which means during the time that Mr Seleka is talking about when those negotiations were being held there was no investigation that they were going to interfere with if they
20 were allowed to come back, so which goes back to the question why was the Board giving them money to go away.

DR NGUBANE: But Eskom does that.

CHAIRPERSON: Eskom does that?

DR NGUBANE: Yes.

CHAIRPERSON: [laughing], okay Mr Seleka are you

about to finish?

ADV SELEKA SC: Shouldn't we finish then on that note
Chair.

CHAIRPERSON: Mmm?

ADV SELEKA SC: Shouldn't we end on that note?

CHAIRPERSON: No further questions? That is the note
then, Eskom does that.

DR NGUBANE: I mean there were two people in my time
who were paid a lot of money.

10 **CHAIRPERSON:** Ja, at Eskom?

DR NGUBANE: Yes, precisely ...[intervenes]

CHAIRPERSON: Apart from these.

DR NGUBANE: Apart from these.

CHAIRPERSON: And of course Eskom also paid Dentons
what – R27million or whatever.

DR NGUBANE: Yes.

ADV SELEKA SC: Who is that Chair?

CHAIRPERSON: How many millions, Dentons, how much
were they paid?

20 **ADVE SELEKA SC:** Oh they were paid ...[intervenes]

DR NGUBANE: But chair they wanted more money.

CHAIRPERSON: They wanted more money.

DR NGUBANE: Yes.

CHAIRPERSON: And they paid R27million for
...[intervenes]

ADV SELEKA SC: Twenty for six weeks torture.

CHAIRPERSON: Ja.

DR NGUBANE: No, no to go to order, test order number two they wanted more money.

CHAIRPERSON: They wanted more money yes.

DR NGUBANE: They wanted more money yes, and we didn't have the budget.

CHAIRPERSON: Okay.

ADV SELEKA SC: But here is another highlight
10 Chairperson, here is another highlight. If we take Ms Klein's evidence to the Chairperson, which is in this letter Dr Ngubane that the issues Denton was coming up with were not new to Eskom, if you take that and you look at what Mr Marukane was offering to the Board, he says I want to help you with the issues that have already been reviewed by external parties, if you genuinely want to resolve the issues I am here to help you. If you look at the position of Mr Mathona he was giving the turnaround strategy, a report on his turnaround strategy in the meeting
20 of the 11th of March 2015 before the Minister comes there.

DR NGUBANE: But that is why we did not want to suspend them Chair.

CHAIRPERSON: You didn't want to suspend them but you suspended them. You suspended them.

DR NGUBANE: Ultimately.

CHAIRPERSON: If you didn't want to suspend them who made you suspend them? [laughing] Well that question remains unanswered.

ADV SELEKA SC: And Chair let me add, let me conclude, because when they are given a chance doctor, if they were given a chance to carry on with – now instructed you which is the CFO, to help you, Dr Ben Ngubane, in the investigation of these issues which are said to have not to have been unfamiliar to you, then they would have done so
10 without any more cent to Eskom. You would have paid them their normal salary, and you wouldn't have paid any more to them.

Now what you did is this, you kicked them out, you pay them for staying at home, for doing nothing. You get Dentons to do an investigation, which on the face of it, if you at the totality of the evidence, is a farce, and you pay them R20million six weeks into the job. So you pay double. You paid three people to stay at home, you bring Dentons to start an investigation that is never going to go
20 anywhere, and you stop it six months down the line because by that time the Board had achieved the mandate of whoever was directing it to do it, you had signed the settlement agreements and you signed it Dr Ngubane, and I need to test this. Ms Klein, in her affidavit, says the Board had authorised the chairperson of P&G with the power to

delegate further to take all the necessary and all immediate steps to give effect to the above, including the signing of any agreements or other documentation necessary or related thereto.

This is after she says that the Board authorised the three of you, Dr Ngubane, Ms Klein and Mr Kumalo, to negotiate settlement agreements of up to 12 months, but she doesn't sign the agreements, you sign two of them, Mr Sithembile Khoza signed the one of Mr Mathona.

10 **CHAIRPERSON:** Ms Molefe.

ADV SELEKA SC: No I have seen them chair, I have looked at them now.

CHAIRPERSON: Oh, is that so, okay.

ADV SELEKA SC; Dr Ngubane signs Ms Molefe and Mr Dan Marokane.

CHAIRPERSON: Oh, that is important.

ADV SELEKA SC: Yes and is it Mr Sithembile Khoza who signs – he is acting as a CEO in the position of the person who is signing him out.

20 **CHAIRPERSON:** Yes.

DR NGUBANE: Chairperson there was a clause we said “and can delegate further” in that resolution.

ADV SELEKA SC: But she didn't.

DR NGUBANE: In that resolution?

ADV SELEKA SC: Yes, but Ms Klein didn't delegate.

DR NGUBANE: No.

ADV SELEKA SC: She was here Dr Ngubane.

CHAIRPERSON: That is what she said.

MR NGUBANE: No, you see she was moving out of P & G, I think that is how I came to sign, Ms Mabude was coming into P & G, there was some movement in the committees.

CHAIRPERSON: Well you see when Ms Klein was giving evidence I found this quite interesting, or strange, that she
10 knew that in terms of the delegation from the Board she was the one who was supposed to sign the settlement agreement with Ms Molefe and she did not sign it. I think at that stage we were under the impression it was signed by Mr Sithembile Khoza.

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: But now Mr Seleka says you signed it and I was saying – and then she was saying she did not know the amount in terms of the settlement agreement that was to be paid to be Ms Molefe and then it turns out that
20 the settlement agreement exceeded the 12 months laid down by the Board, so I was saying to her, one the person who signed must have known that you were the person who were authorised to sign, so why did that person sign without your knowledge, two, the amount delegated amount was exceeded and why didn't you after the settlement

agreement had been signed why didn't you want to know what the settlement agreement said or what the amount was, and then she said well it could be that she was no longer Chairperson of P & G as at that date and we – I think further investigations were still to be done to establish whether she was still chairperson of the P & G Committee at the time and maybe Mr Seleka does have the answer already whether she was or she wasn't.

ADV SELEKA SC: I found a different fact Chair, a fact of
10 a different kind, that on the 2nd of July the Board has a meeting, 2nd July 2015, and they refer to what P & G has discussed and is recommending to the board, an 18 months settlement agreement is referred to, the Board ratifies that decision.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: It ratifies, Ms Klein is in that meeting, Ms Klein is also in the meeting of P & G that took place.

CHAIRPERSON: Yes.

ADV SELEKA SC: And I think she was correcting it that it
20 is not on the 1st of July, it is the 2nd of July, whatever date it is, it is neither here nor there, but what you see there is that a settlement had been achieved with Ms Molefe, at 18 months, it goes to the Board, the Board ratifies it.

CHAIRPERSON: Ratifies it yes.

ADV SELEKA SC: And they use the word ratify.

CHAIRPERSON: Okay but at least the – because when she was giving evidence here she was saying she didn't remember the settlement agreement with Ms Molefe being brought back to the Board so I was saying that would be strange that, one, that settlement agreement is signed by somebody who is not authorised to sign it, two, it exceeds the authority given by the delegated authority – given by the Board, three, the person who has exceeded that authority doesn't bring the settlement agreement back to
10 you to see and the agreement is not brought back to the Board to ratify, so – but at least if it was brought to the Board that is fine, but what it does mean is that the entire Board endorsed the document in terms of which Ms Molefe was paid much more than the others.

At a time when to their knowledge there were no further investigations and therefore if Ms Molefe wanted to come back she could come back.

DR NGUBANE: Well some explanation must have been given to the board to endorse that settlement.

20 **CHAIRPERSON:** Yes, well the investigations were going to – steps were going to be taken to look at whatever minutes but arising from Ms Molefe's evidence the explanation may well have been this that she said to me she was not prepared to agree to leave Eskom on the basis of 12 month's salary. She wanted much more because she

thought that was not enough for her and I think it must have been in that context that according to her Mr Romeo Kumalo had a private meeting with her to try and maybe persuade her to settle, but she was resisting reaching a settlement agreement on the basis of 12 months, that is why it was increased and the question is why does the Board, why did the Board increase that amount, why didn't the Board say we actually have no problem with you, you can come back if you don't want 12 months come back.

10 **DR NGUBANE:** Chairperson I have said ...[intervenes]

CHAIRPERSON: You have said what you can say.

DR NGUBANE: And that at Eskom these things happened.

CHAIRPERSON: [Laughing] but at that time remember you were in charge of the Board, you were the Chairperson.

DR NGUBANE: Ja, people can put very persuasive arguments.

CHAIRPERSON: Ja, ja.

ADV SELEKA SC: Chair this is my last.

20 **CHAIRPERSON:** Ja.

ADV SELEKA SC: Then Dr Ngubane you say in your affidavit, this is under the heading "the appointment and early retirement of Mr Brian Molefe", I just want this paragraph. It says:

"After the suspension of the four executives,

including Mr Mathona, who was the GCEO there was a serious vacuum in the leadership of Eskom.”

That is Eskom Bundle 9A Chairperson.

CHAIRPERSON: Just repeat that, I am sorry.

ADV SELEKA SC: After the suspension of the four executives, including Mr Mathona who was the GCEO there was a serious vacuum in the leadership of Eskom. Now who caused that vacuum, but not the Board Dr Ngubane? And when you have a vacuum like that Dr Ngubane.

10 **CHAIRPERSON:** You know this is a serious matter, but sometimes you can't afford not to laugh at this.

DR NGUBANE: Let me say this Chairperson, the script was written for us.

CHAIRPERSON: [Laughing] who wrote the script Dr Ngubane?

DR NGUBANE: Mr Tsotsi came with it.

CHAIRPERSON: I mean you have – that is one example.

DR NGUBANE: Yes.

20 **CHAIRPERSON:** There is another one which we are not covering here where apparently, I don't know whether it was towards the end of 2014 or 2015 apparently Eskom came up with a programme for voluntary severance packages and said a lot of employees who wanted to take voluntary retrenchment packages could take them and allowed people with skills that Eskom needed to also take

voluntary packages now. In any company if a company comes up with a voluntary retrenchment or severance package to say those who want to leave can leave on an agreement they always put a rider to say the company has the final say whether any particular individual maybe, or they might say the following categories are not eligible, because they know they need their skills, but in Eskom it looks like from what I have read people with skills were allowed to go and after they had gone it was said we don't
10 have skills now, we need a company to do A, B, C, D.

So you say what was going on. It is ...[intervenes]

DR NGUBANE: That was before our time.

ADV SELEKA SC: But this is a mirror image in your time.

CHAIRPERSON: It is like they did – the previous Board did what they did and when your Board came you said okay “if they can did it, we will did it” – it’s like they did their part, we will do our part, and when I say if they can did it, we can did it, people who were old enough during apartheid, 1980’s will know what I am talking about when I
20 say that, but basically the previous Board did its own thing about the severance packages and allowing Eskom to lose a lot of skills and then here comes this Board, it gets sold this idea of an inquiry and the suspension of executives, they get suspended, the inquiry starts, get stopped, settlement agreements are signed, they are given money,

they go and then says now there is a vacuum in leadership we must look for leadership, then they go to Transnet and get certain people to come on board.

It is – honestly it is a very serious thing, it is taxpayers' money and it is really regrettable. But anyway let's – are you done?

ADV SELEKA SC: Yes, in our next phase chair we are going to start at this vacuum and how it gets to be addressed and we go into the transaction that follow that.

10 **CHAIRPERSON:** That is the secondments?

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja, okay alright.

ADV SELEKA SC: That is our next stage, Dr Ngubane hopefully before the end of the Commission.

CHAIRPERSON: Yes, thank you very much Dr Ngubane for coming to assist the Commission, we appreciate it very much. We have taken long because we wanted to at least finish this part of your evidence. I see it is already seven o'clock.

20 We will ask for you to come back with regard to other matters in due course, but thank you very much and thank you to your attorney as well for all the cooperation, thank you.

DR NGUBANE: I presume harm can happen despite good intentions. Our Board had very good intentions for this

country and we worked very hard to make sure that the lights were on, make sure that the expenses at Eskom were reduced, we even managed to sell power to the neighbouring states. You know I wish that the country can acknowledge some of the good things that happened.

CHAIRPERSON: Yes, yes, well look in the end it is important that a balanced view be taken of matters, so where good things were done they need to be acknowledged and where wrong happened that needs to be
10 also highlighted so that what can be done to make sure those things don't happen again can be looked into.

Okay, thank you very much, we are going to adjourn now. For the sake of the public I just mention that tomorrow and for the rest of the week and next week I will be hearing evidence relating to Transnet.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 14 OCTOBER 2020