

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

**14 OCTOBER 2020**

**DAY 283**



**Gauteng Transcribers**  
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 14 OCTOBER 2020**

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

**ADV MYBURGH SC:** Good morning Chairperson.

**CHAIRPERSON:** Yes are you ready?

**ADV MYBURGH SC:** Yes thank you.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** Chairperson this sitting of the commission as you know involves the Transnet stream.

10 **CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** Now we intend to lead evidence on four main topics.

Firstly the reinstatement of Mr Gama as the Chief Executive of Transnet Freight Rail in 2011.

Secondly the settlement of litigation against Abalozi Risk Advisory Services formerly known as GNS in 2014. That is on pause at the moment and we hope to bring that to evidence next week.

20 Thirdly corruption in relation to the Manganese Expansion Project known as MEP in 2013 and then

Fourthly some new and different evidence in part in relation to the acquisition of locomotives in particular the 1064 locomotives.

We intend to call these witnesses in relation to Mr Gama's reinstatement, Mr Mapoma, Mr Todd and Mr

Mkwanazi. In relation to Abalozi, Mr Todd in relation to MEP, Mr Bester and Ms Strydom we also would seek leave to present an affidavit from Mr Bierman who is in Australia.

And then in relation to the locomotives we intend to call Mr Callard and Mr Leher. Mr Leher's evidence will also cover his Rule 3.4 Application.

Chairperson in relation to the bundles you – there have been five files that have been produced. If we were to run through them Bundle 1 and 2 contains what is referred to as Exhibit BD15. Now Chairperson...

**CHAIRPERSON:** That is Transnet Bundle 01 and Transnet Bundle 02?

**ADV MYBURGH SC:** That is correct.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** That is Exhibit BB15 and those two files contain documentation relating to the Gama investigation.

The first file is a series of affidavits. The second file is a series of key documents. Then Transnet Bundle 03 contains Exhibits BB16 that being Mr Mapoma's affidavits and BB17 that being Mr Todd's affidavits.

Transnet Bundle 04[A] that contains Exhibit 18 being Mr Mkwanazi's affidavit. 19 Mr Bester's affidavit. 20 Ms Strydom's affidavit and then also an Exhibit BB4 F1 now that appears out of sequence but that was bundled

before this proceedings and that is part of the affidavits relating to Mr Leher.

And then the final file is Transnet Bundle 04[B] and it contains two exhibits in relation to Mr Leher. BB4[F]2, BB4[F]3 and Exhibit BB4[H] in relation to Mr Callard.

Mr Chairperson we intend to start with evidence relating to Mr Gama's reinstatement. The facts, the background are – is probably well known to the public. Mr Gama as you will recall...

10 **CHAIRPERSON:** Yes but I think it might help.

**ADV MYBURGH SC:** Certainly.

**CHAIRPERSON:** To just help the public to see where this fits in. Ja.

**ADV MYBURGH SC:** Mr Gama...

**CHAIRPERSON:** Just to give some background.

**ADV MYBURGH SC:** As you please. Mr Gama was the Chief Executive of Transnet Freight Rail a very big division of Transnet. And he was dismissed for serious misconduct in June of 2010. He referred an unfair dismissal dispute to  
20 the Transnet Bargaining Council.

Chairperson then came a change in the Minister of Public Enterprises from Ms Hogan to Mr Gigaba and the appointment of a new board of directors at Transnet.

You will recall the evidence of Ms Hogan which was in summary that former President Zuma was a devout

supporter of Mr Gama. There was a change in Minister, a change in board. Within a few months of that the new board decided to reinstate Mr Gama with full retrospectivity and undertook and agreed to pay his costs and that was a decision that was taken in February of 2011.

Mr Gama would go on to be appointed as the Group Chief Executive of Transnet. Mr Mapoma was the General Manager Group Legal Services. Mr Todd was the attorney that represented Transnet in the Gama disciplinary proceedings and related litigation and Mr Mkwanazi was the new chairperson of the board of directors.

With your leave we would ask to call our first witness Mr Mapoma.

**CHAIRPERSON:** Well maybe just to add on the background you have given because I have the advantage that I have been here all along.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** I have heard all the evidence. Just to emphasise that two things may be relevant before the dismissal of Mr Gama.

One is that his dismissal came about as a result of a disciplinary hearing that was chaired by an independent chairperson senior counsel at the Johannesburg Bar. He was represented by lawyers at the disciplinary hearing. He was found guilty of I think three acts of misconduct. That

is the one thing.

The other thing is that prior to that that is now in 2000 and I think and 2009 or – and maybe early 2010. According to Ms Hogan who was Minister of Public Enterprises at the time there was a vacant post for the Group Chief Executive Officer at Transnet which was created after Ms Ramos – Maria Ramos had left and Mr Gama was a candidate together with other candidates.

One of the candidates ultimately was Mr Siph  
10 Maseko I think and the board which had conducted the interviews recommended that Mr Maseko – Mr Siph Maseko should be appointed as the Group Chief Executive Officer. And they considered that Mr Gama was not yet ready for such a position of responsibility.

But also it happened that there were allegations that were being investigated or were about to be investigated against him relating to tender irregularities at Transnet.

So according to Ms Hogan when she presented to  
20 the former President Mr Zuma the name of Mr Siph Maseko as the candidate who was recommended by the board – according to her Mr Zuma said that he had only one choice for the position of Group CEO for Transnet and that choice was Mr Siyabonga Gama.

According to Ms Hogan when she said to Mr Zuma

that the board has recommended somebody else they think he is not – Mr Gama is not ready and also mentioned that there were investigations or there were about to be investigations into certain allegations – serious allegations against Mr Gama which could lead to a disciplinary process.

According to Ms Hogan Mr Zuma said that then the position would have to wait and not be filled until the – those processes relating to Mr Gama had been completed.

10 Ms Hogan says she tried to emphasise the need for the filling of the position but she said Mr Zuma was not prepared to change his view.

Mr Zuma has testified and has denied this evidence by Ms Hogan and said that he could not have adopted such an approach because if the board had gone through the processes he would have gone along with that.

But the position did remain unfilled until I think 2011. So when Mr Gama was dismissed the position was still not filled. It was then filled by Mr Brian Molefe I think 20 early in 2011. I hope I am right with regard to the year. Ja I think 2011 and then as you said in February the new board of Transnet that had been appointed I think in December or October I am not sure then seems to have decided to reinstate Mr Gama and concluded a certain settlement agreement with him and he was reinstated with



full back pay and benefits as I understand the position and the board undertook to pay certain costs to him.

And then about three years later I think in 2015 when Mr Brian Molefe was seconded to Eskom Mr Gama was made acting Group CEO for Transnet.

I think – I thought I would use the benefit – my benefit of having listened to all the evidence just to mention those features.

**ADV MYBURGH SC:** Thank you Chairperson.

10 **CHAIRPERSON:** Okay alright. Yes you may call your first witness.

**ADV MYBURGH SC:** Thank you. Mr Mapoma. Mr Chairperson I have mentioned that the bundles that are relevant to this witness are 1, 2 and 3 that is Exhibit 15 and Exhibit 16.

**CHAIRPERSON:** Will you be using them at the same time?

**ADV MYBURGH SC:** Yes in certain respects we will.

**CHAIRPERSON:** Oh – ja okay alright. I think he will bring me 16. Oh you know but – I think just do as you normally  
20 do as in – so what he will do Mr Myburgh as you refer to another bundle he will bring me that bundle.

**ADV MYBURGH SC:** Thank you Mr Chairperson.

**CHAIRPERSON:** Okay. I think administer the oath or affirmation.

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

**ADV MAPOMA:** Siyabulela Xhanti Mapoma.

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

**ADV MAPOMA:** No.

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

**ADV MAPOMA:** 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.

**ADV MAPOMA:** So help me God.

**CHAIRPERSON:** Thank you Mr Mapoma. You may be seated. Mr Myburgh my Registrar has given me Transnet Bundle 1 but that one does not have Mr Mapoma's statement.

**ADV MYBURGH SC:** No.

**CHAIRPERSON:** Should I have ...

**ADV MYBURGH SC:** It should be Bundle 03.

20 **CHAIRPERSON:** Ja okay.

**ADV MYBURGH SC:** Containing Exhibit 16.

**CHAIRPERSON:** Thank you.

**ADV MYBURGH SC:** Mr Mapoma do you have Bundle 3?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** There is a – there should be a tab in

there 16 could I ask you to turn to that please? As you please thank you Mr Chairperson. Two pages or so into that bundle you will find an affidavit. I am going to as I have said to you I will refer to the black numbers that is the page number in the bundle. So I am referring here to page 3. Are you there?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Is this an affidavit of yours?

**ADV MAPOMA:** Yes.

10 **ADV MYBURGH SC:** Could I please just ask you to turn to the end of that affidavit at page 14. Would you confirm that that is your signature and that you signed it under oath on the 31 July this year?

**ADV MAPOMA:** Yes I confirm that.

**ADV MYBURGH SC:** Now there is a series of three affidavits in this exhibit. I am going to take you Mr Mapoma through them one by one.

Let us start with this affidavit. You start of by saying that you are an Advocate in private practice.

20 **CHAIRPERSON:** I am sorry Mr Myburgh do you request that I admit this affidavit as Exhibit BB17 – no BB16. – we – what we would do is admit each affidavit as an Exhibit on its own.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** So that it is not the file that is the

exhibit.

**ADV MYBURGH SC:** Absolutely.

**CHAIRPERSON:** The actual documents. Then when we admit it it would be the affidavit plus its annexures.

**ADV MYBURGH SC:** Well perhaps Mr Chairperson let me just go through because there are three affidavits here.

**CHAIRPERSON:** Oh okay.

**ADV MYBURGH SC:** Perhaps I could just deal with all of them.

10 **CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** And then ask you.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** To admit all of them at once.

**CHAIRPERSON:** Yes okay that is fine.

**ADV MYBURGH SC:** So Mr Mapoma you have dealt with your first affidavit page 3 through to 14 and would you confirm that it then included annexure A, annexure B at page 17 which ends at page 22 – would you confirm that?

**ADV MAPOMA:** Yes I confirm Chair.

20 **ADV MYBURGH SC:** And then there is another affidavit starting at page 23 is that your affidavit?

**ADV MAPOMA:** Yes it is.

**ADV MYBURGH SC:** Could I ask you please to turn to page 28, is that your signature?

**ADV MAPOMA:** Yes it is my signature Chair.

**ADV MYBURGH SC:** And you attested to that affidavit under oath on the 31 August this year.

**ADV MAPOMA:** Yes I did.

**ADV MYBURGH SC:** And then at page 29 is that the commencement of your third affidavit?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** And could I please take you to page 32, is that your signature?

**ADV MAPOMA:** Yes it is mine yes.

10 **ADV MYBURGH SC:** Thank you. And did you attest to that affidavit under oath on the 8 October?

**ADV MAPOMA:** Yes I did.

**ADV MYBURGH SC:** That affidavit I would ask you to confirm and it contains annexures SM1 starting at page 31, Annexure SM2 starting at page – sorry SM1 starting at 33 the black numbers.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** SM2 starting at page 36 and SM3 starting at page 39 and running until 42.

20 **ADV MAPOMA:** Yes I confirm.

**ADV MYBURGH SC:** Mr Chairperson I would ask you then to admit those three affidavits together with the annexures making up Exhibit BB16.

**CHAIRPERSON:** I suggest that we – we do not make them all Exhibit BB16 but rather that we make them Exhibit

BB16.1, 16.2, 16.3.

**ADV MYBURGH SC:** Yes it is a...

**CHAIRPERSON:** Is that alright?

**ADV MYBURGH SC:** That has been pointed out to me by the Secretariat as per the index.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** 16.1, 16.2, 16.3.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** As you please.

10 **CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** Mr Chairperson.

**CHAIRPERSON:** The affidavit of Mr Siyabulela Xhanti Mapoma starting at page 3 is admitted and will be Exhibit BB16.1. Just guide me again in terms of where the next starts Mr Myburgh.

**ADV MYBURGH SC:** The second affidavit Chairperson starts at page 23.

**CHAIRPERSON:** 22?

**ADV MYBURGH SC:** 23.

20 **CHAIRPERSON:** Oh. The affidavit of Mr Siyabulela Xhanti Mapoma starting at page 23 is admitted as Exhibit BB16.2. Okay.

**ADV MYBURGH SC:** The third affidavit starts at page 29 Chairperson.

**CHAIRPERSON:** The affidavit of Mr Siyabulela Xhanti

Mapoma starting at page 29 is admitted as Exhibit BB16.3.

Okay.

**ADV MYBURGH SC:** Thank you. Mr Mapoma could I ask you please to turn to page 3, are you there?

**ADV MAPOMA:** Yes I am there.

**ADV MYBURGH SC:** Now you say at paragraph 1 that you are an advocate in private practice – where do you practice? Are you – and what bars are you a member of?

**ADV MAPOMA:** I am a member of the Bisho Society of  
10 Advocates with its offices in East London and I am also a member of the Mthatha Bar with its offices in Mthatha all in the Eastern Cape so I practice in the Eastern Cape.

**ADV MYBURGH SC:** At paragraph 3 you deal with your work history at Transnet could you deal with that please?

**ADV MAPOMA:** Do you want me to read from paragraph?  
The paragraph reads and which I confirm:

20 “I started working at Transnet on 1 February 2007 as a legal advisor Litigation and Administrative Law. Later I was appointed as a General Manager Group Legal Services which position I occupied from the 1 September 2008 to 31 January 2012. I was based in the Carlton Centre Johannesburg which was the head office at the time. I resigned from Transnet to do

pupillage at the Johannesburg Bar after which I have been in practice since.”

**ADV MYBURGH SC:** Now I just want to confirm then that you were General Manager Group Legal Services 2008 through to January 2012.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** The time of Mr Gama’s reinstatement in early 2011 you would have occupied this position?

**ADV MAPOMA:** Yes.

10 **CHAIRPERSON:** Just one second Mr Myburgh. I do not know it looks like it is quite dark this side. I do not know if there is a lighting that is not there today that is usually there. So – or whether there is a light that is not directed where it is normally directed. So if somebody can look at that. Yes you may continue.

**ADV MYBURGH SC:** Thank you Chairperson. Mr Mapoma in paragraph 4 you have set out various positions of responsibilities that you held whilst at Transnet what were those?

20 **ADV MAPOMA:** Yes Chair I occupied other positions of responsibility at Transnet during my time there. I was a member of the Transnet Forensic Working Group which was a sub-committee of Group Internal Control Committee. I was a member of the [00:24:32] Committee which was a committee under Group Risk. I also chaired the Transnet



Acquisition Council for some time although I am sure if this is the correct of the committee but I think at the time it was called the Transnet Acquisition Council. I also acted as CO of Autopax Pty Ltd which was then a subsidiary of Transnet for about eight months. Manager of the transfer of Autopax to PRASA. During that time I was doing both the duties at Autopax and as a GM at Transnet. I was also a Trustee of Transnet. I was also a board member of a company called Commerce Pty Ltd which was a company  
10 that Transnet had an interest in. And I know that I might have been in one or other committee which I do not recall now.

**ADV MYBURGH SC:** And to whom did you initially report?

**ADV MAPOMA:** Initially I reported to Mr Vuyo Kahla who was a member of EXCO and when Mr Kahla left I then reported to Ms Zola Stephen who replaced Mr Kahla as the Group Executive responsible for Legal. I was reporting then to her.

**ADV MYBURGH SC:** So Ms Stephen was the Group  
20 Executive Legal?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Then you go on in paragraph 6 to explain the request for information that was made on you by the commission.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Over the page you then attach the letter Annexure A and then you quote paragraph 2 of the letter – paragraph 7 of your affidavit.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Is that correct?

**ADV MAPOMA:** Yes I did.

**ADV MYBURGH SC:** And it reads:

10            “That in this regard it seems prima facie  
              strange that Transnet agreed not only  
              reinstate Mr Gama despite him having been  
              found guilty of three serious acts of  
              misconduct but also that he wants to be  
              paid full back pay and Transnet was to pay  
              75% of his unsuccessful high court  
              application, 75% of his costs relating to his  
              unfair dismissal dispute.”

20            It would seem that Transnet abandoned its costs  
              that the high court had ordered Mr Gama to pay Transnet.  
              Just ask you to confirm then it is those issues that you  
              address in your affidavit?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** In paragraph 8 you then attach the draft settlement agreement concluded on the 23 February where you say that you witnessed the signature of Mr Mkwanazi?

**ADV MAPOMA:** Yes I did.

**ADV MYBURGH SC:** Who at that time what was his position?

**ADV MAPOMA:** That time Mr Mkwanazi occupied two positions at Transnet. He was the acting Chief Executive Officer and he was also chairman of the board.

**ADV MYBURGH SC:** Now Mr Mapoma so as to give context to your evidence and to the other related witnesses I would like to take you to the settlement agreement that  
10 you attach as annexure B to your affidavit. That you will find at page 17 through to 22.

**ADV MAPOMA:** Yes I am there.

**ADV MYBURGH SC:** I would just like to take you please to the preamble. It refers to the fact that an unfair dismissal dispute has arisen between the parties following the dismissal of Mr Gama as the Chief Executive Officer CEO of TRF on the 29 June. Do you confirm that?

**ADV MAPOMA:** Yes I confirm.

**ADV MYBURGH SC:** And that Mr Gama then referred an  
20 unfair dismissal dispute to the Transnet Bargaining Council at 2.2.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** And 2.3 records that that dispute is now settled in terms of this agreement.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** 3.1 Mr Gama returned to Transnet with effect from 23 February 2011 and he is to resume his duties as CEO of TRF on 1 April 2011.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** So nine months after he was dismissed.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** 3.2 Any employment benefits that were due to him for the intervening period of 30 June 2010  
10 to 23 February 2011 in terms of his employment contract should be deemed to fully restored.

**ADV MAPOMA:** Yes audit reports.

**ADV MYBURGH SC:** And it goes on to record at 321 The full restoration of benefits entails sub 1 payment of Mr Gama's short term benefits and they are described. Sub 2 payment of Mr Gama's long term benefits and they are described.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Sub 3 Restoration of Mr Gama's  
20 salary and that is described.

**ADV MAPOMA:** Ja.

**ADV MYBURGH SC:** And then at 3.3 Mr Gama is deemed to have served the 6 months final written warning. The final written warning will be deemed to have been effected or effective from 29 June to 29 December 2010.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** This agreement as you have said in your affidavit was concluded on the 23 February 2011.

**ADV MAPOMA:** Yes Chair.

**ADV MYBURGH SC:** Had that warning then lapsed by the time that the agreement was concluded?

**ADV MAPOMA:** Yes by the look of paragraph 3.3 that warning had lapsed by the time the agreement was concluded.

- 10 **ADV MYBURGH SC:** And then a clause that is of particular relevance to your evidence 3.5 Transnet will make a contribution equivalent to 75% of Mr Gama's taxed legal costs incurred during Gama's high court application and in respect of his unfair dismissal dispute referred to the Transnet Bargaining Council.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** 3.6 deals with the time within which payment would be made. 3.7 the parties agree to formulate a common statement.

- 20 **ADV MAPOMA:** Yes I see that.

**ADV MYBURGH SC:** And then there are a number of boiler plate clauses confidentiality, full and final settlement and then under general – perhaps I could just direct your attention please to clause 6.4. The parties agree that the terms of this settlement agreement are in final settlement

of any claims and disputes which each party to the agreement may have against the other in respect of Mr Gama's employment as CEO of TFR, confirm that?

**ADV MAPOMA:** I confirm that.

**ADV MYBURGH SC:** Let us then go back to your affidavit. At paragraph 9 you record that your recollection might not be perfectly accurate and that you may wish to put in a supplementary affidavit once you see any documents.

**ADV MAPOMA:** Yes I do.

10 **ADV MYBURGH SC:** Well let us then turn to paragraph 10 you deal with that.

**ADV MAPOMA:** Yes at paragraph 10 Chair I recorded that and I confirm it. But initially when the disciplinary hearing of Mr Gama was initiated the matter was dealt with directly by Mr Kahla. I was not involved at all and the reasoning as I understood it at the time was that Mr Gama was EXCO member and I was – it was deemed appropriate that a junior member like myself should be directly involved in the disciplinary hearing of a senior executive.

20           However I know that initially Mr Brian **Briback** [?] had been requested – been briefed or consulted by Mr Kahla on Mr Gama's disciplinary hearing.

**ADV MYBURGH SC:** Then at paragraph 11 you say that you were later informed that Mr Todd of Bowman Gilfillan known as Bowmans Attorneys handled the disciplinary

matter. Is that correct?

**ADV MAPOMA:** Yes that is correct.

**ADV MYBURGH SC:** Let us then turn to paragraph 12 where you say coming to the matters.

**CHAIRPERSON:** Mr Myburgh – I am sorry Mr Myburgh. I would prefer if Mr Mapoma as far as you are able to you just give your evidence and not read it. Obviously you can look at your statement to refresh your memory because some of the details might need that. So Mr Myburgh might  
10 see how to formulate his questions so that you can respond in terms of your knowledge of your involvement. But obviously when there is something – details that you need to look at you can look at them.

**ADV MAPOMA:** Thank you Sir.

**CHAIRPERSON:** Okay. Alright.

**ADV MYBURGH SC:** Thank you.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** Now at what point in time did you then become involved in the matter relating to Mr Gama?

20 **ADV MAPOMA:** I came involved in this matter when Mr Mkwanazi joined Transnet.

**ADV MYBURGH SC:** And can you remember when that was approximately?

**ADV MAPOMA:** I do not recall approximately but I think it was in 2010 – 2010 towards the end.

**ADV MYBURGH SC:** Alright. And what – had Mr Gama taken any action or laid any complaints at that time that caused you to become involved in the matter?

**ADV MAPOMA:** Yes Mr Gama had laid a complaint with the Public Protector. It was alleged that he had been unfairly treated by Transnet.

The other allegations that were in that complaint with the Public Protector was investigating. Now complaints from the Public Protector at the time will come  
10 to my office. So this complaint also came to my office. Mr Mkwanazi came to know about it because I think it was reported in the various committees – it would have been reported at EXCO and it would have come to the attention.

So I was dealing with that response that Transnet had to make to the Public Protector. It was a huge investigation.

We had to get external service providers to assist us because of the – of the number and the areas of investigation that – that were required to be done. So that  
20 we could have the comprehensive response to the Public Protector. Ultimately I did that.

So this is I think the first time that I came to direct with Mr Mkwanazi on the Gama – on Mr Gama.

**ADV MYBURGH SC:** Can I take you.

**CHAIRPERSON:** Was that complaint laid by Mr Gama at



the – after he had been dismissed or before he was dismissed? Do you remember?

**ADV MAPOMA:** I think he laid it after he was dismissed.

**CHAIRPERSON:** And he was dismissed at the end of June 2010?

**ADV MAPOMA:** 2010 yes.

**CHAIRPERSON:** Yes okay alright.

**ADV MYBURGH SC:** Thank you. Mr Mapoma perhaps I could take you for the first time to Bundle 2 Exhibit BB15.

10 Could I ask you please to turn to page 24.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** There is a letter from the Public Protector dated the 22 December 2010 addressed to Mr Mkwanazi.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Headed Investigation alleged tender irregularities and abuse of power at Transnet.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Do you recall this document?

20 **ADV MAPOMA:** I recall this letter but I have not seen it in a long time but I do recall it.

**ADV MYBURGH SC:** Is this the Public Protector complaint that you have told the Chairperson about?

**ADV MAPOMA:** This is the complaint I am talking about yes.

**ADV MYBURGH SC:** Now if I could just ask you please to go to the second paragraph. The complaint alleged irregularities in procurement at Transnet further that the then Transnet board had unfairly conspired to prevent Mr Gama from successfully applying for the vacant post of Group Chief Executive.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Which was about to be vacated by Ms Maria Ramos.

10 **ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** In a meeting with him Mr Gama alleged that the motive for his suspension could only have been to scupper his chances of successfully applying for the post as seen from the following. And so the letter goes on.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Now you mentioned that in dealing with the Public Protector complaint you engaged certain service providers. Who were those?

20 **ADV MAPOMA:** We engaged the services of **Konvisizwa** **[?]** We engaged the services of Norton Rose. One of the partners there at the time Mr Goola was the **[00:38:39]** in responding to the complaint.

**ADV MYBURGH SC:** And did you...

**ADV MAPOMA:** We also – I think at the time also engaged

with Services of Senior Council and Advocate [00:38:52].

So I know that we had those service providers with us.

**ADV MYBURGH SC:** And you – did you then in the fullness of time did Transnet respond to the Public Protector complaint?

**ADV MAPOMA:** Yes Transnet did respond to this complaint in time. I remember I think I took that myself to the Public Protector's office in Pretoria before the due date or on the due date but we did respond to it.

10 **ADV MYBURGH SC:** So if I can direct your attention to paragraph 13 of your affidavit you said: He ultimately provided the response to the Public Protector. You say you do not know what happened to the complaint. Could I in relation to the response ask you please to turn to page 48 of the same bundle, Bundle 2. There from page...

**CHAIRPERSON:** You say 48 – did you say 48 Mr Myburgh?

**ADV MYBURGH SC:** Yes Chairperson 48. Mr Mapoma, there you see a letter addressed to the Public Protector and if you turn forward then at page 55, you will see that it  
20 appears to have been signed by Mr Mkwanazi ...[intervenes]

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** ...on behalf of Transnet on the 30<sup>th</sup> of June 2011.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Was this the response that you speak

of?

**ADV MAPOMA:** This is the response that I speak of.

**ADV MYBURGH SC:** Alright.

**ADV MAPOMA:** But I think the response had certain attachments to it.

**ADV MYBURGH SC:** Yes.

**ADV MAPOMA:** But I am not sure. But this would be the response ...[intervenes]

**ADV MYBURGH SC:** Alright.

10 **ADV MAPOMA:** ...that I speak of.

**ADV MYBURGH SC:** Now, were you aware of the fact that Mr Gama had referred an unfair dismissal dispute to the Transnet Bargaining Council?

**ADV MAPOMA:** Yes, I am aware. Because after the dismissal of Mr Gama, such a referral was then made.

**ADV MYBURGH SC:** Now, I want to deal with your interaction with Mr Mkwanazi. When he initially interacted with you, what did he tell you? What did he want you to do?

20 **ADV MAPOMA:** Mr Mkwanazi told me that I needed to assist him to bring Mr Gama back to Transnet at the time. And I advised my immediate supervisor about this. Then she had no problem with Mr Mkwanazi working with me on this in relation to what I have mentioned earlier that Mr Gama was... had been a Senior Executive of Transnet and my supervisor was on the same par with Mr Gama. So Mr

Mafika Mkwanazi then asked me to assist him to do this, to bring Mr Gama back to Transnet.

**ADV MYBURGH SC:** I just want to clarify something. Why did you, when you say you informed your supervisor, you are referring, I understand, to Ms Stephen.

**ADV MAPOMA:** I am referring to Ms Zola Stephen, yes.

**ADV MYBURGH SC:** Why did you find it necessary to speak to her about this?

**ADV MAPOMA:** I found it necessary because normally from  
10 where Mr Mkwanazi's position was as CEO. CEO's will normally interact with the Group Executive and so for Legal and then I will get the instruction from my executive.

So in this instance, Mr Mkwanazi wanted to talk to me directly and he wanted me to assist him directly and not through my supervisor, Ms Stephen.

So I had inform her because I do not want to have any tensions in the office about why would the chairman of the board, why would the CEO be interacting with me directly instead of her.

20 **ADV MYBURGH SC:** Now when you first were approached by Mr Mkwanazi in this regard, was that before or after the board resolved to reinstate Mr Gama?

**ADV MAPOMA:** At the time that Mr Mkwanazi first approach me, I think his instruction was that the board had resolved already to do it but I am not certain at the time. But I was

aware that he had the authority to do the reinstatement either from the board or from elsewhere.

**ADV MYBURGH SC:** Now were there times before the settlement agreement was concluded that you attended meetings relevant to the reinstatement of Mr Gama?

**ADV MAPOMA:** Yes, I had a number of meetings with Mr Mkwanazi himself where he would tell me how he wanted to do this. And his words, at the time was, that he wanted to do this cleanly, in the light of the fact that Mr Gama had  
10 been dismissed.

So he wanted to do the reinstatement cleanly. And I use this word cleanly because it is the word that he used with me.

So I had a number of meetings with him. We also had a number, that is Mr Ghule myself. We had a number of meetings with Mr Langa, who were Mr Gama's attorneys at the time.

There was a meeting as well where we... there was Mr Gama, Mr Langa, it was myself, Mr Ghule and one of his  
20 associates at the time ...[intervenes]

**ADV MYBURGH SC:** Yes.

**ADV MAPOMA:** ... Mr Sangoni(?) which was held at Inanda on a weekend. We arrived there in the morning. We had a caucus. Mr Mafika, Ghule, myself and somebody on the side. And then later on, Mr Mkwanazi went meet to Mr

Gama, separate, in another room where we were not. I personally got to meet Mr Gama but I would meet Mr Mkwanazi fairly regularly about this thing.

**ADV MYBURGH SC:** But what did Mr Mkwanazi report to you about that meeting at Inanda?

**ADV MAPOMA:** At the meeting of Inanda, Mr Mkwanazi told us that he had no... he could not agree with Mr Gama on a number of things.

One of the things that Mr Gama wanted at the time, according to Mr Mkwanazi was that. in order to be reinstated as CEO of Transnet and Mr Mkwanazi was refusing with this.

He was also... there was also the issue of the bonuses at the time. But the specific thing I recall, was that Mr Mkwanazi was refusing that Gama must be reinstated as CEO.

He and Mkwanazi had proposing that Gama must go back to Transnet Freight Rail or he must come and work as Group Executive in his own office, that is the chairman's office.

20 But the main thing at the time was the return of Mr Gama as CEO of Transnet but Mr Mkwanazi was not agreeing to.

**ADV MYBURGH SC:** Yes ...[intervenes]

**CHAIRPERSON:** Ja, just to go back to the first time that Mr Mkwanazi asked you to assist him. Did you say that he asked you to assist him to bring back Mr Gama to Transnet?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** That is how he put it?

**ADV MAPOMA:** That is how he put it. He said, we need to reinstate Mr Gama ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** ...back to Transnet.

**CHAIRPERSON:** And your understanding is that, at that time when he approached you, the board had already resolved to reinstate Mr Gama?

10 **ADV MAPOMA:** That is how I understood it at the time, yes.

**CHAIRPERSON:** Yes. But this... there was no settlement agreement concluded as yet?

**ADV MAPOMA:** There was no settlement agreement. There was no detail ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** ...on the terms of the reinstatement.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** So I had no detail at all.

20 **CHAIRPERSON:** Yes. Now this resolution of the board which you seem to say seems to have been made before the settlement agreement was concluded. Did you ever see that resolution or did you hear from Mr Mkwanazi that there was such a resolution?

**ADV MAPOMA:** No.

**CHAIRPERSON:** You never saw it?



**ADV MAPOMA:** I never saw it, ja.

**CHAIRPERSON:** But did Mr Mkwanazi say that the board had already resolved to reinstate Mr Game or are you not sure about that?

**ADV MAPOMA:** He did say so.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** Because at the time, I understood that he had a mandate to talk to Mr Gama. He had a mandate to agree to terms with Mr Gama. The details of which he would  
10 have received from the board, I suppose.

And at the time my advice to him was this. Because you are, Mr Mkwanazi, you are acting CEO, you are also chairman of the board, there might be some conflict somewhere. And you have no authority to reinstate Mr Gama to be CEO of Transnet because it is the board that must make that decision.

So my interactions with him at the time was, was always to say that: Whatever it is that you do, the terms that you agree with and so on, make sure that the board agrees to  
20 this because it is the board that has the power to do this.

That the board has the power even if... which you have to answer if some that needs to be done at some stage.

So that was my kind of advice that I would give him that the board must be at all times be the one that makes the decisions on this thing.

**CHAIRPERSON:** Was your understanding at the time that Mr Mkwanazi approached that the board had or may have had, made a resolution in principle that Mr Gama should be reinstated without, at that stage, talking about the terms under which he should be reinstated?

**ADV MAPOMA:** So it was certainly and I needed to understand him. But I never asked him for a board resolution or anything like that.

**CHAIRPERSON:** Yes.

10 **ADV MAPOMA:** But I understood that he had the authority.

**CHAIRPERSON:** To do...

**ADV MAPOMA:** To do what ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** ...he asked me to assist him with.

**CHAIRPERSON:** Could it be that he said to you something to the effect that the board had given him the mandate or authority to negotiate a settlement with Mr Gama which would include a reinstatement or to negotiate Mr Gama's reinstatement? Is it possible that he might have put it, more  
20 or less, along those lines?

**ADV MAPOMA:** That is possible.

**CHAIRPERSON:** Okay alright.

**ADV MAPOMA:** That is possible. And I also understood that, at the time he also had instructions from elsewhere to do this because we interacted with him quite a lot.

**CHAIRPERSON**: Yes.

**ADV MAPOMA**: And then I would... we would continue(?) to each other and I was comfortable to ask him certain questions ...[intervenes]

**CHAIRPERSON**: Yes.

**ADV MAPOMA**: ...but not certain questions.

**CHAIRPERSON**: Yes.

**ADV MAPOMA**: Because he is my senior.

**CHAIRPERSON**: Yes.

10 **ADV MAPOMA**: So you have to differ(?).

**CHAIRPERSON**: Yes.

**ADV MAPOMA**: And then have some sort of different streams(?). So you do not ask him certain things but your understanding was all too clear that Mr Gama must be reinstated and he needed to do it cleanly.

**CHAIRPERSON**: Yes. Now you say that you understood or he had instructions from somewhere. You want to elaborate on that? Did he say he had been instructed or what was the position?

20 **ADV MAPOMA**: Yes, he did say Chair.

**CHAIRPERSON**: Make a reference to that. Can you just tell me?

**ADV MAPOMA**: He did say that he was under an instruction to do it as well.

**CHAIRPERSON**: Under instructions to do what?

**ADV MAPOMA:** To reinstate Mr Gama.

**CHAIRPERSON:** To reinstate Mr Gama?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Did you ask him who had instructed him?

**ADV MAPOMA:** No, I never asked him.

**CHAIRPERSON:** Oh, you did not?

**ADV MAPOMA:** I know I had directions.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** At various times, I would be made to  
10 understand that the instructions came from the presidency.

**CHAIRPERSON:** Okay.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Okay. Now when you say that you are not  
saying specifically in relation to the instructions but you are  
talking in relation to other matters relating to Mr Gama.

**ADV MAPOMA:** I am talking Chair in relation to the  
reinstatement of Mr Gama.

**CHAIRPERSON:** In regard to the reinstatement of  
Mr Gama?

20 **ADV MAPOMA:** Yes.

**CHAIRPERSON:** So the discussion you had with him were  
to the effect that on the reinstatement of Mr Gama, the  
understanding was that the instructions came from the  
former President?

**ADV MAPOMA:** Yes, and that the board had made that

decision as well.

**CHAIRPERSON:** And the board had given him the mandate?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Okay alright. Mr Myburgh.

**ADV MYBURGH SC:** Thank you, Chairperson. You were speaking about a meeting that you held at Inanda.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Is that the meeting that you deal with  
10 in paragraph 9? Sorry, in 19 of your affidavit, page 8?

**ADV MAPOMA:** Yes, that is the meeting that I am referring to at paragraph 19.

**ADV MYBURGH SC:** I take it then that that meeting would have happened before the settlement agreement was concluded?

**ADV MAPOMA:** Ja.

**ADV MYBURGH SC:** The meeting happened before the settlement agreement was concluded?

**ADV MAPOMA:** Yes. Yes, I agree.

20 **ADV MYBURGH SC:** Elsewhere in your affidavit, you talk of a meeting held in the Magaliesberg area Can you just name ...[intervenues]

**CHAIRPERSON:** Maybe Mr Myburgh, before you go there. What was the purpose of that meeting at Inanda?

**ADV MAPOMA:** The purpose of that meeting was for

Mr Mkwanazi to sit with Mr Gama and process the details of a settlement document, that is between Transnet and Mr Gama.

**CHAIRPERSON:** Oh, okay alright.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Yes, continue Mr Myburgh.

**ADV MYBURGH SC:** You also make reference to a meeting in the Magaliesberg area.

**ADV MAPOMA:** Yes.

10 **ADV MYBURGH SC:** Can you deal with that meeting, please?

**ADV MAPOMA:** I am just looking for the paragraph so that I just remind myself. But I know that there was a meeting that was held. It was an Exco meeting. And my understanding at the time that because the board had made that decision, Mr Mkwanazi had to now brief Exco on the decision that had been made by the board because he was also chairing Exco. So he had now to brief the Exco members. That is my understanding of that. But I did not ...[intervenes]

20 **CHAIRPERSON:** And Exco being the Exco of Transnet?

**ADV MAPOMA:** Ja ...[intervenes]

**CHAIRPERSON:** The senior management. Yes.

**ADV MAPOMA:** The senior management of Transnet.

**CHAIRPERSON:** Ja.

**ADV MAPOMA:** Which was comprised by various people,

namely the CEO's of the various divisions of Transnet.

**CHAIRPERSON**: Yes, okay.

**ADV MAPOMA**: Yes.

**CHAIRPERSON**: H'm.

**ADV MYBURGH SC**: Now in paragraph 21 and further, you go on to explain your involvement in the payment of legal fees.

**ADV MAPOMA**: Yes.

**ADV MYBURGH SC**: So this is now, obviously, at a time  
10 after the conclusion of the settlement agreement.

**ADV MAPOMA**: Yes.

**ADV MYBURGH SC**: And you have told the... highlighted for the Chairperson the provision of Clause 3.5 of the Settlement Agreement.

**ADV MAPOMA**: Yes.

**CHAIRPERSON**: I am sorry, Mr Myburgh. I may be mistaken but I thought that when or rather, during or around the Magaliesberg meeting ...[intervenes]

**ADV MYBURGH SC**: Yes.

20 **CHAIRPERSON**: ...that there was an occasion when Mr Mkwanazi met with Mr Gama alone which he knew about. I do not know whether that was a different one or that is a reference to the Inanda meeting.

**ADV MYBURGH SC**: Yes.

**CHAIRPERSON**: But if it is a different meeting, I would like

to hear more about it. Was there one meeting where Mr Mkwanazi had a one-on-one meeting with Mr Gama or were there two?

**ADV MAPOMA:** In my presence, there was one meeting where Mr Gama and Mr Mkwanazi met. So in another meeting ...[intervenes]

**CHAIRPERSON:** Okay.

**ADV MAPOMA:** ...where I was but they met separately in some other room.

10 **CHAIRPERSON:** Yes.

**ADV MAPOMA:** And we were in some other room.

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

**ADV MAPOMA:** At the Magaliesberg meeting, Mr Gama was not there.

**CHAIRPERSON:** Oh, okay.

**ADV MAPOMA:** Yes, Mr Mkwanazi... they informed me that he wanted to brief Exco there as to the board's decision and what was happening with the reinstatement and so on and so on.

20 **CHAIRPERSON:** Okay.

**ADV MAPOMA:** So he... that is what he wanted me to do.

**CHAIRPERSON:** Oh, okay.

**ADV MAPOMA:** But he asked me to come to be there, so that if he needed me for something ...[intervenes]

**CHAIRPERSON:** Yes.



**ADV MAPOMA:** ...he will then call me to... I do not know whether to explain to Exco, where we were, I think ...[intervenes] .

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** ...as Transnet. But I was not an Exco member.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** So I was not attending the meeting but I was at the venue.

10 **CHAIRPERSON:** Yes.

**ADV MAPOMA:** But not inside.

**CHAIRPERSON:** Ja. Well, maybe he might have needed you in case there are legal... there were legal aspects to be explained to Exco.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** So... Okay, I may have misunderstood when I thought there were two such meetings.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Okay.

20 **ADV MAPOMA:** And they also used Magaliesberg very cautiously because, I am not familiar with the time, but it might even out of Transnet ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** ...in the Magaliesberg area.

**CHAIRPERSON:** Okay.

**ADV MAPOMA:** I am not ...[intervenes]

**CHAIRPERSON:** You might not accurate about Magaliesberg.

**ADV MAPOMA:** But the name, Magaliesberg.

**CHAIRPERSON:** Ja, okay.

**ADV MAPOMA:** Because I remember of the news ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** ...in that area and we were in one of them.

10 **CHAIRPERSON:** Okay. No, no. That is fine.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** But because Mr Myburgh is going to take you to the time when you deal with payments. If we go back to the meeting in Inanda. You say, Mr Mkwanazi wanted to have a meeting with Mr Gama where it would just be the two of them?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** And that is what happened?

**ADV MAPOMA:** That is what happened.

20 **CHAIRPERSON:** And when... after that meeting, did Mr Mkwanazi brief you about the discussion or some aspects of the discussion?

**ADV MAPOMA:** Yes, he did Chair.

**CHAIRPERSON:** Ja. And which aspects were those?

**ADV MAPOMA:** The one that I remember specifically is the

one about when Mr Gama will be reinstated to.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** Mr Gama had been asking from Mr Mkwanazi to be reinstated as CEO of the group, just that group. And Mr Mkwanazi was refusing that. He wanted to reinstate him at TFR. The CEO at TFR.

**CHAIRPERSON:** So the position is that there was a pending unfair dismissal dispute in terms of which Mr Gama sought to be reinstated in his position as CEO of TFR, that  
10 at that meeting, according to Mr Mkwanazi and in terms of what he had told you, Mr Gama was no longer seeking reinstatement to the position at TFR?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** But he was in effect seeking to be appointed Group CEO of Transnet?

**ADV MAPOMA:** Yes, Chair.

**CHAIRPERSON:** And that is a position he did not hold before?

**ADV MAPOMA:** That is the position that he did not hold  
20 before and this was the position that Mr Mkwanazi was not agreeing to.

**CHAIRPERSON:** And Mr Mkwanazi did not agree to that?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Okay alright. Mr Myburgh.

**ADV MYBURGH SC:** Thank you, Chairperson. So I was

going to or let me take you to paragraph 21 and further of your affidavit, where you now deal with your involvement in trying to resolve the issue of legal costs. Is that correct?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** How did you become involved in that?

**ADV MAPOMA:** Okay. Under the settlement agreement that was then signed, the reinstatement now became effective, as it were. Although it had at a date that Mr Gama was going to start working in April somewhere.

10 But there was the issue now of the payment of Mr Gama's legal fees. The legal fees were in respect of his dispute, the labour dispute, up to the referral to the Bargaining Council. That is my understanding of it.

And before the disciplinary hearing started, Mr Gama had issued an application to the high court, seeking to stop the disciplinary hearing from going ahead. So the court ruled against him.

And Transnet was giving the cost order in the chamber. Now Mr Gama had incurred costs there. Transnet had  
20 occurred costs there.

And it is Transnet who was supposed to pay his legal costs. And the lawyers... I mean, Transnet's legal team were instructed accordingly to cover those costs for Mr Gama.

Now on the Bargaining Council of the matter, Mr Gama had incurred costs and Transnet had incurred costs as well

there. And Transnet wanted to recover its costs from that process as well.

However, the settlement agreement now said something different. It changed what was normal and asked Transnet to contribute.

So 75% of Mr Gama's legal costs that he had incurred at these two processes and there was a date that it must done, within 14-days after he had presented certain documentation.

10 **CHAIRPERSON:** So the settlement agreement... in terms of the settlement agreement, Transnet undertook to pay 75% of Mr Gama's costs in regard to the high court application that Mr Gama had brought against Transnet?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Which he had lost?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** And the high court had ordered him to pay Transnet's costs?

**ADV MAPOMA:** Yes.

20 **CHAIRPERSON:** So, but in the settlement agreement, Transnet undertook to pay him 75% of his costs in regard to that application?

**ADV MAPOMA:** Chair, the wording of the agreement on these aspects needs to be interpreted very carefully. Firstly, the 75% or the 75% of taxed costs, not 75% of the costs but

it should be taxed first.

And this was costs that he had incurred. So there was actually, that must have happened that he must have incurred these costs. Now what happened ...[intervenes]

**CHAIRPERSON**: Yes, of course, you know when they say... when an order says you are to pay somebody costs, it is always understood that those costs are either agreed or taxed. So in this agreement there is no issue.

**ADV MAPOMA**: Yes.

10 **CHAIRPERSON**: But if there is no agreement, then it ought to be taxed, ja.

**ADV MAPOMA**: The agreement, the term of the agreement was specific.

**CHAIRPERSON**: Specific that it must be taxed?

**ADV MAPOMA**: That it must be taxed.

**CHAIRPERSON**: Oh, okay, okay.

**ADV MAPOMA**: Yes.

**CHAIRPERSON**: Okay.

**ADV MAPOMA**: Now subsequent to that ...[intervenes]

20 **CHAIRPERSON**: Okay let us finish with regard to what Transnet undertook to pay in terms of costs. In regard to the high court litigation that Mr Gama had brought which he had lost and he had been ordered by the high court to pay Transnet costs. The settlement agreement said it was... they said, Transnet undertook to pay his taxed costs

...[intervenes]

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** ...in regard to that application. And then it said or Transnet also undertook to pay 75% of his taxed costs in relation to the unfair dismissal matter.

**ADV MAPOMA:** Chair, with your permission ...[intervenes]

**CHAIRPERSON:** Ja.

**ADV MAPOMA:** ...so that I do not misquote this.

**CHAIRPERSON:** Yes.

10 **ADV MAPOMA:** At page 19 of the Exhibit 17, I think it is 17, which is the third bundle.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** Which is the annexure in my affidavit.

**CHAIRPERSON:** Yes, that is where the settlement agreement is. Ja?

**ADV MAPOMA:** Now that... what is relevant, are paragraphs 2.5 and 2.6.

**CHAIRPERSON:** Ja.

**ADV MAPOMA:** 2.5 reads:

20           “Transnet will make a contribution equivalent to 75% of Mr Gama’s taxed legal costs incurred during Mr Gama’s high court application in respect of his unfair dismissal dispute referred to the Bargaining Council.”

2.6:

“Transnet undertakes that such contribution towards the legal costs incurred by Mr Gama, will be made within a period of 14-days after submission by Mr Gama after the relevant supporting documents.”

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

**ADV MAPOMA:** So this is what I was asked to implement after this agreement was concluded. And there were happens that then emanated from this.

**CHAIRPERSON:** Well, before you talk to me about what  
10 happened when you were asked to implement, let me ask this question. This agreement, this issue of the legal costs, the undertaking by Transnet to pay Mr Gama’s legal costs, taxed legal costs or contribution to his legal costs in regard to the high court application is very unusual.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Actually, I have never [laughing] in my  
experience of many, many years heard of a party undertaking to contribute to the costs of the other party who lost in the case against that party and that party had been ordered to  
20 pay this party’s costs. I have never heard of anything like that. So it is very unusual.

Now what I want to find out is, you being in the Legal Department of Transnet and you being somebody that Mr Mkwanazi had been taken along to some meetings relating to Mr Gama.



Were you asked to advise on any of the terms of the settlement agreement including the issue of costs, to give advice whether Transnet should agree to any such terms?

**ADV MAPOMA:** How this process Chair, as I recall it, happened, it goes like this. When Mr Mkwanazi interacted with me or with Ghule and so on or with me, even individually, he would not say: This is the term I want to include in the settlement.

He would talk about options and that he had and I would  
10 advise him. I will not... he will not say specifically: This is what I want in the agreement. Must I put it there? Do you say yes or no? Would you recommend that I should put it there or not?

He will not do it like that. He would be very general with how he interacted with us and you will not even know that this is something that will end up in an agreement or this nature.

Now in respect of legal costs, I never advised him to put that agreement in. He did not ask me. But later on, I learnt  
20 that Transnet had agreed to this, to this. I would never have advised ...[intervenes]

**CHAIRPERSON:** Never advised ...[intervenes]

**ADV MAPOMA:** I agree with you, it is unusual.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** I never had heard of it myself.

**CHAIRPERSON**: Yes.

**ADV MAPOMA**: As the time, I did not know.

**CHAIRPERSON**: H'm.

**ADV MAPOMA**: I have never heard of it.

**CHAIRPERSON**: Yes.

**ADV MAPOMA**: And when now the bill came, it was within 14-days, they had to give us these documents, which is supporting them, what they said we must pay.

They came with a long bill of costs which was 55 pages  
10 long which was in excess of R 12 million and I refused to pay  
it at the time.

And there were lot of interactions subsequently which I referred to in the affidavits. I do not want to preamp my counsel.

**CHAIRPERSON**: Yes, he will take you through it.

**ADV MAPOMA**: He will take me, ja.

**CHAIRPERSON**: Yes, ja.

**ADV MAPOMA**: We will get it but...

**CHAIRPERSON**: H'm.

20 **ADV MAPOMA**: Then a lot of problems then started when  
all of this was happening.

**CHAIRPERSON**: Okay. Would you have known if Mr Mkwanazi sought and obtained advise from some attorneys on whether to include these terms about costs in the settlement agreement or you might not have known?

**ADV MAPOMA:** I will not know, Chair.

**CHAIRPERSON:** You would not know?

**ADV MAPOMA:** I would not have known.

**CHAIRPERSON:** Okay alright. I interrupted you when you were dealing with Mr Myburgh's question about implementation.

**ADV MYBURGH SC:** Yes, thank you Chairman.

**CHAIRPERSON:** So, Mr Myburgh you can take it from there.

10 **ADV MYBURGH SC:** Mr Mapoma, I am going to deal with the actual payments that were made when we deal with you second affidavit because there they are set. But I just wanted to pick up from paragraph 22 and further of your affidavit. You have already mentioned to the Chairperson that you received a 55 page bill of costs. Is that correct?

**ADV MAPOMA:** Yes, that is correct Chair.

**ADV MYBURGH SC:** And from whom did you receive that?

**ADV MAPOMA:** We have received it from Mr Langa who was the... Themba Langa. Themba Langa Attorneys who  
20 were representing Mr Gama at the time.

**ADV MYBURGH SC:** And what was the total amount of that bill?

**ADV MAPOMA:** It was in the excess of R 12 million.

**ADV MYBURGH SC:** And what view did you form in relation to the bill?

**ADV MAPOMA:** I formed the view that it was ridiculous. There were a lot of faults in it. Inaccuracies. I went through it very carefully. And on the face of it, *prima facie*, it was ridiculous. I told Mr Langa that I am refusing to pay it.

There were a number of things that I had pointed out to him at the time and how they calculated the distances for instance, how they calculated the time of consultations. I

It just did not make sense to me at the time. So I was... I refused to pay it outright.

10 **ADV MYBURGH SC:** And you mentioned later on in your affidavit that there was a point where you indicated to Mr Langa that you might report him to the Law Society. Is that correct?

**ADV MAPOMA:** Yes, that is correct Chair. That is correct because he was insisting that we must pay this money. And at the time, there are correspondence, there are phone calls as pressure to pay the money.

And I did say to him: Look, this bill is overrated and I have a good sense to report you to the Law Society but I  
20 never reported at the time.

**ADV MYBURGH SC:** And did you ever receive a letter from Mr Langa in relation to this issue?

**ADV MAPOMA:** Yes, Mr Langa sent me a letter which was very insulting. He was accusing me of many things. It was either transformation. I was resistant(?) to assist the black

people.

He was saying that because I had a job at Transnet. I brought a new other thing and so on and so on. So it was a letter that was full of insults which I not agreed(?) to at the time.

**ADV MYBURGH SC**: Could you turn to another topic and I will come back perhaps to the issue of costs when we are concluding this affidavit. But in your affidavit your referred to a Mr Siyabonga Mhlango.

10 **ADV MAPOMA**: Yes.

**ADV MYBURGH SC**: Who is he?

**ADV MAPOMA**: Siyabonga Mhlango was a special advisor to the Minister of Public Enterprises at the time, Minister Gigaba.

**ADV MYBURGH SC**: And did you have any dealings with Mr Mhlango around this time?

**ADV MAPOMA**: Yes, in the reinstatement of Mr Gama and whatever was happening, I received a call from him in the evening going home and he was questioning the delay that  
20 Transnet was...

He was accusing Transnet of delaying the reinstatement of Mr Gama and the sort of actually it to me at the time.

And he was not angry or anything but he was just raising it to me as a concern that he had, that the minister had to say that Transnet is doing and I should make it a point that

things are speeded up.

**ADV MYBURGH SC:** Right.

**ADV MAPOMA:** And he called me two times. He called me once and I told him that this is not my responsibility. I am merely assisting Mr Mkwanazi to do what he says I must do.

And the last conversation we had, I was a bit stern with him and told him not to call me again because I did not report to him or his minister to the president.

So he must stop calling me and he never called me  
10 again. I never spoken to Siyabonga Mhlango again.

**ADV MYBURGH SC:** What ...[intervenes]

**CHAIRPERSON:** I am sorry. You made a reference to the president and the minister but I did not hear what you were saying about them.

**ADV MAPOMA:** I told him the second time that he must not call me again about this issue of Mr Gama because I am not answerable to him, that is Mr Mhlango. I was also not answerable to the minister. I am also not answerable to the president.

20 **CHAIRPERSON:** Okay.

**ADV MAPOMA:** So he must not call me about this and speeding up of things and so on.

**CHAIRPERSON:** H'm.

**ADV MAPOMA:** They need to talk to Mr Mkwanazi if they talk about anything relating to Mr Gama. So this was not

something I had to answer to them at all.

**CHAIRPERSON**: H'm. Why did you refer to the minister and the president when you said that to him?

**ADV MAPOMA**: That is because Mr Mhlango indicated to me that there was a concern of the delay from the presidency and from the minister.

And what was strange to me is that he, even though there was a delay from them, but he... I did not think that he had the authority or the right to what he related to me.

10 **CHAIRPERSON**: Okay.

**ADV MAPOMA**: So this was my annoyance with him at the time.

**CHAIRPERSON**: Yes.

**ADV MAPOMA**: Which I explained to him.

**ADV MYBURGH SC**: Did Mr Mhlango refer to the president or did he refer to some other term?

**ADV MAPOMA**: He referred to the presidency but he did not say the president.

**ADV MYBURGH SC**: What did he say?

20 **ADV MAPOMA**: He would use a language that made you understand that he was referring to the president.

**ADV MYBURGH SC**: What language?

**ADV MAPOMA**: Let me see in my affidavit because I think in my affidavit I did mention this.

**CHAIRPERSON**: Ja, you can refresh your memory in your

affidavit if you...

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** I ask you to go to paragraph 27, please. At page 12.

**ADV MAPOMA:** Yes, he referred to number one.

**ADV MYBURGH SC:** That you understood to mean the president?

**ADV MAPOMA:** That is how I understood, yes. And this was not... the involvement of the presidency in sorting(?) of  
10 things was not strange to me because we had previously received a complaint from the presidency about some matter that we had.

Someone who had sued Transnet, allegedly that delivered some wheels at Transnet Rail Engineering. So suing Transnet for R 8 million plus.

And we find that this claim at the time, we were briefed Advocate Natal(?) and we investigated and found that no wheels were ever delivered.

But the plaintiff at the time was insisting that he must  
20 paid and laid complaints up to the presidency and the presidency wrote us a letter which I had to answer.

So to me there was nothing new about queries coming from the president's route about Transnet was doing.

**CHAIRPERSON:** H'm. Do you remember who the plaintiff was in the matter you are ...[intervenes]



**ADV MAPOMA:** I can find out Chairperson.

**CHAIRPERSON:** You can find out?

**ADV MAPOMA:** Because I know the specifics ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** ...of the particulars of claim, the enterprise(?).

**CHAIRPERSON:** Yes. But ...[intervenes]

**ADV MAPOMA:** I forget the ...[intervenes]

**CHAIRPERSON:** What was the gist of the president's letter  
10 or complaint?

**ADV MAPOMA:** The gist Chair... sorry to interrupt. Was that why were we not settling the matter.

**CHAIRPERSON:** Is that what the letter was saying?

**ADV MAPOMA:** Yes, why was the matter not settled or it had been settled? And at the time, this was a matter that was also reported to at the board because we had a legal report that we did for litigation matters ...[intervenes]

**CHAIRPERSON:** H'm.

**ADV MAPOMA:** ...which I will hand to my supervisor to take  
20 and table it at Exco. It would be a report about the decision(?) of Transnet. And this was this matter including some of the bigger(?) matters at Transnet, also became part of the board that said we will now have to meet with the board itself.

But ultimately, that matter was settled because the

plaintiff withdrew the case on the day of trial at the high court here in Johannesburg because we totally, totally decided that we are not going to pay it.

**CHAIRPERSON:** Oh, did you say that this was a case where the plaintiff was supposed to have delivered some goods to Transnet?

**ADV MAPOMA:** Ja, indeed Chair.

**CHAIRPERSON:** Ja, and he alleged or it alleged that I had delivered the goods.

10 **ADV MAPOMA:** Yes.

**CHAIRPERSON:** But your investigations at Transnet revealed that no such goods had been delivered.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** And he was claiming payments for those goods.

**ADV MAPOMA:** Yes, Chair.

**CHAIRPERSON:** And you would defend the matter.

**ADV MAPOMA:** Yes, Chair.

20 **CHAIRPERSON:** And then there was a letter from the president ...[intervenes]

**ADV MAPOMA:** Ja.

**CHAIRPERSON:** ...asking why you were not settling the matter.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Despite that letter, you did not settle the

matter.

**ADV MAPOMA:** No.

**CHAIRPERSON:** You continued to fight it.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Then ultimately the plaintiff withdrew the claim.

**ADV MAPOMA:** Yes, on the morning of the trial.

**CHAIRPERSON:** Yes. Without Transnet paying anything.

**ADV MAPOMA:** Without Transnet paying anything.

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

**ADV MYBURGH SC:** Thank you, Chairperson. It is ...[intervenes]

**CHAIRPERSON:** I see we are at seventeen past eleven. Let us take the short tea-break. We will resume at twenty-five to twelve.

**ADV MYBURGH SC:** Thank you, Chairperson.

**CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

20 **CHAIRPERSON:** Okay, let us continue.

**ADV MYBURGH SC:** Mr Chairperson, I have been asked by the secretariat to bring to your attention a letter. I do not know if you have been given a copy, from NPM Attorneys representing Abalozi.

**CHAIRPERSON:** Oh, okay, I have not seen it.

**ADV MYBURGH SC:** Perhaps if I could hand it up?

**CHAIRPERSON:** Yes, okay.

**ADV MYBURGH SC:** Mr Chairperson in summary it seems that what has happened here is that a 3(e) was served on Abalozi. You will remember they were previously GNS and they were provided with a 3(3) in relation to Mr Todd's affidavit dealing GNS. They write to you effectively saying that what Mr Todd says in his affidavit is privileged, they say it is unuseful. At paragraph 3, that is simply is his  
10 opinion, it is a legal memorandum and they, it appears, want a ruling from you that they – the affidavit must either be knocked out or that they do not have to respond to it. I do not think this is something that needs to be dealt with now, subject to your view.

**CHAIRPERSON:** Ja, if they want to come and move any application they should do so. Ja.

**ADV MYBURGH SC:** As you please, Chairperson. Before the tea adjournment you had dealt with your interaction with Mr Mahlangu. I just want to go back and ask you, did  
20 you know Mr Mahlangu?

**MR MAPOMA:** Yes, I know him.

**ADV MYBURGH SC:** And how do you know him?

**MR MAPOMA:** Well, Mr Mahlangu had been a partner at a firm of attorneys called [indistinct] 02.35 Mahlangu, might not be naming it correctly but they were a member of the

Transnet legal panel. Subsequently they merged – again, I do not know whether I am using the right word, with Edward Nathan Sonnenbergs and he was director at Edward Nathan Sonnenbergs. So he would visit me at times regarding legal work that his firm of attorneys were engaged in with Transnet.

**ADV MYBURGH SC:** And did – Mr Mahlangu, does he hail from the Eastern Cape?

**MR MAPOMA:** Not to my knowledge but I know that he  
10 was friends with somebody I knew from the Eastern Cape or his family I knew.

**ADV MYBURGH SC:** Now you have told the Chairperson about your discussions with Mr Mahlangu and what you said to him the last time that he phoned you.

**MR MAPOMA:** Yes.

**ADV MYBURGH SC:** Did you report on that discussion that you had with Mr Mahlangu to anybody?

**MR MAPOMA:** Yes, I did.

**ADV MYBURGH SC:** To whom did you report?

20 **MR MAPOMA:** I informed Mr Mkhwanazi of the conversation the following morning and the reason for that was I was worried that Mr Mahlangu might report our conversation to his minister and the minister might call Mr Mahlangu – I mean Mr Mkhwanazi to complain that I had not spoken – know well with Mr Mhlanga, something like

that. So I thought that I should warn Mr Mkhwanazi that this conversation between me and Mahlangu and this is how I responded to him.

**ADV MYBURGH SC:** And you did that?

**MR MAPOMA:** I did that.

**ADV MYBURGH SC:** Alright. Then if we go back to your affidavit at page 12 ...[intervenes]

**CHAIRPERSON:** I am sorry, when you did that what was Mr Mkhwanazi's reaction to that report by you?

10 **MR MAPOMA:** No, he really did not do anything, there was nothing to be done, I think just took note of ...[intervenes]

**CHAIRPERSON:** Oh, you just wanted him not to be surprised?

**MR MAPOMA:** I just wanted him to be aware.

**CHAIRPERSON:** If he got a call.

**MR MAPOMA:** If he got a call about my conversation.

**CHAIRPERSON:** Okay.

20 **MR MAPOMA:** There was that conversation that had happened.

**CHAIRPERSON:** Okay, alright.

**ADV MYBURGH SC:** Thank you. If you go back to your affidavit at page 12 you discussion at paragraph 28 and then at paragraph 29 you deal with the settlement agreement, we have dealt with that. And just a few things

to finish off this affidavit, we come to the second one.

You have already told the Chairperson, Mr Mapoma, about a letter that you received from Ms de Lange.

**MR MAPOMA:** Yes.

**ADV MYBURGH SC:** Did you ever bring that letter to the attention of anyone within Transnet?

**MR MAPOMA:** Yes, I showed it to my colleagues, I showed it to Ms Stephen, who was my supervisor at the time, and asked her, you know, to intervene on my behalf  
10 and talk to Mr Gama about this because the letter was very – it was in very unsavoury terms and in my view it was tantamount to me being insulted by one of the executives because a letter from his attorneys, in my mind, it is a letter from him so I showed it to Ms Stephen at the time and I asked her to intervene because it is written, should not be dealing like this with me and/or anybody else. I thought it was very wrong.

**CHAIRPERSON:** So you are saying the letter was from Langa Attorneys.

20 **MR MAPOMA:** Yes.

**CHAIRPERSON:** Who were Mr Gama's attorneys?

**MR MAPOMA:** Yes.

**CHAIRPERSON:** But because they represented Mr Gama you took what they were saying as coming from Mr Gama.

**MR MAPOMA:** Yes.

**CHAIRPERSON:** And you reported it to your senior.

**MR MAPOMA:** Yes.

**CHAIRPERSON:** So that he could – she could take it up with Mr Gama.

**MR MAPOMA:** Yes.

**CHAIRPERSON:** Oh, okay.

**ADV MYBURGH SC:** And at this time had Mr Gama been reinstated?

**MR MAPOMA:** Yes, Mr Gama was back at work at the  
10 time.

**ADV MYBURGH SC:** And what was the reaction of Ms Stephens?

**MR MAPOMA:** She laughed at me.

**CHAIRPERSON:** She?

**MR MAPOMA:** She laughed.

**CHAIRPERSON:** She laughed. Did she read the letter?

**MR MAPOMA:** Yes, she did, Chair.

**CHAIRPERSON:** And you said the letter was quite insulting as far as you were concerned.

20 **MR MAPOMA:** Yes.

**CHAIRPERSON:** H'm.

**ADV MYBURGH SC:** Thank you. Mr Mapoma, was there a time where other employees of Transnet spoke to you about Mr Gama's costs?

**MR MAPOMA:** Yes.



**CHAIRPERSON:** I am sorry again, Mr Myburgh, maybe just to conclude. Ms Stephens laughed after reading the letter and that was the end of her involvement on the issue or was there some discussion that followed between the two of you after she had laughed?

**MR MAPOMA:** Nothing, Chair.

**CHAIRPERSON:** What was your understanding of her reaction?

**MR MAPOMA:** She did not see the significance of it.

10 **CHAIRPERSON:** She did not see the seriousness of the issue?

**MR MAPOMA:** Ja.

**CHAIRPERSON:** Okay and you left it at that?

**MR MAPOMA:** I left it at that.

**CHAIRPERSON:** Okay, alright. Mr Myburgh?

**ADV MYBURGH SC:** Thank you, Chair. I had asked you whether there were other employees of Transnet who approached you in relation to Mr Gama's costs.

20 **MR MAPOMA:** Yes, I was approached as well at different times by Ms [indistinct] 08.03 Sekela(?) and Mr [indistinct] 08.08 at different times who came to my office and discussed this issue of Mr Gama's legal fees that I was refusing to pay and I also explained to them the times they were there my reasoning by the time. So they did come to my office to ask about this.

**CHAIRPERSON:** What was your understanding of why they – where they came into the matters of Mr Gama’s costs?

**MR MAPOMA:** Chair, they were colleagues.

**CHAIRPERSON:** In legal language what was their *locus standi* on the matter?

**MR MAPOMA:** They had no *locus standi* in legal language but we were colleagues, we got on very well together and I – at the time I took no offence by them coming to enquire.

10 I just explained to them ...[intervenes]

**CHAIRPERSON:** And that is how it ended.

**MR MAPOMA:** And then that is how it ended.

**CHAIRPERSON:** Okay, alright.

**MR MAPOMA:** Ja.

**CHAIRPERSON:** Yes, Mr Myburgh?

**ADV MYBURGH SC:** Thank you and then the last two paragraphs of your affidavit you say that:

“Mr Molefe was then appointed as the CEO. He never asked me about legal fees of Mr Gama.”

20 **MR MAPOMA:** Yes. Yes, Mr Molefe then came in and he never interacted with me on this except when there was a query from the ministry, Public Enterprise ministry about Mr Gama’s fees. And he wrote a note on a memo pad that I must draft a response for him to the ministry, which I did.

**ADV MYBURGH SC:** And then perhaps I can just ask you

two questions, were you – and you might have already dealt with this, were you involved yourself in negotiating the settlement agreement with Mr Gama?

**MR MAPOMA:** No. I have never met Mr Gama, I have never interacted with him at all. If I would meet in the lift perhaps, it would be greeting but I absolutely had no interactions with him at all.

**ADV MYBURGH SC:** I want now, Mr Mapoma to take you please to your second affidavit. That you find at page 23  
10 and further.

**CHAIRPERSON:** Before that, Mr Myburgh. I know that you have said that you had no part in negotiating the settlement agreement.

**MR MAPOMA:** Yes.

**CHAIRPERSON:** Ja but you were – you held a senior position in the legal department of Transnet and Transnet – part of your job was to give legal advice to Transnet, is that right?

**MR MAPOMA:** Yes.

20 **CHAIRPERSON:** Yes. Now when you did see the settlement agreement and you saw its terms you obviously saw that one of the terms was that Mr Gama I think was being given a final written warning which would be – which was valid for six months but retrospectively. A settlement agreement was being concluded on the 23 February 2011,

that warning was said to have commenced on the 29 June, is that right?

**MR MAPOMA:** Yes.

**CHAIRPERSON:** 2010.

**MR MAPOMA:** Yes.

**CHAIRPERSON:** And therefore would have expired on the 29 or 28 December 2010.

**MR MAPOMA:** Yes.

**CHAIRPERSON:** Did you have an understanding of what  
10 that part of the settlement agreement meant at a practical level? Are you able to say something, being a legal adviser to Transnet knowing that you were not asked for your opinion but seeing that, did you take a view about what it meant to have that kind of clause in the settlement agreement?

**MR MAPOMA:** One of the terms [indistinct] 12.44 it was [indistinct] 12.49 that Mr Gama could come back to work immediately.

**CHAIRPERSON:** Yes. But to the extent that the  
20 settlement agreement said the warning would have been valid for six months did it not mean that by the time the settlement agreement was signed there was no warning anymore?

**MR MAPOMA:** I would mean that the sanction had been served, as it were.

**CHAIRPERSON:** Yes, yes.

**MR MAPOMA:** And the ...[intervenes]

**CHAIRPERSON:** Even before the settlement.

**MR MAPOMA:** Even before the settlement.

**CHAIRPERSON:** Yes.

**MR MAPOMA:** Because at the bargaining council, as I understood this thing at the time, that Mr Gama was complaining about the actual finding of guilt, he was complaining about the sanction itself. So if now the finding  
10 of guilt stands and then the sanction has been made the way it was, it means that the matter was finalised and he could come back to work.

**CHAIRPERSON:** Yes.

**MR MAPOMA:** Without the matter going to the bargaining council for it to determine the sanction that he had been given.

**CHAIRPERSON:** Yes.

**MR MAPOMA:** So Transnet took it upon itself to decide on the sanction, as it were.

20 **CHAIRPERSON:** H'm.

**MR MAPOMA:** Because the sanction had been decided by whereby [indistinct] 14.12 was chairing the disciplinary hearing, so they sought to view [indistinct] 14.19 I suppose without it going to any form of formal legal process like the bargaining council, through that. So this is what they had

decided to do.

**CHAIRPERSON:** At a practical level did it mean that there was any risk to Mr Gama in any way of this warning being taken into account if there was - he committed another misconduct after he came back or far as you know?

**MR MAPOMA:** As I am sitting here, Chair, there would have been no risk.

**CHAIRPERSON:** There would have been no risk.

**MR MAPOMA:** Yes.

10 **CHAIRPERSON:** Yes. Had there been any settlements before in relation to dismissal disputes at Transnet which had been settled on a basis where a warning was given but it had lapsed before a settlement happened?

**MR MAPOMA:** Not to my knowledge.

**CHAIRPERSON:** Not to your knowledge?

**MR MAPOMA:** Yes because matters like this, dismissals, disciplinary hearings and so on were mainly dealt with by HR.

**CHAIRPERSON:** Yes.

20 **MR MAPOMA:** Were not through legal.

**CHAIRPERSON:** Yes, okay. Okay.

**MR MAPOMA:** So there will be ones who will be better positioned to answer that question.

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

**MR MAPOMA:** Yes.

**CHAIRPERSON:** And you do not know whether they were involved in advising on this?

**MR MAPOMA:** I do not know.

**CHAIRPERSON:** Okay, alright. Okay, thank you.

**ADV MYBURGH SC:** Thank you, Chairperson. Mr Mapoma, at paragraph 4 of your second affidavit at page 24 you make reference to the fact that you had then received two affidavits from the Commission.

**MR MAPOMA:** Yes.

10 **ADV MYBURGH SC:** One from Ms Mohlabi the Group company secretary of Transnet and the other from Mr Mhlangu.

**MR MAPOMA:** Yes.

**ADV MYBURGH SC:** And you have been asked to comment on them.

**MR MAPOMA:** Yes.

**ADV MYBURGH SC:** I just want to identify those affidavits because I am going to cross-refer you to them in your evidence. If you could please go to – keep that  
20 bundle open where it is, now turn to bundle 1. You should have flags there, stickers. Could you turn please to flag number 2? There you find an affidavit of Ms Mafabe(?)

**MR MAPOMA:** Yes,. I see that.

**ADV MYBURGH SC:** That deals with legal fees and there is a whole series of annexures which we will come to in a

moment. Is that the affidavit that you received?

**MR MAPOMA:** Yes, that is the affidavit I am referring to that I received.

**ADV MYBURGH SC:** And then the affidavit of Mr Mahlangu, could I ask you - you have the stickers as me – to turn to flag 4. 4 And 5 are together.

**MR MAPOMA:** Yes.

**ADV MYBURGH SC:** Are you there?

**MR MAPOMA:** Yes I am.

10 **ADV MYBURGH SC:** It is the affidavit of Mr Mahlangu at page 169 and if you turn forward to page 172 you see that he addresses the allegations that you had made against him.

**MR MAPOMA:** Yes.

**ADV MYBURGH SC:** Is this the other affidavit that you received?

**MR MAPOMA:** Yes it is.

**ADV MYBURGH SC:** Alright. Now if we go back to your second, did these affidavits help you in working out the  
20 sequence of events at all?

**MR MAPOMA:** Yes.

**ADV MYBURGH SC:** And how did they assist you in that regard?

**MR MAPOMA:** Well, firstly, they would have helped me – well, they helped me in relation as to when Mr Mahlangu



would have called me. And secondly, as to the payments made for the legal costs that were referred to on the settlement agreement and later on I also remembered that later on it was also on the opinion that was sought in relation to the bonuses as well that are referred to in the affidavit. But, I do not think they referred them in the affidavit, I am not sure.

**ADV MYBURGH SC:** What did you conclude then as to when did Mr Mahlangu phone you?

10 **MR MAPOMA:** It will have been before the settlement agreement.

**ADV MYBURGH SC:** And the demand from Langa Attorneys?

**MR MAPOMA:** It would have been after settlement agreement.

**ADV MYBURGH SC:** Then you say at paragraph 6 that:

“The information sought, presumably from the Commission, relates to the unsuccessful High Court application by Gama and costs relating to his unfair dismissal dispute.”

20

**MR MAPOMA:** Yes.

**ADV MYBURGH SC:** Now at paragraph 7 and this is text that you have already given or evidence that you have already given. I just want to take you for the purposes of the record to that judgment. You mention here that Mr

Gama has sued all the board members of Transnet and there had been a defending of that action by different legal firms. Can I just take you please to bundle 2? Are you there?

**MR MAPOMA:** Yes, I am there.

**ADV MYBURGH SC:** And could I ask you to turn to page 142?

**MR MAPOMA:** Yes, I am there.

**ADV MYBURGH SC:** So as an advocate you will be  
10 familiar with this, this is a judgment extracted from SAFLII.

**MR MAPOMA:** Yes.

**ADV MYBURGH SC:** And it is in the matter of Gama v Transnet dated the 7 October 2009. Do you see that?

**MR MAPOMA:** Yes, I see that.

**ADV MYBURGH SC:** Now I would like you please to go to the end of the judgment which you find at page 162. At the foot of the page, paragraph 121 the order made by the court is:

20 “The application is dismissed with costs including the costs of the 1<sup>st</sup> to 3<sup>rd</sup> respondents and the 4<sup>th</sup> to 13<sup>th</sup> respondents excluding the 10<sup>th</sup> and 11<sup>th</sup> respondents. Such costs to include the costs of two counsel.”

**MR MAPOMA:** Yes, I see that.

**ADV MYBURGH SC:** And then over the page at 163 it

reflects there that the 1<sup>st</sup> to 3<sup>rd</sup> respondent was represented by Bowman Gilfillan Attorneys, correct?

**MR MAPOMA:** Yes.

**ADV MYBURGH SC:** And that the 4<sup>th</sup> to 9<sup>th</sup> and the 12<sup>th</sup> to 13<sup>th</sup> were represented by Eversheds Attorneys.

**MR MAPOMA:** Yes.

**ADV MYBURGH SC:** Some familiar advocates involved too.

**MR MAPOMA:** Yes.

10 **ADV MYBURGH SC:** Now at paragraphs 8 and 9 of your second affidavit, this is evidence that you have already given, you have explained to the Chairperson that while Mr Gama was supposed to pay the costs of Transnet and the board members, Transnet agreed to reverse that and pay 75% of his costs.

**MR MAPOMA:** Yes.

**ADV MYBURGH SC:** And what was your view of that? I think you have already expressed it but then you deal with it in paragraph 9.

20 **MR MAPOMA:** This was an usual – this was strange, to say the least and I found no rationality for this, Chair. I struggled with it, I could not find the legal basis for it and because there was an instruction that later came verbally again that the money must be paid from Group Legal. I then took a particular interest as to how one was going to

account to auditors for this and I was reluctant to pay it but the instruction came that Transnet must pay the money.

And this came after Mr Langa was struggling to provide documents which are referred in paragraph 2.6 of the settlement agreement which would have justified Transnet paying the money. So these documents were not forthcoming except the 55 page bill of costs which I had rejected.

So after a lot of to-ing and fro-ing, correspondence,  
10 emails, telephones and so on, then a decision was taken somewhere and then to me that Transnet instead of it asking for Mr Langa to bring proof of the costs that he had incurred, Transnet must then pay 75% of the taxed costs of its own attorneys. In other words, Transnet had deemed to costs that it incurred as costs that were liability to Mr Langa that they will have to pay, so they must just pay it in, that money. This is very difficult to explain.

And then after I received that instruction, being uncomfortable with it, I went to see Mr Singh, who was the  
20 CFO at the time.

**CHAIRPERSON:** Is that Mr Anoj Singh?

**MR MAPOMA:** That is Mr Anoj Singh, yes. So that he can give me the go-ahead to pay this money in the manner that I explain and he agreed that I should pay and then I made a note on the bills by my own handwriting at the time

and instructed my office to pay the money.

**CHAIRPERSON:** So in terms of the settlement agreement between Transnet and Mr Gama, Transnet had undertaken to pay - to pay, to make a contribution...

**MR MAPOMA:** Ja.

**CHAIRPERSON:** ...of 75% of Mr Gama's taxed legal costs.

**MR MAPOMA:** Yes.

**CHAIRPERSON:** In respect of his unsuccessful High  
10 Court application.

**MR MAPOMA:** Yes.

**CHAIRPERSON:** And another contribution of 75% of Mr Gama's taxed legal costs in relation to the unfair dismissal dispute that he had referred to the Transnet Bargaining Council.

**MR MAPOMA:** Yes.

**CHAIRPERSON:** That is what the settlement agreement said about costs.

**MR MAPOMA:** Yes.

20 **CHAIRPERSON:** Now are you saying that Mr Gama's attorneys failed to provide supporting documents in order for Transnet to pay its contribution to Mr Gama's legal costs in regards to the two matters in accordance with the settlement agreement?

**MR MAPOMA:** Yes.

**CHAIRPERSON:** And because they were struggling to furnish such supporting documents, somebody within Transnet or a group of people within Transnet came up with the idea that what you must do in order to solve this problem of Mr Gama's attorneys not being able to furnish supporting documents, what you must do is look at the legal costs that Transnet had paid to its own attorneys or to its own lawyers in regard to the two matters and calculate 75% thereof and then pay that amount to Mr  
10 Gama's attorneys? Is that what you are saying?

**MR MAPOMA:** Just a little bit of correction.

**CHAIRPERSON:** Ja.

**MR MAPOMA:** On what you are saying, Chair. Transnet had a cost s order against Mr Gama.

**CHAIRPERSON:** Yes.

**MR MAPOMA:** Which was taxed.

**CHAIRPERSON:** Yes.

**MR MAPOMA:** This money was supposed to be paid by Mr Gama to Transnet.

20 **CHAIRPERSON:** Yes, yes.

**MR MAPOMA:** So instead of him paying it to Transnet, the decision then was that 75% of that cost that was due to Transnet must then be deemed to be due to Mr Gama and would be paid to him.

**CHAIRPERSON:** Oh, okay. So that relates – that is the

cost order that had been granted by the High Court in favour of Transnet against Mr Gama in regard to the High Court application?

**MR MAPOMA:** Yes.

**CHAIRPERSON:** That cost order had said Mr Gama should pay Transnet's legal costs as well as the legal cost of various directors of the board of Transnet who had been cited.

**MR MAPOMA:** Yes.

10 **CHAIRPERSON:** And had opposed his application.

**MR MAPOMA:** Yes.

**CHAIRPERSON:** So Transnet then said Transnet must calculate those costs.

**MR MAPOMA:** Ja.

**CHAIRPERSON:** Which Mr Gama was supposed to pay to him.

**MR MAPOMA:** Yes.

**CHAIRPERSON:** And then calculate 75% thereof and pay that to Mr Gama's attorneys.

20 **MR MAPOMA:** Yes, that was the [indistinct] 29.08.

**CHAIRPERSON:** Oh, okay.

**MR MAPOMA:** Just that there were two attorneys on Transnet's side.

**CHAIRPERSON:** Yes.

**MR MAPOMA:** Because the board members, they decided

to use different sets of attorneys.

**CHAIRPERSON:** yes.

**MR MAPOMA:** So there were two attorneys now against whom Mr Gama had to pay costs, as it were.

**CHAIRPERSON:** Yes.

**MR MAPOMA:** Ja because he had lost and both attorneys for the different board members had cost orders against him. So this is what he had to pay.

**CHAIRPERSON:** Yes.

10 **MR MAPOMA:** Yes.

**ADV MYBURGH SC:** Thank you, Mr Mapoma, let us go through the documents and this may become clearer.

**CHAIRPERSON:** Mr Myburgh, I just want to mention this because it is in my mind.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** And you can see how you deal with it, maybe that you deal with it later. I am wondering whether the – what Transnet decided to do might have ended up giving Mr Gama more than he should have got if the  
20 settlement agreement is to be interpreted as meaning that Transnet was supposed to pay 75% of his cost to his own lawyers.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** So I am wondering whether this would not have ended up being much more than that.



**ADV MYBURGH SC:** We will come to those figures, it certainly did because as has been clarified Chair it seems that the bills of Eversheds and Bowmans were used as a proxy really for Mr Gama's costs, strange as that may be, but what then happened is he was paid his costs in any case, as we will see.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** And of course he was absolved of responsibility or liability of paying our costs so it is really a  
10 sort of a three way issue.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** Mr Mapoma let us go to the documents, at paragraph 9 you say three lines from the bottom:

“However I auctioned it as instructed.”

I also refer the Commission to the handwritten notes dated 28 March I made it the time on two bills, one from Bowman Gilfillan and one from Eversheds. I want to go to those handwritten notes and then your evidence might I think  
20 become clearer. If you go to file one, bundle one, could I ask you to turn please to page 93. This is an annexure to Ms Mxlabbe's affidavit. There is a handwritten note, is that the note you refer to?

**ADV MAPOMA:** This is the note I am referring to.

**ADV MYBURGH SC:** Now if you turn to page one

...[intervenes]

**CHAIRPERSON:** Are you talking about the handwritten annotations at page 93?

**ADV MYBURGH SC:** At the foot of the page yes Chair.

**CHAIRPERSON:** Oh okay, alright.

**ADV MYBURGH SC:** We are going to come back to that Mr Mapoma but if you go to page 88 could you confirm that this is a bill of fees and disbursements due to Bowman Gilfillan?

10 **ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Alright, so let's go back to 93, so it had been taxed and allowed in the sum of R353 457, correct?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** And what does your handwritten note say?

**ADV MAPOMA:** My handwritten note reads as follows:

20 "Transnet to pay 75% [Seventy five percent] of the taxed costs above, that is 75% of R353 457,36 [Three hundred and fifty three thousand four hundred and fifty seven rand thirty six cents]. Payment has been approved as the attached memo [discussed with Anoj] and I signed it and there is a date of 28 March 2011."

**ADV MYBURGH SC:** Alright, now we will come to that

memo in a moment but you made the same annotation if you go over the page to page 94 there is another taxed bill in relation to Bowman Gilfillan.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** If you go to page 96 would you confirm that you made the same annotation on that ...[intervenes]

**ADV MAPOMA:** Yes I definitely did.

**ADV MYBURGH SC:** And then those are the Bowman  
10 Gilfillan documents, if you go to page 112 these are fees and disbursements due to Eversheds.

**ADV MAPOMA:** Yes I am there.

**ADV MYBURGH SC:** If I could ask you to turn forward then to page 117 we find the same annotation there, is that correct?

**ADV MAPOMA:** Yes that is correct.

**ADV MYBURGH SC:** And then over the page another tax bill in respect of Eversheds and if you go to page 120 we find the same annotation.

20 **ADV MAPOMA:** Yes that is correct.

**ADV MYBURGH SC:** Now you say in all of these annotations that you had discussed the matter with Mr Singh.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Is there a particular reason why you

made these annotations what you wrote at the bottom of each one of them.

**ADV MAPOMA:** Yes normally attorneys' bills when they come to my office I would not go to Mr Singh.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** And discuss them. I will not even go to my direct supervisor to discuss them.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** I had authority to make payments when  
10 payments were due to attorneys for work done, but in this particular instance I was not happy with how this one was to be paid and Mr Mkhwanazi has asked me to ...[indistinct] as I am explaining it to you. Now out of my unhappiness I struggled in my mind how this can be explained towards that, because when auditors come they will ask me how do you explain that, so I went to him and said to him I don't recall the particular conversation, the words, but I would have said to him this is what my instruction is and I am asked to pay this money. Now from  
20 your position as CFO must I do this, because when the auditors come I wanted to have somebody who has seen enough, this thing with the CFO who had agreed that payments must be made in this fashion and I think I will have asked or told Mr Makonas as well that I am going to go and ask Mr Singh around this, he would know about it,

I would not have done it behind his back, so I had this instruction and this comfort at least of knowing that this is what the executives approved and I made the payment.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** So you say in your annotations that you had discussed it with Anoj, Mr Singh and you've explained that and why you escalated it to him, but you also talk of approval as per the attached memo.

**ADV MAPOMA:** Yes.

10 **ADV MYBURGH SC:** And this is something that you deal with at paragraph 10 of your affidavit, you say I also refer to the memo I wrote to Mr Singh dated 23 March. Could I take you please to that memo.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Bundle one, same bundle that you are in, at page 104.

**ADV MAPOMA:** Yes I am there.

**ADV MYBURGH SC:** Is that the memorandum?

**ADV MAPOMA:** That's the memorandum I am referring to.

20 **ADV MYBURGH SC:** So it is addressed to Mr Singh and from you dated the 23<sup>rd</sup> of March?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Now I want to take you to your motivation, your quotes, the relevant clauses from the settlement agreement and then you deal with the financial

implications.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** And you say 75% of the attached invoices have to be paid to Gama's attorneys and then if you go down the breakdown of cost is as follows, talk about the South Gauteng High Court litigation, over the page tax costs awarded to Eversheds Attorneys were X and Transnet in terms of the settlement agreement must pay 75% and then you go on to say the tax cost awarded to  
10 Bowmans were X and in terms of the settlement agreement Transnet must pay 75%.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** And then you say we're still awaiting the tax costs from Langa, Mr Gama's attorney. It is recommended that when such has been obtained payment of 75% of these costs is also approved. You go on to seek a recommendation that based on the motivation of that I recommend that the contribution to legal fees must be paid as per settlement agreement and you sign that and then  
20 who are the signatories after that?

**ADV MAPOMA:** ...[Indistinct] and Ms Stephan and ...[indistinct] Stephan, and Mr Brian Molefe.

**ADV MYBURGH SC:** And what – there's a handwritten annotation there, whose writing is that?

**ADV MAPOMA:** That is Mr Molefe's handwriting.

**ADV MYBURGH SC:** And what does it say?

**ADV MAPOMA:** It says Mapoma I do not see the need for a letter on the PFMA list and the ...[indistinct] opinion. If you don't want the document to leak why do you make copies and attach it.

**CHAIRPERSON:** Was there something in the memo where you were giving a lecture on the PFMA and risk and Deneys Reitz opinion?

**ADV MAPOMA:** The page prior to that one Chair where  
10 we had signed, at the top of the page this is now page 105.

**CHAIRPERSON:** Yes?

**ADV MAPOMA:** There is reference to the Public Finance Management Act.

**CHAIRPERSON:** Oh, okay.

**MR MAPOMA:** And then below that there's a paragraph written to an opinion where it is said.

**CHAIRPERSON:** Yes.

**MR MAPOMA:** And then on page 104 under the heading  
20 "motivation" there's a sentence that says a ...[indistinct] agreement is attached.

**CHAIRPERSON:** Mmm, okay. Oh I am sorry is this a memo that Mr Singh saw or would have seen before giving you the go ahead to pay?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Okay, alright.

**ADV MYBURGH SC:** You also refer to later on in your affidavit at paragraph 12 to a memorandum that you wrote to Mr Molefe, so we have dealt with the memorandum to Mr Singh. The memorandum to Mr Molefe could I ask you please again in Bundle 1 to turn to page 142.

**ADV MAPOMA:** Just before we go there counsel I just want to bring to your attention and the Chair's attention the dates on the memo that you are referring to that is at page 106, and the ...[indistinct] handwritten notations as well  
10 because all of that would have come after the approval that we received in that memo if you look at the dates. Then we can go to the memo that you are referring to.

**ADV MYBURGH SC:** Yes, I think the point that you make is that Mr Molefe signs on the 28<sup>th</sup> of March and that is the same day as your handwritten annotations, is that what you say?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Fair enough, so if we then go to your memorandum to Mr Molefe at page 142 of Bundle one is  
20 this the memorandum?

**ADV MAPOMA:** Yes that is the memorandum.

**ADV MYBURGH SC:** To Brian Molefe, Group Chief Executive and it is cc'd to Mr Mkhwanazi the Chairperson of the Board, and it is from you, dated 17 August.

**ADV MAPOMA:** Yes.



**ADV MYBURGH SC:** What gave rise to this memorandum?

What caused you to write it?

**ADV MAPOMA:** Okay, there was a letter that was received by Transnet by Mr Molefe's office from the Ministry, from the Public, Minister of Public Enterprises regarding the complaint that Mr Gama had laid there about outstanding legal fees in the matter of Transnet so a letter would have been sent to Mr Molefe and a response would have been required and Mr Molefe asked me to draft a

10 response for him.

In fact he asked me to explain to him first and then later on he asked me now to draft the letter but I first had to explain to him what had happened so that he could answer and then he said no I must draft the answer for him.

**ADV MYBURGH SC:** Alright well let's first deal with as you say your explanation. And to echo what you have said to the Chairperson you see at page 142 paragraph 3, it records the Director General of the Department of Public

20 Enterprises sent a letter to the Group Chief Executive dated 16 August advising that Langa Attorneys is complaining etcetera about the fees.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Now I want to – because things are clarified now very clearly, just deal with the headings how

were the figures calculated. You say at paragraph 6 that Mr Gama incurred legal costs in two matters, the first is his application in the High Court, in which Transnet used two sets of attorneys, Bowman Gilfillan and Deneys Reitz, is that correct, Deneys Reitz?

**ADV MAPOMA:** Yes, I might be mistaken, it could have been Eversheds, but there were talks about Deneys.

**ADV MYBURGH SC:** Well we've seen from the judgment that it was Eversheds.

10 **ADV MAPOMA:** So I agree, the reference there should be to Eversheds and not Deneys.

**ADV MYBURGH SC:** The second matter in which he incurred costs is the labour matter, in which he was charged in a disciplinary process, the costs at paragraph 7 in the High Court were granted in Transnet's favour by the Court, these costs were supposed to have been paid by Mr Gama, on reaching settlement with Mr Gama Transnet sought and obtained the tax bills from these two firms of attorneys and paid 75% of the total costs. The taxed  
20 amount included the fees of counsel which are indicated as disbursements in the attorneys' bills.

The amounts of R696 000 and R319 000 were paid to Langa Attorneys on 28 March 2011 being 75% of the tax costs incurred by Transnet to its attorneys.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** The total amount paid to Langa Attorneys on 28 March was therefore R1 016 000.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Is that right?

**ADV MAPOMA:** That's correct.

**ADV MYBURGH SC:** Then you go on and you say at paragraph 8:

10                   “Mr Gama's own attorneys in both the High Court application and the labour matter was Langa Attorneys.”

And then I think you explained already that there were concerns about its bill.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Is that right. Can you then pick up please at paragraph 9, what do you say there?

20                   **ADV MAPOMA:** In paragraph 9 I say after a number of meetings from which it becomes clear that the parties will not reach agreement Transnet instructed its legal advisors to instruct the private taxing master to tax the bill which was done, and the total amount came to R2 293 627,68, according to the taxing master. ...[Indistinct] consultants ...[indistinct] the bill was instructed not to cooperate with the taxation process. Normally in a taxation process the parties who represent to justify its various costs its claims it is entitled to. If the party opts to be absent they cannot

claim ...[indistinct]. Transnet then paid some of – I mentioned the amount, on 9 June 2011 to the attorneys being 75% of the taxed costs.

Now these are in reference now to it's another process.

**ADV MYBURGH SC:** Well so Transnet instruct its legal advisors to instruct a private taxing master to tax the bill.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** This was done and the amount came  
10 to as you say R2.293million and then 75% of that was paid  
which was R1 720 000.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Now did you ever see the Taxing Master's memorandum and the taxed bill?

**ADV MAPOMA:** I would have seen it at the time.

**ADV MYBURGH SC:** Let me take you please to Bundle 2  
and could I ask you to turn to page 167.

**ADV MAPOMA:** Yes I am there.

**ADV MYBURGH SC:** So 167 reflects a payment to Langa  
20 Attorneys of R1 720 000, the same figure you refer to at  
paragraph 9 of your memo to Mr Molefe, correct?

**ADV MAPOMA:** Yes, yes.

**ADV MYBURGH SC:** And you will see over the page at  
168 there's a page of the memorandum that is stamped  
Transnet paid/betaal.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** We then sourced the full memorandum and that you see at 169 and it runs all the way through to 174, do you see that?

**ADV MAPOMA:** Yes I see that.

**ADV MYBURGH SC:** And at 174 the tax consultant comes to an amount due of R2 293 000, it is the same figure that you referred to at paragraph 9 of your memo to Mr Molefe.

**ADV MAPOMA:** Yes.

10 **ADV MYBURGH SC:** And what the consultant concludes at 19 is when the above figures are considered kindly bear in mind that as per my instructions I marked the bill as liberally as I thought possible, taking into considering the difficulty of the matter, the importance to client and the fact that the agreement stated that the respondent agrees to pay payment of fees and disbursements as between attorney and own client, do you see that?

**ADV MAPOMA:** Yes I see that.

20 **ADV MYBURGH SC:** And then attached to this memorandum was the taxed bill and it runs from page 175 through to 209, do you see that?

**ADV MAPOMA:** Yes I see that.

**ADV MYBURGH SC:** Did you see this at the time?

**ADV MAPOMA:** Well I am not sure whether it is the same one that I saw, the one that I refused to pay the time. At

this particular moment we had asked Norton Rose I think to appoint a Taxing Master to deal with the thing which I think they did, but I am not sure whether I would have seen this, but if it was sent to my office I would have seen it. I will not deny that I saw it but I can't recall.

**ADV MYBURGH SC:** Now if I could, I am going to take you to the bill but perhaps you can go back to the memorandum.

**ADV MAPOMA:** Yes.

10 **ADV MYBURGH SC:** At paragraph 3.8 at page 170 I have not allowed any travelling for the attorney to consultations with counsel, in a number of cases they'd frowned upon attorney charging for travelling to attend anywhere but court and only to court, when the courthouse is outside of the area etcetera.

What I want to just ask you to comment on is this tax bill of costs it certainly does include I think 14 days of disciplinary hearing but it also includes the cost of the High Court litigation doesn't it?

20 **ADV MAPOMA:** Mmm.

**ADV MYBURGH SC:** Well let us start by looking at page 177, at 39, consultation with Advocate Kennedy SC re the letter. Advocate Kennedy we know represented Mr Gama didn't he in the High Court proceeding, that we saw from the judgment.

**ADV MAPOMA:** Yes. Oh yes I see that.

**ADV MYBURGH SC:** Over the page at 178, 49, consultation with Advocate Kennedy, at 179 at number 71 it talks about a notice to oppose the application.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Perusal of answering affidavit. Do you see?

**ADV MAPOMA:** Yes I see.

**ADV MYBURGH SC:** At 86 attend court with counsel,  
10 postponement, travelling time.

**ADV MAPOMA:** Mmm.

**ADV MYBURGH SC:** And so we can go on Mr Mapoma but this tax bill would you accept deals with both the high court litigation and Mr Gama's disciplinary hearing.

**ADV MAPOMA:** It seems so.

**ADV MYBURGH SC:** And in fact what you see in the first seven or eight pages of the bill it all relates to the High Court application, because let me take you to page 192, or in fact page 190, right at the bottom, remember the high  
20 court litigation preceded, as you know the disciplinary hearing.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** At 190 right at the bottom there is then a charge for Day 1 of the disciplinary hearing, do you see that?

**CHAIRPERSON:** Is that at page 191?

**ADV MYBURGH SC:** Sorry, 190.

**CHAIRPERSON:** One nine zero.

**ADV MAPOMA:** Yes I see that.

**CHAIRPERSON:** Oh ja.

**ADV MYBURGH SC:** And then those are involved, one can track the at 191 the second day, the third day, the fourth day, over the page the fifth day and so it goes on.

**ADV MAPOMA:** Yes, they are in bold yes.

10 **ADV MYBURGH SC:** In bold and I think if my memory serves me correctly it goes up to the 14<sup>th</sup> day at page 194.

**ADV MAPOMA:** Yes I see that.

**ADV MYBURGH SC:** So then let me ask you is this then in summary what happened? Firstly Mr Gama is absolved of his liability of paying costs to two different sets of attorneys, in the High Court litigation.

**ADV MAPOMA:** Yes.

20 **ADV MYBURGH SC:** Secondly what happens is Transnet pays 75% of the cost that he incurs for that litigation in the High Court.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** And then on top of that Transnet pays him 75% of the cost that Transnet and Transnet's directors incurred in the High Court.

**ADV MAPOMA:** Yes, I see that.



**ADV MYBURGH SC:** In relation to this payment of Mr Gama's tax costs, 1.7million, initially in your evidence you said that that related to his disciplinary hearing?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Now we know it relates also to High Court.

**ADV MAPOMA:** I see that yes.

**ADV MYBURGH SC:** Was that paid by mistake or did you intend to pay this?

10 **ADV MAPOMA:** It would have been a mistake.

**ADV MYBURGH SC:** A mistake?

**ADV MAPOMA:** Yes, it could not have been paid intentionally.

**CHAIRPERSON:** Did the mistake relate to the disciplinary hearing costs?

**ADV MAPOMA:** Yes because then it meant there's a duplication now.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** Yes.

20 **CHAIRPERSON:** Well why do you say duplication?

**ADV MAPOMA:** Because the High Court's matter, the costs thereof are also being paid again now, they are also included in R1.7million because the R1.7million arises from this ...[indistinct]

**CHAIRPERSON:** Yes. Okay I am not sure I understand, I

want to make sure I do. Well there is the question, and I don't know whether Mr Myburgh was asking about that or whether he is still going to deal with it, it is the question of whether in terms of the settlement agreement Transnet undertook any liability in relation to Mr Gama's costs relating to the disciplinary hearing, there is that aspect.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Do you, are you able to say what your understanding was of whether the settlement agreement  
10 included Mr Gama's costs relating to the disciplinary hearing?

**ADV MAPOMA:** Yes my understanding was that it included Mr Gama's costs at the labour hearing, at the disciplinary hearing.

**CHAIRPERSON:** Yes that your understanding.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** So as far as to the extent that the tax bill related to those costs you had no problem?

**ADV MAPOMA:** To the extent that yes I did not have a  
20 problem.

**CHAIRPERSON:** Okay, alright.

**ADV MAPOMA:** Yes, because I just want the settlement agreement sorted.

**CHAIRPERSON:** Yes well we will talk about that in due course, but I just want to understand the duplication to

which you are referring?

**ADV MAPOMA:** Because the previous payments that counsel referred to, where I had made written notes in my on hand were costs that Transnet incurred in reference to the High court matter.

**CHAIRPERSON:** Yes okay that's 1.7?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Ja.

**ADV MAPOMA:** And then Gama was paid that money.

10 **CHAIRPERSON:** Yes.

**ADV MAPOMA:** And then later on this bill now which ...[intervenes]

**CHAIRPERSON:** Langa Attorneys.

**ADV MAPOMA:** Coming from Langa Attorneys.

**CHAIRPERSON:** ja.

**ADV MAPOMA:** Then it gets sent to our attorneys then they send it to the Taxing Master.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** The private Taxing Master.

20 **CHAIRPERSON:** Yes.

**ADV MAPOMA:** Who then taxes it.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** And this deal includes both the disciplinary hearing and the high court matters.

**CHAIRPERSON:** Oh okay, okay. So that is where you say

now this is a duplication.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** But of course I take it that their bill is based on Mr Gama's costs.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Was supposed to be based on Mr Gama's costs whereas the amount that you paid them that you had already paid them was based on Transnet's own legal costs.

**ADV MAPOMA:** Yes.

10 **CHAIRPERSON:** Yes okay. So the point you were making to Counsel was that the payment of Mr – of Langa Attorneys bill was a mistake.

**ADV MAPOMA:** It should be a mistake that may have...

**CHAIRPERSON:** Which should not have been paid.

**ADV MAPOMA:** Should never have been paid.

**CHAIRPERSON:** Yes okay. Mr Myburgh. Now I understand the duplication where it comes from.

**ADV MYBURGH SC:** Perhaps I could just pick up on Chairperson's questioning. You understood the settlement  
20 agreement to provide that Transnet undertook to pay 75% of Mr Gama's costs incurred during the disciplinary hearing.

**ADV MAPOMA:** Yes that was my understanding.

**ADV MYBURGH SC:** Let me go to page 19 of Bundle 3. It is the settlement agreement attached to your first affidavit. So there is a reference there to tax costs.

**CHAIRPERSON:** I am sorry which bundle?

**ADV MYBURGH SC:** Bundle 3.

**CHAIRPERSON:** 3?

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** Okay and what page?

**ADV MYBURGH SC:** Chairperson page 19 – 19.

**CHAIRPERSON:** 19? Okay, yes.

**ADV MYBURGH SC:** There is reference to tax legal costs incurred during the high court. This is at 3.5.

10 **ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Application and in respect of his unfair dismissal which it referred to the Transnet Bargaining Council.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** How do you interpret that to mean you would pay his costs of the disciplinary inquiry?

**ADV MAPOMA:** Because the referral to the Bargaining Council did not happen – I mean did not...

**ADV MYBURGH SC:** No it did happen.

20 **ADV MAPOMA:** Did not – I do not know how to put this thing.

**ADV MYBURGH SC:** That is what was settled.

**ADV MAPOMA:** Yes it was settled in the sense that there was no according to what I knew at the time there was no hearing or anything like that they settled it.

**ADV MYBURGH SC:** Yes.

**ADV MAPOMA:** It was settled.

**ADV MYBURGH SC:** That is why he should have got buried in costs.

**ADV MAPOMA:** So our understanding at the time – my understanding and I think this was the understanding of Transnet at the time was that it referred to the disciplinary hearing that led to that referral.

**ADV MYBURGH SC:** But where does it say that Mr  
10 Mapoma? It talks about unfair dismissal dispute referred to the Transnet Bargaining Council. And we talking about taxed costs.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** You tax costs in legal proceeding right?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Have you ever heard of tax costs in a disciplinary hearing?

**ADV MAPOMA:** No.

20 **ADV MYBURGH SC:** So how do you get to that interpretation?

**ADV MAPOMA:** Because this is why there was this problem. One of the problems was this. Because they could not provide or agree that those costs in that disciplinary hearing must be taxed. Because they had to present these

documents to us to say – or for us to go to jointly to a Taxing Master to tax whatever costs that they said they incurred there. And this is what they were not coming with – fought with. That the – these tax costs at the disciplinary hearing.

**ADV MYBURGH SC:** You do not tax the costs of a disciplinary hearing.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** I mean who taxes them?

**ADV MAPOMA:** Nobody.

10 **ADV MYBURGH SC:** Precisely. So how do you land up paying the man for fourteen days of a disciplinary hearing?

**ADV MAPOMA:** This is the instruction that was there.

**ADV MYBURGH SC:** By who?

**ADV MAPOMA:** By the board of Transnet. This is what [00:04:19] said to me must be done.

**ADV MYBURGH SC:** Right.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Was that your own interpretation or is that what he told you to do?

20 **ADV MAPOMA:** It was what he told me to do and this is how I understand the board interpreted it. Because when Gama's attorney Mr Langa presented this thing to me first time – the first question that one asks is it must be taxed. Although I remember saying to him Mr Gama can be dismissed for ignoring a board instruction. So here is a settlement

agreement now that the board has entered into referring us to the taxation that must happen. And do you expect me to go and pay fees that have not been taxed anyway? So that was the first battle that Langa could not jump with me. Because this brings could not be taxed so we are not taxed anyway. So all our problems started from there but then the understanding was that the payment must be for the cost that he incurred at the disciplinary hearing.

**ADV MYBURGH SC:** You say understanding – the  
10 understanding of who?

**ADV MAPOMA:** The board and those who instructed me at the time.

**CHAIRPERSON:** When you look at that clause now do you maintain – do you still have the same understanding or has your understanding changed as to whether the settlement agreement included payment by Transnet offering Mr Gama's cost in relation to the disciplinary hearing.

**ADV MAPOMA:** Chair that is not what it says when you at it in another time.

20 **CHAIRPERSON:** No, no.

**ADV MAPOMA:** But the point is at the time the only disciplinary hearing that had happened for Mr Gama before the Bargaining Council was the disciplinary ...

**CHAIRPERSON:** Okay let us take this step by step. Okay it is the relevant clause of the settlement agreement is 3.5.



Have you got it in front of you? Okay. The first part deals with the high court legal costs and the second part deals with the unfair dismissal dispute costs. So it reads:

“Transnet will make a contribution equivalent to 75% of Mr Gama’s taxed legal costs incurred during Gama’s high court application.”

So that – that we will leave that. That is not what we are dealing with now. And then says:

10 “And in respect of his unfair dismissal dispute referred to the Transnet Bargaining Council.”

Now the costs relating to the second part of the clause do you agree they relate to an unfair dismissal dispute? Do you agree that the unfair dismissal dispute to which they relate is one that was referred to the Bargaining Council?

Do you – do you accept or do you not accept that therefore the costs that are contemplated there are costs  
20 that would have begun around when the dismissal dispute was referred to the Bargaining Council? You accept that?

Now the dispute – unfair dismissal dispute was only referred to the Bargaining Council after Mr Gama had been dismissed is it not?

**ADV MYBURGH SC:** Sorry Mr Chairman – Chairperson.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** I have been asked just to ask Mr Mapoma to put his microphone on.

**CHAIRPERSON:** Oh okay ja. I wonder how much we – was not captured.

**ADV MYBURGH SC:** Apparently the answer was not captured.

**CHAIRPERSON:** Okay let – I will – we will just start again. Okay do you accept that this clause insofar as it relates to  
10 costs concerning the unfair dismissal dispute relates to the unfair dismissal dispute that was referred to the Transnet Bargaining Council.

**ADV MAPOMA:** I accept.

**CHAIRPERSON:** You accept that. You – do you also accept that those costs could only have arisen around when that dispute was referred to the Bargaining Council?

**ADV MAPOMA:** I accept that too.

**CHAIRPERSON:** Do you also accept that this unfair dismissal dispute would only have been referred to the  
20 Bargaining Council after Mr Gama had been dismissed?

**ADV MAPOMA:** Yes I do.

**CHAIRPERSON:** And do you accept that Mr Gama was dismissed at the end of June 2010?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Therefore costs relating to the disciplinary

hearing which happened before the actual dismissal happened – before the dismissal dispute arose could not be included. Do you also accept that?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** You accept that now?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** That should then lead to and you must tell me if my understanding of your evidence is wrong. That should then lead us to a position where you say, this  
10 understanding is different from the understanding you had at the time. Because at the time as I understand your evidence your understanding was that the cost that Mr Gama had incurred before being dismissed in regard to the disciplinary hearing were included in the settlement agreement.

**CHAIRPERSON:** Yes Chair.

**CHAIRPERSON:** You accept?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Okay. Thank you. Mr Myburgh.

**ADV MYBURGH SC:** Thank you. I just want to ask you one  
20 or two questions around that. How did you rationalise that in your own mind? Mr Gama was put through a disciplinary hearing and he was dismissed. There was then a settlement agreement where he got a final written warning.

**ADV MAPOMA:** Hm.

**ADV MYBURGH SC:** How did you rationalise him being

reimbursed for the entire cost of his disciplinary hearing?

**ADV MAPOMA:** [00:10:52] to pay Mr Gama's costs.

**ADV MYBURGH SC:** Yes.

**ADV MAPOMA:** Which incurred – this clause not mine. So it was not for me to rationalise or not rationalise.

**ADV MYBURGH SC:** Right.

**ADV MAPOMA:** I refused to pay Mr Gama's costs for a number of reasons. Some of them I have told you.

**CHAIRPERSON:** Please face this side Mr Mapoma.

10 **ADV MAPOMA:** Oh sorry Chair. My apologies.

**CHAIRPERSON:** Ja I know he is asking.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** The questions.

**ADV MYBURGH SC:** I ask the question you answer them to the Chair.

**ADV MAPOMA:** No, no I – my apologies – my apologies.

**CHAIRPERSON:** Ja.

20 **ADV MAPOMA:** I am saying the decision to make the payments was not mine for me to rationalise or not to rationalise. I refused to pay these costs for a number of reasons. Some of them which I have set out in – or before the Chair today. And the instruction that I had at the time was that I should pay the costs from the time of the disciplinary hearing. Because this is what Transnet wanted to do. So I agreed. There is no rationality for this. Even at

the time I saw no rationality for it. There were...here were...

**CHAIRPERSON:** That was the instruction?

**ADV MAPOMA:** Sorry Chair.

**CHAIRPERSON:** That was the instruction.

**ADV MAPOMA:** That was the instruction.

**CHAIRPERSON:** Hm.

**ADV MAPOMA:** It was known my stance on these fees was known by many people.

**CHAIRPERSON:** Hm.

10 **ADV MAPOMA:** And – but I ended up paying them from my – form my group tax fees.

**CHAIRPERSON:** Yes but you – are you saying that your understanding of the settlement agreement was in accordance with the understanding of those who were giving instructions?

**ADV MAPOMA:** Yes Chairperson it was them.

**CHAIRPERSON:** Yes okay.

**ADV MAPOMA:** I firstly first refusing them to pay them from Group Legal.

20 **CHAIRPERSON:** Yes.

**ADV MAPOMA:** Because I was arguing that it was actually we are not supposed to pay these costs because they have been dealing with the disciplinary hearing.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** Because this was going to include the

disciplinary hearing. And I said why – but why must they come to me? But my complaints and protestations fell into deaf ears. Because I was refusing to pay this money.

**CHAIRPERSON:** Hm okay.

**ADV MYBURGH SC:** Alright so we at...

**CHAIRPERSON:** Were you ever asked by the board or Mr Mkwanazi or anybody as to the opinion of whether this – the settlement agreement in terms of the costs relating to the [00:13:23] included costs relating to the disciplinary hearing?

10 Were you asked for your advice opinion whether it did or you – were you asked?

**ADV MAPOMA:** Chair I do not recall.

**CHAIRPERSON:** You do not recall it?

**ADV MAPOMA:** I do not recall that.

**CHAIRPERSON:** Okay alright.

**ADV MAPOMA:** [Not audible]

**ADV MYBURGH SC:** Alright we had – we were dealing with paragraph 12 of your second affidavit that is at page 100 and – sorry not 100 – page 26 of Bundle 3. And you had dealt  
20 with the memorandum that you sent to Mr Molefe. If you go to page 144 you see you signed it and then he signed it on the 24 August.

**CHAIRPERSON:** That is page 144?

**ADV MYBURGH SC:** 144 yes.

**CHAIRPERSON:** Of volume – Bundle 2?

**ADV MYBURGH SC:** Bundle 3.

**CHAIRPERSON:** Bundle 3?

**ADV MYBURGH SC:** Yes.

**ADV MAPOMA:** Yes I see that.

**ADV MYBURGH SC:** In fact I am hopelessly out it is actually Bundle 1 I beg your pardon.

**CHAIRPERSON:** Oh okay. Okay I got Bundle 1. Okay and the page 144?

**ADV MYBURGH SC:** Yes Chairperson.

10 **CHAIRPERSON:** Okay. Yes.

**ADV MYBURGH SC:** So the signatures appear at 144, is that correct?

**ADV MAPOMA:** Yes I see that yes.

**ADV MYBURGH SC:** If we go back to 139 there is some handwritten notes at 139. Whose notes are those?

**ADV MAPOMA:** At 139 is – the handwritten notes are at 141. I am on my bundle.

**ADV MYBURGH SC:** 141.

**ADV MAPOMA:** Yes 141.

20 **ADV MYBURGH SC:** Yes handwritten notes – whose handwritten notes are those?

**ADV MAPOMA:** They are different people who wrote here. The handwritten notes at the top – the first ones is my handwriting. The second written...

**CHAIRPERSON:** Is that – are you referring to the ones that

have got 123?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Okay that is your handwriting?

**ADV MAPOMA:** That is my handwriting.

**CHAIRPERSON:** Hm.

**ADV MAPOMA:** And then that is my handwriting again as to when I received this. I would have received it from Mr Molefe's office that is now the file cover itself. And there are comments underneath there under the word comments. And  
10 the name Sachs – that is Mr Molefe's handwriting. And then the last comments.

**CHAIRPERSON:** Was Sachs a reference to you?

**ADV MAPOMA:** Yes Sachs is reference to me.

**CHAIRPERSON:** Okay.

**ADV MAPOMA:** That is how I am commonly known. I just missed my spelling there. Yes and then the last handwritten notes I recognise that signature and I – but I am not sure it looks like this was Ms Phyllis Difeto's handwriting. Phyllis Difeto was an executive in Mr Molefe's office.

20 **CHAIRPERSON:** In whose office?

**ADV MAPOMA:** Mr Molefe's office.

**CHAIRPERSON:** Oh okay. So the DG at DPE who had made enquiries was Mr Matona?

**ADV MAPOMA:** Yes it was Mr Matona at the time.

**CHAIRPERSON:** Ja okay.



**ADV MYBURGH SC:** Did you then draft a response for Mr Molefe?

**ADV MAPOMA:** Yes I did.

**ADV MYBURGH SC:** Can I ask you please to turn to page 147.

**ADV MAPOMA:** Yes I see that.

**ADV MYBURGH SC:** Is this the draft that you prepared?

**ADV MAPOMA:** This is a draft that I prepared but when I look at it now I think it was amended and I have got two  
10 reasons why I say so. The actual draft that I sent is not this one. The reason I say it was amended especially at paragraph – at page 147 at the bottom there is a reference to – there is a paragraph that reads:

“The matter is a [00:17:47] communications both written and oral with Transnet’s attorneys in an attempt to resolve the issue. There is also further communication both written and oral between Langa Attorneys and the office of Ms Zola Stephen Group  
20 Executive Corporate Affairs. The executive responsible for legal affairs at Transnet.”

That is the gist of that paragraph. And because of the handwritten notes at the bottom again of the same document which states or reads:

“Amended after Zola advised that she met Mr

Gama and they agreed that Mr Gama would provide further information which she said he had.”

And then they agreed to have a meeting after 19 August when Zola came back from leave. I was not privy to any communication between Mr Langa or Mr Gama between them and Ms Stephen. So I will not have included that paragraph there. And well the handwritten notes I do not know whose handwritten notes is that. There is no signature  
10 that I recognise. So it is clear that the draft that I would have sent to Mr Molefe was then subsequently amended because of the [00:18:58] that are recorded there.

**CHAIRPERSON:** Are you able to say whether this memorandum represents the draft that you had prepared except for the paragraph that you have read?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** That is the handwritten notes?

**ADV MAPOMA:** It would have captured the [00:19:20] that I had prepared to an extent.

20 **CHAIRPERSON:** Ja the – the substance of it.

**ADV MAPOMA:** Substance of it.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** The second last paragraph at page 148 Mr Gama’s own attorneys in both high court application and the labour matter was Langa Attorneys when Transnet

received their bill being presented for payment it became apparent that the bill had not been taxed and then you go on to say the draft records that a private Taxing Master was appointed. Was that paragraph I read to you is that your own original language? You remember?

**ADV MAPOMA:** I think it is.

**ADV MYBURGH SC:** So it says: Mr Gama's own attorneys in both high court application and the labour matter was Langa. When Transnet received their bill – their bill for  
10 what?

**ADV MAPOMA:** For payment.

**ADV MYBURGH SC:** Yes but in respect of what Mr Mapoma?

**ADV MAPOMA:** It was the bill that I – I had received from Langa. Was the only one that I was refusing to pay. That is the only bill that I you know that I had at the time.

**ADV MYBURGH SC:** But that bill it included the costs of the high court proceedings and the disciplinary enquiry?

**ADV MAPOMA:** If it is the same one as this I agree.

20 **CHAIRPERSON:** I just want to – you to assist me with something that I should have asked earlier while Mr Myburgh is looking at his next question. You said earlier on that ultimately Transnet made a duplication in terms of payment to Langa Attorneys because they paid – Transnet paid Langa Attorneys in terms of the calculations they made based on

their own legal costs but also when Langa Attorneys sent their bill ultimately there was a payment based on a calculation of – on the basis of that bill.

Attorneys sent their bill ultimately there was a payment based on a calculation of – on the basis of that bill.

**ADV MAPOMA**: Yes.

**CHAIRPERSON**: Is that right?

**ADV MAPOMA**: Yes.

**CHAIRPERSON**: Roughly what was the total of the two  
10 payments?

**ADV MAPOMA**: Chair I would [mumbling].

**CHAIRPERSON**: Are you able to...

**ADV MAPOMA**: I cannot remember.

**CHAIRPERSON**: Okay I am sure it is somewhere. I thought you might recall more or less.

**ADV MAPOMA**: Oh no [mumbling].

**CHAIRPERSON**: Okay alright. And – and did Langa Attorneys not return some of the money and say no you have paid us twice?

20 **ADV MAPOMA**: Not to my knowledge.

**CHAIRPERSON**: Yes. Okay.

**ADV MYBURGH SC**: The sum of the two amounts paid to Mr Gama or his attorneys was approximately R2.3 million, correct?

**ADV MAPOMA**: I accept.

**ADV MYBURGH SC:** Would you go to your second affidavit again and ask you to have a look at page 27 and paragraph 15. You say:

“In paragraph 35 of my first affidavit I stated the following: When I left Transnet the legal fees of Mr Gama had not yet been paid. Further when I left Transnet I had not approved such payments.”

**CHAIRPERSON:** I am sorry are you back to his affidavit?

10 **ADV MYBURGH SC:** Yes Chair at Bundle 3.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** Page 27.

**ADV MAPOMA:** Can I answer?

**CHAIRPERSON:** Okay page 27?

**ADV MYBURGH SC:** I have just read to the witness Chair paragraph 15.

**CHAIRPERSON:** Okay alright thank you.

**ADV MYBURGH SC:** Paragraph 16 you say:

20 “When I so stated I was referring to any further payments that might have been in respective legal fees over and above what is reflected in the memoranda attached [00:23:33].”

Are you aware of a payment that was made subsequently? Another payment?

**ADV MAPOMA:** Yes I know after I had left Transnet I was advised that there was another payment that was made to Mr Gama – Mr Langa.

**CHAIRPERSON:** Purporting to be a contribution to his legal costs?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Oh. Did you get to know about how much that was?

**ADV MAPOMA:** No.

10 **CHAIRPERSON:** You did not?

**ADV MAPOMA:** I did not even [mumbling].

**CHAIRPERSON:** Ja you had no interest at this stage.

**ADV MAPOMA:** I had no interest.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** Perhaps just for the sake of completeness and another witness will deal with this. Could I ask you please to turn in Bundle 2 to page 211.

**ADV MAPOMA:** Yes I am there.

20 **ADV MYBURGH SC:** 210 and 211 reflect a payment in 2015 of an amount of R1 399 000.00 do you see that?

**ADV MAPOMA:** Yes I saw it.

**ADV MYBURGH SC:** And at 213 there was a memorandum in support of that.

**ADV MAPOMA:** Yes I see that.

**ADV MYBURGH SC:** It was compiled you see at 215 by Mr

Salinga and then approved by Mr Singh. Presumably you have no knowledge of that?

**ADV MAPOMA:** No I do not.

**ADV MYBURGH SC:** Had you left Transnet by that time?

**ADV MAPOMA:** Yes I left by that time.

**ADV MYBURGH SC:** Then if we go to – back to your affidavit page 28.

**CHAIRPERSON:** I am sorry – I am sorry Mr Myburgh this is something I had not picked up before about the third  
10 payment. So another payment of more than R 1 million was made in 2015?

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** Ja okay. Ja no that is okay it is – it is...

**ADV MYBURGH SC:** And you will see Chairperson at 213 that it relates to the same settlement agreement.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** There is a quotation of clause 3.5.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** And there is a discussion if you go to  
20 paragraph 6.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** That a certain amount was paid and then there was a deduction. And then there is a balance. And then interest is payable at 15.5% and that then takes one to R1.4 million but we – we will have to bring someone

**CHAIRPERSON:** Yes okay.

**ADV MYBURGH SC:** To give evidence in an attempt to decode this.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** Chair I see that it is one minute past one.

**CHAIRPERSON:** Yes let us take the lunch adjournment. We will resume at two o'clock. We adjourn.

**REGISTRAR:** All rise.

10 **INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**ADV MYBURGH SC:** Mapoma, before the lunch break, I was about to take you to page 28 of your second affidavit at Bundle 3 where you deal with Mr Mhlango's affidavit.

You will remember that your second affidavit, effectively, was an answer to two affidavits that you provided.

And the sum total of what you say there is that you stand by your version in relation to your discussion with Mr Mhlango. Is that correct?

20 **ADV MAPOMA:** Yes, that is correct Chair.

**ADV MYBURGH SC:** Have you had an opportunity of reading what he... well, presumably you did. An opportunity of reading what he said?

**ADV MAPOMA:** Yes, I did.

**ADV MYBURGH SC:** Perhaps we could just go to that very



briefly. Could you go to Bundle 1?

**ADV MAPOMA:** [No audible reply]

**ADV MYBURGH SC:** And turn up page 169.

**ADV MAPOMA:** Yes, I am there.

**ADV MYBURGH SC:** And perhaps then you can move to page 172.

**ADV MAPOMA:** Yes, I am there.

**ADV MYBURGH SC:** So much of what Mr Mhlango has to say on page 172, appears to be summarised in paragraph 17  
10 at 173.

It is now not clear to me whether he denies having a telephonic discussion with you or he simple denies your recollection of what he said. But he says:

“I submit that the support that Mapoma gave to MNR...

It is the attorney’s firm.

20 “...the intersection between one of our social circles, the nature of my social interactions with him forbade me from being rude to him or putting any pressure on him. This would have resulted in a backlash in an important friendship circle and would have adversely affected my standing as an attorney amongst the community of lawyers in that social circle. I am clear about my reputation and standing amongst my friends and peers.”

Do you have any comment in that regard?

**ADV MAPOMA:** Well, I do not have a comment. The discussion was between the two of us.

**ADV MYBURGH SC:** Yes.

**ADV MAPOMA:** Of course, I informed Mr Mkwanazi about it later on and I never shared it with anybody else, except when the Commission approached me.

**ADV MYBURGH SC:** Then he says:

10                    “I had no motive or reason to pressure or call  
                         Mapoma about the pace or details of the settlement  
                         between Gama and Transnet.”

**ADV MAPOMA:** He did call me.

**CHAIRPERSON:** Just one second. Did you say earlier on he called you about two times?

**ADV MAPOMA:** Yes, I recall that he called me two times.

**CHAIRPERSON:** Yes. I think when you gave evidence in the morning, if I am not mistaken, there may have been a time.

20                    And I do not know whether it refers to the first call, there  
                         may have been a time when you seemed to suggest that he  
                         was not pressurising you. Is that correct?

**ADV MAPOMA:** Yes, that is correct Chair. It was on the second time that he was ...[intervenes]

**CHAIRPERSON:** It was only during the second call ...[intervenes]

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** ...that he was pressurising you?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** But the first call, he was like making enquiries?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Oh, okay alright.

**ADV MYBURGH SC:** Then at paragraph 19, he said:

10 “Lastly, if I had any questions, which I did not, I would have raised these with Mkwanazi. To the best of my recollection, Mapoma was a few levels down in the Transnet Executive Management hierarchy.”

Any comment on that?

**ADV MAPOMA:** This is quite correct because I reported to Ms Stephen who was an Exco member. So in the normal stream of things, if he was calling on behalf of the minister, he would have called the CEO or the chairman of the board, not me.

**ADV MYBURGH SC:** Yes, but did he call you?

20 **ADV MAPOMA:** Yes, he called me.

**ADV MYBURGH SC:** Then he goes on to say at 20:

“I never said to Mapoma, as he alleges, number one, I wanted to get it done quickly.”

And essentially what he says in that paragraph is that that is not the language that he uses. He does not refer to a

sitting president as number one.

He would have referred to him as President Zuma. What do you have to say to that?

**ADV MAPOMA:** Well, I stand by what I said in my own affidavit.

**CHAIRPERSON:** Are you quite clear about this conversation?

**ADV MAPOMA:** I am quite clear Chair.

**CHAIRPERSON:** Yes, okay.

10 **ADV MAPOMA:** The conversation was not a long one.

**CHAIRPERSON:** It was not a long one?

**ADV MAPOMA:** No, I was driving home.

**CHAIRPERSON:** Because that was the second one?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** And I decided to... I said what I said to him so that it stops.

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

20 **ADV MYBURGH SC:** Alright. Can I then take you please to your third and last affidavit, Bundle 3, page 29?

**ADV MAPOMA:** Yes, I am there.

**ADV MYBURGH SC:** You deal in this affidavit with two things and the main heading is new document. At page 29. And then the payment of legal fees at the foot of page 30. Do you see that?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** And under new documents, you deal with Annexures SM1, 2 and 3.

**ADV MAPOMA:** Yes, I do.

**ADV MYBURGH SC:** Perhaps I can take you then directly to those annexures. Can we start please with SM1? That you will find at page 33.

**ADV MAPOMA:** Yes, I am there.

**ADV MYBURGH SC:** This is a consultation note. It reflects  
10 you as having been present. Have you had an opportunity of reading this note?

**ADV MAPOMA:** Yes, I did.

**ADV MYBURGH SC:** Does it accord with your recollection of what transpired at this meeting?

**ADV MAPOMA:** Yes, it does.

**ADV MYBURGH SC:** So you will see there listed as present was yourself, Mr Mkwanazi, Mr Langa, who we know by now who is the attorney, Mr Gama, Mr Ghule and Sangoni. They were attorneys from ...[indistinct]

20 **ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Then in the second paragraph, it says:

“Themba Langa and Gama were also in attendance but we initially had a caucus meeting between Mr Sebu(?), Mr Mapoma and Mr Mkwanazi and myself.”

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** This is the note of the caucus meeting.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Could you just read paragraph 4 of that note into the record?

**ADV MAPOMA:** The paragraph reads:

10 “Mr Mkwanazi explained that he would like to assist Mr Gama where reasonable possible. His intention is to bring him back to his “determines” offices. He wants Mr Gama to assist him on a number of strategy issues.

He, however, needs a good motivation to do so. His view is that if he is provided with an opinion, certain that there had been some unfairness towards Mr Gama at the board meeting on 16 February.

He will persuade the other board members to make the decision to bring Mr Gama back into the organisation.”

20 That is where it stops.

**ADV MYBURGH SC:** So you were aware that there was an upcoming board meeting on the 16<sup>th</sup> of February?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** And he said that if he is provided with an opinion setting out that there had been some unfairness

towards Mr Gama, then he would persuade the other board members to make a decision to bring Mr Gama back into the organisation.

**ADV MAPOMA:** Yes, that is what it says.

**ADV MYBURGH SC:** At the meeting of the 16<sup>th</sup>.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Well, Mr Mapoma. I just want to share with you the impression I get from the... from that paragraph, particularly the sentence that Mr Myburgh just referred to.

10 And you can tell me whether that is the impression that you may have got being at the meeting when this was said by Mr Mkwanazi.

Maybe I am being unfair to him but it gives me the impression of somebody who is saying: I just need somebody to say in an opinion, there was some unfairness ...[intervenes]

**ADV MAPOMA:** Yes, Chair.

**CHAIRPERSON:** ...in the dismissal of this man. And then if I got that, then that will give me grounds to go to the board  
20 and I will get the board to agree to take him back. Is that the impression... does it accord with your own impression of what you may have got when you are this...?

**ADV MAPOMA:** Yes, Chair it does.

**CHAIRPERSON:** It does?

**ADV MAPOMA:** Yes.

**CHAIRPERSON**: Okay alright. Thank you.

**ADV MYBURGH SC**: Thank you, Chairperson. Then if you go over the page to paragraph 5, it says:

“He, as being Mr Mkwanazi, was to discuss details of such return to Transnet with Mr Gama in a one-on-one meeting between them.”

Do you recall that?

**ADV MAPOMA**: Yes, I recall.

**ADV MYBURGH SC**: And then it seems that he was not  
10 familiar with the details. There are, however... Sorry.

“There are details, however, that he is unfamiliar with such as, when was Mr Gama fired, when Mr Gama was suspended...”

**ADV MAPOMA**: Yes.

**ADV MYBURGH SC**: Is that correct?

**ADV MAPOMA**: That is correct.

**CHAIRPERSON**: I am sorry Mr Mapoma. That surprises  
me. How could Mr Mkwanazi not be aware of when Mr Gama  
was fired at that stage of the discussions about the Gama  
20 matter? That just seems strange to me.

I would have thought that before that, he would have familiarised himself properly with these basic facts. Like, when was this man dismissed.

Had he not prior to that, because you were at the meeting and he had been talking to you, had he not been



furnished with any memo or document that set out the important background?

**ADV MYBURGH SC:** Not by me, Chair.

**ADV MAPOMA:** Not by you?

**ADV MYBURGH SC:** Not by me. If he had any knowledge of the details of the suspension, the hearing and any figures, he would not have got it from me.

**ADV MAPOMA:** Okay. So to your knowledge, at this time, in your conversation with him, you had not... he had not  
10 asked you to brief you about these facts?

**ADV MYBURGH SC:** No, but I did also asked that... would have explained him at the time to have that kind of information. Yes.

**CHAIRPERSON:** It is just that it seems strange to me, you know. He already wanted to meet with Mr Gama on a one-on-one meeting to discuss. I think he was already wanting to discuss a possible settlement.

**ADV MAPOMA:** Yes, to discuss Chair.

**CHAIRPERSON:** Yes. And I am not sure how you discuss a  
20 possible settlement of an unfair dismissal if you do not know when the person was dismissed because that is like one of the first things you look at because you are going to...

You may have to apply your mind to, will this man or will this person wants back pay. If he wants back pay or she wants back pay, for how long could they be demanding back

pay. You know that kind of thing. But I guess you cannot assist.

**ADV MAPOMA**: I cannot assist the Chairperson, no.

**CHAIRPERSON**: Okay, no that is fine. Mr Myburgh.

**ADV MYBURGH SC**: Thank you, Chairperson. Perhaps if you can just have a look at paragraph 6. It does record:

“Once he is clear on those details, he can then formulate a proposal.”

Was that said?

10 **ADV MAPOMA**: Yes.

**ADV MYBURGH SC**: Now I am going to take you to the balance of this note but I just ask you to confirm that at paragraph 16 at page 35, the note ends on this basis:

“At that point, the caucus ended so that Mr Mkwanzazi could meet alone with Mr Gama.”

**ADV MAPOMA**: Yes.

**ADV MYBURGH SC**: And is that what happened?

**ADV MAPOMA**: Yes, that happened.

20 **CHAIRPERSON**: Were you surprised by his decision of which to exclude you from and anybody including the Transnet attorneys from this meeting he wanted to have with Mr Gama?

**ADV MAPOMA**: Chair, he could exclude me because of my position in the company. Mr Gama is an executive.

**CHAIRPERSON**: Yes.

**ADV MAPOMA:** So the decision to meet with him is on a separate level.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** Not mine. But with the attorneys who were at Transnet, he would have taken them ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** ...to the discussions.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** Because they were there on Transnet's  
10 behalf.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** And he was perfectly entitled to take them along in my absence. But with me, I was not surprised that I was not part of the discussion.

**CHAIRPERSON:** The exclusion of the attorneys, did that surprise you?

**ADV MAPOMA:** It did at the time.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** But we... well, at least from my  
20 understanding was that they still needed to talk about the details of the settlement which we knew nothing about. I certainly knew nothing about. So I was not going to be able to what they were going to talk about.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** Because I did not know what the mandate

Mr Mkwanazi had in terms of the details of the settlement.  
He had to negotiate with Mr Gama.

**CHAIRPERSON**: Yes.

**ADV MAPOMA**: Because he never shared that with me.

**CHAIRPERSON**: Yes. Had you been involved in a number of settlement negotiations in regard to legal disputes relating to Transnet and other parties at all or ...[intervenes]

**ADV MAPOMA**: No ...[intervenes]

**CHAIRPERSON**: ...is that not your role?

10 **ADV MAPOMA**: Sorry, Chair. My apologies. Not with Transnet because there were units that dealt with such matters at Transnet.

**CHAIRPERSON**: Yes, okay. No, it just strikes me as strange. Well, you had provided a reason why you say you were not surprised by your own exclusion.

But then one would have thought that Transnet attorneys would have been allowed to be part of that meeting because otherwise, why were they there? You know.

20 Did he not need them to be part of the negotiations or did he not need to get advice from them as the discussions happened?

**ADV MAPOMA**: Ja.

**ADV MYBURGH SC**: Ja, okay. Mr Myburgh.

**ADV MYBURGH SC**: Thank you. Then if we go to page 36. On the face of it, this is an email from you on the

14<sup>th</sup> of February to Messrs Ghule and Sangoni.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** And you say:

“The chair has asked that we prepare a two-pager for him for the board meeting.”

What board meeting was that?

**ADV MAPOMA:** This was not(?) calling board meeting. The fact(?) when the... in that consultation of the 16 February.

**ADV MYBURGH SC:** 16 Feb?

10 **ADV MAPOMA:** [No audible reply]

**ADV MYBURGH SC:** “I have started the process. Please look at the attachment and finalise to a settle.”

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** But was this the favourable opinion that Mr Mkwanazi was looking for?

**ADV MAPOMA:** This was the start of the process of what Mr Mkwanazi was asking us to do.

**ADV MYBURGH SC:** Yes.

20 **ADV MAPOMA:** Because he wanted something that he could take to the board and table there.

**ADV MYBURGH SC:** Yes.

**ADV MAPOMA:** And he wanted some memorandum of some sort, setting out the history of the matter, what is considered and the proposal that he was going to make to the board.

**ADV MYBURGH SC:** As he had described at the

consultation on the 22<sup>nd</sup> of January?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** And then at pages 37 and 38, is that then your work?

**ADV MAPOMA:** That is my memo that I drafted.

**ADV MYBURGH SC:** Deal with a few things. Under the heading settlement negotiations at the foot of page 37.

**ADV MAPOMA:** Yes, I am there.

**ADV MYBURGH SC:** Please would you read that into the  
10 record?

**ADV MAPOMA:** Paragraph 7 reads:

“The current board commenced its duties on 13 December 2010. The chairman of the board with the support of the shareholder minister as within his rights and obligations, decided to revisit the matter of the dismissal against Mr Gama. His decisions were informed by a number of reasons, strategy and other.”

**ADV MYBURGH SC:** Okay we will come to that. This  
20 sentence: The chairperson of the board with the support of ...[intervenes]

**CHAIRPERSON:** Please raise your voice Mr Myburgh.

**ADV MYBURGH SC:** I beg your pardon.

**CHAIRPERSON:** It has gone down again.

**ADV MYBURGH SC:** I am reading at the same time. Thank

you, Chairperson.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** This sentence, the second sentence.

“The chairman of the board with the support of the shareholder minister as within his rights and obligations, decided to revisit the matter...”

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** How did that sentence come to be put into this memorandum?

10 **ADV MAPOMA:** Mr Mkwanazi had informed me about that.

**CHAIRPERSON:** Just repeat that answer.

**ADV MAPOMA:** Mr Mkwanazi had informed me about that.

**CHAIRPERSON:** Did he tell you?

**ADV MAPOMA:** That what was he was doing, the reinstatement, he had supported the minister.

**CHAIRPERSON:** Yes, okay. So in preparing the memorandum, you included that ...[intervenes]

**ADV MAPOMA:** Yes, I included it

**CHAIRPERSON:** ...because he had told you about it.

20 **ADV MAPOMA:** Yes.

**CHAIRPERSON:** Oh, okay.

**ADV MYBURGH SC:** Then ...[intervenes]

**CHAIRPERSON:** And you are sure about this?

**ADV MAPOMA:** I am sure about that.

**CHAIRPERSON:** Yes, okay. Mr Myburgh.

**ADV MYBURGH SC:** Yes, thank you Chairperson. And then what you do is, you seem to set out a serious of factors in support of some sort of settlement.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** And I want to paraphrase because there is a point I am going to come to. You talk about the Public Protector, complaint at 8. At 9 you deal with something that is generic really to all litigation where you say:

10           “Risk is always part of litigation.

At 10 another generic thing:

“The judicial processes are extremely slow.”

At 11 you deal with various acting appointments. At 12 you say:

“These are not conducive to an effective operational environment.”

At 13 you again talk about an acting appointments in the context of corporate governance. At 14 you say that Mr Gama is highly experienced. And at 15, another generic  
20 thing ...[intervenes]

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** ...about legal costs. Is that right?

**ADV MAPOMA:** Yes, that is correct.

**ADV MYBURGH SC:** But what you do not deal with her is anything about prospects of success in litigation against Mr



Gama.

**ADV MAPOMA:** Yes, I do not.

**ADV MYBURGH SC:** You accept that this... a lot of the points you make, you can say about any litigation?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Time, costs, inconvenience and litigation.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Why do you not deal with prospects of  
10 success?

**ADV MAPOMA:** I did not deal with those Chair because one, I had not been involved in that process. I was also not privy to the details thereof, the disciplinary hearing. And I could not find any opinion on Transnet's prospect of success on that at the time. So I simply said nothing about it.

**CHAIRPERSON:** H'm.

**ADV MAPOMA:** Despite the request by Mr Mkwanazi that we should have an opinion regarding that going to take to the board.

20 **CHAIRPERSON:** Are you saying that Mr Mkwanazi's request to you which resulted in your preparing this memorandum had included that you must deal with...

You had to deal with the prospects of success but you did not deal with them because you did not have the information?

**ADV MAPOMA:** It included that Chair and he had wanted us to ...[intervenes]

**CHAIRPERSON:** You say, it did include that?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Oh, okay.

**ADV MAPOMA:** Only regards to have something that will show that there was an unfairness towards Mr Gama.

**CHAIRPERSON:** Oh, okay.

**ADV MAPOMA:** Yes. And one of the things that one would  
10 consider on the prospect of success will be such unfairness.

**CHAIRPERSON:** Yes, yes.

**ADV MAPOMA:** And I could not make that call.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** So I wrote nothing on that aspect.

**CHAIRPERSON:** Yes, yes.

**ADV MYBURGH SC:** Yes, I think you make an important point. Perhaps I have put it incorrectly. It is not that you did not deal with prospect of success as much as you did not deal with Mr Gama's dismissal having been unfair.

20 **ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Alright. Now let us get to MS3 over the page.

**CHAIRPERSON:** Alright. Can we before that? Had you before preparing this memorandum, had you had a chance to read the "ruling or judgment" of the chairperson of the

disciplinary inquiry that resulted in Mr Gama's dismissal?

**ADV MAPOMA:** No.

**CHAIRPERSON:** You had not?

**ADV MAPOMA:** No.

**CHAIRPERSON:** Oh, okay then. Okay Mr Myburgh.

**ADV MYBURGH SC:** At page 39, what you see is that the next day, the 15<sup>th</sup> of February, this memorandum is sent back to you by Mr Sangoni.

**ADV MAPOMA:** Yes.

10 **ADV MYBURGH SC:** And it says:

“Please find herewith the document which Mr Mapoma sent to us yesterday with our amendments.”

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Now your draft included ...[intervenes]

**CHAIRPERSON:** Wait. Amendments, I think.

**ADV MYBURGH SC:** Yes, I will point them out now.

**ADV MYBURGH SC:** Oh, I thought you read with our memo, where it says with our amendments. Maybe I did not hear  
20 you correctly.

**ADV MYBURGH SC:** Yes, it is:

“Please find herewith the document which Mr Mapoma sent to us yesterday with our amendments.”

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** I will point out the amendments.

**CHAIRPERSON:** Oh, okay, okay.

**ADV MYBURGH SC:** Your memo included 16 paragraphs.

Do you see that at page 38?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** The ...[intervenes]

**CHAIRPERSON:** One, five? Oh, 16.

**ADV MYBURGH SC:** 16.

**CHAIRPERSON:** Ja.

10 **ADV MYBURGH SC:** You see that the memo that Deneys Reitz sends back to you at 18?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** All of your points but they added two paragraphs.

**ADV MAPOMA:** Yes, Chair.

**ADV MYBURGH SC:** The new paragraphs are 10 and 11.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Do you confirm that?

**ADV MAPOMA:** I confirm.

20 **ADV MYBURGH SC:** The rest of it is all your work?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** I mean, so for example, paragraph 7 that said that what you had said.

“The chairperson of the board with this support of the shareholder minister, has within his rights and

obligations decided to revisit the matter.”

That remained unaltered.

**ADV MAPOMA**: Yes.

**ADV MYBURGH SC**: New paragraphs 10 and 11. Now let me read to you 10. And this is really text about prospects of success.

**ADV MAPOMA**: Yes.

**ADV MYBURGH SC**: 10:

10 “In the arbitration before the Bargaining Council, Mr Gama has challenged the appropriateness of the sanction of dismissal.”

You had not dealt with this?

**ADV MAPOMA**: No.

**ADV MYBURGH SC**: Yes.

20 “The issue of sanction is then complex and a perplex matter to which there is no clear and straightforward answer. This is demonstrated by amongst other cases, the celebrated case of *Sidumo and Another v Rustenburg Platinum Mine* in which the Labour Court and the Constitutional Court on the one hand and the Supreme Court of Appeal on the other hand came to different conclusions on sanctions. The other cases dealing with the issue of sanction which also demonstrate the complexity of consideration of appropriate sanction by the

*Shoprite Checkers cases...*”

And then they added these footnotes.

**ADV MAPOMA**: Yes.

**ADV MYBURGH SC**: Yes.

“...in which the facts in the two separate cases were similar but the Labour Appeal Court in each of the cases came to a different conclusion on sanction.”

Which by the way Chairperson, one of those judgments was yours.

10 **CHAIRPERSON**: [laughing] Yes.

**ADV MYBURGH SC**: The Shoprite Checkers.

**CHAIRPERSON**: Yes. Yes, I remember that.

**ADV MYBURGH SC**: And then it goes on to say:

“In the one case, the findings of the Labour Appeal Court was endorsed by the Supreme Court of Appeal.”

That is what they give some advice on the sanction.

**ADV MAPOMA**: Yes, I see that.

**ADV MYBURGH SC**: They inserted it. And then paragraph

20 11:

“It is accordingly our view that there is a probability that the Bargaining Council or a court considering the appropriateness of the sanction of dismissal of Mr Gama may reach the conclusion that dismissal was not appropriate having regard to the challenge

on sanction advanced by him.

In that instance, the court may either award compensation to Mr Gama or find that a lesser sanction ought to have been imposed and therefore orders his reinstatement.”

**ADV MAPOMA:** Yes, I see that.

**ADV MYBURGH SC:** So the how watermark of that is that there was a probability that the Bargaining Council may reach a different conclusion.

10 **ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** But... did you receive this memo?

**ADV MAPOMA:** I received the memorandum.

**ADV MYBURGH SC:** And what did you do with it?

**ADV MAPOMA:** I forwarded it to Mr Mkwanazi’s office.

**ADV MYBURGH SC:** And what ...[intervenes]

**ADV MAPOMA:** Mr Mkwanazi’s office.

**CHAIRPERSON:** Mr Mkwanazi?

**ADV MAPOMA:** Yes, Mr Mkwanazi’s office.

**CHAIRPERSON:** Yes. H’m.

20 **ADV MYBURGH SC:** And what was your expectation as to what he would have done with it?

**ADV MAPOMA:** What he would have done with it, he would give... taken the documents and use his own letterhead for him to present it to the board.

**CHAIRPERSON:** H’m.

**ADV MAPOMA:** That is what I was expecting him to do because this was a memorandum for him to table to the board and for him to discuss it there. But we did not discuss that memorandum. I just forwarded it.

**CHAIRPERSON:** I guess you did note the new paragraphs?

**ADV MAPOMA:** Yes, I did not them.

**CHAIRPERSON:** Yes. When you sent it to Mr Mkwanazi, did you send it to him as your memorandum or was there something that told him that there had... there was some  
10 input from the attorneys, Transnet attorneys?

**ADV MAPOMA:** Chair, as much as I will not know the detail ...[intervenes]

**CHAIRPERSON:** Ja.

**ADV MAPOMA:** ...of what they would have written.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** ...in the email or something like that or what I would have said to him when I gave it to him personally.

**CHAIRPERSON:** Yes.

20 **ADV MAPOMA:** He would know that it came from... it was settled by the attorneys.

**CHAIRPERSON:** Oh, he knew that it had been settled by the attorneys?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Okay. What you do not remember is



whether you did say to him, paragraphs 10 and 11 had been inserted by our attorneys.

**ADV MAPOMA**: I would not have said that.

**CHAIRPERSON**: Yes... You would not have said that?

**ADV MAPOMA**: No. It is not ...[intervenes]

**CHAIRPERSON**: Yes.

**ADV MAPOMA**: That is not how I would have done it.

**CHAIRPERSON**: Okay. Well, that ...[intervenes]

**ADV MAPOMA**: I would have given the memo to say: Here  
10 is the memo you requested. And I would have left it there.

**CHAIRPERSON**: Yes.

**ADV MAPOMA**: Unless he had specific questions.

**CHAIRPERSON**: Yes.

**ADV MAPOMA**: That he wanted me to answer, then I would have answered it.

**CHAIRPERSON**: The importance of that answer you give me is that if you did not indicate to him that there was – there were these paragraphs that came from the attorneys he would be entitled, would he not, to accept this  
20 memorandum as what you were saying to him as something he could put before the board.

**MR MAPOMA**: Not in the context of our discussion.

**CHAIRPERSON**: Sorry?

**MR MAPOMA**: Not in the context of the discussions that he and I had with the attorneys at all times.

**CHAIRPERSON:** Yes, what was this discussion.

**MR MAPOMA:** At all times he knew that the attorneys were involved in the memorandum, they were going to assist [indistinct] 00.56 in drafting the memorandum. So he knew exactly what was going on.

**CHAIRPERSON:** [inaudible – mic not on]

**MR MAPOMA:** He asked me when I was with the attorneys.

**CHAIRPERSON:** [inaudible]

10 **MR MAPOMA:** Yes. Yes, Chair.

**CHAIRPERSON:** Oh, I am sorry. I have spoken without being recorded, let me just try and capture that again. Was his request directed to both you and the Transnet attorneys?

**MR MAPOMA:** Yes, Chair.

**CHAIRPERSON:** To prepare a two pager for him?

**MR MAPOMA:** Yes.

**CHAIRPERSON:** Okay, so therefore when he received the document he would have known that that probably was the  
20 product of a joint effort.

**MR MAPOMA:** Yes, Chair.

**CHAIRPERSON:** Including yourself and the attorneys.

**MR MAPOMA:** Yes.

**CHAIRPERSON:** Yes. Yes, I am concerned about this situation, that from your side you did not know anything on

the matter on the basis of which you could say that there were probably good prospects of success or bad prospects of success. You have told me you knew nothing that could enable you to form that opinion.

**MR MAPOMA:** Yes.

**CHAIRPERSON:** Then the attorneys now insert this document, insert these paragraphs which include a paragraph which seems to just suggest that in the view of the author or authors of this memorandum there was a  
10 probability that the bargaining council could or may or might find the sanction of dismissal inappropriate. Now I am concerned whether – you do not – you did not effectively adopt that approach even though you might not have known whether it was justified.

**MR MAPOMA:** Chair, when you read the document now sitting here...

**CHAIRPERSON:** Ja, ja.

**MR MAPOMA:** ...as a third party, to read, this is the impression that you will have gained, you will gain.

20 **CHAIRPERSON:** Yes.

**MR MAPOMA:** And that is understandable.

**CHAIRPERSON:** Yes.

**MR MAPOMA:** But at the time this document was going to Mr Mkhwanazi.

**CHAIRPERSON:** Ja.

**MR MAPOMA:** And fortunately, when the attorneys sent it back they also copied Ms Stephen on it.

**CHAIRPERSON:** Yes.

**MR MAPOMA:** So that she also is aware that it was settled by them.

**CHAIRPERSON:** Yes.

**MR MAPOMA:** Yes, it appears under my name here but the only person to whom it was intended at the time was Mr Mkhwanazi.

10 **CHAIRPERSON:** Yes.

**MR MAPOMA:** Who knew exactly the context under which it was produced.

**CHAIRPERSON:** Ja. Well, I guess maybe another possible point in your defence is that Transnet attorneys, having been involved in the matter, if they put in a paragraph that says there were prospects of success or there was a probability that the bargaining council may find the sanction inappropriate you might have deferred to them on the basis that they would have – they would know the merits of the case better than you.

**MR MAPOMA:** I can agree, Chair.

**CHAIRPERSON:** Ja, okay. Mr Myburgh?

**ADV MYBURGH SC:** Thank you. Mr Mapoma, I am going to take you in a moment to some statements that you made at a meeting about your views of the fairness or otherwise

of Mr Gama's dismissal. Are you sure you are not being coy here? Did you have a view that it was fair? Did you have a view that it was unfair or did you have no view?

**MR MAPOMA:** Well, I had a view.

**ADV MYBURGH SC:** So what was your view?

**MR MAPOMA:** My view that I saw nothing wrong that it happened at the hearing.

**ADV MYBURGH SC:** I beg your pardon?

**MR MAPOMA:** I knew nothing that had happened with  
10 this hearing so there was no reason for me to say it was not fair. I had absolutely no reason to say so because there was a [inaudible – speaking simultaneously]

**CHAIRPERSON:** I am sorry, I am sorry ...[intervenes]

**MR MAPOMA:** Oh, my apologies.

**CHAIRPERSON:** I do not hear, ja.

**MR MAPOMA:** It was a decision of [indistinct] 05.49  
[indistinct] which Mr Gama was only challenged on the part thereof. The merits of the matter, that is the merits of the dismissal, he was challenging. He was challenging the  
20 dismissal so ...[intervenes]

**CHAIRPERSON:** The sanction.

**MR MAPOMA:** The sanction rather, so I do not know how I could have been asked for a view on its merits when the person affected saw it not to challenge it himself. So I absolutely did not understand all this effort being made,

you know, at the time to reinstate us for the fees and all these things. So my view as that the [indistinct] 06.37 is there, straight to the point. So this was my view.

**ADV MYBURGH SC:** So did you think – were you of the view that the dismissal of Mr Gama was fair or unfair?

**MR MAPOMA:** I said I had no reason to say it was unfair.

**ADV MYBURGH SC:** Oh.

**MR MAPOMA:** It was there, it was not challenged on the hearing.

10 **CHAIRPERSON:** I am not sure if you are on the same page as Mr Myburgh. When it is said that a dismissal is fair or unfair, there are at least two possibilities. The one – I am talking about a dismissal for misconduct such as this one – the one reason why it may be said it was unfair is because it is thought that he should not have been found guilty. You understand that?

**MR MAPOMA:** I understand that, Chair.

20 **CHAIRPERSON:** So somebody who looks at what he was charged with, looks at the evidence, looks at the reasoning of the Chairperson of the disciplinary enquiry in regard to his finding that Mr Gama was guilty might say I do not agree with the conclusion of the Chairperson of the hearing that Mr Gama was guilty, okay, so therefore the dismissal is unfair because he was not guilty. As far as I am concerned, he was wrongly found guilty.

But another possibility is that somebody might say I agree with the conclusion of the Chairperson of the disciplinary enquiry that Mr Gama was guilty but I do not agree that the sanction of dismissal was appropriate, was fair. I think that he should have given a final written warning or something less than dismissal.

But in both cases you talk about whether a dismissal is fair or unfair. Okay. Now we know that in the bargaining council Mr Gama was accepting that he was  
10 guilty of these acts of misconduct of which he had been found guilty, he was only challenging the fairness of the sanction, okay?

So when counsel asks you whether you had a view whether a dismissal of Mr Gama was fair or unfair, he is talking broadly.

You might say I thought it was unfair because he should not have been guilty. You might say I have no problem with the finding that he was guilty but I did not think that dismissal was fair, was appropriate or you might  
20 have some other ground or saying the dismissal was unfair. Okay, I thought I must clarify that.

**MR MAPOMA:** No, thank you for that.

**CHAIRPERSON:** Now what is your answer to the question then, did you have a view whether Mr Gama's dismissal was fair or unfair or did you not have a view.

**MR MAPOMA:** I do not think I had a view at the time.

**CHAIRPERSON:** You did not have a view?

**MR MAPOMA:** No.

**ADV MYBURGH SC:** I see. No, we will come to that. Let me just go back a little. You made mention of the fact that Mr Mkhwanazi wanted you to prepare the memorandum together with the lawyers.

**MR MAPOMA:** Yes.

**ADV MYBURGH SC:** Could you just go back please to  
10 page 36 of bundle 3? And I just ask you to confirm that what you said to Mr Sangoni, was the Chair has asked that we prepared to page – who are your referring to there?

**MR MAPOMA:** I am referring to myself and the attorneys.

**ADV MYBURGH SC:** Now, we have dealt with the new paragraphs 10 and 11 that were added by Deneys Reitz. I would like to take you please to bundle 2. That memorandum that we have dealt with now was produced the day before the board meeting, correct? If you could go to bundle 2 and turn to page 19?

20 Now on the face of it this is a report for Transnet on settlement from Mr Gooley of Deneys Reitz dated the 22 February and you see at the top it was cc'd to you.

**MR MAPOMA:** Yes, I see that.

**ADV MYBURGH SC:** Did you receive this document?

**MR MAPOMA:** I would have received it.



**ADV MYBURGH SC:** Right. So this, whereas your memo was finalised or settled the day before the board meeting, this report is actually produced on the same day as Mkhwanazi signs the settlement agreement and the day before Mr Gama signs it.

**MR MAPOMA:** I see that.

**ADV MYBURGH SC:** Is that right. Now I want to just take you please to page 20 and can I direct your attention to paragraph 1.1?

10 **MR MAPOMA:** Yes.

**ADV MYBURGH SC:** There Deneys Reitz say:

“There are various opinions which had been obtained from reputable firms of attorneys with regard to prospects of success of Mr Gama in successfully challenging his dismissal by the company. All of the opinions, including ours, which we gave after perusing documents pertaining to the disciplinary enquiry were of the view that Mr Gama’s chances of successfully challenging his dismissal are not good.”

20

**MR MAPOMA:** I see that.

**ADV MYBURGH SC:** These are the people that you are settling and writing your memorandum with.

**MR MAPOMA:** Yes.

**ADV MYBURGH SC:** So their view here in this report is

prospects of success are not good.

**MR MAPOMA:** Ja.

**ADV MYBURGH SC:** Had you seen that opinion?

**MR MAPOMA:** The one that they wrote?

**ADV MYBURGH SC:** Well, they are talking about:

“..all the opinions including ours...”

**MR MAPOMA:** I am not sure I did. I am not sure I did.

**ADV MYBURGH SC:** Well, had you seen other opinions?

**MR MAPOMA:** I am not sure. Remember, Mr Gama’s  
10 disciplinary and opinions and stuff, I would come into the  
matter very, very late after bargaining council and Mr  
Mkhwanazi came in.

**ADV MYBURGH SC:** Yes.

**MR MAPOMA:** There would have been opinion probably  
that were returned for one or other boardroom Exco and so  
on, that would have missed me. But if they were sent to  
me I would have read them. I do not deny that they were  
sent to me, if they would have been sent to me I would  
have read them but I do not recall which one is this one,  
20 which one is that one.

**ADV MYBURGH SC:** Did you ever see an opinion from Mr  
Todd of Bowmans?

**MR MAPOMA:** I will have seen it if it was sent to me  
although I do not [inaudible – speaking simultaneously]

**ADV MYBURGH SC:** No, I am not asking you that. It

does not help ...[intervenes]

**MR MAPOMA:** I do not recall it off my head, Mr ...[intervenes]

**ADV MYBURGH SC:** Mr Mapoma, you occupied a senior legal position in the company.

**MR MAPOMA:** Yes.

**ADV MYBURGH SC:** You were being asked at one point in time to produce a memorandum dealing with the fairness or unfairness of Mr Gama's dismissal.

10 **MR MAPOMA:** Yes.

**ADV MYBURGH SC:** You did not bother to look around and see if there were legal opinions?

**MR MAPOMA:** I had the juniors that were working with me.

**ADV MYBURGH SC:** I am asking you. You did not look around for legal opinions?

**MR MAPOMA:** No, I did not at the time.

**ADV MYBURGH SC:** I see. So ...[intervenes]

20 **CHAIRPERSON:** Well, if you did not look around for legal opinions, at least one would have expected you to call for the ruling of the Chairperson of the disciplinary enquiry because you would know that if you went to that ruling that you ought to find the reasons that the Chairperson of the disciplinary enquiry advanced or why he found Mr Gama guilty of the charges that had been preferred against him

and why he recommended that Mr Gama should be dismissed. One would have thought that you would be interested at least to read those.

Well, there were two rulings. Actually one, on whether Mr Gama was guilty of the charges and the other one, whether or what sanction would be fair, would be appropriate.

**MR MAPOMA:** Yes.

**CHAIRPERSON:** One would have expected you that you  
10 would have been interested particularly after the  
Chairperson, Mr Mkhwanazi, mentioned that he wanted the  
memo to address the issue of whether there was  
unfairness. You did not try and access those rulings.

**MR MAPOMA:** No.

**CHAIRPERSON:** You did not?

**MR MAPOMA:** No.

**CHAIRPERSON:** But you accept that that is what would  
have been expected from you?

**MR MAPOMA:** Yes, I accept that.

20 **CHAIRPERSON:** Yes.

**MR MAPOMA:** Chair, a decision that is communicated to  
me had been taken already to reinstate Mr Gama. So  
whatever opinion or whatever was said, it was a decision  
that had been taken already. It was taken. My opinion or  
analysis of that opinion say or said, I do not think that

would have changed much because there were, at that stage, negotiations for settlement already ongoing between Mr Mkhwanazi and Mr Gama.

So as to opinions about the fairness or unfairness, the rightness or wrongness of whatever had happened in the past, I do not think would have amounted to much and I must have had that view at the time and say not – to use the counsel's word, bother myself to be looking for opinions on whether the outcome was fair or not because  
10 they were already bent on doing this thing.

**CHAIRPERSON:** Well, you see, if Mr Mkhwanazi had not asked that the two pager should include – the two pager that should be prepared for him should include the question of whether there was unfairness, I would understand your answer, you know?

**MR MAPOMA:** H'm.

**CHAIRPERSON:** I would understand your answer. But once he specifically request that that be addressed, I would expect that if you had not read that ruling and if you  
20 did not have a view on the fairness or otherwise of Mr Gama's dismissal, I would expect that you would want to read that but irrespective of whether the board would change its view or not simply because Mr Mkhwanazi requested that the two pager should include something on that.

**MR MAPOMA:** Yes.

**CHAIRPERSON:** So that is what makes me think that I would have expected that you would at least want to read that in order to be able to address this issue that he requested be addressed. You accept that?

**MR MAPOMA:** No, I understand that. I understand where you are coming from.

**CHAIRPERSON:** Yes, yes.

**MR MAPOMA:** But at that time I was working with the  
10 attorneys.

**CHAIRPERSON:** Yes.

**MR MAPOMA:** And the instruction was given to us.

**CHAIRPERSON:** Yes.

**MR MAPOMA:** As a team and maybe I used the word wrongly, and we produced the two pager that he was looking for.

**CHAIRPERSON:** Yes, okay. Mr Myburgh?

**ADV MYBURGH SC:** Thank you. So that is paragraph 1.1  
20 at page 20. All the opinions say prospects of challenging his dismissal are not prospects of success.

**MR MAPOMA:** Yes.

**ADV MYBURGH SC:** If you go to page 21 under the heading Sanction, you will see that is precisely the same paragraph that Deneys Reitz inserted as paragraph 10 into your memo, with the footnote.

**MR MAPOMA:** Yes, I see that.

**ADV MYBURGH SC:** And then if you go to page 22 you will see that Deneys Reitz conclude in precisely the same terms as the inserted paragraph 11 into your memo.

**MR MAPOMA:** Yes, I see that.

**ADV MYBURGH SC:** Where they say there is a probability that the sanction may be found unfair.

**MR MAPOMA:** Yes, I see that.

**ADV MYBURGH SC:** Do you read this opinion when you  
10 received it?

**MR MAPOMA:** Yes, I am sure I read it.

**ADV MYBURGH SC:** Were you able to reconcile paragraph 1.1 with paragraph 4?

**MR MAPOMA:** You cannot reconcile.

**ADV MYBURGH SC:** You cannot.

**MR MAPOMA:** H'm.

**ADV MYBURGH SC:** What view did you form then when you read this report? I mean, what is going on here.

**MR MAPOMA:** It contradicts itself.

20 **ADV MYBURGH SC:** It is what?

**MR MAPOMA:** It contradicts itself.

**ADV MYBURGH SC:** It contradicts itself?

**MR MAPOMA:** Ja.

**CHAIRPERSON:** I guess Mr Myburgh is asking whether you did anything about this contradiction.

**MR MAPOMA:** I do not think I did anything.

**CHAIRPERSON:** You did not do anything?

**MR MAPOMA:** No.

**CHAIRPERSON:** H'm.

**ADV MYBURGH SC:** And just – I do not know if you had an opportunity of reflecting on the language. What does it mean to say there is a probability that something may happen?

**MR MAPOMA:** [indistinct] 21.13 that.

10 **ADV MYBURGH SC:** Ja, I mean, does it make sense to you?

**MR MAPOMA:** Yes, I mean, it is as long that is used all the time, the probability of something happening.

**ADV MYBURGH SC:** May.

**MR MAPOMA:** Yes.

**ADV MYBURGH SC:** Yes, the language is certainly used, the probability of something happening but the probability of something may be happening is difficult to understand, is it not?

20 **MR MAPOMA:** Yes, it is.

**ADV MYBURGH SC:** Yes because ...[intervenes]

**MR MAPOMA:** As long as it is used – and I have seen it [inaudible – speaking simultaneously]

**ADV MYBURGH SC:** Because they may might just as well go the other way.



**MR MAPOMA:** Yes.

**ADV MYBURGH SC:** So did you understand this advice?

**MR MAPOMA:** I understood it at the time but if you want it now and you want to interpret the language, well you can sitting here with all the documents you have. At the time the two pager that Mr Mkhwanazi asked from me and Mr Gooley was delivered to him and this what you were referring me to earlier. This opinion that we have here on the – that is dated 22 Feb. It is also an opinion that rightly,  
10 when you look at it now, does not seem to make sense, while paragraph 1.1 says another thing, the last paragraph says something else.

**CHAIRPERSON:** Did you read that sentence which has got probability, did you read it as meaning that the probabilities were that the bargaining council would find the sanction of dismissal inappropriate? Did you understand it to be to that effect?

**MR MAPOMA:** Yes, Chair.

**CHAIRPERSON:** That is how you understood it.

20 **MR MAPOMA:** Yes.

**CHAIRPERSON:** And with that understanding you then found it in conflict with 1.1?

**MR MAPOMA:** Yes.

**CHAIRPERSON:** Yes, oaky.

**MR MAPOMA:** Because, you see, 1.1 is what the

attorneys are saying.

**CHAIRPERSON:** Ja.

**MR MAPOMA:** Ja, it is their opinion.

**CHAIRPERSON:** Yes.

**MR MAPOMA:** But they are also telling us that even if we say this, probably the bargaining council can see it differently.

**CHAIRPERSON:** Yes.

**MR MAPOMA:** With the fact that what it says  
10 ...[intervenes]

**CHAIRPERSON:** Oh okay, no, you may be introducing new ones that may be one might not pick up. Are you saying the attorneys in the two paragraphs are saying – or are saying in the – effectively saying on the one hand our opinion is that there are no good prospects for Mr Gama to succeed in the bargaining council, the arbitration, in having the dismissal declared unfair and get reinstatement. That is the opinion they give.

**MR MAPOMA:** H'm.

20 **CHAIRPERSON:** But, having said that, are you saying in the later paragraph that has got probability, they are saying irrespective of our opinion we think probably the bargaining council will find the dismissal unfair and reinstate Mr Gama? Is that how you read it?

**MR MAPOMA:** That is how I read it, Chair. You see, an

opinion can be given to say what are your views on this, to give them the views but you cannot be asked to guarantee then what is a particular body going to – how is going to decide, it is about the views, strong as they may be at some stage. But now if you are asked well, what is the bargaining council going to say? You cannot say that. You must allow for the fact that there might be somebody else who differs with your strong views, with your strong opinion. So I think that is what the attorneys are saying.

10 There [indistinct] 00.25 but despite our view that the prospects are good, there is a possibility that the council can still rule in his favour.

**CHAIRPERSON:** But if you ...[intervenes]

**MR MAPOMA:** This is my interpretation of it.

**CHAIRPERSON:** But if that is how you understood two paragraphs then there would be no contradiction.

**MR MAPOMA:** Well, in the sense that counsel is asking the questions because the way he is asking, juxtaposes the two so say if there is an opinion that the prospects are not  
20 good then for them now to say to right the probabilities of this person seems to call it [indistinct] 25.56. And I agree with him, you can read it like that. His reason is also a way of looking at this thing but there was also another way of looking at it where I say an opinion can be given, very strongly to say this is my view on this but be alive to the

fact that another body can reach a different conclusion despite what I say. So that is my understanding.

**CHAIRPERSON:** Yes, but you did say you saw the two as contradictory to each other.

**MR MAPOMA:** Yes, I say that in the context of the question that he is asking me now.

**CHAIRPERSON:** Yes.

**MR MAPOMA:** Yes.

**CHAIRPERSON:** Mr Myburgh.

10 **ADV MYBURGH SC:** Yes, thank you. I mean the one thing you cannot do is interpret this opinion as saying that Transnet prospects of success were poor.

**MR MAPOMA:** Can you come again?

**ADV MYBURGH SC:** There is no way of interpreting this opinion as meaning that the advice was that Transnet's prospects of success were poor.

**MR MAPOMA:** Paragraph 1.1 is clear that the opinion is that they are not good, it is almost good, is that not what it says?

20 **ADV MYBURGH SC:** I does not say they are not good, Mr Mapoma ...[intervenes]

**MR MAPOMA:** It says it is not good.

**ADV MYBURGH SC:** It highlights what you put in your memo. There is a risk that comes with all litigation. Where does it say that your prospects of success are bad,

you are going to lose this case?

**MR MAPOMA:** No, it is not saying so. Does not say so.

**ADV MYBURGH SC:** Ja.

**MR MAPOMA:** Ja.

**ADV MYBURGH SC:** So do you see any basis for settlement on the basis of that advice?

**MR MAPOMA:** No.

**ADV MYBURGH SC:** That it does not mean anything?

**MR MAPOMA:** No, I do not.

10 **ADV MYBURGH SC:** Well, let me take you to something that I must say has been troubling me about your evidence. You – at the beginning, when we were dealing with your first affidavit you said that you first began work in relation to the Gama matter after the Public Protector's complaint, you worked together with Mr Mkhwanazi in addressing the Public Protector's complaint. is that right?

**MR MAPOMA:** No, that is not a correction, yes.

**ADV MYBURGH SC:** Did you have occasion to go to meetings, board of directors or subcommittees of the board  
20 where you would address them in relation to no doubt what was an important thing, that being the Public Protector's complaint?

**MR MAPOMA:** Yes, I did.

**ADV MYBURGH SC:** Could I ask you please to go to bundle 1 and to turn up page 827?

**MR MAPOMA:** Yes, I am there.

**ADV MYBURGH SC:** Now this is an annexure to the affidavit of Doris Tshepe who was a director at the time. At 827 you find a minute of a meeting of the Corporate Governance and Nomination Committee of 3 February 2011, is that correct?

**MR MAPOMA:** Yes, I see that.

**ADV MYBURGH SC:** And you will see at 1.2 that members of that committee that were present, it seems when Mr  
10 Mkhwanazi, Ms Nkanya ...[intervenes]

**MR MAPOMA:** Mnyaka.

**ADV MYBURGH SC:** Mnyaka, I beg your pardon, Ms Tshepe and Mr Sharma.

**MR MAPOMA:** Yes.

**ADV MYBURGH SC:** And then if you drop down, so there are four, the Chairman and then three members. You drop down under 1.4 you see that you were there as well.

**ADV MAPOMA:** Yes, I was there.

**ADV MYBURGH SC:** Together with your boss Ms  
20 Stephen?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Now perhaps I can just you please over the page to 828 and ask you to have a look at paragraph 6.7, the heading being “Report back from the Advert Process”, and you will see that the text there what

was happening is this committee was applying its mind wasn't it to the new – to filling the position of the Group Chief Executive.

**ADV MAPOMA:** Yes, I see that.

**ADV MYBURGH SC:** And if you then go to page 830, you will see towards the middle of the page there's a heading at 6.9, "Investigation by the Public Protector".

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** And there it records at 691,

10           "Mr Mapoma took the committee through Senior Counsels opinion that was obtained with regard to Mr Gama's application with the GCE position".

He highlighted that the legal opinion was based on the following issues,

                  "Does the guilty verdict against Mr Gama exclude him from being considered in the current GCE selection process, how does the pending appeal, affect the Board decision, does the Public Protector complaint currently being dealt with have any bearing?"

20

                  When you talk about an appeal, I assume you're talking about the Bargaining Council arbitration?

**ADV MAPOMA:** That would have been it.

**ADV MYBURGH SC:** Yes, so we will get, in a moment, to a clause in one of the Transnet's policies, clause 4.8.4,

you've heard of that clause.

**ADV MAPOMA:** I've heard.

**ADV MYBURGH SC:** And what does that clause provide.

**ADV MAPOMA:** I will have to look at the minute now because I don't recall it off my head.

**ADV MYBURGH SC:** Yes.

**ADV MAPOMA:** But I think it's got to do with the – somebody who had been dismissed and who had not been – who was supposed to not to be allowed to apply again for  
10 the position in the company.

**ADV MYBURGH SC:** Yes, precisely.

**ADV MAPOMA:** It was to that effect.

**ADV MYBURGH SC:** And that's in fact, why you had sought Senior Counsel's opinion. I mean one of the questions that Senior Counsel was asked is, does the guilty verdict against Mr Gama exclude him from being considered, correct?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** So, let's then go, to what was the  
20 central debate at this meeting. Let me ask you to go to page 831 and let me direct your attention please, to paragraph 6.3.13 where it says deviation from clause 4.8.4, do you see that?

**ADV MAPOMA:** Yes, I see that.

**ADV MYBURGH SC:** And the first sub-paragraph says,



“Ms Tshepe and Mr Nyaka stated that the current settlement negotiations with Mr Gama were, presumably a rationale for deviation from clause 4.8.4 but because there were current settlement negotiations that was a rationale to deviate from that clause”,

That’s what they said.

**ADV MAPOMA:** That’s what they say ja?

**ADV MYBURGH SC:** Mr Sharma disagreed and stated that  
10 it was not in the best interest of the organisation to deviate  
from clause 4.8.4.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Next sub-paragraph,

“Mr Sharma stated that he was unhappy with how Mr Gama’s matter was being handled. He indicated that he was of the view that the committee was not considering the best interest of the company but that of an individual”.

**ADV MAPOMA:** Ja.

20 **ADV MYBURGH SC:** I mean, what was being considered  
here was whether a dismissed Chief Executive, dismissed  
from a division of Transnet, could be in the running for the  
Group Chief Executive, correct?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** The next sub-paragraph,

“The committee voted on whether or not it should deviate from clause 4.8.4, there were three votes against one, in favour of deviation”,

So, we certainly – we’ll see just now Mr Sharma voted against it, Mr Mkhwanazi and the two other members voted in favour of a deviation.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** And then if you go to the next subparagraph below that,

10 “The committee resolved that it recommends that Gama be considered for the GCE selection process, correct?

**ADV MAPOMA:** Yes, I see that.

**ADV MYBURGH SC:** Now, do you accept that there was an extensive debate about deviating from clause 4.8.4?

**ADV MAPOMA:** Yes, there was a debate.

**ADV MYBURGH SC:** And you participated in that debate.

**ADV MAPOMA:** Yes, I was participating, I was asked certain advice – questions were asked to me, I will answer  
20 them, so I participated.

**ADV MYBURGH SC:** Now – and I brought this to your attention, Ms Tshepe, at page 833, she has produced – she obtained a recording of this meeting and she produced a transcript of it.

**ADV MAPOMA:** I saw that this morning.

**ADV MYBURGH SC:** And there's a certificate of veracity, you see that?

**ADV MAPOMA:** Yes, I saw that but having seen that, I just want to bring something to your attention that you might not be aware of. There are instances where my name is written against what Mr Mkhwanazi will be saying, for instance he'll be saying I want to bring Mr Gama to my office and that will be written against my name, so I will not accept that...[intervenes].

10 **ADV MYBURGH SC:** Alright we can deal with that.

**ADV MAPOMA:** So, there will be some inaccuracies in respect of that.

**ADV MYBURGH SC:** Yes, no, that I understand but I want you take you to a particular portion of this transcript which I have brought to your attention before.

**ADV MAPOMA:** Ja.

**ADV MYBURGH SC:** Let us go, please to page 854, now I just want to contextualise this, this is really towards the end of the debate, because if you look at 855, I'm going to go through it in detail, you see at the foot of 855 it says at  
20 715,

“Colleagues I will deviate, I will do the same, I will not, we will record it, three against one”,

So, you see there's the voting at the foot of 855?

**ADV MAPOMA:** Yes, I see that.

**ADV MYBURGH SC:** So, this passage that I'm going to take you to, at the end of the debate, immediately before the vote. Let's start at 854 and I want to take you two lines above, what is recorded on the left as 685, you see that?

**ADV MAPOMA:** Yes, I see that.

**ADV MYBURGH SC:** The Chairman – Who is the Chairman of this meeting?

**ADV MAPOMA:** You asking who was the Chairman of the  
10 meeting?

**ADV MYBURGH SC:** Yes.

**ADV MAPOMA:** No.

**ADV MYBURGH SC:** Who was the Chairman of the meeting?

**ADV MAPOMA:** It was Mr Mkhwanazi.

**ADV MYBURGH SC:** Correct, so Mr Mkhwanazi says,  
"Can you comment on that, the appeal process",  
Now we know that's the arbitration,  
"Can you comment and then it records opposite  
20 your name, CA is not appealing against the  
dismissal for all intents, he's appealing the  
sanction, [indistinct] Ms Tshepe but the sanction is  
the dismissal. Nyaka, he's not appealing against,  
we agree with that",  
Then over the page opposite your name,

“He’s not appealing against the finding of guilty,  
he’s appealing against the dismissal, now I said”,  
You said that?

**ADV MAPOMA:** Yes, I said that.

**ADV MYBURGH SC:** And then Ms Tshepe said,

“Which is the disqualification, sorry Saaks I just  
want to understand which is the disqualification”,  
So, you refer to a Saaks.

**ADV MAPOMA:** Yes, I’m Saaks, you just misspelled my  
10 name a lot.

**ADV MYBURGH SC:** Sure, you said that?

**ADV MAPOMA:** The line...[intervenes].

**ADV MYBURGH SC:** Ms Tshepe said that?

**ADV MAPOMA:** He’s not appealing against the finding of  
guilty appealing against the dismissal now I said – then it  
gets cut off.

**ADV MYBURGH SC:** Correct, could you then read please,  
to the Chairperson, what you said after that?

**ADV MAPOMA:** Okay.

20 **ADV MYBURGH SC:** From 695 to 703.

**ADV MAPOMA:** Yes, Chair, the said paragraph reads as  
follows, against my name,

“Right, now I advise the Chair to say that, if we as  
Transnet go to the appeal and oppose the appeal,  
we stand a very good chance of winning that

appeal”,

That was my view at the time,

“Where I’m saying, we are not strong Doris is, if we have to explain the rationality of why we are settling, I don’t think we are on very strong grounds on that, that is my view but ...[indistinct] of itself and if we go and argue the matter on the appeal we stand a very good chance of succeeding. You see I can win, but we can also win as Transnet, but we have a very, very good case against him there”,

10

That is why we said, let us rather postpone to the 24<sup>th</sup> of April Chair, after another hearing, so that we pursue the settlement process, so the dismissal – then it gets cut off again.

**ADV MYBURGH SC:** So, let’s just look at this now, here you say that Transnet had a very, very good case.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Right, and in fact what you say, is that settlement would not be rationale.

20 **ADV MAPOMA:** I say so, that’s the fact of it.

**ADV MYBURGH SC:** So, up until now you’ve been telling the Chairperson that you didn’t have any view on this matter, why? Here you are expressing the strongest view, “we have a very, very, good case”, where we’re going to act irrationally is if we settle, how do you reconcile that

with your evidence earlier, that you had no view?

**ADV MAPOMA:** well my view would have been formed at some stage...[intervenes].

**ADV MYBURGH SC:** This is on the 3<sup>rd</sup> of February, your view didn't disappear, did it, before the consultation?

**ADV MAPOMA:** No.

**ADV MYBURGH SC:** Or your memorandum?

**ADV MAPOMA:** This I got this morning, I record it, I read it and I remember it and I agree it correctly reflects what I  
10 said at the time.

**ADV MAPOMA:** So, what's important is, you got it this morning, before you gave evidence in the Commission, that's why, I purposely, as a courtesy to you, brought this to your attention.

**ADV MYBURGH SC:** Well it might have been the way the question was asked but my view is recorded there at the time of the meeting, remember this meeting happened, not on the same time as when we were at ...[indistinct] because Mr Mkhwanazi's request was when ...[indistinct] in  
20 writing something that said Mr Gama had been treated unfairly. At that time...[intervenes].

**ADV MYBURGH SC:** Mr Mapoma, you're really mixing yourself up now. When you said to the Chairperson that you had no view on the merits, is when I was examining you in relation to your memorandum.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** That you wrote on the 14<sup>th</sup> of February.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** This is at a meeting, very, very important meeting on the 3<sup>rd</sup> of February.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** You're not suggesting to the Chairperson that on the 3<sup>rd</sup> of February I had a very strong  
10 view and then my view evaporated by the 14<sup>th</sup> of February, you're not suggesting that?

**ADV MAPOMA:** No, I'm not suggesting that.

**ADV MYBURGH SC:** So, what is your position?

**ADV MAPOMA:** It might well be – my recollection, maybe I might have forgotten, I don't know.

**CHAIRPERSON:** Well, it's something that does need some explanation, particularly if you were given this in the morning and you were able to read it and therefore you remember – if you had forgotten you remembered that you  
20 did express quite a strong view on the merits, of prospects of success at this meeting. Now, when you were asked in the course of the day, whether you had a view on the unfairness or otherwise of Mr Gama's dismissal, one would have expected that two things would happen. One is, that you'd say, yes I had a view because you had read it, you



had refreshed your memory and this was my view or you might say, well I had a view from a certain time but before that time I might not have had a view, that's another possibility but to the extent that we were dealing with a time that is later than the 3<sup>rd</sup>, that was later than the 3<sup>rd</sup> of February where you said you did not have a view and you did not even say, look I have actually seen something – there's a time that I expressed a view. So, it's going to be important to check where – the timing that – if you had  
10 said that, that might be – might have been something else but you didn't say that you said, you said, you had no view and that was it.

**ADV MAPOMA:** Sir, we'll have to look at the context of these questions. I answered that in the morning because we were coming from the consultation note meetings, we were coming from a request that Mr Mkhwanazi had made for us to have an opinion on whether Mr Gama had been treated unfairly at the time, which we wanted to go and tell the Board and at the time that he asked me that, I still say,  
20 I didn't have a view on the matter and then you continued and you said but you then received opinions later on and so on and so on but his was now after Mr Mkhwanazi, at the time when he asked me this thing. At the time I knew that – he had informed me that the Board had already taken a decision to reinstate Mr Gama, all that was left

were the details of the settlement. So, my views were irrelevant as it were or views of anybody because a decision had been taken already for Mr Gama to be reinstated...[intervenes].

**CHAIRPERSON:** Ja, no, but Mr Mapoma the point – one of the points Mr Myburgh made which, you agreed with is once you had a view and you had a strong view on the 3<sup>rd</sup> of February, that view was not going to evaporate after that.

10 **ADV MAPOMA:** No, I agree with that.

**CHAIRPERSON:** Yes, so mid February, a week or two weeks later or even three weeks later, when you were asked to formulate – prepare a two pager which would include the issue of prospects of success or the issue of whether there was unfairness in the dismissal, you knew that you had a strong view and the strong view was, Transnet had a very good chance of winning in the arbitration, there was no unfairness, as far as you were concerned in how Transnet had dealt with Mr Gama. So,  
20 why did you say you did not have a view at that time because you did have a view and a strong one at that?

**ADV MAPOMA:** Maybe my view was formed at different times I really cannot be able to explain on that.

**CHAIRPERSON:** Ja, you are not able to explain?

**ADV MYBURGH SC:** Ja.

**CHAIRPERSON:** Okay, Mr Myburgh?

**ADV MYBURGH SC:** Let me just pick up on a few things. If you go back to your words, “we have a very, very good case, then you say that is why we said, let us rather postpone to the 24<sup>th</sup> of April Chair, after another hearing, so we can pursue settlement”, I mean, do I understand this to mean that you understood that you didn’t want to go to arbitration because you could lose and that’s why the arbitration was postponed so that you could settle,  
10 correct?

**ADV MAPOMA:** I don’t know whether I will agree with you there.

**ADV MYBURGH SC:** Well, Mr Mapoma you don’t postpone an arbitration because you have a very, very good case, you postpone it for some other reason.

**ADV MAPOMA:** The arbitration matter was dealt with by lawyers that I had no contact with. I’m sitting at the meeting where different kinds of questions are asked and I’m asked for an opinion there and for the life of me, if you  
20 ask me now to pinpoint a particular reason why X and Y was said, I might not be able to.

**ADV MYBURGH SC:** Well I just – I’m sorry I’m just going to ask you this once more. What did you mean when you said, “we have a very, very good case against him there, that is why we said, let us rather postpone”?

**ADV MAPOMA:** I don't recall even what was being postponed but when I look at this thing, this paragraph ...[indistinct] I mean without context. I would have to know now whether was the hearing on the 24<sup>th</sup> of February, I'm not sure as I'm sitting here now.

**ADV MYBURGH SC:** Right, so what's happened now is – remember this is right at the end of this debate. You've said we've got a very, very good case.

**ADV MAPOMA:** Ja.

10 **ADV MYBURGH SC:** Look at what Doris Tshepe then said, "Sorry Chair, I'm very confused, then you have to explain to me, why are we settling if we're going to win the case",

A good question hey, so it's a good question?

**ADV MAPOMA:** Not me, it was the Board that decided to do that, so she should have asked that question from them.

**ADV MYBURGH SC:** I'm asking you, it's a good question to ask, isn't it?

**ADV MAPOMA:** Yes, it is.

20 **ADV MYBURGH SC:** Correct, she says,

"I'm confused then you have to explain to me why we're settling if we're going to win the case",

Then what does Mr Mkhwanazi say?

**ADV MAPOMA:** Do you want me to read?

**ADV MYBURGH SC:** Yes.

**ADV MAPOMA:** It means I will deviate from clause 4.8.

**ADV MYBURGH SC:** No, what was Mr Mkhwanazi say at 9705 in response to her?

**ADV MAPOMA:** Oh sorry, sorry then he says, “we don’t know”.

**ADV MYBURGH SC:** We don’t know?

**ADV MAPOMA:** Ja.

**ADV MYBURGH SC:** How did you understand that – what did you understand that to mean? So, it’s put  
10 to...[intervenes].

**CHAIRPERSON:** The question is – I’m sorry Mr Myburgh, the question from Ms Tshepe is, if we have a very good case, why are we settling?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** And then the Chairperson says, we don’t know, did you understand his answer, the Chairperson’s answer?

**ADV MAPOMA:** No, I don’t think I would have understood at the time but that is what is recorded there.

20 **CHAIRPERSON:** Yes.

**ADV MAPOMA:** At the time that this meeting was happening, a decision to settle Mr Gama had been taken already, even if it was not by this committee. So, by the time this committee is sitting and they have to make their own decisions on this, it was after this committee then this

was supposed to go to the Board, so the sequence of events, I am also not able to explain because at this time the decision is already there, negotiations are happening.

**CHAIRPERSON:** See, what you are saying may be an explanation for something else but I don't think it fits into what we're talking about because here this reflects that this committee is entertaining the issue of, how good are our chances of winning this case, in the arbitration. So, there is a discussion that's why you say, "we have a very  
10 strong case", you know. So, Ms Tshepe then asked the question, "but why are we then settling", and – because she says she gets confuse by the fact that you are saying, Transnet has a very good case but she knows Transnet is seeking to settle or something or some people within Transnet are talking – are saying, let's settle. So, she's saying, why then are we settling, then the Chairperson says, we don't know.

**ADV MAPOMA:** When I'm in that meeting, Chair, I mean that meeting with knowledge or information that the Board  
20 has already taken this decision because this is initially what Mr Mafuda had told me. So, here are Board members now asking these kinds of questions from the Chairperson. So, for me as well, I don't understand why Board members who were supposed to be part of a decision already would be sitting in this meeting asking all these kinds of

questions but then the answer is, as recorded there, we don't know and then it continues further down...[intervenes].

**CHAIRPERSON:** Of course it goes to the question that Mr Myburgh posed to you earlier on, namely, where he was reading that you said we – Transnet has a very, very good case, that's why we postponed to pursue settlement, the two don't go together you see. So, now Ms Tshepe says, why are we settling then, Mr Mkhwanazi says, we don't  
10 know but Mr Mkhwanazi is the Chairperson of the Board.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** If anybody should know or should be able to explain what the Board is doing it should be the Chairperson, the leader.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** But he says, we don't know, I'm sorry I interrupted you Mr Myburgh.

**ADV MYBURGH SC:** Yes, thank you, Mr Chairperson. So, the Chairperson says, we don't know, then Ms Tshepe, to  
20 her credit says, but Saaks says we stand a very good chance of winning and then what does the Chairperson say?

**ADV MAPOMA:** Do you want me to read that?

**ADV MYBURGH SC:** Yes.

**ADV MAPOMA:** Chairperson, it's a 50/50.

**ADV MYBURGH SC:** So, this is a Chairperson who starts out by saying, I've got no idea why we're settling, and the sentence later says, well actually our prospects of success are 50/50. He doesn't agree with you, you're the lawyer, you say, we have a very, very good case, quite a shift isn't it?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** And then – you didn't quarrel with him, I mean, you didn't think it was a 50/50 case.

10 **ADV MAPOMA:** No but ...[intervenes].

**ADV MYBURGH SC:** You thought it was a very good case.

**ADV MAPOMA:** [Indistinct] against you would not just jump in and – you would have to answer when – talk when called upon.

**ADV MYBURGH SC:** Well let's see what Mr Nyaka has to say, I just want to check – before we get to that because it's an important passage. You – in your position as, what is it, General Manager Legal?

**ADV MAPOMA:** General Manager Group Legal.

20 **ADV MYBURGH SC:** General Manager Group Legal?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** That's a high legal position – high up legal position.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** You reported to Ms Stevens?



**ADV MAPOMA:** Yes.

**CHAIRPERSON:** That's just under the Executives?

**ADV MAPOMA:** Yes Chair.

**CHAIRPERSON:** Ja okay.

**ADV MAPOMA:** There were a number of GM's reporting to various Executives.

**ADV MYBURGH SC:** And you were involved in this because of your legal acumen, I mean, you had been brought in to deal with the Public Protector issue, you had  
10 got an opinion dealing with the deviation from clause 4.6.4, you had briefed Senior Counsel, correct?

**ADV MAPOMA:** Ja.

**ADV MYBURGH SC:** And just so that we understand it, at this time you were legally qualified, we know that you had left Transnet to go and do your pupillage but this time, presumably, you were legally qualified?

**ADV MAPOMA:** Yes, I was.

**ADV MYBURGH SC:** I see.

**CHAIRPERSON:** But now, Mr Mapoma how could you, on  
20 the 3<sup>rd</sup> of February 2011, at this meeting say, Transnet had a very, very good case, a very, very good chance of winning the case if you had never read the rulings of the Chairperson of the disciplinary inquiry?

**ADV MAPOMA:** [Inaudible mic not on].

**ADV MYBURGH SC:** Sorry Chair, the witnesses'

microphone is off apparently.

**CHAIRPERSON:** Just keep it on Mr Mapoma.

**ADV MAPOMA:** I didn't realise that it was off.

**CHAIRPERSON:** Are you saying that, when you said that this meeting, Transnet had a very, very good case, one, you had not read the reasons or the rulings of the Chairperson of the disciplinary inquiry but two, you may have read somebody's opinion on the matter – on the case.

**ADV MAPOMA:** I'm sure I must have read some opinion  
10 Chair because there was a lot of correspondence, writings  
on this Mr Gama issue, I would have formed an opinion  
from somewhere.

**CHAIRPERSON:** But are you able to remember whether you did – you had read an opinion or you say, you are not sure, maybe you had read an opinion or maybe you had not read but you had formed your opinion based on...[intervenes].

**ADV MAPOMA:** I must have read an opinion.

**CHAIRPERSON:** You must have read an opinion?

20 **ADV MAPOMA:** Yes.

**CHAIRPERSON:** But you can't remember whose opinion it may have been?

**ADV MAPOMA:** I can't remember, no.

**CHAIRPERSON:** Could it have been an opinion from the Deneys Reitz?

**ADV MAPOMA:** Possibly.

**CHAIRPERSON:** Possibly?

**ADV MAPOMA:** Or the one from Mr ...[intervenes]

**CHAIRPERSON:** I, I ...[intervenes]

**ADV MAPOMA:** I don't know.

**CHAIRPERSON:** Didn't you say earlier on you had not read any opinions when you were saying you had no view?

**ADV MAPOMA:** I had read opinions, Chair, even in my own memorandum that I'd written to Anoj I referred to an  
10 opinion, I quoted it, one of the opinions that I had come across I actually quoted it there. So, I know that there were opinions on this floating around, but I cannot pinpoint as to where exactly I would have read that to make my view what it was.

**CHAIRPERSON:** Well part of what's concerning to me is that at some stage you said you had no opinion about the merits of Mr Gama's case or the fairness or otherwise of his dismissal and then we discover that, at some stage you didn't just have an opinion, you had a very strong opinion  
20 but you had not read the rulings of the Chairperson of the disciplinary inquiry and you may have read or did read some opinions that you can't remember who they were written by and so on, that's the sum total of what you are saying?

**ADV MAPOMA:** Ja.

**CHAIRPERSON:** Yes, okay, Mr Myburgh?

**ADV MYBURGH SC:** Thank you. So, we have got to the Chairperson now saying, it's a 50/50 case.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Let's have a look what Mr Nyaka then says,

“I think, Chair, let's move it from legal now”,

So you had just, as the second most senior legal mind in the organisation said, that we have a very, very good case, Mr Nyaka says, let's move it from legal now because that's the problem, I think let's move it from legal, he's given his opinion which I, by the way, don't agree with. It is his opinion. I have an opinion. He shares an opinion. Everyone else has an opinion. Now the accountability and the decision making comes from this committee and let us decide at this committee that we... what we are deciding on this deviation.

10

**ADV MAPOMA:** Yes, that is right.

**ADV MYBURGH SC:** I mean, now that you read that, what is your sense of it that you brought the ...[intervenes]

20

**CHAIRPERSON:** I am sorry, Mr Myburgh. I think my... not knowing what that Clause 4.8 says is hampering my understanding. Do you ...[intervenes]

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** Are you able to remind what it says, the

one that ...[intervenes]

**ADV MYBURGH SC:** Yes, that is the clause. The Clause 8.4 and we will get to the exact text but in the context of the debate, it is a provision that says that if you are dismissed by Transnet then you should not be reappointed. So it is to prevent people being dismissed and then coming back into their status.

**CHAIRPERSON:** Yes, yes.

**ADV MYBURGH SC:** And the issue here was whether or not  
10 there could be a deviation from that.

**CHAIRPERSON:** Oh, okay. But the... as far as you understand, there was nothing in the policies that made provision for a deviation but there was a question simply at the meeting whether even though there might be nothing a deviation was possible.

**ADV MYBURGH SC:** Chair, I do not think I can responsible answer that question.

**CHAIRPERSON:** Yes, okay.

**ADV MYBURGH SC:** Mr Chairperson, without having got  
20 the text to the policy. I will give that to you.

**CHAIRPERSON:** Yes, okay alright.

**ADV MYBURGH SC:** But what I can say is that I am aware of the fact that an opinion was obtained by senior counsel. An opinion that has been referred to and you will confirm this is, that the opinion was that Transnet did have a measure of

discretion.

**CHAIRPERSON**: Oh, okay. H'm.

**ADV MYBURGH SC**: So it seems that the advise was not an absolute part.

**CHAIRPERSON**: Yes.

**ADV MYBURGH SC**: And that is why they were entertaining the matter.

**CHAIRPERSON**: Okay alright.

**ADV MYBURGH SC**: So here you give this view. We have  
10 got a very, very strong case. And you see what the director says. Well, it just a view. Let us leave it at that. I have got my view. My view is different.

**ADV MAPOMA**: Yes, I see that.

**ADV MYBURGH SC**: What did you... what is your sense of it, now when you look at it in black-and-white?

**ADV MAPOMA**: I suppose that they have emphasised that discretion. I do not know.

**ADV MYBURGH SC**: Do you have any idea what... when Ms Myanna(?) said that she does not agree with your opinion?  
20 Have you any idea what information she had at her disposal ...[intervenes]

**ADV MAPOMA**: No.

**ADV MYBURGH SC**: ...to inform that opinion?

**ADV MAPOMA**: No, I do not.

**CHAIRPERSON**: Do you know if she was a lawyer who was

legally qualified?

**ADV MAPOMA**: No, I do not. I do not.

**CHAIRPERSON**: You do not know?

**ADV MAPOMA**: No.

**CHAIRPERSON**: Okay.

**ADV MAPOMA**: I knew Ms Doris(?) to have an attorney.

**CHAIRPERSON**: Yes.

**ADV MAPOMA**: If I am correct.

**CHAIRPERSON**: Yes.

10 **ADV MAPOMA**: But I just know about Ms Myanna.

**CHAIRPERSON**: Yes. Do you know what the chairperson's basis was for saying that Transnet's prospects were 50/50? Do you know why he said that or is it something that you do not know?

**ADV MAPOMA**: I do not know Chair.

**CHAIRPERSON**: You do not know. Okay alright.

**ADV MYBURGH SC**: Thank you. Then just to close off on this. Straight after that, the chairperson says:

“Colleagues, I will deviate from Clause 4.8.

20 Myanna says:

“I will do the same”.

Tshepe says:

I will not.

Chairperson says:

“We will record it. It is three against one. Yes, we

will record it.”

So the three would have been the Ms Tshepe, Myanna, the chairperson, right?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Ms Tshepe on the face of it seems to change her mind quite fast.

**ADV MAPOMA:** Yes, it seems so.

**ADV MYBURGH SC:** Right.

**CHAIRPERSON:** I am sorry. Who? Ms Tshepe?

10 **ADV MYBURGH SC:** Well, she is the one that says: What are we settling for? What are we doing here. And then a few sentences later, she herself agreed to the deviation.

**CHAIRPERSON:** H’m. Okay.

**ADV MYBURGH SC:** Perhaps, just to go back to... because it is captured perhaps better in the minutes as to what the rational was for agreeing to deviation. Can I take you back please to page 831, paragraph 6.3.13?

**ADV MAPOMA:** [No audible reply]

**ADV MYBURGH SC:** Sub-one:

20 “Ms Tshepe and Ms Myanna stated that the current settlement negotiation with Mr Gama were rational for the deviation for Clause 4.8.4.”

In other words. Look, he has been dismissed, right. But we are going to settle with him and if we are going to do that. Well, then we might as well deviate. Right?



**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Is that correct?

**ADV MAPOMA:** That is what ...[indistinct]

**ADV MYBURGH SC:** And it was in that context that there was an interrogation of prospects of success, right?

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** And Ms Tshepe says: But if you are going to win this case then why are we settling this case?

**ADV MAPOMA:** Yes.

10 **CHAIRPERSON:** Well, is it not remarkable that this committee was having this discussion in the first place? Mr Gama remained dismissed from Transnet at the time of this meeting, okay?

**ADV MAPOMA:** Yes, Chair.

**CHAIRPERSON:** And he had been dismissed after having been found guilty of three very serious acts of misconduct. At least you know that part.

**ADV MAPOMA:** Yes, Chair.

20 **CHAIRPERSON:** Ja. And it was known that he was not challenging the finding that he was guilty of these very serious acts of misconduct.

He was only challenging whether even if he was guilty of those quite serious acts of misconduct, dismissal should have been imposed as a sanction.

Now I do not understand why there is an entertainment

of the idea that somebody who has been dismissed, there should be a debate about whether that person should be interviewed in circumstances where there is litigation pending. Because if at the close of the...

If by the deadline for the submission of applications, he is still dismissed, I would have thought that you do not entertain him.

You entertain the ones who have not been dismissed. If the closing date happens to be after the settlement had been  
10 made and he had been reinstated and he puts in an application, that is something else.

But as at the time he remains dismissed. Is there something I am missing?

**ADV MAPOMA:** Chair, I agree with you. But it would be a question better answered by others, not me.

**CHAIRPERSON:** What I want to... I seek to is whether that is something that may have perplexed you as well as to why this was happening?

**ADV MAPOMA:** Yes, because you are sitting in a meeting  
20 like this with board members who you have been informed were already party to a decision for the reinstatement.

**CHAIRPERSON:** H'm.

**ADV MAPOMA:** And you are being... you are still asked about the deviations from policy and all this and all that.

**CHAIRPERSON:** H'm.

**ADV MAPOMA:** And you give... *and it has uttered the three, one at a time. [utterance not clear]*

**CHAIRPERSON:** H'm.

**ADV MAPOMA:** So all these things were perplexing at the time without manage.

**CHAIRPERSON:** H'm.

**ADV MAPOMA:** Not very easy.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** And you will... when you got that  
10 transcripts, the one that counsel was referring to, you will see a lot of discussions there, jumping from one issue to the other. Very, very difficult to follow even that discussion. And how I respond to what is asked of me and the question.

**CHAIRPERSON:** Ja.

**ADV MAPOMA:** So it was not an easy thing to manage at the time.

**CHAIRPERSON:** H'm. Okay. Thank you.

**ADV MYBURGH SC:** Thank you. And to end off, Mr Mapoma. Perhaps I can just take you back to your third  
20 affidavit at page 29 of Bundle 3. We have been dealing with the new documents.

**CHAIRPERSON:** Yes, well... I am sorry, Mr Myburgh.

**ADV MYBURGH SC:** Page 29 of Bundle 3.

**CHAIRPERSON:** Yes. No, no. I am sorry. I am interrupting you for something else. You know, the...

yesterday and the day before and last week, I think, I was hearing... well, yesterday and sometime last week, I was hearing evidence into Eskom.

One of the things that seemed to emerge in regard to Eskom and the suspension of certain executives at Eskom was that within the board of Eskom, there may have been certain members of the board who might have known of a certain agenda which would involve the suspension of those executives and maybe even a larger plan.

10 But there may have been others who might not have known about that.

If you look at Ms Tshepe's questions here, all saying: But if we have a good case. Why are we settling? It might be that he had too.

Well, because Mr Mapoma says the board had already decided that they would reinstate Mr Gama.

But here is a board member saying: Why are we settling because we have a good case?

20 So it may be that here too some members knew why they were settling the case. Others did not know.

**ADV MYBURGH SC:** Certainly.

**CHAIRPERSON:** H'm. I am sorry. I interrupted you.

**ADV MYBURGH SC:** No, no. Not all Mr Chairperson. We ...[intervenes] 30.

**CHAIRPERSON:** You said the bundle...?

**ADV MYBURGH SC:** We dealt with the documents at page 30 of Bundle 3.

**CHAIRPERSON:** Bundle 3?

**ADV MYBURGH SC:** Yes. This is your third affidavit.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** Page 30 of Bundle 3. And there you see, you talk about the various annexures. But just to end off. Could I ask you to go to paragraph 8 and could you read that into the record? You have already given evidence along  
10 these lines.

**ADV MAPOMA:** Yes. The paragraph reads:

“I mentioned in this regard that from the outset of my interactions with Mr Mkwanazi, he made it clear to me that he had been instructed to reinstate Mr Gama and that he wanted to find a way to do so cleanly.

Although I did not consider it my place to ask who had instructed him, I assumed that it must have been former President Zuma.”

20 **ADV MYBURGH SC:** I just wanted to ask you. What did you understand the word cleanly to mean in the context of that discussion?

**ADV MAPOMA:** Well, Mr Mkwanazi said a number of things that I think he was worried about. One of them being the various acting appointments in the company. Because one,

Mr Gama was reinstated to any position.

So there had to be perceived of the various executives. And he wanted to deal also with the media, the outfall. The fallout rather, that would inevitably follow or some questions from the media that will follow.

He also had to deal with the fact that there was a dismissal in place which had not been reviewed.

When he said he wanted to do it cleanly, I understand that he wanted it to be taken to board approvals, all the relevant committees so that it is a decision that the company takes.

And I did advise him that whatever he was doing, discussion that he had with Mr Gama, he should ensure that he takes it to the board approval because the position that he was holding he himself was the CEO and acting CEO and as a chairperson of the board.

So he had to make a point that he follows proper governance and lead by example. I am sure these are the discussion that happened. He did use that word. That he wanted to do it cleanly.

And we did discuss what I am saying because in the various discussion that we had.

**ADV MYBURGH SC:** But do you have any idea as to why Transnet capitulated completely or Mr Mkwazi capitulated completely in the settlement negotiations?

**ADV MAPOMA:** I do not know.

**CHAIRPERSON:** Actually ...[intervenes]

**ADV MAPOMA:** You know, because that settlement agreement, in November already, I mean in 2011, the ...[indistinct] had been signed.

We were still being asked for opinions on the process that led to the bonus payments and so on and so on. [Indistinct] had signed these. So I do not know why they signed(?) it but I do not know.

10 **CHAIRPERSON:** I wanted Mr Myburgh to remark that I do not think it is accurate to say Transnet capitulated completely because it would have been a complete capitulation if they reinstated Mr Gama. They gave him full back pay and all the benefits. But they went further than that. So I do not what you call it.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** They had paid his contribution of 75% on his legal costs and all of that. So it seems to me that ...[intervenes]

20 **ADV MYBURGH SC:** Well, perhaps ...[intervenes]

**CHAIRPERSON:** ...it is something much more than capitulation.

**ADV MYBURGH SC:** Maybe reinstatement on steroids, Mr Chairperson.

**CHAIRPERSON:** [laughing]

**ADV MYBURGH SC:** But I mean. Mr Mapoma, again. Are you not playing coy here? Because you are involved. Surely, you must have thought to yourself: Why are we giving this man everything? What is actually happening?

**CHAIRPERSON:** What is going on?

**ADV MYBURGH SC:** What is going on?

**CHAIRPERSON:** And of course, Mr Mapoma. I do not think that the exclusion of the attorneys in that meeting that Mr Mkwanazi had with Mr Gama, would not have, at some  
10 stage, flashed back to you to say: What was the  
...[intervenes]

**ADV MAPOMA:** Not the contents (?). I had those concerns.

**CHAIRPERSON:** You had those concerns?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** I had those concerns.

**CHAIRPERSON:** H'm.

**ADV MYBURGH SC:** So what did you think was motivating this?

20 **ADV MAPOMA:** It was the instruction that Mr Gama was reinstated.

**ADV MYBURGH SC:** Yes.

**ADV MAPOMA:** Ja.

**ADV MYBURGH SC:** From who?

**ADV MAPOMA:** From the president.



**ADV MYBURGH SC:** Ja.

**ADV MAPOMA:** Well, that is what Mr Mkwanazi(?), you know, explained it to me at the time. So the ...[indistinct], the reasoning was always something I never understood.

**CHAIRPERSON:** I am sorry. I do not... I am not... I do not hear.

**ADV MAPOMA:** I am saying Chair. I... the reasoning, the rational of the process in the settlement agreement, I never understood them as to why they were there.

10 **ADV MYBURGH SC:** I just want to confirm because I will need to make sure that the Chairperson heard this. You testified that you were of the view that he was being treated so generously because the president had instructed that he be reinstated.

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Is that your evidence?

**ADV MAPOMA:** That is my evidence.

**CHAIRPERSON:** Now in your statement in paragraph 18 of your affidavit, you say you assumed that it must have been  
20 former President Zuma.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Now, was it an assumption that you made or was there something on which... let me put this questions. Was it an assumption or was it not an assumption?

**ADV MAPOMA:** The reason I come to that conclusion Chair.

Because at some stage, I did ask Mr Mkwanazi... you know in my ...[indistinct]

Because we got familiar with each other and I felt comfortable. I could ask him certain things although I had to always ...[indistinct] to who he was in relation to me in the company. And he indicated ...[intervenes]

**CHAIRPERSON:** Did you ask him?

**ADV MAPOMA:** I asked him: Why is Transnet doing this? And then he indicated initially that this was coming from the  
10 ministry. And later on, he indicated that this is coming from higher up. And this is the word that he used. Higher up.

But the president was not mentioned. And I will not say he was mentioned. He was not. And the assumption comes from that. Because as a shareholder minister at the time, the minister had certain authority over Transnet.

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

**ADV MAPOMA:** And they would interact, obviously, with Mr Mkwanazi at his level. So I was not privy to discussion that they had but I know that... and hence and in my memo, I  
20 could write that I wrote there.

That it mentions the minister's name because that memo was going to Mr Mkwanazi and he would have read that. And I know that he know... he would have known that. He told me so.

So I had no issue putting that paragraph in the manner

that I did.

**CHAIRPERSON:** Okay of course, that is that memo where you have a sentence that says that Mr Mkwanazi with the chairperson with the support of the shareholder minister ...[intervenes]

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** ...in his rights... within his rights.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Or was within his rights to revisit  
10 ...[intervenes]

**ADV MAPOMA:** Ja.

**CHAIRPERSON:** ...the disciplinary proceedings against Mr Gama.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** There is that memo where you wrote that.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Which you gave to Mr Mkwanazi at some stage?

**ADV MAPOMA:** Yes, that is what I am talking about.

20 **CHAIRPERSON:** And he never queried that sentence?

**ADV MAPOMA:** No, he never queried that.

**CHAIRPERSON:** Yes, yes. But are you saying that at some stage you asked him why Transnet was doing this? When you say why this Transnet was doing this, what did you mean?

**ADV MAPOMA:** I mean the reinstatement of Mr Gama at the time that we were having.

**CHAIRPERSON:** Ja.

**ADV MAPOMA:** And I cannot recall exactly when but there were problems with the payments as discussed earlier. And a lot of pressure on the government to pay the complaints to the minister at some stage.

But I do not know exactly when I would have asked him. But he would... he did inform me and the word he used: No, 10 from higher up. And higher up was, my assumption was that it is the presidency.

**CHAIRPERSON:** Did you say that he mentioned that the instruction was coming from the ministry?

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** At some stage?

**ADV MAPOMA:** At some stage, yes.

**CHAIRPERSON:** And at some stage, he said the instruction was coming from higher up.

**ADV MAPOMA:** Yes.

20 **CHAIRPERSON:** And was that the same conversation or on a different occasion?

**ADV MAPOMA:** It could have been a different conversation.

**CHAIRPERSON:** A different, okay.

**ADV MAPOMA:** Because I was not interrogating him like...

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** And then I will not remember now  
...[intervenes]

**CHAIRPERSON:** Ja.

**ADV MAPOMA:** ...the exact details of the conversation.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** As time goes on ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** ...and this thing is becoming an issue in the  
company in the ways.

10 **CHAIRPERSON:** Yes.

**ADV MAPOMA:** So ...[intervenes]

**CHAIRPERSON:** So when you say higher up on that  
occasion, he had not mention the minister or the ministry?

**ADV MAPOMA:** He had mentioned that is higher up from  
the ministry.

**CHAIRPERSON:** Oh, he said higher up.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** In other words, higher than the minister?

**ADV MAPOMA:** Higher than the minister.

20 **CHAIRPERSON:** Oh.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** And then you understood that.

**ADV MAPOMA:** Yes.

**CHAIRPERSON:** Or you took it or assumed that that must  
be ...[intervenes]

**ADV MAPOMA:** Higher up ...[intervenes]

**CHAIRPERSON:** ...reference to the president?

**ADV MAPOMA:** Yes, Chair that was my assumption.

**CHAIRPERSON:** Mr Myburgh.

**ADV MYBURGH SC:** Yes, thank you. Mr Mapoma, at Bundle 3, page 30. The second thing you deal with in your last affidavit is the payment of legal fees. We have gone through all of this.

I just want you to confirm please. At paragraph 12.2 at  
10 page 31, you say... 1, 2, 3, 4, 5, 6 lines down that:

“I held a discussion with Mr Mkwanazi which culminated in him instructing me to pay 75% of Transnet’s tax costs to Mr Gama.”

**ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** You have given evidence about that. Do you confirm that?

**ADV MAPOMA:** Yes, I confirm that.

**ADV MYBURGH SC:** And you go on to explain that you escalated the matter to Mr Singh and that he approved it.

20 **ADV MAPOMA:** Yes.

**ADV MYBURGH SC:** Chairperson, we have no further questions. Thank you.

**CHAIRPERSON:** Thank you. You never... by virtue of your position you would not have attended any meeting of the board except by invitation?

**ADV MAPOMA:** Yes, Chair.

**CHAIRPERSON:** Yes. Were you ever invited to any meeting of the board where the reasons for settling the unfair of dismissal or dispute of Mr Gama were discussed or where the pros and cons of whether to settle or not to settle or to reinstate him or not to reinstate him, were discussed?

**ADV MAPOMA:** It is possible that I attended such a meeting Chair.

**CHAIRPERSON:** Yes.

10 **ADV MAPOMA:** Although I cannot recall specifically.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** But it is possible.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** I did.

**CHAIRPERSON:** H'm?

**ADV MAPOMA:** It would have been only on this matter, I will be invited to attend Exco even if I wait outside, then be called for a specific thing and then leave. So it is possible that I would have been invited to a board meeting for this  
20 kind of...

**CHAIRPERSON:** But do you have a recollection in your own mind of being part of such a meeting where such reasons were discussed?

**ADV MAPOMA:** No, not at the moment.

**CHAIRPERSON:** You do not have a recollection.

**ADV MAPOMA:** No, not top of my head. But it is possible that I might have attended chair.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** I will not be surprised if some minutes surface somewhere to say I was there.

**CHAIRPERSON:** Yes.

**ADV MAPOMA:** It is very, very possible that I could have attended such a meeting.

**CHAIRPERSON:** Oh, okay, okay. Nothing arising?

10 **ADV MYBURGH SC:** No, Mr Chairman.

**CHAIRPERSON:** Yes. Thank you very much Mr Mapoma for coming to assist the Commission. We appreciate that you came. Thank you very much. You are now excused.

**ADV MAPOMA:** Thank you.

**CHAIRPERSON:** Thank you. I guess we will adjourn for the day Mr Myburgh?

**ADV MYBURGH SC:** Thank you, Chairperson.

**CHAIRPERSON:** And then tomorrow, we will have Mr Todd's evidence?

20 **ADV MYBURGH SC:** Mr Todd's, yes.

**CHAIRPERSON:** Yes. On the same matter.

**ADV MYBURGH SC:** That is correct.

**CHAIRPERSON:** Okay. We adjourn.

**INQUIRY ADJOURNS TO 15 OCTOBER 2020**



