

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

22 NOVEMBER 2018

DAY 28

20

PROCEEDINGS HELD ON 22 NOVEMBER 2018

CHAIRPERSON: Good morning Mr Maleka, good morning everybody. Good morning Mr Fuzile.

ADV VINCENT MALEKA SC: Good morning Chairperson.

MINISTER LUGISA FUZILE: Good morning Chair.

CHAIRPERSON: Thank you. Are we not starting with the application that Ms Norman sought to move yesterday?

ADV VINCENT MALEKA SC: Yes. Ms Norman is not here.

CHAIRPERSON: Oh thank you.

10 **ADV VINCENT MALEKA SC:** But Mr Mokoena would be able to deal with the applications.

CHAIRPERSON: Okay, shall we start with it?

ADV VINCENT MALEKA SC: Oh he tells me that he is not ready. Yes I hope it is not a poison pass.

CHAIRPERSON: Okay alright when should we deal with it then?

ADV VINCENT MALEKA SC: Chair should we deal with them when Ms Norman returns?

CHAIRPERSON: Okay.

20 **ADV VINCENT MALEKA SC:** She is coming around 12:00, I am told. There is a pressing matter that she had to attend to.

CHAIRPERSON: So the brief is with Mr Mokoena now, but it will go back or what?

ADV VINCENT MALEKA SC: Chair may I ask that we proceed with the evidence and when Ms Norman comes back she should take the punishment she deserves for not been here on time to deal with that application?

CHAIRPERSON: Well let us – I think, you and I let us continue with the evidence.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Let us leave the head of the legal team to sort out this issue.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: As to when this application will be heard and whether it will be moved by Mr Mokoena or by Ms Norman.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Let us get out of it for now.

ADV VINCENT MALEKA SC: Thank you Chair.

CHAIRPERSON: Sorry. Mr Pretorius.

- 10 **ADV PAUL PRETORIUS SC:** Sorry just so that neither Mr Mokoena nor Mr Maleka are visited with any – a probation on your part for the present state of affairs. I received a telephone call from Ms Norman this morning who said that she would not be here today, she is attending a function in Pretoria, but would be back as soon as that function was over. So we were visited as a legal team with a *fait accompli* in that regard and we apologise for any inconvenience.

CHAIRPERSON: Ja the problem is that I said yesterday we would deal with this application this morning, that is what I said and if she was not going to be here, she should have made sure there is somebody who is ready with it.

ADV PAUL PRETORIUS SC: Yes.

- 20 **CHAIRPERSON:** Or to ask that it be stood down or something.

ADV PAUL PRETORIUS SC: Yes she did suggest that the application be dealt with by others, but Chair a notice is probably required before the application can be given justice.

CHAIRPERSON: Ja.

ADV PAUL PRETORIUS SC: So that the papers can be got through and preparation,

the notice made for the address.

CHAIRPERSON: I will put it aside for now and I assume somebody will talk to me in due course as to when it should be dealt with.

ADV PAUL PRETORIUS SC: I will deal with it in a shortage moment.

CHAIRPERSON: Ja thank you. Okay Mr Maleka.

ADV VINCENT MALEKA SC: Thank you very much Chairperson. Ms Fuzile yesterday we ended up on the events of the 9th December and we are going to resume with the events of the 10th December. You begin by describing those events from paragraph 20 on page 58 of your statement which is in EXHIBIT P. Do you still have it before you?

10 **MINISTER LUGISA FUZILE:** I must confess I do not have it and I did not take it home, I left it here.

ADV VINCENT MALEKA SC: Yes. It must be in one of those bundles. I will ask my colleagues to ...[intervenes]

CHAIRPERSON: Oh.

ADV VINCENT MALEKA SC: It is not hard for me to – if it is here I will find it. I think it was P1 or ...[intervenes]

MINISTER LUGISA FUZILE: "P".

ADV VINCENT MALEKA SC: Yes.

20 **CHAIRPERSON:** Well you may as well Mr Fuzile bring the others closer in case they are needed in the course of your evidence. I think somebody wanted to – the place to look, organised. Thank you.

ADV VINCENT MALEKA SC: Can you just flip over to page 58?

MINISTER LUGISA FUZILE: I am there Chairman.

ADV VINCENT MALEKA SC: You indicate in paragraph 20 that on that morning you went to work fairly early. The first point you indicate when you arrived at work that

morning.

CHAIRPERSON: That is the 10th December?

ADV VINCENT MALEKA SC: The 10th December indeed. Chair he describes the events of the 10th from paragraph 12 page 58. There you say that the first notable thing that worried you was the pounding, as you put it, the Rand was taking as against other foreign currencies, especially the US Dollar. Do you confirm that?

MINISTER LUGISA FUZILE: Yes Mr Chairman I do.

ADV VINCENT MALEKA SC: Why was that of concern to you immediately on the morning of the 10th December?

- 10 **MINISTER LUGISA FUZILE:** It was a concern because I was aware then as I am now that when the currency takes a knock, given the fact that Government raises money. I think at the time we were borrowing anything between R9 million and R11 million a week in different instruments on different days of the week. I also was aware of course that there are other entities in the broader economy of South Africa that do the same at different intervals and magnitudes relative to Government.

- Of course on any given day, the ability to get that money depends on the perception of risk by investors or lenders. If they think that the currency is going fall precipitously over a given period of time, then it stands to reason for them to expect that a Rand – a Dollar that they invest in SA, today would be worth less a week later if
- 20 the currency has weaken. Therefore they would hesitate to engage in an action that destroys value like that.

Small movements of the currency do not normally bother investors, but sharp movements do concern them. This is applicable, not only to bond investors by the way, it is also applicable to investors in equities and of course in Greenfields Projects. Because whilst – in once sense it makes it cheap to invest in SA, but the concern an

investor has is, when I repatriate that investment out of South Africa, will it be worth more or less and if they think that it will be worth less, they may not be prepared to take that risk.

ADV VINCENT MALEKA SC: Alright. So it would be fair to sum up that your concern regarding the poor performance of our currency at that time related to the investor confidence?

MINISTER LUGISA FUZILE: Yes.

10 **ADV VINCENT MALEKA SC:** In our currency and also the burdensome effect of it our liability that is denominated in foreign currency, when we borrow in the financial markets?

MINISTER LUGISA FUZILE: That is very true Mr Chairman.

ADV VINCENT MALEKA SC: Alright. Now Minister Gordhan gave the Chairperson some numbers relating to the performance of our currency at that time. Chair you would recall that he did so with reference to EXHIBIT N1 especially on page 30 in paragraph 79 of his statement. Also with reference to EXHIBIT N2 on page 140, which are the figures that he ultimately sourced from Bloomberg Indices.

Mr Fuzile, I would like you to confirm, if you could please those numbers as the precise indicators of the Rand's performance during the reference period that Mr Gordhan talked about. There is a bundle before you which must be marked N2.

20 **MINISTER LUGISA FUZILE:** Yes I have it.

ADV VINCENT MALEKA SC: Can you go to page 140 of that bundle?

MINISTER LUGISA FUZILE: I am starting at – I have got the same N2 as you. Because my N2 started at 425.

ADV VINCENT MALEKA SC: No that is N1 "B" that you have, there should be a file which is N2. Can I ask one of my colleagues to assist you?

CHAIRPERSON: Well we will need him to know which bundle is what for purposes, in case later on he is referred to another bundle.

ADV VINCENT MALEKA SC: Indeed.

CHAIRPERSON: So we will need him to know which bundle is what and where it is so that he can find it with ease.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Maybe for this purpose, I should just take 2 minutes, 3 minutes adjournment and let somebody check that he has got everything that he needs to have.

ADV VINCENT MALEKA SC: Yes. Chair I would be grateful if we could do that.

10 **CHAIRPERSON:** Yes.

ADV VINCENT MALEKA SC: Can we also use that moment, or that opportunity to indicate to you that there are additional documents that we requested, the legal team of Mr Fuzile to bring here. Those would be a copy of the Cabinet Special Dispensation that was made pursuant to Section 12A of the Public Service Act, relating to the engagement of Ministerial Advisors.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: And also a memo which has to be produced by the Minister to request and justify the appointment of advisors.

CHAIRPERSON: Yes.

20 **ADV VINCENT MALEKA SC:** And especially of the contract.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: So we will place those documents appropriately indexed in your file and also in the files of Mr Fuzile.

CHAIRPERSON: That is fine, that is fine no thank you. Let us make it 5 minutes, so we will take a 5 minutes adjournment.

ADV VINCENT MALEKA SC: Thank you Chair.

COMMISSION ADJOURNS

COMMISSION RESUMES

CHAIRPERSON: Yes Mr Maleka.

ADV VINCENT MALEKA SC: Chair thank you very much for the indulgence. We are now at page 140 of EXHIBIT N2 and we have now located it for Mr Fuzile.

CHAIRPERSON: You said N2, is that the supplementary?

ADV VINCENT MALEKA SC: The supplementary bundle of Mr Gordhan.

CHAIRPERSON: The writing on its spine is smaller.

10 **ADV VINCENT MALEKA SC:** Yes.

CHAIRPERSON: Compared to the writing on the spines of the other lever-arch files.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: So to identify it is quite a problem if you are looking for "N".

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: So I think during the tea break or lunch break if somebody can put a bigger – something with a bigger writing.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: So I can see it from a distance. The others are not so bad I think it is bigger.

20 **ADV VINCENT MALEKA SC:** Yes.

CHAIRPERSON: Okay thank you.

ADV VINCENT MALEKA SC: Thank you Chair we will attend to that during the tea adjournment.

CHAIRPERSON: Yes and you said it is page?

ADV VINCENT MALEKA SC: 140.

CHAIRPERSON: 140?

ADV VINCENT MALEKA SC: Yes Chair.

CHAIRPERSON: Right. Oh ja thank you.

ADV VINCENT MALEKA SC: Are you there Mr Fuzile?

MINISTER LUGISA FUZILE: Yes I am Mr Chairperson.

ADV VINCENT MALEKA SC: I am not going to take you through the details, I just want you to confirm – or let me say this. Mr Gordhan has gone through the details and has confirmed them under oath. So I am not going to go through that repetitive exercise. But I want you to confirm is that those numbers reflect the performance of the
10 Rand as against the Dollar from the 9th December up to Friday the 11th December 2015, do you see that?

MINISTER LUGISA FUZILE: Yes they definitely do.

ADV VINCENT MALEKA SC: And the opening was R14.59 as against the Dollar on the 9th December 2015 and the closing was R15.90 as against the Dollar on the 11th December 2015. So that is the two days of the trading period.

My calculation is that for that two short days, the Rand lost approximately \$1.31 as against the Dollar.

MINISTER LUGISA FUZILE: Yes R1.31 yes.

ADV VINCENT MALEKA SC: Yes and what is the significance of that movement in
20 that amount?

MINISTER LUGISA FUZILE: The significance of that, if you were to just consider an individual who was in the process of buying something from a place that uses the Dollar for instance and most countries by the way you go via the Dollar when you enter into those international transactions. It means that within that very short space of time, the person would have had to pay for every Dollar that they bought with the Rand as much

as that difference between R14.59 and R15.90 more. Now I might look like it is a small amount, perhaps it is R1.39, but if you are engaging in a transaction of a billion or multiples of billions of Rands, then all of a sudden the picture becomes very different.

ADV VINCENT MALEKA SC: Yes.

MINISTER LUGISA FUZILE: It is not inconceivable, for an example that there may be people, you know, those who trade in commodities who would have had to buy, or pay for oil or something of that sort for those amounts. Of course there are other things that people do to protect themselves against that. But if you just take the spot rate.

ADV VINCENT MALEKA SC: Yes.

10 **MINISTER LUGISA FUZILE:** That is the implications.

ADV VINCENT MALEKA SC: Yes. I mean, for our part is, you have indicated that for a week you used to borrow about \$9 billion?

MR O'DONNELL: Rands.

ADV VINCENT MALEKA SC: Sorry R9 billion. So for that week you would be paying R1.31 more because of the performance of the currency, as I had it.

MINISTER LUGISA FUZILE: The arithmetic would work differently Mr Chair. But let us just apply it differently that is as they call it. If you for instance take a billion Dollar worth of our debt.

ADV VINCENT MALEKA SC: Yes.

20 **MINISTER LUGISA FUZILE:** Right, just without doing anything. If you had to revalue it between those two days, that billion Dollar debt would now have had to increase by the multiple of the difference between those two amounts.

ADV VINCENT MALEKA SC: Yes.

MINISTER LUGISA FUZILE: Am I making sense? So in other words, when you convert it to Rands, it is no longer now the billion Dollar times 14.59.

ADV VINCENT MALEKA SC: Yes.

MINISTER LUGISA FUZILE: It is the billion Rand times 15.90. You have not borrowed more, but all of a sudden the amount of debt that you owe ...[intervenes]

ADV VINCENT MALEKA SC: Increases.

MINISTER LUGISA FUZILE: Has increased.

ADV VINCENT MALEKA SC: Okay thank you for that clarification. Now in paragraph 21 you talk about the meeting you had with Minister Nene at his office and yesterday I asked you some questions. I am going to skip it unless you want to comment on it?

10 **MINISTER LUGISA FUZILE:** No that is fine.

ADV VINCENT MALEKA SC: Then we go to paragraph 23, I am going to skip paragraph 22. Unless you want to confirm it?

MINISTER LUGISA FUZILE: It is – it will become important just for reflection, because I can now recall that the first thing I did as contact with Mr van Rooyen was to send him an sms.

ADV VINCENT MALEKA SC: Yes.

MINISTER LUGISA FUZILE: Exactly at what time of the evening of his announcement as the new Minister of Finance I cannot remember. I congratulated him and then in 22 as I say, when that call took place, I congratulated him again in a way I reached out,
20 you could say demonstrated acceptance of the fact that he had being made a Minister.

ADV VINCENT MALEKA SC: Yes.

MINISTER LUGISA FUZILE: I did not have to choose my bosses. Of course I could choose jobs. So there I was reaching out.

ADV VINCENT MALEKA SC: Yes.

MINISTER LUGISA FUZILE: And it will become important later on just this point.

ADV VINCENT MALEKA SC: Yes. By the time you sent the sms and by the time called him on the morning of the 10th December, he was known to you, he was no stranger to you, he was someone that you knew?

MINISTER LUGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: You confirm in fact in paragraph 24 that you had worked with him and appeared before him in Parliament, because he was a member of the Parliamentary Finance Committee, correct?

MINISTER LUGISA FUZILE: That is correct ja.

ADV VINCENT MALEKA SC: So he was no stranger to you, someone that you knew
10 and had worked with.

MINISTER LUGISA FUZILE: No he was no stranger to me. I had his telephone number which is why I could send him a sms, I did not have to look for it and he had my telephone number, because we had had exchanges previously on matters that in fact he himself needed which related to his work.

ADV VINCENT MALEKA SC: Yes.

MINISTER LUGISA FUZILE: Proper staff.

ADV VINCENT MALEKA SC: Yes. In paragraph 22.1 and 22.2 you explain why you called you. Can I ask you to elaborate on those considerations?

MINISTER LUGISA FUZILE: Yes I did that. If I may Mr Chairman I am on 22.1 as
20 Mr Maleka is leading me on page 59 where my statement is. I said, the first thing that I had in mind was to ask him to try and get to the Department earlier that morning, because I was aware from the previous night that Minister Nene was going to be in the Department early that morning, he would be packing his belongings to clear the office, so that his successor could occupy it. Of course, because it was not the first time that we had a change of Minister. Mr Chairman might recall, we had the change from

Minister Manuel to Minister Gordhan after the elections of 2009 and we did a very nice similar change from a Minister who had been with the Department for 13 years to the new one who was coming. Who, by the way, was no stranger to us, because he had been the Commissioner of SARS. We could have said, there is no need for introductions because everyone knew him. But we just thought, because of the – people tend to develop real chemistry with their bosses, it would be a good thing also to just have this thing of showing that the one Minister is leaving, this is Manuel in the first instance and the new one is coming, there is no problem, life continues.

So I wanted us to do more or less the similar thing with the outgoing Minister,
10 Minister Nene. At the time of my call, Minister designate Minister Des van Rooyen.

I also wanted to do this in his case in particular, because his appointment had come, even though there had been rumours, unexpectedly and I anticipated, in fact not anticipated, I already knew from sms'es and just other communication that people had been unnerved by the development. I thought that symbolically having the two of them, one saying his goodbyes and the other one saying I am here and whatever other good stuff they would have said to try to come to people who would have been vulnerable.

The second ...[intervenes]

ADV VINCENT MALEKA SC: I ...[intervenes]

MINISTER LUGISA FUZILE: Sorry.

20 **ADV VINCENT MALEKA SC:** No go ahead.

MINISTER LUGISA FUZILE: The second reason was that, I also asked him to consider issuing a media statement in light of what I was saying insofar as the currency is concerned which we talked about, which was a serious, and if you will, a precipitous fall in the currency and of course all the implications that that had for the country. Wanted us to consider drafting carefully where the statement which he would issue,

which would in the main respond very directly to some of the issues that concerned the people. But of course, as it would become apparent later, he turned that down.

ADV VINCENT MALEKA SC: Yes. I understand the soft issues of the outcoming Minister meeting with the incoming one and the exchange pleasantries and so on. But there are hard issues relating to any changeover and transitions?

MINISTER LUGISA FUZILE: That is it.

ADV VINCENT MALEKA SC: Those, amongst others you are now in a private sector, you know that one of the best practice is "handover".

MINISTER LUGISA FUZILE: Exactly.

10 **ADV VINCENT MALEKA SC:** What is the process in National Treasury when there is this shift in Ministries?

MINISTER LUGISA FUZILE: When it happens at a time of elections, we spend a lot of time to set out in detail, first just the broad work of the Treasury. I suspect that some of what was referred to here as a document that Minister Manuel had prepared, was part of that file which Minister Manuel had prepared for his likely successor.

ADV VINCENT MALEKA SC: Yes.

MINISTER LUGISA FUZILE: He did that every time when the elections came, needless to say he would return and have to read it himself – until of course Minister Gordhan. So we had this practice of having that, you can call it an induction
20 file.

ADV VINCENT MALEKA SC: Yes.

MINISTER LUGISA FUZILE: Who would identify the major projects that the Department would be working on at any given time, so that the Minister has got this document that he can go to, which he receives from his predecessor.

Of course, it may not be easy to do this as perfectly as I have described it

now, when the change happens in-between.

ADV VINCENT MALEKA SC: Yes.

MINISTER LUGISA FUZILE: But be that as it may, as you are correctly indicating Mr Maleka, there is a need for it, that the outgoing Minister and the new one must meet and interact, so that even if the outgoing Minister does not hand a fresh file, maybe hands over the old one and then signals the changes that have happened since they were in office and of course they can agree that at time "T" plus whatever, they will meet again where they can do a proper handover.

ADV VINCENT MALEKA SC: Indeed. I mean you must know what is in the entry
10 which we should include the pressing and priority issues. But anyway, did that handover take place when the changeover happened between Minister van Rooyen and outgoing Minister Nene?

MINISTER LUGISA FUZILE: It never did to my knowledge.

ADV VINCENT MALEKA SC: Why did that not happen?

MINISTER LUGISA FUZILE: Because when I asked Mr van Rooyen to come, he said he would come at his own time.

ADV VINCENT MALEKA SC: Alright. In paragraph 23, you explain the response of Minister van Rooyen to the two suggestions you had made in the course of the telephone conversation you had with him. You describe that response as "turning down
20 your suggestions". But then telling you – and I quote you:

"Stanley that the officials of National Treasury have a tendency
to issue statements and that must come to an end."

Do you confirm that that was his unmistakable response to your suggestions?

MINISTER LUGISA FUZILE: That is exactly what happened.

CHAIRPERSON: Was this the first occasion you were speaking to him after his

appointment?

MINISTER LUGISA FUZILE: Interacting Mr Chairman, but I had sent him an e-mail the night before.

CHAIRPERSON: No, I mean in terms of, were you not speaking to him now?

MINISTER LUGISA FUZILE: Yes, it was the first time of speaking to him and it is probably just about 12, 13 hours after his appointment had been announced.

CHAIRPERSON: Okay thank you.

ADV VINCENT MALEKA SC: Thank you Chair. I am struck by your use of the adverb Stanley. I mean I went to the dictionary to look at what it means but in your
10 words what does it convey?

MINISTER LUGISA FUZILE: I mean in this context I would not even say it conveys excessive preoccupation with authority; it was though maybe I or we as the officials were behaving in a manner that he felt required to be put to an end or a stop had to be put to it. And as I go on to say it just struck me as being prejudicial, full of prejudice because I just could not understand, given the processes that we used to go through as a department, before a statement will be put out, because even in this case I was not saying we are going to issue a statement. I was saying to him I think you should consider issuing a statement.

ADV VINCENT MALEKA SC: Yes.

20 **MR LUNGISA FUZILE**: And if you are okay with that then we can start to draft something, which of course in the normal course of doing our business he would have had to okay, he would have had to say I am happy with it. And if, in the normal course of doing business he wished to discuss it with us, to understand deeply why we were using the words we were using in certain parts, why we felt it necessary to say the things we would have been proposing he should say. Then we will do it.

That is what we used to do with all his predecessors.

ADV VINCENT MALEKA SC: Yes.

MINISTER LUGISA FUZILE: Who by the way, I can say here, not because I – I mean I do not want anything from them. They are no longer my bosses. What I know of them, they would have been able to draft a statement that is – that would deal with the kinds of concerns that were there, sufficiently, without deferring to us. But just the teamwork culture that had been inculcated in the Treasury and the appreciation of the power of teamwork was such that everyone would be pulled in, relevant people of course, to make a contribution to thinking about how to carefully
10 word one's statement that would achieve the purpose for which is it intended. So I was astounded by the reaction.

ADV VINCENT MALEKA SC: Yes, and in fact that is what you say in paragraph 14, and you indicate there that your immediate view of things from his response what that you thought he was prejudiced about or against members of Treasury. Do you confirm that?

MINISTER LUGISA FUZILE: Yes I confirm it.

ADV VINCENT MALEKA SC: Chair, that response of Minister van Rooyen and the rebuke is going to become important when we deal with Mr Fuzile's evidence about the attitude taken by his advisors. Because as you know from the reading of the
20 statement, the advisors took a different view. They wanted a statement when he did not want it. Yes, but we will get to that point in due course. Now Mr Fuzile I would skip the rest of paragraph 24 because you have dealt with it, you have indicated to us the context in which you had prior knowledge and a prior working relationship with Minister van Rooyen, and now I turn to page 60 and I am at paragraph 25, and you say there that you were disappointed by the attitude taken by your Minister designate

at the time. And you say you were disappointed, why were you disappointed?

MINISTER LUGISA FUZILE: I was disappointed Mr Chairman because (1) he was breaking tradition and (2) I really thought that it would make for a good start for him to be seen with his predecessor addressing staff and also just to hear his predecessor, and of course take some sense of the mood of the department, he was then soon to be charged with [indistinct], which they would have of course informed how he would approach his work going forward. I was also disappointed because insofar as for instance the statement was concerned there was a lot of speculation about what had led to the removal of Mr Nene, his appointment, Mr van Rooyen and
10 what it would imply for first the institution of the Treasury and how it would approach its work from then on.

ADV VINCENT MALEKA SC: Yes.

MINISTER LUGISA FUZILE: So I was hoping that he would use the opportunity quite quickly to dispel some of those notions.

ADV VINCENT MALEKA SC: Yes.

MINISTER LUGISA FUZILE: Of course he could have come out and said different things, that too would have helped because it would have meant that both the department and the rest of the country and the world would have known where he stood, but it was just important, in my view, for him very early on to come and do that
20 stuff.

I was also disappointed because it just seemed, which is what I get to in 26, that at that time he had not come to terms with what his role was about. It just seemed to me from the reaction that he as oblivious to the fact that the currency was for instance depreciating in the manner in which it was doing and that he had a role in doing something to stave that off. Of course he could have worked with others

and so on and so forth but it was important because the questions that people were asking, the speculation was a lot around him and only Mr van Rooyen was in a position to dispel some of that speculation.

ADV VINCENT MALEKA SC: Yes, I mean you come across as someone who is explaining a moment of crisis which required intervention by the leadership of Treasury, and you indicate that the leadership at the time was the incoming Minister, who you required him to do something. Now can I ask you this, in the absence of the leadership intervention from the head of Treasury, which you identified as the Minister, who else would be able to play that roll? Who else will come and assure
10 the markets and assure the country that it is not as bad as the market may reflect in terms of the performance of the currency?

MINISTER LUGISA FUZILE: I think it would be correct to expect that it will be the President or the presidency.

ADV VINCENT MALEKA SC: Yes.

MINISTER LUGISA FUZILE: Chair, in this case there was a statement issued by the presidency, in fact I suspect a few of them in one day.

ADV VINCENT MALEKA SC: Yes. Mr Mahayana would explain how the presidency, in conjunction with Treasury filled the void which was taking place at the time. And then you conclude that part of your disappointment by indicating in
20 paragraph 27 that you know how have expressed your disappointment to some of your colleagues. As you sit here today are you able to indicate who whose colleagues could be?

MINISTER LUGISA FUZILE: I am sure, as I indicated in the statement that Ms Maxanda, who was the head of communication, knows about this, In fact at one stage I recall that she was with me when I was taking to Mr van Rooyen, and I put

the phone on speaker so that she would hear, because I had anticipated that in fact the call was going to be to switch quickly from the suggestion I was making to auctioning it, which is to say maybe we should draft a statement. We should say A, B, C to it and then she was going to get started with that, and of course I and other colleagues would have had to just take a look at it and make inputs. Ultimately have the Minister approve it and release it later on after he is sworn in.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Just as a matter interest the swearing in, his swearing in was to happen later in the day is it not?

10 **MINISTER LUGISA FUZILE:** Yes Mr Chairman.

CHAIRPERSON: And I think I must have seen something to the effect that it happened around midday or thereabout is that correct?

MINISTER LUGISA FUZILE: Yes Mr Chairman.

CHAIRPERSON: Yes. Would a Minister designate as you have said, would have, would that mean the designate be able to perform any duties of Minister before he or she is sworn in?

MINISTER LUGISA FUZILE: No really, and it is a good question you area asking chairman, I would have maybe clarified this. The idea was not to say to him come and consider issuing a statement right now, we anticipated that after he is sworn in
20 there would be media people because we have done the thing before, and we knew that the media would be asking him the questions that were in fact floating, and we – our preference was that he should read a statement. And in fact not only were we going to have him read a statement, if he wished, which is something we used to do diligently, is to anticipate the questions that might be asked, and we do a question and answer document for him so that – the idea with these things, it is not about the

individual, it is about saying you want to preserve the institution, the office of the Minister of Finance, head of Treasury and Treasury and South Africa.

So what we were thinking about essentially, not just me, including my colleagues, was we now have Minister van Rooyen. We may not have been expecting him but now let us see if we can make it work. Let us see if we can help him project a picture as good as his predecessor or predecessors first time, but of course he turned down the opportunity.

ADV VINCENT MALEKA SC: Yes, I mean he made ...[intervenes].

CHAIRPERSON: So what you had in mind was that if, when you spoke to him in the morning on the 10th, and made this suggestion, if he was favour of the suggestion possibly the work of drafting the statement could start even before the swearing in, and it would be ready for – by the time he was sworn in, and he could use it immediately after the swearing in ceremony to dispel any perceptions?

MINISTER LUGISA FUZILE: Precisely Mr Chairman, including familiarise yourself with the statement because you need that late time. It is one thing to read a statement that has just been passed to you, and once you have folded it and put it aside, people ask you questions about it, and some of them, they can just even pick a word and say exactly why have you chosen to use this word. And if you have not internalised it yourself, you could come out badly. So the idea was let him prepare so that by the time he needs to issue a statement he has it. By the time he needs to respond to questions from the people from the media, he is able to respond to them coherently and convincingly, which is something we all do or used to do, and I am sure it continues to this day. I used to joke to people that when I would be asking my direct report, some of whom are here, I say look this time you have to go and say the things that you normally go – ask me to go and say, you say them yourself, which

was true because I was not producing all the stuff that came out the Treasury, it was produced by the team under me, with me. I just happened to occupy a particular position where I was the face of the department at a particular level below the Minister.

CHAIRPERSON: So ideally in terms of what you had wished for, what you had wished for would probably have been something like that he might have had a meeting with you, either alone or with such other members of your team as you might have wished to put together. You might have had a session with him and that opportunity could have been used for him to just make sure that his understanding of
10 the issues that were quite important for the day, were the same – was the same as yours, and the teams, and then how this should be handled in terms of any media conference later in the day.

MINISTER LUGISA FUZILE: I was waiting for Mr Chairman, and there was method in how I was thinking about it, because had he come at the time when he was going to be talking to Mr Mann, he would even have had the opportunity, let us say potentially to just hear from [indistinct] because Mr Nene had been a Deputy Minister for six years before he became Minister. And during part of that time, I my memory serves me well, there had been a turmoil of sorts and we dealt with those, including for instance even having the sub work with us to issue a statement just to reassure
20 the market and stuff. So that is what I had in mind.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: And of course the foundational point you make is not that you were trying to follow the tradition and processes for the sake of it but you were doing so in order to protect the institution of Treasury. People come and go

and institutions are perennial and they have to survive strongly or weakly as it may be. Now the next chapter that you deal with of that morning the 10th of December, is the swearing in, and I would like you to move quite quickly. The Chairperson as asked you some issues around it but the first issue you reference in regard to that part on the morning, is that you were invited to attend the swearing in of Minister van Rooyen and there is nothing eventful about paragraph 28 in relation to that invitation, unless you want to tell us who invited you.

MINISTER LUGISA FUZILE: It is a pity because I do not remember the person's name. I even suspect that I never bothered to ask the person's name.

- 10 **ADV VINCENT MALEKA SC:** Alright, but we know that the venue that you reference is the place for the ceremony of swearing in Chairperson, is, at that time the Union Building correct?

MINISTER LUGISA FUZILE: That is correct.

ADV VINCENT MALEKA SC: And the first even you identify about that venue is that the first person you met is some person who introduced himself as Mr Mohamed Bhobat, correct?

MINISTER LUGISA FUZILE: That is correct.

ADV VINCENT MALEKA SC: Who were not there, and some of us may not be in the hallowed place of the Union Building, can you give us a sense of the setting?

- 20 How you met him? How the introduction took place and who said to who?

MINISTER LUGISA FUZILE: Thank you very much. I got there Mr Chairperson, I think it was after 11:00 and of course I am walking on this kind of very long, I would call it a veranda for simplicity, and there was a person standing right in front of the door which I knew was the place I had been directed to go to. Of course I did not know the person so as I got quite close with him, he assured he looks towards me

and he greets me, good morning or good day Mr Fuzile. I responded and then he told me immediately that – in fact as part of introducing himself, that he is the advisor to Mr van Rooyen and I was taken aback. I was taken aback because all the advisors the department had had during my tenure, which were not many, had signed contracts with me. Perhaps to use the context of here, it is like you meeting a person who is your subordinate, that you are supposed to appoint, maybe leave the subordinate part because it is inaccurate. A person on whose appointment you were supposed to be the signatory and you know you have not signed any piece of paper, and the person tells you that I am employed here, essentially that is what it meant.

10 **ADV VINCENT MALEKA SC:** Yes.

MINISTER LUGISA FUZILE: That was the first astonishing thing. The second astonishing thing was the fact that ...[intervenes].

CHAIRPERSON: Before this second, is it astonishment or what? Before this second one, why were you taken aback because Mr Godongwana had told you the previous day?

ADV VINCENT MALEKA SC: It is good you say that Chair, we will come to it do not worry. Can I, with your leave my apologies, he is going to talk to that issue fairly soon, can I ask you, with your permission, to ask him to conclude the first part because the second part is coming and you will see that it is in paragraph 30.2 on
20 page ...[intervenes].

CHAIRPERSON: Okay, alright.

MINISTER LUGISA FUZILE: With your leave Chair. So in a way Mr Chairman and Mr Maleka, whilst theoretically a Minister can just bring anyone to be their advisor, so they have got discretion. It helps if they get a good feeling, I might add, but – and I do touch on that but as I say I was the only person with the authority. I could

delegate to someone if for instance I am traveling, but usually at the Treasury appointments, we would do the delegation under exception circumstances, precisely to avoid this situation where a person gets appointed by a person in a – you know in an acting capacity or you know for a day. Because if it happens to be a wrong person the process to remove the person can be cumbersome.

ADV VINCENT MALEKA SC: Yes.

MINISTER LUGISA FUZILE: So I had not signed any person for him, there he was, he was telling me is the advisor. He was not saying I am going to be the advisor to Mr Van Rooyen, which I perhaps would have kind of reluctantly brushed aside. He
10 was saying strongly I am the advisor at the time [indistinct].

ADV VINCENT MALEKA SC: Yes, and I would like you to deal with the second element of your surprise by reading paragraph 30.2 on page 61.

MINISTER LUGISA FUZILE: So the second element of my surprise gets to the point then that yesterday we did touch on, which was that all of sudden what I heard, and If will kind of partially believed but I did not dismiss it but I sort of hastily kind of said it cannot be that a person would be given advice and stuff like that.

So it turned out that when I saw this guy, and you would remember that I said that the point that almost got me into trouble, I said I was hesitating to just talk about his race but there he was and he happened to be of Indian decent. So I said
20 so obviously there must be truth in everything that Mr Godongwana had said the previous evening. I was really surprised, perturbed actually.

CHAIRPERSON: How soon after meeting him and hearing him saying he is the advisor to the new Minister how soon did you realise that it meant that Mr Godongwana was right? Was it something that happened ...[intervenes].

MINISTER LUGISA FUZILE: Immediately.

CHAIRPERSON: Immediately.

MINISTER LUGISA FUZILE: Immediately because perhaps let me just make this point, I know Mr Godongwana quite well. He is a serious person. He can even say serious stuff you know with [indistinct] he is a very serious person and a lot of the time when we talk it is clear when we are joking, it is clear when we were serious. I had understood him to be serious, but it was like a fairy-tale that – I do not know, just the story as I told it yes. But now when this point happened it just – this was the real first point where this connecting of the dots was occurring because here was person standing in front of me, and here was a person by the way who almost disdainfully
10 tell me tells me, as the accounting officer, who is supposed to sign a contract with him on behalf of the government, he is telling me that I am working for government.

ADV VINCENT MALEKA SC: Yes.

MINISTER LUGISA FUZILE: Later we might talk about the importance of a contract, and talking to lawyers I am sure you would understand.

ADV VINCENT MALEKA SC: Yes we will get there but for now we went to bed the previous night with this shocking prediction by Mr Godongwana, and the next morning that nightmare is now unfolding in reality before you when you meet the person who says things that in your view are not consistent with her functions and duties. In paragraph 30 you make the point that you were surprised that by that
20 stage you had met Mr Bhobat, being Minister designate, had just been announced about 15 to 17 hours and yet he had an advisor already. And you say that you had never seen something like this in two decades that you have been in the public service is that correct?

MINISTER LUGISA FUZILE: Yes nearly two decades. I had not seen it.

ADV VINCENT MALEKA SC: Is this the first of its kind that you had to confront on

that day?

MINISTER LUGISA FUZILE: Essentially it was the first of this kind. The Minister had not been to the department what he had already figured out is you want to be charitable, that he would need an advisor. What gap was the advisor filling?

ADV VINCENT MALEKA SC: Yourself.

MINISTER LUGISA FUZILE: What need was he filling?

ADV VINCENT MALEKA SC: Because the Minister had not been to the department, he had not spoken, to my knowledge, to anyone in the department, not Mr Manuel, sorry Nene, certainly not me but he had already determined he would heed an
10 advisor.

CHAIRPERSON: You may or may not be able to say this but based on what I know you say in your statement it is unlikely that – you are likely to say it is unlikely that they knew each other well, that is Minister van Rooyen and Mr Bhobat or Bobbitt, do you know?

MINISTER LUGISA FUZILE: I do not know.

CHAIRPERSON: I just want to pronounce it correctly.

MINISTER LUGISA FUZILE: But I think I am correct when I say it is Mr Bhobat.

CHAIRPERSON: Oh okay. Do you know whether he might have been an advisor that Minister van Rooyen might have had at some stage in the past, well I do not
20 know if you are in a portfolio committee, and member of Parliament, I doubt that you would have an advisor. Is it somebody that he may have been using in some when he was occupying some position before?

MINISTER LUGISA FUZILE: Factually Mr Chairman I not know but what I can say is that committees in Parliament would have researchers and the committee he happened to be in, I know reasonably well and I knew the researchers for that

committee and Mr Bhobat was not one of them.

ADV VINCENT MALEKA SC: So the appointment had been announced a some stage in the evening the previous day, was it round about, did you say yesterday it was around about 20:00?

MINISTER LUGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: And you were now meeting Mr Bhobat around midday on the 10th?

MINISTER LUGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: So he was – he would have been, I do not know
10 whether appointed is the correct word since you had not signed any papers, but he would have been told by whoever told him that he was going to be Minister van Rooyen's advisor, he would have been told either that evening or that morning of the 10th within 24 hours after the announcement, actually within much less than that.

MR LUNGISA FUZILE: 15 to 17 hours.

CHAIRPERSON: Within 17 hours he was already for all intents and purposes as far as he was concerned in the job?

MR LUNGISA FUZILE: Yes, Mr Chairman, but of course it would be remiss of me to just leave that point like that, because as I indicated yesterday the process of
20 approaching a person for the possibility of becoming a Minister could start a day earlier, it is not inconceivable that it could start much longer before the person is announced. We do not know that part.

But of course be that as it may it can never detract from the fact that if I am given a role and I have the option of asking to have an advisor the first thing I think about is to have an advisor rather than, and of course determining that the right advisor

is this one before I have learned that in the department and made a proper assessment that this department has got economies, it has got accountants, it has got financial analyst, but it lacks this part. So to compliment my capacity let me get an advisor to perform this role.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: Of course that is my way of thinking about it. I do not know if political principles think about it this way, they may be using a different process altogether.

ADV MALEKA SC: Yes, well they will appear before the Chairperson, and they will
10 have to explain themselves about the way they think when they go through these processes and in paragraph 13 you say that Mr Bhobab wasted no time and he started to issue instructions to you. Do you confirm that?

MR LUNGISA FUZILE: Yes, I can confirm it.

ADV MALEKA SC: What did he say to you?

MR LUNGISA FUZILE: He said to me, if I quote him verbatim "I would require a statement from you to be issued by the Minister."

ADV MALEKA SC: Do you confirm that those are his instructions to you as far as you can recall?

MR LUNGISA FUZILE: Yes, and it is not inconceivable that Ms Mtanda who was close
20 by might have heard this, but I am not sure, I have never test with her whether she did hear.

ADV MALEKA SC: Here is the thing, you tried to get Minister Designate van Rooyen earlier on to consider preparing a statement that you would issue once the formalities have been done and he rebuked you for that suggestion and yet when moments later

you meet a person who describes himself as the advisor he requires you by way of an instruction to prepare that statement.

The two as far as I see cannot sit side by side. Why would there be any inconsistency of that sort from your perspective between a Minister designate at the time and his supposed advisor at the time?

MR LUNGISA FUZILE: The sharpest way to put this is it was clear then that Mr Bhobat had not cared to check with his principal what he would want to do and how. I mean it is obvious, it is here for everyone to see it, because it just so happened that the first instruction he issued to me, unfortunately for the guy it is in direct contravention with
10 what the person on whose behalf he was purporting to be acting had indicated, you know, I make the offer that we should consider issuing a statement, he puts me down quite sternly and moments later the person who is the advisor who is supposed to help the Minister, not the other way around feels that he should demand a statement from me.

We will come of course to the other issues which is exceedingly important as far as I am concerned, and is a learning point for everyone and the nation, advisors do not issue instructions to DG's and any other official for that matter.

CHAIRPERSON: Well I was about to ask whether it is normal for a Minister's advisor to issue an instruction to a Director General?

20 **MR LUNGISA FUZILE**: It is abnormal, Mr Chairman, but let me apologise for even hinting at it, I am sure Mr Maleka is coming, because it is part of the statement.

CHAIRPERSON: No, no, but for now, ja.

MR LUNGISA FUZILE: It is abnormal.

CHAIRPERSON: Yes, yes.

MR LUNGISA FUZILE: It is illegal.

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: Let me put it straightforward, it is illegal.

CHAIRPERSON: But of course you speak about, you suggest that it seems that Mr Bhobat did not care to speak to his principal about the issue of a statement, because if he had maybe his principal, maybe he would have known that his principal was against the idea, but also it seems that when the principal had to respond to your suggestion the morning he too did not check with his advisor what he thought about this idea.

MR LUNGISA FUZILE: I cannot agree with you more.

ADV MALEKA SC: Chair, just before we take the tea adjournment can I ask Mr Fuzile
10 to round up his view of the instructions by Mr Bhobat and the conclusions that he drew from the attempts to issue instructions?

CHAIRPERSON: Yes.

ADV MALEKA SC: And you make some conclusions from paragraph 34.1. May I ask you and I invite you to reflect those conclusions as accurately as you can by reading into the record those subparagraphs.

MR LUNGISA FUZILE: Thank you very much. Mr Chairman, 34.1:

20 "Mr Bhobat did not care about, it became clear to me given just how he conducted himself that he did not care about protocol or civilities. And he appeared determined to assert his authority over me. He was not bothered that he was not an employee of the department at that time and that his role has never been explained to me by anyone else other than him or himself."

34.2:

"Mr Bhobat felt such a sense of authority and empowerment that he could issue instructions to anyone without first checking with the person that is the Minister designate on whose behalf he purported to act. He gave me the impression of being a law onto himself."

Lastly, 34.3:

"As it happened on that occasion..."

Which was your point, Mr Chairman.

10 "...he issued an instruction that was the direct opposite of what the Minister, his principal wanted."

And I state this as a matter of fact, because a Minister designate had indicated to me earlier that he did not want a statement from me or us as the officials of the department.

CHAIRPERSON: He had actually, from what you had said already before the Minister had actually indicated to you that you people at Treasury must stop this tendency of yours of issuing statements, which seem to indicate the dim like media statements?

MR LUNGISA FUZILE: Certainly the ones prepared by us.

20 **ADV MALEKA SC**: Yes, okay Mr Fuzile, I hate to be in your position at that time, because two persons are asserting authority over you, trying to put you in a situation where you do not understand truly what the instructions to you are. Chair, is this a convenient moment to take the tea adjournment?

CHAIRPERSON: Yes, we will take the short adjournment and resume at 11:35.

ADV MALEKA SC: Thank you, Chair.

CHAIRPERSON: We adjourn.

MEETING ADJOURNS

MEETING RESUMES

CHAIRPERSON: Yes, Mr Maleka?

ADV MALEKA SC: Thank you, Chair. Mr Fuzile, you in paragraph 5 you talk about a further instruction which Mr Bhobat issued to Ms Matanda in your presence, do you recall that?

MR LUNGISA FUZILE: Yes, I do, Mr Chair.

ADV MALEKA SC: In paragraph 36 you indicate that that instructions reflected his failure to understand the communication policy and protocol of National Treasury at the time, correct?

10 **MR LUNGISA FUZILE**: That is correct.

ADV MALEKA SC: Ms Matanda will elaborate on these things, but for your purposes you can confirm that National Treasury had its own communication policy?

MR LUNGISA FUZILE: Yes, that is correct.

ADV MALEKA SC: And that is you as the head of National Treasury at the time authorised that policy in terms of the public service regulations?

MR LUNGISA FUZILE: Yes, that is correct

ADV MALEKA SC: And in paragraph 37 you indicate that at some point as the flow of instructions was taking place from Mr Bhobat, Minister van Rooyen arrived, is that correct?

20 **MR LUNGISA FUZILE**: Yes, that is correct, Mr Chairman.

ADV MALEKA SC: Yes. Can I ask you to tell us, because we were not there, what happened when he arrived at the time you were with Mr Bhobat and others?

MR LUNGISA FUZILE: Mr van Rooyen on arriving at the Union Building, he and Mr Bhobat greeted and I could of sort pick that amongst the things that they were

discussing were the fact that Mr Bhobat had tried to call Mr van Rooyen earlier and Mr van Rooyen had not answered the call.

And of course it was obvious that there was a bit of agitation in Mr Bhobat, but quite importantly I picked the comment from Mr van Rooyen to the effect that he did not recognise the number, which would suggest that it is not a number which would appear with a person's name, that is saved on the phone, so, and because he was appointed probably, knowing myself, at the time, you get to many calls from people you know and you can identify the names and sometimes from people you know calling you from new phones, but also people you do not necessarily know, and therefore you do
10 not have their phone numbers on your phone.

So I could pick that up, which would suggest to me that either they did not know each other or they had not known each other for too long to have exchanged telephone numbers.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: Before that time.

ADV MALEKA SC: Well can I try and press for some further detail from you on that point. This is a two way communication taking place between Minister van Rooyen and Mr Bhobat at the time and you say you heard what that communication was all about and from what you heard you drew some conclusions. One of which is that you could
20 pick up that there was not a level of familiarity between the two of them.

Why did you come to that conclusion?

MR LUNGISA FUZILE: The first is this issue of the phones, phone numbers that they did not have of each other, and of course there was also, I mean the body language was not great actually, because I had been used to seeing advisors who would approach the Ministers with a lot of difference as their bosses, essentially, and the just

degree of call it agitation and stuff and the tone to a certain degree of Mr Bhobat...[intervenes]

CHAIRPERSON: On the first day of being advisor to the Minister?

MR LUNGISA FUZILE: Yes, the first hours of being advisor to Minister designate to be precise, Mr Chairman, advisor without a contract for that matter. So there was just a sense of this lack of good chemistry of what you would know of a normal relationship between advisor and a Minister.

ADV MALEKA SC: Yes, I mean when you met Mr Bhobat, there were introductions, I mean you said so.

10 **MR LUNGISA FUZILE**: There were.

ADV MALEKA SC: Well you said he knew you, Fuzile.

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: What happened when the two of them met in your presence at that point in time?

MR LUNGISA FUZILE: Look I do not recall that they really introduced each other, but it is not inconceivable, but the bit that is very clear to me is this phone stuff and also just the relationship was not the normal one that I have witnessed of Minister and advisor before and also really not of people who have known each other for too long, and as I say the Minister said I did not recognise the number, the other one will say, but why did
20 you not answer my calls, I have been trying to call you, kind of thing as well.

ADV MALEKA SC: Was there no explanation as between them why the one or the other were there?

MR LUNGISA FUZILE: Yes, why the other one were there?

ADV MALEKA SC: This is a swearing in ceremony.

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: And people get invited to be there, as you were.

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: I could not arrive as a stranger to attend this swear in of a Minister. I mean I suppose that people who are there have a business to be there, and there would be introductions, there would be explanations why people are there, in the normal course of business. Holding those variables constant do you or do you not recall that there was an explanation as between the two of them?

MR LUNGISA FUZILE: No, I do not recall.

CHAIRPERSON: Did you say that from what Mr Bhobat said to Mr van Rooyen on that
10 occasion that you could hear and the tone in which he said it, you formed the view that Mr Bhobat seemed to be maybe upset, maybe irritated that Mr van Rooyen had not answered his call or returned his call or something like that?

MR LUNGISA FUZILE: No, I did say that, Chairman, and I stated it as a matter of fact.

CHAIRPERSON: And what was Mr van Rooyen's response to what appeared to you to be a very strange thing as I see it that here is an advisor that shows irritation or of being upset at the Minister that the Minister did not answer his call? What was his reaction to this?

MR LUNGISA FUZILE: His reaction was that look I did not recognise that it is you
20 calling, you know, in a way, because he only saw, I would presume this, a number, because if person A calls me and their number is saved against person A then I see it is A calling and I take the call. Then I can explain why I could not take it if I do not take it, but the explanation cannot be I did not know it is you who is calling, because that suggests that he did not have the number saved, unless of course he called him with a private number, in which case he would have said it is a private number that I saw.

ADV MALEKA SC: Yes, Chair, Minister van Rooyen may or may not testify and I would like Mr Fuzile's evidence on this issue, because...[intervenes]

CHAIRPERSON: If everyone who is seriously implicated will testify, they may decide to come forward themselves or I will call them.

ADV MALEKA SC: Yes, and that is why I said may or may not, Chair, and – but I would like to with your leave test more on this evidence, with your permission. You see Mr Fuzile, what you indicated already is that when you had the earlier telephonic conversation with Mr van Rooyen it was quite clear to you that he was asserting authority to you.

10 What I want to know from you...[intervenes]

CHAIRPERSON: Remember about the nods, Mr Fuzile. Remember the nods do not get recorded, okay, alright.

MR LUNGISA FUZILE: Yes, that is true, that is correct, thank you very much for the reminder, Chairman.

ADV MALEKA SC: And that stand rebuke was unmistakable, because it led you to conceive that he had some prejudice against officials of Treasury. But here you are with someone who complains to him that he did not answer his call and you indicate how he responded. What I am interested in is whether you can recall the mood of his response to Mr Bhobat's complaint that he did not return the call?

20 How was he? How did he comport himself as he was responding?

MR LUNGISA FUZILE: To be honest with you he looked a bit sheepish in a way that is – if I think about it, he was getting close to getting under one's skin, because if you think about the story I had been told and I was thinking about it that he will arrive with advisors and there he arrived with one, or he arrived to find the advisor there waiting for him, it does not make a difference, they were now there, the two of them.

And here is a person who has known me for a very long time. We have interacted with each other with a lot of difference and respect even occasionally calling each other comrade and now I am – he is going to be my Minister, he is going to be my boss in a matter of minutes, in fact he was my Minister, leave the formality that he just had to be sworn in, and I am watching him, one level he puts me down like I deserve to be put in my place. Fine he had made that choice on the day.

And now here comes this person I was seeing for the very first time, by the way, who had behaved rather rudely towards me, impolitely. Dare I say, by the way, in front of my subordinates and now again in front of all of us you have this gentleman Mr
10 Bhobat talking to the Minister as if the roles have been reversed.

It was not...[intervenes]

CHAIRPERSON: As if he was the boss to the Minister?

MR LUNGISA FUZILE: Precisely it just was not a nice thing to see.

ADV MALEKA SC: To see. Alright, now can I reflect on the conclusion that you draw in paragraph 37? Because it resonates with what Mr Godongwana had told you earlier on. You come to the conclusion that there appears an impression that the two did not know each other?

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: On that score.

20 **MR LUNGISA FUZILE**: Yes.

ADV MALEKA SC: At that moment.

MR LUNGISA FUZILE: They did not know each other, they looked to me not to know each other very well.

CHAIRPERSON: They did not know each other very well.

ADV MALEKA SC: Very well, yes.

MR LUNGISA FUZILE: Ja, so I hope I say here that they either must have not known each other at all or they had just gotten to know each other.

ADV MALEKA SC: Yes, and you remember what Mr Godongwana said to you earlier on and if you do not mind, you hold page 62 with one hand and turn back to page 58. Chair, I am at paragraph 18.

CHAIRPERSON: 18?

ADV MALEKA SC: 18, yes. And you recall there you said on the previous day Mr Godongwana said to you that your new Minister is likely to come with advisors he does not know? I mean that again is the second real indicator of the nightmarish prediction
10 he laid out before you the previous moment, is that correct?

CHAIRPERSON: I am sorry Mr Maleka, did you say paragraph 18?

ADV MALEKA SC: 18, Chair, page 58.

CHAIRPERSON: Oh, I am sorry, okay.

ADV MALEKA SC: Page 58, Chair, you would recall the previous night Mr Godongwana, not only did he say there would be a Gupta Minister, that Minister will arrive with advisors.

CHAIRPERSON: They would be of Indian descent.

ADV MALEKA SC: Of Indian descent and they would be known in all likelihood to that Minister.

20 **CHAIRPERSON:** So, so Mr Fuzile you must have said Mr Godongwana knew what he was talking about.

MR LUNGISA FUZILE: The story is here, Mr Chairman.

CHAIRPERSON: Yes. I mean he even knew that, you know, Mr van Rooyen and the advisors that he would have would not be knowing each other and up to the point that

you had the conversation between Mr Bhobat and Mr van Rooyen everything was suggesting that they might not really be knowing each other, at least not well?

MR LUNGISA FUZILE: Exactly, Mr Chair.

CHAIRPERSON: Thank you, and maybe they did not know each other at all, we do not know.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: It is not out of the realm of probabilities.

ADV MALEKA SC: Yes. And, Chair, there is a picture of a nightmare which the next day unfolds into reality, but we will test this with Mr Godongwana when he comes in.

10 Mr Fuzile has given you a broad stroke of the picture. In paragraph 38 you indicate that the ceremony took place, but it was not that long. Of interest to me is what you say about the conduct of Mr van Rooyen, immediately after the swearing in.

I am now at paragraph 38 page 63, you say that he took out a paper from which there was a statement which he made, is that the first summary of what you say in paragraph 38?

MR LUNGISA FUZILE: Yes, it is.

ADV MALEKA SC: And then you indicate that, that statement did not cover certain topics of concern to you, given the environment of the crisis that was unfolding at the time. Can I ask you to in broad summary to just highlight those factors of concern to
20 you which were not covered by the statement?

MR LUNGISA FUZILE: The first of those is at the heart of the work of the Treasury. You may recall from Minister Gordhan, but definitely from what I said yesterday, Mr Chairman, which was that the biggest job of the Treasury, not to downplay the other functions, they are just as important, but the biggest role that the Treasury performs is to produce a budget every year, annual budget.

So it is important, because it in some senses it determines the impact if you will government has on economic activity in the country and therefore the prospects for the country. So whenever a budget is to be tabled the curiosity that South Africans have, investors have, that rating agencies have, all of them looking at the world from their vintage points is what will be the fiscal stance?

What will be the attitude of this government towards fiscal policy? Are they going to be reckless or are they going to be prudent? Are they going to do things that would indebt the country to a point where it ends at the door of the IMF on some program of sorts with policy being dictated from outside South Africa for good reason?

10 So in essence equally when there is a change of Minister the curiosity is, is there going to be policy continuity or is the direction of fiscal policy going to change, and so that was the speculation that was in the media and Minister van Rooyen said a couple of, what I could call benign things.

It is not reckless things, it is not rude things, but in the context where you see the currency is taking a pounding you see the articles that are written in not only that time the electronic media, but also the print media, saying that the reason Nene was removed is because he said no to things that would amount to fiscal recklessness.

20 Fiscal policy is going to be loosened, in other words spending is going to be happening willingly. So there was a need, I would imagine, in fact not imagine, I thought, to respond directly to that, to say there is going to be policy continuity if you think that it matters, or also come clean and say I do not care about this thing, these people have been conservative I am going to change and I will let people deal with you in that context.

Similarly there was speculation that Minister Nene was fired for nuclear. A new Minister of Finance did not have to come and say something possibly that

contradicts cabinet and we can talk about that in detail if you wish, but he could say something sufficiently carefully worded to allay the fears of the people so that it is understood that even if there is a commitment nuclear, but I exist as a Minister of Finance, I am not about to allow South Africa to commit itself to something it cannot afford.

And of course there had been the issue of fees for higher education that had been curbed, which is the reason why the budget allocations could not be finalised, and again it was in the media and topical at the time it would have been good for him to say something on it, and ultimately of course something got said by Minister Gordhan, the
10 Monday thereafter, but ultimately in the budget, which was constructive enough without putting him at least in conflict with reasonable people.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: Both in government, his party and the nation.

ADV MALEKA SC: And then you say that the statement he made did not calm the market or the fears of the investors. I am reading what you say in the unnumbered paragraph following the bullet points. And of course we know that the performance of the Rand on the 10th fell sharper the next day on the 11th compared to his performance between the 9th and the 10th, we do not need to go to those figures.

MR LUNGISA FUZILE: I confirm that Mr Maleka.

20 **ADV MALEKA SC:** Yes, and then you tell us where we can get the statement issues by Minister van Rooyen. I looked at it, it is for no moment for the present purposes, unless you want to comment on it, but I do not think it will help the, Chairperson, one way or the other.

CHAIRPERSON: You may not be able to answer this, but answer it if you are able to. What do you or what did you ascribe Mr van Rooyen's failure in his statement to deal

with what you considered to be very important issues that a Minister of Finance should have dealt with on that occasion?

MR LUNGISA FUZILE: The first problem for me was that he deprived, and I say this with humility, he deprived himself the opportunity to draw on the experience of many people who have been doing the job that he was about to take and what it means. When you walk into a new role, unless you have performed it elsewhere it makes a lot of sense to humble yourself without humiliating yourself, but to humble yourself to interact with the people you have.

They are in effect members of your team. It does not matter at what level
10 you come into an organisation, but definitely as you are coming in as a Minister you inherit the people. You can decide of course later on that some of them do not fit your plans and stuff like that, but of course if you come in at the risk of being verbose and you have been told that, that one and that one and that one, there were four of us, they are bad, they must go.

You cannot then listen to them telling you what you must say, because it is a contradiction, right? And of course I did not know that at the time. I got to know it in the evening by talking to Mr Jonas and then I put, you know, connected the dots.

So that is the one things, and of course talking to the people who have been there who are members of your team, even if you had had good proximity to their work
20 as Mr van Rooyen was, to allows you to really understand what is said in the media carries a totally different meaning to you, you know, because they can tell you, when they say this, when the media people are saying this, when investors are asking this, when rating agencies are asking about this, not only are they asking what seems obvious, but they also want to know ABC.

So I am saying that he deprived himself to understand the staff, and I could say here without fear of contradiction he had different priorities. I mean, you know if you are coming and you have been told one of your first tasks is to get rid of these people you would – it is a distraction that there is an economy that is bleeding. Your financial institutions, your – a whole lot of parts of your economy are in pain, figuratively speaking, because of this development.

And of course it may well be that he had this dilemma that the media was not describing him in positive terms, they were using the term back bencher, unknown and stuff like that, so he just, he may have had those dilemmas too, but if I may say this and
10 I say this, you know it sounds a bit, I do not know how to say, he had not come to terms with the role.

CHAIRPERSON: So would you say he might not have had or he did not have a true appreciation of the enormity of the issues involved in being Minister of Finance in that kind of environment that had developed since the announcement of the removal of Mr Nene and his own appointment? Or you would say he did have the appreciation, but he may have had other priorities as you say?

MR LUNGISA FUZILE: I think he had a broad sense of appreciating it, but I will say this and again I say it with the greatest of respect, if you just think about what then flowed in terms of news, how the decision was changed, it took several business
20 people among others, I am not saying only, and some key politicians it would seem from what I heard from Mr Gordhan here, being able to explain in clear terms the crisis that was unfolding before everyone.

And the problem with crisis like those is that a person who just goes into Pick n Pay to buy bread does not associate the effect that the Rand is collapsing to the

effect that life tomorrow is going to be harder. Some people realise it when life is actually becoming hard and this is not an insult to them.

I know it myself before I started economics, I used to just see these economic indicators at the end of the news, that would be the time when I switched channels, because I thought this thing had nothing to do with me. And some of this and one has to watch how he says it, comes out of the commentary that came from some of the leaders about the Rand, which demonstrated lack of appreciation that it affects everyone.

10 People thought that, because it is published, you know you get an index that is in the JSE published Dollar, Rand exchange rate and my people in the village do not trade currencies, but for heaven's sake, they ride a taxi that has got to have fuel in it and we do not produce oil we import it.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: So all too quickly what appears to be a very distant event, and event that I might think should not interest me, does not impact me.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: So I am saying that he may have been amongst those who were on the border line of not appreciating fully the crisis that was unfolding.

ADV MALEKA SC: Yes.

20 **CHAIRPERSON:** Thank you.

ADV MALEKA SC: Thank you, Chair. I think Minister Gordhan did explain to us the flow through effect of this weakening Rand and its multi-fold consequences on ordinary people such as you and me and the inflationary effect of it. I do not want you to get there, but you conclude that phase of the swearing in ceremony by saying to the

Chairperson that after the swearing in, Minister van Rooyen left with the President and did not say anything to you, and you seem to feel affronted by that fact?

MR LUNGISA FUZILE: Here is time for confession again. This is one of those lines that I put in very last, after thinking about it a lot, because I thought it could be subject to different interpretation that I was offended personally. Personally I did not care about maybe let me rephrase that – it is a lot like I would kill myself for having Mr van Rooyen refusing to shake my hand, but I was just concerned that I did not know who else observed it, who might write about it in ways that suggest that then the relationship between him and a Minister and I as DG was not going to work.

10 And inferences that people would draw from that, because for some reason what you find is that in many instances when people in the media, rating agencies, investors get to know that Mr X has grown within the Treasury, they have been interacting with him/her then he becomes a DG, they get to have confidence in the person.

A little to do with the shape of his forehead or something like that. They know that this person probably knows what the Treasury is about. So now when he did not shake my hand I thought that this might have been spotted by the media and if they did spot this they would infer that I am not going to stay.

CHAIRPERSON: Okay, I am sorry, I know I am interrupting you, but because I did not
20 hear it so well, maybe somebody else also did not hear it so well, but I am now looking at the statement, I can pick it up. The point you are making is that after Mr van Rooyen had been sworn in, he walked out with the President and when he came back to all of you who were waiting outside, Mr Bhobat was in front of you, he shook his hand?

MR LUNGISA FUZILE: Yes, to congratulate him.

CHAIRPERSON: Sorry?

MR LUNGISA FUZILE: He congratulated him.

CHAIRPERSON: Yes, and congratulated him.

MR LUNGISA FUZILE: Yes.

CHAIRPERSON: You followed and put out your hand to congratulate him, but you were surprised that he ignored you and walked away instead, that is the point that you are dealing with?

MR LUNGISA FUZILE: Yes, that is the point I am dealing with, Mr Chairman.

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: And I make a couple of points, but I will not repeat all of them.

- 10 I say, it did not offend me personally, but I cared about the optics of it, for what the people around would interpret it to mean, that if the media sees that my new Minister has got no time to shake my hand to congratulate him, then they would infer that actually he hates me, he does not like me, he does not want to work with me.

And therefore they would infer that I am likely to leave and I suspect they would not have been wrong and of course they could have inferred that there may be people who feel that if he does not like me, because they have worked with me for long, then they have got no reason to stay with him.

And at this time I did not know of course that he had a list of people, but I was concerned about the message it would convey.

- 20 **CHAIRPERSON**: That must have been quite strange, because as you have said you have interacted with him on many occasions in his capacity as a member of the finance portfolio committee, is that how it is called?

MR LUNGISA FUZILE: Yes.

CHAIRPERSON: Finance portfolio standing committee.

MR LUNGISA FUZILE: Standing committee on finance.

CHAIRPERSON: On finance, ja, and you knew each other so well that you actually had his number and he had your number, he at some stage, occasionally you would call each other comrade, so this must have been quite strange?

MR LUNGISA FUZILE: I am not even sure the word strange captures it. I mean, it was absurd in the extreme, because if I think about the last interaction we had with Mr van Rooyen it was in a boardroom in the Treasury, that is before the call that morning.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: We met him in the context of discussing a piece of legislation that we were having difficulties implementing and on the occasion he was very good, he
10 played, he came as the whip of the governing party in that committee and to mediate and to have this conversation, because the legislation was coming from Treasury, the Minister of Finance that is – and of course there were sections of the population that had issues with it.

So he came to mediate and he played that role so well. I would not take that away from him. So that was the last interaction I had with him proper and then there is this evening/morning stuff that we had already been through and then at that moment. Of course if you then put that in the context of Mr Jonas' revelation that evening, you now understand that he had cause to do this, because it was the beginning of executing that first task, which is to communicate the message to me that I do not want you.

20 **CHAIRPERSON**: And as at the time that he ignored you and did not shake your hand, you had as far as you, you had never done anything to upset him?

MR LUNGISA FUZILE: Except to do my job to the best of my ability.

CHAIRPERSON: Of course at that time you would not have thought that, that would upset him?

MR LUNGISA FUZILE: No, I was not naïve, Chairman. The job of the Treasury was described very nicely here by Mr Gordhan reading a lot from Mr Manuel's – if you do it well you do not make many friends.

CHAIRPERSON: No, no, I understand that, but I would think that first and foremost the people with whom you might not make friends might be Ministers in other departments who want certain projects – I mean funding for certain projects and their DG's and then maybe some stakeholders and so on, but I am not sure about a member of portfolio committee whether he would immediately come into that?

MR LUNGISA FUZILE: That is correct, except that members of portfolio committees
10 live in the society that we live in, so some of the views that are held by people in society filter into how members of portfolio committees think, but I am just – in this case I am not even suggesting, because imagine this picture that I painted of my interaction, very healthy, proper with him a few weeks earlier, it could have been a month or so and then all of a sudden there was this kind of interaction.

I cannot imagine at the risk of spoiling how – but of course this is something we covered yesterday, so there is no problem with it. I think that other than the fact that he came with this agenda that was given to him by the Guptas if you will take Mr Jonas' story to be true, which I have got no reason not to believe, if you take that he came with that agenda it is not inconceivable that he had a real preoccupation to show Mr Bhobat
20 who we know was connected to the Guptas for longer, that I am actually showing this guy that I do not want him, so that he would have something good to report.

Because if we would have hugged and said hallo comrade, welcome and stuff, the report could have been, I doubt if this guy is going to do what you have told him to do. I mean if you stretch it and by the way it is not illogical.

CHAIRPERSON: It just seems really quite an unusual thing, because I am sure in your many years as DG there would be lots of South Africans who might have been unhappy about Treasury not approving that or that, but I do not know how many, you know did not want to shake your hand. So, in anyway Mr Maleka you may proceed.

ADV MALEKA SC: No, Chair, can I follow on that, because it is important.

CHAIRPERSON: Ja, thank you. I am just saying that it seems to me that whatever it is, it must have been something very important to him that made him do something so unusual and doing it to the DG of the department he was joining. Somebody that he would need to work very closely with and of course you told us yesterday that the DG of
10 Treasury is like a chief advisor to the Minister of Finance if I recall correctly. Ja, okay, alright, thank you.

ADV MALEKA SC: Chair, you have captured it, I will leave it, I think I am adequately covered now on that issue.

CHAIRPERSON: Oh, okay.

ADV MALEKA SC: Yes, the next topic begins from paragraph 41 and you squarely deal with the legislative framework for appointment of advisors. You referred to the provisions of Section 12(A) of the Public Service Act and, Chair, for your notes...[intervenes]

CHAIRPERSON: I am sorry I did not want you to hear that, I wanted you to proceed,
20 but the Registrar could not hear, I think my voice was too soft, you may proceed.

ADV MALEKA SC: Thank you, Chair.

CHAIRPERSON: Thank you, Mr Maleka?

ADV MALEKA SC: Thank you, Chair. Mr Fuzile you set out the relevant provisions of Section 12(A) from paragraph 42.3 of your statement on page 64, and, Chair, for your notes we would ask you to cross-reference that paragraph 42.3 with EXHIBIT F1 which

is the – you do not have to go there, if you could make it on your note, it is EXHIBIT F1 page 76 and 77 which is the text of the Section including in the Williams bundle.

We will debate later on, Chair, what that Section means, but your purposes Mr Fuzile, you have worked with that section and it lists a number of requirements. One of them is that there has to be a determination by a cabinet relating to the appointment of advisors. We have asked your lawyers and they have now given us that determination made by cabinet set out in the special dispensation, a copy whereof we have included it in your bundle and that of the Chairperson.

It begins at page 112J. Can I ask you to go to page 112J? Are you there?

10 **MR LUNGISA FUZILE:** I think so, the dispensation for the appointment of...[intervenes]

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: And I am going to highlight quickly some of the elements of it and if you go to page 112K you will see that after the introductory part of it in paragraph 1 there is identification of the scope of that special dispensation from paragraph 2. And the key thing is that it identifies in paragraph 2 the number or upper limits of the special advisors a Minister could appoint.

Can you confirm to us what is the upper limit?

20 **MR LUNGISA FUZILE:** The upper limit is two, but it can be determined otherwise by cabinet.

ADV MALEKA SC: Yes. And then in paragraph 5 we are told what are the requirements of the special advisors who could be appointed, pursuant to this special dispensation. Can you tell us what is the key requirement that is referred to in paragraph 5?

MR LUNGISA FUZILE: It is that they must be citizens of South Africa. They must be subjected to security clearance. Ja.

ADV MALEKA SC: Alright, and then in paragraph 6, 7, 8 and 9 we are told what the role of the special advisor would be, do you see that?

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: And my reading of it is that the role of the special advisor cannot include the take over power of the functions and duties that are conferred upon employees of a department such as National Treasury, correct?

MR LUNGISA FUZILE: That is correct, yes.

10 **ADV MALEKA SC**: Now there is part of the special dispensation and perhaps you can identify it for me now, which says that a special advisor cannot assume the functions and duties of a Director General?

MR LUNGISA FUZILE: Towards the end of paragraph 7 of that – I do not know if you call it exhibit or what, the last line, the very last line...[intervenes]

ADV MALEKA SC: Can you read it out for us?

MR LUNGISA FUZILE: It says:

20 "The special advisor shall direct his/her inputs to the executive authority and emphasis refrain from interfering in the administration and management of the department, which in law is the function and responsibility of the Director General."

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: It was for this reason that I said the things he did were illegal, because this builds on the Public Service Act.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: As you were directing me.

ADV MALEKA SC: So in context and applying characters at play at that time you are the DG, you are the accounting authority, the Minister has now been sworn in and someone introduces himself to you as the special advisor of the Minister. Those are the three characters at play.

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: And one of them purports to give you instructions and that would be in breach of this part of the special dispensation?

MR LUNGISA FUZILE: That is correct.

ADV MALEKA SC: Yes.

10 **MR LUNGISA FUZILE:** And as the statement shows he also went ahead to issue instructions to Ms Matanda.

ADV MALEKA SC: Yes. And then in paragraph 8 there is an exclusion of things special advisors cannot do once appointed, lawfully in terms of this special dispensation. Can I ask you to read it out for us please?

MR LUNGISA FUZILE: Yes.

20 "The serving of special advisors on statutory boards or councils for which the executive authorities individual are correctively accountable would be inappropriate since it could give rise to a direct or indirect conflict of interest or advice which could be bias or perceived to be bias, therefore, a person who is to be appointed as a special advisor serves on a statutory board or council or similar bodies for which the relevant executive authority individual are correctly accountable, his/her appointment to such boards or council must be terminated with effect from date of appointment as special advisor to the

relevant executive authority."

ADV MALEKA SC: And finally the general provisions of the special dispensation beginning from paragraph 10 stipulate that there has to be a contract of the kind that is approved by Cabinet that has to be concluded between the special advisor and the executive authority. You see that?

MR LUNGISA FUZILE: Yes I do.

ADV VINCENT MALEKA SC: And it identifies components of the contract.

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: And then it makes it quite clear what the benefits, I am
10 talking about the financial benefits of the special advisor would be. We do not have to go there for the purposes of our discussion.

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: Thus far the special dispensation sets out several requirements which must be complied with before someone can lawfully call himself or herself a special advisor of an executive authority such as Minister Van Rooyen, correct?

MR LUNGISA FUZILE: That is correct.

ADV VINCENT MALEKA SC: Yes. Chair we have included in the bundle specimen documents of the type of contract which had been approved by cabinet which has to be
20 concluded by a special advisor and his or her Minister. If I can ask you to reverse back to page 112A.

CHAIRPERSON: 11?

ADV VINCENT MALEKA SC: 2A.

CHAIRPERSON: Yes?

ADV VINCENT MALEKA SC: That document is an example of a contract of

employment executed by a Minister and we have redacted the names so that they should not disclose confidential matters, but you will see that the first part of the document indicates that the contract is entered into by and between the government of the Republic of South Africa and its National Treasury and herein represented by Lungisa Fuzile in his capacity as the DG and as such duly authorised and then it indicates who else would be the special advisor to conclude that contract. In National Treasury this will be the format of the type of contract that will be concluded by a special advisor and National Treasury for and on behalf of the Minister, correct?

MR LUNGISA FUZILE: That is correct.

10 **ADV VINCENT MALEKA SC**: Yes and you would sign that contract.

MR LUNGISA FUZILE: Yes I would sign that contract.

ADV VINCENT MALEKA SC: As appears...[intervenes]

MR LUNGISA FUZILE: On a rare occasion it might be someone to whom I would have delegated that authority.

ADV VINCENT MALEKA SC: Yes.

MR LUNGISA FUZILE: Very rare.

ADV VINCENT MALEKA SC: Yes, yes.

CHAIRPERSON: So this person who was issuing instructions to you on the first day that you met actually at a formal level to say the least is a person to whom you would stand as employer, because you would represent the government in the contract that he would ordinarily be required to conclude.

20

MR LUNGISA FUZILE: That is correct.

ADV VINCENT MALEKA SC: Thank you Chair. We wanted to hold back on that proposition until later, but it is self-evident and then Chair the next document we have included begins at page 112E. You will see that that is a memorandum which the

Minister concerned has to prepare and motivate for the appointment of a special advisor consistent with the requirements of the special dispensation and you will see that in this case the memo concerned is from Minister Gordhan who is motivating the purpose, the reason and requirements for the appointment of a special advisor that he sought at the time and Chair we have blocked out the names for the purposes of protecting confidentiality, but the rest of the motivation and elements of the requirements are set out Mr Fuzile from paragraph two. I am not going to ask you to go through it unless you want to do so, but you will see that it indicates all sorts of requirements including the duration and thereafter a recommendation and someone will

10 have to decide on this rather than the Minister himself who is making the request and recommendation. From your knowledge once the Minister prepares this memorandum who then decides on it?

MR LUNGISA FUZILE: That is an interesting question because it is almost like the Minister would have made up his mind in this case that he wants the advisor, but quite importantly the Minister would not simply go ahead and appoint the advisor for the following reason which I capture in my memorandum and you will see it in this memorandum why it is important, because the Director General of a department who is the accounting officer is the person who as I was describing yesterday led by Mr Maleka has got the duty and responsibility to ensure that every contract that gives rise

20 to an expenditure from a department there is money in the department to meet that financial commitment. So the Minister may from his heart and head feel he needs an advisor but if the department does not have a resource and the Director General or accounting officer says there is no resource then the Minister will not appoint. The same would apply in the unlikely event that the Minister wants to exceed the threshold that is allowed in the dispensation, special dispensation we are discussing then the

Director General would have to politely remind the Minister that no, no, no you have exhausted your quota now and similarly if there is any inconsistency between what the Minister wants and any of the relevant rules the Director General or the accounting officer has got a duty and responsibility to make sure that he or she tells the Minister and as we say it in government if the Minister insist the law is very good with this all you do is to ask him or her to put it in writing.

ADV VINCENT MALEKA SC: Yes.

MR LUNGISA FUZILE: And then you have absolved yourself.

ADV VINCENT MALEKA SC: And that is the reason why I ask you this question
10 because here it seems to be that the roles of approval and the location of the authority to approve is reversed, because there are PFMA implications here. It is not the Minister who is responsible for unauthorised expenditure of the kind. It is you as the Director General.

MR LUNGISA FUZILE: That is correct.

ADV VINCENT MALEKA SC: And that you must express that approval that there is indeed a budget allocation for the advisor the Minister seeks and you must say yay or nay and if the Minister insists then questions of absolutions from your part will follow by asking him to put it in writing.

MR LUNGISA FUZILE: That is correct Mr Chair.

20 **ADV VINCENT MALEKA SC:** And the Auditor General will then take over.

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: When the time for audit comes.

MR LUNGISA FUZILE: Exactly.

ADV VINCENT MALEKA SC: Yes. Now...[intervenes]

CHAIRPERSON: Sorry Mr Maleka. You said that you people blocked out the names,

but whatever you used is not, was not very effective. So I think you must at the earliest opportunity find something that will be effective. If you stand at a certain angle you can see the names. You can read the names.

ADV VINCENT MALEKA SC: Chair *mea culpa* it is the lawyers of Mr Fuzile that did the exercise and I...[intervenes]

CHAIRPERSON: Okay...[intervenes]

ADV VINCENT MALEKA SC: Can I show you that they hear you on this score? I would like to round up all of these requirements in the context of the facts because they mean nothing unless you apply them to the facts that we are dealing with during the
10 reference period. We have gone through the law, we have gone through the requirements of the processes. We have gone through the powers and duties. On the facts here you are, you are sitting with Mr Bhobat who told you that he is the advisor. Did he or the Minister at the time show you any contract that he may have had to justify his status as an advisor?

MR LUNGISA FUZILE: No Mr Chair.

ADV VINCENT MALEKA SC: As far as you are aware given that interposing 15 to 17 hours would he have gone through any security clearance as is required under the special dispensation?

MR LUNGISA FUZILE: I doubt if he would have, but even if there were to be an
20 attempt the letter would have had to come from or under the letterhead of the Treasury to the relevant authorities that undertake security clearance. So unless of course he was migrating as an advisor from another department which happens a lot. If a Minister transfers to another department the law is written in such a way that at least there is a month in which the Minister can move that advisor or leave the advisor in the one department and then processes to regularise what happens beyond that can be

followed.

ADV VINCENT MALEKA SC: Yes. You have already told the Chairperson that you did not sign any contract.

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: What then remains is to find out whether you yourself had explored the question that there was or there was no money within the budget of treasury to accommodate the costs of whatever advisor or advisors Minister Van Rooyen would have wanted to appoint? Had you explored that issue at that point in time?

- 10 **MR LUNGISA FUZILE:** Not when I met Mr Bhobat and not when I met Mr Van Rooyen. Even if we were to hypothesise that I had explored it at one point where Minister Gordhan would have wanted to appoint advisors I would have explored it for a different reason under a different context. So the facts would have changed. So the process needed to be restarted and rerun even if it comes to the same conclusion.

ADV VINCENT MALEKA SC: All right and then in paragraph 46 on page 67 of your statement you emphasise a point about the probity and integrity of persons who must be appointed as special advisors, correct?

MR LUNGISA FUZILE: I do.

- 20 **ADV VINCENT MALEKA SC:** And you say that it must be persons of utmost integrity and it must be a person who would not leak information to persons outside the department in order to influence policy for nefarious purposes. We will get back to the facts on this issue, but Chair these are not new standards. They apply across the board in all employees of the State and they are usefully set out in the Treasury, not Treasury the Public Service Regulations and they have been canvassed by Ms Hofmeyr with Ms Williams.

CHAIRPERSON: Yes I remember.

ADV VINCENT MALEKA SC: And I do not have to take you through them.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: So that these standards apply across the board as between advisors and also the employees of the State. I would like to move now to the next topic of your statement which is the one that begins from Friday of the 11th and you deal with that topic from paragraph 47 on page 67 and I want you to be as quickly as you can in that regard and can I ask you to tell us about the morning conversation you had with Mr Van Rooyen on the 11th of December 2015?

- 10 **MR LUNGISA FUZILE:** As 47 indicated Mr Chair the first part was about a telephone call. I cannot recall quite who called whom but the essence of it is that the conversation was that I should be at the, we should meet at 11:00, that is Mr Van Rooyen and I in his office at 40 Church Square and he also asked that on the same day at 11:15 I should arrange to, for him to be able to meet the whole executive that he might direct reports. Of course I duly availed myself for the meeting and as I was walking into the office Mr Jonas was walking out. He looked quite tense. I asked him if he was going to join us which was just the usual thing unless of course diaries were not permitting that the Deputy Minister, Minister and I would meet together and then meet the executive together and he shook his head in disagreement and walked towards his
- 20 office. Of course I walked into the office, found Mr Van Rooyen with three gentleman. Mr Bhobat that I have already mentioned, Mr Whitley and Mr Malcolm Mabaso.

ADV VINCENT MALEKA SC: Yes. Then are you able to indicate why Mr Jonas decided not to join the meeting that you, your direct reports and Mr Van Rooyen and his – those who accompanied him would be part of that meeting? I mean is there anything that you would like to share with us on that score?

MR LUNGISA FUZILE: I can make an inference.

ADV VINCENT MALEKA SC: Well then let us not go there.

MR LUNGISA FUZILE: Okay.

ADV VINCENT MALEKA SC: Mr Jonas will speak for himself.

MR LUNGISA FUZILE: There was no specific reason that we talked about.

ADV VINCENT MALEKA SC: No he will speak for himself.

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: But as a fact you say he decided not to become part of that meeting?

10 **MR LUNGISA FUZILE**: And I had asked him in my case.

ADV VINCENT MALEKA SC: Yes. Then please continue about what happened after you met the four gentlemen.

MR LUNGISA FUZILE: Then when we were meeting Mr Van Rooyen instructed me to expedite the process of formalising the appointment of Mr Bhobat and Mr Ian Whitley as advisor and as Chief of Staff respectively albeit by the way with some sort of stumbling in terms of who is Chief Advisor, who is Chief of Staff and who is advisor.

ADV VINCENT MALEKA SC: No, no it is important and I would like you to...[intervenes]

CHAIRPERSON: It is important. Deal with it properly.

20 **ADV VINCENT MALEKA SC**: Yes.

MR LUNGISA FUZILE: Okay because at one stage he pointed to Mohamed Bhobat as Chief of Staff and then he said no I will be advisor. Chief of Staff is this one.

CHAIRPERSON: Yes. That part just say it – narrate it as it happened. It is quite important.

ADV VINCENT MALEKA SC: And then take your time please.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Unless you have other pressing engagements elsewhere.

MR LUNGISA FUZILE: He walked in, we sat. Could you appoint these two gentlemen and then pointing towards Mr Bhobat he said this one is Chief of Staff and then the reaction was no, no, no I will be advisor, this one will...[intervenes]

ADV VINCENT MALEKA SC: Who is saying...[intervenes]

MR LUNGISA FUZILE: This is Mr Bhobat.

ADV VINCENT MALEKA SC: Yes?

10 **MR LUNGISA FUZILE:** Saying that he is going to be advisor and the other one is going to be the Chief of Staff which is Mr Ian Whitley.

ADV VINCENT MALEKA SC: Are you saying that Mr Bhobat is correcting the Minister?

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: On the status that he is going to and the role that he is going to play?

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: How is that possible?

MR LUNGISA FUZILE: It happened.

20 **ADV VINCENT MALEKA SC:** I know that it happened but what explains it as far as you are concerned?

MR LUNGISA FUZILE: I suspect that the title Chief of Staff sometimes sounds like the Chief of Staff in the White House for some people because if you think about a Chief of Staff in the White House that is the only example that comes to mind it is I suspect it would be the most senior role in the office of the President. I might be wrong.

ADV VINCENT MALEKA SC: It is an official appointment.

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: By the President of the US.

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: In his administration.

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: In fact in some regard that person as a *de facto* president. So let us not go there.

MR LUNGISA FUZILE: So I suspect...[intervenes]

ADV VINCENT MALEKA SC: Yes?

- 10 **MR LUNGISA FUZILE**: Yes. So I suspect that in just saying the words Mr Van Rooyen you will remember that there are these two roles advisor and Chief of Staff and the one that sounded senior was Chief of Staff to advisor and I mean it sincerely because of this Chief of Staff advisor and then he corrected him in that way.

ADV VINCENT MALEKA SC: Yes. Right then we know from your explanation that it is Mr Bhobat who immediately corrected the Minister. What did Mr Ian Whitley say if ever he had to say something about the confusion of the roles?

MR LUNGISA FUZILE: No he was – he was quiet and smiled a bit.

ADV VINCENT MALEKA SC: Okay and there was a third person that you identify as Mr Malcolm Mabaso.

- 20 **CHAIRPERSON**: Before you go to Mr Mabaso as Mr Van Rooyen was telling you who was going to be Chief of Staff and who was going to be Minister the two men were in front of him?

MR LUNGISA FUZILE: Yes, Chair.

CHAIRPERSON: So if he knew exactly which one was to be his advisor and which one was to be Chief of Staff if he had appointed them himself he could not make a mistake

because he would know which one he had appointed, is it not?

MR LUNGISA FUZILE: That is a reasonable observation, Chair.

CHAIRPERSON: That might be different and you must just make comment on this, it might be different if they were not in front of him and he was giving you names and then maybe if you said Mr Bhobat, well as he did say Mr Bhobat would be Chief of Staff and Mr Whitley would be advisor he might be having the right face in mind but the wrong name but here they are in front of him. How does one make that mistake?

MR LUNGISA FUZILE: I would make it, Mr Chairman if I am overwhelmed. You have got people you do not know very well, you have not known for long which is why I used
10 the phrase I do not want to suggest he does not know them very well and then but it just looked like the way things were unfolding in front of my eyes it did not look like they had known each other for too long and it also did not look to me that most of what Mr Van Rooyen was saying was original to your point which is that if you, I even think that Mr Chairman you are being too accommodating if I know two people very well and I know two roles that I want to assign them. I do not need to see their faces to say that person A is going to be this and person B is going to be this.

If you know the people very well and know the roles very well you will correct yourself if you have got a Freudian slip.

CHAIRPERSON: I am just trying to understand how it could happen. Maybe – maybe
20 there is some explanation and I am trying to understand but you did try to offer some explanation.

MR LUNGISA FUZILE: I can see now, Mr Chairman you are getting close to where I was. I could sense yesterday that Mr Maleka was feeling that I should be able to just say that when things were said by Mr Godongwana and then I should just make sense of these things.

The problem with these things is that normal human beings in my book operate within a frame of what you expect to be normal. We do not expect that while we are sitting here someone can just walk in naked because it is antisocial. It is not how we have been socialised.

We understand that before you walk out of your home you must ready yourself to be presentable. So that is why a lot of what we talk about here we sound like we have lost our senses because some of the things just do not make sense including this next point that if you are happy I can get into.

ADV VINCENT MALEKA SC: Before you get these...[intervenes]

- 10 **CHAIRPERSON:** Well before even Mr Maleka you see part of the reason why I put this to you I ask this question, Mr Fuzile, is that part of the Judge's job or anybody who is called upon to listen to evidence from different witnesses and make up his or her mind is that you always have to leave room that what might seem inexplicable may well be explicable or may well be explained by somebody else and then when that person explains it you say oh, okay he does make sense. At that time I did not see it so.

MR LUNGISA FUZILE: Yes.

CHAIRPERSON: So it is part of my job to try and say when something appears to other people not to make sense or maybe even to me I try and see if there might be some sense. So okay, thank you.

- 20 **ADV VINCENT MALEKA SC:** Thank you, Chair and you can see that the training of lawyers is to keep an open mind. Chair, Mr Van Rooyen and the three persons will speak for themselves but you, Mr Fuzile have to assist us to the extent possible on this issue and where I was going to test your version on this issue is this.

I wanted to do it before I get – I wanted to do it after I had explored with you the question of Mr Mabaso.

MR LUNGISA FUZILE: Okay.

ADV VINCENT MALEKA SC: But let me do it now because the difficulty as the Chairperson has put to you are still fresh in your mind. You recall that you have dealt with the question of conflict of or inconsistency of instructions the previous day as between the Minister and Mr Bhobat?

We have gone through that territory. We do not have to rerun again and here you are second time around. You are now being given something which on the face of it is an instruction repeating or reflecting to some degree that inconsistency.

You were asked to facilitate and to do it quickly the execution of the contracts
10 of the DG for the advisors. You are told by the Minister that hey for this one is Chief of Staff. On the face of it and absence any further comment you would have to do what the Minister tells you, correct?

MR LUNGISA FUZILE: Correct.

ADV VINCENT MALEKA SC: Now there is an interruption by someone who corrects the Minister that by the way I am the advisor not the Chief of Staff. There is conflict at that point in time. At worse there is an inconsistency.

How do you go about implementing that ministerial agent instruction? What line do you take in between and what line did you intend to take at that point in time?

MR LUNGISA FUZILE: The problem did solve itself on the spot in a way or albeit
20 intelligently because then Mr Van Rooyen accepted the assignment of roles.

CHAIRPERSON: The correction.

MR LUNGISA FUZILE: The correction yes, accepted the correction. So because it had come out of his mouth that is what I was going to explore doing.

ADV VINCENT MALEKA SC: Well realise the difficulty which I have and I put it to you so that you can comment on it. It is now Mr Bhobat who reflect the true nature of the

instructions and not the Minister.

MR LUNGISA FUZILE: You are correct.

ADV VINCENT MALEKA SC: Well can we get to Mr Mabaso if you have nothing further to say on this second round of a conflict of instructions?

MR LUNGISA FUZILE: No, no suffice to just make the point that from the difference of views the previous day and that little bit but it was clear even from the previous day that we were actually set for a very difficult time as a team because you – it was clear that there were times where the advisor and the Minister would differ. The advisor is quite assertive or was quite assertive.

10 Then the Minister went on to point in the direction of Mr Mabaso to say I should not worry about him insofar as the formalisation of the paperwork. He was just going to be around.

ADV VINCENT MALEKA SC: What does that mean or how did you understand him to convey?

MR LUNGISA FUZILE: I understood him to be saying that we should not have a contract like that sample contract that you saw, Mr Chairman want to that then would imply that – in fact his name would not have appeared on any memorandum like the one you saw again in the sample or if it were to appear it would have been an odd thing because you would have said there is going to be someone but his role is not that clear
20 and there is no salary and there is not going to be a contract. I would not have signed such a...[intervenes]

CHAIRPERSON: I guess there would have been no office either.

MR LUNGISA FUZILE: I do not know about that because he said he was going to be around. I do not think he was going to be walking up and down passages but I am saying as he said it to me honestly.

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: So in essence I understood him to be saying you must not put therefore if you do not have that contract you cannot capture the person's details on the electronic system that government uses to keep a person's details to run a person's salary, leave and everything on a regular basis. I objected to that. Actually very firmly. I said I do not think it is going to happen to which Minister Van Rooyen responded in a way that shocked me. In fact I must say it annoyed me because he said "no, you must just facilitate this thing, you are just a DG." Now at that point I had to remind him that the role of a DG is, carries more weight than what he was insinuating. In fact the
10 Director General is the accounting officer of the department. I underlined this here and I found that very disturbing coming from someone who had been a member of Parliament. Someone I had interacted with. Who held me accountable.

ADV VINCENT MALEKA SC: Yes.

MR LUNGISA FUZILE: And now all of a sudden he is reducing the importance of the position. I do not care about what you call me as long as you do not swear at me in ways that get me to feel that it warrants a response or reaction, but you know, but the whole notion that the law, the law says this person is the accounting officer. It sets out the duties and responsibilities of the person and here I have a Minister who the first conversation suggest that when it suits him he will reduce or diminish this role, which
20 then means he is likely to run roughshod what the responsibilities it carries. Then I could foresee a situation where we were going to disagree every day and it was at that point that for the first time I suggested to all of them that they should familiarise themselves with the Ministerial handbook and all the relevant laws so that from that point onwards we would interact from an understanding of the same rules of the same system that we were serving, but I also encouraged Mr Van Rooyen to fill out as he

goes through the Ministerial handbook what is allowed in it and whether there would be a role that he thinks Mr Mabaso could fit in which would fit within the rules, but the just being around bit I said to him was unacceptable. In fact I emphasised to him and said "you may want to think about this before we go to the other meeting with the rest of the colleagues." Parts of what concerned me had less to do with me as a person Lungisa Fuzile but the role that I was supposed to play and if I had gone to the meeting with all my reports where the Minister says we have just had a discussion with the DG, we are agreeing that Mr Mabaso is just going to be around. My colleagues would have thought that from the last time they saw me I had gone insane.

- 10 **ADV VINCENT MALEKA SC:** And that is the sense I get that you are now longer a Mr Nice Guy who you were the day before and now you are setting your own authority of the office of the DG at that point in time. So there has been a swung in the perspective and the conversation between you and the Minister at that point in time. Can I just ask you a last question before I ask for the lunch adjournment? You indicated when and how you met Mr Bhobat so that by the time he arrives on the 11th at the office of Treasury he is no longer a stranger. What about Mr Whitley? When did you meet him for the first time?

MR LUNGISA FUZILE: The occasion in the Minister's office was the very first time I ever saw him, I ever saw him.

- 20 **ADV VINCENT MALEKA SC:** Had you heard about his name before?

MR LUNGISA FUZILE: Not at all.

ADV VINCENT MALEKA SC: What about Mr Mabaso?

MR LUNGISA FUZILE: I do not know if I had heard about his name or I checked afterwards, but I checked all of them by the way in the, on the internet just to connect them and at some point I picked that Mr Mabaso may have been a business partner

with the Guptas or something.

ADV VINCENT MALEKA SC: But that is after the fact of your meeting?

MR LUNGISA FUZILE: I think so, I think so.

ADV VINCENT MALEKA SC: Yes.

MR LUNGISA FUZILE: I did not know him before that.

ADV VINCENT MALEKA SC: Okay. Chair I see that it is past 13:00. I wonder whether it is that moment for a traditional long break.

CHAIRPERSON: Yes we will take the lunch adjournment and we will resume at 14:00.

ADV VINCENT MALEKA SC: Thank you Chair.

10 **CHAIRPERSON:** Thank you.

HEARING ADJOURNS

HEARING RESUMES

CHAIRPERSON: Yes Mr Maleka?

ADV VINCENT MALEKA SC: Chair thank you. It is that time of the day when one's brain works less efficient than other vital organs. We will try as best as we can to maintain the desired level of concentration. Mr Fuzile we were at page 68 of your statement and we had just finished your view of things when you were told that you were just a DG. I would like now to talk about the next instruction that flows from Minister Van Rooyen which you deal with from paragraph 54. Are you able to canvas
20 that part of the instruction? I think you used the verb demand. Can you just explain what he said to you first of all?

MR LUNGISA FUZILE: Yes thank you very much. At that point Mr Van Rooyen when we were still in his office asked that I should work to ensure that by Monday the 14th I could furnish him with a handover report and I go on to explain here that I think in fact that that request was unreasonable and I list the reasons that I can go through fairly

quickly. One, because I have already touched on it Mr Chairman at the beginning I had received for instance my own handover report from my predecessor Mr Kganyago who was the DG.

ADV VINCENT MALEKA SC: Yes.

MR LUNGISA FUZILE: Mr Nene who was Mr Van Rooyen's predecessor I had received his handover report from Minister Gordhan. So Minister Van Rooyen had in fact refused earlier on, in fact a day or so earlier the opportunity to meet Mr Nene which would have allowed him to make arrangements either to start the process of handing over as Mr Maleka was relating me earlier on in that direction correctly so and of course
10 to the extent that time might have been a constraint he would have had the opportunity to, the two of them would have had an opportunity to agree an appropriate time to do it. So for all of those reasons and in fact of course the fact that it was middle of December and I knew and then told him at that point and later on it became obvious I suppose even to him when we met the executive that most people who would assist the Minister by sort of indicating or doing write ups on the important projects in relation to their areas of work had already left for holidays. So then the timeline of requiring a report from me by Monday was actually very unreasonable.

ADV VINCENT MALEKA SC: Right.

MR LUNGISA FUZILE: I communicated that.

20 **ADV VINCENT MALEKA SC:** Before you talk about the unreasonableness of the timeline you reference an event in prospects at that point in time. In other words an event which took place after the instruction by Minister Van Rooyen to you on the 11th, but also to make the point that when both Minister Gordhan and his deputy Mr Jonas were removed there was a moment when they did hand over the ministries and they did so to their successors who were both Minister Gigaba and Deputy Minister Buthelezi.

You made that point in paragraph 54.2. Do you see that?

MR LUNGISA FUZILE: Yes I do. I do and really the point to emphasise, thank you Mr Maleka for pointing me to that, is that even though as the Commission knows now Mr Chairman Minister Gordhan and his deputy Mr Jonas had been removed in the most unceremonious of manners. They still saw it fit to respect the practice, normal practice I might add of making sure that they do not just walk away in disappointment, in anger and not do what is proper, which is to hand over yet Minister Van Rooyen saw it fit not to agree to a similar process.

ADV VINCENT MALEKA SC: Yes. Chair you will see that he makes that point on
10 page 68 of EXHIBIT P, at page 54.2 when he talks about that well known event which the media describes it as the night of the long knives.

CHAIRPERSON: Okay I am sorry Mr Maleka you will have to repeat that. My mind was on something else.

ADV VINCENT MALEKA SC: It is...[intervenes]

CHAIRPERSON: Will the legal team please make sure that in this bundle such as this one which has got Mr Fuzile's statement...[intervenes]

ADV VINCENT MALEKA SC: Yes Chair?

CHAIRPERSON: It has got other witnesses' statement that there are markers or something that immediately tells me where to go...[intervenes]

20 **ADV VINCENT MALEKA SC**: Yes...[intervenes]

CHAIRPERSON: If I look for a particular statement.

ADV VINCENT MALEKA SC: Yes Chair.

CHAIRPERSON: So I have had to page through for some time trying to see where, where his statement as.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: So that would be very helpful.

ADV VINCENT MALEKA SC: Yes. Chair I apologise. I see that your Registrar has one immediately available for the present purposes. Can I ask that it be...[intervenes]

CHAIRPERSON: It can be done later for now because I found it. That is fine. It can be made with other bundles as well.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Okay, all right. Yes?

ADV VINCENT MALEKA SC: I really apologise Chair.

CHAIRPERSON: Okay thank you. There was something you were saying?

10 **ADV VINCENT MALEKA SC**: Yes.

CHAIRPERSON: While my mind was on how to find the statement. Do you want to repeat that?

ADV VINCENT MALEKA SC: Page 68 Chair paragraph 54.2.

CHAIRPERSON: Yes?

ADV VINCENT MALEKA SC: You would recall that Mr Fuzile is now talking about the instruction that he must produce a handover report by Monday of the preceding Friday.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: So they are talking with Minister Van Rooyen on Friday and he has given...[intervenes]

20 **CHAIRPERSON**: And that would be, was Friday the 11th?

ADV VINCENT MALEKA SC: Yes Chair.

CHAIRPERSON: Yes okay.

ADV VINCENT MALEKA SC: And the report must come on Monday the 14th.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And then he gives reasons.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Why he cannot do so.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And one of the reasons he gives in 54.2 that he has already canvassed is, "but I had previously invited you Minister Van Rooyen to meet with your predecessor Minister Nene who was available to meet you to get a handover report from him because he is your colleague at an executive functionary level" and he was dealing with that fact by illustrating why that ought to have been the process by referring to something that happened thereafter and that was the dismissal of Minister

10 Gordhan and Minister or Deputy Minister Jonas.

CHAIRPERSON: I heard everything that Mr Fuzile said in regard to that evidence. It is just what you were saying that last bit that I did not hear.

ADV VINCENT MALEKA SC: Okay.

CHAIRPERSON: So I heard all his evidence...[intervenes]

ADV VINCENT MALEKA SC: No, no...[intervenes]

CHAIRPERSON: About the reasons why he thought that Minister Van Rooyen's request was unreasonable.

ADV VINCENT MALEKA SC: Yes.

20 **CHAIRPERSON**: Actually what I wanted to ask him Mr Fuzile in regard to one of your reasons is whether when you had suggested to Mr Van Rooyen on, I do not know if it was on the 9th, but that he should come early, it must have been on the, to come early on the 10th.

MR LUNGISA FUZILE: Yes.

CHAIRPERSON: Because you knew that Minister Nene either was going to be or was likely to be in the office so they could meet. When you made that suggestion did you

do anything more than simply say well it might be a good idea that you come early and meet Mr Nene before he leaves or did you specifically talk about handover?

MR LUNGISA FUZILE: I do not recall if I spoke about the handover but I did speak about the opportunity for him to meet Mr Nene and the opportunity for both of them together to address staff.

CHAIRPERSON: Yes, yes.

MR LUNGISA FUZILE: And in a way, look I might have...[intervenes]

CHAIRPERSON: You may have had it in mind.

MR LUNGISA FUZILE: For sure.

10 **CHAIRPERSON**: You might...[intervenes]

MR LUNGISA FUZILE: No I definitely had it in mind, but I mean without appearing like I am leading them...[intervenes]

CHAIRPERSON: Yes...[intervenes]

MR LUNGISA FUZILE: And handholding them.

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: But at least the opportunity to meet would have presented opportunity for a whole host of other things.

CHAIRPERSON: It is just that if you had mentioned specifically there might have been a certain angle in which I would have been interested in the fact that he was now
20 asking you to give him...[intervenes]

MR LUNGISA FUZILE: Yes...[intervenes]

CHAIRPERSON: A handover report, but in fact you are saying that if he had taken up your suggestion, if he had accepted, if you would have had a chance to speak to Mr Nene and in all probability their conversation might have included things like what are the most important issues that need attention.

MR LUNGISA FUZILE: No it definitely would have Mr Chairman. I mean one of the things in fact I had in mind was that I would sort of prepare Mr Nene and say to him one of the things you have got to talk to Mr Van Rooyen about is the fact that we have a budget process that is running a month behind because normally we would get to November, the meeting that we went to that December 9th that is used to be November, but now it was maybe the second or third year in the running where it was migrating and going into December and in fact previously it would get into December and things would be concluded, but in that particular year it got into December and things did not get concluded because of the higher education problem that I referred to, which then

10 was taking the budget process into the following year and South Africans go on holiday or leave most of them between the 16th of December roughly, mid-December to the, you know end of the first week of January usually people return on the second week. So you know I wanted him to impress it upon him that there was some heavy lifting to be done even before we went home so that we would give direction to the leadership of the department about the difficult task that remained and even implore people to return a bit earlier than normal given that there was still a lot to do. So I had in mind that that stuff, that bit must be on the table among other things.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Thank you very much. Then we can talk about the

20 timeframe relating to the demand for the handover. Minister Van Rooyen was quite clear that he wanted it by Monday.

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: And you took a different view as I understand your statement. You took the view that Monday was unreasonable.

MR LUNGISA FUZILE: Yes I did.

ADV VINCENT MALEKA SC: Did you tell him that?

MR LUNGISA FUZILE: No I did. I did. In fact in a way because I was realising that we were headed for a difficult time at my age I realised that it is going to be very important that we understand the boundaries here so that we can settle some of those problems and then I decide if I leave, but what I was not going to accept or allow is that I get bullied around, because, less because I wanted to be a hero but a lot because if that had started with me and if it succeeded with me then it would have meant that it is going to be a bit difficult for the people under me and I am not suggesting that I was stronger than them but I was definitely their leader.

10 Now if I get humiliated and just get told you know you cannot have a weekend now you know when a person has failed to do his part notwithstanding what I considered to be reasonable advice and then expect that you pass that problem to me I thought no, no, no we should define a way of working that is professional, that demonstrates respect for one another which I why then I still said to him I will make an effort to make sure that you have got something but at a reasonable time.

ADV VINCENT MALEKA SC: Then what was your response because it seems to me that there is not a common understanding as between you and him. You insist reasonableness, he insists Monday. What was the ultimate conclusion of that shall I say a difference of view? How was that issue settled?

20 **MR LUNGISA FUZILE:** No we had to settle for my time bearing in mind that it was not even my duty. You know in essence strictly speaking he was asking me to do him a favour. Now you do not say do me a favour on my terms.

ADV VINCENT MALEKA SC: All right but ultimately did you get around to giving him a handover report.

MR LUNGISA FUZILE: We did not have time to get to that because the weekend's

events happened.

ADV VINCENT MALEKA SC: All right. So what began as an instruction ended up being a [indistinct] squib.

MR LUNGISA FUZILE: I would not disagree with what you are saying.

ADV VINCENT MALEKA SC: Right we are still there on the discussion between you and Minister Van Rooyen about the demand for a handover report and then you deal with a further interaction that took place about accommodation for him and you do so at paragraph 55 and I ask you to deal with that interaction in your own words.

MR LUNGISA FUZILE: Yes Mr Chairman. At 55 I make the point that Mr Bhobat did
10 ask that we should accelerate the process of finding accommodation for Mr Van Rooyen, suitable accommodation which I add towards the end of that sentence a quotation – in quotation marks so that he would not be accessible to people.

ADV VINCENT MALEKA SC: Why not?

MR LUNGISA FUZILE: A charitable interpretation of this would be that if I return, if a person not you or myself if a person returns to let us say a neighbourhood where people know him and they know that he has been appointed or he has won a Lotto everybody would want to befriend the person.

I mean there is a kind of a charitable interpretation that is done.

ADV VINCENT MALEKA SC: No, no, no.

20 **MR LUNGISA FUZILE:** But there could be another one here in this context which is that he, they must have access to him and by they, I mean him, Mr Bhobat and that lot of people without the people where he used to live having evidence of who comes and who goes because when he is in a place where he is not known that is easy to do relative to where he is known and my neighbours would know if the pattern around my house is changing from what it normally is whereas strangers do not know if I have got

a particular pattern. They do not know who my friends are and they may not even care to know who I am until of course they have got reason to.

ADV VINCENT MALEKA SC: Did you ask...[intervenes]

CHAIRPERSON: Sorry Mr Maleka. This is quite an unusual kind of statement so that he would not be easily accessible to people. You are quite clear in your mind that that was said?

MR LUNGISA FUZILE: This is what was said.

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: But I do want to because one does not want to create stories
10 out of nothing. Ministers are entitled to accommodation temporary or transitory accommodation from the time of appointment because usually the predecessor is allowed a certain amount of time to vacate the official residence.

So in that time temporary accommodations is not a problem. So there is nothing to write home about. Of course it is an aspect that has embarrassed many Ministers. I mean it is common cause.

CHAIRPERSON: What I was more interested – what I was focussing on was...[intervenes]

MR LUNGISA FUZILE: The access yes I understand. I understand Mr Chair but I thought let me just get this out.

20 **CHAIRPERSON:** Yes.

MR LUNGISA FUZILE: So that people do not say there he goes. He ought to know that people are allowed accommodation. Let us just put that one aside. I did not emphasise it here but this bit is strange and this is why one puts it here.

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: And I have put my own interpretation to it.

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: And I guess the Commission can put its own interpretation too.

ADV VINCENT MALEKA SC: Yes but for as long as you are there the Chairperson would ask of you two things. One is did you ask Mr Bhobat as he is speaking for the Minister why does he want the Minister not to be accessible to people?

MR LUNGISA FUZILE: No, no I did not. I did not. I did not and I cannot make excuses for it but I was actually tired of the situation we were having unfolding.

ADV VINCENT MALEKA SC: Yes because I do not put it here but he had talked about a car. Of course Ministers have got to have cars but it was as though he expected that
10 there would have been a car ready on at the swearing in kind of a thing I mean.

ADV VINCENT MALEKA SC: Yes.

MR LUNGISA FUZILE: When it is just hours after the thing had happened. Of course we had started the process but we did not have the car. So there is also a sense in which he did not know a lot of what he was talking about but which is why I was talking about his lack of ability to restrain himself and observe protocol and just sometimes ask you know what is normally done in the circumstances?

You know he comes highhandedly knowing making this demand. Some of them – in fact all of them were inappropriate coming from him.

ADV VINCENT MALEKA SC: It just seems to me that it is an issue or a topic that must
20 in fairness be dealt with through Mr Bhobat's evidence when he testifies because I do not think that Mr Fuzile would help us further on that issue strange as this request might be...[intervenes]

CHAIRPERSON: No, no he will not help us further but I think he has been helpful enough to remember that this was a condition.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: That where accommodation was to be found for Mr Van Rooyen it should be a place where he would not be easily accessible to people.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: I think it is important that he has told us that then the rest we can...[intervenes]

ADV VINCENT MALEKA SC: Yes and when he comes Mr Bhobat we will ask him because he is a public representative. On the contrary he must be accessible to people and that is what we do and we will do it and all of them will be accessible to the people beginning with the electoral campaign beginning early next year if it has not
10 begun already.

MR LUNGISA FUZILE: And of course there is a contradiction here if I may? The statement says you want to take the Treasury to rural people and make it accessible and then you are drifting to a place where you will not be accessible.

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: But that was the situation.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And something comes to mind in fact as we locate accessibility of Treasury to people. My recollection is that you as Treasury also had that interesting but important public relations campaign on the budget on the road
20 shows.

I am not too sure if that still is happening where you go about and engage the public on a widespread basis about the budget.

MR LUNGISA FUZILE: It is still done Mr Chairman. In fact a variation of it that came towards the tail end of my tenure was to even include institutions of higher learning. We would go to almost all universities. In fact to most universities let me say to just

interact with students and academics on the budget. Yes you are correct, Mr Maleka.

ADV VINCENT MALEKA SC: And many others – Ministers that I do recall they also invite the public to explain or send their wish list about what the budget should deal with and so on.

MR LUNGISA FUZILE: Yes it started under the Tips for Trevor I do not know whether to call it hash tag.

ADV VINCENT MALEKA SC: Yes and Chair those campaigns are so widespread in terms of public engagement that the ceremony that might well come close to it as far as one could recall it will be equal or equivalent to the Rio Carnival but less frills than the
10 carnival of that sort.

Anyway but the point is that all of those things engage the public and Minister who is the head of Treasury is accessible to the public and cannot be less accessible to the public.

MR LUNGISA FUZILE: That is – I will agree with that.

ADV VINCENT MALEKA SC: And then you indicate in paragraph 56 how you ultimately delegated the functions of [indistinct] Mr Van Rooyen to one of your staff members. I think you call him Mr Study Mngomezulu, correct?

MR LUNGISA FUZILE: That is correct.

ADV VINCENT MALEKA SC: Yes. I have nothing further to deal with you on that
20 issue unless you have further things to raise?

MR LUNGISA FUZILE: The only thing I would say in passing, Chair and perhaps on a lighter note if it is allowed here? The actions of Mr Bhobat by the way were those of a Chief of Staff. The roles that he was performing here are what you would expect a Chief of Staff to do which is to look after the wellbeing of the Minister, does he have – so it is quite an interesting thing which I thought I should just drop with the Commission.

So he was not quite too far off when he was introduced. Forgive me.

CHAIRPERSON: So you think that in terms of the actual work that he seemed to like doing that was closer to a Chief of Staff than but he did not want the title?

MR LUNGISA FUZILE: It looks like.

CHAIRPERSON: Okay. All right. Thank you.

ADV VINCENT MALEKA SC: Then we – the next chapter you deal with is the real business of Minister Van Rooyen's visit to Treasury on that day and that is to meet and greet the leadership of Treasury.

10 You talk about that issue from paragraph 59 and I would like you to be fairly quick and brief if you can. There are some highlights of that meet and greet session that I would like to raise with you but in your own words can you sum up what happened when you went to is it the DG's boardroom to meet the leadership of Treasury?

MR LUNGISA FUZILE: Thank you very much. Mr Chairman, the first thing perhaps that is maybe material of interest to the Commission Mr Van Rooyen did not bring Mr Mabaso to that meeting. We can read what we make of that but he did not bring him and Mr Jonas also did not attend that meeting which was not the normal case. I mean in most instances people would attend and of the people who attended when you get to 61 I list some of them.

20 **ADV VINCENT MALEKA SC**: Yes.

MR LUNGISA FUZILE: Roughly now I have been talking to my colleagues to try and recollect. We can give the names to the Commission, the complete list, but many people were in acting capacities because the persons who were heads of those divisions were on leave some of them. The one person that is worth mentioning perhaps in passing here is Mr Mononiat. You might remember that he was one of the

four people who were to be removed. In his case because he was, although he was on leave he was still in Gauteng. He took the trouble to come to the meeting and arrived a little late, but just as the meeting started. Mr Van Rooyen we sat in the room and said it was going to be a very short meeting because he thinks that everyone knew everyone. So he it is going to be a meet and greet and of course, and he said hello or something along those lines and then I said to him "I think Minister we should just do kind of a proper introduction, because I think that the people you are have brought which is Mr Bhobat and Mr Whitley do not know the people and equally the people do not know them." Of course it helped that one of the guys at the Treasury Mr Monale Ratsoma, I

10 mention this I think in paragraph 62.

ADV VINCENT MALEKA SC: 61 I think.

MR LUNGISA FUZILE: 61, yes 61 or 60 somewhere there but I mention it that he very helpfully actually said "Minister I think you do not know me and I do not know you" and the Minister had a difficulty at that point because through and through he did not know him. So because if he said he knew him he would have said "okay tell me who I am." So I did then insist I said "look Minister I think we should have a proper introduction."

I was a bit, I did not like what was happening actually because if you just think about it just take the case of Mr Mononiat he is a senior official. He takes the trouble to come and you say "I just want to say hello to you. Go back home and continue with

20 your holiday" and of course it is in the context that we have discussed this morning and yesterday of what was happening in the economy. It is in the context where two days or so earlier the budget process was clearly as I indicated running behind schedule. So at least you needed the proper conversation. So I insisted on the introductions and of course at that time something extraordinary happened in my view which is that he then tried, Mr Van Rooyen, to introduce the two gentlemen. This had not, this did not need

to happen in his office. It occurs to me now, because he knew that we had met with Mr Bhobat. It was only Ian Whitley that, Mr Ian Whitley that I had not met. If you remember we had met with Mr Bhobat and Mr Van Rooyen on Thursday. So the introduction in terms of names was not an issue. What was an issue was introduction in terms of roles.

CHAIRPERSON: Was Mr Whitley not also present...[intervenes]

MR LUNGISA FUZILE: No he was not...[intervenes]

CHAIRPERSON: At the Union buildings...[intervenes]

MR LUNGISA FUZILE: No he was not.

10 **CHAIRPERSON**: Okay.

MR LUNGISA FUZILE: To my recollection he was not.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: But did you not say when I asked you whether when Mr Van Rooyen mixed up the titles I asked you the question whether Mr Whitley and Mr Bhobat were not in front of him and you answered yes?

MR LUNGISA FUZILE: Yes it was in his office Mr Chairman. Let us just separate the days quickly.

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: There is Thursday the swearing in. Only two people are there.

20 **CHAIRPERSON**: The 10th was it Thursday?

MR LUNGISA FUZILE: The 10th was a Thursday.

CHAIRPERSON: Okay.

MR LUNGISA FUZILE: It is Mr Bhobat and Mr Van Rooyen.

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: And myself. It is now Friday. On Friday I walk into Mr Van

Rooyen's office...[intervenes]

CHAIRPERSON: That is the 11th?

MR LUNGISA FUZILE: I find him with three gentlemen.

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: The one I had met the day before.

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: Mr Bhobat. Now he is with two other gentlemen Mr Mabaso and Mr Ian Whitley. Of course naturally when I walk in they stand and we greet and we say each other's names.

10 **CHAIRPERSON**: Yes.

MR LUNGISA FUZILE: We sit. So there is no formal names again. We talk about the appointment and so on. Now move to Friday, sorry not to Friday. It is still Friday, we walk out of the office to the meeting now...[intervenes]

CHAIRPERSON: In the mix up with the positions on which date does it happen?

MR LUNGISA FUZILE: On Friday the 11th.

CHAIRPERSON: At his office?

MR LUNGISA FUZILE: First at his office.

CHAIRPERSON: It happened more than once?

MR LUNGISA FUZILE: Yes.

20 **CHAIRPERSON**: Okay.

ADV VINCENT MALEKA SC: Yes and...[intervenes]

CHAIRPERSON: Okay now I understand.

ADV VINCENT MALEKA SC: Yes, yes.

MR LUNGISA FUZILE: So then this is the second encounter for me with them. The first with the rest of the executive. We are together now. So at that point then he then

says "okay let us do the introductions" and he points at Mr Bhobat and you can see there is a bit of an awkward moment because the name does not come out and the guy helps him and he says "no I am Mohamed Bhobat" and he says "I call him Mo." So, so afterwards he says "yes, no", the chief of staff says "no, no advisor." So he continues then, it is easy then with Ian Whitley because now it is only the chief of staff.

ADV VINCENT MALEKA SC: Yes.

MR LUNGISA FUZILE: So...[intervenes]

CHAIRPERSON: So you mean he makes this shall we call it a mistake for the second time.

10 **MR LUNGISA FUZILE:** Yes.

CHAIRPERSON: Now in terms of Mr Bhobat?

MR LUNGISA FUZILE: Yes and just to be clear Mr Chairman the mistake of names did not occur in his office, because the names were not said. The mistake in the office was the titles.

CHAIRPERSON: Yes okay, okay, okay, yes.

MR LUNGISA FUZILE: Now here he starts with the name. He says, and then the person says "Mohamed Bhobat" and he says "yes I just call him Mo" and then, and then he continues to repeat the mistake he had made about title one more time and the guy corrects him and of course it was quiet so I decided to really make the point to show
20 that I knew the people I was with and I took my time to introduce everyone. Myself and to say "look, this is person A, surname B", not the person who normally occupies the role, acting this one, the person who normally occupies the role you might know or not know it is so and so, he is on leave and this one and this one and they went around.

CHAIRPERSON: And it was many people on your part that you had introduced?

MR LUNGISA FUZILE: It was many people. I could say as I say we were about 13,

14.

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: All of us including myself excluding the new people. So I, then...[intervenes]

ADV VINCENT MALEKA SC: Before you go further I understand the hilarity of that confusion as it is entertaining, but the consequences of it are far reaching and I would like you to deal with those consequences as you canvas them in paragraph 65 and perhaps a good starting point for it in order to illustrate those consequences of the second mistake is to read for us paragraph 65 in its entirety.

10 **MR LUNGISA FUZILE**: Okay. During the introductions it became apparent that Mr Van Rooyen was not fully familiar with neither of the two gentleman nor the specific roles he wanted them to play as they had to correct him on their names and new positions. I recall that he said Mr Bhobat was going to be chief of staff and Mr Bhobat had to correct him that he was going to be the advisor. At that point I again remembered the telephone conversation with Mr Gordhan. Several of my colleagues who were in the room during the meeting had observed the same thing and I know this because we talked about it a lot from that point onwards.

ADV VINCENT MALEKA SC: Yes. At that point in time the mental process that had engaged with you or you had been engaged in with was a repetition of a confusion on
20 the part of Mr Van Rooyen, but at the same time replaying in your mind-set what Mr Gordhan had been telling you on the 9th and taking the two together there is some reinforced conclusion you must have come to about the far reaching implication of the act of capturing Treasury as it was unfolding right in front of your eyes in your presence and the presence of your direct rapporteurs?

MR LUNGISA FUZILE: That is correct. I mean I at that point it had become very clear

to me that a lot of what Mr Gordhan had said had been confirmed actually. It is not like I was not making inferences. He said he would come with advices given to him. There were points as I have illustrated in the evidence that I have led where it was confirmed that he did not know the people. So it stands to reason that they were given to him and it was clear also that certainly in relation to Mr Bhobat I want to make this quite clear he was asserting this kind of authority of almost like he is actually the guy in charge and you can say the instructions he was giving everything he was or many things he was saying, but of course by his own actions Mr Van Rooyen had shown unwittingly, inadvertently that he was not sufficiently familiar with them and the fact that he was

10 making the mistakes about the roles would seem to suggest that it is not like his own idea as the Chairman was indicating earlier on. If I have decided that I am going to put person A and I have determined that I need person A for this role person A does not have to keep reminding me that no, no, no you said I am going to be this kind of thing reminding him about his name or her name and also the role. So I am saying in that context there was no doubt that a lot of what he had said was correct. The one bit that I still it was there but, you know, it was to be confirmed as it became later on clear was this connection to the Guptas.

ADV VINCENT MALEKA SC: Yes. Yes. Chair Mr Mokoena asked me to say to you that Mr Mogajane will take this topic further when he testifies.

20 **CHAIRPERSON:** Okay, okay thank you.

ADV VINCENT MALEKA SC: Because he is able to give even more detail than Mr Fuzile is able to.

CHAIRPERSON: In relation to whether Mr Van Rooyen knew his advisors or not?

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: And Chair of course he will come and tell you what he observed, but at page 48 of the bundle paragraph 10 you will see what Mr Mogajane say on his recollection and reference to what took place at that meeting and whilst Mr Mokoena is desirous that I should deal with it now I would leave it for Mr Mogajane to deal with it when he comes in. I do not think that it will help you for Mr Fuzile to reference other witness' recollection of the issue. Then you go on and introduce your team members and you say that at some point you reflect upon the Gupta leaks insofar as they refer to Mr Mabaso and his involvement at the Department of Mineral and Resources. Again that is a mental process that you are engaged with in the light of the
10 events that are unfolding at that meeting or shortly thereafter and it is that process of trying to connect the dots as you say and I would like you to deal with how you now get lifted over mentally to what the Gupta leaks are saying about Mr Mabaso.

MR LUNGISA FUZILE: If you do not mind Mr Maleka through you Mr Chairman I think paragraph 66 contains something very-very fundamental. I just want to...[intervenes]

CHAIRPERSON: Yes...[intervenes]

MR LUNGISA FUZILE: Make the point and then we cruise.

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: Because in the meeting if there was anything profound that was said which I took away with a lot of discomfort was the point that Mr Van Rooyen
20 made that Mr Van Rooyen made that these are the guys we would be working through. In other words staff that goes to him would go through these guys. Now I had no problem with the chief of staff by the way because that is the role that he is a sort of connection between the department and the Minister in terms of just even instructions and all that kind of stuff as I was saying which is a job that Mr Bhobat seemed to like but did not like the title but that was something quite profound to say that we would

work through an advisor, Mr Bhobat, because if you think about the sections that Mr Maleka was leading us through of the law and the reference to the fact that the job of the Director General and that of a special advisor are totally separate.

ADV VINCENT MALEKA SC: Yes.

MR LUNGISA FUZILE: So he was making an egregious mistake by making that reference. I thought I should just make that point...[intervenes]

ADV VINCENT MALEKA SC: Yes. No, no it is important because if I sought to suggest that I was skimming over it that is the wrong impression.

CHAIRPERSON: He did not imply, did he, that his advisors would also be between you
10 and him? In other words that you two had to reach him through the advisors he was talking about other members of staff or you are not sure?

MR LUNGISA FUZILE: I am very sure.

CHAIRPERSON: Oh.

MR LUNGISA FUZILE: There is no reason why there should be another person between the Minister and my report unless the Minister has come to the conclusion that I cannot do my job in which case he or she, it was he in this case, would have to find another Director General. What he cannot do is to do something that either borders on the illegal or that is decidedly illegal as that section that Mr Maleka had led us through says. So he was essentially saying, let me just put this very clearly Mr Chairman,
20 advisors do not have a business whatsoever issuing instructions to officials.

CHAIRPERSON: No, no that I understand. You made it clear.

MR LUNGISA FUZILE: Yes I did.

CHAIRPERSON: I am more interested in whether he, when he said these are the people through which people had to work or we had to work whether what your understanding was whether he meant that you too would have to go through advisors to

him. That is what I am trying to understand.

MR LUNGISA FUZILE: Okay. I...[intervenes]

CHAIRPERSON: So in terms of what was your own understanding of what he was saying whether it included that he meant you too would have to go through advisors to reach him. Not that that is the role for special advisors, it is not, but I am wondering whether that is what he meant, whether that is what you understood or whether that is not what you understood in respect of what he meant.

MR LUNGISA FUZILE: What I understood was that he was saying all of us me included would work through those people Mr Bhobat and Mr Ian Whitley.

10 **CHAIRPERSON**: And this working through them did it mean what I have just indicated my understanding is namely whatever work is to be done that requires, that would require him people must not just go straight to him they must through the advisors and the advisors might say yes, no, yes, no or whatever. Is that what he meant as far as you understood?

MR LUNGISA FUZILE: My interpretation was exactly like you put it Mr Chairman. In essence they were going to be the filter through which what we propose, what we recommend goes through, which by the way is not even the role of a chief of staff. The role of the chief of staff is more administrative. Of course you can have a different chief of staff who has been around the block who might have the capacity to in a collegial
20 polite way say maybe you did not understand what the Minister asked for. It is not what you are giving, but of course in a, a DDG could conceivably say let the Minister tell me that not you if you understand what I am saying. So I understood it in exactly the terms you are making which is also that the instructions that come from the Minister would go through them and that is not a big problem in relation to the Chief of staff as long as it does not create a gulf between the Minister and the officials because as you know if

things go through people then before you realise it when what gets to the Minister is not what he wanted then the Chief of Staff can say he or she did not understand the instruction. So it is always advisable, it is not written in the rules, but the Minister should get to have a working relationship with the officials. Definitely the DG and the DDG's. It can even go lower than that for that matter as it happens at the Treasury or used to happen. I think it still does and, but what is not right is to plug between the administration and the Minister an advisor because as we spoke about it this morning the law is very clear on that.

CHAIRPERSON: Thank you.

- 10 **ADV VINCENT MALEKA SC**: And Chair it is a pattern that fits in within the theory you had of state capture, but where the law is quite clear it requires a relationship of cooperation between specified public officials, in this case the DG and his or her Minister. You then get an intercession of a third party to break up that relationship and create a new link of reporting and that is what Doctor Kaufmann said to you before.

You were now receiving live evidence to support that theory in the context of a model of state capture. Now unless you have anything further to say about the profoundness of paragraph 66 I would quickly want you to deal with paragraph 67.

MR LUNGISA FUZILE: Thank you very much. Then...[intervenes]

- CHAIRPERSON**: I am sorry. I just want to make sure that we are – I have a correct
20 understanding of your attitude towards this suggestion or instruction or rule that there would be advisors who would be the people through which the Minister and everybody would work.

Your initial statement to me when I put this to you to suggest that it seems really it would be very strange if it included you your reaction seem to suggest to me that you really find this very unacceptable because I think you said unless the Minister

does not want you – you know you do not expect that.

That was my understanding of what you said but you later on say well maybe it might not be a big issue as long as the interposition of those advisors between the Minister and the rest of officials does not create I do not know I cannot remember what word you used but I think what you meant is it does not create misunderstandings or walls that result in misunderstandings.

So the second statement you made this one that it might not be a big problem as long as it does not create that suggest to me that it would be – it might not be acceptable but it might be tolerable provided it did not create misunderstandings but
10 your initial reaction seem to suggest to me that you would have interpreted that kind of instruction or rule to say this Minister does not want to work with me as DG.

MR LUNGISA FUZILE: Okay, thanks Chair. Let us come at it this way. We are talking about two roles and maybe let me take one so that I am clear. Take the role of advisor. It is even written in law and there are things that the law prohibits insofar – in fact says the advisor must do.

CHAIRPERSON: Must do.

MR LUNGISA FUZILE: And there are also things that the law says an advisor must do and cannot do. So there are do's and don'ts for the advisor written in law.

CHAIRPERSON: They cannot do yes.

20 **MR LUNGISA FUZILE**: And the law very wisely even uses a strong word which is that the advisor should refrain...[intervenes]

CHAIRPERSON: You read it here?

MR LUNGISA FUZILE: And it goes on.

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: So the law does not leave a discretion for me to like that. It

just says it is not done and I am not in the habit and the Treasury is not which is something I must come to just now because of something that happened on that day as well.

I am not in the habit of saying the law says this but let us just have a deal that even if that deal is inconsistent with the law. So insofar as the advisor is concerned I am saying I was affronted by the fact that the statement that Mr Van Rooyen had made in addition to the actions of the advisor already seemed to be taking us on this course where or path where in fact we were edging towards breaking the law.

10 In fact the law was broken on their side but now here he was saying our arrangement here if you use my interpretation which you are articulating yourself Mr Chairman he seemed to be saying that we should live outside of the framework of the law insofar as the advisor is concerned. Then come to the Chief of Staff.

CHAIRPERSON: Before you go to the Chief of Staff complete your attitude in relation to the advisor.

MR LUNGISA FUZILE: Yes.

CHAIRPERSON: Was your attitude therefore that insofar as Mr Van Rooyen meant to interpose an advisor between himself and the staff including yourself are you saying that that was totally unacceptable to you and would not be tolerable or are you saying well he would be in breach of the law but maybe I would have a way of – I would leave
20 it...[intervenes]

MR LUNGISA FUZILE: No, no yes let me say I recall saying to him for the second time, in fact to them for the second time that it looks like they are going to have to familiarise themselves with the law and with the ministerial handbook and I said because from Monday I do not know if I said this as it is going to come out now but the effect was from Monday onwards we must all know the rules and play by the rules and

[indistinct] said something to the effect that you know as the Treasury we pride ourselves for doing everything in terms of the law and that is how we would socialise and so I said you know we are not going to do anything that is illegal here.

I was not saying it because I was arrogant. I was just saying to him there is the law and it is meant for a purpose. So let us abide by it and I am clear then there is no room for any tolerance for...[intervenes]

CHAIRPERSON: For an advisor to be...[intervenes]

MR LUNGISA FUZILE: There is no accommodation for illegality in the way in which we would work.

10 **CHAIRPERSON**: Okay.

MR LUNGISA FUZILE: It does not matter that Mr Bhobat was behaving in a manner that it was clear that he did not deserve to be given a little bit of authority in a place as important as the Treasury.

CHAIRPERSON: And then the Chief of Staff.

MR LUNGISA FUZILE: Then the Chief of Staff it is a matter of then interpretation. The Chief of Staff has got a valuable role to play in being the link between the department and the Minister but the Chief of Staff cannot be the substitute for a Director General and DGDs neither can he be or she be a substitute for the Minister having a direct relationship with his DG and [indistinct] and his DDGs.

20 The Minister must be able to talk to the people and get stuff first-hand. That is where then I was talking about it is not inconceivable that a dynamic Chief of Staff can play a role far bigger than the narrow one of I have put the file together, I have arranged that the Minister must be there at the time you wish to see him.

He can also make sure that because he would sit in the meetings with the Minister he can interpret, he can translate what transpired and be able to marry these

things usefully but which is where then I was maybe muddling the thing when I was explaining it.

He or she is not the mini Minister because once they do that then they create this problem that you break the connection between the Minister and the department because it is intermediated through this Chief of Staff.

CHAIRPERSON: So with regard to the Chief of Staff your attitude may have been let us see how it works out in terms of whether the Chief of Staff might be the one that you said could be quite – could play a bigger role than the smaller role and you would handle it as you saw how it was evolving.

10 **MR LUNGISA FUZILE**: That is precisely the situation, Mr Chairman and I have got no reason in that short – very short period I say to say this which Mr Ian Whitley said or did I found offensive and to be outside of as far as I know.

CHAIRPERSON: Okay, thank you.

ADV VINCENT MALEKA SC: Thank you, Chair. Mr Fuzile even on your charitable interpretation of the law the type of distinction you seek to draw between the Chief of Staff and an advisor is not tolerable under the law as we read it but it will be debated with others when the moment comes for that debate because paragraph seven of the special dispensation we have talked about this morning at page 112K does not accommodate that type of distinction. We do not have to go there.

20 **MR LUNGISA FUZILE**: Okay.

ADV VINCENT MALEKA SC: You have expressed your views. Now we have dealt with that question of how the Minister conceived should be the people that you must work through and I had invited you to tell us more about Mr Mabaso in relation to the Gupta Leaks. Is there anything that you wish to draw to our attention in that regard?

MR LUNGISA FUZILE: Yes for sure, Mr Chairman. In 67 I make the point that I

learned later and I do not know exactly when but soon after I had seen Mr Mabaso. As I said I checked on the internet and any other source I could lay my hands on that in fact he had been at the Department of Mineral Resources at that time actually.

What then that suggested to me was that in fact one of the reasons why Mr Van Rooyen had emphasised that there was no need to capture his details on Persal because Persal is one system for the rest of government so if you type my ID number you have got access, rights and stuff like that you would see who I am, where I am and what role do I play, am I full time, part time and so on and so forth.

10 So in a way I can say now – in fact I figured this out then that it was not possible that we could as Treasury also appoint him at Treasury when he was also at DMR. That is the first thing. The second point to make is that in fact it occurred to me now when I connect the many things that if you go back to the conversation with Mr Godongwana who asked me to talk to Doctor Tsibedi Ramuntsha who was the DG at DMR that he was suggesting that maybe –not maybe, what was going to happen at Treasury or was starting to happen at Treasury had happened already at DMR.

So Doctor Ramuntsha was probably in Enoch's view going to share with me what transpires when a department is being captured. So I drew the conclusion that in fact Mr Mabaso must have been there to handhold these other guys on how this thing is done because it had been done at DMR with him as advisor there.

20 **ADV VINCENT MALEKA SC:** You know what I find interesting...[intervenes]

CHAIRPERSON: DMR is of course Department of Mineral Resources?

MR LUNGISA FUZILE: Department of Mineral Resources. Pardon me.

ADV VINCENT MALEKA SC: Why would Mr Mabaso be at National Treasury as far as you are concerned on that day when he had no role whatsoever to play in the meet and greet session that the Minister identified as the first baseline of his business with the

National, with the leadership of National Treasury? Why would he be there if he has got no role to play?

MR LUNGISA FUZILE: I think that he must have been there to if you will study the situation with them, for them and two, to advise them on how it is done but also clearly if he is connected to the Guptas and in fact given his connection to the Guptas, let me not say if – given his connection to the Guptas and given the logic that Mr Godongwana was giving me he was – he had participated in the capturing of a department and probably had experience now in how it is done and knew how quickly to do it and you can imagine that a person who has been in a department knows how things happen in
10 a department as opposed to someone who comes cold from outside.

ADV VINCENT MALEKA SC: Yes and in fairness to Mr Mabaso I mean you did not have any direct evidence that he was assisting in the capturing of Treasury at that point in time. These are the things that you tried to draw together from your subsequent study of his relationship with the Gupta family and also from reading the Gupta Leaks.

MR LUNGISA FUZILE: Yes that is correct.

ADV VINCENT MALEKA SC: But you did not have any direct evidence at that point in time?

MR LUNGISA FUZILE: Not of participating in capture but as I say I used the logic that there he was coming from a department that in the logic of what the conversation
20 between Mr Godongwana and I had suggested was either capture or in the process of being captured itself and there he was with a role that brought by the Minister to play a role that the Minister could not just easily to his DG say I have got this guy, he is going to do a, b, c.

So clearly his role was not easily explainable even from the Minister which then leads me to the conclusion connecting everything that it was in the role that the Minister

found it easy to explain. He never did and of course after the exchange that we had in his office he did not bring him to be seen by other officials in the department.

ADV VINCENT MALEKA SC: Yes and Mr Fuzile I mean do not misunderstand me as expressing a tacit criticism on you when I suggest that you did not have direct evidence.

MR LUNGISA FUZILE: Yes, yes.

ADV VINCENT MALEKA SC: That Mr Mabaso was trying to help capture National Treasury.

MR LUNGISA FUZILE: Okay.

10 **ADV VINCENT MALEKA SC:** Because it is quite clear that state capturers like someone said they are not like drum measurers who announce themselves when they arrive. It is, nothing is written on the forehead. You have to connect the dots as you tried to do. Can I ask you now to deal with paragraph 69?

MR LUNGISA FUZILE: Should I proceed?

ADV VINCENT MALEKA SC: Yes.

MR LUNGISA FUZILE: Right away? Mr Chairman in paragraph 69 I then deal with some details in relation to Mr Bhobat whom I learned later that was connected to either Regiment or Trillian or both at different points in time and in fact after he had been in the department, he got to the department that Friday. We were busy working on a
20 presentation that we were preparing for a meeting of Cabinet on the state of the economy and some of the actions that government was considering in order to spare growth and we interacted a lot over the period from the meeting we had with the Minister and the advisor and the Chief of Staff and say Sunday sometime and during those interactions one of the things we were talking about was this presentation because we were trying to help prepare Mr Van Rooyen for the presentation because

now he was going to be the Minister presenting the presentation. Of course I learnt that once the presentation was sent to Mr Whitley either by myself or Mr Marlon who was the chief of staff of the former Minister then Mr Bhobat immediately forwarded that presentation to people connected to the businesses I have just mentioned Mr Eric Wood in particular. His name appeared on the people on the circulation list.

ADV VINCENT MALEKA SC: Yes. We will get to how you established that Mr Bhobat had shared this information with third parties such as Mr Wood. First thing first though the Chairperson may have gathered anecdotally outside the evidence presented before him who Regiment and Trillian would be, but from your side now that you have
10 mentioned their names can I ask you to tell us what at that point in time and I am talking about December 2015 what did you know about Regiment?

MR LUNGISA FUZILE: The company's name had been mentioned a few times in connection with irregularities that had happened at some of the state owned companies.

ADV VINCENT MALEKA SC: Which are?

MR LUNGISA FUZILE: I recall Transnet for sure. I think later on some evidence came in relation to Eskom as well.

ADV VINCENT MALEKA SC: And did you have that information in 2015 about allegations of irregularities involving Regiment?

20 **MR LUNGISA FUZILE:** I think I knew it in 2015.

ADV VINCENT MALEKA SC: What about Trillian? Trillian?

MR LUNGISA FUZILE: I mean I know this is not necessarily the correct way to think about it. In law companies are separate and stuff, but Trillian just splintered off Regiment so you would notice that the personalities they overlap in certain respects. In other words the directors who ended up at Trillian came out of Regiment. So some of

what Regiment did they were somehow by association close or associated with it and therefore Trillian then got formed later on and clearly with one of the key persons in it being if I am correct Eric Wood and he received this information as I say which is a matter of interest for me from Mr Bhobat.

ADV VINCENT MALEKA SC: Yes. Chair that is one of the reasons why we have placed before you EXHIBIT R. You recall it is that statement of the whistleblower together with fairly sizeable annexures and you will see that on...[intervenes]

CHAIRPERSON: I am trying to look for EXHIBIT R. Is it on this bundle or in a different bundle?

10 **ADV VINCENT MALEKA SC:** In a different bundle Chair.

CHAIRPERSON: Okay. Do I need to have a look at it?

ADV VINCENT MALEKA SC: No, no Chair I just wanted to note that Mr Fuzile introduces the two names of Regiment Capital and Trillian whose full names and business activities are dealt with fully by the whistleblower in EXHIBIT R from page 2 onwards and she gives a chapter in this about who these entities are and the role Mr Wood played in those entities. Now that we have identified what allegations were made about Trillian and Regiment at that time and now that you have told the Chairperson that you had prepared a submission for Minister Van Rooyen Mr Bhobat took it and shared it with third parties. We would get to the submission in due course. What I wish
20 to establish from you now is what was that status of that submission as far as National Treasury and the Minister were concerned?

MR LUNGISA FUZILE: The, like most of what we deal with in the department the information contained in that document was about the strategic thinking or at least shaping the strategic thinking of Cabinet on how first to understand the sluggishness of the South African economy, the causes thereof and also the thinking on what

opportunities were there to exploit and how to exploit them to therefore spur growth to accelerate the growth of the South African economy and such similar things and the presentations attached here, but quite importantly which is what I understand your question to be about it was not meant for anyone other than people employed by the department who have the right level of clearance and therefore it was never meant to be reproduced or sent outside. I am not sure if I would be helping if I then just make reference to for instance the contract that advisors sign.

ADV VINCENT MALEKA SC: Yes.

MR LUNGISA FUZILE: Which says something about information if you
10 think...[intervenes]

ADV VINCENT MALEKA SC: I would want to get there...[intervenes]

MR LUNGISA FUZILE: Later...[intervenes]

ADV VINCENT MALEKA SC: Just later on.

MR LUNGISA FUZILE: Okay.

ADV VINCENT MALEKA SC: But if you feel so compelled and urged to deal with it we can go there.

MR LUNGISA FUZILE: No, no, no I will take your guidance.

ADV VINCENT MALEKA SC: No, no it is your evidence and you can present it.

MR LUNGISA FUZILE: No I will take your guidance.

20 **ADV VINCENT MALEKA SC:** Maybe we should go to that contract/

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: It is EXHIBIT P Chair and it starts on 112A. It is the very bundle that was before you Chair. It is that one in front of you.

CHAIRPERSON: What page is it?

ADV VINCENT MALEKA SC: 112A.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: But I know that Mr Fuzile would like to refer to clause 15.

MR LUNGISA FUZILE: Exactly.

ADV VINCENT MALEKA SC: Which is on page 112B.

MR LUNGISA FUZILE: Yes. No, thank you very much for all this wait for me.

ADV VINCENT MALEKA SC: And you can deal with that clause in your own words about...[intervenes]

MR LUNGISA FUZILE: Okay...[intervenes]

10 **ADV VINCENT MALEKA SC**: The nature of confidential information such as the one you are dealing with now that is the presentation...[intervenes]

CHAIRPERSON: I have got it.

MR LUNGISA FUZILE: So in a way...[intervenes]

ADV VINCENT MALEKA SC: Let us take the Chairperson along.

CHAIRPERSON: Yes I have got it. You said...[intervenes]

MR LUNGISA FUZILE: Yes you said I should proceed...[intervenes]

CHAIRPERSON: Clause 15?

ADV VINCENT MALEKA SC: Yes on page 112B.

CHAIRPERSON: Yes I have got it.

20 **MR LUNGISA FUZILE**: You said I should proceed. So if...[intervenes]

ADV VINCENT MALEKA SC: Can you read out that clause first?

MR LUNGISA FUZILE: Let us just read the clause, yes. Thank you very much Mr Maleka. The clause reads Mr Chairman;

"The employer shall have copyright on all documents,
programs and reports compiled by the advisor and the advisor

may not reproduce or distribute them without the consent of the employer."

So in a way just to start if you pause and think Mr Chairman about the information that the Treasury handles it is information that present opportunities for business for people. If you can have it before everyone else you have – you are in pole position to use a phrase that is used in motor car racing. You have an advantage albeit it an unfair one over competition.

Similarly some of that information insofar as it relates to the or has the potential to move the market one way or the other in other words calls share prices, the
10 currency to move one way or another. If you get access to the information early you do not have to speculate now.

The only thing you do not know is the exact magnitudes of the movements but you know which directions things will move using past trends of how things would have evolved.

So the point one is making here if a person is in the Treasury and they have the proclivity to steal information, to distribute it to people other than the people who use it for purposes of giving advice and or doing the work of government then you have a serious problem.

You have a serious problem so the so the point one wants to emphasise with
20 this is that it was a very egregious problem that Mr Bhobat saw it fit to distribute the information and part of the problem whilst people might think that one is just being dogmatic by emphasising the need for a contract but where you have a person not having a contract which they ought to have read which tells them that these are the do's and don'ts you run this kind of a risk as some former colleagues would comment and say look this was like turning the Treasury into a spaza shop and I suspect that people

who run spaza shops will find this offensive because they do keep records.

So there is a sense in which this was a very, very serious problem. I am sure...[intervenes]

ADV VINCENT MALEKA SC: Yes.

MR LUNGISA FUZILE: Words might not be communicating this properly but I am sure in the company of lawyers you would understand it, Mr Chairman.

ADV VINCENT MALEKA SC: It comes to mind that even you as the DG or any of your subordinates would not be entitled to distribute confidential information of this nature to anyone and Chair if I may illustrate the point by asking you to note that in EXHIBIT F1,
10 you do not have to go there I will read it out for the record, it is EXHIBIT F1 which is the Williams bundle.

There is a set of public service regulations which deals with code of conduct which is applicable to employee of the state from page 111 and then the key part of that code of conduct from clause 13 provides for ethical conduct that the state officials must engage in and at page 113 clause 13G says this:

"State officials shall not use or disclose any official information
for personal gain or the gain of others."

So that is the ethical yardstick that is reflected on clause 15 of the contract with special advisors also applies to officials of National Treasury. I draw your attention
20 to that part of the code of conduct because the information which we now know was given to Mr Bhobat comes from officials of National Treasury and they will have disclosed this as confidential information not for gain by any third party.

Now we can go to the information itself and it begins as I have it from page 78.

CHAIRPERSON: Maybe before you go there Mr Maleka just for the sake of

completeness Mr Fuzile, in the case of Mr Bhobat he probably still was not an employee of the department at the time that he distributed this information.

He was not yet an employee of the department or had you signed?

MR LUNGISA FUZILE: No he did not have a contract.

CHAIRPERSON: Yes but if he had already signed it would have been you from him whom he would have needed permission such as is contemplated in that clause of the contract that you referred us to that says without, I think it says without the permission of the employer.

MR LUNGISA FUZILE: Yes.

10 **CHAIRPERSON**: And not the permission of the Minister that you would have needed.

MR LUNGISA FUZILE: It is a very interesting question. I suspect that if he asked for the permission of the Minister the Minister would have been entitled to give it to him. The same if he asked it from me.

CHAIRPERSON: Well except that...[intervenes]

MR LUNGISA FUZILE: Remember I signed that kind of a contract on behalf of government/ on behalf of the Minister to be fair.

CHAIRPERSON: Yes but would it not mean, let us go back – cast your mind back to the contract that you referred us to. The representative of government in terms of that contract would have been the Director General, is it not?

20 **MR LUNGISA FUZILE**: The contract says that.

CHAIRPERSON: Yes the contract says so in terms of the contract if it said he needed the permission of the employer and in terms of the contract you are the representative of the government you might think differently but it just seems to me that probably he would have talked to you although at a practical level everything being equal in a normal environment the Minister would have known what he could say yes to and what

maybe he might say just talk to the DG about that or something.

MR LUNGISA FUZILE: Sorry.

CHAIRPERSON: But I am just thinking that in terms of the contract I would have expected that technically you would be the person whom he would have needed to get permission from. You are not able to say whether that is your understanding or not?

MR LUNGISA FUZILE: I would say Mr Chairman in the absence of my legal advisors...[intervenes]

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: That would have been my interpretation.

10 **CHAIRPERSON**: Yes.

MR LUNGISA FUZILE: Because I have got documents...[intervenes]

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: That say that I represent government. Of course if I had then time I would have had access to the legal advisors...[intervenes]

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: And say is my interpretation correct?

CHAIRPERSON: Yes.

20 **MR LUNGISA FUZILE**: That although I am the signatory to the contract I do so on behalf of government and in this case the representative of government in this institution is actually the Minister.

CHAIRPERSON: Okay.

MR LUNGISA FUZILE: So if he asks...[intervenes]

CHAIRPERSON: Yes?

MR LUNGISA FUZILE: And I think that it is within the law...[intervenes]

CHAIRPERSON: Yes?

MR LUNGISA FUZILE: Then I would do it except that in this case the point is I do not know if it is in law or whether you say it is moot because I would not have agreed so it is academic whether I was asked or not because I would not have agreed to this.

CHAIRPERSON: Yes but I am just wondering whether the Minister knew about that activity on the part of Mr Bhobat and whether Mr Bhobat might say no I discussed with the Minister so I do not think I did anything unlawful.

MR LUNGISA FUZILE: Yes.

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: They would have accepted that this one I do not need a lawyer.

10 I can tell you that there is no reason why even a Minister, not even the President I can say this can take information let us say for instance or classify information and give it to people who do not have the proper clearance. It is as simple as that.

ADV VINCENT MALEKA SC: Now we know that the President cannot do so...[intervenes]

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: Because section 96...[intervenes]

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: Of the Constitution prohibits him or her from doing so.

MR LUNGISA FUZILE: yes.

20 **ADV VINCENT MALEKA SC**: And so is the case with the Executive Ethics Act, Chair which makes it quite clear without doubt that no member of the National Executive would be entitled to share confidential information with others for their gain or the gain of others but here you are, Chair. You make the point which is quite important because it reflects a possible tension and I am suggesting a possible tension by looking at what page 112A indicates.

CHAIRPERSON: Yes?

ADV VINCENT MALEKA SC: The preamble of it makes it quite clear that the employer in this case is National Treasury representing government and yet the signatory and the representative of National Treasury who signs the contract is the DG without any express reference to the Minister.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: So the key question you raised is that there is some level of tension. That it will be under this contract Mr Fuzile who has to give permission for sharing of confidential information.

10 Whilst he makes it quite clear to you that he himself was quite clear as the DG at the time there is a systemic issue which we think ought to be explored and if necessary you should deal with the removal of that tension by way of recommendations on how contracts such as these should be formulated and reflected to remove some unavoidable consequence because you might have a Minister who gives permission and yet the DG who is supposed to sign says no he is not giving permission and a tension arises.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: I had invited you to look at the information which you say Mr Bhobat unlawfully shared with others including Mr Wood and I had indicated to you
20 that that information begin with an email from page 78.

MR LUNGISA FUZILE: I am there, Mr Chairman.

ADV VINCENT MALEKA SC: And Chair people who know how emails work tell me that you have to read them from the bottom working yourself upward because you will see in the middle it says begin forwarding the message.

CHAIRPERSON: I am sorry. I thought you were going back to the statement. Where

are you?

ADV VINCENT MALEKA SC: I am...[intervenes]

CHAIRPERSON: On [indistinct]?

ADV VINCENT MALEKA SC: Yes at the moment I am at page 78, Chair. Page 78.

CHAIRPERSON: 78?

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Okay. Yes I am there.

ADV VINCENT MALEKA SC: You will see that that is Annexure LF2 to Mr Fuzile's statement and what has drawn me to page 78 is what he had already said to you on
10 paragraph 69 of his statement. So in paragraph 69 he introduces this annexure.

CHAIRPERSON: Yes, yes.

MR LUNGISA FUZILE: And you will recall Chair that in paragraph 69 he said the following and I quote in the interest of time;

"I, Mr Fuzile, also subsequently learned from former colleagues
and media reports that Mr Bhobhat had, was connected to
Regiment Capital and Trillian and that in the short period that
Mr Bhobhat was in the department he shared some classified
information, a presentation intended for Cabinet with people
outside government like Mr Eric Wood. I can only infer that
20 these are people who sought to profit personally from such
information."

A copy of the email attached SLF2, of course we do not know who else got the information once it had landed in Mr Whitley and Mr Bhobhat's hands. So that is how I get to page 78 and Chair you will see on page 78 that right from top...[intervenes]

CHAIRPERSON: Well you are getting to page 78 confuses me because the annexure

a copy of which is referred to in paragraph 69 is said to be marked LF2.

MR LUNGISA FUZILE: Yes.

CHAIRPERSON: But you are referring me to an annexure that is at page 78 on the page and it is marked AA107 and not LF2.

MR LUNGISA FUZILE: Yes, Chair, again there is another confusion, because that AA107 on my document is also marked LF2.

CHAIRPERSON: Well if you want to see for yourself mine is not marked LF2.

MR LUNGISA FUZILE: Yes.

CHAIRPERSON: And the problem with that is that later on when somebody reads the transcript and wants to go and see the annexure they get confused. The annexures that we all have should be marked exactly the same.

ADV VINCENT MALEKA SC: Chair can I hand up a marker to your Registrar and ask her to mark it LF2 so that...[intervenes]

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And make sure that the most important person for the purposes of this conversation has the same document. It is page 78 annexure LF2.

MR LUNGISA FUZILE: I am on that page.

CHAIRPERSON: And how is your one marked LF2 or AA107?

MR LUNGISA FUZILE: It is AA107. I have an advantage over you Chair because either way these are my documents so I can swim backwards.

CHAIRPERSON: Well you see if both of us have got AA107 it looks like it is Mr Maleka who has LF2. Okay, all right.

ADV VINCENT MALEKA SC: Let me just dextrously hand two markers to you and mark LF2 using the black pen on the Chairperson and LF2 using the blue pen on Mr Fuzile's document. Please.

CHAIRPERSON: Registrar Mr Fuzile is no longer DG of Treasury. So you are not going to get a job at Treasury. You see I see he starts with you.

MR LUNGISA FUZILE: At least you should take some consolation Mr Chair that the fact that she got told as to where to start, but logically I think she figured out that it is closer to me and that it is better to start this way in her defence.

ADV VINCENT MALEKA SC: Thank you Registrar. I think we are now on the same page Mr Fuzile.

MR LUNGISA FUZILE: Yes sir Mr Maleka.

ADV VINCENT MALEKA SC: Look just take us through the e-mail. As I indicated to
10 you that someone told me that it is meaningful to read the e-mails by beginning from the messages, the addresses and the timelines from the bottom working yourself upwards, but you read it for us, you interpret it for us the way it is convenient to you.

CHAIRPERSON: Well I guess that whatever happens to the extent that one page might have two, maybe two or more e-mails preferably the one that came first should be read first and then the sequence then makes sense to the extent that that might be the case.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: In case what is replied, is a response to another.

ADV VINCENT MALEKA SC: And you will see to make the Chairperson's point that
20 the timelines are identified on each of the sections of the e-mail. The bottom one is the earlier of the top one purely out of time sequencing only.

MR LUNGISA FUZILE: I would perhaps leave the report on which is between Yolanda and I because there is no contention there. The one, the bottom of page 78 of EXHIBIT LF2 it is an e-mail that I sent to Ian Whitley on the new e-mail address that he had been assigned on Friday and I am copying on it Mr Marlon Geswint who was the Chief of

Staff of Mr Nene and that here really is that he would have known if Minister Van Rooyen at some point said he is okay with the presentation Marlon would have known what to do with it, how to reproduce it and to take care of all manner of things logistically to make sure that that presentation is available. The e-mail the essence of it just says "look, it is still early days, look at it, let the Minister look at it, we can shape it as the Minister wishes, but you know it is time for him to help himself, familiarise himself with it." So Marlon Geswint sends it to him. I suspect that what might have happened here is that the address because it was new, I suspect this I do not know for sure, maybe it had not gone because Marlon would have seen that Ian was copied but

10 Ian must have phoned Marlon to ask for it, but he then sends it to him and of course if you look above that Ian sends it and he says "gents finally" and you can see although the perforation has taken his name out, but the surname is there.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Who is that?

MR LUNGISA FUZILE: Then the person who...[intervenes]

CHAIRPERSON: I am sorry.

MR LUNGISA FUZILE: Sorry, sorry.

CHAIRPERSON: Is that finally, dot-dot-dot?

MR LUNGISA FUZILE: Yes "gents finally", yes, dot-dot-dot.

20 **CHAIRPERSON:** Okay, well you might not attach, you might not attach any meaning to the dot-dot-dot but I tend to think that it has got a meaning.

MR LUNGISA FUZILE: No clearly it has got meaning. For me it suggest that there had been communication which says something is coming, you know, I am going to get it or other saying get it because you cannot say finally. If I send you something first time I cannot say finally there must have been iterations or some interaction prior to that.

CHAIRPERSON: It is like at long last.

MR LUNGISA FUZILE: Exactly Mr Chairman.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Right.

ADV VINCENT MALEKA SC: But just in terms of the timeframe before you proceed...[intervenes]

MR LUNGISA FUZILE: Yes?

ADV VINCENT MALEKA SC: You will see that it comes from Mr Marlon Geswint.

MR LUNGISA FUZILE: Yes we understood, yes.

10 **ADV VINCENT MALEKA SC**: On 12 December 2015 at about 16:38...[intervenes]

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: PM.

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: Right, and we know that the 12th of December was a Saturday, right?

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: And then he sends it to Mr Whitley on that Gmail account.

MR LUNGISA FUZILE: Yes.

20 **ADV VINCENT MALEKA SC**: And he identifies the subject which is the feedback from Minister Nkwinti meeting.

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: And then he seem to have sent it to Mr Whitley at that time 16:38.

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: And then the next recipient of that e-mail is Mr Ian Whitley at the Gmail account on the same date .

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: And he forwards it to a number of people at 17:36.

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: Do you see that?

MR LUNGISA FUZILE: Yes I do.

ADV VINCENT MALEKA SC: So more or less a period of an hour...[intervenes]

MR LUNGISA FUZILE: Yes...[intervenes]

10 **ADV VINCENT MALEKA SC:** Elapses between the receipt by Mr Malcolm and the sending to him that is 17:36.

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: And then he sends it under the same subject matter the feedback from the meeting with Minister Nkwinti and a number of people that he sends to include Mr Mohamed Bhobat at the Gmail account, do you see that?

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: It also includes Mr Malcolm Mabaso.

MR LUNGISA FUZILE: Yes.

20 **ADV VINCENT MALEKA SC:** At some account I cannot identify. Are you able to identify that account?

MR LUNGISA FUZILE: I see it is malcolm@open something-something.

ADV VINCENT MALEKA SC: Opensbs.

MR LUNGISA FUZILE: Yes it look like 8 some of them, but...[intervenes]

ADV VINCENT MALEKA SC: Yes.

MR LUNGISA FUZILE: It is afternoon.

ADV VINCENT MALEKA SC: So Mr Bhobat if the e-mail trail has anything to do with this he would have received this forwarded presentation at 17:35, 17:36.

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: From Mr Whitley. Is that correct?

MR LUNGISA FUZILE: That is spot on Mr Maleka and Mr Chairman.

ADV VINCENT MALEKA SC: And then once he receives it on the same date almost three minutes later he forwards it to a number of people and you can tell us who those individuals are.

MR LUNGISA FUZILE: Yes the most obvious one to me is Mr Eric Wood and then
10 there is another e-mail that seems to be kind of fake-ish because it is infoportal@soho.com. I do not know if you will see the same thing, but you are correct it is astounding that within those three minutes it had gone to those people.

ADV VINCENT MALEKA SC: Yes and that would explain the Chairperson's interest in the intro line in Mr Whitley's e-mail that "gents, whether it might be finally dot-dot-dot."

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: In other words what they have been waiting for is...[intervenes]

MR LUNGISA FUZILE: The waiting is over.

ADV VINCENT MALEKA SC: Yes. Can I ask you to identify for us the key features of
20 that presentation, which leads you to the conclusion that once you have it when it was not designed or intended for your eyes and ears you will gain an unfair advantage ahead of many.

MR LUNGISA FUZILE: Much later on what you would see if you just take a page like page 95 it talks about initiatives to promote trade and growth. Immediately you see that you would see that there is a bullet that talks to state owned enterprises at Champion

and Development and so on and you just have to think about the connection with state capture and so on, but bearing in mind that this is not a kind of a budget thing, but as I was saying it is a document that points in the direction of where government is going over the next while. You can continue then later on...[intervenes]

ADV VINCENT MALEKA SC: Can I ask you to just on that page 95 deal with two because one of them has become a subject matter of investigation by our investigators Chairperson and that is the third bullet point. If you could look at it and tell us what does it deal with?

10 **CHAIRPERSON:** Okay I am sorry where are you? You have moved away from the presentation?

ADV VINCENT MALEKA SC: No I am at the presentation it is on page 95.

CHAIRPERSON: Okay. Okay thank you.

MR LUNGISA FUZILE: You found it?

CHAIRPERSON: Yes. Yes. I found it.

20 **MR LUNGISA FUZILE:** So if you look at page 95, Mr Chairman as Mr Maleka is sort of leading us there you would see that the third bullet there signals the key role that a state owned entity for an example like Transnet will or is playing in the Maputo corridor and you can see – well in a way towards the end there is also reference to other initiatives that the state owned enterprises were either involved in or likely to be involved in, in the period I had.

Now when you know this kind of information later on when it becomes projects and of course a mixture here of projects and just sort of directionally this is where the focus should be you can quite quickly if you are an astute business person position yourself, start an engagement with Transnet or any other entity that you think would have a role to play to shape things as projects or as they become projects be

involved in executing them.

You would have what we call in economics a first mover advantage so to speak.

ADV VINCENT MALEKA SC: All right. I had invited you to just read for us the third bullet point on page 95 the second last bullet point.

MR LUNGISA FUZILE: The one that is state owned enterprise championing African infrastructure development such as Transnet Maputo corridor JOC launched in September 2014 to streamline cargo logistics between South Africa, Swaziland and Maputo as well as the on-going development of prototype Trans African locomotive
10 suited for the conditions of Africa's railways.

ADV VINCENT MALEKA SC: Yes and Chair you will hear something in due course about the connection of the rail line between Swaziland, well between South Africa, Swaziland and Maputo in due course.

CHAIRPERSON: Well while you are looking at your next issue, excuse me I would very much like us to finish with Mr Fuzile's evidence today.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: I hope that Mr Fuzile's position about moving, working beyond 16:00 is the same as yesterday's position. Mr Fuzile if we have to go beyond 16:00 just to finish your evidence I am hoping we would finish within 30 minutes after 16:00. If we
20 were to do that would that be convenient to you?

MR LUNGISA FUZILE: I would certainly be willing to assist the Commission in that regard.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Okay, thank you.

ADV VINCENT MALEKA SC: Chair I am almost at the end.

CHAIRPERSON: Oh, okay. All right.

ADV VINCENT MALEKA SC: And I will just...[intervenes]

CHAIRPERSON: I must – I must say that your estimation yesterday was horrible.

ADV VINCENT MALEKA SC: Chair.

CHAIRPERSON: You said you would finish easily within the time available.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: And even when I thought of starting early this morning you said no, no, no we will be fine.

ADV VINCENT MALEKA SC: Chair.

10 **CHAIRPERSON**: Okay, Mr Maleka we all sometimes underestimate.

ADV VINCENT MALEKA SC: Yes, Chair.

CHAIRPERSON: What needs to be done in the time. Thank you.

ADV VINCENT MALEKA SC: Thank you. The importance of the issues Chair made me to pace myself like a tortoise and I really apologise for that.

CHAIRPERSON: Okay, thank you.

ADV VINCENT MALEKA SC: But what I wanted to do Mr Fuzile I mean to illustrate the point that remained is to go to the whistleblower's bundle which is EXHIBIT R before you.

CHAIRPERSON: Okay which bundle are we going into now?

20 **ADV VINCENT MALEKA SC**: R, Chair.

CHAIRPERSON: R?

ADV VINCENT MALEKA SC: R yes.

CHAIRPERSON: Okay and what page?

ADV VINCENT MALEKA SC: 237.

CHAIRPERSON: Thank you. Did you say 2037?

ADV VINCENT MALEKA SC: 237.

CHAIRPERSON: 237

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: Are you there, Mr Fuzile?

MR LUNGISA FUZILE: Yes. Yes I am.

ADV VINCENT MALEKA SC: And this is a document introduced by the whistleblower in her statement. You do not have to go there, Chair, where she introduces it.

CHAIRPERSON: Yes.

10 **ADV VINCENT MALEKA SC:** She introduces it from page 14 and page 15 of her statement but what the document reflects are several major government economic transactions. For instance if you look at the first one, Mr Fuzile on page 237 it deals with the collateralisation of municipal debt and you will see there it says if you assessed, Chair, two municipal entities to efficiently tap debt capital markets through facilitating collateralization of a debt with the financial assistance of DBSA and PSA through the support of the mezzanine portion of this collateralized debt this will assist in the infrastructure rollout required of a country and with National Treasury oversight and assistance begin to instil financial discipline currently lacking in the two municipalities approximately 20 billion per month, per annum sorry at 30 basis point.

20 You see anyone who has confidential information knowing how you are going to create financial instruments around a debt of municipality will have knowledge of how much you could achieve in terms of savings and if you are a service provider to do that you will certainly earn some income by way of fees and that is what this document tells us because if you go to number five you will see that again it is a collateralization of property owned by various state entities and there whoever does that job will earn a fee

based on 25 percent development of the upside and that is a huge amount.

So what this document say and hopefully the whistleblower will come to tell us more about it is that if you have this type of confidential information which you talk about you are able to enter as a service provider into government transaction space and begin to provide services for which you earn handsome fees and that after all is what Trillian has been doing.

That after all it is what Regiment Capital has been doing and we know that that after all is what McKinsey has been doing.

MR LUNGISA FUZILE: I can confirm, Mr Chairman that the logic of what Mr Maleka is making makes perfect sense. As to the specific entities of course they do feature here and the extent I have not investigated and studied but as I say myself the people who are connected to them there is no reason why anyone would want this kind of information that was shared here for fun.

It is about placing you or an individual or his or her business in a position of advantage *vis a vis* competition insofar as the opportunities to compete for business are concerned assuming there will be competition but it may even be about circumventing that competition.

Needless to say I may repeat the point that the sharing of the information itself even before you talk about the reasons for sharing it and the consequences of sharing it was illegal.

ADV VINCENT MALEKA SC: Yes. Mr Fuzile we are now going to round up and conclude. I am now at page 72 and you have talked about that chapter of your statement when you canvassed the conversation you had with...[intervenes]

CHAIRPERSON: Sorry Mr Maleka, we are going back to the bundle that has his statement now?

ADV VINCENT MALEKA SC: Yes that is EXHIBIT P, Chair.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: You have talked about the conversation you had with Deputy Minister Jonas yesterday. I wonder whether you have more to say or what you said yesterday was enough for the purposes of your evidence.

You can go through it quietly. It begins at paragraph 71.

MR LUNGISA FUZILE: Yes. No unless the Chairman and you, Mr Maleka feel that there is something to amplify. We have covered it quite extensively. Perhaps the point that it just cements...[intervenes]

10 **CHAIRPERSON:** Maybe you could just repeat the main features of that conversation.

MR LUNGISA FUZILE: Okay. No, thank you very much, Mr Chairman. In a way what the conversation with Mr Jonas did for me really is what I capture in these bullets was to just now complete the picture insofar as one, the role that perhaps I should use the singular here, a particular Gupta person played where in the meeting with Mr Jonas he in addition to offering him money...[intervenes]

CHAIRPERSON: Okay I am sorry I am going to just...[intervenes]

MR LUNGISA FUZILE: Yes?

CHAIRPERSON: How the – so it was not a meeting it was a telephone conversation or it was not?

20 **MR LUNGISA FUZILE:** It was a meeting, Mr Chairman.

CHAIRPERSON: Okay.

MR LUNGISA FUZILE: On 71.

CHAIRPERSON: Yes?

MR LUNGISA FUZILE: Paragraph 71 of page 72.

CHAIRPERSON: Yes?

MR LUNGISA FUZILE: I start with this...[intervenes]

CHAIRPERSON: Yes just say how the meeting came about.

MR LUNGISA FUZILE: Yes. Yes. No, essentially I had – one of us called and I cannot remember which one but the essence of it was you know it is what a day and then the Deputy Minister said I think that we should talk and in fact...[intervenes]

CHAIRPERSON: This is now on 11 December?

MR LUNGISA FUZILE: This is on the 11th.

CHAIRPERSON: 2015.

MR LUNGISA FUZILE: In the afternoon like 16:00 or 17:00.

10 **CHAIRPERSON**: Yes.

MR LUNGISA FUZILE: So and I went. I drove to where he was or he may have been heading to himself but I found him there and then he told me that around October and this for me was the first time he had told me this or I even heard about this.

CHAIRPERSON: I am sorry you say you had?

MR LUNGISA FUZILE: In October...[intervenes]

CHAIRPERSON: Yes?

MR LUNGISA FUZILE: For me on that day it was the first time in December...[intervenes]

CHAIRPERSON: That you were hearing about...[intervenes]

20 **MR LUNGISA FUZILE**: That I was hearing about the approach that was made by a Gupta person to Mr Jonas.

CHAIRPERSON: Oh, okay. Yes?

ADV VINCENT MALEKA SC: And Chair just to interrupt you will see that there is a gap of a full two months.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Between what the experience of Mr Jonas has been.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And how he now begins to feel comfortable to disclose it to Mr Fuzile. We know that he told you about who else he disclosed that experience.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: But for now we deal...[intervenes]

CHAIRPERSON: He disclosed to somebody else.

ADV VINCENT MALEKA SC: Yes. Yes.

MR LUNGISA FUZILE: So thank you very much, Mr Chair.

10 **CHAIRPERSON:** Yes.

MR LUNGISA FUZILE: For the stuff on paragraph 72 is what is known I mean how he ended up there and of course he said that he found this conversation quite disturbing that he had with the Gupta person because you know he was insinuating that he had control over many things or everything that happened in government almost suggesting that if he wants something and it requires the authority of the President he can get it to happen. Signal to Mr Jonas that he would like, in fact Mr Jonas did tell me that they claimed two other things that they had information on him in a way trying to blackmail him, but they did not say what information. They knew who his friends were. All the stuff that has now been alluded he told me on that day. He said they wanted, they
20 claimed that many people worked for them, many people who are in government. Let me not use they, he. The Gupta person claimed that there were many people, important people in government and key positions and in SOCs for that matter who were working for their interest and they wanted him to take the job and the President was happy, would be happy if he took the job and then in his case he wanted that...[intervenes]

CHAIRPERSON: This is of course the job of Minister of Finance?

MR LUNGISA FUZILE: The job of Minister of Finance, thank you, to be precise and said "look, if you were to take the job it would be good to help them to expand their business interests with government." There were numbers mentioned I think he said at the time it was three or four billion, they wanted to take it to six or eight, some number, big number.

CHAIRPERSON: Actually I was going to ask you the question whether as far as you know at Treasury it might have been possible or it would be possible to establish whether there was any connection between those figures that according to Mr Jonas he
10 was told about in terms of what they were making from government. I think he said they said six billion and they wanted to increase it to eight billion.

MR LUNGISA FUZILE: Something, yes.

CHAIRPERSON: Would it be easy to, for Treasury to check if anybody, how much any particular company may be making from all government departments and parastatals maybe or not really?

MR LUNGISA FUZILE: I think I would take out easily, but it can be done Mr Chairman and I am saying I taking easily out of it because let me just say it can be done, but it is an exercise that would entail that the Treasury would have to ask for the information. You cannot just do it...[intervenes]

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

MR LUNGISA FUZILE: From a systems point of view.

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: Treasury can go quite far to get that information from national government departments.

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: But the entities because those departments are on the same system, IT system so to speak that is why it is possible to pull reports and collate them relatively easily, but the entities are kind of independent states of sorts.

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: But the Treasury has got the authority in law which I think can be stretched to allow it to ask for that information, but I mean my successor would be in a position to answer that question better than me. I do not want to set him up for...[intervenes]

CHAIRPERSON: Yes.

10 **ADV VINCENT MALEKA SC**: Yes.

CHAIRPERSON: Okay, no but what you have said is helpful.

ADV VINCENT MALEKA SC: Yes and Chair I mean we asked the investigators to get that sort of information from the auditors of Oakbay and associated companies which is the almost full picture of the Gupta empire.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: And we know that the auditors have been begun to disclose the financial information under a subpoena of course.

CHAIRPERSON: Okay.

20 **ADV VINCENT MALEKA SC**: But if we could get information from Treasury along those lines it will provide...[intervenes]

CHAIRPERSON: Yes...[intervenes]

ADV VINCENT MALEKA SC: Important corroborative evidence.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: No thank you.

ADV VINCENT MALEKA SC: So we will take that issue with Mr Mogajane.

CHAIRPERSON: Yes please.

ADV VINCENT MALEKA SC: In fact that will be installment number one before he testifies.

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: So should I continue?

ADV VINCENT MALEKA SC: Yes.

MR LUNGISA FUZILE: So quite critically and this is I think why Mr Maleka is also suggesting correctly that we could go through this fast. If you look at 75 then Mr
10 Godongwana, sorry...[intervenes]

CHAIRPERSON: Mr Jonas.

MR LUNGISA FUZILE: Mr Jonas, thank you, dropped this bombshell. This is now the afternoon. I call it a bombshell where he said they said one of the tasks he would have to perform when he first gets there would be to dismiss the four of us that I list there and we ventilated the issue Mr Chairman yesterday as to what...[intervenes]

CHAIRPERSON: Well you mentioned them yesterday but we just...[intervenes]

MR LUNGISA FUZILE: It is Mr Ismael Mononiat, it is Mr Kenneth Brown, it is Mr Andrew Donaldson and myself.

CHAIRPERSON: Yes.

20 **MR LUNGISA FUZILE:** I suspect that our experience just at the Treasury the four of us would add up to a number upwards of eight years. Of course they overlap those years.

CHAIRPERSON: Of course Mr Kenneth Brown was Chief Procurement Officer.

MR LUNGISA FUZILE: He was Chief Procurement Officer.

CHAIRPERSON: So he was one of those that they did not want?

MR LUNGISA FUZILE: The role...[intervenes]

CHAIRPERSON: According to Mr Jonas...[intervenes]

MR LUNGISA FUZILE: Was dropping him sadly in the line of fire because he was writing rules for procurement, sort of amending them for us, for government so to speak with the view to making the process more transparent so that it would be less easy to manipulate procurement processes or it would be easier to get caught when you have actually done so for instance the publications of who has one which tender and who are the directors and-and-and, but at the same time there was a stepping up of enforcement for instance we initiated a process to review contracts beyond a certain threshold just to see if there was malfeasance in those and of course there was

10 suspicion of a strong and then the reports on those some of them ...[indistinct] Treasury and I would presume that some of them are still work underway, but just that kind of work had meant that he had become a problem by wanting to insist that there should not be stealing, there should not be manipulation of tender processes and stuff like that. I cannot imagine any other reason why because his role of that position was not brought and I said Mr Mononiat was, he is, you know he does tax stuff. Sometimes people think that what SARS does administratively and in terms of enforcement is he has asked them to do, but he does not, but not in the sense of directing them necessarily he is instrumental in terms of shaping tax legislation including the administration of tax for that matter, but one of the important roles that he plays and I

20 said this yesterday is advising the Minister and the DG of financial regulation including tightening the laws on anti-money laundering, the issues of reporting on suspicious transactions. I mention this because there is enough evidence in the public domain that these kinds of legislation were resented. People did not resent them simply because they were there because they knew that they would make it harder to engage in those kinds of activities which entail the ability to move and to enjoy proceeds of

crime. So this kind of shocked me, but I quickly connected it to the fact that, and the fact that he was going to be given replacements for us including advisors. So if you go back to the story of Wednesday night with Mr Gordhan who said you will get a Gupta Minister, he will be given advisors, he might not even know them very well, they would be of Indian descent. So I said okay, so this stuff was planned as far back as October. I had no reason whatsoever to doubt Mr Jonas' version of these events. So I then came to the conclusion quite firmly that the gentleman that Mr Van Rooyen showed up with whom he did not seem to know well must in fact have been given to him by the Gupta person that or the Mr Gupta that Mr Jonas spoke to hence he did not know them

10 all too well including the roles that he was going to assign them and indeed if you just look, perhaps jumping now, I hope I do not muddy the water, it is clear that Mr Bhobat was, the way he was just approaching me, the way he was abrasive, impolite, throwing his weight around had the hallmarks of making sure that right from the word go it was untenable for me to or unbearable for me to stay in the department and hopefully leave. I mean I can say today it is known factually that he was wrong I was not going to go anywhere. Certainly not pushed away by him. Of course I am saying that it was then clear to me because the Gupta persons said it to Mr Jonas and Mr Jonas said the President's son was there. That in fact there was a connection of most of what we were going through as an institution and as individuals to the person of the President just

20 given how this was unfolding. So I think that is, that is enough to say. In fact I just make this last line where I, which is partly the reason I at some point just felt I should actually leave the Treasury without saying much and it became obvious that there where we were we had heard Minister Manuel, you could say he had been tired of the job. He had been there for too long but he was replaced by a competent person Mr Pravin Gordhan who after just one term was replaced by yet another competent person.

You could say he was a committee member for years, Deputy Minister for many years, easy chemistry, he knew the job in Mr Nene. Now you come from having a Minister for 13 years without a change in the department and all the benefits that went with that. You have a Minister for just one term and then next time just 18 months. I actually just thought, look, it is obvious to me and this I can say at least in my mind without fear of contradiction it can be denied by others it was obvious to me that there was a mission to make sure that we end up ultimately with a Minister who would be pliable, a Minister who would be weak and therefore weaken the Treasury and after having been in the department for the length of time that I was there for I was not going to be there and be

10 party to decimating an institution that I inherited being very strong, being recognised worldwide for its strength. I used to even sometimes say it jokingly Mr Chairman to people and say let us say that people who talk this ill about Treasury sometimes even in my presence I would say you know let us say you think that people the world over are wrong in thinking that the Treasury does its job well, but it benefits South Africa and South Africans because then it gets people to invest in government bonds and therefore enables government to finance its programs and whatever it does. So would it annoy you so much as a South African that you would want to tell the world that you are wrong in thinking that this Treasury of ours it is good. It is actually bad. It is weak. Of what good would it be? So anyway I am saying that it became clear from that conversation

20 that I had with Mr Jonas that what we were going through was actually very bad. Was terrible.

ADV VINCENT MALEKA SC: Yes.

MR LUNGISA FUZILE: And it was orchestrated with the President certainly at the centre of it.

ADV VINCENT MALEKA SC: And then you conclude that after that conversation with

Deputy Minister Jonas you were deeply disappointed and demoralised and I can understand that you had taken so much in that two days and you were thinking about your future, but as we have it fate intervened and you outlasted those who thought they would replace you. Can I ask you now to just by way of concluding remarks share with us the lessons that we can learn and around which we can make recommendations to the Chairperson about how to even strengthen further National Treasury if it is not strong or stronger or ready.

MR LUNGISA FUZILE: I would say Mr Chairman what we went through around that time taught me several things. The one, one of the things that placed us in good stead
10 that ensured that we were able to weather the storm, to withstand a lot of the, the negative stuff that was buffeting us from all sorts of angles including from the highest office was the fact that we were led and when I say we were led I would just first take the politicians or the political office bearers we had in Mr Gordhan and Mr Jonas by people who, who hold our constitution very dear and all the laws of the country. I said this several times in the department on the occasion that we would celebrate one or some other event and have the Minister and the Deputy Minister around, that I was very proud to work with two people with Mr Gordhan and Mr Jonas and of course you can add Mr Nene to that list. You can even add Mr Manuel to that list and Mr Moleketi Jabu. We were led over this period of time by people who never sought to do anything
20 themselves or ask us to do things that were aimed at helping them or people connected to them to gain, you know, personally or for themselves. I used to say that not once if I had to face a dilemma where I am faced with a Minister or a Deputy Minister who is trying to do something that I feel uncomfortable with because it is incongruent or in contravention of the law. That was very powerful and the lesson from that if I were to be direct with what Mr Maleka has asked me is that anyone who happens to find

themselves in a position let us say of a Director General for that matter of a DDG in a department or in a department the managerial position. If you know the rules you know the law. It helps to make sure that first time when a person tries to ask you to do something that is illegal to let them know and let them know in no uncertain terms that you are not going to be party to doing a crime. There are many people some of them now tell untruths they say they liked me when I was in government, because they say, you know, we always knew where we stood with you. I do not like talking about myself in those terms, but in my case it is either something is legal, it is worth considering, it is either something is in the national interest and therefore we can debate it. Once it is

10 illegal or it is not in the national interest then it is off the table and you would not leave it any doubt. So it is important to be law abiding and the issue of playing by the rules is important because at every point if you look at my interactions with Mr Van Rooyen, Mr Bhobhat over that short period I kept making reference to the rules. I was not making the rules for them. The rules had been made for all of us. All I was doing was to draw their attention to the rules, but I would say the bigger issue for me which one has got to say carefully just having heard the question that the Chairman was putting to Mr Gordhan yesterday is it just seems to me that even at points when there were signs that state capture was happening, corruption happening or whatever you choose to call it there are many people who opted I think chose not to seek it. I do not think that with

20 all that we were watching playing itself in front of us, many of us as South Africans especially those who happen to be close to things like ourselves can say that we were shocked by the very last events that came, let us say, for instance on the Gupta leaks or whatever other event people remember as the big event that makes it very hard for them to deny that they see that state capture is happening or corruption is happening. What do I say by this? You asked me for lessons When you see something when it

smells fishy then it is fishy. You have got no excuse to say I thought it was smelling good and I like the quote that Mr Maleka started with which was the one that Mr Gordhan concluded with. The reason these terrible things happened is because many good people kept quiet. I do not buy the excuse that is convenient that people make that they did not notice. Of course you may not notice from the first event but the thing is that too many events were happening here.

Too many events were happening here and what is said about it is that you will need people. We may still like it when people commend us and say we did well by stopping this or stopping that or you know but I take no comfort from that because it
10 was not easy.

I say this because there were moments when some of my direct reports would walk into my office, some of the verge of breaking down and they would say to me listen this department is actually under attack and I would sometimes myself played to the gallery if I may call it that.

I said look I do not think we are under attack but there are just too many things happening A, B, C. Things are going to get better but the reality is that bad stuff was happening. Bad stuff was happening and I am sure the picture, I hope the picture of – the picture I have painted here with this very short submission that has taken a little long to go through does help to fit a few pieces of this jigsaw puzzle such that
20 South Africans can form a picture of their own.

I say to people as I end my reason for coming to help the Commission now and in future if I do come is less and I say it is not...[intervenes]

CHAIRPERSON: You thought it was when not with?

MR LUNGISA FUZILE: When yes.

CHAIRPERSON: I thought it was when.

MR LUNGISA FUZILE: Sorry, sorry. I am saying my reason for coming here...[intervenes]

CHAIRPERSON: And you say and in the future if you come...[intervenes]

MR LUNGISA FUZILE: No, no, no.

CHAIRPERSON: Okay. Based on the fact that you clearly said there is a lot that you would like to share with the Commission.

MR LUNGISA FUZILE: Yes, yes. Let me say when I come back the reason for doing what we do and taking whatever risk it would entail is less about being heroes certainly not for me and I suspect for all of us who came here.

10 It is also less certainly for me about being vindicated or being vindictive insofar as those people who did things that are bad. When I say for instance if I use the example of my own submission Mr Bhobat broke the law it is not because I just heard the guy and I wished he would be jailed tomorrow and that will be fine too because if he pays for his own sins who else should pay for them?

 But the most important thing about it is the lesson for every South African. It is the lesson for every South African that it carries that this is a country governed by a constitution and law. Your first point of reference ought to be that if you are coming into the civil service, in fact every sphere of life.

20 So one would hope that as we come here present evidence it helps South Africans for a picture of what happened but not only that it also then helps the South Africans learn so that in future if something similar starts to happen it can be stopped much earlier than what this one has done.

 You only need to look at what for instance some of the state owned companies the state in which they are in to see the egregiousness of what we went through. Thank you very much.

CHAIRPERSON: Are you done...[intervenes]

ADV VINCENT MALEKA SC: Chair, just for me to thank Mr Fuzile and through him to appeal to many others to heed the very important call of Professor Niemöller that we are here and we are at this stage of our [indistinct] democracy affected by these acts of state capture simply because good men and women chose to keep quiet when there was a time, a moment for them to speak and through you we would definitely keep on asking those questions why they remained quiet at that moment when they were supposed to speak?

I mean a certain part of the conversation you have heard from Mr Fuzile's
10 evidence is that there was a moment of quiet attitude for two months in relation to crucial, crucial information which affected him in such a way that he was not only demoralised but thought of leaving Treasury and so as much as we may be thought to be nonsensically critical of the silence we would appeal in advance and ask for your forbearance to keep on asking these questions from every other person who would come to appear before you and testify why was that moment of silence and we will put those questions to anyone who would come to testify before you.

Other than that let me apologise for you for taking so long and making mistake in estimations of time.

CHAIRPERSON: Thank you, Mr Maleka. Well Mr Fuzile thank you very much for
20 coming to give evidence and my understanding is that like Minister Gordhan and Minister Nene and former Deputy Minister Jonas you came voluntarily because you appreciated the need for you to come and assist the Commission.

I have before specifically appealed to current Directors General of departments and former Directors General quite apart from Cabinet Ministers past and present to come forward and give the Commission information and evidence about

what they knew and I have said that when I make these appeals it is not because we depend completely on people coming forward on their own to give us evidence.

We have an investigation team. They are investigating. Some of the things we will find ourselves but it would be very good if people who know information that is relevant came forward because to the extent that at the end of this process I may find that there was state capture the question will arise as to who had the duty to do what when they realised and I have said that question will arise in regard to the governing party to say as the governing party that was given power over these years by the electorate when did they realise that there was state capture and what did they do
10 about it.

The same will arise with regard to the executive. When did members, different members of the executive realise what was happening and what did they do about it and to the extent that whether it is the governing party or it is members of the executive to the extent that they may not have done what they ought to have done. Is it because there was an environment or a framework that made it difficult for people to do what they were supposed to do and if so what is that environment?

We must identify it so that the Commission can then address, deal with that environment in recommendations to say we should not have this kind of framework or this environment going forward because this kind of environment if it is, if it continues to
20 exist will facilitate another state capture in the future.

We need to look at this but we need people in the governing party, in the executive and government everywhere and outside of that of people who can observe or observed things, who participated in things and activities to say this environment provided fertile ground for state capture.

It needs to be changed if we are serious about wanting to make sure that

state capture does not happen again but to be able to do that effectively and to get to the truth and the real depth and extent of these things we need people to be able to come forward and speak without fear of any physical harm to them, fear of being prejudiced in any other way or being marginalised.

People must be allowed to say I want to make a contribution in the rebuilding that needs to take place to the extent that there may have been state capture and the state capture may have involved a certain amount of destruction of our country.

So people who take the trouble to come to the Commission and say I want to make my own contribution. I want to say what I knew, what I saw and help the
10 Commission, to help the country they must be able to come forward and say so without fearing that they may be marginalised by whoever.

So I hope that your coming here like that of Mr Themba Maseko right at the beginning of our proceedings will encourage both current Directors General and former Directors General who knew things, who knew what happened to come forward and say I will not stand on the side. I will join those who are trying to rebuild, who are trying to help the Commission to make sure that the future of the country will be better than the times when there was state capture if indeed in the end I find that there was state capture.

But once again thank you very much for coming forward and I have no doubt
20 that you will return. Thank you very much. You are excused.

MR LUNGISA FUZILE: Thank you very much, Mr Chair.

CHAIRPERSON: Thank you.

MR LUNGISA FUZILE EXCUSED

CHAIRPERSON: Mr Pretorius I see you standing up. Is that for the condonation application?

ADV PAUL PRETORIUS SC: Chair, it is simply to request you to direct whether you wish to hear it now or would prefer to hear it tomorrow. It will not take long but perhaps you could give that some thought. Also to state that as a result of the length of time that Mr Fuzile has taken there has to be some amendment to the program.

It was planned that and I might say that counsel's prediction of time is a feature comment to all counsel. It is not unique to Mr Maleka. The plan was that tomorrow Mr Manyi would return to the witness box but as you stated in chambers it is preferable that the trio of Treasury witnesses complete their evidence on term of reference 1.8 before Mr Manyi comes.

10 Arrangements have been initiated through the Commission attorney to delay Mr Manyi's arrival until Monday if that is appropriate.

CHAIRPERSON: Yes, no I think that Mr Manyi was going to give evidence after certain witnesses had given evidence before him. Those witnesses have not or some have but there are still others that we are supposed, that were ahead of him in terms of the arrangements.

I think we should hear those first more so because what they will be testifying about is linked to the evidence of Mr Fuzile and Mr Gordhan. So what I do not know as I understand it is two witnesses, is that right?

ADV PAUL PRETORIUS SC: Yes, Chair.

20 **CHAIRPERSON:** What I do not know is whether we would finish them within the two hours that we will have tomorrow afternoon but if we do not finish we should finish them first even if on Monday then Mr Manyi can come in.

ADV PAUL PRETORIUS SC: Any answer that the three of us give is subject to the same questions that have already arisen due to the length of Mr Fuzile's evidence.

CHAIRPERSON: So there is a reluctance to...[intervenes]

ADV PAUL PRETORIUS SC: We can attempt to answer that. We take your counsel.

CHAIRPERSON: Okay, no what we will do is one) tomorrow let me just make it we are only going to resume at 14:00 in the afternoon and so we will not be sitting in the morning. That is because in my other job I have to attend some other business at the Constitutional Court.

So once I am done there I will have to, I will come here. It is something important that will be happening for the first time in the country. So we will resume at 14:00 tomorrow. So we will then hear one or both of the witnesses depending on whether we finish the one who will start and then once we have finished with the
10 second one whether it is tomorrow or it is on Monday then Mr Manyi can then come in. So I would leave it to the legal team to be in touch with him.

ADV PAUL PRETORIUS SC: Thank you, Chair.

CHAIRPERSON: But I understand he has been informed already about tomorrow.

ADV PAUL PRETORIUS SC: Yes, Chair.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: That leaves your direction about the condonation application.

CHAIRPERSON: Maybe I should deal with it now then we know it is – I was told at some stage there was counsel who was ready but if there are challenges I can hear it
20 tomorrow at 14:00. Okay it looks like it is better tomorrow at 14:00.

ADV PAUL PRETORIUS SC: Thank you, Chair.

CHAIRPERSON: Is it better at 14:00 tomorrow?

ADV PAUL PRETORIUS SC: Yes, Chair.

CHAIRPERSON: Okay. That condonation application will be dealt with tomorrow at 14:00. We therefore adjourn for the day and once again we will resume at 14:00

tomorrow.

ADV PAUL PRETORIUS SC: Thank you.

CHAIRPERSON: We adjourn.

HEARING ADJOURNS