

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

23 OCTOBER 2020

DAY 290



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 23 OCTOBER 2020

CHAIRPERSON: Good morning Mr Myburgh, good morning everybody.

ADV MYBURGH: Good morning Chairperson.

CHAIRPERSON: Are you ready?

ADV MYBURGH: Yes we are. The next witness is Mr Siyabonga Mahlangu. Mr Mahlangu is represented by Counsel who is sitting to my right.

CHAIRPERSON: Yes okay. Will he put himself on record?

10 **CHAIRPERSON:** You can put yourself on record from where you are if you just switch on your microphone.

ADV MAROLEN: I am Mr Tsakani Marolen also for Mr Siyabonga Mahlangu on the instructions of Moleko Ratau Attorneys.

CHAIRPERSON: Thank you.

ADV MAROLEN: Thank you Chair.

CHAIRPERSON: Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR MAHLANGU: Siyabonga Mahlangu.

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

MR MAHLANGU: No.

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

MR MAHLANGU: 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.

MR MAHLANGU: So help me God.

ADV MYBURGH: Mr Mahlangu good morning.

MR MAHLANGU: Morning Mr Myburgh.

ADV MYBURGH: Could I ask you please to turn to Bundle 1 and if you could turn up page 169.

10 **MR MAHLANGU:** I am there.

ADV MYBURGH: That on the face of it appears to be an affidavit of yours. If I could ask you please to turn to 174 would you confirm that this is your affidavit and that you signed it under oath on the 25 August 2020?

MR MAHLANGU: That is correct.

ADV MYBURGH: And then immediately following that at page 175 there is a so called supplementary affidavit of yours and that affidavit is signed at page 177 would you confirm that you signed the supplementary affidavit under
20 oath on the 28 August 2020?

MR MAHLANGU: I confirm.

ADV MYBURGH: And attached to that supplementary affidavit there are two annexures; Annexure SM A1 and SM A2. That you find running from pages 178 through to page 182 would you confirm those were the two annexures?

MR MAHLANGU: I confirm.

ADV MYBURGH: Mr Chairman may I ask that the affidavit appearing at Bundle 1 page – commencing at 169 be entered as Exhibit BB15.2.5.

CHAIRPERSON: The affidavit of Mr Siyabonga Mahlangu starting at page 169 is admitted as Exhibit BB15.2.5.

ADV MYBURGH: Mr Chairperson might I then ask that the affidavit – the supplementary affidavit of Mr Mahlangu commencing at Bundle 1 page 175 be entered as Exhibit
10 BB15.2.6.

CHAIRPERSON: The supplementary affidavit of Mr Siyabonga Mahlangu starting at page 175 is admitted as Exhibit BB15.2.6.

ADV MYBURGH: Thank you Chairperson. Mr Mahlangu as I have explained to you I intend to lead you through these two affidavits and neither of which are particularly lengthy and go through the contents and once I have done that then I will have a series of questions for you.

If we can start with your first affidavit you say that
20 you are an adult male, non-practicing attorney and the former special advisor to the then Minister of Public Enterprises Mr Gigaba, is that correct?

MR MAHLANGU: That is correct.

ADV MYBURGH: And for what period of time did you hold that position?

MR MAHLANGU: That would be 1 December 2011 until the end of last administration which – that administration I think ended somewhere in May 2014.

ADV MYBURGH: You go on to explain that you were invited by the commission to submit an affidavit in response to certain allegations that have been levelled against you Mr Mapoma.

MR MAHLANGU: That is correct.

ADV MYBURGH: That you deal with at paragraph 3.

10 **MR MAHLANGU**: That is correct.

ADV MYBURGH: And as you say the essence of those allegations are and I quote:

“Mr Mahlangu called and put pressure on me to finalise the reinstatement of Mr Gama accusing me of causing the delay; telling me Number 1 wanted to get it done quickly. You furthermore alleged that he scolded me and told me never to call him again.”

So you were asked to deal with that. Correct?

20 **MR MAHLANGU**: That is correct.

ADV MYBURGH: And furthermore:

“The chairperson requested you to give a full account of what you know about how the settlement between Mr Gama and Transnet came about including indicating any person

in government at the time or outside of government who to your knowledge played a role either directly or indirectly in the reinstatement of Mr Gama at Transnet or in the conclusion of the settlement agreement on the terms on which it was concluded. In particular you were requested to indicate whether your knowledge anybody in Cabinet in 2011 played a role directly or indirectly in the reinstatement of Mr Gama or in the conclusion of the settlement agreement on the terms on which it was concluded.”

Correct?

MR MAHLANGU: That is correct.

ADV MYBURGH: Then what you do is you have three headings before you deal with Mr Mapoma. The first heading is No Knowledge of the Contents and Details of the Settlement Negotiations and Consequent Agreement.

Then you deal with persons involved in the settlement discussion.

Then you deal with the heading Nature of our Relationship with Gama at the time.

And then at page 172 and further you deal with the allegations made against you by Mr Mapoma.

You confirm that?

MR MAHLANGU: That is correct.

CHAIRPERSON: Mr Myburgh you know how I was feeling when I could not pronounce your junior's surname correctly.

ADV MYBURGH: Yes.

CHAIRPERSON: Mapoma is Mapoma.

ADV MYBURGH: Ma.

CHAIRPERSON: Mapoma Ja.

ADV MYBURGH: Thank you Chairperson.

10 **CHAIRPERSON:** Ja M-a – Mapoma and I think with Mkwanzazi you tended to say Mkwanzazi it is Mkwanzazi

ADV MYBURGH: Mkwanzazi without the a.

CHAIRPERSON: Mkwanzazi yes. I feel bad when anybody mispronounces my name and I feel bad when I pronounce other people's names but I know that sometimes I struggle myself. So – but I think we all just keep on trying.

ADV MYBURGH: Thank you Chairperson.

CHAIRPERSON: Yes thank you.

20 **ADV MYBURGH:** So could I then ask you please to – to deal with the text under the heading No knowledge of the contents and details of the settlement negotiations and consequent agreement.

MR MAHLANGU: Should I start at paragraph 6?

ADV MYBURGH: Yes.

MR MAHLANGU:

“I was not involved directly or indirectly in the settlement discussions leading to the reinstatement of Mr Gama. The only insight I have on the discussions was when I was informed by Mr Mkwanazi the then Chairperson of Transnet and acting Chief Executive Officer at the time that the company intended to reinstate Mr Gama. Due to the passage of time I cannot recall the exact reasons for or context of my discussions with Mr Mkwanazi. He conferred with me on a variety of matters in my capacity as a special advisor to the Minister and in his capacity as the Chairman of Transnet on things that he needed me to convey to the Minister informally or prior to any formal process. I recall that during my conversation with Mr Mkwanazi I advised that it was prudent for Transnet to seek legal advice on the company’s proposed cause of action. We discussed a few options on imminent lawyers – on imminent labour lawyers that he could consult. One of the names that came up is that of Mr Sbu Gule who at the

time was a partner or director at Deneys Reitz now Norton Rose. I offered suggestions because of my familiarity with the legal profession. At – it all remained with the Chairman on how he intended to proceed. I did not recall whether Mr – whether the Minister was officially briefed by the Transnet Board of Directors on its intention or decision to reinstate Mr Gama.

10 If this happened ordinarily there would be correspondence to this effect addressed to the Minister. This correspondence would be considered by the Department's unit responsible for Transport Enterprises and one for Legal and Governance. The Deputy Directors' General who headed these units would make suitable recommendations to the Minister through a decision memorandum. This memorandum would get

20 to the Minister via the office of the Director General. This type of internal correspondence is officially kept and registered by the Department's Registry."

ADV MYBURGH: Alright and then you go on to deal with the persons involved in the settlement discussions and you

record that save as I state in earlier paragraphs of this affidavit:

“I have no personal knowledge of the settlement discussions between Mr Gama and Transnet and the persons who were involved in such discussions.”

And you say that you only saw the settlement agreement when it was provided to you by the commission’s acting secretary. Is that correct?

10 **MR MAHLANGU**: I confirm.

ADV MYBURGH: And then at paragraph 10 you state that:

“Save as stated in this affidavit I do not know any person in government at the time or outside government who played a role either directly or indirectly in the reinstatement of Mr Gama at Transnet or in the conclusion of the settlement agreement.”

You say:

20 “In particular I do not know of anybody in Cabinet in 2011 who played a role directly or indirectly in the reinstatement of Mr Gama or in the conclusion of the settlement agreement on the terms on which it was concluded.”

MR MAHLANGU: I confirm.

ADV MYBURGH: And then you go on to deal with the nature of your relationship with Mr Gama at the time and you state that you commenced work as a special advisor in December 2010. The settlement agreement with Mr Gama you say was concluded on the 22 February 2011 and you state that by this time I was familiarising myself with my work environment. You had not met Mr Gama or engaged with issues pertaining to hi employment or dismissal. Is
10 that right?

MR MAHLANGU: That is correct.

ADV MYBURGH: And you say:

“Prior to joining government I had – I had not had any dealings with Mr Gama whether professionally or socially.”

MR MAHLANGU: That is correct.

ADV MYBURGH: And then for the balance of the affidavit you deal in the main with the allegations made against you by Mr Mapoma. Do you want to deal with those paragraphs
20 please?

MR MAHLANGU: Thank you Mr Myburgh I will do so.

“Mapoma’s allegations are contained in paragraphs 26 to 27 of his affidavit. Principally he alleges that

1. I pressured him to expedite Mr Gama’s

reinstatement.

2. He scolded for doing so and advised me never to call him again.

3. He only knew me professionally.

Given that at the time I was still new in my job I could not have pressured Mapoma. I had no reason or motive to pressure Mapoma or anyone. In any event my role or function did not involve pressuring officials.

10 Furthermore my disposition towards Mapoma and his complementary social network would not permit me to act rudely towards him or pressure him in the manner that he alleges. I was taken by surprise to learn of these allegations.

First Mapoma's recount of the nature of the relationship that existed between us is not entirely correct. During my time as partner at Mahlangu Nkomo Mabandla Ratshimbilani

20 Attorneys MNMR I interacted with Mapoma frequently and developed a professional relationship that was based on mutual respect. I would seek his counsel on how our firm could increase its flow of work from Transnet. He gave me good advice and whilst

favourably disposed towards me. This type of professional proximity continued even after our firm merged into Edward Nathan Sonnenbergs.

10 Secondly we had a common social circle. In his affidavit Mapoma underplays his social circle and its effect on how I would view him. This circle consisted of friends predominantly from Umtata and surrounding areas. Some of these friends were attorneys. I developed a strong bond with them. Some of them I know from as early as 1999. Mapoma's socialised with this circle – social circle. I may not remember the specific events but I do recall meeting him at some of the social gatherings where I was invited.

20 In this social circle Mapoma was regarded as one of the elder brothers and was accorded commensurate respect. I also treated him with the respect I reserved for my older siblings.

I was introduced to this social circle by a friend who then worked as a legal advisor for a client of Webber Wentzel where I did my articles.

Our friendship grew and persists to this day. Mapona errs in his affidavit that I went to university with any of the friends in the social circle.

I submit that the support Mapoma gave to MNMR the intersection between one of our social circles and the nature of my social interaction with him forbade me from being rude to him or putting him – or putting any pressure on him.

10

This would have resulted in 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 care about my reputation and standing amongst my friends and peers.

20

Thirdly I had no motive or reason to pressure or call Mapoma about the pace or details of the settlement between Mr Gama and Transnet.

Lastly if I had any questions which I did not I would have raised these with Mr Mkwanazi – with Mkwanazi. To the best of recollection Mapoma was a few levels down in the

Transnet Executive Management Hierarchy which meant that I would not encounter him in the normal course of my duties as special advisor to the Minister.

I have never said Mapoma as he alleges Number 1 wanted to get it done quickly. In the South African political lexicon the term Number 1 is usually used to refer to a sitting President of the Republic.

10 I assume that in his allegation Mapoma ascribes the same meaning to this term. If that is so Mapoma's allegation is without basis. In my normal use of language I do not refer to a sitting President as Number 1. In particular I have not referred to former President Zuma as Number 1.

In my ordinary use of language – or I have not referred to former President Zuma as Number 1 in my ordinary use of language.”

20 Pardon me for the typo.

“What comes naturally to me in my conversations is to refer to President Zuma using his initials, surname or turn names.

For avoidance of doubt I wish to state that I have never used former

President Zuma's name as alleged by Mapoma. I have never met or had conversations of any substance with President Zuma other than in large government gatherings.

He has never instructed or requested me to put pressure on anyone to finalise the reinstatement of Mr Gama.

10 Furthermore my erstwhile principle has never instructed me to put pressure of follow up with anyone regarding the reinstatement of Mr Gama.

At no point did the Minister advise me that the President wished to have Mr Gama reinstated expeditiously or that the dispute with him be resolved expeditiously.

20 All I recall is that after the board had decided to reinstate Mr Gama but prior to him resuming his duties at Transnet the Minister requested a meeting with him. I was not part of this meeting."

Thank you Mr Myburgh.

ADV MYBURGH: Alright. Could we then please go to your supplementary affidavit? Your supplementary affidavit we see was signed three days after your initial affidavit,

correct?

MR MAHLANGU: That is correct.

ADV MYBURGH: And in your supplementary affidavit you effectively repeat the first four paragraphs of your first affidavit. We need not go through that. Perhaps I can ask you please to pick up at paragraph 5 and deal with the – the next one and third or one a half pages.

MR MAHLANGU: Thank you.

10 “After I submitted the affidavit to the
 commission I discovered two emails in my
 personal email. One dated 18 January 2011
 Annexure SMA1 hereto and the other 4
 February 2011 Annexure SMA2 which are
 relevant to what I was required to answer in
 my main affidavit.

20 These emails refer albeit briefly to
 the settlement negotiations between Mr
 Gama and Transnet. I came upon the two
 emails in my personal email box in the
 course of my preparation of a separate
 affidavit that I have been invited by the
 commission to submit and which relates to
 my employment at the Department of Public
 Enterprises in my role in the events
 identified by the commission.

Their omission in my affidavit of 25 August 2020 was not deliberate. The two emails are from me to then Minister of Public Enterprises Mr Malusi Gigaba. I did not remember the communication to Minister Gigaba as recorded in – I did not remember the communication to Minister Gigaba as record in the email. I still do not have an independent recollection of it.

10 Although is Annexure SMA1 I promised the Minister that I would obtain the settlement agreement for him and to brief him on it. I did not do so and in fact saw the settlement agreement for the first time when it was provided to me by the commission.

20 In SMA1 I also advised the Minister to brief the President about Transnet's intended settlement with Mr Gama. I do not remember the reasons why I advised the Minister to do so but in hindsight I think that it was probably because of the public interest that the matter had invoked at the time.”

I think the word was supposed to be evoked.

“I can think of no reason I have no knowledge whether Minister Gigaba discussed the matter with the President – with President Zuma.

10 In SMA2 I set out my advice to the Minister on matters that Mr Mafika Mkwanazi the then Chairperson of Transnet wished to convey to him through me. I do not recall me and Mr Mkwanazi discussing the terms of the settlement with Gama in any detail and in fact have no independent recollection of the discussions with him that preceded my email to the Minister.

In my main affidavit I state that in January 2011 I would not have been involved with the settlement discussions because at the time I was newly employed as the Minister special advisor.

20 SMA1 as SMA2 show that I had had no dealings or discussions with Mr Mkwanazi around the 18 – around 18 January 2011 about two weeks after the Christmas break and around 4 February 2020.

These emails are the only reminder

to me that I had discussions with Mr Mkwanazi and the Minister separately before the settlement was concluded.

I had no recollection of any other discussion with Mr Mkwanazi or the Minister. I reiterate that I was new in my job and could not have been involved in the settlement discussions in any substantive way. Any discussion with Mr Mkwanazi on the dispute between Mr Gama and Transnet was intended for me to convey to the Minister Transnet's position on the matter.

Should I come across any documentation or correspondence that may be of assistance to the commission I will submit it at the earliest opportunity."

ADV MAROLEN: I beg your pardon Chair I am so sorry for interrupting. I see the date 4 February 2020.

CHAIRPERSON: Sorry.

20 **ADV MAROLEN:** I see the date 4 February 2020 that is paragraph 9 of Mr Mahlangu's affidavit. I – I – could you...

CHAIRPERSON: Oh ja that must be 2011.

ADV MAROLEN: Yes.

CHAIRPERSON: Yes.

ADV MAROLEN: 2012.

MR MAHLANGU: 2011

CHAIRPERSON: 2011 ja.

ADV MAROLEN: Thank you Chair.

ADV MYBURGH: And then Mr Mahlangu do you want to deal at all with these two annexures? If you go to page 178 Annexure SMA1. The only part of that annexure or email that deals with Mr Gama is the second bullet point. Is that correct?

MR MAHLANGU: That is correct.

10 **ADV MYBURGH:** And it reads:

“I understand that Transnet may be nearing a settlement with Mr Gama. I will obtain the details of the settlement and brief you accordingly. I suggest that you socialise the President and his key aides [formal and informal] on the proposed settlement. It is intended that the forthcoming board should consider and authorise it.”

20 Is that correct?

MR MAHLANGU: That is correct.

ADV MYBURGH: And then Annexure SMA2 – first Annexure – there was an email sent on the 18 January. The second one SMA2 is an email sent on the 4 February. Now I would just ask you to confirm. This – this email is

lengthier document certainly in relation to Mr Gama but it deals with two things. That is the settlement with Mr Gama and also the issue that arose about Mr Gama wanting to apply for the then vacant position of Group Chief Executive of Transnet. Is that correct?

MR MHLANGU: That is correct. I considered the two matters intertwined and interlinked.

ADV MYBURGH SC: Yes. And you, as you say, you considered them intertwined. You deal with them on that
10 basis in the email and you presented the minister with the, what you considered to be various options. Is that correct?

MR MHLANGU: That is correct.

ADV MYBURGH SC: You wish to highlight any particular aspect of the advice that you gave the minister?

MR MHLANGU: I would love to, Mr Myburgh. Should I just read it into the record?

ADV MYBURGH SC: Alright. You can, if you wish. Otherwise, you could just summarise what you considered to be important.

20 **MR MHLANGU**: I think the... Chairperson, with your leave. I would like to read it all into the record because it discloses my state of mind and what I ...[intervenes]

CHAIRPERSON: That is fine.

MR MHLANGU: ...though of at the time.

CHAIRPERSON: You can read it.

MR MHLANGU: Yes.

“Dear Minister.

CHAIRPERSON: You are starting with the one of 18th January?

MR MHLANGU: No, the 4th.

CHAIRPERSON: Oh, the 4th.

MR MHLANGU: The first one.

CHAIRPERSON: Okay.

MR MHLANGU: Yes.

10 **CHAIRPERSON**: Yes, continue.

MR MHLANGU: Yes.

“Dear Minister. At my meeting with chair, he acknowledged that by advertising the GCE position was a mistake.

In light of Gama’s response to the advert, the board seeks guidance on the way forward.

Despite the ongoing without prejudice discussions, G insist on staying on the list.

20 He was informed through his lawyer of an offer to reinstate him with no loss of benefits and a contribution towards his legal costs.

It is my recommendation that the issue regarding his discipline and the appointment of the DEC be dealt with separately.

His challenge to his dismissal should not belay the

appointment of the new GCE.

In light of the current impasse on the case regarding his dismissal, the board should go ahead and deal with the appointment of the GCE.

The following options seems to present themselves.

1. The board should not interview G but proceed to make a recommendation on the available candidates. The board may base its view on the quality of service that it received.

10 G may challenge the appointment of the new GCE as flawed, arguing that he is entitled to be heard by the committee because he was previously shortlisted.

I am persuaded that the foregoing argument is not like to sway a court to come to G's aid but it is likely to require political management.

2. The board should interview him and not shortlist him for consideration by the minister.

The risk highlighted in one above, equally apply.

20 3. The board should interview him and shortlist him for consideration by the minister. The minister may proceed and appoint his choice. It is still likely that G will challenge the process and allege that the appointed candidate was a ...[indistinct]
This may attract unnecessary attention to the

minister. The minister should avoid being a bearer of bad news.

In my view, there is a need to contain the drama at Transnet level. In either scenario, it is likely that G will sue. He has no right to be appointed GCE and therefore any likelihood of an urgent interdict succeeding, is very minimal.

10 I further recommend that G should not be interviewed or shortlisted and that way the minister does not have to deal with him.

A Transnet act in this regard will constitute a valid act in law upon which the minister may base his action.

If he wish to interdict the minister, he will have to show that the minister will infringe one of his legally recognised rights.

In order to succeed in that argument, he will have to show that he has prospects of success in overturning the recommendation to the minister.

20 In light of the fact and circumstances surrounding G's case, it is not likely that a court will approve such a proposition.

Further, there is a great likelihood that the leaks of the case between him and Transnet emanate from his side.

If such speculation holds, his interviews and short listing will arise publicity that is unnecessary and may result in unintended political status.

The matters surrounding his dismissal may be dealt with by the GCE and the board going forward. It seems unavoidable that he may sue but it is a loss hood I think we should be prepared for and we should defend.

I await your guidance.”

10 Thank you, Mr Myburgh.

ADV MYBURGH SC: Thank you, Mr Mhlango. Perhaps it completes your two affidavits. Perhaps I could ask... start my questioning by dealing with the need for the supplementary affidavit that arose.

You confirmed that you were asked to give a full account of what you know about how the settlement agreement came about, correct?

MR MHLANGU: That is correct.

20 **ADV MYBURGH SC:** And we know that that request was separate from the request for you to deal with Mr Mapoma’s allegations.

MR MHLANGU: That is correct.

ADV MYBURGH SC: If you look at your first affidavit. If I could invite you pleas to go to page 169?

MR MHLANGU: Page?

ADV MYBURGH SC: One, six, nine.

MR MHLANGU: One, six...?

ADV MYBURGH SC: One, six, nine.

MR MHLANGU: Yes, sir.

ADV MYBURGH SC: If you turn to page 170. Now what we know is that you deal with Mr Mapoma from page 172 onwards. I just want to point out to you that in your first affidavit, the only thing that you say that you knew about potential settlement is your initial discussion with
10 Mr Mkwanazi, correct?

MR MHLANGU: That is correct.

ADV MYBURGH SC: I mean, as for the rest of your affidavit it just says that you were placed under no pressure. You do not know of the involvement of anyone else. So your knowledge in this affidavit is limited to the initial discussion with Mr Mkwanazi, correct?

MR MHLANGU: That is correct.

ADV MYBURGH SC: Your recollection of that discussion, though, appears quite detailed. If we go to the text of
20 paragraph 6, you say that you were informed by Mr Mkwanazi that the company intended to reinstate Mr Gama. You remember that?

MR MHLANGU: Yes, sir. I remember the text. Like I said, I am dependent on the text.

ADV MYBURGH SC: Yes. And then what you do is, you go

on to explain what happened after he told you that. You say:

“I cannot recall the exact reason or the context of my discussion...”

And you go on to say:

“I recall that during my discussion...

Presumable, that is your discussion referred to in paragraph 6, correct?

MR MHLANGU: [No audible reply]

ADV MYBURGH SC: Mr Mhlango?

10 **MR MHLANGU**: Yes, I am trying to follow paragraph 6. Yes, sir?

ADV MYBURGH SC: Yes.

“I recall that during my conversation with Mr Mkwanazi, I advised that it was prudent for Transnet to seek legal advice.”

And you discussed a few options of eminent labour lawyers, the proposal of Mr Gule came up. So you remember that initial discussion and the advice that you gave about Mr Gule?

20 **MR MHLANGU**: Yes, sir.

ADV MYBURGH SC: So what you fail to mention in your first affidavit. You do not mention that you had other discussions with Mr Mkwanazi about Mr Gama, correct?

MR MHLANGU: I failed, yes.

ADV MYBURGH SC: Yes. Now what do you mention that

based on those other discussions, you then interacted with and advised the minister about the Gama issue. You did not mention that either.

MR MHLANGU: That... at the time when I drafted the affidavit ...[intervenes]

ADV MYBURGH SC: Yes.

MR MHLANGU: ...that I do not recall.

ADV MYBURGH SC: Yes, but your answer to my question is, you accept that you did not mention it. You limited your
10 knowledge to paragraphs 6 and 7.

MR MHLANGU: Yes.

ADV MYBURGH SC: Can you accept that in relation to the first and initial discussion, you have a relatively detailed recall of it?

MR MHLANGU: Mr Myburgh, I think what needs to be clear. I do not know if it was one discussion.

ADV MYBURGH SC: Yes.

MR MHLANGU: It was a long time ago. But there are features that I recall.

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

MR MHLANGU: So I would not us to, to stick to a meeting. It could have been one, two or three. I spoke to Mr Mkwanazi often.

ADV MYBURGH SC: Ja.

MR MHLANGU: But that... what I mentioned about that

discussion is what I could recall as I was answering this article.

ADV MYBURGH SC: When you read your affidavit, you will see that you are referring to one discussion.

MR MHLANGU: Yes, it is probably... yes, I probably referred to one discussion.

ADV MYBURGH SC: Yes.

MR MHLANGU: But as I said to you, I recall... as I actually preface in my affidavit ...[intervenes]

10 **ADV MYBURGH SC:** Yes.

MR MHLANGU: ...that some of these things, I want to... the sequence may be a bit tricky.

ADV MYBURGH SC: Yes.

MR MHLANGU: But I recall the essence Mr Myburgh.

ADV MYBURGH SC: I understand that. You recall the essence, it seems, of your initial discussion with Mr Mkwanazi.

MR MHLANGU: Of the discussions.

20 **ADV MYBURGH SC:** Yes. So let us go back to the fact that you also do not mention then in the first affidavit that based on those discussion with Mr Mkwanazi, you then interacted with the minister and advised the minister in relation to them. You did not mention that.

MR MHLANGU: I did not.

ADV MYBURGH SC: Then what we see in your

supplementary affidavit is that you put up two emails which show that you had further interaction with Mr Mkwanazi and that you advised the minister accordingly.

But what is important is that in your supplementary affidavit, you seem to state that you have no independent recollection of the events in those emails, all of the emails. Is that correct?

MR MHLANGU: That is correct. Insofar as you look there, the two affidavits together Mr Myburgh.

10 **ADV MYBURGH SC**: Let us go to... so just let me, so that everyone is clear. When the situation like this arises, I suppose there is one of two things that a person can do.

The one is you can say: I have come across these emails. I did not attached them to my first affidavit. I am sorry. They have now triggered my memory. They have refreshed my memory and now I remembered what happened and this is what happened.

Or you could adopt the position, which you seemed to, and that is: Well, I came across these emails. I do not have
20 any independent recollection of these emails or of the events that are dealt with them in them.

But I accept that they are my emails and I accept that if that is what is recorded I must have had the discussion. Is that right?

MR MHLANGU: That is... the second option is what I... that

is my situation.

ADV MYBURGH SC: Yes, but you confirm that... so, your evidence - because this is important – your evidence now before the Commission is: Yes, here are the two emails. But I have no independent recollection of writing those emails of sending those emails or of the content of the emails.

MR MHLANGU: That is correct, Mr Myburgh.

ADV MYBURGH SC: Alright. And perhaps I can just show you where you say that because ...[intervenes]

10 **CHAIRPERSON:** You are sure that is the position Mr Mhlangu?

MR MHLANGU: That is correct, Chair. And when I discovered the emails, I immediately contacted the Commission and I also contacted my senior counsel to say... because I was preparing for a different affidavit and then I came across this. And I do not know if that is all of that but that is what... this is as far as I can recall. I would not have omitted them had I seen them in the first email.

CHAIRPERSON: Okay.

20 **MR MHLANGU:** And the memory they jog is consistent with what I have said in the main affidavit.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Alright. Well, we will come to the significance of that in a moment. So I need not take you to the various passages where you say that you accept that

your version is: I have no independent recollection of writing the email, sending the email or of the contents of the email.

MR MHLANGU: That is correct.

ADV MYBURGH SC: Alright. And then, I suppose what you must accept, if we go to page 171, paragraph 11 is where you say in the third line:

“By this time...

And now you are talking about the time of the settlement.

10 “...I was still familiarising myself with my new work environment. I had not met Mr Gama or engaged with issue pertaining to his employment or dismissal.”

Well, you must accept then, albeit it that you have no independent recollection, but on the face of the two emails that you have put up, that statement is false, correct?

MR MHLANGU: Yes.

ADV MYBURGH SC: In fact, what the email shows, albeit that you have no independent recollection is, that you have
20 had a series of discussions with Mr Mkwanazi. You had reported on those discussions to your boss. And in fact, you had given your boss advice in relation to them. Is that correct?

MR MHLANGU: That is correct.

ADV MYBURGH SC: And in fact, you had... you say you

remember none of this. But in relation to the Gama settlement, you had actually advised Minister Gigaba that he should socialise the president, correct?

MR MHLANGU: Not on the details but on the... on chance that is proposed cause of action.

ADV MYBURGH SC: Yes. So just so that I understand. Are you now remembering this or are you just saying what you ...[intervenes]

MR MHLANGU: Based on the document.

10 **ADV MYBURGH SC**: Yes. You told the president – and we are going to come to the detail – but you advised the minister. You said... your advice was: I suggest you socialise the president. Correct?

MR MHLANGU: That is correct.

ADV MYBURGH SC: You have no recollection of that?

MR MHLANGU: [No audible reply]

ADV MYBURGH SC: And then what you did just now ...[intervenes]

20 **CHAIRPERSON**: Maybe... I am sorry, Mr Myburgh. Before we get further. What did it mean to say the minister should socialise the president.

MR MHLANGU: To make him ...[intervenes]

CHAIRPERSON: I have got an idea but ...[intervenes]

MR MHLANGU: To make him... To make him aware ...[intervenes]

CHAIRPERSON: ...I want to hear it from you.

MR MHLANGU: To make him aware of what Transnet is about to do.

CHAIRPERSON: That is reinstate Mr Gama?

MR MHLANGU: Yes.

CHAIRPERSON: Okay alright.

ADV MYBURGH SC: We are going to come back to the advice that you gave but I am just testing this. You have no independent recollection.

10 And then in relation, as you say, the second email reflects there were two things. There was the Gama settlement and there was the issue of him of wanting to be a candidate for a promotion.

And you then advised the minister and you have read that email in some detail about the various options, correct?

MR MHLANGU: That is correct.

ADV MYBURGH SC: And you have no independent recollection of that?

MR MHLANGU: No.

20 **ADV MYBURGH SC:** But you have a recollection ...[intervenes]

MR MHLANGU: I have got some triggers.

ADV MYBURGH SC: Well, that is what you say in your affidavit.

MR MHLANGU: No, when I... I think you are interpreting it

very narrowly.

ADV MYBURGH SC: Yes.

MR MHLANGU: To the extent that is there in that thing, I remember.

ADV MYBURGH SC: Yes, fair enough.

MR MHLANGU: That is what I am saying.

ADV MYBURGH SC: Okay.

MR MHLANGU: But I do not have other things that... I have been thinking long and hard about it.

10 **ADV MYBURGH SC:** Yes.

MR MHLANGU: Yes. I have been trying to remember it.

ADV MYBURGH SC: But Mr Mhlangu, I am just going to put to you what you have now agreed to twice before. You have no independent recollection of writing the email or sending the email or of the contents of it but you accept that if that is what you wrote, well then it happened.

MR MHLANGU: Yes.

ADV MYBURGH SC: That is essentially what you say.

MR MHLANGU: Yes.

20 **ADV MYBURGH SC:** But you have no independent recollection of any of that happening.

MR MHLANGU: I think that appears too strong. I think, when I say I have no independent, I am saying, I do not have command of the full facts.

ADV MYBURGH SC: Well, in your affidavit, you say you

have no independent recollection.

MR MHLANGU: Mister... there is no inconsistency with ...[intervenes]

ADV MYBURGH SC: Alright. Fair enough. But you somehow have a very clear recollection of your first discussion with Mr Mkwanazi, correct?

MR MHLANGU: Like I said. I do not know if it is the first Mr Myburgh.

ADV MYBURGH SC: Okay.

10 **MR MHLANGU**: There was a discussion where he told me something and I said: Go and get legal advice. There is a discussion like that.

ADV MYBURGH SC: Yes and we are going to come to that because we know that that must have been at the outset. So in fairness to you, we will come to the date line and timeline. So that is your... but what you do have a very clear recollection about it, if I understand, is that you did not phone Mr Mapoma.

20 **MR MHLANGU**: I think I need to get to that before discussing Mapoma, my recollection here is. I do not recall making a phone call, a physical phone call, right? I knew Mr Mapoma and he knew me.

ADV MYBURGH SC: Yes.

MR MHLANGU: Right. So what I deny is that I made a phone call to pressure Mr Mapoma.

ADV MYBURGH SC: And you somehow have a very clear recollection of that?

MR MHLANGU: I have a very clear recollection because that is something... it is a life event.

ADV MYBURGH SC: But ...[intervenes]

MR MHLANGU: Because Mr Mapoma ...[intervenes]

ADV MYBURGH SC: Yes.

MR MHLANGU: ...he was very important to me at the time in my circle, in my being.

10 **ADV MYBURGH SC:** Yes.

MR MHLANGU: So if I have any tension with him, I would remember it.

ADV MYBURGH SC: Alright. And I presume that when you were carrying out your duties as a special advisor to Mr Gigaba, you would also remember them.

MR MHLANGU: I am talking about ...[intervenes]

ADV MYBURGH SC: Is that correct?

MR MHLANGU: Not all of them.

20 **ADV MYBURGH SC:** I see. And these ones, you simply cannot remember?

MR MHLANGU: Mr Mapoma – it is a specific instance.

ADV MYBURGH SC: Yes.

MR MHLANGU: Like I am saying. Until to this day ...[intervenes]

ADV MYBURGH SC: Yes.

MR MHLANGU: ...I battle to understand why Mr Mapoma would say that about me. And like is say to you, I had no, no motive ...[intervenes]

ADV MYBURGH SC: Yes.

MR MHLANGU: No intention. And that they... I could not have picked up the call for the intention of pressuring Mr Mapoma.

ADV MYBURGH SC: Mr Mhlangu, you, I think misunderstand what I am driving at. We are going to come
10 to your version about Mr Mapoma but essentially what you have said is you have a very clear recollection of not having called him. Is that right? And pressurised him.

MR MHLANGU: I recall that I did not pressurise him ...[indistinct]

ADV MYBURGH SC: Just so that you understand. To this very day, Mr Mapoma also cannot understand why you deny having had that discussion with him.

MR MHLANGU: I am telling you that it would not have happened.

20 **ADV MYBURGH SC:** Alright. Well, we will come ...[intervenes]

MR MHLANGU: It is improbable.

ADV MYBURGH SC: Well, I am going to suggest to you that it is highly probable but in order to get to that, we need to look at the chronology. So let us start off then with the

dismissal of Barbara Hogan of the Minister of Public Enterprises. Now as I understand it. You have the doctorate in Political Science. Is that correct?

MR MHLANGU: That is incorrect.

ADV MYBURGH SC: What doctorate do you have?

MR MHLANGU: Administrative Law.

ADV MYBURGH SC: Okay. And as I understand it, you are someone who follows politics and in fact, decided that you wanted to pursue a career for a point in time in that field. Is

10 that right?

MR MHLANGU: Vaguely, yes.

ADV MYBURGH SC: Sorry?

MR MHLANGU: Vaguely, yes.

ADV MYBURGH SC: Alright. Now let me just summarise for you the evidence of Ms Hogan. She says that at the time that Mr Gama was facing disciplinary action in 2009, and we know that he was suspended on the 1st of September 2009, she approached former President Zuma to confirm the board nomination of a Mr Maseka as the new Transnet Chief
20 Executive. You have heard of this testimony, presumable.

MR MHLANGU: No, I was not following.

ADV MYBURGH SC: Alright. And he wanted Mr Gama to be appointed and he refused to make any board appointments, pending the outcome of Mr Gama's disciplinary inquiry. You have not heard of that either?

MR MHLANGU: I have no knowledge of that.

ADV MYBURGH SC: But I mean ...[intervenes]

MR MHLANGU: All I know is, is that the position of GCE became vacant when Ms Maria Ramos left.

ADV MYBURGH SC: Yes.

MR MHLANGU: Up until.

ADV MYBURGH SC: And what we do know – and I am surprised you say you do not know anything about this because what we do know, roundabout this time there was
10 much political support for Mr Gama that was played out in the press. Do you not remember that?

MR MHLANGU: That I do remember.

ADV MYBURGH SC: Yes.

MR MHLANGU: I do not remember the detail of Ms Hogan's testimony.

ADV MYBURGH SC: Good.

MR MHLANGU: I do not remember how she dealt with it. What I recall is that there was a lot of drama ...[intervenes]

ADV MYBURGH SC: Yes.

20 **MR MHLANGU:** ...surrounding Mr Gama.

ADV MYBURGH SC: And there was a lot of political support for him. I can take you to the portions in the record if necessary. But there were certain politicians that came out in his favour. There were trade unions that came out in his favour. I mean, Mr Malema also came out in his favour.

MR MHLANGU: I accept that.

ADV MYBURGH SC: Alright. Then after Mr Gama was dismissed at the end of June of 2010, it is a year or so later, Ms Hogan then approached former President Zuma about the appointment of a new board and she made that approach, according to her evidence, in August/September.

Only to then be relieved of her position with the fact from the 31st of October 2010. You would have, no doubt, followed that in the media.

10 **MR MHLANGU**: I followed the race but I did not follow, specifically, Ms Hogan.

ADV MYBURGH SC: Yes, but your boss then ended up replacing her the next day.

MR MHLANGU: Yes. But ...[intervenes]

ADV MYBURGH SC: But it is not something that you were not aware of.

MR MHLANGU: He was not my boss at the time.

ADV MYBURGH SC: Yes.

MR MHLANGU: Remember that time, I was practicing law.

20 **ADV MYBURGH SC**: Alright.

MR MHLANGU: So I did not follow specifically what was happening at Public Enterprises. I would follow the news like everybody else.

ADV MYBURGH SC: Ja.

ADV MAROLEN: I beg your pardon and I am sorry to...

Mr Myburgh for interrupting. But I think Mr Mahlangu has said, he has not seen the evidence of Ms Hogan and I do not know if the ...[intervenes]

CHAIRPERSON: Yes, you have lowered your voice. I cannot hear you.

ADV MAROLEN: I beg your pardon, Chair. Chair, Mr Mahlangu has repeatedly said that he has not seen the evidence of Ms Hogan. And questions are being put to him from that evidence.

10 **CHAIRPERSON:** Yes, but he was being asked whether he became aware of that from the media, I think.

ADV MYBURGH SC: Ja. Mister ...[intervenes]

CHAIRPERSON: I think he said he ...[intervenes]

ADV MYBURGH SC: Yes.

CHAIRPERSON: ...he was aware but not of details because he was not in the Department of Public Enterprises at the time. Is that correct?

MR MHLANGU: That is correct.

20 **ADV MYBURGH SC:** So what we know is that Mr Hogan was relieved of her position on the 31st of October 2010. You might have read it about that in the press. I am not trying to pin you to the date. But you recall having read about that?

MR MHLANGU: It was not just Ms Hogan. There was a whole shopping list of ...[intervenes]

ADV MYBURGH SC: Absolutely.

MR MHLANGU: ...of reshuffle. So I would not have specifically known what reasons and what is not but ...[intervenes]

ADV MYBURGH SC: What we know is that Mr Gigaba was then appointed as the new minister with effect from the 1st of November 2010.

MR MHLANGU: Correct.

ADV MYBURGH SC: So he replaced Ms Hogan.

10 **MR MHLANGU:** Correct.

ADV MYBURGH SC: And a new board was then appointed by him and that board took up its duties in December of 2010.

MR MHLANGU: That is correct. That was the same time as I arrived.

ADV MYBURGH SC: Ja. And then we know that Mr Gama was reinstated towards the end of February a few months later.

MR MHLANGU: That is correct.

20 **ADV MYBURGH SC:** And we know that a few years later, he was then ultimately promoted to the position of Group Chief Executive of Transnet.

MR MHLANGU: That is correct.

ADV MYBURGH SC: Now do I understand you to be saying that... or what part of this controversy, some of it was played

out in the press, were you aware of you before you took up your position as Special Advisor on the 1st of December?

MR MHLANGU: I cannot recall specifics but I know that there was something about Gama being in the news. What I can help you with is, why did I consider it a drama.

ADV MYBURGH SC: Alright. Well, why did you consider it a drama?

MR MHLANGU: At that time... this is the opinion I held, which is I why I am telling you that it was improbable that I
10 would pressure anyone. At that time when I got to have some conversations with the minister and Mr Mkwanazi. What I remember is that there was an insistence on Mr Gama to be appointed GCEO, right.

And that any disciplinary proceedings against him and the finding and all of that, were in some way orchestrated to stop it from being so. And so for me, Transnet is a very big organisation and an important one for this country.

And you would not want to have a person... because invariable in my view, it may have been wrong, but my view
20 was that, if there is that, then there is probably divisions Chair within Transnet.

And that also, if there is a finding by an independent committee. So all of those things, it was a combination of complexed political issues and legal issues.

And therefore, in my view, the minister had to tread

carefully around that. And based on SMA2, I believed that I probably would have said as much to him.

And I really do believe, remember that I was a bit cautious around the issues relating to Mr Gama because of that.

ADV MYBURGH SC: H'm.

MR MHLANGU: And I may not, at the time, have had full details and so on but I remember that it was a politically charged matter. It was a legally complex matter.

10 **ADV MYBURGH SC:** Politically charged and legally complex. No doubt of that then, an important thing on the minister's radar, correct?

MR MHLANGU: I do not know if it was the only thing and I do not know if it was ...[intervenes]

ADV MYBURGH SC: I never said it was the only thing. I said, no doubt an important thing on the minister's radar.

MR MHLANGU: No.

ADV MYBURGH SC: I see. Well ...[intervenes]

MR MHLANGU: Ja.

20 **ADV MYBURGH SC:** ...you have sent him emails Mr Mhlangu that deals with this. One of your emails is one and a half pages where you list us in four, five different options. I mean, it was a significant event.

MR MHLANGU: Because ...[intervenes]

ADV MYBURGH SC: It was something that needed to be

dealt with.

MR MHLANGU: No, the drama, it should not attract ...[intervenes]

ADV MYBURGH SC: Well, there we go.

MR MHLANGU: ...because it was not his place.

ADV MYBURGH SC: Alright.

MR MHLANGU: It was not his place because my view was, if he gets himself in it, he will not be able to get himself out of it.

10 **ADV MYBURGH SC**: Alright. Well, let us deal with that. So what we are actually dealing with is what you knew before you took up your position. So Mr Gigaba ...[intervenes]

CHAIRPERSON: I am sorry. Just clarify that Mr Mhlangu what you have explained was that something you knew before you took up your position as special adviser or was it something you knew after you had taken up your position?

MR MAHLANGU: It was after, Chair, I had no specific interest in public enterprises when I was an attorney.

20 **CHAIRPERSON**: It was you had taken the position?

MR MAHLANGU: It was after, Chair. And, Chair, I think the timing that the Commission needs to be aware of is that I arrived on the 1 December.

1 December in government then things slow down and at that time they were orientating the minister with

some things. There were a lot of briefings that minister was going through.

January, Chair, what happens in the political calendar, is that you have what is called the January 8 in the ANC. So the political leaders are consumed by the activities leading up to the January.

Then from the January 8, Chair, you have the lekqotlas. You have the ANC lekqotla where the ANC National Executive Committee, member of which my
10 minister was, were taken.

Then you have the cabinet lekqotla. You actually have access to the minister after the State of the Nation address which would take you to around first or second week of February.

I am not saying the administration is at a standstill but I am saying that have that in mind as you assess what I knew.

ADV MYBURGH SC: We are going to come to that very chronology, Mr Mahlangu. So Minister Gigaba is appointed
20 with effect from the 1 November. Mr Mkwanazi in his evidence of a meeting that he had with the minister, he says that meeting happened in October and at the same time his evidence was when he met with Mr Gigaba it was as if he was already the minister. So October/November. And I want to just take you to bundle 4A. I just want to run

through with you what was then discussed between Minister Gigaba and Mr Mkwanazi.

MR MAHLANGU: Bundle 4A?

ADV MYBURGH SC: Bundle 4A, could I ask you to turn to page 4?

MR MAHLANGU: I am on page 4.

ADV MYBURGH SC: So at paragraph 4.3 Mr Mkwanazi says:

10 “In my meeting with the minister he indicated that he was not happy about a few things.”

1. A lack of Transnet information as there were very few senior positions held by African women.

2. He was under the impression that the procurement system of Transnet was open to corruption by employees and other stakeholders. He emphasised that as the incoming Chair of the board this must be an area of focus.

20 3. He was somehow aware of problems in the procurement of suppliers and services for mega projects in Transnet”

And then he lists a lot of them.

4. He was also under the impression that disciplinary matters at Transnet were racially biased and that there was a condonation process at Transnet that was generally used to deal with

deviations within Transnet.”

Now Mr Mkwanazi put up then – I think you mentioned this to me before we began, you are aware of the fact that Mr Mkwanazi then put up a supplementary affidavit and what he says is that at this meeting Minister Gigaba also requested ...[intervenes]

CHAIRPERSON: Do you want to remind me where the supplementary is?

ADV MYBURGH SC: Yes, certainly. Could you – perhaps
10 I could ask you, Mr Mahlangu, to turn now - the easiest way is to ask you to look at the third last tab, Chairperson in bundle 4A.

MR MAHLANGU: EB20 or something?

ADV MYBURGH SC: E19.

MR MAHLANGU: 19.

ADV MYBURGH SC: And then to turn backwards to page
21.415. So 414 is the supplementary affidavit and I want to direct your attention please to paragraph 5. I have mentioned in the initial affidavit in paragraph 43, that is the
20 meeting we are dealing with, that:

“I had a meeting with the minister at which the minister highlighted things that he was not happy with at Transnet. In this meeting Minister Gigaba also requested that the incoming board must also review the fairness of the dismissal of Mr Gama.”

Do you see that?

MR MAHLANGU: Yes, I can.

ADV MYBURGH SC: Now you have told the Chairperson that you were appointed as special adviser with effect from the 1 December 2010.

MR MAHLANGU: That is correct.

ADV MYBURGH SC: Were you then briefed by the minister?

MR MAHLANGU: Not in the once-off briefing sessions, we
10 interacted in the office. The minister had ways to talk to us either as advisers or as the entire political office on issues.

ADV MYBURGH SC: Yes, well were you informed by the minister about the concerns that he had at Transnet?

MR MAHLANGU: No.

ADV MYBURGH SC: Were you told by the minister of the discussion that he had had with Mr Mkwanazi?

MR MAHLANGU: No.

ADV MYBURGH SC: Were you told by the minister that he
20 had requested that Transnet should review the fairness of the dismissal of Mr Gama?

MR MAHLANGU: No.

ADV MYBURGH SC: In fact Mr Mkwanazi says that the Minister issued what was tantamount to a shareholder instruction, instructed him to review the dismissal of Gama.

MR MAHLANGU: I was not there in 20 – in October.

ADV MYBURGH SC: No, I am not asking you that, I am asking you did the minister tell you about this?

MR MAHLANGU: No.

ADV MYBURGH SC: You would accept that the minister seemed to have very serious concerns about Transnet.

MR MAHLANGU: I am trying to go back in time. So I do not know if I learnt of the Gama issue from the office. What I know, because – what I know is that Mr Mkwanazi
10 apprised me of it for the purposes of informing the minister. It would therefore be on the basis of my report to the minister that the issue about Mr Gama would have been discussed.

ADV MYBURGH SC: Yes, we are going to come to that, but just that I understand your evidence. You say that the minister did not brief you about his concerns about Transnet and the minister himself never told you that he had issued an instruction that the fairness of Mr Gama's dismissal should be reviewed.

20 **MR MAHLANGU:** No. On the – no, on the issues with Transnet the department has a unit responsible for transport enterprise and I recall at the time there were issues that were ongoing but there were no specific issues that I – had sprang to mind as – I know that the NMPP, as now I see it from Mr Mkwanazi's affidavit...

ADV MYBURGH SC: Alright.

MR MAHLANGU: ...the department was grappling with it.

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

MR MAHLANGU: But I do not recall specific instructions to me. In fact, I do not – the minister never instructed me.

ADV MYBURGH SC: Well, perhaps you can just say that and we live with it.

MR MAHLANGU: Ja, the minister never instructed me.

ADV MYBURGH SC: Yes, let us move on then.

10 **CHAIRPERSON:** Did Mr Mkwanazi tell you that the minister had instructed the board to review the fairness of Mr Gama's dismissal?

MR MAHLANGU: No.

CHAIRPERSON: In the discussions he had with you?

MR MAHLANGU: No, Chair, not specifically. I think there I am a bit – my memory is not good. But remember Mkwanazi tells me what is happening on the issue.

CHAIRPERSON: Yes.

20 **MR MAHLANGU:** So we did not start – and I arrived on the 1st of – these discussions happened in January, so I suppose a lot has happened between October and January because then when he tells me things, he is telling me things that are happening there that I relayed to the minister.

CHAIRPERSON: But he could have said to you when he

started interacting with you in your capacity as special adviser to the minister, you know, we are busy with reviewing the fairness of Mr Gama's dismissal, I had a meeting with the minister in October and he instructed the board to review the fairness of Mr Gama's dismissal, one would imagine that he might not have just started telling you what was happening at the time but he might tell you the background, namely if they were busy with their review – with a review of the fairness of Mr Gama's dismissal and
10 if that review had been instructed – they had been instructed by the minister to conduct it, one would expect that that is where he would have start when talking to you so that as you – as he continued to interact with you thereafter you would have the background and the context.

MR MAHLANGU: Chair, I cannot remember.

CHAIRPERSON: You cannot remember.

MR MAHLANGU: No but what I remember is the discussion specifically, where they emanated and what the genesis were, no. It is possible – if it is, it is possible but I
20 do not remember an instruction because, Chair, the government works in a particular way, if there an instruction to the asset. As the shareholder then there will be a shareholder memo to the Chairperson of the board and that would have been based on what the department would have sort of analysed and advised the minister to do.

I have not seen that. If it exists then I am happy to have a look at it but I do not recall seeing that kind and I – my discussions with Mr Mkwanazi, my recollection of how it started is I do not have a very clear recollection.

CHAIRPERSON: Do you not recall him having said to you, even if he did not talk about the minister having instructed the board, do you not recall him having said to you, for example, you know, the board is busy reviewing the fairness of Mr Gama's dismissal, even that you do not think
10 he said that?

MR MAHLANGU: No, that is true, that he would have said because otherwise there would be no context to the brief.

CHAIRPERSON: Yes, yes.

MR MAHLANGU: So what I am saying is I do not recall how – remember the board, according to me, are separate from the minister and if you are briefing me that this is what you are doing then I must tell the shareholder that that is what you are busy with. That is how I would have engaged with this, that is why I do not recall saying now I
20 am giving you an update based on the instruction I was given by the minister.

CHAIRPERSON: So is the instruction by the minister part that you do not recall but that the board was undertaking a review of the fairness of Mr Gama's dismissal, that you recall.

MR MAHLANGU: That was the – yes, that was the essence of it.

CHAIRPERSON: Okay.

MR MAHLANGU: I think that is what we were dealing – the reason why he was telling me that that is what they were busy with.

CHAIRPERSON: Okay.

MR MAHLANGU: Yes.

CHAIRPERSON: Mr Myburgh?

10 **ADV MYBURGH SC:** Alright, I am going to come to that in more detail. So you were appointed on the 1 December, the 13 December we know that a new board commences its duties, you have accepted that that was a board appointed by Minister Gigaba.

Now another important event in this case is a Public Protector complaint that was received by Transnet on the 22 December. Did you ever come to learn about that?

MR MAHLANGU: I learnt of that – my memory was jogged by Mr Mkwanazi's evidence, I think, about – I do not
20 remember the content but I remember there was something about the Public Protector's report.

ADV MYBURGH SC: So just perhaps before we break for tea, you have mentioned to the Chairperson that this initial discussion that you had with Mr Mapoma where you deal with Mr Sbu Gule, that would have happened in January, is

that right?

MR MAHLANGU: Yes.

ADV MYBURGH SC: Alright. And are you able to assist us with when in January that was?

MR MAHLANGU: No, Chair, but it should be somewhere around the vicinity of that email.

ADV MYBURGH SC: Yes.

MR MAHLANGU: When I look at the email ...[intervenes]

ADV MYBURGH SC: That email came – was another
10 meeting that you had with Mr Mkwanazi but let us leave it at that, Mr Mahlangu, perhaps over teatime you could reflect on when you first held a discussion in January with Mr Mkwanazi. Mr Chairperson, if this is an appropriate time?

CHAIRPERSON: Okay, we will take the tea adjournment until half past eleven. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

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

UNIDENTIFIED SPEAKER: Pardon, Chair, may I be excused please at 12 o'clock, Mr Chair?

CHAIRPERSON: That is fine, that is fine.

UNIDENTIFIED SPEAKER: Thank you, Chair.

CHAIRPERSON: Okay, alright.

ADV MYBURGH SC: Thank you. Mr Mahlangu, just before we get to the approximate date of your first discussion with Mr Mkwanazi, can you remember what caused you to get in contact with him or him get in contact with you?

MR MAHLANGU: Perhaps, Chair, before I answer this question, I need to just put this forward. The events that you are seized with now happened around nine years ago. So when I prepared the two affidavits it was on the basis of
10 what I remembered then and from the day I received Mapoma's affidavit and the letter from the Commission I have been thinking about these matters. Some things do not make sense, some things I – I am not maliciously not remembering and therefore I would like you, as you assess what I am with is what I could remember it is based on these two things – the two emails that I drafted after that, but the conversation in my head has not stopped. So I would like you to allow me where I can remember stuff to indulge you but right now things are – I would like you to
20 understand that I would like to be as helpful as I can, to Mr Myburgh and to the Commission.

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

MR MAHLANGU: And therefore I will not ...[intervenes]

CHAIRPERSON: The fact that these are matters that happened a long time ago has got to be factored into the

whole conversation, there is no doubt about that, with every witness, so – and nobody asks you to talk about things that you know nothing about, nobody asks you to remember what you cannot remember but obviously there has got to be an assessment of what you have placed before the Commission and when Mr Myburgh asks you questions about maybe some aspects, it is simply a way of him trying to understand as much as possible from you so that in the end he can assist me in evaluating your
10 evidence as well as the evidence of other witnesses.

ADV MYBURGH SC: Thank you, Chair. So perhaps we can then go back to my question. Do you recall what gave rise to your first discussion with Mr Mkwanazi?

MR MAHLANGU: No, I do not recall specifically.

ADV MYBURGH SC: Now ...[intervenes]

MR MAHLANGU: But I will presume that Mr Mkwanazi would have called me because there is no – he had direct relationship with the minister and he also had access to all of the political office so it would have been – he would call
20 me. So I do not know at which point which call in fact ...[intervenes]

ADV MYBURGH SC: In fact Mr Mkwanazi's evidence, he said you would phone him often.

MR MAHLANGU: That, Chair, I think it would be on a specific issue if I would call. I would not deny I called Mr

Mkwanazi, if I had a specific question.

ADV MYBURGH SC: Would you accept that you called him often?

MR MAHLANGU: As often as the other chairpersons, yes.

ADV MYBURGH SC: Alright.

CHAIRPERSON: Or maybe a number of times.

MR MAHLANGU: Chair, I do not know what often means but it was not irregular to call Mr Mkwanazi, if I had a question. But the often is not I would call him every day or
10 every second day.

CHAIRPERSON: Ja.

MR MAHLANGU: If I had a question and the question had to be something I needed clarity on, maybe there is a thing that I need to know that the minister or that administration is dealing with and I needed context.

CHAIRPERSON: So would you say you may have called him often or a number of times in accordance with the requirements of your job?

MR MAHLANGU: Yes, in the context of ...[intervenes]

20 **CHAIRPERSON:** In other words, if there was something about your job that you needed to talk to him about you would phone him?

MR MAHLANGU: That is correct, Chair. And also ...[intervenes]

CHAIRPERSON: And that there could have been a

number of those things.

MR MAHLANGU: That is correct, Chair.

CHAIRPERSON: Ja.

MR MAHLANGU: It is the context as well on what – because I could have called him, he could have called me, I was accessible to Mr Mkwanazi. Whenever he wanted to talk to me I would make myself available.

ADV MYBURGH SC: So, Mr Mahlangu, given your imperfect received of events, understandably, let me tell
10 you when it seems this discussion must have happened. It must have happened, it seems, before the 13 January and I say that because the first piece of correspondence that we have, and it is going to be printed now, from Deneys Reitz relating to Mr Gama, was an offer made by them to Langa Attorneys on the 13 January. So we know that by this time you must have had this discussion and Mr Mkwanazi would then have appointed Deneys Reitz and Mr Gule. Would you accept that?

MR MAHLANGU: I cannot recall but ...[intervenes]

20 **ADV MYBURGH SC:** Yes.

MR MAHLANGU: But what I see in my email is that I sent it in the evening at around 17 ...[intervenes]

ADV MYBURGH SC: That was after another discussion, Mr Mahlangu. That is really the point I am making. And please, if you could just listen to me instead of looking at

the documents. You had a discussion where you put forward Mr Gule as an eminent labour lawyer. We know from Mr Mkwanazi's evidence that Transnet then appointed Mr Gule. On the 13 January 2011 Mr Gule wrote to Langa Attorneys making a without prejudice settlement proposal in respect of Mr Gama. It must follow from that that this discussion that you talk about here in paragraph 7 was a discussion that occurred before the 13 January, correct?

MR MAHLANGU: It is possible.

10 **ADV MYBURGH SC:** Right.

MR MAHLANGU: But it is not also – it is not – it is possible but that is not the only reasonable inference.

ADV MYBURGH SC: But, Mr Mahlangu, I do not want to argue with you about things that you yourself say you do not have a recollection of.

What we know here is a matter of fact, is that by the 13 January Gule is on record as the attorney. Mr Mkwanazi says he took your advice, that is why he went to Gule. It follows from that that this discussion must have happened
20 before then.

MR MAHLANGU: I accept.

ADV MYBURGH SC: Ja, it is in fact the only reasonable inference.

MR MAHLANGU: No, I was trying to connect it to [inaudible – speaking simultaneously]

ADV MYBURGH SC: Well, I do not know what you were trying to do.

MR MAHLANGU: Ja. No, I was trying to see if we are talking SMA2 because if ...[intervenes]

ADV MYBURGH SC: That is what we are talking about.

MR MAHLANGU: Okay, that is fine.

ADV MYBURGH SC: And we are going to come to your email on the 18th. Of course that followed another discussion that you had had with Mr Mkwanazi. We are
10 going to come to that.

Now let me tell you what the issue is in relation to this discussion. I put to Mr Mkwanazi that based on my reading of your paragraph 6 and 7, it is your contention that Mkwanazi tells you at this first discussion that Transnet intended to reinstate Gama. That is what I put to him. His answer was no, that is not what he said to you. What he said to you is that the minister had issued an instruction that the board should review the fairness of Gama's dismissal. That is his version.

20 Now you understand part of my job is to put to you what he has to say and you must comment on it. What do you say?

MR MAHLANGU: My statement, Mr Myburgh and Chairperson, is that I had a number of discussions with Mr Mkwanazi. In one of those I recommended ...[intervenes]

CHAIRPERSON: Ja, do raise your voice.

MR MAHLANGU: I had a number of discussions with Mr Mkwanzazi and I recommended that he seeks legal advice and I do not recall specific that there was a review that the minister – I think what I was nervous about at the time was that if the board is acting without legal advice, which probably is the impression I got at the time, that would have been dangerous. So that is where I was.

ADV MYBURGH SC: Your affidavit ...[intervenes]

10 **MR MAHLANGU:** So I cannot comment on it.

ADV MYBURGH SC: So you stand by, as I understand it, your version, being that Mr Mkwanzazi told you that Transnet intended to reinstate Gama.

MR MAHLANGU: That was my reading.

ADV MYBURGH SC: Right. Now – and that is important because ...[intervenes]

CHAIRPERSON: Yes, it is very important, sir. That is your recollection, is that right?

20 **MR MAHLANGU:** Yes. I think, Chair, even where I write I say I understand.

CHAIRPERSON: H'm.

MR MAHLANGU: So it is what – it is the conclusion I drew from the discussion. I heard Mr Mkwanzazi saying maybe I was premature. Maybe that is true, maybe that is not, but that is my impression of the facts and the

discussions as they took place at that time.

ADV MYBURGH SC: You see, Mr Mahlangu, you answer my question, you give a clear answer. You then learn of its importance ...[intervenes]

MR MAHLANGU: No, no, no.

ADV MYBURGH SC: And then you try to take the edge off it. In paragraph 6 you say that Mkwanazi informed you that the company intended to reinstate Mr Gama. You did not say I drew a conclusion or I inferred, I was informed,
10 correct?

MR MAHLANGU: Mr Myburgh, let us go to annexure SMA1 which is a contemporaneous record of ...[intervenes]

ADV MYBURGH SC: No, it is not. That was on the 18th.

MR MAHLANGU: I am saying of the events at the time.

ADV MYBURGH SC: Mr ...[intervenes]

CHAIRPERSON: I am sorry, Mr Mahlangu, look this side when you speak so I can hear.

MR MAHLANGU: Oh, sorry, Chair.

CHAIRPERSON: Yes.

20 **MR MAHLANGU:** I was saying, Chair, there are two things. In the email that I wrote I say I understand. This is on the 18 Jan and I said the sequencing here could be problematic for me but there was a time I was told about the intended settlement and we agree that it is before the 13th, there is a letter of the 13th. Yes, at that time I would

have said that, go and get legal advice. Yes.

ADV MYBURGH SC: Alright, well let us just stick with this. You stand by what you say in your affidavit.

MR MAHLANGU: Yes.

ADV MYBURGH SC: Alright, that is fine. So why we pressed Mr Mkwanazi on this is we said to him in cross-examination that how could you say to Mr Mahlangu before – and now we know the 13 January that you were going to reinstate Mr Gama, unless you had been instructed to do
10 so by Mr Gigaba. That is really the proposition and that is why the evidence that you have given here and confirmed is important. You follow that?

MR MAHLANGU: Ja. Let us deal with this paragraph again, I would like to go through it. Paragraph 6 of page ...[intervenes]

CHAIRPERSON: Page 170.

MR MAHLANGU: 170.

CHAIRPERSON: That is your first affidavit.

MR MAHLANGU: Chair, this paragraph – like there could
20 be a timing around it, which is a problem, but there is a point – and as I said to Mr Myburgh, I am prepared to take it that it might have been the 13th or before but maybe that is my mischaracterisation. Whether they intended to review or reinstate, Chairperson, I cannot give you a firm – say Mr Mkwanazi is wrong but in my – my recollection

seems to be the issue was the reinstatement and I am not – I do not want to be too firm about it because I cannot...

ADV MYBURGH SC: But, Mr Mahlangu, with all respect, you wrote this in your affidavit. I mean, as I understand it, you have said there is a lot of things you cannot remember but this you could remember, that is why you put it in here.

MR MAHLANGU: It is to the best of my recollection.

ADV MYBURGH SC: Fair enough.

MR MAHLANGU: And it could be that there are flaws in it
10 but there were those talks. Whether it was a review – but there was an issue that there was something that being dealt with which was around those times having to do with Mr Gama in his discussions with Transnet and that is after he was dismissed. So I am not sure, Mr Myburgh, and I take your point, I really take your point.

ADV MYBURGH SC: Mr Mahlangu, I am going to deal with this in argument and trace my way through the evidence that you have given. I think it will speak for itself.

Did you during this discussion come to learn of the
20 involvement of the minister in any way whatsoever because Mr Mkwanazi is clear, he says that he told you that the minister had issued an instruction.

MR MAHLANGU: That I do not recall [indistinct] 14.52 and I – because what – you see, the difficulty there is that I come in in December and I deal with this matter around

January, so – and certain discussions according to the evidence before the Commission, it had already taken place, so I am not sure at what point of the discussions I was brought in and whether I was brought up to speed about the genesis of them or to say there is this matter that is being dealt with and this is where it is at and that is ...[intervenes]

CHAIRPERSON: But I do not think there would have been much that would have happened before mid-January
10 because remember, Mr Mkwanazi and his board also – were also appointed in December. Actually you were appointed first, I think. You said you were appointed with effect from 1 December. I think they were appointed with effect from around 10 December or 13, I am not sure, thereabout. And, of course, there would have been the traditional, you know, Christmas break and people would have come back to work around 10 January, 15. So I do not think that there would have been much that would have happened before mid-January.

20 **MR MAHLANGU:** I was saying, Chair, I was clarifying that there was a conversation that relates to October.

CHAIRPERSON: Yes, yes, ja.

MR MAHLANGU: Yes. So what I am saying, in that conversation, I am not sure at what point of that conversation I was brought in.

CHAIRPERSON: Yes.

MR MAHLANGU: But I do not recall there being Siya, I have instructed Transnet to look at this matter, can you follow up for me or whether Mkwanazi said as per your principal's instruction, here is the update. I do not recall it being that crisp.

ADV MYBURGH SC: Now just remind me, why did you suggest go and get legal advice? I mean, on your version he says we are going to reinstate Gama. Well, fine, why
10 do you need legal advice?

MR MAHLANGU: Not we, Transnet.

ADV MYBURGH SC: Yes, absolutely.

MR MAHLANGU: Yes.

ADV MYBURGH SC: So why would Transnet need legal advice if it has decided to reinstate Mr Gama?

MR MAHLANGU: I had said that I held a view that this matter was a little bit too complex. Of course, I did not have a full appreciation.

ADV MYBURGH SC: You had a view.

20 **MR MAHLANGU:** Yes. That this matter raised very complex matters and particularly there was a lot on the go, right? And it was also, in my opinion, if I had a preference, it was that you needed to deal with this matter clinically and try and contain whatever needed to be contain, whether it is the legal issues, the political issues, but that

needed to be navigated with care and if you are going to navigate this with care, you needed to act with legal advice.

ADV MYBURGH SC: So you understood that this was a controversial issue?

MR MAHLANGU: Ja.

ADV MYBURGH SC: Right. And is it then just a coincidence that the lawyer who you pointed Transnet in the direction of, he then provides an opinion creating a slight doubt as to Transnet's prospects of success in a litigation against Mr Gama which they then accept and used that as a basis to reinstate him? Is that all a coincidence?

MR MAHLANGU: Chair, I cannot comment on that.

ADV MYBURGH SC: Alright.

MR MAHLANGU: I cannot. What I can say is that as I got to Johannesburg in 1999, as a candidate attorney, I have done my stint in the employment law department and of the eminent lawyers I recall of the time, labour lawyers, Sbu Gule ranked amongst them and I did not give him on Sbu Gule, I recall that we discussed a number of names that he went away with. So I do not know about the opinion, I do not know about anything, but insofar as Mr Gule is concerned, he is one of the senior attorneys in the city with serious respect. I think even articulated with the DCJ.

ADV MYBURGH SC: Well, do know – or did Mr Mkwanzazi
...[intervenes]

CHAIRPERSON: Well, he came as an attorney.

ADV MYBURGH SC: But did you know that Transnet of
course already had lawyers on this case?

MR MAHLANGU: At that time ...[intervenes]

ADV MYBURGH SC: Did you know that?

MR MAHLANGU: Yes – no, no, no, I did not know – I
know that there were lawyers that were advising them on
10 the Gama matter.

ADV MYBURGH SC: Yes.

MR MAHLANGU: But Mr Mkwanzazi – remember, the issue
there, it was politically charged.

ADV MYBURGH SC: Yes.

MR MAHLANGU: And I think the law firm concerned was
seen as part of the people that were purging some people
there.

ADV MYBURGH SC: Alright. So you accept that it was
contentious and politically charged?

20 **MR MAHLANGU:** Yes.

ADV MYBURGH SC: Alright. Now I think I and the DCJ
have already asked you a series of questions about this.
So here we have the first discussion. I have mentioned to
you that Mr Mkwanzazi speaks of numerous or various
discussions that you had with him but he made it clear that

he had a number of discussions with you after this in relation to Mr Gama and that those discussions were in the context of the minister's instruction.

In other words, his evidence was that he was liaising with you in acquitting himself of the minister's instruction and he was using you as a conduit to relay information to the minister. That is the extent of his recollection of his interaction with you. Now do I understand you to be saying you cannot remember that?

10 **MR MAHLANGU:** No, let me answer that because the chairpersons do not have to speak to me, they speak to me because they want to convey something to my principal.

CHAIRPERSON: Look this side.

ADV MYBURGH SC: That is what he said.

MR MAHLANGU: The Chairpersons did not speak to me for me, they would speak to me because they wanted to convey something to my principal or to assess where my principal stood on particular matters. So that would be correct, ja.

20 **ADV MYBURGH SC:** So ...[intervenes]

CHAIRPERSON: Actually, he – Mr Mkwanazi said, if I recall correctly, Mr Myburgh, other than the meeting that he had with Mr Gigaba, which he said was in October, other than that he did not have another meeting with him, I do not know whether before Mr Gama was reinstated or he

never had any other meeting at all but it seems that certainly, on his version, between the meeting that he says he had with the minister in October 2010 and the reinstatement of Mr Gama, he says he never had any meeting with the minister, he was liaising with you as the person who would convey matters to the minister. Yes, Mr Myburgh?

ADV MYBURGH SC: Yes, perhaps I could just read to you. I put to Mr Mkwanazi after a lengthy cross-
10 examination:

“So you were keeping Mr Mahlangu appraised of developments in the light of the instruction that you got from the minister to, as you put it, review Mr Gama’s dismissal?”

He says:

“I would have.”

MR MAHLANGU: Chair, to the extent that I can recall, he did brief about – he kept me abreast but not on the details. But the important thing that we need to recall is that the
20 chairpersons had an independent relationship with the minister and their discussions with the minister were not just meetings, they would call him, they would call him because – and the minister would call them too because I would have then said minister, there is this thing and minister would then pick that up maybe through the

department or directly with the chairperson.

So I do not know, just to comment on the Chair's remarks, I do not know if Mr Mkwanazi and my minister had discussions following those briefing.

ADV MYBURGH SC: But, you see, Mr Mahlangu, you are defecting now to discussions with the minister, I am talking about the discussions he had with you.

And no, I do not agree with you, the important thing is whether you came to learn through this series of
10 discussions about the minister's instruction. That is the important thing.

MR MAHLANGU: That I have – I cannot take it further, Mr Myburgh, I have said ...[intervenes]

ADV MYBURGH SC: Well, what is your answer, you cannot remember?

MR MAHLANGU: I cannot recall that Mr Mkwanazi said that to me.

ADV MYBURGH SC: Could he have?

MR MAHLANGU: I do not understand why - and I do not
20 understand why not but I cannot take it further than I cannot recall it, Chairperson.

ADV MYBURGH SC: Well, then you cannot dispute his version, can you, that he told you of the minister's instruction and nor can you dispute his version that he then liaised with you on a number of occasions in acquitting

himself of that instruction. You cannot dispute that, can you?

MR MAHLANGU: Chair, I cannot dispute it because I cannot recall it.

ADV MYBURGH SC: Right. Now let us then deal with how Mr Mapoma enters the scene. We know that by the 11 January he had engaged KPMG to undertake an investigation of the Public Protector report and his evidence and Mkwanazi's evidence is that Mkwanazi
10 appointed him to deal with the Public Protector. So he is now dealing with that at least from the 11 January and what is important about that and Mr Mapoma's initial involvement, is his evidence was that from the outset of his interactions with Mr Mkwanazi he made it clear to him that he, Mkwanazi, had been instructed by Mr Gigaba – sorry, he had been instructed to reinstate Gama and his evidence was that it was by someone higher up in the ministry. How can that be?

MR MAHLANGU: I do not know that.

20 **ADV MYBURGH SC:** Well, if Mr Mapoma is to be believed, Mr Mkwanazi told him that.

MR MAHLANGU: I cannot comment.

ADV MYBURGH SC: Yes. And if Mkwanazi told him that, presumably that instruction must have come from Mr Gigaba and higher.

MR MAHLANGU: I cannot comment. I do not know.

ADV MYBURGH SC: Whilst we are on Mr Mapoma and his initial interaction, he also talks about a meeting that he attended between Mkwanazi and Gama over the weekend at the Inanda Estate and there was an attempt to negotiate a settlement – so we know this is before the settlement agreement – and those negotiations were unsuccessful and Mapoma’s evidence was that Mkwanazi tells him that they broke down because Gama wanted to be appointed, this is
10 something that you were dealing with, as the Chief Executive of Transnet. Do you find that strange?

MR MAHLANGU: I do not know the facts, I ...[intervenes]

ADV MYBURGH SC: Assuming that happened, would you find that strange?

MR MAHLANGU: Yes, that is strange.

ADV MYBURGH SC: And would you accept that it is indicative of the fact that Mr Gama must then have had some very serious political backing, correct?

MR MAHLANGU: I do not know that, I cannot comment.

20 **ADV MYBURGH SC:** But why is that not indicative of the fact that Mr Gama – if it happened.

MR MAHLANGU: I am not qualified to comment on that, I do not know how to throw politically ...[intervenes]

ADV MYBURGH SC: Your reaction is immediate, you do not even allow me to finish the proposition and it is not a

matter of qualification, I am asking you what else, what else could have informed that stance by Mr Gama?

MR MAHLANGU: I do not know, Chair.

ADV MYBURGH SC: Fair enough.

CHAIRPERSON: I guess that what you could say is that somebody who was dismissed from a certain position, who has got an unfair dismissal claim against the company, wanted to be reinstated to that position from which he was dismissed should in negotiations aimed at settling that
10 dispute demand to be appointed to a higher position is strange, would be strange. I guess that you can say.

MR MAHLANGU: I have said it, Chair.

CHAIRPERSON: Ja, ja.

MR MAHLANGU: Ja.

ADV MYBURGH SC: You mention then in your supplementary affidavit, just following the chronology, that you would have held the discussion with Mr Mkwanzazi around the 18 January and that leads us to your 18 January email, correct?

20 **MR MAHLANGU:** Yes.

ADV MYBURGH SC: So let us go then to that email at page 178, bundle 1. Now the first bullet point says:

“I have been invited on a trip to India on 24 January to 1 February. Although this is a private excursion, it promises to be of great political ...and therefore

suggest that we take full advantage of it, I therefore request leave to undertake this sojourn.”

Is that right?

MR MAHLANGU: That is correct.

ADV MYBURGH SC: And did you then undertake this trip to India?

MR MAHLANGU: I deal with this Chair in a separate affidavit that I filed with the Commission.

ADV MYBURGH SC: And I have read that affidavit, your
10 version is that you were invited by Ranej Gupta to attend a wedding of one of his family members and that he paid for you.

MR MAHLANGU: Chairperson I was asked to prepare to deal with the Transnet issues and I deal extensively about my relationship with the members of the Gupta family and I have not prepared today to deal with that, but to Mr Myburgh’s point at – there was no discussion between the members of the Gupta Family and me about Mr Gama, and neither do I think at that time they even knew each other, I
20 don’t know, the impression I recall that at that time there was no – he had not asked anything of me, they were not infamous but I would like Chair to deal with it appropriately and to be able to adequately address that.

CHAIRPERSON: Okay, ...[intervenes]

ADV MYBURGH SC: I don’t intend to pursue that any

further, of course, I mean the point I just wanted to make really is that because of that this email came to light, because you were preparing the other affidavit.

MR MAHLANGU: That's correct.

ADV MYBURGH SC: The other affidavit asked you to answer to this trip to India and you then produced, I think it was Annexure 17, and it was in the context of preparing that affidavit that you the realised you should put this up in this – these proceedings.

10 **MR MAHLANGU:** That is correct, yes Mr Myburgh.

ADV MYBURGH SC: Alright, and you are right, you will in time you may be called as a witness to answer those allegations. Let's get then to the second bullet point.

“I understand that Transnet may be nearing a settlement with Gama. I will obtain the details of the settlement and brief you accordingly. I suggest that you socialise the President and his key aides [formal and informal] on the proposed settlement. It is intended that forthcoming board should
20 consider and authorise it.”

So here this is contemporaneous, you had a discussing with Mr Mkwazi, you lead up to this email and that's what he told you?

MR MAHLANGU: Yes.

ADV MYBURGH SC: Just so that we understand it, you

can't remember that, that's your case, but you say well if I wrote it then it must have happened.

MR MAHLANGU: I have tried to explain it after the break Mr Myburgh, at the time when I drafted the affidavit the only recollection of this was this email, but I have been continuously thinking and trying to understand and trying to contextualise these issues and to place them – to try to go back into history, so I would like you to understand it in that regard.

10 **ADV MYBURGH SC:** Alright, now what's important is when I put this to Mr Mkwazi he says no he didn't say this to you because as of the 18th they weren't nearing a settlement and ultimately in fact said that you made a false report to the Minister.

MR MAHLANGU: I think that Mr Myburgh I watched the video of Mr Mkwazi's evidence, I think that was – that concession that he made, he made it under intense questioning and all of that but his view was that I prematurely ...[intervenes]

20 **ADV MYBURGH SC:** It wasn't a concession, he said you made a false statement to the Minister, you indeed don't agree with him?

MR MAHLANGU: I don't agree, the facts don't agree.

ADV MYBURGH SC: Ja, well precisely and that was the point I was putting to him so you and I agree with one

another, so he must have told you.

CHAIRPERSON: I think the forced part came because it was said if what you were saying was premature – okay I think I asked pertinently, I said when he said it was premature is it because it was true but it should not have been conveyed at that time, it was not the right time to tell the Minister, or was the position that as at that time what you said had happened had not happened, and my recollection is that his response was that what you said
10 had happened had not happened, that is my recollection. Does it – is it consistent with your recollection of what you listened to?

MR MAHLANGU: Chair I wouldn't want to labour on it, what I wrote to the Minister here as you can tell is my understanding.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Thank you. And it probably is just simply a timing issue at worst, you say that I will obtain details of the settlement, in other words the settlement
20 agreement or what did you have in mind of giving to the Minister?

MR MAHLANGU: If you read the two emails I think later on I did talk about loss of benefit ...[indistinct – static on audio].

ADV MYBURGH SC: Mr Mahlangu what details did you

intend to get for the Minister?

MR MAHLANGU: On what basis the - what is the settlement, what is it.

ADV MYBURGH SC: In other words a settlement agreement?

MR MAHLANGU: Yes of the content.

ADV MYBURGH SC: And did you then do that?

MR MAHLANGU: No.

ADV MYBURGH SC: How do you remember that?

10 **MR MAHLANGU:** Because that is significant, that is a significant event.

ADV MYBURGH SC: But so is this email.

MR MAHLANGU: No I am saying the details of it would have been odd, because remember in my next email I seem to have – I seem to know about, if you go to my second email I said he was informed through his lawyer of an offer to reinstate him with no loss of benefits in the contribution towards his legal costs.

20 That is probably what I meant, but I have no independent recollection.

ADV MYBURGH SC: So in other words, I think you said earlier that you didn't do this, but it seems that you did do that, you did get details then ...[intervenes]

MR MAHLANGU: Not the agreement, the agreement I saw it for the first time when the Commission gave it to me.

ADV MYBURGH SC: I see. How do you know that you didn't look for the settlement agreement?

MR MAHLANGU: There are certain important incidents, like – I don't like I was telling you about ...[intervenes]

ADV MYBURGH SC: You would describe getting a settlement agreement from Transnet as an important ...[intervenes]

MR MAHLANGU: On the matter relating to Mr Gama.

ADV MYBURGH SC: Just so that we understand one
10 another, your evidence here is you have no independent recollection of this.

MR MAHLANGU: I have said this Chair that when I drafted the affidavits on those two days, these affidavits, that is all I had, but it doesn't mean I have stopped enquiring about the event.

ADV MYBURGH SC: Alright, then you suggest that you socialise the President, just remind me what your answer was to the Chairperson's question about what does that mean?

20 **MR MAHLANGU:** By socialise Chair I meant that he must make him aware, because of the importance of the matter, the matter had evoked public interest and in fact there are two things there. The matter was of public interest, and the matter is what the public was interested in at the time.

ADV MYBURGH SC: Well I think that is important

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MR MAHLANGU: Aides in the context means the assistants and advisors of the President, the inner sanctum of the President.

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say.

ADV MYBURGH SC: They would have had to have had
20 their say?

MR MAHLANGU: To the President.

ADV MYBURGH SC: About the reinstatement of Mr Gama?

MR MAHLANGU: Yes.

ADV MYBURGH SC: I see.

MR MAHLANGU: That's why you would see in my SMA2 I think I repeat the political problems that I saw.

ADV MYBURGH SC: Doesn't this evidence of yours make it all the more probable that Mr Mkwanazi was instructed by the former President via your Minister to reinstate Mr Gama?

MR MAHLANGU: No.

ADV MYBURGH SC: Sir your evidence was that you felt that the aides the key aides, both formal and informal,
10 should have their say about the reinstatement of Mr Gama.

MR MAHLANGU: Yes Mr Myburgh, let me put this in context, firstly for me the public interest is that Transnet is one of the biggest organisations in the country and the biggest employer. Secondly Transnet Freight Rail runs 80% of Africa's rail, so in terms of public interest to me the importance of Transnet Freight Rail was not lost. The politicisation of this matter was also not lost to me. If the President, if Mr Gigaba in my view, and now in hindsight, had not – if there is something as big as that, whether he
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ADV MYBURGH SC: Alright, and then you go on to say
10 that it is intended that the forthcoming board should consider and authorise it, what did you mean by that, the forthcoming Board meeting or ...

MR MAHLANGU: I would presume it is the meeting Mr Myburgh ...[intervenes]

ADV MYBURGH SC: Because you see that is also very important, because if this is what Mr Mkwazi told you well then what it shows you is that his intention was to persuade his Board to reinstate Gama at the forthcoming meeting.

20 **MR MAHLANGU:** I can't comment on that.

ADV MYBURGH SC: But he told you that?

MR MAHLANGU: I stand by this.

ADV MYBURGH SC: Alright, now let us deal then with over the page ...[intervenes]

CHAIRPERSON: Before you go over the page Mr

Myburgh.

ADV MYBURGH SC: Yes Chairperson?

CHAIRPERSON: Mr Mahlangu your statement in that first bullet point of 18th January 2011, in the second bullet point, your suggestion to the Minister that he socialise the President and his key aides on the proposed settlement suggests to you, and I would like to hear your comment, suggest to me that it is unlikely that there had not been a discussion involving you and the Minister in terms of which
10 you had formed the impression or understanding that the President was interested to be informed about what was going on with regard to the Gama dispute. Is that a fair reading or analysis of the statement?

MR MAHLANGU: No Chair.

CHAIRPERSON: Yes, what do you say to this?

MR MAHLANGU: In the nature of my work Chair I would determine in my view whether this is a – remember Chair I give you that the Executive Powers in the Republic vest in the President and therefore every Minister is a councillor of
20 the President, although they have those delegated powers that they must discharge and therefore if there is something that has particular sensitivities you will do good in my view to appraise the President before you take that stand, and we have seen ministers over the years who have taken steps without briefing the Presidents and then

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CHAIRPERSON: You see that thinking comes from this that I would expect that a special advisor to the Minister would leave it to the Minister's judgment what he tells the President and what he doesn't tell him and when he tells him and that the special advisor would simply advise the Minister and the Minister as a certain relationship with the President and how they interact but that might – you might not share that, but that is what I am thinking.

20 **MR MAHLANGU:** That is a mistaken view Chair.

CHAIRPERSON: Ja

MR MAHLANGU: That is not practically how it works.

CHAIRPERSON: You would advise the Minister.

MR MAHLANGU: You would overrule him if he doesn't believe it is important. There are instances where we

overrule.

CHAIRPERSON: So your advice to him would include what to bring to the attention of the President as well?

MR MAHLANGU: That is correct.

CHAIRPERSON: Okay, but I see also that in terms of that statement it seems that you considered that it was important not just that the President should be informed about Mr Gama's possible reinstatement or intended reinstatement but that he should be informed of the
10 settlement and I take it you mean the terms of the settlement, is it fair to read it like that?

MR MAHLANGU: I think Chair that is correct and ...[intervenes]

CHAIRPERSON: Yes.

MR MAHLANGU: Yes, let me leave it at that.

CHAIRPERSON: Ja okay, alright. Mr Myburgh?

ADV MYBURGH SC: Yes thank you. So did Mr Gigaba socialise the President, Gigaba socialise the President and his key aides?

20 **MR MAHLANGU:** I don't know Chair.

ADV MYBURGH SC: Did you not follow up with him?

MR MAHLANGU: I may have like I said there's memory lapses there, I don't know.

ADV MYBURGH SC: There's memory lapses?

MR MAHLANGU: I am saying I cannot recall, maybe that

is an inelegant use of language, but I cannot recall Mr Myburgh.

ADV MYBURGH SC: Because let's go to page 180, you say we shall take discussions on some of these letters eyeball to eyeball. Does that not help jog your memory?

MR MAHLANGU: I am not sure if we had – I used – some of these things I would use them to – these emails I would send them to the Minister so that in case we don't, sometimes the Minister is in Cape Town, sometimes I am in
10 Pretoria, sometimes we are both at the same geography, but the important thing is that I do not recall him going to the President, if he did, I mean the Minister is around, he can testify to that.

ADV MYBURGH SC: Yes well it seems the Minister have to update his affidavit or supplement it like you did after your testimony.

MR MAHLANGU: I do not recall.

ADV MYBURGH SC: Because the Minister he puts up a one paragraph affidavit where he says he knows nothing
20 about this at all, which your evidence shows cannot be true.

MR MAHLANGU: I cannot comment on that.

CHAIRPERSON: Well as you said that as special advisor to the Minister you would advise and it would be up to the Minister to take your advice or not to take it, and I think

there are a number of examples that you have made in one of your affidavits where you say he did not take your advice, he took the advice of other colleagues of yours or other people in the department. I would have thought that whether he socialised the – whether he went along with your advice that he should socialise the President, whether he went along with that advice or not would have been quite important for you to know, for further advice because maybe if the President wasn't happy or was happy might influence how you advise him going forward.

MR MAHLANGU: Chair in an ideal circumstance yes, but in the political and administrative centres things happen vertically and you have advised and you then saw that the Minister then is aware of your advice, that is your primary issue, so in this instance Chair consistent with the work that we are doing there I would have to take something else to confirm whether he did or didn't, and whether we had a further discussion after that I do not have any specific recollection. I do not dispute that it would have been important to follow up, but right now I do not have enough facts to assist you with that.

ADV MYBURGH SC: What would you need to check Mr Mahlangu?

MR MAHLANGU: I am saying I would have to look at the correspondence between me and the DG or the – internal

correspondence within the department at that time, whether there was any formal letter written to the President or whether there was any diary entry, requested meeting with the President.

ADV MYBURGH SC: Alright, please speak to the Chairperson.

MR MAHLANGU: Oh sorry. I would have had to verify from objective evidence within the Department whether the Minister did or reported back to us.

10 **ADV MYBURGH SC:** So as things stand now you don't know whether Minister Gigaba did that but your advice was that he certainly should.

MR MAHLANGU: Yes.

ADV MYBURGH SC: Alright, so that is the 18th of January. We know then from the 24th of January to the 1st of February you go to India, so that ...[intervenes]

MR MAHLANGU: I am not sure if the dates are correct but yes I did.

20 **ADV MYBURGH SC:** That is what you asked, you asked for leave, if you go to your bullet point one.

MR MAHLANGU: Yes, I am saying I am not sure if those eventually that was the date but somewhere around those times.

ADV MYBURGH SC: Alright, so on those dates that you gave the Minister your trip was planned from 24 January to

1 February. Now just to follow the chronology, on the 21st of January, that was the first board meeting Transnet where Mr Gama was discussed. I am trying to trace the steps to your next email of the 4th of February.

So we know you are back on about the 1st or 2nd of February, the board meeting on the 21st of January and now I want to get to a meeting that was held the day before your 4 February email, and that was a meeting of the Corporate Governance Nominations Committee. Perhaps I
10 could ask you please to go to file one, Bundle 1.

CHAIRPERSON: That is the one that has got your emails.

MR MAHLANGU: Pardon?

CHAIRPERSON: That is the one that has got your emails, SMA1 and SMA2.

MR MANHLANGU: Oh, thank you Chair.

ADV MYBURGH SC: And – yes I beg your pardon, it is the same file, can you turn all the way to page 855.

MR MAHLANGU: 855.

ADV MYBURGH SC: Now this is a meeting that precedes
20 your discussion and email of the next day. Perhaps in fairness let me take you to page 827 first.

MR MAHLANGU: 827?

ADV MYBURGH SC: 827. So you see there minutes of a meeting, Corporate Governance and Nomination Committee on 3 February 2011, present Mr Mkwanazi etcetera, do you

see that?

MR MAHLANGU: Yes.

ADV MYBURGH SC: And then at 1.4 also Mr Mapoma.

MR MAHLANGU: Yes.

ADV MYBURGH SC: Now the business of this committee Mr Mahlangu on this day was by and large to debate whether or not Mr Gama, his application for the position of Group Chief Executive should be allowed, and whether there should be a deviation from what is known as Clause
10 4.8.4 which says as a general rule if you are dismissed you cannot be re-employed.

So that was the debate and we know that you deal with this in your email of the 4th of February, further to a discussion you had with Mr Mkwanazi.

Now I am referring you now to page 855, also part of the transcript and at 855 at 695 on the left hand side Mr Mkwanazi had asked Mr Mapoma to give his view on Mr Gama's dismissal, issue of settlement etcetera, and this is the passage where he says now advise the Chair to say:

20 "If we at Transnet go to the appeal and oppose the appeal, that is the arbitration, we stand a very good chance of winning that appeal, that was my view at the time. Where I am saying we are not strong Doris, that is the director, is if we have to explain the rationality of why we are settling I do not think

we are on very strong ground on that. That is my view but on the disciplinary process itself and if we go and argue the matter on appeal we stand a very good chance of succeeding. Siya can win, but we can also win as Transnet, we have a very, very good case against him there.”

So it seems then that the discussion that you have with Mr Mkwana on the 4th of February then gives rise to your email, it is in this context, the debate about allowing Mr
10 Gama’s application, correct?

MR MAHLANGU: Yes.

ADV MYBURGH SC: But what is also important for the purposes of your evidence, and we are going to come to it just now, is you see how Mr Mapoma is really dead against settlement.

MR MAHLANGU: Yes.

ADV MYBURGH SC: In fact he says it would be irrational to settle.

MR MAHLANGU: Yes.

20 **ADV MYBURGH SC:** Do you see that? And Mr Mapoma was as forthright when it came to the issue of the payment of Mr Gama’s costs, you might have seen his, listened to his evidence.

MR MAHLANGU: I did.

ADV MYBURGH SC: He was utterly opposed to the

payment of Mr Gama's costs, you would have heard that, correct?

MR MAHLANGU: I saw that.

ADV MYBURGH SC: Let us then go to your email of the next day, the 4th of February. We need to go back please to page 181 of this bundle, and here you say on the 4th of February ...[intervenes]

MR MAHLANGU: The page?

ADV MYBURGH SC: 181, your second email.

10 **MR MAHLANGU:** Yes.

ADV MYBURGH SC: You say:

“Dear Minister

At my meeting with Chair ...”

I assume that is Mr Mkwanazi, is that right?

MR MAHLANGU: Yes.

ADV MYBURGH SC: And your supplementary affidavit says that you would have held that meeting on or about the same day.

MR MAHLANGU: Probably.

20 **ADV MYBURGH SC:** And really what you discussed with him was this issue of Mr Gama and his application for Group Chief Executive, correct?

MR MAHLANGU: That is correct.

ADV MYBURGH SC: And along the way you also discussed with him the issue of a settlement with Mr

Gama?

MR MAHLANGU: That is correct.

ADV MYBURGH SC: Now the two things were intertwined weren't they?

MR MAHLANGU: In my view they were.

ADV MYBURGH SC: Because ...[intervenes]

CHAIRPERSON: They were or they weren't?

MR MAHLANGU: They were.

CHAIRPERSON: They were, alright.

10 **ADV MYBURGH SC:** I want to put to you suggest
 that we take full advantage of it, I therefore request
 leave to undertake this sojourn.”

Is that right?

MR MAHLANGU: That is correct.

ADV MYBURGH SC: And did you then undertake this trip
to India?

MR MAHLANGU: I deal with this Chair in a separate
affidavit that I filed with the Commission.

20 **ADV MYBURGH SC:** And I have read that affidavit, your
 version is that you were invited by Ranej Gupta to attend a
 wedding of one of his family members and that he paid for
 you.

MR MAHLANGU: Chairperson I was asked to prepare to
deal with the Transnet issues and I deal extensively about
my relationship with the members of the Gupta family and I

have not prepared today to deal with that, but to Mr Myburgh's point at – there was no discussion between the members of the Gupta Family and me about Mr Gama, and neither do I think at that time they even knew each other, I don't know, the impression I recall that at that time there was no – he had not asked anything of me, they were not infamous but I would like Chair to deal with it appropriately and to be able to adequately address that.

CHAIRPERSON: Okay, ...[intervenes]

10 **ADV MYBURGH SC:** I don't intend to pursue that any further, of course, I mean the point I just wanted to make really is that because of that this email came to light, because you were preparing the other affidavit.

MR MAHLANGU: That's correct.

ADV MYBURGH SC: The other affidavit asked you to answer to this trip to India and you then produced, I think it was Annexure 17, and it was in the context of preparing that affidavit that you realised you should put this up in this – these proceedings.

20 **MR MAHLANGU:** That is correct, yes Mr Myburgh.

ADV MYBURGH SC: Alright, and you are right, you will in time you may be called as a witness to answer those allegations. Let's get then to the second bullet point.

"I understand that Transnet may be nearing a settlement with Gama. I will obtain the details of

the settlement and brief you accordingly. I suggest that you socialise the President and his key aides [formal and informal] on the proposed settlement. It is intended that forthcoming board should consider and authorise it.”

So here this is contemporaneous, you had a discussing with Mr Mkwazazi, you lead up to this email and that’s what he told you?

MR MAHLANGU: Yes.

10 **ADV MYBURGH SC:** Just so that we understand it, you can’t remember that, that’s your case, but you say well if I wrote it then it must have happened.

MR MAHLANGU: I have tried to explain it after the break Mr Myburgh, at the time when I drafted the affidavit the only recollection of this was this email, but I have been continuously thinking and trying to understand and trying to contextualise these issues and to place them – to try to go back into history, so I would like you to understand it in that regard.

20 **ADV MYBURGH SC:** Alright, now what’s important is when I put this to Mr Mkwazazi he says no he didn’t say this to you because as of the 18th they weren’t nearing a settlement and ultimately in fact said that you made a false report to the Minister.

MR MAHLANGU: I think that Mr Myburgh I watched the

video of Mr Mkwanazi's evidence, I think that was – that concession that he made, he made it under intense questioning and all of that but his view was that I prematurely ...[intervenes]

ADV MYBURGH SC: It wasn't a concession, he said you made a false statement to the Minister, you indeed don't agree with him?

MR MAHLANGU: I don't agree, the facts don't agree.

ADV MYBURGH SC: Ja, well precisely and that was the
10 point I was putting to him so you and I agree with one another, so he must have told you.

CHAIRPERSON: I think the forced part came because it was said if what you were saying was premature – okay I think I asked pertinently, I said when he said it was premature is it because it was true but it should not have been conveyed at that time, it was not the right time to tell the Minister, or was the position that as at that time what you said had happened had not happened, and my recollection is that his response was that what you said
20 had happened had not happened, that is my recollection. Does it – is it consistent with your recollection of what you listened to?

MR MAHLANGU: Chair I wouldn't want to labour on it, what I wrote to the Minister here as you can tell is my understanding.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Thank you. And it probably is just simply a timing issue at worst, you say that I will obtain details of the settlement, in other words the settlement agreement or what did you have in mind of giving to the Minister?

MR MAHLANGU: If you read the two emails I think later on I did talk about loss of benefit ...[indistinct – static on audio].

10 **ADV MYBURGH SC:** Mr Mahlangu what details did you intend to get for the Minister?

MR MAHLANGU: On what basis the - what is the settlement, what is it.

ADV MYBURGH SC: In other words a settlement agreement?

MR MAHLANGU: Yes of the content.

ADV MYBURGH SC: And did you then do that?

MR MAHLANGU: No.

ADV MYBURGH SC: How do you remember that?

20 **MR MAHLANGU:** Because that is significant, that is a significant event.

ADV MYBURGH SC: But so is this email.

MR MAHLANGU: No I am saying the details of it would have been odd, because remember in my next email I seem to have – I seem to know about, if you go to my second

email I said he was informed through his lawyer of an offer to reinstate him with no loss of benefits in the contribution towards his legal costs.

That is probably what I meant, but I have no independent recollection.

ADV MYBURGH SC: So in other words, I think you said earlier that you didn't do this, but it seems that you did do that, you did get details then ...[intervenes]

MR MAHLANGU: Not the agreement, the agreement I saw
10 it for the first time when the Commission gave it to me.

ADV MYBURGH SC: I see. How do you know that you didn't look for the settlement agreement?

MR MAHLANGU: There are certain important incidents, like – I don't like I was telling you about ...[intervenes]

ADV MYBURGH SC: You would describe getting a settlement agreement from Transnet as an important ...[intervenes]

MR MAHLANGU: On the matter relating to Mr Gama.

ADV MYBURGH SC: Just so that we understand one
20 another, your evidence here is you have no independent recollection of this.

MR MAHLANGU: I have said this Chair that when I drafted the affidavits on those two days, these affidavits, that is all I had, but it doesn't mean I have stopped enquiring about the event.

ADV MYBURGH SC: Alright, then you suggest that you socialise the President, just remind me what your answer was to the Chairperson's question about what does that mean?

MR MAHLANGU: By socialise Chair I meant that he must make him aware, because of the importance of the matter, the matter had evoked public interest and in fact there are two things there. The matter was of public interest, and the matter is what the public was interested in at the time.

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10 **CHAIRPERSON:** Before you go over the page Mr Myburgh.

ADV MYBURGH SC: Yes Chairperson?

CHAIRPERSON: Mr Mahlangu your statement in that first bullet point of 18th January 2011, in the second bullet point, your suggestion to the Minister that he socialise the President and his key aides on the proposed settlement suggests to you, and I would like to hear your comment, suggest to me that it is unlikely that there had not been a discussion involving you and the Minister in terms of which
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CHAIRPERSON: Yes.

MR MAHLANGU: Yes, let me leave it at that.

CHAIRPERSON: Ja okay, alright. Mr Myburgh?

ADV MYBURGH SC: Yes thank you. So did Mr Gigaba socialise the President, Gigaba socialise the President and his key aides?

MR MAHLANGU: I don't know Chair.

ADV MYBURGH SC: Did you not follow up with him?

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MR MAHLANGU: I cannot comment on that.

CHAIRPERSON: Well as you said that as special advisor to the Minister you would advise and it would be up to the
10 Minister to take your advice or not to take it, and I think there are a number of examples that you have made in one of your affidavits where you say he did not take your advice, he took the advice of other colleagues of yours or other people in the department. I would have thought that whether he socialised the – whether he went along with your advice that he should socialise the President, whether he went along with that advice or not would have been quite important for you to know, for further advice because maybe if the President wasn't happy or was happy might
20 influence how you advise him going forward.

MR MAHLANGU: Chair in an ideal circumstance yes, but in the political and administrative centres things happen vertically and you have advised and you then saw that the Minister then is aware of your advice, that is your primary issue, so in this instance Chair consistent with the work

that we are doing there I would have to take something else to confirm whether he did or didn't, and whether we had a further discussion after that I do not have any specific recollection. I do not dispute that it would have been important to follow up, but right now I do not have enough facts to assist you with that.

ADV MYBURGH SC: What would you need to check Mr Mahlangu?

MR MAHLANGU: I am saying I would have to look at the
10 correspondence between me and the DG or the – internal correspondence within the department at that time, whether there was any formal letter written to the President or whether there was any diary entry, requested meeting with the President.

ADV MYBURGH SC: Alright, please speak to the Chairperson.

MR MAHLANGU: Oh sorry. I would have had to verify from objective evidence within the Department whether the Minister did or reported back to us.

20 **ADV MYBURGH SC:** So as things stand now you don't know whether Minister Gigaba did that but your advice was that he certainly should.

MR MAHLANGU: Yes.

ADV MYBURGH SC: Alright, so that is the 18th of January. We know then from the 24th of January to the 1st

of February you go to India, so that ...[intervenes]

MR MAHLANGU: I am not sure if the dates are correct but yes I did.

ADV MYBURGH SC: That is what you asked, you asked for leave, if you go to your bullet point one.

MR MAHLANGU: Yes, I am saying I am not sure if those eventually that was the date but somewhere around those times.

ADV MYBURGH SC: Alright, so on those dates that you
10 gave the Minister your trip was planned from 24 January to
1 February. Now just to follow the chronology, on the 21st
of January, that was the first board meeting Transnet where
Mr Gama was discussed. I am trying to trace the steps to
your next email of the 4th of February.

So we know you are back on about the 1st or 2nd of
February, the board meeting on the 21st of January and
now I want to get to a meeting that was held the day before
your 4 February email, and that was a meeting of the
Corporate Governance Nominations Committee. Perhaps I
20 could ask you please to go to file one, Bundle 1.

CHAIRPERSON: That is the one that has got your emails.

MR MAHLANGU: Pardon?

CHAIRPERSON: That is the one that has got your emails,
SMA1 and SMA2.

MR MANHLANGU: Oh, thank you Chair.

ADV MYBURGH SC: And – yes I beg your pardon, it is the same file, can you turn all the way to page 855.

MR MAHLANGU: 855.

ADV MYBURGH SC: Now this is a meeting that precedes your discussion and email of the next day. Perhaps in fairness let me take you to page 827 first.

MR MAHLANGU: 827?

ADV MYBURGH SC: 827. So you see there minutes of a meeting, Corporate Governance and Nomination Committee
10 on 3 February 2011, present Mr Mkwanazi etcetera, do you see that?

MR MAHLANGU: Yes.

ADV MYBURGH SC: And then at 1.4 also Mr Mapoma.

MR MAHLANGU: Yes.

ADV MYBURGH SC: Now the business of this committee Mr Mahlangu on this day was by and large to debate whether or not Mr Gama, his application for the position of Group Chief Executive should be allowed, and whether there should be a deviation from what is known as Clause
20 4.8.4 which says as a general rule if you are dismissed you cannot be re-employed.

So that was the debate and we know that you deal with this in your email of the 4th of February, further to a discussion you had with Mr Mkwanazi.

Now I am referring you now to page 855, also part

of the transcript and at 855 at 695 on the left hand side Mr Mkwanazi had asked Mr Mapoma to give his view on Mr Gama's dismissal, issue of settlement etcetera, and this is the passage where he says now advise the Chair to say:

10 "If we at Transnet go to the appeal and oppose the appeal, that is the arbitration, we stand a very good chance of winning that appeal, that was my view at the time. Where I am saying we are not strong Doris, that is the director, is if we have to explain the rationality of why we are settling I do not think we are on very strong ground on that. That is my view but on the disciplinary process itself and if we go and argue the matter on appeal we stand a very good chance of succeeding. Siya can win, but we can also win as Transnet, we have a very, very good case against him there."

20 So it seems then that the discussion that you have with Mr Mkwanazi on the 4th of February then gives rise to your email, it is in this context, the debate about allowing Mr Gama's application, correct?

MR MAHLANGU: Yes.

ADV MYBURGH SC: But what is also important for the purposes of your evidence, and we are going to come to it just now, is you see how Mr Mapoma is really dead against settlement.

MR MAHLANGU: Yes.

ADV MYBURGH SC: In fact he says it would be irrational to settle.

MR MAHLANGU: Yes.

ADV MYBURGH SC: Do you see that? And Mr Mapona was as forthright when it came to the issue of the payment of Mr Gama's costs, you might have seen his, listened to his evidence.

MR MAHLANGU: I did.

10 **ADV MYBURGH SC:** He was utterly opposed to the payment of Mr Gama's costs, you would have heard that, correct?

MR MAHLANGU: I saw that.

ADV MYBURGH SC: Let us then go to your email of the next day, the 4th of February. We need to go back please to page 181 of this bundle, and here you say on the 4th of February ...[intervenes]

MR MAHLANGU: The page?

ADV MYBURGH SC: 181, your second email.

20 **MR MAHLANGU:** Yes.

ADV MYBURGH SC: You say:

“Dear Minister

At my meeting with Chair ...”

I assume that is Mr Mkwanazi, is that right?

MR MAHLANGU: Yes.

ADV MYBURGH SC: And your supplementary affidavit says that you would have held that meeting on or about the same day.

MR MAHLANGU: Probably.

ADV MYBURGH SC: And really what you discussed with him was this issue of Mr Gama and his application for Group Chief Executive, correct?

MR MAHLANGU: That is correct.

ADV MYBURGH SC: And along the way you also
10 discussed with him the issue of a settlement with Mr Gama?

MR MAHLANGU: That is correct.

ADV MYBURGH SC: Now the two things were intertwined weren't they?

MR MAHLANGU: In my view they were.

ADV MYBURGH SC: Because ...[intervenes]

CHAIRPERSON: They were or they weren't?

MR MAHLANGU: They were.

CHAIRPERSON: They were, alright.

20 **ADV MYBURGH SC:** I want to put to you ...[intervenes]

MR MHLANGU: You cannot.

ADV MYBURGH SC: You cannot?

MR MHLANGU: It is not something we do.

CHAIRPERSON: Well, can you not pressure your elder respectfully?

MR MHLANGU: But you persuade, chair.

ADV MYBURGH SC: Yes.

MR MHLANGU: And if not, you do not. So I... what I am trying to say Chair. I did not.

CHAIRPERSON: H'm.

MR MHLANGU: I did not. And the way... Chair, I wish I could play out how we used to live between 1999 and 2019-ish.

CHAIRPERSON: H'm.

10 **MR MHLANGU**: Thereabout and that. This was a...

CHAIRPERSON: H'm.

MR MHLANGU: And why he denies that he was at those braais with us, I do not know Chair.

CHAIRPERSON: H'm.

ADV MYBURGH SC: So Mr Mhlangu, then I must also put to you. We have dealt with the motive and reason. Then you say:

“Well, I would have raised these issues with Mr Mkwanazi.”

20 But that is the point. You see, what I want to put to you. An analyses of the evidence may very well reflect in this case. But Mr Mkwanazi was only too keen to do this deal and give Mr Gama whatever he wanted.

The person that was opposed to this, certainly in relation to costs, was Mr Mapoma. So it did not... it would not help

you to phone Mr Mkwanazi. Mr Mkwanazi was not the problem.

MR MHLANGU: Chair, I think what I am saying is that Mr Mkwanazi did not tell me that Mr Mapoma had certain concerns about. That I do not know. I have left, like I said.

CHAIRPERSON: Ja, your reason ...[intervenes]

MR MHLANGU: My view.

CHAIRPERSON: Mr Mkwanazi did not say he called you about that. He also said he did not recall whether
10 Mr Mapoma had told him that you had called him and pressurising him.

ADV MYBURGH SC: And then this paragraph where he say:

Well, I do not refer to a sitting president who is Number 1.”

I mean, you cannot suggest that is persuasive.

MR MHLANGU: With respect. It depends from which political tradition you emerge from.

ADV MYBURGH SC: Yes.

MR MHLANGU: Some called them chief in a particular area,
20 during the Mbeki area. With me, it has always been JZ or TM or those... it is in your daily grind.

ADV MYBURGH SC: Did you phone this man or not?

MR MHLANGU: I do not know if I phoned the man as in and ...[intervenes]

ADV MYBURGH SC: But ...[intervenes]

MR MHLANGU: ...and as a matter of a physical phone call Chair. Because I knew the gentleman well. I cannot deny that I placed a physical call but that call had been predicated on my social relations with him.

ADV MYBURGH SC: No ...[intervenes]

MR MHLANGU: I did not call him Chair to pressure him.

ADV MYBURGH SC: This is a very important evidence that you give now. I mean, do I understand you know to be saying that you accept that you phoned him roundabout this
10 time?

MR MHLANGU: I do not accept that. I am saying ...[intervenes]

ADV MYBURGH SC: What were you saying?

MR MHLANGU: I am saying. I cannot recall that I called him. I do not deny that I may have placed a physical call...[intervenes]

ADV MYBURGH SC: And why would you have ...[intervenes]

MR MHLANGU: ...in the engineering ...[intervenes]

20 **ADV MYBURGH SC:** Why would you have done that around this time?

MR MHLANGU: Because I know him.

ADV MYBURGH SC: Well, yes that is the point.

MR MHLANGU: Because I know him. Not because I intended to pressure him, Mr Myburgh.

ADV MYBURGH SC: Mr Mhlangu, let us just deal with this because of course this is not something you deal with in your affidavit.

CHAIRPERSON: I am sorry. So your point is. Is your point you may have called him but the purpose would have been different?

MR MHLANGU: That is correct Chair.

CHAIRPERSON: If you called him, you would have wanted to talk about something else?

10 **MR MHLANGU:** We were going... we either spoke... that is why I am saying. Because I knew him, it is difficult for me to deny that there could have been a phone call during that period.

CHAIRPERSON: H'm.

MR MHLANGU: Particularly, Chair. He was in the space that I knew... that he knew better than I was and I was new at the time.

CHAIRPERSON: H'm.

20 **MR MHLANGU:** It... but I would not pick up the call for the purposes of pressurising him.

CHAIRPERSON: Could you have picked up a call to persuade him?

MR MHLANGU: No, I was not. Like I said, Chair.

CHAIRPERSON: H'm?

MR MHLANGU: My view of the matter was clinical. This

thing could have been dealt with. There was no urgency for me.

CHAIRPERSON: H'm. H'm.

ADV MYBURGH SC: So you ...[intervenes]

CHAIRPERSON: Okay Mr Myburgh.

ADV MYBURGH SC: So you accept then that you may, during the course of February, have placed a telephonic call to Mr Mapoma.

MR MHLANGU: That is correct.

10 **ADV MYBURGH SC**: Why did you not say that in your affidavit?

MR MHLANGU: The critical thing I dealt with in my affidavit was I understood, and this is my understanding, was that I pressured him.

ADV MYBURGH SC: So can we then deal with, assuming you had made this call because Mr Mapoma says there was one roundabout this time in February. What is it that you would have discussed with him?

MR MHLANGU: I do not know Mr Myburgh. I do not know.

20 **ADV MYBURGH SC**: You do not know?

MR MHLANGU: What...[intervenes]

ADV MYBURGH SC: Can you not even think what you might have discussed with him?

MR MHLANGU: Mr Myburgh, I do not know. What I am saying to you is that I knew the man. There could have been

many things we could have spoken about. I could have sought advice about things happening at Transnet.

I could have sought things. But I did not call him to pressurise him because pressurising him is a specific event.

ADV MYBURGH SC: So what typically... because I did not know these facts before that you seemingly would regularly speak to Mr Mapoma on the phone. What typically then would you discuss with him?

MR MHLANGU: Mr Myburgh, I am unable to recall the
10 issues but like I said to you. We are in the same social circle. He was at Transnet. I am new in the SOE environment. I could have asked for advice.

I could have been discussing the happenings at the time, right. But I would not have pressured him.

ADV MYBURGH SC: You see ...[intervenes]

MR MHLANGU: That is my evidence, is that I did not pressure Mr Mapoma.

ADV MYBURGH SC: You see Mr Mhlangu, you really now add something to my list on the probabilities because you did
20 phone him. You do not deny that there could have been a discussion.

MR MHLANGU: I did not say I phoned him. I said because of the nature of my relation with Mr Mapoma ...[intervenes]

ADV MYBURGH SC: Yes.

MR MHLANGU: ...it is possible that I may have phoned him,

Chair.

ADV MYBURGH SC: Yes, but what you are saying is, that insofar as Mr Mapoma says, one, there was a telephone call. I will not... I cannot dispute that. Because I might ordinarily phone him.

MR MHLANGU: That is correct.

ADV MYBURGH SC: Ja. And it is really important what you say because you were new on the block, right? Here was someone inside Transnet that you knew well, correct?

10 **MR MHLANGU:** Yes.

ADV MYBURGH SC: Yes. Well, I think I have already made my points to you. I just want to ask you one more. What is it that you would typically speak to Mr Mapoma about when you placed these calls to him?

MR MHLANGU: Chair, I have answered this question.

ADV MYBURGH SC: What is the answer?

CHAIRPERSON: H'm. Maybe, let me put it this way. You did say you had regular interactions with Mr Mkwanazi. Is that right?

20 **MR MHLANGU:** That is correct.

CHAIRPERSON: Yes. Did you also have regular interactions with Mr Mapoma?

MR MHLANGU: Not to my recollection Chair. It is not regular but it is not unusual for a call to have happened.

CHAIRPERSON: Yes.

MR MHLANGU: Yes.

CHAIRPERSON: Now, whenever you had interactions with him by way of phone calls, what type of issues would you have discussed with him during that time, generally speaking?

MR MHLANGU: Chair, and I am just saying this, trying to reconstruct. I think that I would have sought certain insights on things that would have either been happening at Transnet or in the SOE environment in general.

10 And that probably would then dovetailed to whatever other social discussions there could have been at the time.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Yes. Well, I mean, then you... you make really the very point I am driving at. It would have been insights. Here the common issue between you and Mr Mapoma was Mr Gama. Both of you were dealing with that, correct?

MR MHLANGU: That is correct.

ADV MYBURGH SC: Yes. All the more reason then why
20 you would have had the discussion that he describes.

MR MHLANGU: That is impossible. It is impossible, Chair.

ADV MYBURGH SC: Then I ...[intervenes]

MR MHLANGU: I stand here today pained to try to remember. To try to say why. I have spoken to some of the people I knew who also know him who was senior and I was

like, this for me is bizarre. And Mr Myburgh, it really pains me. So I do not know.

ADV MYBURGH SC: Alright. Well ...[intervenes]

CHAIRPERSON: We are at eight minutes past ...[intervenes]

ADV MYBURGH SC: I have got only one more question.

CHAIRPERSON: Oh, okay alright.

ADV MYBURGH SC: Chairperson, if I may. I mean, it might lead to one or two others but it will not ...[intervenes]

10 **CHAIRPERSON:** Yes. No, no. That is fine. I just wanted to have an idea that... I wanted us to have... to go on the same page.

ADV MYBURGH SC: Certainly.

CHAIRPERSON: I mean, we... for purposes of finishing. I do not mind if we go up to half-past one if everybody is fine with that.

ADV MYBURGH SC: Fine.

CHAIRPERSON: Rather than adjourn for lunch and come back.

20 **ADV MYBURGH SC:** Yes, look but ...[intervenes]

CHAIRPERSON: Would that be fine with you?

MR MHLANGU: That is fine with me Chair.

CHAIRPERSON: Okay alright.

ADV MYBURGH SC: So what I then want to ask you and I mean I suppose there is a shortcut way of dealing with it.

Did you listen to the evidence of Mr Mkwanazi?

MR MHLANGU: I listened to the evidence of Mr Mkwanazi. Yes, on Monday. Is that right?

ADV MYBURGH SC: And I am not... I am just going to ask you this and you can comment if you want to comment. But certainly on an analyses of the evidence that was led by Mr Mkwanazi.

It is certainly arguable that the only rational basis for the reinstatement of Mr Gama on the terms that he was
10 reinstated is that there must have been an instruction, a political instruction because otherwise, it makes absolutely no sense.

MR MHLANGU: Chair, I cannot comment on that.

ADV MYBURGH SC: Because that is ...[intervenes]

CHAIRPERSON: Well, maybe one can ask this. And maybe your answer that you cannot comment includes this but I just want to make sure. You have had a chance to look at that settlement, the terms of that settlement agreement, have you not?

20 **MR MHLANGU**: I have Chair.

CHAIRPERSON: Yes. I asked Mr Mkwanazi when he gave evidence here what he would say if somebody said it was indefensible. The reinstatement of Mr Gama was indefensible in the light of everything that he said and if he considered that it was indefensible.

Would you share that or is that something you prefer not to comment on?

MR MHLANGU: I will leave that to the Board of Transnet, Chair.

CHAIRPERSON: Yes. Okay alright. You see... okay, maybe let me allow Mr Myburgh to finish his questions.

ADV MYBURGH SC: That is really the only question that I had.

CHAIRPERSON: Yes. Look, you see Mr Mhlangu, when one
10 looks at that settlement agreement and I would have expected you as an experienced lawyer to have a view about whether this is, on the face of it.

I mean, you might not know all the facts but on the face of it, whether it seems... it does not seem very strange.

But when you look at it, you say to yourself but why would the Board of Transnet conclude a settlement agreement on these terms?

Particularly when you have read the judgment and court of ruling of the chairperson of the disciplinary inquiry. And of
20 course, there is also a report or opinion by Mr Todd from Bowman Gilfillan who was Transnet's attorney in regard to the Gama matter until his mandate was terminated sometime, I think, in January.

And he and Transnet... the board took the matter to Deneys Reitz. One of the things they do is, they undertake

to pay Mr Gama's 75% of Mr Gama's costs in relation to a high court application that he had brought before his disciplinary inquiry where he sought to interdict the disciplinary inquiry and he lost.

And the high court ordered him to pay Transnet's costs. Now that was a matter that had been finalised. He applied for leave to appeal. That was refused. That matter was finalised.

The high court had ordered costs in favour of Transnet.
10 When they settle the dismissal matter, they say instead of enforcing the high court costs order in their favour against Mr Gama, they instruct Mr Todd who had gone a long way to try and recover those costs. That is about R 426 000,00. They instruct him to stop that.

And instead, they say: Mr Gama, we will pay 75% of your costs. Now I do not know about you but throughout my experience [laughing] in law, I have never heard of anything like that Of a party who has been ordered by a court to pay my costs.

20 I say: No, do not worry. I will pay 75% of your costs. It is something that is unthinkable. And then they say he must... they give him a final written warning. But they say the final written warning will begin to have started running from the day he was dismissed for six months and six months ended in December 2010.

They are signing the settlement agreement in February 2011. So it is ineffective. You say: What were they thinking? How can you give a written warning that will not be applicable when the person comes back?

Then they say: Okay in relation to the unfair dismissal claim, we will also pay 75% of Mr Gama's costs.

Now, I do not know how much labour matters you know but Mr Myburgh here and Mr Todd, you know, deal a lot with labour matters.

10 And labour matters, you know, in the Bargaining Council, CCMA and Labour Court, it is not easy for the losing party to be ordered to pay costs for the winning party.

It is something very rare. And here, this is what the Transnet Board undertook to do in circumstances where Mr Gama had been given a very fair disciplinary process.

In circumstances where he had been found guilty of three very serious acts of misconduct.

20 In circumstances where, at that time, the board knew that he accepted that he had been properly found guilty of those. He was no longer disputing that.

Then you ask yourself the question: Under what circumstances would a board have ever thought they were at risk of being ordered by the Bargaining Council to pay 100% of his costs because that is the only thinking one can think of.

To say: Well, maybe they thought well let us offer to pay 75% so that... because we are at risk of being ordered to pay 100%. You do not understand all of those things.

That is apart from other things. Those are just some of the things. But you might still... you might not be able to say anything.

MR MHLANGU: Look Chair, I would only express a view like yours.

CHAIRPERSON: Yes.

10 **MR MHLANGU**: Because I do not know ...[intervenes]

CHAIRPERSON: Ja.

MR MHLANGU: ...what the board ...[intervenes]

CHAIRPERSON: Yes.

MR MHLANGU: Yes.

CHAIRPERSON: Yes, yes, yes. Yes, so... but the point I wanted to make is, that when you have a settlement agreement like that, you look for a reason why the employer would settle on those terms which are very much in favour of the employee and against the employer.

20 And you look at the merits of the case, you will find that the employer had a very strong case. So it cannot be... so you say it does not look like it can be the merits of the case that drove them to agree to these terms. So what is it? You start looking, okay?

And then of course, Mr Mkwanazi says at the first

meeting I had with Minister Gigaba where he offered me the position of Chair of the board which I subsequently accepted.

One of the issues he raised upfront was the issue of Mr Gama's dismissal and Mr Mkwanazi said Minister Gigaba expressed the view that Mr Gigaba's(sic) dismissal had been unfair. And he instructed him and the board to review the matter. That is what happened.

And then of course, Mr Mapoma. Here is the evidence that he gave including that you called him and pressured and
10 pressured him.

And then in the contexts of all of this, one has to go back to the evidence of Ms Barbara Hogan which Mr Myburgh applied earlier on. Ms Barbara Hogan said the then President, Mr Zuma when she recommended...

She told him that the board had recommended Mr Sipho Maseko for the position of Group CEO for Transnet, responded by saying: He had only one choice and his choice for that position was Mr Gama.

Mr Zuma has denied having said that. But in the end, if
20 the finding were to be that Ms Hogan's evidence is true then one would then look at what happened after. And one looks at this kind of mysterious reinstatement of Mr Gama.

And actually, about, within three years after that, after he has been reinstated to this position, he actually becomes Group CEO of Transnet.

So one cannot divorce a consideration of the issues from all of this. So I thought I would just mention that to you. To say, you know, there are all these aspects that have to be looked into.

MR MHLANGU: I agree, Chair.

CHAIRPERSON: H'm.

MR MHLANGU: Chair, I think that... you have asked that question about. For me, as you were going through it, my question was.

10 In a settlement you want to know what the other party gave and what you are buying. And those are determinations which I think were made by the board.

So I am unable... I am also reading it clinically. From a lawyers' perspective, it is a bit curious. But I do not know if there were commercial considerations which must be brought before you by the board.

And I want... and the reason I do not want to comment deeply on it is because the board at the time had eminent persons in it with very serious experience and running big
20 corporates including listed companies.

So that I why I would.. I want to defer that to there.

CHAIRPERSON: Yes.

MR MHLANGU: But insofar as my part is concerned Chair. I have said what I have said and I think Chair, I cannot take it further.

CHAIRPERSON: Ja.

MR MHLANGU: Other than the fact that I was in no... I was not in an auto modem(?).

CHAIRPERSON: H'm.

MR MHLANGU: I exercised my judgment as I saw it. I gave advice and when necessary, I would just let the system work.

CHAIRPERSON: Ja. Okay. No, thank you.

ADV MYBURGH SC: We have no further questions. Thank you.

10 **CHAIRPERSON:** Thank you. Thank you.

MR MHLANGU: Thank you, Mr Myburgh. Thank you.

ADV MYBURGH SC: Thank you very much Mr Mhlangu for coming to assist the Commission. I think probably you would still come back because of the other matters but thank you very much for coming to assist the Commission.

MR MHLANGU: Thank you Chair and thanks Mr Myburgh.

CHAIRPERSON: You are excused. So we will adjourn for the day.

ADV MYBURGH SC: Thank you, Chairperson.

20 **CHAIRPERSON:** And just for the public, next week the Commission will hear evidence relating to Denel. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 26 OCTOBER 2020