

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

**09 DECEMBER 2020**

**DAY 321**



**Gauteng Transcribers**  
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 09 DECEMBER 2020**

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

**ADV SELEKA SC:** Morning Chairperson.

**CHAIRPERSON:** Hm. Are you ready?

**ADV SELEKA SC:** Yes Chairperson we are ready. There is just two housekeeping matters to get out of the way. One of which relates to the second witness scheduled for today and maybe we could start with that first  
10 Chairperson?

We have scheduled today Mr Khoza and Ms Verushni Naidoo. In regard to Ms Verushni Naidoo Chairperson we received the affidavit only yesterday after four – late afternoon. It is an affidavit of some 56 pages I think with annexures – it runs up to 237 pages. So we have not had a chance to look at the affidavit.

The deadline for that affidavit was towards the end of November. Extensions were asked and we had agreed amicably with the other – the legal representatives for Ms  
20 Naidoo that they could submit but they should submit on a particular date. Well that also did not happen so we only received it yesterday.

So in the light of that Chairperson we are in a predication from our side to proceed with her evidence today. I have communicated with the legal repre – with the

attorney in particular I do not think he will be here this morning. We had indicated to him that he will start later because we will start with Mr Khoza this morning.

So what we will be requesting from the Chairperson is to have Ms Naidoo's evidence postponed to a later date and – ja we ...

**CHAIRPERSON:** Does Ms Naidoo know why the affidavit was not ready on time so that we could have proceeded today?

10 **ADV SELEKA SC:** I do not know whether she knows Chairperson I have not...

**CHAIRPERSON:** Is she here?

**ADV SELEKA SC:** I do not think she is. No – I see the shaking of heads Chairperson I do not think she is here.

**CHAIRPERSON:** Hm.

**ADV SELEKA SC:** I have not dealt with her directly ...

**CHAIRPERSON:** Well let us – let – us deal with Mr Khoza's evidence and then when we finish with it then you can raise the matter of Ms Naidoo again.

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

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** On Mr Khoza Chairperson he – he is represented by Mr Cooper and I would like him to...

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Place himself on record.

**CHAIRPERSON:** Mr Cooper would you like to place yourself on record? You can do it from where you are if you are able to?

**ADV COOPER:** Yes good morning Chair. It is Athisten Cooper from the firm Ka-Mbonane Cooper and I am Mr Khoza's attorney.

**CHAIRPERSON:** Okay no thank you.

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

**CHAIRPERSON:** Yes.

10 **ADV SELEKA SC:** There was also an aspect Mr Cooper and I were discussing before we start.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** It is about also a default in regard to the filing of Mr Khoza's affidavit on transactions. Mr Khoza has duly cooperated and filed an affidavit on the suspensions and we followed up in regard to the transactions but that has not been forthcoming.

**CHAIRPERSON:** Hm.

20 **ADV SELEKA SC:** And the intention was we could touch on both the suspensions and the transactions today that the failure to file on the transactions impacts on that plan.

**CHAIRPERSON:** Hm.

**ADV SELEKA SC:** And perhaps Mr Cooper could address the Chairperson.

**CHAIRPERSON:** When was he supposed to let the

commission have his affidavit?

**ADV SELEKA SC:** The date was – the first date given Chairperson was the 16 November.

**CHAIRPERSON:** Huh-uh.

**ADV SELEKA SC:** Or on the 16 November I beg your pardon he was given a request for information with a due date of the 1 December to file the affidavit. Mr Cooper can confirm that as well. I do not...

**CHAIRPERSON:** Ja.

10 **ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Well Mr Cooper do you want to say something about the failure to file an affidavit dealing with transactions so far?

**ADV COOPER:** Yes Chair thanks. So Chair the position of Mr Khoza has – has always been that – that he in conjunction with our firm has been in the process of preparing an affidavit. The latest request for information with Mr Seleka and his team sent to Mr Khoza it traversed many issues not only the transactions which Mr Seleka is  
20 speaking about but there is probably about ten other subject matters and that – that extends to subject matter which Mr Khoza is not offhand familiar with and it would require us to go through archives of documentation and source information and then prepare something.

As of the 25 November we did communicate to the

commission that at this stage Mr Khoza was not in a position to file an affidavit and we would once we have consulted with Mr Khoza further let the commission know of our – our position.

On the 30 November we did receive a summons from the commission and in the summons it advised that Mr Khoza was required to appear at the commission on today – today and to address the affidavit which he has submitted to the commission and that affidavit being the  
10 affidavit on the suspension of the executives together with the issues arising therefrom.

So on that basis we were under the assumption that Mr Khoza would be asked to come here today to address his affidavit and we were not aware and we would have thought that we had the commission aware that we had not filed anything and we were not yet of a certainty to file an affidavit on the other issues. And it is – and I must say again it is not merely just those two transactions those pre-payments but there is approximately ten other issues  
20 and ten isolated separate issues.

So that unfortunately that is our position today and I cannot take it much further.

**CHAIRPERSON:** I suspect that the ten other issues you talking about would fall under the topic of transactions that Mr Seleka is talking about? Ja, ja Mr Cooper.

**ADV COOPER:** Chair if you just allow me to read some of the issues which arise in that – and these are the topics. Okay. So some of the other issues are the addendum to the Hendrina Coal Supply Agreement naturally the guarantees and thereafter we go onto the T Systems contract. We talk about the Eskom and McKinsey [00:07:40] plan.

**CHAIRPERSON:** Ja all of those are – fall under transactions. But it is fine it is okay. What I do gather from  
10 what you say and what Mr Seleka has said is that Mr Khoza is giving his cooperation to the commission. There may have been some hitches and misunderstanding about what his evidence would cover today and you may be needing more – you may have needed more time to prepare the – an affidavit that deals with other matters. That is what I am gathering. Is that correct?

**ADV COOPER:** Yes Chair that is our position.

**CHAIRPERSON:** Yes. I think that it is fine we will cover the suspensions today.

20 **ADV SELEKA SC:** Yes.

**CHAIRPERSON:** But you and Mr Seleka must finalise the date by when the other affidavit must be filed. And if you do not reach agreement then I will fix the date. We do not have time. The commission is running out of time for oral evidence. We were meant to finish all oral evidence by



end of this year which is end of this month effectively next week. We find ourselves having to go into next year in regard to some witnesses which we would want – we wanted to avoid. So there is – there are serious time constraints. So that should just be borne in mind in ting to assist the commission with your affidavit and also on the deadline. So it should not be too long. Okay. Alright. Okay Mr Seleka.

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

10 **CHAIRPERSON:** Let us continue.

**MR KHOZA:** Thank you Chair. I suppose Mr Khoza will be prepared to take the affirmation or the oath.

**CHAIRPERSON:** Yes please administer the oath or affirmation.

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

**MR KHOZA:** Zethembe Wilfred Khoza.

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

**MR KHOZA:** No.

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

**MR KHOZA:** Yes.

**REGISTRAR:** Do you solemnly swear that the evidence you will give will be the truth; the whole truth and nothing else but the truth; if so please raise your right hand and

say, so help me God.

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

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

**ADV SELEKA SC:** Thank you Chairperson. Chairperson we will use the bundle, Eskom Bundle 14 – Eskom Bundle 14.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** And Mr Khoza's exhibit is – affidavit is found in Exhibit U30. You found it Mr Khoza? Mr Khoza  
10 the affidavit starts on page 273. Now that is the black pagination on the top left hand corner. Please assist Mr Khoza quickly.

**MR KHOZA:** Yes correct.

**ADV SELEKA SC:** You have found it there. Thank you. So the affidavit starts there – it runs up to page 286 – 286.

**MR KHOZA:** Ja that is correct.

**ADV SELEKA SC:** You see that. There is a signature there by the deponent. Is that your signature?

**MR KHOZA:** Correct.

20 **ADV SELEKA SC:** You confirm that. The affidavit is dated 21 October 2020. You confirm that this is your affidavit Mr Khoza?

**MR KHOZA:** Confirmed.

**ADV SELEKA SC:** Thank you. Chairperson I will beg leave to have the affidavit admitted as Exhibit 30.1.

**CHAIRPERSON:** The affidavit of Mr Zethembe Wilfred Khoza started at page 273 is admitted as Exhibit U34.1.

**ADV SELEKA SC:** 30 Chairperson.

**CHAIRPERSON:** 30?

**ADV SELEKA SC:** Ja – 30. I beg your pardon.

**CHAIRPERSON:** Okay that will be U30.1.

**ADV SELEKA SC:** Thank you Chair. Mr Khoza just by way of a background we will then as you have heard this morning being discussed confine ourselves for now to the  
10 issue of suspensions. A lot of evidence has been led already before the commission and most of which has become common cause if you one looks at the evidence.

So just by way of a background Mr Khoza we see from the evidence that you were one of the board members newly appointed to the Eskom board on the 11 December 2014.

**MR KHOZA:** That is correct.

**ADV SELEKA SC:** Ja. Could you tell the Chairperson how did you become appointed to serve on the board?

20 **MR KHOZA:** Okay we were – as I said I retired from Telkom.

**ADV SELEKA SC:** Please address the Chairperson.

**MR KHOZA:** I retired from Telkom and since Telkom was a public service quite a number of people knew me and I received quite a number of requests to serve on the boards

for public and private and Eskom was one of them.

I used to accept the nomination and submit my CV and that is what I did even on Eskom and then I received the invitation to serve in Eskom from the Minister.

**ADV SELEKA SC:** So you received nominations to serve?

**MR KHOZA:** Yes.

**ADV SELEKA SC:** Where would you have received the nominations from?

**MR KHOZA:** As I said I received quite a number of them.

10 Even though I cannot recall individually but I did fill out the documentation should be available because I did not keep a copy at the time.

**ADV SELEKA SC:** So prior to – or at the time when you are appointed to serve on the board of Eskom where were you working?

**MR KHOZA:** No I was retired at home.

**ADV SELEKA SC:** You were retired.

**MR KHOZA:** And I was doing just small construction work as a sub-contractor on existing contractors.

20 **ADV SELEKA SC:** Yes. And prior to your retirement where were you working?

**MR KHOZA:** I was working at Telkom SA.

**ADV SELEKA SC:** Did you – oh sorry in what position?

**MR KHOZA:** I serve as a Managing Executive for Customer Services.

**ADV SELEKA SC:** Did you know any of the board members you served with at Eskom prior to your appointment?

**MR KHOZA:** Not really. The only person that I met during our – was Mark Pamensky. Mark Pamensky was working for Blue Label at the time and Blue Label was distributing our prepaid cards and prepaid phones. So now and then in maybe once a year we used to meet with all the distributors to get their concerns and also to set the  
10 targets for the other year.

**ADV SELEKA SC:** So you came to know him in those interactions?

**MR KHOZA:** Yes professionally I knew him there.

**ADV SELEKA SC:** Did you know Dr Ngubane?

**MR KHOZA:** No I did not know Dr Ngubane personally or ever work with him close. I knew him as a chairperson and as a Premier and as a Minister.

**ADV SELEKA SC:** A chairperson of?

**MR KHOZA:** SABC.

20 **ADV SELEKA SC:** But you never knew him personally?

**MR KHOZA:** No.

**ADV SELEKA SC:** Did you know Kumalo – Romeo Kumalo?

**MR KHOZA:** No I knew Mr Kumalo as a – he was Vodacom and he was a competitor so we now and then we used to

monitor how they the business.

**ADV SELEKA SC:** But did you know him?

**MR KHOZA:** Not personally. I never met or talked to him.

**ADV SELEKA SC:** You never met with him?

**MR KHOZA:** No.

**ADV SELEKA SC:** Ms Venete Klein?

**MR KHOZA:** No we have not met.

**ADV SELEKA SC:** Ms Verushni Naidoo?

**MR KHOZA:** No we did not meet.

10 **ADV SELEKA SC:** Mariam Cussim?

**MR KHOZA:** No.

**CHAIRPERSON:** I think did he not say Mr Seleka he only knew Mr Pamensky?

**ADV SELEKA SC:** Mr Pamensky.

**CHAIRPERSON:** Out of the board members he did not know them. Is that correct Mr Khoza?

**MR KHOZA:** Yes Sir that is correct.

**CHAIRPERSON:** Ja. Ja.

20 **ADV SELEKA SC:** Thank you Chair. You – did you know the Gupta brothers?

**MR KHOZA:** No.

**ADV SELEKA SC:** You never dealt with them?

**MR KHOZA:** No I never met them.

**ADV SELEKA SC:** You never met them?

**MR KHOZA:** No.

**ADV SELEKA SC:** Have you ever spoke with them on the phone?

**MR KHOZA:** No.

**ADV SELEKA SC:** You know the evidence of Mr Khulani Qoma – Qoma?

**MR KHOZA:** Yes.

**ADV SELEKA SC:** That the board meeting where Mr Koko was about to be suspended you walked out and called one of the Gupta brothers and after you called him the Gupta  
10 brother called the Minister – Minister Brown. Minister Brown then called Dr Ngubane who apparently communicated to him that Mr Koko should not be suspended and that is what happened.

**ADV COOPER:** Chair if I may interject?

**CHAIRPERSON:** Ja.

**ADV COOPER:** Chair the question Mr Seleka is asking Mr Khoza is something that was put to Mr Khoza a few days ago – probably a week in the form of that affidavit and we have not addressed that affidavit. And Mr Khoza is intent  
20 on addressing that affidavit – the specific one on Mr Qoma so if I may suggest on Mr Khoza’s behalf that perhaps that be something that is also addressed and I was under the impression that we were just discussing the suspension issue.

**CHAIRPERSON:** Well the suspensions would include that

type of question. Mr Seleka.

**ADV SELEKA SC:** Ja. Thank you Chair. The – yes I communicated with the attorneys for Mr Khoza a while back before we formally got the affidavit from Mr Qoma That while back included the evidence of Mr Qoma at the Parliamentary Portfolio Committee and I forewarned that this issue will be pursued but we will be provided with an affidavit in due course by Mr Qoma which we did finally gave it to him but the information had already been shared  
10 with them because Mr Qoma does not say anything different in the evidence – in the affidavit here. B

But this is relevant to the suspension Chairperson in this way. And I do not know why.

**CHAIRPERSON:** What is the story about a request for an affidavit that as I understand Mr Cooper seems to be recent. Was the request for an affidavit recent?

**MR KHOZA:** No the – at the very beginning Chairperson in my email to respondents I had requested that this issue be addressed.

20 **CHAIRPERSON:** Ja. In his affidavit?

**ADV SELEKA SC:** In Mr Khoza's affidavit.

**CHAIRPERSON:** Ja. So before he filed this affidavit?

**ADV SELEKA SC:** Before he files this affidavit.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Because I – I had communication



directly with Mr Khoza prior to him invoking ...

**CHAIRPERSON:** Being represented.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** But I send an email to both ultimately.

**CHAIRPERSON:** Ja. Ja.

**ADV SELEKA SC:** Which they saw and the issue was pertinently raised as well.

**CHAIRPERSON:** Ja.

10 **ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Ja. Mr Cooper what do you say? Mr Seleka says before this affidavit was filed he had raised the issue directly with Mr Khoza in an email to say this issue should be addressed in the affidavit. I do not – I did not see anything addressing it in the affidavit but obviously that cannot be a reason for the question not to be asked.

**ADV COOPER:** Chair we – we are not suggested that any questions should not be asked just for a matter of housekeeping. Mr Qoma's affidavit was given to Mr Khoza  
20 but not with – with an accompany Rule 3.3 Notice requesting him to address it and perhaps by coincidence yesterday we sent correspondence to Mr Seleka and his team requesting them to let us know if they expect Mr Khoza to address Mr Qoma's affidavit.

**CHAIRPERSON:** Ja. If they had – have they had raised it

obviously it needed to be addressed is it not?

**ADV COOPER:** Well I would have expected or Mr Khoza would have expected a Rule 3 Notice to be accompanied as it was in previous times and based off of those Rule 3.3 Notices that was when we – we responded with an affidavit addressing and – those specific affidavits which are attached to those Rule 3.3 Notices. On this occasion however we did not receive anything.

**CHAIRPERSON:** Ja okay I – as long as he was alerted  
10 that this would be raised I will allow that question because what is important is that you have an idea what your – you will be questioned about. Okay let us carry on. So I will allow that question.

**ADV SELEKA SC:** Thank – thank you Chair. Yes Mr Khoza that is the question should I repeat it or you know the question? In fact I believe Mr Qoma says you were the one who told him the story.

**MR KHOZA:** That is not correct. I addressed the same issue because the first time I heard about the issue was in  
20 the Portfolio Committee Inquiry and I did indicate to say I never said it and I never done it.

**CHAIRPERSON:** That is the allegation that when Mr Koko was before the committee would – that would have been the P&G Committee?

**ADV SELEKA SC:** That is the board Chairperson.

**CHAIRPERSON:** Oh the board – he was before the board.

**ADV SELEKA SC:** Ja. He was about to be suspended.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** The board had called him for suspension and...

**CHAIRPERSON:** Were they not called before the Committee rather than the board? I was under the impression that the actual – the executives who were suspended were called before the P&G Committee rather  
10 than the board?

**ADV SELEKA SC:** Oh not that suspension Chair.

**CHAIRPERSON:** Oh another suspension?

**ADV SELEKA SC:** It is a different suspension.

**CHAIRPERSON:** Oh okay, okay.

**ADV SELEKA SC:** After Mr – Mr Koko had come back from this one. Mr Khoza you could assist there because apparently...

**CHAIRPERSON:** Well – well if it was another suspension not the suspension that I am talking about.

20 **ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Then it may well be that you may be going out of the scope because I am talking about these suspensions.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Of the executives and Koko – Mr Koko

was one of them.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** So if – but if it was a separate suspension that has got nothing to do with the suspension of the executives on the 11 March.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Then you may be – the question might be falling outside these suspensions.

**ADV SELEKA SC:** Yes. Through the...

10 **CHAIRPERSON:** So my - I thought you were talking about these suspensions.

**ADV SELEKA SC:** Yes. No it was raised only to show the connection with the Gupta brothers Chairperson.

**CHAIRPERSON:** Hm.

**ADV SELEKA SC:** Not – not for the suspension per se. But that Mr Khoza might have had some communication directly with the Gupta brothers.

**CHAIRPERSON:** Hm.

**ADV SELEKA SC:** Yes.

20 **CHAIRPERSON:** Ja well maybe when he comes back you can – you can deal with it.

**ADV SELEKA SC:** Can deal with that.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Thank you – Mr Khoza and you will address it further in your affidavit in due course.

**MR KHOZA:** Okay.

**ADV SELEKA SC:** Ja. Have you had any dealings with Mr Salim Essa or any interaction with him?

**MR KHOZA:** No, no interaction.

**ADV SELEKA SC:** Now let us deal with quickly the suspension issues. We understand that the board which started on the 11 December 2014 had its induction on the 26<sup>th</sup> or is it the 16 January 2015?

**MR KHOZA:** January.

10 **ADV SELEKA SC:** That board had a scheduled meeting on the 26 February 2015. You recall that?

**MR KHOZA:** Yes.

**ADV SELEKA SC:** And that – that meeting was cancelled on short notice.

**MR KHOZA:** Correct.

**ADV SELEKA SC:** The next meeting the board would have which was a special meeting was called on the 9<sup>th</sup> – convened on the 9<sup>th</sup> March 2015. You remember that?

**MR KHOZA:** That is correct.

20 **ADV SELEKA SC:** And this meeting...

**CHAIRPERSON:** Well Mr Seleka I do not know if there is much with regard to the meeting of the 9<sup>th</sup> that you really want to explore?

**ADV SELEKA SC:** No.

**CHAIRPERSON:** Why do you not go straight to the 11<sup>th</sup>.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Or the 10<sup>th</sup> and the 11<sup>th</sup>.

**ADV SELEKA SC:** I am just following the sequence.

**CHAIRPERSON:** Ja let us go to the real issues.

**ADV SELEKA SC:** Should we go to the///

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Thank you Chair. And in that meeting – the meeting of the 9<sup>th</sup> or the attitude of the board on the 9<sup>th</sup> cost ultimately the meeting to be called with the Minister  
10 on the 11 March 2015, recall that?

**MR KHOZA:** Yes.

**ADV SELEKA SC:** Then on – in that meeting of the 11<sup>th</sup>. The minister comes. There are various meetings on the 11<sup>th</sup>. But the key meeting is where the minister is present. And you deal with that in your affidavit. And perhaps you could then relay to the Chairperson what, in your recollection, did the minister discuss with the board.

**MR KHOZA:** The minister came to the meeting and the key-  
20 issues that the minister discussed, it was a concern in terms of the operations of Eskom. The issue of the load shedding was affecting the country, the economy and the people of South Africa.

The second one. The financial issues at the time. The minister stated that they received an email or an advice to say Eskom is unable to pay the salaries by end of March and

all other financial constraints that the company existed at the time.

The minister felt that we need to do a deep-dive into the organisation so that we understand the issues on a first-hand basis and we are able to resolve the issues.

And the areas that were identified that the minister spoke to. She spoke about the finance, she spoke about the load shedding, she spoke about the delay in a build programme which was yield to a huge costs.

10 She spoke about the issues that were taken place in procurement that has been on the media or been a concern in the organisation and the functioning of the organisation at the time.

And the investigation should not be interfered by management. It is supposed to be seen to be independent and give the board the basis to understand.

The minister further stated that, she is not there to tell the board what to do but it is up to the board to apply their mind to do a deep-dive into the organisation so that they  
20 understand the issues on a first-hand basis.

**ADV SELEKA SC:** So there seems to be – what is it – ambivalence in what you are saying about the minister there. On the one hand, he says she cannot dictate to the board. On the other, you have said that she identifies certain areas within Eskom which she considered problematic.

She said the executives should not impede the inquiry and you ultimately say, although she did not direct, it was clear that she wanted the board to read between the lines.

**MR KHOZA**: That is correct.

**ADV SELEKA SC**: And what do you think you needed to read between the lines?

**MR KHOZA**: Because... As I said, the first meeting of the 9<sup>th</sup>, the chairperson did address us about the issues that were taking place in our organisation. And he did mention  
10 the issue of having an inquiry which is...

And that is going to be – seem to be credible, according to the words of the chairperson. And we felt at the time, we did not have enough time ourselves as the board to deliberate issues amongst ourselves.

We have not even met as the board, as the board meeting was for the 26<sup>th</sup>. Therefore, we might not have enough information at hand.

However, the insistence of the chairperson to say he has got instruction from the minister and the president at the  
20 time.

Even some board members did argue why the need on just resolution, to say as per instruction from the shareholder, then we must do the inquiry because we might not have enough information at the time.

And we have not sat as the board to set up the strategy,



how we are going to deal with the issues, how we are going to deal with the sub-committees and engage the executives in terms of the issues that we have seen. We never debated amongst the executives to find out the first-hand information.

So as the minister went and spoke in the same manner as the chairperson, that gave us the assurance to say the shareholder is aware.

**ADV SELEKA SC:** So, in other words, when the minister came there, she was consistent with what Mr Tsotsi had said  
10 in the meeting of the 9<sup>th</sup>?

**MR KHOZA:** That is correct.

**ADV SELEKA SC:** Ja. and that resulted in the board deciding on the inquiry as well as the suspension of the executives?

**MR KHOZA:** That is correct.

**ADV SELEKA SC:** So you had the confidence to do that after the minister had addressed you?

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

**ADV SELEKA SC:** You had the confidence to do so after  
20 the minister had addressed you?

**MR KHOZA:** That is correct.

**ADV SELEKA SC:** I see that in paragraph 38, page 281 of your affidavit, you also say that it was the minister who raised concerns about the area of finance. That is 281, 38.

**MR KHOZA:** That is correct.

**ADV SELEKA SC:** H'm. So is that what led to the suspension of the financial director?

**MR KHOZA:** That is correct.

**CHAIRPERSON:** Did the minister talk about suspension?

**MR KHOZA:** Even though it was not explicit, but the fact that the executive should be set aside so that the inquiry carries on with the full credibility.

**CHAIRPERSON:** Oh, did she talk about the executives of some members of the executives stepping aside?

10 **MR KHOZA:** It was said that the executive in the environment that are going to be investigated, needs to step aside.

**CHAIRPERSON:** To step aside?

**MR KHOZA:** To step aside.

**CHAIRPERSON:** Did that come from the minister or did that come from some of the board members?

**MR KHOZA:** No, it did in the same point came from the minister.

**CHAIRPERSON:** From the minister?

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

**CHAIRPERSON:** Okay. At that stage, what was your understanding by the time the minister left the meeting, what was your understanding of how many executives would need to be suspended or would need to step aside and who were those on your understanding?

**MR KHOZA**: On my understanding at the time as it was presented before, it was supposed to be the CEO.

**CHAIRPERSON**: Mr Matona?

**MR KHOZA**: Mr Matona.

**CHAIRPERSON**: H'm?

**MR KHOZA**: And Mr Marokane.

**CHAIRPERSON**: Yes.

**MR KHOZA**: And Mr Matjila.

**CHAIRPERSON**: It was supposed to be the three?

10 **MR KHOZA**: That is the three that was mentioned earlier.

**CHAIRPERSON**: Ja.

**MR KHOZA**: By the chairperson.

**CHAIRPERSON**: Yes.

**MR KHOZA**: But that was also the feeling when we left the building.

**CHAIRPERSON**: So in the meeting of the board that took place before the minister came, was there mention of the suspensions at that stage or not?

20 **MR KHOZA**: It was a mention of the environment which was affected.

**CHAIRPERSON**: Yes, but the stepping aside or the suspension?

**MR KHOZA**: No, it was not mentioned.

**CHAIRPERSON**: As yet.

**MR KHOZA**: No.

**CHAIRPERSON**: It was not – the stepping aside of the executives was mentioned for the first time during the meeting with the minister?

**MR KHOZA**: That is correct.

**CHAIRPERSON**: Okay and it was three executives who were to step aside as you understood the position?

**MR KHOZA**: As I said, even though it was not explicit.

**CHAIRPERSON**: Yes.

**MR KHOZA**: But it was the in the environment which was  
10 mentioned earlier ...[intervenes]

**CHAIRPERSON**: Yes.

**MR KHOZA**: ...to have in mind.

**CHAIRPERSON**: Yes.

**MR KHOZA**: Which led us to request the minister to come and address us.

**CHAIRPERSON**: Yes, but what I am saying is. On your understanding. By the time the minister left, your understanding was that certain executives needed to step aside. Is that right?

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

**CHAIRPERSON**: And that there were three of them. Was that the correct number, at you understood the position at that time?

**MR KHOZA**: That is correct.

**CHAIRPERSON**: Okay. And do you recall who they were at

that time or you did not know their names but you knew it was going to be three executives?

**MR KHOZA**: No, I did not know their names at the time.

**CHAIRPERSON**: Oh, but you knew it was three?

**MR KHOZA**: Yes.

**CHAIRPERSON**: Did you know to which portfolios they were attached at that stage?

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

**CHAIRPERSON**: So which departments they were in charge  
10 of. Is that something you knew or you are not – you cannot remember?

**MR KHOZA**: At the time, it was not clear.

**CHAIRPERSON**: Oh, okay alright.

**MR KHOZA**: H'm.

**CHAIRPERSON**: Okay. Mr Seleka.

**ADV SELEKA SC**: Mr Khoza... Thank you Chair.  
Mr Khoza, maybe you need to clarify to the Chairperson because in your affidavit it appears that when the minister left, four areas had been identified.

20 And that even though some board members were against the suspension of the FD, because the minister had raised concerns in regard to it, you decided to have her suspended.

So it seems after the minister had left and I want you to clarify to the DCJ. Is this correct, that when she left, you knew that four – she had raised four areas of concern as

opposed to only three.

**MR KHOZA**: That is correct. The minister had a concern on four areas.

**ADV SELEKA SC**: And are you saying at the time, you did not know who occupied these areas?

**MR KHOZA**: That is correct.

**ADV SELEKA SC**: But the finance director, you would have known, the CFO. Because she was in the meeting on the 9<sup>th</sup>, she was in the meeting of the 11<sup>th</sup> which took place in  
10 the morning. So you would have known your finance director?

**MR KHOZA**: No, you... Definitely, you could know the individual. As I said, at the time, the FD – we knew the FD is the Financial Director.

**ADV SELEKA SC**: Yes.

**MR KHOZA**: We knew the CEO's.

**ADV SELEKA SC**: Yes.

**MR KHOZA**: That was the CEO. But what I am saying, in the meeting that we had on the 9<sup>th</sup>, there was no name  
20 attached and there was no talking about the suspension of the executives.

**ADV SELEKA SC**: I see. Okay. I see. But fair enough. I understand.

**MR KHOZA**: H'm.

**ADV SELEKA SC**: But then on the 11<sup>th</sup>, you would have

known. Oh, if these areas are the ones identified, then Mr so and so is in that area. Mister so and so is that area. So they are the one perceptible to suspension.

**MR KHOZA**: That is correct.

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

**MR KHOZA**: H'm.

**ADV SELEKA SC**: Okay. Now that is interesting from the point of view of what you say Mr Tsotsi has said because when Mr Tsotsi was deliberating with the board, he says he  
10 had three persons in mind to step – for them to step aside. Do you recall that?

**MR KHOZA**: Yes.

**ADV SELEKA SC**: That he had three persons in mind?

**MR KHOZA**: That is correct.

**ADV SELEKA SC**: When the minister leaves the meeting after the 11<sup>th</sup>, now there are four persons to be suspended. I mean, there are talks between the board about the fourth person but ultimately she also gets suspended. Do you remember that?

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

**ADV SELEKA SC**: Now Mr Tsotsi, on his evidence, says his instructions came from a meeting in a Durban where he met with the president and Ms Dudu Myeni. That is President Jacob Zuma at the time and Ms Dudu Myeni. And he was given three names there. Remember, he came to the

meeting and said it is an instruction from the president?

**MR KHOZA**: That is correct.

**ADV SELEKA SC**: The outcome of the meeting of the 11<sup>th</sup> is curious in this sense. On the evidence of Ms Suzanne Daniels, she says on the 10<sup>th</sup> she is called to Melrose Arch. You would have heard her evidence?

**MR KHOZA**: Yes, I heard.

**ADV SELEKA SC**: Ja. She is called to Melrose Arch by Mr Koko and there she meets with Mr Koko and  
10 Mr Salim Essa and in that meeting being asked about the process for suspensions. She is also told four executives will be suspended. Four, not three. And the names are given.

It turned about to be exactly the executives that the board will ultimately suspend. And Salim Essa, apparently, according to Ms Suzanne Daniels, introduced himself to her as the minister's advisor. Minister Lynne Brown's advisor.

So it is a coincidence that the minister comes to the meeting and articulates not three but four areas of concern  
20 which is consistent with what Ms Suzanne Daniels said she was told at Melrose Arch?

**MR KHOZA**: H'm.

**ADV SELEKA SC**: Is it a coincidence or is it an orchestration?

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



**ADV SELEKA SC:** What do you say to the Chairperson?

**MR KHOZA:** I do not think I can comment on that because the minister, I think, spoke as a shareholder and when she mentioned the issues about the finance, she was specific to say she received a request or instruction or a say which state that they might be unable to pay the salaries by the end of March.

So that was a specific issue that she mentioned. So what is in her mind and what is Suzanne Daniels comes up, I  
10 do not think I qualify to comment on that.

**CHAIRPERSON:** Ja.

**MR KHOZA:** Yes.

**CHAIRPERSON:** Of course, you would be concerned, would you not, if somebody from outside of Eskom knew on the 10<sup>th</sup> of March that certain executives were to suspended and that is somebody outside of Eskom, outside of government and was, according to Ms Daniels, asking for advice as to what procedure should be followed if you want to suspend executives at Eskom. You would be concerned about that,  
20 would you not?

**MR KHOZA:** Yes, definitely I will be concerned about that.

**CHAIRPERSON:** Because at that stage, the – you as a member of the board did not know anything about any plans for the suspension of any executives on the 10<sup>th</sup>?

**MR KHOZA:** That is correct.

**CHAIRPERSON**: Yes.

**MR KHOZA**: H'm.

**CHAIRPERSON**: Yes, okay.

**MR KHOZA**: H'm.

**CHAIRPERSON**: Alright. Mr Seleka.

**ADV SELEKA SC**: Ja. And you see, Ms Daniels tells one of the executives, would be suspended executives about what she had been told at Melrose Arch, Mr Dan Marokane who in turns, tells Ms Tsholofele Molefe. And this happens the night  
10 before.

**MR KHOZA**: H'm.

**ADV SELEKA SC**: So at the dawn of the 11<sup>th</sup> of March 2015, these people know only by reason of that they are going – they might be suspended or they will be suspended.

**MR KHOZA**: H'm.

**ADV SELEKA SC**: But Mr Khoza, did you as the board questioned the minister in regard to the suspensions?

**MR KHOZA**: I think the – because the minister did explicitly  
20 said so and so and so and so needs to be suspended or be suspended. She left it to the board to apply their mind and make their decisions. And even state that she is going to be around and available to hear or if we need her. It is difficult to create the opinion.

**CHAIRPERSON**: Well, Mr Khoza. It is clear from your

affidavit, is it not, that even though the minister may not have expressly said there should be suspensions. It is clear from your affidavit that your understanding was that that is the direction the minister wanted the board to take.

**MR KHOZA**: Yes, it was my opinion.

**CHAIRPERSON**: Yes.

**MR KHOZA**: H'm.

**CHAIRPERSON**: Yes. So if you thought that the minister wanted the board to take a certain direction, you would be  
10 entitled to question the minister on that, is it not?

Because you would be able to say: Minister, I hear that you say you do not intend to instruct the board as to what it should do and that they need to apply its mind to the issues and make its decision.

But when you say A, B, C, D it is clear that, as far as you are concerned, there should be suspensions. And then question him.

Would you not have been able to say to – to do that?

**MR KHOZA**: That is correct. I think maybe at the time, we  
20 did not ask such questions.

**CHAIRPERSON**: yes.

**MR KHOZA**: There was a lot of debate with the minister and other questions that we asked the minister.

**CHAIRPERSON**: Yes.

**MR KHOZA**: But maybe I do not recall us going across like

that.

**CHAIRPERSON:** Ja, you see, part of the concern that I have is that what does come out, both – what does come out of your affidavit, which I have read, as well as the evidence of some of the board members, including Dr Ngubane, is that.

One gets the impression that maybe the whole board or some members of the board thought: Well, if that is what the shareholder wants, if that is what the minister wants, then  
10 we will fall in line.

Without interrogating the need for certain things to be done and the justifiability of those things being done. What do you say to that?

**MR KHOZA:** That is correct. As I said, the – on the 9<sup>th</sup> when we questioned the chairperson, he was explicit to say his instruction.

**CHAIRPERSON:** H'm.

**MR KHOZA:** And his instruction from the shareholder and the presidency.

20 **CHAIRPERSON:** H'm.

**MR KHOZA:** So that is where we felt uncomfortable to say: Is it correct? Is it definitely the minister? And the minister - then we find – it is better to call the minister as we cannot question the president.

**CHAIRPERSON:** H'm.

**MR KHOZA**: Because it is our shareholder and was available in our meeting, the induction meeting and was willing to discuss the issues with us.

**CHAIRPERSON**: H'm.

**MR KHOZA**: So when it comes like that, one would form an opinion to say, since it was an instruction and you have verified(?) that the minister is aware of the environment and the possible suspensions, that is sufficient.

**CHAIRPERSON**: H'm.

10 **MR KHOZA**: And the fact that she left it to the board to say he cannot instruct the board or dictate what the board is supposed to do. It is up to the board to deliberate and come with it. So I felt that it was left up to us as the board to make decisions.

**CHAIRPERSON**: H'm. Yes, Mr Seleka.

**ADV SELEKA SC**: Yes. So you say to the chairperson ultimately the decision was the board's decision.

**MR KHOZA**: That is correct.

20 **ADV SELEKA SC**: Even though the platform for the decision making was created by the minister. She gave you the platform under which you could make the decision by telling you of the problematic areas.

**MR KHOZA**: As I said, the chairperson and the minister speak from the position of authority.

**ADV SELEKA SC**: Yes.

**MR KHOZA**: Then they can really influence.

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

**CHAIRPERSON**: Well, one of the points you made earlier was that one the 9<sup>th</sup>, you or some members of the board felt that they were still too new at Eskom, which was true, was it not?

**MR KHOZA**: That is correct.

**CHAIRPERSON**: Yes. You probably still needed quite some time to understand how Eskom works and to understand all  
10 the issues. Do you not feel so?

**MR KHOZA**: We did. But when we looked at the MOU which said if maybe the company is not operating efficiently, it has got financial difficulties, the minister can intervene or the shareholder can intervene.

**CHAIRPERSON**: H'm.

**MR KHOZA**: In my view, I see that in that point of view.

**CHAIRPERSON**: H'm.

**MR KHOZA**: To say maybe that is an intervention which is required to address the situation at the time.

20 **CHAIRPERSON**: H'm, h'm. Of course, if that is the situation, then the minister would instruct you.

**ADV SELEKA SC**: Ja.

**CHAIRPERSON**: Is it not? If it is a situation which is provided for in the Memorandum of Incorporation, then he can say this is what must be done.

**MR KHOZA:** H'm.

**CHAIRPERSON:** But here he was – she was not saying that. She was saying: I am not instructing you. So obviously, it was not that situation. Do you not agree?

**MR KHOZA:** I do agree but taking into account that we were just being appointed and maybe it was the first time before we even interacted as a board, the chairperson presented this dilemma and now we are meeting the minister.

10        Maybe because of that, we could not have developed such good dialogues with the minister. So we felt, because the chairperson already laid down the grounds and indicated that it was an instruction ...[intervenes]

**CHAIRPERSON:** Which the minister was not confirming.

**MR KHOZA:** Even though ...[intervenes]

**CHAIRPERSON:** You said the minister said: I am not instructing you.

**MR KHOZA:** As I said, technically and politically you can pass the statement without...[intervenes]

20        **CHAIRPERSON:** [laughs]

**MR KHOZA:** [laughs]

**CHAIRPERSON:** But are you able to say the minister confirmed that – confirmed what Mr Tsotsi had told you on the 9<sup>th</sup>, namely that she was instructing you, the board to do A, B, C, D? Are you able to say that?

**MR KHOZA**: No, I cannot say that. Because what I say ...[intervenes]

**CHAIRPERSON**: Oh, what Mr Tsotsi said on the 9<sup>th</sup>, namely it was an instruction from the minister to the extent that he said that, that was not confirmed by the minister expressly, at least.

**MR KHOZA**: Exactly.

**CHAIRPERSON**: Ja. But are you able to say, implying she did confirm it or are you not able to say that?

10 **MR KHOZA**: I can say so.

**CHAIRPERSON**: [laughs]

**MR KHOZA**: [laughs]

**ADV SELEKA SC**: [laughs]

**CHAIRPERSON**: Okay alright.

**MR KHOZA**: Yes.

**CHAIRPERSON**: Okay let us move on Mr Seleka.

20 **ADV SELEKA SC**: So the executives gets suspended and they are paid to stay at home. Mr Khoza, is that right? They were suspended on full pay. They were suspended on full pay.

**MR KHOZA**: Yes, that is correct.

**ADV SELEKA SC**: Yes. And they write letters. At least two of them write letters. But one of them takes you to court and take you to the CCMA. The indication is they want to come back to work.



They want to come to their employment but instead the board engages in what you referred to as exit meetings in your affidavit. What was the reason for exiting them?

**MR KHOZA**: As I said, one of the board member, I think it was Mr Khumalo, raised it in our meeting to say he had interacted with some of the executives and the intend or the inclination is that they would like to separate with the company as this was damaging their names in the market and the inquiry was going to take long, up to three months,  
10 which they cannot keep their lives on hold for so long.

That was mentioned in the meeting which led to a resolution by the board to say, if then, then we must look at the separation agreement.

And there was a board meeting and there was a round robin which then requested the three of our members, executives to engage on separation if need be.

**ADV SELEKA SC**: Ja. I have noticed in your affidavit, like other directors who have come to testify, they do not put a date when exactly was this indication made to them that the  
20 executives want to separate. Can you recall when?

**MR KHOZA**: I think the board resolution was on the 4<sup>th</sup> of May. If I am not mistaken. Or the 4<sup>th</sup> or 5<sup>th</sup> of May.

**CHAIRPERSON**: Is that the resolution that authorised some of the board members to engage in discussions with the suspended executives?

**MR KHOZA**: That is correct.

**CHAIRPERSON**: Yes. Okay. Yes, continue.

**ADV SELEKA SC**: Yes. But you see, on the 4<sup>th</sup> of May already, meetings had been arranged. Let me put it this way. Before the 4<sup>th</sup> of May, Ms Suzanne Daniels says she was instructed to arrange meetings for the 4<sup>th</sup> of May where the executives would be engaged in, what you referred to as exit meetings. So it seems to have been done before the 4<sup>th</sup> of May.

10 **MR KHOZA**: Okay. I cannot comment on that.

**ADV SELEKA SC**: You cannot ...[intervenes]

**MR KHOZA**: If it is a fact, that is correct.

**ADV SELEKA SC**: Yes. And Ms Molefe has testified here and in her affidavit also, she says:

“When I arrived at the meeting of the 4<sup>th</sup> of May, Mr Khumalo did this opening statement (that she understands) that I want to separate from the company.”

And she says:

20 But I told him no. You are misconstruing my letters to the company. I want the company to provide me with the terms of reference for this investigation that is being appointed and because I hear conflicting views. Give me the right reasons why you have suspended me. I do not want to leave. I want to

come back.

Were you in that meeting?

**MR KHOZA**: Yes, I was there.

**ADV SELEKA SC**: You heard her say these things?

**MR KHOZA**: Yes, she said so.

**ADV SELEKA SC**: H'm. So clearly, she wanted to come back. Because I see in your affidavit you say only Mr Koko wanted to come back. So that cannot be correct.

**MR KHOZA**: At the time. At the time.

10 **ADV SELEKA SC**: So what I am saying ...[intervenes]

**CHAIRPERSON**: Which time?

**MR KHOZA**: The meeting of the 4<sup>th</sup>.

**ADV SELEKA SC**: Yes?

**CHAIRPERSON**: At the meeting of the 4<sup>th</sup> ...[intervenes]

**MR KHOZA**: Which ...[intervenes]

[Parties intervening each other – unclear]

**CHAIRPERSON**: ...Ms Molefe indicated that she wanted to come back.

**MR KHOZA**: Yes.

20 **CHAIRPERSON**: You accept that?

**MR KHOZA**: Yes.

**CHAIRPERSON**: I also understood your affidavit to be suggesting that none of the executives, except for Mr Koko, indicated that they wanted to come back. That is my understanding of your affidavit as well. Did I misunderstand

it or is there something that I am missing?

**MR KHOZA**: I think it is a time lapse.

**CHAIRPERSON**: Yes.

**MR KHOZA**: Because – eventually, I think the approach was, she was willing to go later.

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

**MR KHOZA**: At that time ...[intervenes]

**CHAIRPERSON**: ...at the first meeting, she did not want.

**MR KHOZA**: Yes.

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

**CHAIRPERSON**: Now why did you not as representatives of the board accept if she said I want to come back and say: Okay, there is no problem with that. We do not have a problem with you coming back as long as it is after the investigation has been completed. And stop the negotiations. Why did you not do that?

**MR KHOZA**: I think after she mentioned that, there was not much discussions. I think the meeting stopped with her.

20 **CHAIRPERSON**: Well, that is not the recollection. My recollection of the evidence of one of the witnesses who was there. Is it Ms Klein?

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

**CHAIRPERSON**: Ms Klein?

**ADV SELEKA SC**: Yes, she was also there.

**CHAIRPERSON**: Ja. And certainly, Ms Molefe, in her

evidence, suggested that Mr Romeo Khumalo kind of marched her towards accepting that there should be discussions about exit. Am I right Mr Seleka?

**ADV SELEKA SC:** You are correct Chair.

**CHAIRPERSON:** Yes. Did you remember that? I think Ms Molefe said something like Mr Romeo Khumalo said to her something like: You the inquiry, the investigation could take quite some time. So maybe we should talk about separation or your exit. Do you remember anything along  
10 those lines?

**MR KHOZA:** In my understanding that was an opening statement which was made by Mr Kumalo.

**CHAIRPERSON:** Oh.

**MR KHOZA:** Because he made an opening statement and then she had to respond.

**CHAIRPERSON:** Yes, okay.

**MR KHOZA:** And after she responded I think she was quite upset.

**CHAIRPERSON:** Yes.

20 **MR KHOZA:** And the meeting did not go further than that after that.

**CHAIRPERSON:** Yes, yes.

**MR KHOZA:** But initially that was what the opening statement of Mr Kumalo.

**CHAIRPERSON:** Yes. So are you saying that Mr Kumalo

did not after Ms Molefe had made her remarks did not pursue the matter of discussing her possible exit on that day.

**MR KHOZA:** No, in my recollection he did not insist after she mentioned it.

**CHAIRPERSON:** Okay.

**MR KHOZA:** It was part of his opening statement.

**CHAIRPERSON:** Ja. Now just tell me this, his opening statement as far as you are able to remember, what did he  
10 say?

**MR KHOZA:** I think he mentioned the suspensions and the difficulties that the board gone through and the fact that it was rushed to the executives and he understand that the executives are not comfortable, etcetera. And he indicated to say the inquiry might take little bit longer than expected and there are requests that has gone to the Chairperson or said that people want to settle and hence we came with the proposal for settlement.

**CHAIRPERSON:** That is the gist as you remember it.

20 **MR KHOZA:** As I recall it.

**CHAIRPERSON:** Yes, okay. So when did you have another meeting with Ms Molefe or somebody from the board have another meeting?

**MR KHOZA:** Thereafter I think there was a communication between the Chairperson of the People in Governance

which is Venete Klein with all the correspondence. The only time I saw a correspondence from her was on the 25 May which I then at the time responded to it on the 3 June.

**CHAIRPERSON:** Yes. So at what stage on your recollection did she indicate her willingness to leave, that is Ms Molefe.

**MR KHOZA:** I think it was after the 3<sup>rd</sup>.

**CHAIRPERSON:** After the 3 June?

**MR KHOZA:** After the 3 June.

10 **CHAIRPERSON:** Oh, okay, but in the meantime there had been a lot of to-ing and fro-ing between herself and ...[intervenens]

**MR KHOZA:** Communication.

**CHAIRPERSON:** Communication between herself and Ms Klein or Mr Kumalo.

**MR KHOZA:** Especially with Ms Klein.

**CHAIRPERSON:** Ja.

**MR KHOZA:** Because I think she was asking questions on the 25 May of the settlement, of the bonuses and etcetera,  
20 etcetera that was list in that particular one.

**CHAIRPERSON:** Yes.

**MR KHOZA:** So it was just looking at the administration and the benefits that are associated with the settlement.

**CHAIRPERSON:** Yes.

**MR KHOZA:** Yes.

**CHAIRPERSON:** But why did – oh, I understand from your affidavit that the board, when it suspended the executives, as far you know, had no problem with them coming back in due course.

**MR KHOZA:** That is correct.

**CHAIRPERSON:** So why then did the board want to spend money to facilitate their exit if they wanted to leave?

**MR KHOZA:** I thought maybe at the time, as I said, some of them did allude to their letters to say maybe the  
10 relationship between the board and themselves they felt is broken and they felt that maybe the board does not need them anymore. So based on that, I think that is where the decision was taken.

**CHAIRPERSON:** And do you think the board still needed them?

**MR KHOZA:** To my view, yes.

**CHAIRPERSON:** So why did it not say to them we need you, there is no need for you to go, there is no need for – why did it not take the view that Eskom does not have  
20 money, it is going through financial difficulties, there is no need for Eskom to spend money to facilitate the exit of people that it needs.

**MR KHOZA:** I think the agency that was expected because they were suspended for three months pending the investigation and the enquiry started quite earlier,



when the investigation was still carrying on and some of them were not prepared to wait till the end. That is my understanding.

**CHAIRPERSON:** Yes but then that is their problem, is it not? If you, as the board, still needed them, still needed their services and they wanted to leave then that is their problem, why should you give them money to leave when you do not want them to leave?

**MR KHOZA:** As I said maybe because it was raised to say  
10 maybe the trust relationship has been broken and  
...[intervenes]

**CHAIRPERSON:** As far as the board was concerned had the trust relationship been broken?

**MR KHOZA:** No, I think on the emails, on the correspondence, it was indicating to say that is how the executive felt and so because that is how felt then the board have decided on that what do you call, a round robin, for the particular board members to go and engage them.

20 **CHAIRPERSON:** Well, I leave aside the question of which executives said that. I leave that aside for the time being but you, as the board, did not believe that there was any relationship that was broken or any trust that was broken, am I right?

**MR KHOZA:** In terms of the investigation that is correct.

**CHAIRPERSON:** Yes.

**MR KHOZA:** But in terms of the influence that was created by the Chairperson at the BM of the 9<sup>th</sup> it indicated some issue about management that I think were still needs to be addressed and the fact that the Chairperson said is a lot of issues that needs to be dealt with and is crafted in a document which was available that does not needs to charge individually at the time when we suspend them.

I do not know whether those things does indeed  
10 influence the board but at no stage we discussed the issue of charging individuals even though we did raise it on the 11<sup>th</sup> to say why we do not – we suspend them to say pending the investigation or they just put aside, if we have got issues let us just charge them but then the feeling at the time said we do not have information on that. So that might have created a perception.

**CHAIRPERSON:** Yes but you, as a board had not taken any view, had you?

**MR KHOZA:** No we did not take any view.

20 **CHAIRPERSON:** The relationship between the board and these executives had broken.

**MR KHOZA:** No, we did not take a view or any resolution.

**CHAIRPERSON:** Yes, yes, actually you did not even discuss that aspect, did you?

**MR KHOZA:** No, we did not.

**CHAIRPERSON:** You did not.

**MR KHOZA:** Until we find that request and the discussion with Mr Kumalo.

**CHAIRPERSON:** Yes. And then you took the decision that you must pay, offer them money so that they could leave Eskom, is that right, as a board?

**MR KHOZA:** That is correct, it was a normal settlement.

**CHAIRPERSON:** Yes, yes. What were you settling?

**MR KHOZA:** According to the advice that we got at the  
10 time from the experts in HR or whatever, is just to say normally if there is a dispute of this particular nature they go the settlement route and the proposal of the settlement route was then discussed at the board and the board agreed to 12 months and with certain benefits should they have and that and ...[intervenes]

**CHAIRPERSON:** But the board had no dispute with these executives, as I understand the position, you enter into a settlement if there is a dispute, is it not, to settle that dispute, is it not?

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

**CHAIRPERSON:** Yes, what dispute was that between the board and these executives?

**MR KHOZA:** There was no dispute at the time because – but the issue was that they are suspended and the executives were not happy for being suspended.

**CHAIRPERSON:** Yes but otherwise there was no dispute.

**MR KHOZA:** That is correct..

**CHAIRPERSON:** And the board was going to be happy for them to come back and I assume if at that time after they had come back the board had grounds to say some of them must be charged with misconduct, that would be a separate issue.

**MR KHOZA:** That is correct.

**CHAIRPERSON:** Yes, the suspension was never meant to  
10 be used to charge them in terms of misconduct.

**MR KHOZA:** That is correct.

**CHAIRPERSON:** Yes. So we come back to the question that I posed to Dr Ngubane and Ms Klein that I do not understand why the board decided to spend as much money as it did, millions of rands, to pay these executives, these three executives to get them to leave when they say and you say – certainly Dr Ngubane says and you say we had no problem with them coming back after the investigation had been completed. I mean, I am sure you  
20 know this having worked in the corporate world at high level that an employer would pay an employee some money if the employer does not want the employee to continue and the employee still wants to come back. So there you have that tension, the employer does not want this employee anymore, the employee wants to continue. So

the employer then says okay, I am offering you so much, if you accept it you must sign that you will resign, you will leave. So that is understandable but where you, as the board, say to me we did not want them to leave, we were happy for them to come back and yet you go ahead and pay as much money as you paid them for them to leave. I do not understand it. Are you able to defend this decision?

**MR KHOZA:** I am not defending the decision, I think maybe the issues that took place, the noise that was on  
10 the media and maybe dissatisfaction of the executives and maybe later to the board when the letters were coming in or whether people were talking to Romeo suggesting that they resolve to make sure that at least let us offer them the package with those who wants to go so that they can go.

**CHAIRPERSON:** But then nobody in the board out of so many people, nobody says it does not make sense that we should pay people who we feel – who we have no problem coming back, we should pay them so much money. Why are we paying them? If they want to leave let them leave,  
20 let them resign like everybody resigns if they want to leave and explore other opportunities, we do not have to pay them, why must we pay them? Nobody says that.

**MR KHOZA:** I think the challenge is that most of the issues and debate were – took place on the 11<sup>th</sup> on the day when they were suspended. There was a lot of

disagreement between the board – between some of the board members and the Chairperson or did not agree with the process. However, eventually, we agreed - they agreed with the process and when at the end of the day the documentation that was supposed to be submitted, which Dr Tsotsi said it is available, does not come forth, I think that was well discouraged the board members.

So, as I said, it can be a number of things that might have - in the minds of people.

10 **CHAIRPERSON:** Well, you see, in the end if the board makes a decision they must be able to defend it, they must not make decisions that they cannot defend. You accept that?

**MR KHOZA:** I do.

**CHAIRPERSON:** But obviously if at some stage they may have thought that they could defend a decision but subsequently on reflection they feel that they cannot defend it they must be honest enough to say look, having reflected on this, we cannot defend it, we can see that we  
20 should not have made this decision. But obviously, if they feel that the decision was right they must be able to continue to defend it. You accept that?

**MR KHOZA:** I accept that, yes.

**CHAIRPERSON:** Yes. What is your position as we talk, are you able to defend the board's decision to suspend

these executives at the time that they suspended them?

**MR KHOZA:** The decision to suspend the executives at the time when we suspended, as I said, it was based on [indistinct]

**CHAIRPERSON:** On the information [inaudible – speaking simultaneously]

**MR KHOZA:** On the information that was available at ...[intervenes]

**CHAIRPERSON:** You have information and all of that, 10 processes, did you in terms of process, in terms of substantive validity of the decisions do you feel that you are able to defend it or that it was defensible?

**MR KHOZA:** No, I think at this time when we suspended the executives based on investigation that was going to take place without charging them, I agree that we can defend that because it was a decision that we want to deep dive and understand what is happening the organisation. But maybe when they approached the executives, come across as dissatisfied and wanted separation packages, 20 maybe did not go then apply our mind to say what was the position.

**CHAIRPERSON:** So when you look at the payment of these millions to the executives to leave that is the part where you think the board might not have applied its mind.

**MR KHOZA:** Yes.

**CHAIRPERSON:** Yes.

**MR KHOZA:** Because the feeling was that they were going to come back and then the request to circle, maybe we just go with them.

**CHAIRPERSON:** H'm. Because, you see – well, Dr Ngubane conceded that even the suspensions, they should not have happened, if I recall correctly, and Mr Seleka will tell me if my recollection is incorrect but I think he made that concession. Mr Seleka?

10 **ADV SELEKA SC:** The concession, Chairperson?

**CHAIRPERSON:** That the executives should not have been suspended.

**ADV SELEKA SC:** No, he did. He said the board would lose in court, certainly if these executives went to court.

**CHAIRPERSON:** Yes. But, you see, part of the issue that the Commission is looking at is why these executives were suspended, who initiated these suspensions and why did they initiate them? You know, based on your own evidence, that the suspensions of the executives were not  
20 initiated by the board.

**MR KHOZA:** That is correct.

**CHAIRPERSON:** Mr Tsotsi said he was called to a meeting in Durban at the President's official residence, that meeting took place on the 8 March 2015, Ms Dudu Myeni was there and the President came into the meeting.



There was Mr Nick Linnell and I think there was somebody else, there were two other people, I think. According to Mr Linnell and Mr Tsotsi there was Ms Dudu Myeni's son and apparently there was also Mr Masangayi or somebody and that this is where Mr Tsotsi was told for the first time about the idea that certain executives at Eskom should be suspended and this is where you he was told about the need for an enquiry to be conducted and he says that at the end of the meeting or at some stage Mr Zuma asked

10 him whether he knew which executives were to be suspended and Mr Tsotsi confirmed because those had been dealt with in the meeting but he says at that stage it was only three and not four, they did not include the financial director. So you ask yourself the question where did Ms Myeni take the idea, if Mr Tsotsi's version is correct and if Mr Linnell's version is correct, where did Ms Dudu Myeni get the idea that certain executives at Eskom should be suspended? Did she get it from the then President, Mr Zuma? How did this idea come to Mr Zuma?

20 It does not appear like something that came from the minister because according to Mr Linnell and Mr Tsotsi, at the end of that meeting Mr Zuma said – suggested that Mr Tsotsi should introduce the idea of an inquiry and the suspensions to the board and he would talk to the minister about it. You know, so the two of them had homework to

do.

And I seem to have read in an affidavit by Minister Brown that she does not seem to have known about this issue.

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

**CHAIRPERSON:** By the eight at least, you know? So the question arises, who outside of Eskom initiated these issues, the board of Eskom, being new as it was, initially it was disinclined to go along this route on the 9<sup>th</sup> but once  
10 the minister confirmed in effect that this is what the board should at least consider and to say impliedly instructed the board to do, the board was prepared to go along, suspended these executives. But a month later, a month later – or before that, if Ms Daniels' evidence is correct and if Mr Masango's evidence, Abram Masango's evidence correct, then on the 10 March, one day before the board made this decision, Mr Salim Essa knew that there were going to be suspensions and he even knew who the executives were who were going to be suspended, he  
20 mentioned them to Ms Daniels and Mr Koko knew about them if Mr – if the evidence of Ms Daniels and Mr Abram Masango is correct.

And Ms Molefe's name had not been concluded in the Durban meeting but on the 10<sup>th</sup> Mr Essa mentioned the financial director, so there were four names now and then

the Minister comes to the meeting on the 11<sup>th</sup>. Now remember you said in the board meeting that happened before the Minister came on the 11<sup>th</sup> the issue of suspensions was not discussed. So the minister came and when the minister spoke, she spoke on the basis that executives who were in charge of four portfolios, I think you said she spoke about four portfolios, is that right?

**MR KHOZA:** Yes, that is correct.

**CHAIRPERSON:** She did not mention names but the  
10 understanding was that the executives who were in charge of the portfolios concerned would need to step aside of something like that.

**MR KHOZA:** That is correct.

**CHAIRPERSON:** Is that right? But you did say at that stage there was a mention of three, so you might need to clarify that but other evidence is that the executives who were in charge of four portfolios that the minister mentioned were the ones who were to face a possible suspension according to the minister, so – and this Mr  
20 Essa, who mentioned four executives on the 10<sup>th</sup>, introduced himself, rightly or wrongly, to Ms Daniels as an adviser to the minister and the minister comes on the 11<sup>th</sup> and talks about – and includes the finance portfolio as an area to be investigated whereas in the Durban meeting the finance portfolio had not been included and therefore the

financial director was not one of those contemplated.

And then, about a month later after the executives have been suspended Mr Brian Molefe is seconded to Eskom but what you might not have known, as the board, or some of you or maybe the whole board, is that what I was told by Mr Henk Bester a few weeks ago in this Commission who says in 2014 he met with Mr Salim Essa on something unrelated to Eskom and I will not bother you with the details but one of the things Mr Salim Essa said  
10 was that they, whoever they were, were very powerful, they had already had decided who would be the next boss of Eskom, it would be Mr Brian Molefe, Mr Bester must wait and see or something like that and indeed Mr Brian Molefe becomes the next boss of Eskom.

And then, of course, Mr Anoj Singh follows him and I have heard evidence here, they are still going to come and put their side of the story, but I have heard evidence from witnesses to say at certain stages, during a certain period, they, both Mr Anoj Singh and Mr Brian Molefe, used  
20 to go to the Gupta house and they used to get some money from the Gupta house which those people said they witnessed.

So the question arises, was this board, of which you were a member, not being influenced, maybe manipulated from outside Eskom and from outside of government to

make certain decisions and it allowed itself to be manipulated like that?

**MR KHOZA:** Based on the evidence that you just led, it is possible. It is unfortunate that maybe on the meeting of the 9<sup>th</sup> the Chairperson at the time, Mr Tsotsi, did not mention where the information came from because if it was known that it was question of Dudu Myeni, which is not working for Eskom, the debate was going to be completely different.

10           However, he came across as the information that he believes in it himself, as a Chairperson, that it comes from the shareholder, so – and it comes from the President and those are the people that are shareholders of the company.

          So at the time, myself, I took it very serious to say the intervention of the shareholder and the intervention of the President, it means there are issues. But if he mentioned that it was Dudu Myeni, etcetera, etcetera, as it comes on revelation, maybe the approach was going to be completely different and maybe it was not going to lead to  
20 the suspension of executive, if we knew the information. But with the information that we had at the time and the verification that we tried ourselves to verify with the shareholder at the time, we thought it was enough, then it means then the Chairperson does have information, he does have a file which is sitting with him, as he stated to

us, that he is going to give us in due course and that the suspension of the executives is about us to understand the deep dive. We believe in him and hence then suspension was done.

**CHAIRPERSON:** Okay.

**MR KHOZA:** The issue of the meetings of the 10<sup>th</sup>, also we were not aware, it was never brought into our attention, we were not aware of it. Maybe if we were aware of it then maybe the tone of the meeting of the 11<sup>th</sup> was going to be  
10 completely different.

**CHAIRPERSON:** But if that evidence is true, namely about that meeting, those two meetings of the 10<sup>th</sup>, involving – one involving Mr Abram Masango and Mr Koko and Mr Salim Essa, the other one involving Ms Daniels and Mr Koko and Mr Salim Essa at Melrose Arch, if those meetings did take place and what the two witnesses, Mr Masango and Ms Daniels, say was said at that meeting is what was said, what would you make of that.

**MR KHOZA:** If that is correct then it means it was  
20 influenced from outside.

**CHAIRPERSON:** H'm, h'm, yes. Mr Seleka from my side I think I have covered most of what I really wanted Mr Khoza to cover but if you still have something you can continue, so that when we finish – so I am not taking the tea break but I think he has dealt with most of the things that I

wanted him to.

**ADV SELEKA SC:** That you wanted, thank you Chair. Just one more thing Mr Khoza you again on the evidence of Mr Kholani Koma, when you were acting as the Chairperson of the Board and you had opportunity to call him to your house you know his details he goes to your place, you talk about that advice he was giving you in regard to how you should handle Eskom and in that meeting, oh is it that meeting when you were driving somewhere, that you say to  
10 him about the suspended executives that you were involved in there exit negotiations and that they could have asked for more but they did not. Would you have given them more?

**MR KHOZA:** No and let me talk about it because now you keep on talking, harping on Kholani Koma's information. Dr Ngubane resigned on the 12<sup>th</sup> of April.

**CHAIRPERSON:** Who resigned on the 12<sup>th</sup> of April?

**MR KHOZA:** Dr Ngubane resigned as a Chairperson on the 12<sup>th</sup> of April.

**CHAIRPERSON:** 2017?

20 **MR KHOZA:** Yes, midnight there was a media released by Suzanne even though it was maybe appropriate by the Minister, by Ms Daniels.

**CHAIRPERSON:** By Ms Daniels, ja.

**MR KHOZA:** Yes, and that morning of the 13<sup>th</sup> I have not seen the email that when Dr Ngubane resigned then it was

indicated that I will be acting in his place. So when I saw it in the morning then I went to the office and that is where I meet Kholane, Mr. Khomo and Mr. Khomo came to my office and just indicated the willingness to say we need to improve the reputation of the organisation and it is a time that maybe I can change if I want to leave a good legacy etcetera, etcetera.

Then I said as reputation manager then I will welcome that please go and prepare it and he went to  
10 prepare it and I told him that on the weekend of the 17<sup>th</sup>, 18<sup>th</sup> I will have a function at home so I am not going to be around because it was already planned. If anything urgent then they can bring it home because I will be at home by the weekend. So Kholane came in my place when I had a function, when I was so busy. There were certain documents that I signed, then he briefly discussed to say he is going to send me the proposal that he has but the proposal it is based on the reputation damage that was caused by the Gupta emails and the people that emanate from it are not seeing and Koko  
20 Masela and Brian Molefe, etcetera.

Then I said okay it is fine we will look at it when you come back and that was the end of the meeting and all of a sudden now he makes up the long story on the issues to say I went and spoke about the Minister and all other things which were never discussed and then on the 18<sup>th</sup> he sent a



document. I could not open the document because I was busy that particular weekend and when I opened the document he had all sorts of other allegations and we were failing to do the fiducial duties of the Board etcetera, etcetera.

Which was not what we communicated or whether we never discussed it and he went further and it was distributed to other Board members that were my colleagues and it was also distributed to the Minister's office and it eventually  
10 leaked to the media. It was his opinion not attested by anyone and now he added a lot of issues that were never discussed. So the issue of me discussing all what he talks about the Minister, myself, the Gupta's I do not know where it comes from. The only issues meanings that was mentioned by him to say the most of the reputation damage only occurred because of the leak emails and the leak emails refer to the three people.

**ADV SELEKA SC:** The point which I was raising with you is a different one Mr. Khoza he says:

20 "That it was on or about 30 March 2017 that you were on your way with him to make an announcement on the KPMG results at Koeberg social impact in the Western Cape. Mr. Khoza had bragged to me about how he led the charge on exiting the three Eskom executives namely Tsholofelo Molefe, Dan Marokane

and Tshediso Matona. Mr. Khoza said they all could be, could have negotiated better offers but appear to be ready to leave as soon as possible. Mr. Khoza appeared very pleased with himself as he related this story.”

That is the part...[intervene]

**MR KHOZA:** It is unfortunate that that information is not correct Chairperson. I was not involved with Mr. Matona, I was not involved with Dan Marokane’s final settlement, I was  
10 not involved with, what you call – the only involvement was with Tsholofelo and it was late as a request to the Chairperson who got me then. So I never - it is impossible that I have said that and there was no need because we are all arguing, we all agreed to say it will be the 12-month settlement that was a Board resolution.

**CHAIRPERSON:** Off cause for what it is worth you have already said you believe that the Board did not apply its mind properly with regard to this separation and the payment of the millions. But I just want to make the point that the  
20 fact that when it came to Ms Molefe the Board was prepared to go far above the 12-month salary. It seems to reflect the determination to say we must make it possible for her to leave. So even when she rejects the 12 months that the others may have accepted it looks like the Board wanted to go not an extra mile a lot of extra miles to make it possible

for her to leave. You, you understand?

**MR KHOZA:** Yes I understand.

**CHAIRPERSON:** Yes, yes okay.

**ADV SELEKA SC:** And in fact Chair they settled her at 18 months not 12 months.

**CHAIRPERSON:** Ja, they settled at 18 months, yes.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** No the point I was making with Mr. Khoza is that while the others accepted 12 months when it came to  
10 her she wanted much more and the Board was prepared to give her much more which seemed to reflect on the part of the Board a determination that she should leave you know. The Board was prepared to go beyond what it was prepared to pay the others. So it does not reflect a Board that wanted these executives back because if she wanted more than 12 months which had been agreed by the Board, one would have expected the Board to say well we will give you the same thing 12 months, if you do not want 12 months come back. You understand that?

20 **MR KHOZA:** No I understand.

**CHAIRPERSON:** Yes, and do you accept that seems to have been the case.

**MR KHOZA:** Yes, that is correct.

**CHAIRPERSON:** Do you accept that?

**MR KHOZA:** Yes.

**CHAIRPERSON:** Okay, alright.

**ADV SELEKA SC:** Thank you Chair. Just two last things Mr. Khoza, I do see from your affidavit you say you participated in Mr. Marokane and Molefe and Mr. Koko's meetings for exit. So those three you participated on except Mr. Matona?

**MR KHOZA:** Yes.

**ADV SELEKA SC:** That is 1, number 2 is that Ms Daniels talked about the Board having determined to get rid of the  
10 executives and she referred to the meeting, the minutes of the 23<sup>rd</sup> of April 2015. Ja, that is the meeting where the Board approved the secondment of Mr. Molefe.

**MR KHOZA:** Okay.

**ADV SELEKA SC:** Can you recall? That is in the minutes. But the point I want to mention to you is how the Board deals with the issue there of the suspended executives. So Ms Klein is set in a capacity as the Chairman of SES committee, that is what social and ethics?

**MR KHOZA:** Social and ethics.

20 **ADV SELEKA SC:** Reported that she had received the letter from the Minister in which confirmation of the removal of the director was recorded and I think they referred to Mr. Tsotsi there because he has been removed now on the – oh well removed or resigned 30 March 2015 now we are in April. Ms Klein confirmed that the Minister also raised a number of

issues.

The next paragraph it was further reported that the Minister had also requested that the process of removal which was followed by the Board be noted. Ms Klein also updated the Board on developments regarding the possible settlement between Eskom and one of the suspended executives who had requested that his suspension be changed to leave and I think that is Mr. Matona. Did you know that? At the CCMA he said his suspension should be  
10 converted into a special leave.

**MR KHOZA:** Okay, no I did not.

**ADV SELEKA SC:** You did not know that?

**MR KHOZA:** No.

**ADV SELEKA SC:** The Board was unanimous in rejecting this proposal. But you were present at this meeting so can you recall this was discussed? It is in the minutes let me go to the next point. It was also reported that whether the suspended executives resigned or not the independent enquiry into Eskom's affairs must continue as originally  
20 planned.

It was pointed out that there may be a problem with the auditors refusing to sign off on the financial statements while the enquiry was proceeding and that that would result in serious matters of compliance. So Ms Suzanne Daniels was saying that paragraph that whether the suspended

executives resigned or not an independent enquiry must continue was one of the indications that the Board expected the executives to go away.

Already, well on her version already in April but I mean we know there is evidence before then but at least on her part.

**MR KHOZA:** Okay.

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

**MR KHOZA:** I hear you.

10 **ADV SELEKA SC:** Chair we do not...[intervene]

**CHAIRPERSON:** Huh.

**ADV SELEKA SC:** There is the issue about the acting appointments I could touch on it.

**CHAIRPERSON:** Well let me ask this before maybe would that be your last?

**ADV SELEKA SC:** That will be the last.

**CHAIRPERSON:** Ja, Mr. Khoza why did you and all the other members of the Board kick Mr. Tsotsi out of the Board?

20 **MR KHOZA:** Chair the way you put it, it is as if we had boots to kick him out of the meeting.

**CHAIRPERSON:** Well he resigned but the fact of the matter is that the Board made it very difficult for him to continue as I understand the position either it passed the vote of no confidence on him or it was about to pass a vote of no confidence in him. Is that true?

**MR KHOZA:** Yes, that is correct.

**CHAIRPERSON:** And according to Dr Ngubane I think he and two other members of the Board and I do not know if you were one of them were mandated by the Board to talk to him to try and in effect get for him a dignified way to get out of Eskom by resigning which they did achieve. Were you one of the members who accompanied Dr Ngubane?

**MR KHOZA:** No, no I was not there.

**CHAIRPERSON:** But did you pass a vote of no confidence  
10 or were you on the verge of passing one if he did not resign?

**MR KHOZA:** It was mentioned in the discussion to say maybe we got the challenges with him which emanated from the documents that he said he got documents and when the documents were requested it did not come forth and I think the other aspect were the interference with the executives and there were quite number of issues that were raised and unfortunately it was done by the audit and the risk and they listed them and he was asked to respond on them. One of the issues it was the - Mr. Nick Linnell who was brought to  
20 the Board without the knowledge of the Board and we felt that there are more things that was not communicated properly.

**CHAIRPERSON:** Let us take some of these about Mr. Linnell, what was your problem as the Board with Mr. Linnell?

**MR KHOZA:** The issue of Mr. Linnell when it was brought to our attention my understanding he was like a presidential resource that could be used because that is a person who is sitting with information and down the line it came back to say he was not contracted to Eskom as an employee or as a contractor or any process that has been followed to identify him. Yet he already started according to what Mr. Tsotsi agreed or maybe testified here to say the document of the 9<sup>th</sup> was already drafted by Linnell.

10 **CHAIRPERSON:** You people, the Board were told by Mr. Tsotsi about Mr. Linnell and you were happy to make use of his services. You had no problem, you did not say has he not been contracted properly, has procurement processes been followed. You did not ask that did you?

**MR KHOZA:** We did not ask that.

**CHAIRPERSON:** You did not ask that before you embraced his services.

**MR KHOZA:** It is correct on the day when he was introduced because he was introduced as a solution to the  
20 problem that we were dealing with the suspension of the executive.

**CHAIRPERSON:** Yes.

**MR KHOZA:** But on the 9<sup>th</sup> he already started working before he even introducing the Board but if and when he was introduced in the Board he was introduced as a presidential



resource, not a person that you going to utilise but it was just a person who is sitting with information that is going to be utilised.

**CHAIRPERSON:** But what was your complaint against Mr. Tsotsi in connection with Mr. Linnell because I understood from the charges that were prepared by the Board against Mr. Tsotsi and from the evidence that has been given by Dr Ngubane and maybe Ms Klein, that as far as Mr. Linnell was concerned the Boards complaint was that Mr. Tsotsi had not  
10 followed procurement processes for Eskom to use Mr. Linnell's services. Was that your understanding of what the Boards complaint was?

**MR KHOZA:** That is correct.

**CHAIRPERSON:** But you did not ask as the Board before using him on the 11<sup>th</sup>, you did not ask Mr. Tsotsi have you followed procurement processes.

**MR KHOZA:** When he introduced him he said he was given resource by the presidency and he has been looking at para-status and his got lots of documents that he is sitting with.  
20 So he was not the person who was supposed to be employed by the time my version of understanding at the time, was that he was not going to be employed by Eskom.

**CHAIRPERSON:** Yes.

**MR KHOZA:** But however he was going to be used as a resource, he come from the presidency but later it was not

the fact because then it was then he was supposed now to be seen as a consultant.

**CHAIRPERSON:** Yes.

**MR KHOZA:** That now he is helping us in the process.

**CHAIRPERSON:** But you did not seek to have any confirmation about him being employed by the presidency or appointed by the presidency or being somebody who would be paid by the presidency as at the 11<sup>th</sup>, is it not?

**MR KHOZA:** No at the 11<sup>th</sup> it was not but I think as later  
10 because it came up on a very hot meeting and tense situation that was there and he introducing in that space and he was going to deal with certain issues. At the time then nobody asked the questions and I think after that then people start following it up then it was realised that he did not come up correctly so he was just being imposed on us.

**CHAIRPERSON:** As well one Dr Ngubane and Ms Klein did not say what you are saying when this was put to them namely we thought he would be paid by the presidency because I think that is what in effect you are saying. That is  
20 not what they said from - as far as I recall from there evidence what emerged is an acceptance that they did use the services of Mr. Linnell on the 11<sup>th</sup> and after whether it was the full Board or the PNG or other committee. He was allowed to make a contribution and so on and then suddenly the Board blames Mr. Tsotsi and does not blame itself for

making use of his services without first checking whether procurement processes have been followed.

That is problematic do you not agree? It is like you were just looking for something to use against Mr. Tsotsi because you knew on the 11<sup>th</sup> as a Board that if you are going to use somebody, there may be a need to follow procurement processes but you did not check before you used Mr. Linnell and said allowed him to assist committees. Do you understand?

10 **MR KHOZA:** I understand but as I said I am not aware of other meetings that he attended, I do not know.

**CHAIRPERSON:** Ja, well I think he did Mr. Seleka?

**ADV SELEKA SC:** Yes Chair.

**CHAIRPERSON:** He did attend other committee or other committees.

**ADV SELEKA SC:** He was invited a couple of times to Dr Pat Naidoo's build and something programme that committee.

**MR KHOZA:** Yes.

20 **ADV SELEKA SC:** What is it Mr. Khoza?

**MR KHOZA:** That was build.

**ADV SELEKA SC:** Yes, the build program. He was invited to assist the PNG in regard to how do you - what process should be followed to present the, to give the person a notice to make representations before you suspend them.

He advised on that, in fact you took his advice on that, you took his advice on that?

**MR KHOZA:** Yes they did.

**ADV SELEKA SC:** Ja, He was also at the PNG and so on.

**CHAIRPERSON:** Ja, so there is that problem and then there was an issue of an allegation that he had issued a media statement without the approval of the Board. Do you remember that?

**MR KHOZA:** Yes I do.

10 **CHAIRPERSON:** Was it one of the reasons?

**MR KHOZA:** It was one of the reasons, yes.

**CHAIRPERSON:** Yes but when I asked Dr Ngubane and Ms Klein here it appeared that they were not sure that he had done that namely issue a wrong statement that should not have been issued but also I ask the question, why would the Chairperson of the Board issue to the media a media statement that he knows need, that he knew needed to be approved by the Board first issue it without the Board approval. What would he be seeking to achieve. They did  
20 not give me any satisfactory answer maybe you will give me. What will he be seeking to achieve?

**MR KHOZA:** I am not aware of maybe the details of it as I was acting at the time some of the preparation that they used to deal with him.

**CHAIRPERSON:** So you do not know about that part?

**MR KHOZA:** I do not know about that part.

**CHAIRPERSON:** So you certainly, your loss of confidence in him did not relate to that because you did not know anything about that or is the position that when the Board dealt with this issue and was showing that it had lost confidence, you did not take part in that because you were already acting COO.

**MR KHOZA:** I was already acting yes I was not acting at all.

10 **CHAIRPERSON:** Oh, okay alright so you did not take part in that.

**MR KHOZA:** I was there as a Board member.

**CHAIRPERSON:** You were there but you refrained from expressing any views.

**MR KHOZA:** Yes.

**CHAIRPERSON:** Okay alright.

20 **ADV SELEKA SC:** And I think the Board accepted that the statement had been leaked, remember that the discussion you accepted that it had been leaked and Leo Dlamini explained to the Board and the focus in the meeting shifted from Mr Tsotsi to Leo Dlamini because he told the Board that he had given a draft statement to the media desk of Eskom. Do you recall that explanation? And now it was about whether is he the one who authorised the statement to be sent out before he could get the authorisation of the

Board. So Mt Tsotsi was left off the hook on that one well not left off the hook it sounds negative but he – the Board did not seek to a portion blame on him. Do you remember that?

**MR KHOZA:** It is quite some time but there was debate.

**ADV SELEKA SC:** Ja, there was debate.

**CHAIRPERSON:** Okay alright you wanted to quickly deal with the acting appointments.

**ADV SELEKA SC:** Yes.

10 **CHAIRPERSON:** If they will not take long.

**ADV SELEKA SC:** They will not take long.

**CHAIRPERSON:** Ja, because Mr Khoza will come back for transactions and some of it can be dealt with at that stage as well.

**ADV SELEKA SC:** Ja, Mr Khoza in the meeting of the 19<sup>th</sup> of March, 19 of March 2015 that is where Mr Tsotsi is in trouble. There are signs of him being in trouble, there is a note minuted there that the people who were acting in the place of the suspended executives were allegedly called in  
20 to a meeting and knew beforehand that they would be acting. The Board needed to find out how this happened. They were apparently called into a meeting and the acting CE met with them. This seems to have been an issue for the Board that they knew beforehand that they would be acting.

**CHAIRPERSON:** And there was an allegation that they had met with Mr Khoza.

**ADV SELEKA SC:** With Mr Khoza at this time you were the acting CE.

**CHAIRPERSON:** Is there an allegation as to the date?

**ADV SELEKA SC:** There is no date noted here but...[intervene]

**CHAIRPERSON:** Did you meet with them Mr Khoza?

**MR KHOZA:** No, not at all.

10 **CHAIRPERSON:** Are you sure?

**MR KHOZA:** I am 100% sure.

**CHAIRPERSON:** Did you have a meeting on the morning of the 11<sup>th</sup> of March that is the day of the suspensions?

**MR KHOZA:** Yes.

**CHAIRPERSON:** Maybe around 8 o'clock with Mr Tsotsi and Mr Abram Masango, Ms Valente-Dlamini I do not know, I cannot remember who else.

**MR KHOZA:** That was on the 12<sup>th</sup>.

**CHAIRPERSON:** That was on the 12<sup>th</sup>.

20 **MR KHOZA:** Not he 11<sup>th</sup>.

**CHAIRPERSON:** Not on the 11<sup>th</sup>?

**MR KHOZA:** No.

**CHAIRPERSON:** Oh so you heard Mr Masango's evidence about that part?

**MR KHOZA:** I heard his evidence, yes.

**CHAIRPERSON:** Oh okay the meeting did take place but it was not on the 11<sup>th</sup>.

**MR KHOZA:** It was on the 12<sup>th</sup>.

**CHAIRPERSON:** It was on the 12<sup>th</sup>?

**MR KHOZA:** Yes.

**CHAIRPERSON:** Around about 8 o'clock?

**MR KHOZA:** Yes.

**CHAIRPERSON:** Oh okay alright.

**ADV SELEKA SC:** Where you were told that you would be  
10 or you were asked to act in this position?

**MR KHOZA:** That I was asked to be informed, remember I was informed the 11<sup>th</sup>.

**ADV SELEKA SC:** Oh yes.

**CHAIRPERSON:** Yes.

**MR KHOZA:** On the 11<sup>th</sup> before they suspend people I was asked to leave.

**CHAIRPERSON:** Yes.

**MR KHOZA:** After they debated and then they resolved and then they said I would be acting. Then I was asked to  
20 leave and Mr Tsotsi then carried on the Chair the people and governance.

**ADV SELEKA SC:** Oh I see.

**CHAIRPERSON:** Okay alright.

**ADV SELEKA SC:** Yes, you heard also Mr Baloyi saying that you told him that you had been called into a meeting



by officials of the DPE before the day of the suspensions and apparently this meeting was to tell you about the suspensions and that you would be acting.

**MR KHOZA:** Not necessarily.

**ADV SELEKA SC:** Oh not necessarily?

**MR KHOZA:** Not necessarily.

**ADV SELEKA SC:** Can you tell the Chairperson why?

**MR KHOZA:** I think one of the people at DPE called but he – that was on the 11<sup>th</sup> when the Minister was on the way  
10 and they were finding out to say there is a rumour to say people are going to be suspended and the people in governance said do I know anything then I said no.

**CHAIRPERSON:** That was on what date?

**MR KHOZA:** On the 11<sup>th</sup>.

**CHAIRPERSON:** On the 11<sup>th</sup> in the morning?

**MR KHOZA:** In the morning, yes.

**CHAIRPERSON:** Oh okay.

**ADV SELEKA SC:** Before the Minister arrived?

**MR KHOZA:** Before the Minister arrived.

20 **CHAIRPERSON:** Ja, okay.

**ADV SELEKA SC:** Okay Chair that will be all from our side.

**CHAIRPERSON:** Okay other matters it can still be raised when you come back because you will come back Mr Khoza about the transactions.

**MR KHOZA:** No problem

**CHAIRPERSON:** Ja, so thank you very much for coming to give evidence I will excuse you but when you come back whatever other matters that have not been covered will be covered.

**MR KHOZA:** Okay.

**CHAIRPERSON:** Okay you are excused.

**MR KHOZA:** Thanks.

**ADV SELEKA SC:** Thank you Chair, Chair we could  
10 then...[intervene]

**CHAIRPERSON:** Is Ms Naidoo here with her lawyer, not yet?

**ADV SELEKA SC:** Oh, my junior informs me that they sent an email asking that I inform them of the outcome of the postponement.

**CHAIRPERSON:** What kind of way of doing things is that?

**ADV SELEKA SC:** Well I had a communication with my learned friend, well not my – the attorney for Ms Naidoo about the lateness of the affidavit I said I will bring it  
20 before the Chairperson and ...[intervene]

**CHAIRPERSON:** The lateness of their affidavit.

**ADV SELEKA SC:** Ja, of their affidavit that we received yesterday. I think he waited for me to indicate what is the position going forward hence this email Judge.

**CHAIRPERSON:** But wasn't Ms Naidoo not supposed to

be here when we started in the morning?

**ADV SELEKA SC:** She was Chair, yes that is the email they sent. The email says what my junior has said to me.

**CHAIRPERSON:** It is unacceptable.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** It is unacceptable. So why were they not here at 10 o'clock do you know?

**ADV SELEKA SC:** Yesterday Chairperson they had been told that there was uncertainty about proceeding today but  
10 I corrected that and said we will proceed and he came back to me and said well okay please tell me that we are coming. I said yes but now I have seen your affidavit which is so many pages long let me ask the Chairperson but you will be scheduled to proceed in the afternoon. Your witness, your client is scheduled to proceed in the afternoon. I indicated the time which is 14h00.

**CHAIRPERSON:** Oh so maybe they were expecting that if the evidence proceeded that they would be here at two.

**ADV SELEKA SC:** Here at 14h00 I think that may well be  
20 so.

**CHAIRPERSON:** Oh, okay.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Alright we will adjourn her evidence then another date must be arranged.

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

**CHAIRPERSON:** Ja, okay we are going to adjourn for the day.

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

**CHAIRPERSON:** And tomorrow I will hear evidence relating to McKinsey. We adjourn.

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

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO 10 DECEMBER 2020**

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