

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

**11 DECEMBER 2020**

**DAY 323**



**Gauteng Transcribers**  
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 11 DECEMBER 2020**

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

**ADV CHASKALSON SC:** Morning Chair.

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** Our witness this morning is Dr Weiss. He is joining us from Germany remotely.

**CHAIRPERSON:** Ja.

**ADV CHASKALSON SC:** His statement is BB8 but before  
10 we admit it maybe we should swear him in and ask him to confirm the correctness of it?

**CHAIRPERSON:** Yes we will continue to use Bundle 7

**ADV CHASKALSON SC:** 7 and 8.

**CHAIRPERSON:** And 8 okay alright. Good morning Dr Weiss can you hear me?

**DR WEISS:** Good morning Chairperson yes I can hear you.

**CHAIRPERSON:** Okay thank you. Please administer the oath or affirmation.

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

20 **DR WEISS:** My name is Alexander Weiss.

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

**DR WEISS:** No I do not.

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

**DR WEISS:** Yes I do.

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

**DR WEISS:** So help me God.

**CHAIRPERSON:** Thank you very much. Mr Chaskalson.

**ADV VAN ZYL SC:** Chair good morning before we start it is Francois Van Zyl.

**CHAIRPERSON:** Yes.

10 **ADV VAN ZYL SC:** I am representing Dr Weiss. I placed myself on record yesterday.

**CHAIRPERSON:** Yes, yes.

**ADV VAN ZYL SC:** But perhaps I should do it again.

**CHAIRPERSON:** Yes ja please do it again.

**ADV VAN ZYL SC:** My name is Francois Van Zyl I am an SC Cape Bar. I am acting for Dr Weiss with Mr Jason Mitchell of the Johannesburg Bar as my junior. We are instructed by Nortons in Johannesburg and we act for Mr Weiss in his deliberations with the commission.

20 **CHAIRPERSON:** Thank you very much Mr Van Zyl.

**ADV VAN ZYL SC:** Thank you.

**CHAIRPERSON:** Thank you very much. Mr Chaskalson I wanted to say either this lamp is not positioned the way it is normally positioned or the screen has been moved. The – so I am trying to manage that so I can see him. I am

looking at the technical people I think they know what they need to do. Is it fine like this? Oh okay alright. Okay thank you Mr Chaskalson.

**ADV CHASKALSON SC:** Thank you Chair. Dr Weiss good morning. Can we first confirm the correctness.

**DR WEISS:** Good morning.

**ADV CHASKALSON SC:** Can we first confirm the correctness of your statement and can I ask you to go to page 762 of Bundle 7 or File 7 and just confirm that that is  
10 the start of a statement that you have made and that the statement runs to 781 and the signature on 781 is your signature?

**DR WEISS:** Wait a second because I was on my bundle. So which page did you say 700?

**ADV CHASKALSON SC:** 762. There should be black numbering on the top left.

**DR WEISS:** 62. This is – I am sorry I may have the wrong file. I have a file Flow of Funds that is Exhibit VV8 and therein my statement is included.

20 **ADV VAN ZYL SC:** Dr Weiss if I may come in here the page number is on the left hand top of the pages.

**DR WEISS:** Okay. Ah okay, okay. Now I get you. Thank you. Thank you Mr Van Zyl. Ja this reads as my statement absolutely correct.

**ADV CHASKALSON SC:** And can you confirm the

correctness of the contents of that statement?

**DR WEISS:** As far as I see it here this statement is correct and also my signature dated 25 November is correct Chairperson. By the way I cannot see you. I only see a black screen I do not know whether that is a [00:05:21].

**CHAIRPERSON:** Oh you cannot see us?

**DR WEISS:** That is correct Chair.

**CHAIRPERSON:** Oh. Okay. Shall we – shall we adjourn for five minutes?

10 **ADV CHASKALSON SC:** Okay Dr Weiss apparently if there is a delay in the commencement of the live stream are you happy to continue without seeing us but just hearing us?

**DR WEISS:** I am absolutely happy to continue without seeing you. I guess it would be you know very attractive seeing you but...

**ADV CHASKALSON SC:** Far from it Dr Weiss.

**DR WEISS:** I can also do with the black one.

20 **CHAIRPERSON:** Well we can see you so – and we do see your counsel.

**DR WEISS:** Excellent.

**CHAIRPERSON:** When he stands up as well. Okay alright.

**DR WEISS:** It is excellent.

**CHAIRPERSON:** Mr Chaskalson.

**DR WEISS:** Thank you.

**CHAIRPERSON:** Do you know whether whatever the delay is may – we might see – he might see us while we – he is giving evidence or is it going to – to take too long?

**ADV CHASKALSON SC:** I am told it – five minutes I am told.

**CHAIRPERSON:** Oh okay no that is alright, that is alright. Let us continue. If it is going to – if it is able to come in as we continue let us do that. And if there is going to be a need to adjourn for whatever that might need to be  
10 adjusted we will do that. So Dr Weiss at least I – we are told that after five minutes or so you should be able to see us. Okay alright.

**DR WEISS:** That is excellent I am looking forward to that moment.

**ADV CHASKALSON SC:** Dr Weiss before...

**CHAIRPERSON:** I see Mr Chaskalson wants to retort.

**ADV CHASKALSON SC:** No I do not want to retort at all. Maybe if we can get going by – could you briefly describe to the Chair who you are and what your role at McKinsey  
20 was in relation to projects in South Africa? And I am thinking here of what you set out.

**DR WEISS:** Yes.

**ADV CHASKALSON SC:** In paragraphs 1 and 8 of your statement.

**DR WEISS:** Okay perfect I am very happy to provide this

information. So Chair my name is Alexander Weiss I am a senior partner with McKinsey and Company. I am working here it was my 21<sup>st</sup> year now with McKinsey. Some education I have a combined diploma of civil engineering and business administration and after that I first did a PHD in Civil Engineering and after that I did another PHD in Business Administration and [00:08:35] two stations I actually came to join McKinsey as a consultant first and then developed within this company. I am actually here  
10 responsible mainly for southern clients and infrastructure and electricity space and in that context had also the honour to get to know South Africa and also SARS, Eskom in various projects starting from 2005 until mid-2017 where we unfortunately then had to disrupts or interrupt our support given you know the events later.

**ADV CHASKALSON SC:** Dr Weiss if I can just take you out of the – the train of your statement briefly and to ask you to answer a question which I also asked Dr Fine yesterday just to get out of the way. Did you in any of your  
20 dealings relating to Eskom have any contact with Salim Essa?

**DR WEISS:** Chair no I can confirm that I did not have contact to Mr Essa at least not that I am aware of. I did not have contact with Mr Essa.

**ADV CHASKALSON SC:** Thank you Dr Weiss and with that



out of the way can we address the first topic that we would like you to speak to today which was the process of on-boarding of Mr Anoj Singh when he moved from Transnet to Eskom and it is a topic that you address at pages 13 to – sorry paragraphs 13 to 15 of your statement. Could you tell the Chair.

**DR WEISS:** Ja.

**ADV CHASKALSON SC:** What happened in that regard.

**DR WEISS:** Ja absolutely. And Chair please allow me to  
10 also provide some additional background information and context information here? So to end off here.

**ADV CHASKALSON SC:** Sorry Dr Weiss.

**DR WEISS:** To end off here.

**ADV CHASKALSON SC:** Sorry to interrupt Dr Weiss if at any stage you want to add anything beyond that which I am inviting you to say at this point please feel free. This – this process to begin with is really getting you to put your statement on record and I do not want to determine what you do and do not say in that regard. So do not feel  
20 constrained by a focus on my questions that you may regard as too narrow.

**DR WEISS:** Thank you Chairperson I – that it is an absolute pleasure that you provide me this freedom. So in 2014 we had the situation that Eskom was in a very difficult situation. There are multiple years before cost

escalations they are actually way above the inflation rate which then resulted into electricity tariffs hiking way beyond inflation giving some strain to the country.

And to make things worse they also had a situation where especially by the end of 2014 we experienced quite significant load sheddings.

Both of these things are obviously challenges to the people of South Africa. Then there was a period that you are referring to that where Mr Singh and Mr Molefe actually  
10 got announced as the new CFO and respectively CEO of Eskom at this time. And that was unfortunately not an unusual situation so in the time I would say in the decade before that I served you know Eskom as a consultant you know with interruptions I had experienced quite a number more than a dozen of new CEO's and CFO's at Eskom.

And if you have that frequent leadership changes at such an important and proud organisation you could imagine that everybody who comes in has only a very, very short time for getting up to speed and please apologise for  
20 this words ja basically you know getting into the business.

So since we as McKinsey as an institution have done significant work over this time we felt it was our duty to you know collect the information and the experience that we had and presented that to the incoming leadership team.

We also provided that to the predecessors of Mr Singh and Mr Molefe. So we had a standing if you want and you know it sounds [00:13:40] but we had a standing pack as they basically spoke about the current situation and also where are the challenges for our potential leavers prepared because the previous CEO Mr Tshediso Matona even came in that you know long before. We upgraded the collection of information there and also put an emphasis that the effects that we experienced that can even become more severe ja so that the power outages came back that actually in the timeframe at around 2008 experience they were experienced before that was really disturbing and you know required for some action. And so when it was clear that Mr Singh and Mr Molefe move over and they were first seconded to Eskom we approached them you know asked humbly for the possibility to present this information and you know and then discuss with them. This is you know how we got to know them and also how we provided them with information while they were incoming.

20 **ADV CHASKALSON SC:** And can I ask who – who made the approach to Mr Singh in particular? Did it come from McKinsey or did it come from Regiments?

**DR WEISS:** The – the approach itself you know perhaps a little bit more context. We had a client service team and Mr David Fine my colleague that testified yesterday among

others were part of this client service team. There was [00:15:41] Mr Vikas Sagar there was Mr Nobadua [?] who were part of that client service team and he has a day to day job with them typical in that case that this team actually approached Mr Singh offered our help to provide a perspective on how we saw the situation and also you know how we actually would go about it. And this is to my knowledge how this meeting originated.

**ADV CHASKALSON SC:** Sorry to dwell on this point but  
10 you have mentioned Dr Fine and Mr Durr would Mr Sagar have been part of that client services team as well?

**DR WEISS:** I thought I mentioned him as well. If I did not then please take it to me being old ja.

**ADV CHASKALSON SC:** That may well have been my mistake not yours. If it was I apologise. Please continue. Is that what – is that essentially all you would say by way of introduction to the topic of the role that you played in on-boarding Mr Singh?

**DR WEISS:** That is correct. So that was the first on-  
20 boarding. I am sorry Chair.

**ADV CHASKALSON SC:** No problem. Then the second topic we asked you to address was the top engineers program or the turnaround program. Can you tell the Chair first of all about the original top engineers program and then we will deal separately with the attempts to extend

that program in 2015 and 16. hair first of all about the original top engineers program and then we will deal separately with the attempts to extend that program in 2015 and 16. Sorry can you speak to the Chairperson.

**DR WEISS:** Thank you Chair for that opportunity yes. Yes. Chair the top engineers program started indeed at around 2013. The intention of this top engineers program was really empowerment. So the – we had discussions with the leadership team back then and we were thinking how can  
10 we support the development of young black talent not only in the form of you know giving away a share of our fees but beyond and on top of that doing a contribution of developing engineering talent within Eskom to gain capabilities that we as management consultants had.

So there was a selection process and you know kind of the leadership team of Eskom back at that time really appreciated this idea. I personally must say I also truly bought into this idea still.

We had then selected these engineers and you  
20 know for the program it was a very professional selection process. I think in the first year we advertised across Eskom for talent to apply. We got if I am not mistaken something you know 400 to 600 applications then ran a full-fledged McKinsey interview process on them and we find new talented people. So we took the first cohort we

call them into the – into the program and then they ran alongside us as additional resources at McKinsey projects.

This had benefit for everybody. It said – it has – had benefits for Eskom because we had to offer only smaller teams because you know Eskom then you know filled additional resources by these top engineers.

It had a super, super kind of impact – a very positive impact on these top engineers get them later on some stage at Eskom some went outside and got really  
10 good positions. And it also you know had an advantage for McKinsey because you know we were not only able to provide textual advice by via these top engineers that you know had natural relationships within Eskom they also made implementation happen and much better happen than we could have done this on ourselves.

So we trained the first cohort. This has proven successful. Then we trained a second cohort and we hired and trained the second cohort. Again the same thing you know we did then you know a festive function where we  
20 basically graduated them and you know this was – this was like deeply, deeply they got access to McKinsey IP, they were trained at McKinsey training events. They had access to our knowledge data base so it was a real cooperation and real talent building beyond this black economic empowerment contribution that we had.

Then at around end of 2014 when we were discussing about the third cohort the discussion came up and here funding for such a program given the dire financial situation and also the dire performance situation that I just was talking about did not allow Eskom to fund for this so in the discussion with Eskom we came about to be kind of you know have find another funding mechanism and we offered to go for a procurement program to actually realise procurement savings and then from that share of  
10 procurement savings we would pay the costs for the programme and you know in parallel also had the opportunity to train the third cohort on this program.

So that was the origination of the top engineers program and if I look at this from today I can also see with quite some pride how the – some of the participants in the sub-engineers program are now you know now really made a career inside and outside Eskom.

**ADV CHASKALSON SC:** And Dr Weiss can you – I understand that in the course of 2015 there were formal  
20 negotiations between Eskom and McKinsey about an appointment for a new top engineer's contract between McKinsey and Eskom. Can you tell the Chair about those negotiations and when they started and how they progressed?

**DR WEISS:** Chair you are correct. So where I just

stopped you know on this offering on the third cohort that was – it only included procurement ja. It was never sight nor exercised at this point in time. Because you know then there was this leadership [00:23:33] as you know we heard also a few days ago with some executives leaving, a new CEO coming in, a new CFO coming in so basically that was on hold.

Now the on boarded the new CFO and COO with our abilities the information that we had you know that we  
10 provided to them and it became clear that there was a turnaround required in – in a number of dimensions. And this basically was the result of the on boarding activities that we had with Mr Singh and Mr Molefe.

So and that was at around May/June 2015 when that transpired. At the same time there was still our proposal on the table to do a program that just entailed procurement that we have done way before this new management team in and the request came up can't we leverage this top engineers program but expand the scope  
20 from only procurement to additional work streams such as power generation, such as primary energy, such as clay management, such as financials and so on and so on.

And you know then a negotiator or a – so you know boss approval was obtained to start such a negotiation on such a program and bought to my knowledge gave approval



under the condition that this program does not cost Eskom a single penny. Because remember Eskom was still in this dire financial situation.

And I also have to admit why we were happy to expand scope we were also frightened to death about parts of the scope ja. And you know especially the generation part.

Remember you kind of the intention was to increase the energy availability that is a measure for you know how often can you operate a power station and you actually want to operate it? And this was over the past five years on a sliding scope with Eskom. That means that the energy availability factor basically the availability of the power station feed declined the past five years you know from I do not know 75 to 68% or something like that due to maintenance challenges and you know all the context that you are also well aware of.

And now you know we were asked to expand the scope into parts of the program where we knew we had a deteriorating performance. It was not so easy to stop you know this availability thing so hence we entered this negotiation and had really long negotiations with Eskom.

The negotiations lasted from July 2015 to at and around November 2015 and – so this was a process Chair that I do not know the exact number of days but you know

plus minus we have negotiated thirty day 30 days and this was not like you know half an hour here, half an hour there this was full day negotiation on these matters in order to come to a scope and an approach that could actually deliver against the aspirations that were formulated.

**ADV CHASKALSON SC:** And as I understand those negotiations commenced around July 2015, is that correct?

**DR WEISS:** They started at July 2015 and ended at around November 2015 that is correct.

10 **ADV CHASKALSON SC:** But the signed letter of instruction that gave McKinsey comfort in relation to this appointment was only furnished or at any rate it is dated 17 December 2015. Is that correct?

**DR WEISS:** That is correct.

**ADV CHASKALSON SC:** So in November 2015 even if the negotiations had been completed you did not sit with the signed document in your hands confirming that you had the appointment?

**DR WEISS:** That is correct Chair.

20 **ADV CHASKALSON SC:** Was there any talk within McKinsey about going to Eskom leadership or to setting up a meeting with Eskom leadership to push through the signed appointment letter that McKinsey was looking for at that stage?

**DR WEISS:** Chair we – I am not pushing anybody or you

know trying to put pressure on anybody. The reason for the delay or [00:29:10] was a technical reason. And this technical reason that later on also was cited in the media and in various investigation was whether there was a question whether this impact based contract is actually allowable under the National Treasury guideline. Back then National Treasury I do not know whether it is still the case published instructions on how to – how to contract consultant work. And the measure that was there was an  
10 hourly fee. Now this would have contradicted the board decision that this is not allowed to cost ...[indistinct] [00:00:01] to Eskom, ja. But it must be paid out of the fees. So hence, there was a discussion and there was also legal engagements in between, both on McKinsey's side and on the Eskom's side.

What - you know, whether it is permissible to have this type of contractual arrangement actually making work. And then later on, you know, as you follow and you said it correctly Mr Chairperson.

20 Yesterday, is that an Eskom was producing this letter, saying that it is going to after approval from National Treasury and actually went out after approval to National Treasury and then informed us in the first Steering Committee that they actually have obtained it, approval from National Treasury.

**ADV CHASKALSON SC:** When you got your letter of instruction in December 2015, did you understand, at that point, that the issue of National Treasury approval was still pending? That Eskom was still seeking National Treasury approval or that they had already been given National Treasury approval?

**DR WEISS:** You are exactly correct Chairperson. We were under the impression that we would still – that they are still underway, obtaining National Treasury approval. And you  
10 know, if we go to this – if we go to this Letter of Acceptance. It is somehow here in the annexure. It is Annexure AW-6 Bundle, page 898. Let me pull that up. It also specified – also specifies exactly – it is specified that same way.

Ja. It is a condition of the – second paragraph. It is a condition of the acceptance that in Eskom considered opinion of the National Treasury's instruction were all through the life of the contract.

In an unlikely eventuality that the said opinion is conclusively altered, parties should agree to review the  
20 contract payment basis to an **electoral(?) revised(?)**  
**[00:02:40]** opinion.

So that then we knew that they still had to be approached because it was over the years, that they still had to approach National Treasury.

It was our understanding that in case National Treasury

confirmation would not be obtained, then there would be a different form of contract again with the – under which then the works could continue.

**ADV CHASKALSON SC:** And then you start at work in January on essentially this basis that with Treasury approval the ...[intervenes]

**DR WEISS:** That is correct Chair.

**ADV CHASKALSON SC:** Can I just ...[intervenes]

**DR WEISS:** That is correct Chair.

10 **ADV CHASKALSON SC:** Can you talk briefly about the work that you did and the impact that that work had?

**CHAIRPERSON:** I am sorry Dr Weiss and Mr Chaskalson ...[intervenes]

**DR WEISS:** Absolutely Chair. I can.

**CHAIRPERSON:** Sorry, mister... Dr Weiss. I think the two of you knew what Mr Chaskalson's question was but he did not finish it and Dr Weiss responded. [laughs] You were asking Mr Chaskalson whether – when they started the work at the beginning of the year, they started it on a certain  
20 basis but you did not finish saying what the basis was.

**ADV CHASKALSON SC:** Yes. Dr Weiss, I did ...[intervenes]

[Parties intervening each other – unclear]

**ADV CHASKALSON SC:** I am sorry ...[intervenes]

**CHAIRPERSON:** The two of you forgot about me. [laughs]

**DR WEISS:** [laughs]

**ADV CHASKALSON SC:** [laughs] Sorry Chair. I was asking Dr Weiss when they started in January, it was still on the basis the Treasury approval was pending and hopefully Treasury approval would be obtained, in which case, the risk based arrangement would be implemented.

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** But if Treasury approval was not obtained, then the fee structure would have to be revisited  
10 within the parameters ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** ...of what Treasury allowed.

**CHAIRPERSON:** Yes. That is what you were confirming Dr Weiss. Is that correct?

**DR WEISS:** Yes, that was exactly what I was confirming. And this is also how I stand – understand Annexure AW-6, the Letter of Acceptance. That was my full understanding ...[intervenes]

**CHAIRPERSON:** Yes, okay. No, that is fine. I have also  
20 looked at that letter at page 898. So. Okay you may continue Mr Chaskalson.

**DR WEISS:** Exactly.

**ADV CHASKALSON SC:** Dr Weiss, can you tell the Chair a little about the nature of the work that you did and what impacts you were able to achieve within the time that the

project ran?

**DR WEISS:** Absolutely. Chair, we ran through this entire period.. You know, and it was not only me. Ja. I would like to give credit also for the wonderful staff here at Eskom. They really have qualified guys there. The top engineers.

But also the team that was not on the fleet and it were really guys and... But one thing that I also wanted to say. Remember, this was all a hundred percent at risk.

So we sent our entire team there not knowing whether  
10 we are getting paid in the end and whether we are able to achieve the impact.

We had a number of work streams. One was actually in power generation. We were given as a project basis, basically, the Majuba Power Station, where we very well cooperated with the Majuba Power Station Team back in these days. And you know, the loss was remarkable.

You know, I think we got – we took the power station at a viability of 63% in the beginning of 2016. When we left the power station we had the viability of 84%.

20 And you know just to – this is basically – the fixed unit power station, it is basically as you are adding an additional unit, right? And you need this increased viability to prevent load shedding.

And so, I am also personally very sad that we could not continue the work and supported Eskom in significantly

increasing the viability factor for the entire fleet thereafter again. The measures are still there, you know, but we were interrupted there. So that was one thing.

Then the second work stream was the coal work stream. On the coal work stream, we had historic costs escalations up until 2016 at 16% per year.

You know, for that year that we were there and worked with the primary Energy Team, we managed to get the costs escalation down to 3.5% only. Ja, from 16% to 3.5% only.

10 And this is – you know, we – you know, also new contracts that we were striking then.. You know that Eskom was striking then. We reduced the new price on, you know, from between 5% and 15%. And at the cost, plus mines by the end of the year, we managed to get one million additional tons of coal out of there.

And we worked on claims. I think we reduced the claim volume that was at ...[indistinct] [00:08:34] back then, you know, by around 15 – 20 billion. And on procurement, we identified during the time that we were there, around 3 billion  
20 savings out of which when we left the programme.

So when our contract was cancelled by mid-year, already R 1 billion was realised. So, besides that, we trained the next coal ...[indistinct] [00:09:05] and the top engineers has been provided PFO services.

And please ensure me. I know this is work ...[indistinct]



[00:09:14] in this process but the team and the people on ground did real work. Everybody.

**ADV CHASKALSON SC:** Dr Weiss, certainly from my side. I wholeheartedly accept that. I cannot see many evidence to suggest that you did not do real work on the ground. Can... and those results that you have cited, speaks for themselves.

Can I take you to the next topic which is the engagements between McKinsey – or that McKinsey had with  
10 Regiments and Trillian. It is a topic that you address from paragraph 37 of your statement. Can you ...[intervenes]

**DR WEISS:** Yes.

**ADV CHASKALSON SC:** Can you tell the Chair about that?

**DR WEISS:** Absolutely, I can do that. Wait a second. I am just trying to get the statement. Ja. So on – let us see that. So as I alluded to before. We had – you know, we were in the process of on boarding Mr Singh and Mr Molefe.

And in this context, you know, we came with the business leaders but it was also clear that there was a  
20 financial restructuring required at Eskom. And from the work that my colleagues, the Client Service Team at Transnet did. So Mr ...[indistinct] [00:11:01], Mr David Fines and all that – and others, right.

I knew that – they knew that Regiments actually was quite capable internationally. That ...[indistinct] [00:11:15]

during the ranked up work... So when we ranked up Mr Singh and Mr Molefe for this new job and we provided them with the Intel that we collected before.

We worked together. All of that pro-bono, by the way. We worked together with Regiments. They also worked pro-bono. And they were the financial model of the business leaders that we identified, that had to change. This is how I got involved with Regiments. So they basically – effectively, we came over with the team that was Southern Transnet and  
10 now I was serving here of the Eskom.

So in this context, they knew the financial – so they knew the initiatives that we thought were required to turnaround Eskom. And they also knew the financial evaluations behind that.

And then – you know, from my perspective and also the impression that I had from them, you know, from a content perspective, I found that you know they did good work, ja. And you know, ...[indistinct] [00:12:36] as a Supply Development partner. I think the ...[indistinct] [00:12:38]  
20 programme.

Remember, then I was in parallel, negotiating on behalf of McKinsey with legal counsel, with foreigners, with foreign) communication and so on and so on. This contract end...

And Chair, I have to confirm that we intended Regiments to be our SDNL partner based on their capabilities back in

that time. Then, you know, a little bit later the... Oh, sorry.  
One more thing.

You know, I also – at this point in time, did not have any doubt because, you know, they were our longstanding – they were our longstanding Supply Development partner at Transnet.

And Mr David Fine yesterday lined out that we also reviewed – we did the reviewing. He was talking about this - they basically ...[indistinct] [00:13:40] due diligence on  
10 Regiments.

So for me, all of this were facts where I said, you know, I need a Supply Development partner on this contract here. They are content-wise capable on the financial side. They are partner colleagues of me, mine.

We have worked with them before and even done the due diligence on them before and this, you know, how – or we considered them also as potential Supply Development partner for the Eskom Turnaround Programme or Top Engineers Programme. Now ...[intervenes]

20 **ADV CHASKALSON SC:** Can I just ...[intervenes]

[Parties intervening each other – unclear.]

**DR WEISS:** [Indistinct] [00:14:18]

**ADV CHASKALSON SC:** Sorry, Dr Weiss. Can I interrupt at this point?

**DR WEISS:** Ja.

**ADV CHASKALSON SC:** Am I correct in understanding that the first work that you did with Regiments at Eskom was not on the Top Engineers or Turnaround Programme. It was actually on the, I think, the Corporate Plan or Business Plan as it is sometimes called. Is that correct?

**DR WEISS:** Chair, you are correct. And that started at around September 2015, where we also intended to have them there as our Supply Development partner. I would have gotten there in a second but we will – it is fine.

10 Because what happened then.

We were informed by Regiments in the form of Dr Wood that he is going to or he intends to buy out the management consulting activities of Regiments and put them into the – into a separate entity into – that he called Trillian.

And also that made in terms of the way how it was explained to us and also confirmed by colleagues as Regiments had like – I mean, we also heard from earlier evidence, several activities.

20 There was financial wing. There was like a real estate wing and there was also management consulting wing. And he felt that the management consulting wing then did not get appropriate attention. So they wanted to have like one management consulting company. At least this is what, you know, was explained to me at that time.

**ADV CHASKALSON SC:** And when did the work on the

corporate plan finish?

**DR WEISS:** The work on the Corporate Plan finished as planned in March. I think we - that was in March 2016 to be precise but I think there were some, you know, additional work where we then kept a team I think for three, four weeks on top of this without payment.

**ADV CHASKALSON SC:** And am I correct that the Supply Development work that was done on that Corporate Plan was work that was done by Regiments, not Trillian?

10 **DR WEISS:** Chair, I would love to give you a razor sharp answer onto this question. I am afraid I cannot. The – I can just tell you what I experienced back in that time. Back in that time, it was very opaque. You know, it was planned that Regiments Management Consulting talent would go from Regiments to Trillian.

We also saw the list of people that went over because we also supported them later on with training and hiring of people.

20 I received during this time period until we terminated the conversation between Regiments and Trillian, multiple emails at times from Regiments' email addresses, at times from Trillian's email addresses and who was what and where. It was almost impossible to determine at that time.

**ADV CHASKALSON SC:** Dr Weiss, can you then talk about the process that led to McKinsey terminating its relationship

with Trillian?

**DR WEISS:** I can very well do that. And it may come across that I am a little bit naïve here but I am, you know, I am a German national that you know that did fly in and fly out to South Africa, you know, during that time.

And I – you know in my capacity, you know, I... Ja, I hear things and I understand things and also what was kind of going on in South Africa. Yet my focus for assigning our contract with both Eskom and the ...[indistinct] [00:19:11]  
10 was to make sure that the Black Economic Empowerment partner is really black owned.

For that – and you know this is – I am a German. For that I needed a piece of paper where there is written this is the owner of the entity so that I can prove you know yes this majority black ownership and I need a BEE certificate.

And for being a German, I asked for this in a very painful highly frequent way. So this started at the very beginning because you know we – and you know, then we intended to have them as our Supply Development partner.

20 In order to get to this partnership, I needed a BEE certificate and I needed the sheet(?) [00:20:04] of ownership to make sure that I understand that they are really majority black owned because that was the whole idea of Supply Development.

So I asked this question. I first asked this orally over

the course of October, November, December And we had the sub-contracting agreement already worked out and negotiated, ja. I did not sign the sub-contracting agreement because I did not have any evidence about the ownership and their BEE status.

Now time comes and we are having, you know, we are starting to work based on the Letter of Acceptance that we discussed before.

And then, you know, and normally, like you first start, 10 just to you know the oral conversation to ask. And then I started to interrogate that letter in writing, ja. It was emails. That is also in the evidence and then later on then letters when we really kind of in a very precise way asked for the ownership information. That information was not forthcoming.

In parallel, as Dr Fine yesterday talked about, they were also looking into Regiments. Then there were news coming up about potential improper, you know, activity of Regiments and Trillian. And you know, a risk assessment was done. 20 We also did risk assessment you know on Trillian.

We had several service providers trying to find out who are the owners of this entity and then in this telephone conference with the Audit and Risk Committee at – on the 14<sup>th</sup> of March 2016, it was an evening call....

We from the CST as well... You know, as the committee

members, we were all aligned that we cannot go on because our potential partner is not forthcoming with the situation. This then led to a series of letters where we wanted to be crystal clear that, you know, this cannot be our partner.

Although indeed we had worked alongside with them in the anticipation that they are just in this process and may work out something.

So we first, with the letter of 15<sup>th</sup> of March, you know, forwarded this termination information to Trillian. And then  
10 with the letter of the 30<sup>th</sup> of March 2016, I sent a letter that you know representatives' termination citing exactly that reason to Eskom. And I know that because I co-signed that letter and this is where it ended.

**ADV CHASKALSON SC:** Dr Weiss, you focussed on the BEE issue in relation to the termination and I accept that it was a very important issue along with the issue relating to ownership but it seems to me that there were other issues as well. And can I take you to a series of letters that were written by McKinsey and in some places you?

20 **DR WEISS:** Yes. Yes.

**ADV CHASKALSON SC:** It is starting with AW-11 at 927 because I would like you to explain to the Chair what those issues were because they seem to be quite important. Page 927.

**DR WEISS:** Jip, I am going there. Ja, this is the Doha



boiler issue. And this was something again, you know, super unacceptable to us. You know, while running the boiler work stream Chair, there was procurement. So there was a boiler work stream.

We procured negotiation on a contract in order or achieve procurement savings and we found out or at least we got an indication that Trillian is both involved in Supply Development for – the supplier in question of – one potential supplier in question for the Duvha boiler as well as starting  
10 the procurement work stream. In our standards, that is not acceptable.

**ADV CHASKALSON SC:** Sorry, Dr Weiss. If I can just come in, to clarify what you are saying? So they are assisting you or they were planning to assist you to oversee that procurement in the interest of Eskom.

At the same, as they were in a relationship with the Supply Development partner of one of the bidders in that relationship. Is that a fair assessment of what you are describing?

20 **DR WEISS:** Yes, that is a fair assessment. I am not saying that they intended to negotiate that but they were close enough because remember Trillian worked with us at the procurement work stream and so – at least my affects do not allow, you know, to be on both sides of the negotiations.

I decided to be either on the side or I am going to be the

other side of the negotiation. And hence, we waived that instance with Eskom and with Trillian.

**ADV CHASKALSON SC:** And can I identify this sub-contractor that was the, potentially the problematic sub-contractor in relation to the procurement? Was that E Gateway Global Consultants FZC or FCD, E Gateway?

**DR WEISS:** Ja. E Gateway were – was sub-contracted by Trillian, as I understand it, for supporting on the procurement work stream and they cut down the work, whether – you  
10 know on the procurement work stream, right.

Whether they then also were involved in that specific negotiation, to me it does not matter.

Alone the fact that I am supporting a procurement work stream while I am at the same time supporting a supplier, that does not help too much from my perspective and that is... It means it goes against our ethics and hence we reported it immediately.

**ADV CHASKALSON SC:** And did you ever establish who E Gateway were or who the controlling party or who held the  
20 controlling interest in E Gateway?

**DR WEISS:** I did – I do not have this knowledge.

**ADV CHASKALSON SC:** We will deal with that separately in the Commission then. Can I ask you also then to go to 932, AW-14?

**DR WEISS:** Ja. Ja, I am there.

**ADV CHASKALSON SC:** Is this the letter that you were referring to where you placed on record your concerns about this conflict with Eskom?

**DR WEISS:** That is certainly the letter with which we explained our concerns with Eskom. Again, you know, we do not know whether there was improper dealings, right. You know, perhaps both of these teams had agreement on the Chinese Wall and you know two separate servers and we are... ja. We may as well be. But the fact that they did not  
10 talk to us about it, that raised our concerns and so we felt it is our obligation to raise the issue to them to be clarified.

**ADV CHASKALSON SC:** And they never came back to with any clarification in this regard?

**DR WEISS:** In this regard, I do not recall clarification.

**ADV CHASKALSON SC:** And do you know if ...[indistinct], who were the primary contractor on involved in that Duvha procurement issue, if they did work for Eskom – continue to do work with E Gateway for Eskom?

**DR WEISS:** I have no information around this. I am afraid,  
20 you know, Eskom needs to be asked who then in the end was selected for the Duvha boiler replacement.

**ADV CHASKALSON SC:** Then you talk... Well, let me take you to a statement of Mr Sneader who was I think the CEO of McKinsey or held the most senior position of McKinsey, is at page 40 of this bundle, it is an annexure to Mr

Mieszala's statement. Do you have a complete file number 7?

**DR WEISS:** I have...

**CHAIRPERSON:** That is bundle 8, hey? Mr Chaskalson?

**ADV CHASKALSON SC:** Bundle 7, bundle 7.

**CHAIRPERSON:** Oh, bundle 7 and what is the page?

**ADV CHASKALSON SC:** 40.

**DR WEISS:** Four zero?

**ADV CHASKALSON SC:** Yes or 41. 41 in fact is the  
10 passage that I am interested in.

**DR WEISS:** No, unfortunately I have - sorry, I have - I am not so sure whether I have that. Let me go onto the other one that I have, four zero...

**ADV CHASKALSON SC:** Dr Weiss, it is not necessary, it is literally a sentence that I want to refer you to and I can read it out to you.

**DR WEISS:** Okay.

**ADV CHASKALSON SC:** So it is from the speech that Mr Sneader(?) made at Gordon Institute of Business Science,  
20 I think it was in 2018 and he is talking about mistakes that McKinsey has acknowledged and he says in that regard:

“As we wound down...”

And Chair, I am reading the second paragraph on page 41.

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:**

“...as we wound down at Eskom in mid 2016 our client team continued to interact with Trillian at Eskom even after they had failed our due diligence and no contract existed between McKinsey and Trillian. They should not have.”

So what I want to ask you is why did McKinsey continue to interact with Trillian after Trillian had failed is due diligence and after Trillian had sent this March letter.

**DR WEISS:** Yes. No, we had sent this March letter, so I  
10 am absolute happy to speak to this. So first of all, it is a very fair question, I think in hindsight I am asking me as well, and what meaning - you know, what does cooperation mean, right, you know? And that is the work package, the work package, so I think, [indistinct] 02.52 Gateway and the procurement consultants of Trillian had a very separate work package. We – you know, they did on data cleanup, we worked on category work. Ja?

You know, to continue working on category work, as we did after this letter, did not require any interaction with  
20 the Trillian folks on the ground. In the event of the Medupi Power Station they had several engineers. We indeed continued our work of the McKinsey work even though the contract was cancelled until August 2016 and they were there and then over time disappeared. Ja? We did not actively reengage with them to teamwork there but making

with the benefit of hindsight, I agree, Chair, that was a mistake.

**ADV CHASKALSON SC:** Was there any discussion about this at the time after the due diligence had failed and after the letter had been sent terminating the relationship? Was there a discussion of how you were to proceed at Eskom?

**DR WEISS:** Ja and, you know, we are forced by the steering committee who had the discussion. Remember there was - you know, we sent this letter to both parties  
10 meaning Trillian, you know, on the 15 March 2016 and Eskom on the 30 March 2016. So it was super clear these are not going to be our supply development partners.

We had to make Steercom, a steering committee and the steering committee where the members are asking [indistinct] 04.52, it is all minuted so, you know, it is all on record, were asking in terms of the [indistinct] 04.57 how do you now fulfil your supply development partner, you know, obligation and are you continuing to work with Trillian?

20 On that steering committee, I made the presentation and said no, Chair, we cannot continue, we are going for an alternative, you know, SD & L contract, that then I also presented. And why I said no, we are not going to work with Trillian going forward, it cannot be our supply development partner and I have a completely different

concept that does not include Trillian for SD & L. Trillian representatives were in the room.

So Eskom was clear, Trillian was clear, we were clear, we have declared this. After this Eskom decided obviously that they still wanted to have Trillian around and continued to work with them because it is not so easy to get into a power station side, there are access cards that you need in order to get in and so on and so on, right? So this was not revoked, we worked further there and, you know, we meanwhile then, you know, we were busy on trying to fill our new SD & L concept [indistinct]06.23.

**ADV CHASKALSON SC:** Can I take you to two documents in relation to that new SD & L concept that you prepared and these are in file 8. In fact, Chair, it is file 8B. The first one is at 1185.

**CHAIRPERSON:** Okay, bundle 8B, the page is 185?

**ADV CHASKALSON SC:** 1185, Chair.

**CHAIRPERSON:** 1185. We are at quarter past eleven, Mr Chaskalson. One thing, we could take a tea break now but if you are close to finish we could take the break after you are done.

**ADV CHASKALSON SC:** Chair, I am close to finishing. I know also that Mr van Zyl has a commitment that he needs to get to at twelve.

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** But I do not propose to be much longer, would it possible to simply proceed?

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

**DR WEISS:** I am afraid I cannot find the document that you are referring to at any of my files here. So my file goes to ...[intervenes]

**MR VAN ZYL:** If I may come in here to assist my client?

**CHAIRPERSON:** Yes.

**MR VAN ZYL:** It is in the McKinsey reference bundle, it is  
10 VV9.

**DR WEISS:** Okay. VV9, I have that.

**MR VAN ZYL:** 1185 in that, on the left top of the page is the numbering.

**DR WEISS:** Appendix to negotiation of key financial parameters, is it that? No? 1125, SD & L proposal.

**MR VAN ZYL:** 1185.

**DR WEISS:** 1185?

**MR VAN ZYL:** Yes, top left corner.

**CHAIRPERSON:** Well, it is writing [inaudible – speaking  
20 simultaneously]

**DR WEISS:** Sorry, I am scrolling.

**CHAIRPERSON:** 08/1185 but we just say 1185, we do not call FOF08.

**DR WEISS:** Ja, okay, okay, I have that, ja.

**ADV CHASKALSON SC:** And do you recognise



...[intervenes]

**DR WEISS:** Ja, I have that, it is an email, right?

**ADV CHASKALSON SC:** Yes, that is correct and it is an email you address to Prish Govender at Eskom on 4 May 2016.

**DR WEISS:** Ja. Ja, accept, okay.

**ADV CHASKALSON SC:** Do you recall – if you read that email, do you remember sending it to Prish Govender?

**DR WEISS:** No, I do not know the day, but, you know, it  
10 seems to be correct that I sent that to Mr Prish Govender, yes.

**ADV CHASKALSON SC:** And, as I understand it, this was your attempt to – I mean, at this stage there were two separate processes going on. The one is that you had – you wanted to give expression to this new SDL idea that you had come up with to be incorporated in the contract.

**DR WEISS:** Correct, ja.

**ADV CHASKALSON SC:** And the other, of course, was the contract ...[intervenes]

20 **DR WEISS:** Correct, ja.

**ADV CHASKALSON SC:** The contract had not yet been signed and until you could reach agreement on this new SDL annexure it would not be possible to sign the contract because this was a necessary part of the contract. Is that correct too?

**DR WEISS:** Correct, Chair.

**ADV CHASKALSON SC:** Can I take you to – and this is a draft you are presenting to Eskom as a proposal for inclusion as appendix 4 of the contract.

**DR WEISS:** Correct so.

**ADV CHASKALSON SC:** Can you go down to 1189 and there you set out context for the need for a new model and you write:

10 “BBBEE partnership model and implementation plan. McKinsey executed on its BBBEE obligations from the start of work in January 2016. During the first quarter a number of particularities occurred that caused both Eskom and McKinsey...”

Sorry, unfortunately is overwritten there, but to do something.

“...in relation to implementation of BBBEE partnership model.”

Let me read from a hard copy.

20 “Eskom raised questions with respect to the partner...”

And it had said “allocated to” and now you have you changed that to:

“...identified for the programme as per written communication of February 19, 2016. McKinsey was able to reply to Eskom’s request as per written

communication of February 24, 2016. McKinsey was not able to receive from the identified partner information about its ownership structure, its shareholding nor the composition of its leadership team. Consequently, McKinsey was not able to prove to Eskom the validity of the BBEE partner and thus informed Eskom as per written communication on March 30, 2016, that its risk committee did not allow McKinsey to cooperate with this partner in the context of the above cited BBEE partnership.”

And then you go on to the new model:

“After consultation between Eskom McKinsey both parties agreed to maintain the envisaged BBEE partnership aspiration but applies somewhat modified implementation strategy. Both parts have aligned on the following implementation strategy.”

And then you set it out and if I understand it correctly, it is that McKinsey is not going to have its own formal supply development partner but it is going to allocate a fixed portion of its fees to a fund which Eskom will then disburse to a range of different BBEE companies who will be engaged on the project. Is that a fair summary of what the model was.

**DR WEISS:** Chair, that was a fair summary of what that

document says.

**ADV CHASKALSON SC:** So in this draft you set out the context which, to put it crudely, is that Trillian failed your due diligence, you have come up with a new model which is your fund supply development and Eskom will disburse from that fund to a range of BEE companies who will be brought into work alongside McKinsey.

Can I take you then to page 1192 which is another email you sent to Prish Govender but this time it is about –  
10 it is just over ten days later, it is twelve days later on the 16 May, 1192.

**DR WEISS:** Ja.

**ADV CHASKALSON SC:** “Dear Prish, dear Edwin..”

It is also sent to Edwin Mabulane:

“Hope this email finds you well. As discussed last Friday we have adapted both the ST & L memo and the related board submission document.”

So you have now revised them again.

**DR WEISS:** H’m.

20 **ADV CHASKALSON SC:** And can I take you to material revision which is at 1196.

**DR WEISS:** Ja.

**ADV CHASKALSON SC:** And there you say:

“McKinsey executed on its BBBEE model from the start of work in January 2016. During the first

months of the execution phase, practical insights were gathered and discussed with Eskom's management team. Upon these insights and discussions a range of modification to the execution of the BBEE partnership are suggested. While these changes will fully maintain the aspiration of the BBEE partnership model, SDL contribution, they will ease the practical implementation and leave Eskom with significant flexibility to achieve its own SD & L targets. The following modification are suggested.”

**DR WEISS:** H'm.

**ADV CHASKALSON SC:** And then you broadly repeat what followed the original draft. That is to be read also with your memorandum to the board at page 1200 or your draft memorandum to be submitted to the board which essentially repeats the extract that I have just read. If you go to 1200, 3.1.4 you say:

“McKinsey intends to select small black owned consultancies wherever possible for the subcontracting, the BBEE credentials and the subcontractors ...[intervenes]

**CHAIRPERSON:** That is 1200?

**ADV CHASKALSON SC:** 1200. 1200, Chair.

**CHAIRPERSON:** Oh, only 1200. Okay.

**ADV CHASKALSON SC:** 1200.

**CHAIRPERSON:** And 3 point?

**ADV CHASKALSON SC:** Well, 3.1.6 is where it is repeated.

**CHAIRPERSON:** Ja.

**ADV CHASKALSON SC:**

10 “McKinsey executed on its BBEE obligation from the start of work in January 2016. Early in the execution phase practical insights were gathered and discussed with Eskom’s management team. For instance, the ramp-up of the envisaged BBEE partners were much longer than anticipated. The key insight was that a multi-partner approach may potentially better fit the complex requirements of the programme. These insights and discussions led to the suggestion of a range of modifications with regard to the execution of the BBEE partnership model. These changes will fully maintain the aspirations to the original BBEE partnership model

20 as the old contribution was significant easing the practical implementation. Critically these modifications will enable Eskom to have far great flexibility to achieve its own SDL targets.”

When I read these documents, what I see is that in your first draft you say fairly frankly, Trillian failed our due

diligence - you do not mention them by name – so we need to come up with a different model, here is our model.

But in the second and third - the second draft together with the board memo that goes with it, you do not – you back off from that, do not mention it at all and instead talk about practical insights and a multi-partner approach and problems with ramping up. Why?

**DR WEISS:** Let me first of all say, Chair, we have not been able to be more brutal and crisp and say we are not  
10 working with Trillian as a supply development partner and we did not do that in 2017 or 2018, we did that in March 2016 and we did not do in, you know, just like a side conversation or something like that, we did it in writing to every party. Eskom was clear, Eskom knew why we have terminated any talks of Trillian. Trillian knew why, you know, we have terminated these – there any talks about them being a potential supply development partner.

Why the facts that, you know, that we had in the beginning did not trickle down to what eventually was  
20 presented to the board, I cannot tell. And, by the way, I am also not sure whether, you know, these documents, you know, are the final version where we gave input to or whether the input letter was kind of modified.

I think yes, it lacks a level of detail, I am completely clear with what you are saying or I heard what

you are saying. Yet, the decision has not been softened or anything, none of that happened.

**ADV CHASKALSON SC:** I do accept that, Dr Weiss, but, I mean we can give you the original files. What you will see on the original files is that these sections that I am reading to you, these which are fact change sections were inserted by you yourself, they have A Weiss or AW, I forget which, they are identifiable as having been inserted by you.

**DR WEISS:** Ja.

10 **ADV CHASKALSON SC:** And what concerns me or what I want to understand is what was going on at Eskom, what was going on at McKinsey that would have persuaded you to produce a first draft that says frankly Trillian failed our due diligence so we need a new model.

And then a second draft that, in my respectful view, touches that issue. So are you able to answer that?

**DR WEISS:** But it says – it comes to the same result. It comes to the – what, you know – I am sorry, this is indeed some years ago so I am surprised that I was [indistinct]  
20 20.22 Chair, but it says exactly the same thing and it did not change anything in our behaviour and the – for sure, you know, people, you know, were wondering, you know, what is going on there? Ja? You know, this was – I do not know – I know I am now in front of the Commission but this was also for us a pretty kind of material step to take to go



there and say this is not our supply development partner because we cannot contract with them for these material reasons.

And, if I look at this, it, you know, says nothing different. It does not say that all of sudden we have now decided, you know, to list all our reservations and, you know, go ahead as planned. No, it does not say that. I does not say exactly, you know, what was there. It says it disregards, that is correct, I cannot give you the reason for  
10 that because I do not recall them right now but it gives exactly the same position that I am also standing with today.

**ADV CHASKALSON SC:** Ja, I fully accept that there was no prospect of McKinsey taking Trillian on as a supply development partner whatever this draft memo said or draft appendix said. But can I take you back to the covering email on the second draft? So that is 1192, the covering email on the May 16 draft and the parties to whom you address are Prish Govender, Edwin Mabulane, Vikas Sagar  
20 and Ageson Rajagopal and Claud Gell(?) at McKinsey and you say:

“Dear Prish, dear Edwin, hope this email finds you well. As discussed last Friday...”

So there was clearly a meeting between the first memo and the revised memo.

“...we have adapted both the SDL memo and related board submission document.”

So refer to a meeting and then you say we have now adapted the documents. Does that help you to remember what was going on at the time and why the more frank first draft was replaced with the less frank – well, slightly toned down second draft?

**DR WEISS:** [indistinct] 23.00 decided that he did not want to destroy the prospects of Trillian going forward. I do not  
10 know, quite honestly. And it would be speculation, I simply to not know. Obviously we have discussed then as indicated also by the earlier email that I sent, but as a matter of fact, Chair, we did not deviate in any way from our decision, neither in this letter or in the formulation there, nor in the actions that we took later.

**ADV CHASKALSON SC:** Then I – if I can take you back – well, let me raise a slightly different issue before we go back to Mr Sneader’s statement. You candidly indicate in your statement that the MSA contract that you ultimately  
20 signed with the date of 11 January 2016 was in fact only signed in September or October and you explain in your statement ...[intervenes]

**DR WEISS:** That is correct, Chair.

**ADV CHASKALSON SC:** You explained that Eskom had actually – that you understood that Eskom’s preference

was that the SLA be signed as of the effective date, not of the actual date on which it was being signed and it was for that reason ...[intervenes]

**DR WEISS**: That is correct, Chair.

**ADV CHASKALSON SC**: ...that you dated your signature January 11 when in fact it was appended to the document sometime in September and October. Can I just clarify, as of September and October – sorry, as of January, of course, there was still not agreement on some material  
10 terms to that contract including for instance the supply development partner annexure that you were exchanging drafts on in May.

**DR WEISS**: Chair, what January do you mean? January 2016?

**ADV CHASKALSON SC**: 2016, yes. So let us just get ...[intervenes]

**DR WEISS**: Chair, you are correct. In January 2016 we did not have a supply development partner confirmed. As you know there was a draft supplier – a subcontract for a  
20 potential supply development partner negotiated yet not signed because we were lacking ownership and BEE information.

**ADV CHASKALSON SC**: And on the main contract after Trillian failed your due diligence you at that point materially changed what was the then draft of the supply

development partner annexure on the main contract. Those are the documents we have been looking at a few minutes ago from May 2016.

**DR WEISS:** That was the only modification that was done later on, you are perfectly correct, Mr Chair.

**ADV CHASKALSON SC:** My concern with your signing with the date of 11 January when the actual date was ...[intervenes]

**CHAIRPERSON:** Mr Chaskalson, I know you may be left  
10 with a few questions but there is a reason for us to adjourn for a short time, only ten minutes. Let us adjourn for ten minutes and then we come back and try and finish.

**ADV CHASKALSON SC:** Thank you, Chair.

**CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**ADV CHASKALSON SC:** I just want to put to you a  
problem with signing the document January 2016 when it is  
actually signed in September or October 2016, it is that  
20 Eskom's own procurement policies precluded from issuing  
orders or paying for work before a contract is signed, but I  
presume you were not aware of that at the time?

**DR WEISS:** No sir.

**ADV CHASKALSON SC:** But what that meant is that if the  
contract had been signed with its true date, not backdated,

that would have flagged something that would have come out as an irregularity that may have triggered greater scrutiny of the contract by internal or external auditors, because payments had already been made on that contract, is that not correct?

**DR WEISS:** I cannot talk about these consequences; it is not our world so I don't know.

**ADV CHASKALSON SC:** Earlier on in your evidence when you were talking about the due diligence of Trillian and  
10 what you expect from Trillian you said – not your exact words – but essentially you were saying I am a German if you say you are a BEE company I want to see a certificate. Can I ask you if you were signing a contract with a German counterparty would you contemplate putting a date on it that was seven months before the date on which you signed?

**DR WEISS:** So let me allow a little bit of context, by the context and I am going to answer your question.

**ADV CHASKALSON SC:** Sure.

20 **DR WEISS:** The context as it presents myself is that we had a pretty long negotiation and that accumulated with us basically aligning on the final contracts and then I signed on 17<sup>th</sup> of September, sorry December 2015 the letter of acceptance. This letter of acceptance is giving effect to the contract because it directly refers to what has been

negotiated there, the result of our negotiation. In Germany indeed I wouldn't even need a signature on that ...[indistinct] ja, but indeed it will be binding, so I found myself bound to this contract.

Then thereafter I think that was minuted several times, and basically on a weekly occasion asked to get the signed contracts from Eskom and ...[indistinct] to this, this is not the first time that I get a task order or anything that is informal way beyond the start of work, ja, unfortunately  
10 that is the truth that we don't, you know that the task orders are not issued on time, so I keep on asking, I keep on asking. We eventually then on 6<sup>th</sup> of June 2016 or I don't know what day – let me say beginning of June 2016 I informed by Eskom that our contract gets terminated. Then at around August 2016 we settled on an amount to be paid, we wrote an invoice only for the McKinsey ...[indistinct] not for the ...[indistinct] and you know got paid and only thereafter in September 2016 I received you know a printed version of a copy that was signed 7<sup>th</sup> of January, so  
20 what I intended there – or not intended – what I understood there was that you know since the contract wasn't there any more it was already cancelled and paid and so on and so on, that you know I was required to sign the contract on that date when it actually started. My very first day in South Africa in the year 2016 was 11<sup>th</sup> of January hence I

put 11<sup>th</sup> of January on that contract because I was anyhow bound by the 17<sup>th</sup> December 2015 letter of acceptance and I really apologise in front of the Commission if that has confused anybody in here but to come back to your question that originally was you know would that be sufficient in Germany, yes it would be sufficient in Germany.

**ADV CHASKALSON SC:** Can I come back to something else that Mr Sneader said on page 41, again I – you may  
10 not have the document but it is literally only one paragraph, short paragraph.

**DR WEISS:** Ja.

**ADV CHASKALSON SC:** He said on page 41:

“Finally our client team relied too much on their relationships at Eskom. They took Eskom’s board approval, Eskom’s appointment letter and Eskom’s management word at face value. They should not have done so.”

I presume you accept that comment from Mr Sneader as a  
20 fair comment?

**DR WEISS:** Yes.

**ADV CHASKALSON SC:** Can you say why you did, what was it about the situation that made you put the sort of reliance on Eskom’s representations at a higher level than you would ordinarily do, or would ordinarily be

appropriate?

**DR WEISS**: I don't know where this question is heading but I am you know indeed quite a lot of these colleagues at Eskom that I worked for a long time ago and perhaps that led me to that behaviour.

**ADV CHASKALSON SC**: Can I tell you where it is heading, I mean my – if I look back at those six months, McKinsey had devoted very substantial resources to Eskom, had done so without a written contract and  
10 certainly without payment and was there not a real concern that was driving McKinsey at that stage that you needed to do what had to be done to get paid for this work.

**DR WEISS**: But I had already been paid for this stuff Chair, I don't understand the reason that you are putting here.

**ADV CHASKALSON SC**: No, no that's in – sorry that is obviously by the time you had – I am not talking backdating now, I am talking other issues, like the supply/development annexure, like continuing to work alongside Trillian and so  
20 on.

**DR WEISS**: But Chair with all due respect you know we started this process, we actually did a due diligence, I think what is fair to say is that you know we shouldn't have worked or started work before this due diligence was closed. They will be working slow most likely ja and you



know as also Mr Mieszala and Mr Fine referred to yesterday this is a process that we have changed, but we came to the conclusion that it is not appropriate to go with Trillian as a supply development partner and despite that you know causing a risk for us not getting paid or not ever work at Eskom again, we were vocal not only saying but wrote on paper that this couldn't be our supply/development partner, so I understand your frustration that we could have done this earlier and I agree  
10 to you this is a mistake that we have done but without external pressure we ourselves did that and you know they are crystal clear in the way you know how we have communicated it.

**ADV CHASKALSON SC:** Thank you Dr Weiss, I don't have any further questions from my side.

**CHAIRPERSON:** Thank you very much Dr Weiss, let me ask whether Mr van Zyl intends to re-examine on anything.

**ADV VAN ZYL:** Thank you Chair, we don't have any questions for Dr Weiss either.

20 **CHAIRPERSON:** Okay, alright. No thank you very much, then it remains for me to thank Dr Weiss for availing himself and thank everybody, I will now excuse him and I will excuse you Mr van Zyl as well.

**DR WEISS:** Chair.

**CHAIRPERSON:** Yes Dr Weiss?

**DR WEISS:** Chair is there still a minute to say some kind of words from me?

**CHAIRPERSON:** Yes, yes.

**DR WEISS:** Because first of all as you know it was ...[indistinct] I first of all I would like to thank you for the opportunity that you have given me and also my colleagues to present ourselves and the fact as we see them and also to answer your question ...[indistinct] this is really helpful to also get kind of these perspectives out and what I also  
10 would say we really intended to help the people of South Africa and especially considering in what dire situation Eskom was at this time. It was a heartfelt you know need for us to engage and also to engage together with developing black talent in this country.

What I you know I think we discussed about we did real work on this and it was not always easy because it was 100% of this contract, ja, because we achieved impact ...[indistinct] what I learnt through this process is that you know our support to Eskom may have laid grounds for  
20 corruption and you know I think therefore it is really important the work that you are doing at the Commission and that you are also asking the questions that you are asking, that at sometimes you know feel uncomfortable. I think you are doing the right thing and thanks again for actually given me the opportunity to speak in front of this

Commission here.

**CHAIRPERSON:** Thank you very much Dr Weiss, you are now excused, thank you. Mr Chaskalson that is the only witness you had for today?

**ADV CHASKALSON SC:** That is correct Chair.

**CHAIRPERSON:** Yes, we are going to adjourn for now, just for the benefit of the public I will return at two o'clock to listen to the evidence Mr Zwane at two o'clock, who did not finish his evidence previously and he will come back to  
10 finish it and then later in the afternoon, or early evening I will listen to the evidence of Mr Koko from Eskom who did not finish his evidence at least we will deal with the evidence relating to the suspensions. We might not get beyond that and he might have to come back some other time, so we will resume at two o'clock.

We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

20 **CHAIRPERSON:** Good afternoon Mr Pretorius, good afternoon everybody.

**ADV PRETORIUS SC:** Afternoon Chair.

**MR ZWANE:** Afternoon Chair.

**CHAIRPERSON:** Yes, good afternoon Mr Zwane.

**MR ZWANE:** Good afternoon Chair.

**CHAIRPERSON:** Thank you for coming back to complete the part of your evidence that we must deal with today, I think you will still come back for other parts of evidence on other matters, okay. I think registrar let us just administer the oath or affirmation.

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

**MR ZWANE:** Mosebenzi Joseph Zwane.

**REGISTRAR:** Do you have any objection to taking the prescribed affirmation?

10 **MR ZWANE:** No.

**REGISTRAR:** Do you solemnly affirm 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 I truly affirm.

**MR ZWANE:** I truly affirm.

**MOSEBENZI JOSEPH ZWANE:** [Affirmation]

**CHAIRPERSON:** Thank you. Is Mr Zwane legally represented today?

**MR ZENGA:** Yes, Chair.

20 **CHAIRPERSON:** Okay his counsel/attorney can place himself on record just from where you are will be fine.

**MR ZENGA:** Thank you Chair, my name is Alpheus Zenga, the representative for Mr Zwane.

**CHAIRPERSON:** Thank you very much. Okay, alright. Mr Zwane we will try and use the time we have optimally and

that might mean me being a little stricter than I was last time on answers so obviously important things feel free to articulate what you need to articulate but because of time we must just try and make sure that answers as far as possible are straight to the point but nothing I say now means you must not make points that you feel are important to make.

**MR ZWANE:** Thanks Chair, I am here to try and assist you as much as I can.

10 **CHAIRPERSON:** Yes, yes, no that is alright. Mr Pretorius?

**ADV PRETORIUS SC:** Thank you Chair. For the record Mr Zwane there are two affidavits that we may refer to later this afternoon. The first is a second affidavit filed by yourself...[intervene]

**CHAIRPERSON:** I am sorry Mr Pretorius maybe for the benefit of the public you could start by just saying where we are with his evidence and what it relates to just so that they can follow.

20 **ADV PRETORIUS SC:** Yes, the evidence that Mr Zwane has given on two previous days and it is to complete hopefully today deals with his participation in or knowledge of a housing - a series of housing matters that occurred during the years 2010 and 2011 in the Free State Province. We have dealt to a large extent with Mr Zwane's knowledge

of a participation in certain events during the course of the year.

The first involved the abandonment of an open tender system and what occurred during the first half of that financial year and the second involved the devising of a prepayment scheme an advanced payment system and it is in relation to the advanced payment system that we will ask questions today principally.

**CHAIRPERSON:** Yes, no that is fine.

10 **ADV PRETORIUS SC:** There are two affidavits Mr Zwane that may become relevant later and certainly is relevant overall in relation to your, are relevant overall in relation to your evidence. The first is the second affidavit filed by yourself that appears just for the record in Bundle FS12 at page 623.

The second is a second affidavit filed by Mr Mokoena and that appears at Bundle FS12, 372.1 to 372.47 it is not a long affidavit but there are a number of annexures to the affidavit. You have been provided with a  
20 copy of that affidavit and you may wish to comment later on and I will ask a few questions later on. Mr Mokoena was the head of department during 2010/2011 Free State Human Settlements.

The first task for today Mr Zwane is to put to you certain versions in relation to the origins of the advanced

payment system during October 2010. We dealt with it briefly certainly your evidence in regard there to during the last hearing when you gave evidence here and you will recall that you said at a meeting with officials in the war room after the Welkom meeting you raised a question as to what could be done.

Mr Mokoena's version is different he says that you called him and other officials to a meeting in what colloquially became known as the war room in October 10 2010 and you proposed the advance payment system. Do you have any comment?

**MR ZWANE:** Yes, Chair my comment is simple I did not propose, I asked a question why can we not help the contractors in terms of materials as that issue was raised in a Welkom meeting that is my story and I deny that I proposed.

**ADV PRETORIUS SC:** Right that evidence Mr Mokoena's evidence is confirmed by Mr Matchatwa and Mr Tsometsi who also attended that meeting they both say that you 20 proposed the advanced payment system.

**MR ZWANE:** Well I have gone through both statements and I agree with you Chair and Mr Matchatwa is agreeing with Mr Mokoena but the version of Mr Tsometsi is the version that I put here that there were discussions after I had asked a question and after those discussions a

decision was taken that there should be a broad research in terms of this.

**ADV PRETORIUS SC:** To an extent that there is common cause between you and the other witnesses we will get there. I just want to put to you what Mr Tsometsi said on the 28<sup>th</sup> of September before the Commission. He says and his version is that at that meeting you said:

“I think we have a solution that we must buy material.”

10 What is your response to that?

**MR ZWANE:** I said when I was here I asked a question that why can we not help the contractors with the materials as that will actually enable us to do what we are supposed to do to deal with the problem that had been raised earlier on by the Minister.

**CHAIRPERSON:** Is your issue simply that you asked a question and you did not propose even though your question may have suggested that that is what you had in mind should be done?

20 **MR ZWANE:** Chair I asked the question that is why there were debates around this matter. My understanding of a proposal is that if you put a proposal on the table that proposal will be accepted or rejected.

**CHAIRPERSON:** Yes, I understand what you mean I just want to make sure.



**MR ZWANE:** Yes.

**CHAIRPERSON:** It seems to me that your issue might just be that you did not put it as a proposal.

**MR ZWANE:** Yes.

**CHAIRPERSON:** But in substance you may have put a question that conveyed to them that you were thinking that that is the way to go. Would you accept that as fair, as a fair interpretation of what may have happened?

**MR ZWANE:** I would accept it Chair as we together in the  
10 very committee when that issue was proposed.

**CHAIRPERSON:** Yes.

**MR ZWANE:** It is not an issue that I came with from somewhere it is an issue of the very committee and when we called a meeting we had to try and address that issue out and see whether it is workable or not.

**CHAIRPERSON:** Yes, well at least I think that clarifies my own mind because I was thinking if I say to Mr Pretorius why do we not adjourn now obviously he will think I am thinking that we should adjourn.

20 **ADV PRETORIUS SC:** I will take it a little bit more seriously.

**CHAIRPERSON:** I leave it at that, Mr Pretorius.

**ADV PRETORIUS SC:** So in summary then when you distinguished between a question and a proposal you are saying that you may well have raised an issue for

discussion and further debate but in doing so you would have conveyed what your thoughts were.

**MR ZWANE:** Well it may have been taken so by other attendees of the meeting but the fact of the matter in all the affidavits they agree with the fact that that matter was debated in that meeting.

**ADV PRETORIUS SC:** So it does not seem that we are too far apart on that issue. What you stressing however that it was not a formal proposal for acceptance or  
10 rejection.

**MR ZWANE:** That is correct Chair.

**ADV PRETORIUS SC:** Then there was it is common cause a discussion about the idea let us settle on that for the moment the idea for further discussion and one of the issues arising was the legality of what was to be considered, correct?

**MR ZWANE:** That is correct Chair.

**ADV PRETORIUS SC:** Mr Mokoena you will have seen in his affidavit goes further, Mr Mokoena raised his concerns  
20 about the idea and I use that word advisedly for the moment and indicated that he did not support it. Do you recall that?

**MR ZWANE:** I do not recall him saying he does not support. I recall one of the concerns raised in the meeting was the legality of that process.

**ADV PRETORIUS SC:** Right, he says that the issue between yourself and himself in a discussion between the two of you, I think it was after the meeting. He says that you said to him that if you do not want to implement this plan you should, you Mr Mokoena should tender your resignation. Do you recall that?

**MR ZWANE:** There was no meeting between me and Mr Mokoena outside the formal meeting which everybody was there, Chair.

10 **ADV PRETORIUS SC:** Did that happen in a formal meeting?

**MR ZWANE:** No, there was no such a comment from me because if I remember well the end discussion of the meeting was actually in Mr Mokoena's favour. There was no conclusion that the question which has been interpreted as an idea is what we must actually implement.

The resolution was that the DG Mr Tsometsi should go and research broadly about all the issues which were raised in the meeting and report to the HOD which was Mr  
20 Mokoena and in that process it is my belief that Mr Mokoena would have then addressed whatever matter that was a concern to him.

**ADV PRETORIUS SC:** Did Mr Mokoena at any stage during the meeting, shortly after the meeting or at any stage thereafter say to you that he objected to the idea or

the plan?

**MR ZWANE:** No, Chair.

**ADV PRETORIUS SC:** He goes further to say quite expressly that you used an expression in Sotho saying that he will walk next to his shoes meaning he would remain poor. Do you recall that?

**MR ZWANE:** No, Chair.

**CHAIRPERSON:** Just to put some context in regard to that last question from Mr Pretorius he said you said this  
10 namely that he would walk next to his shoes. He said you said this in the context of saying if he did not, if he was not prepared to implement the plan or to go along with the plan he would need to resign and obviously he would be without a job and he would then find himself walking next to his shoes. You understand the context? Mr Pretorius is my recollection is it correct?

**ADV PRETORIUS SC:** Correct Chair.

**CHAIRPERSON:** Yes, you never said anything along those lines?

20 **MR ZWANE:** Chair I never said anything of that sort in fact if we refer back to the investigations you would actually realise that the issue of advanced payment was actually implemented even before this document you talking about was finalised. In the meeting of the 18<sup>th</sup> on November as per the investigations. Mr Mokoena in a

report to the investigators actually exceeded to the point that a meeting, when the meeting was discussed on that point advance payment had already been done it is here on black and white.

So we continue to have a good relationship that is why I could understand even when I had said everybody should be working during December Mr Mokoena did not avail himself and I did not have an issue I understood.

**CHAIRPERSON:** Okay, Mr Pretorius.

10 **ADV PRETORIUS SC:** When you refer Mr Zwane to advance payments having already been done are you referring to a period before October 2010?

**MR ZWANE:** In fact if you look at the investigations they will indicate that the issue of advance payment in the Department of Human Settlements started in the year 2007/2008 there about but on this matter of 2010 Mr Mokoena as he was asked he indicated in the report to the investigators that by the 18<sup>th</sup> of November when the MINTEK meeting was organised advance payment had  
20 already been done.

**ADV PRETORIUS SC:** By the 18<sup>th</sup> of November 2010?

**MR ZWANE:** Yes.

**ADV PRETORIUS SC:** The period that you referred to earlier 2007/2008 that would have been before you came to the Department of Human Settlements?

**MR ZWANE:** That is correct Chair.

**ADV PRETORIUS SC:** Is that what you referred to earlier as the Nercha scheme?

**MR ZWANE:** The Nercha scheme was reported in the meeting in Welkom when I raised this matter. I did not know about this matter Chair at that point I must clarify that matter as I was going through this documents by the investigators.

They actually indicated that the problem of  
10 advanced payment in the Free State started around  
2007/2008 and they further discovered that when it was put  
to Mr Mokoena that why would he not have listened to the  
MINTEK meeting of the 18<sup>th</sup> of November 2010. He  
actually acceded to the point that advanced payment had  
already been done before that meeting.

**ADV PRETORIUS SC:** Well we will come to that meeting  
of the 18<sup>th</sup> of November the MINTEK meeting and the  
meeting that followed the MINMAC meeting. But for the  
moment we have done some investigation and research  
20 into the period prior to 2011 and we have found no  
evidence of any prepayment system that mirrors the  
prepayment system that was implemented in 2010/2011.

**MR ZWANE:** I can actually try and help Chair with a page  
if I be allowed.

**CHAIRPERSON:** Okay.

**MR ZWANE:** It is paragraph 7 Chair 1.6 departmental presentation dated the 17<sup>th</sup> of October 2011 slide number six of the presentation and that is found in FS20 page 370. If I may read it in short, it says:

10 “Mokoena admitted that as a result of his strategy to expedite housing delivery in December 2010 that the department had exposed itself to risk due to advanced payment made to building materials suppliers amounting to R497million although MINMAC had rejected this strategy on the 18<sup>th</sup> of November 2010. The HOD admitted in his presentation that the suppliers had already been paid in advance.”

**ADV PRETORIUS SC:** Where are you referring to now?

**CHAIRPERSON:** I think he is reading from his notes.

**ADV PRETORIUS SC:** F20 page 370? Are you referring to black number or red numbers?

**MR ZWANE:** The black numbers.

20 **ADV PRETORIUS SC:** FS20 page 370 you say it is at slide six?

**MR ZWANE:** It is paragraph 7.1.6. In his presentation it is slide six but FS20 page 370 is paragraph 7.1.6.

**ADV PRETORIUS SC:** Yes, well I do not think that there is anything here firstly that deals with 2007 and 2008, correct?

**MR ZWANE:** That is correct Chair.

**ADV PRETORIUS SC:** Nor does it deal with anything before October 2010.

**MR ZWANE:** According to my understanding Chair it deals with the 18<sup>th</sup>.

**ADV PRETORIUS SC:** Yes so let us...[intervene]

**CHAIRPERSON:** The 18<sup>th</sup> of November.

**ADV PRETORIUS SC:** ...read the last paragraph on that page.

10 **CHAIRPERSON:** Okay he says it deals with the 18<sup>th</sup> of November Mr Pretorius.

**MR ZWANE:** Yes.

**ADV PRETORIUS SC:** Yes, exactly so that is what I want to put to Mr Zwane. Firstly, if you look at paragraph 7.1.6 that is a departmental presentation made on the 17<sup>th</sup> of October 2011 not 2010. So this was a year later 17 October 2011. Do you see that?

**MR ZWANE:** Yes, Chair.

20 **ADV PRETORIUS SC:** And this presentation dealt with the Free State Department of Human Settlement expenditure and the delivery for 2011/2012 financial year. Do you see that?

**MR ZWANE:** Well can we read that paragraph Chair so that...[intervene]

**ADV PRETORIUS SC:** Yes, I will come there we are just



going through the whole of the presentation that you have just put before the Chair.

**MR ZWANE:** Because to me it says delivery in December 2010.

**ADV PRETORIUS SC:** No we will get there.

**MR ZWANE:** Okay.

**ADV PRETORIUS SC:** Let us take it step by step.

**MR ZWANE:** Okay.

**ADV PRETORIUS SC:** So slide – before we get to the  
10 slides the introductory part it says:

“The HOD Mokoena made a presentation in respect of the Free State Department of Human Settlements expenditure delivery 2011/2012 financial year.”

So this is dealing with a presentation that took place in the following financial year to the 2010/2011 year. Can I put that document before you so you can follow I think it would be easier.

**MR ZWANE:** FS20?

**ADV PRETORIUS SC:** Yes, FS20 page 371. Ms Rangarta  
20 will help you. Do you have it before you?

**MR ZWANE:** Yes.

**ADV PRETORIUS SC:** You will see then at the top of the page paragraph 7.1.6 of this document deals with the departmental presentation dated 17 October 2011.

**MR ZWANE:** Yes, Chair.

**ADV PRETORIUS SC:** I have dealt with the next two lines, slide three of the presentation”

“Introduction and background reflected that December 2010.”

It is now referring to the previous financial year.

“As a result of strategy to expedite housing delivery department exposed to risk due to advanced payments made to material suppliers amounting to R481million.”

10 That is a matter of record there, correct?

**MR ZWANE:** Yes, Chair.

**ADV PRETORIUS SC:** The next insert says that slide five of the presentation:

“Current certified progress and expenditure, and that is current for that financial year, reflected that it should be reiterated that the department does not make any payments in advance.”

And the words does not make any payments in advance are underlined.

20 “And all funds are dispersed based on certified progress and or proof of delivery of material to site.”

That appears to be the position in 2011, correct?

**MR ZWANE:** Yes, Chair.

**ADV PRETORIUS SC:** Then slide six of the presentation:

“Current certified progress and expenditure reflected that the table below reflects the total amount committed on all the contracts entered into with contractors and service providers during the previous and current financial years for the delivery of housing units across the various programs.”

And the table that appears below that comment then deals with expenditure committed for the 2010/2011 financial year and the 2011/2012 financial year that we can assume.

10 We do not have to go into that table.

**MR ZWANE:** Yes, Chair.

**ADV PRETORIUS SC:** And then there is an asterisk beneath the table which reads:

“It should be noted that the amount dispersed represents the total disbursement on projects to date and includes the R481million paid in advance to material suppliers during December 2010,”

That is the comment there and I think the paragraph which you have referred to that we now have in its context reads

20 as follows:

“Mokoena therefore admitted that as a result of a strategy to expedite housing delivery in December 2010 the department had exposed itself to risk due to advanced payments made to building material suppliers amounting to R497million.”

And then the next paragraph is important:

“Although MINMAC, it says here MINIMAC, had rejected the strategy on 18 November 2010 the HOD admitted in his presentation that suppliers had already been paid in advance.”

So what is clear from that is that there is an admission that suppliers were paid in advance after October 2010 and in fact in December 2010. That this involved risk to the department and there is no admission as to the lawfulness  
10 of such a process.

In fact, what this appear to say is that MINMAC rejected the strategy at the meeting of 18 November and we will come to that meeting in due course. Is that a fair summary of what contained here?

**MR ZWANE:** That is what I was – that is the picture that I was painting Chair.

**ADV PRETORIUS SC:** Okay so I do not think we differ very much on this point.

**CHAIRPERSON:** Yes but I am not sure that I understand  
20 what point you wanted to make.

**MR ZWANE:** The point I am making Chair is that...[intervene]

**CHAIRPERSON:** I just want to make sure that I know if there is a particular point you are trying to make.

**MR ZWANE:** The point I am making in terms of this

information, when it was asked that why was the advanced payments made and that was put to the actual the Mr Mokoena. My reading is here is that he admitted that when, when he was told that he should not continue with the advance payment, that advance payment had already been paid. And I want to say to this Commission the issue of the advanced payment, if it was raised in a meeting of MinTech, subsequently MinMech which was the 18<sup>th</sup> and the 19<sup>th</sup> of November 2010. If he admits that that  
10 particular time when that decision was made, the advanced payment had already been made. The, the document that we are talking about here which was as a result of the question I put in the meeting, the war room meeting was only signed on the 25<sup>th</sup> of November. Not the 18<sup>th</sup> or the 19<sup>th</sup>.

**CHAIRPERSON:** Okay, okay. Mr Pretorius.

**ADV PRETORIUS SC:** We know that Mr Mokoena signed that document, prepared by Mr Tsometsi on the 25<sup>th</sup> of November 2010. You are perfectly correct and you raised  
20 the issue why wouldn't he sign it. His evidence was that he signed it because he feared that he might lose his job if he didn't cooperate.

**MR ZWANE:** I deny that is the truth and the sole truth Chair, because if he was so scared of me, he would have listened to me even when I said he should not go on

holiday. It's on record that he did, did go on holiday and I left in that department as an HOD when I left the department, I never dealt with him or did anything that was indicative of the fact that I was a monster in that department.

**CHAIRPERSON:** But he said when we told you that he had already made arrangements I think for a holiday I think from last time, you, you – I thought you said you understood. So you had no issue with the fact that he was  
10 not going to be around because the arrangements for his holiday had already been made.

**MR ZWANE:** If I understood that Chair, which is true, why would I fail to understand and give him an opportunity on a document that I have given him and Muso Tsometsi? An opportunity to go and work on?

**CHAIRPERSON:** Mr Pretorius.

**ADV PRETORIUS SC:** Thanks. Well perhaps we can wrap this up just concerning that you have no problem with the facts set out in the document we've just referred to at  
20 FS2370, correct?

**MR ZWANE:** Yes Chair.

**ADV PRETORIUS SC:** Thank you. Like to move to a new topic and that is what you were told Mr Zwane of the legality or otherwise of the advanced payment scheme. Mr Mokoena says and we've touched on this that he actually

objected to the plan at war room meeting in October. And he says that your response was that you had been advised that the plan was in fact lawful. You recall anything like that happening at the October meeting?

**MR ZWANE:** I deny that Chair.

**ADV PRETORIUS SC:** Alright. Mr Chainee, do you recall who he was C-H-A-I-N-E-E or is?

**MR ZWANE:** Chain?

**ADV PRETORIUS SC:** Chainee? A member of national  
10 treasury, do you recall that?

**MR ZWANE:** When made to time lapse and the fact that Mr Mokoena was the one would deal with officials at the level of MinTech.

**ADV PRETORIUS SC:** In fairness I must just put something to you. For your comment if you know anything about it. Mr Chainee gave evidence before a disciplinary inquiry which took place in the following years and as a result of which five officials were dismissed for participation and the advanced payment scheme. You  
20 know that there was a disciplinary inquiry and officials were dismissed. Correct?

**MR ZWANE:** I, I read that in the media and as I followed up I got to learn that that was a fact Chair.

**ADV PRETORIUS SC:** In fact Mr Chainee said in the evidence and that's part of the bundles, that you have

before you, that at a Tech MinMech meeting of the 29<sup>th</sup> of October 2010, the Free State representatives were informed that the advanced payment system for materials was now allowed. And Chainee said that although it does not appear in the minutes, he said this at the inquiry. That he raised the wrongfulness of the advanced payment system at that meeting and also that it was non compliant. Now you weren't at that meeting. You've said so already in your evidence. But one would have imagined that had  
10 such strong sentiments been expressed by an official of treasury in regard to an issue that was already on the table as it were at war room meetings or whatever, at least one war room meeting. That would have been reported to you. Was that reported to you?

**MR ZWANE**: No it was not Chair.

**ADV PRETORIUS SC**: Did Mr Makatshwa report to you on the content of Tech MinMech meetings and MinMech meetings?

**MR ZWANE**: No Chair, Mr Makatshwa reported to the  
20 HOD.

**ADV PRETORIUS SC**: And did the HOD then report in turn to you.

**MR ZWANE**: There is a report I call, I recall and I think I had said that in my earlier affidavit, that at some point the HOD approached me to say National had said there were



issues that needed to be corrected in the recovery.

**ADV PRETORIUS SC:** I think you said reviewed or revised.

**MR ZWANE:** Ja. Yes.

**ADV PRETORIUS SC:** Because ...

**MR ZWANE:** And that, I accepted that whatever needed to be revised or reviewed or ...

**ADV PRETORIUS SC:** That was the expenditure recovery?

**MR ZWANE:** Yes. That is the only thing I remember and  
10 for the purpose of the Commission Mr Mokoena indicated that we were supposed to report on weekly basis to national in terms of the progress we are making in terms of these recovery plan. And I was even shown the reports that were going to national.

**ADV PRETORIUS SC:** Alright. The evidence of Mr Makatshwa continues. He says that when he heard about what had happened at the Tech MinMech meeting, and where advice had been given that advanced payments as contemplated, it says by the MEC would be unlawful. He  
20 phoned Mr Mokoena and he asked Mr Mokoena to discuss it with Mr Tsometsi and with yourself. Now you would not have been party to that call, but I just want to put it to you that in all the circumstances, it is probable that this report would have been made to you.

**MR ZWANE:** Chair, the report was not made to me. If the

report was made to me I would have endeavoured as I did earlier on when I got an indication from the office of the Minister that we are lagging behind.

**ADV PRETORIUS SC:** There was another meeting on the 18<sup>th</sup> of November, you have mentioned that. Also of Tech MinMech.

**MR ZWANE:** Correct ja.

**ADV PRETORIUS SC:** And – you nod your head. You must say yes, please.

10 **MR ZWANE:** I said, correct yes.

**ADV PRETORIUS SC:** Don't have to say please, just have to say yes.

**MR ZWANE:** I have said correct Chair. Yes.

**ADV PRETORIUS SC:** At that meeting it was mentioned that the Free State Department of Human Settlements were looking to use the advanced payment system, in particular the tripartite agreements, tripartite agreements and the session in order to make advanced payments. And the response from the meeting was a warning not to implement  
20 the plan.

**MR ZWANE:** I did not get that indication Chair.

**ADV PRETORIUS SC:** Right. I must say that that evidence goes further than what the minutes show. But the minutes of the meeting held on the 18<sup>th</sup> November, show that there was concern expressed by the meeting in regard

to the expenditure recovery plan. Were you aware of that?

**MR ZWANE:** I would, I would say on the hindsight that could fall within what I have already alluded to that HOD Mokoena reported that there were issues that needed to be corrected.

**ADV PRETORIUS SC:** Also FS12 page 300, you can go there if you like. But I will read it to you, it's not a long extract. The minutes of that meeting read:

10           “The province was advised not to enter into a tripartite agreement with beneficiaries and suppliers, since suppliers would have to supply materials in bulk without the necessary support to ensure quality and proper procurement proceedings. Also there are lot of risks involved with this arrangement.”

20           The minutes of that meeting reflect that there was a concern about proper procurement proceedings as well as the risk involved. Did you ever come to learn of the discussions? Or of the contents of the minutes of the meeting?

**MR ZWANE:** Before this Commission summoned me not, I only learned when I was here in this Commission.

**ADV PRETORIUS SC:** Do you recall being at a meeting at the National Council of Provinces in Qwakwa during 2010 with your head of department Mr Mokoena? Because it

said a report was made to Mr Mokoena at that meeting at which you both attended, saying that the, both the ERP and the advanced payment system were questioned and in fact not accepted at the TechMin Mech meeting.

**MR ZWANE:** In Qwakwa?

**ADV PRETORIUS SC:** Well the report was made to Mr Mokoena in Qwakwa and the inference, the probable inference that we would seek to draw is that he would have spoken to you about it.

10 **MR ZWANE:** No Chair.

**ADV PRETORIUS SC:** As far as the officials are concerned, their attendance at meetings particularly of MinMech or Tech MinMech, where the advanced payments system amongst other things was discussed. The evidence is that there was a continued objection to firstly whether the plan should be entered into and secondly its legality. Now we know that the legality of the plan was discussed at a war room meeting at which you presided and was a matter of concern. And they must have known it was a  
20 matter of concern to you as well, because that's why the document had to be prepared, the document signed on the 25<sup>th</sup> of November. Surely in those circumstances probable that they would have reported to you the concerns about the legality and the opinion that it was illegal. And I have given you the incidents where these discussions took

place. And I just want to put it to you, it is more probable than not that this would have been reported to you.

**MR ZWANE:** In the discussions Chair of that war room meeting, there is, the resolution or the end product of the meeting was that the officials must go back and research broadly on all the matters that were raised in the meeting. And come back with a document which I called a legal opinion at that time as a layman.

**ADV PRETORIUS SC:** We had agreed it wasn't an opinion.

10 **MR ZWANE:** After the explanation by you Chair and explaining the details of what happened behind the scenes which I would have not known, we agreed that a legal opinion was not sought. But at the time where I was I had given the HOD, the head of the department and the people who knows law to go and research about their concerns that were raised there. And I thought as an oversight person, I had done my work. When they came back with the document which is signed by the HOD, I took it for granted that all the issues that were of concerns in the  
20 meeting were addressed.

**ADV PRETORIUS SC:** Yes. There remains the issue of accountability. I was going to raise that at the end of the day that we have done some research into the Public Finance Management Act and into certain instruments introduced by cabinet in 2013 and 2011, after these events

that talks to the power of MECs and ministers to delegate. That also deals with their residual accountability. Notwithstanding that delegation and their duties in that regard. It seems to us and we'll do further research on that, that there was a gap in the question of what accountability MECs have when they delegate tasks to heads of department. And you will know that that is particularly relevant in terms of the Housing Act which you have now studied and we'll deal with in a moment. So

10 Chair that is a matter that may have to be addressed further.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** It may be a *lacuna* that requires attention.

**CHAIRPERSON:** Ja, no, that's fine.

**ADV PRETORIUS SC:** Because it seems that approach adopted here is that once there is a delegation from a MEC to a HOD, a line can be drawn in relation to accountability. That's your approach, isn't it?

20 **MR ZWANE:** Well Chair I want to agree with the – your statement you have just earlier put. I think because of the challenges in terms of the clear line of delegation, that is why some steps to try and close the gaps that were existing were then taken around 2013.

**CHAIRPERSON:** In?

**ADV PRETORIUS SC:** 2018. And earlier ...

**MR ZWANE:** Ja.

**ADV PRETORIUS SC:** In 2013?

**MR ZWANE:** Yes. So I, I do understand Chair.

**ADV PRETORIUS SC:** Alright.

**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** But quite apart from the formal steps taken it would seem a matter of common sense in responsibility that when a MEC delegates a task to an executive official, or to an official, that there should be a  
10 degree of supervision compelled and an accountability which remains. Makes common sense and it seems to me that that has now been recognised.

**MR ZWANE:** That is correct Chair.

**ADV PRETORIUS SC:** Let's go on to deal with the warning about the legality of the advanced payment system that came to the fore in February 2011 from National, that is the National Department of Human Settlements. The evidence is that during February 2011, this was Mr Mokoena's  
20 evidence the then minister of Human Settlements Mr Sexwale and the DG of Human Settlements Mr Zulu called the Free State Department of Human Settlements to a meeting to explain why these advanced payments had been made. And that meeting was attended by yourself, Mr Mokoena, Mr Tsometsi, and Ms Debbie Hattingh, the new

CFO of the department. You recall that meeting?

**MR ZWANE**: No Chair.

**ADV PRETORIUS SC**: Who attended?

**MR ZWANE**: I don't recall attending a meeting in February of that nature and I have said in this Commission that I was reshuffled from that department the second week of February. So I do not recall that meeting.

**ADV PRETORIUS SC**: Well Mr Mokoena goes on to say at this meeting the minister instructed the department to stop  
10 making advanced payments. And that you at the meeting then referred to Mr Tsometsi's document and you showed that to the minister to say that the payments were legal. But the minister then insisted that the payments be stopped.

**MR ZWANE**: I don't ...

**CHAIRPERSON**: Ja, Mr Pretorius, I then note there against that paragraph which says the witness, which would be Mr Mokoena, says reference to document is a mistake.

20 **ADV PRETORIUS SC**: I am sorry Chair.

**CHAIRPERSON**: I am saying ...

**ADV PRETORIUS SC**: I didn't follow your question, your statement.

**CHAIRPERSON**: Ja. I think you are, you were, you were basing your question to the second paragraph under



paragraph 27, at page 348. Is that right?

**ADV PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** Yes. I am saying that I then note, a marginal note that I made when Mr Mokoena was giving evidence which says in relation to that paragraph, that witness says reference to document in that part of the paragraph is a mistake. Did you recall anything along those lines?

**ADV PRETORIUS SC:** I don't recall that Chair. And in fact  
10 this, this proposition is based on the contents of the statement.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Might be evidence. So stand to be corrected there.

**CHAIRPERSON:** Maybe your team could just check. I, I certainly have a note. Initially I think before the witness said anything, I put a question mark and then I have a note that says, witness says reference to document is a mistake.

20 **ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** So, so I just mentioned that in case that is what the witness may have said.

**ADV PRETORIUS SC:** Yes, I'll check that because it may have been and I seem now to recollect that the distinction may have been whether the document was put before the

minister as a document, or whether it was referred to in the abstract as having contained issues as to its legality. But before I put anything on the table Chair let me just ...

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Let me check.

**CHAIRPERSON:** Yes. Of course, even afterwards once the position has been established a question could be put to Mr Zwane but put a supplementary affidavit and deal with a question on that paragraph if necessary.

10 **ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** I – it may be a matter of detail because as I recall the position Mr Zwane, his version is that he did not attend such a meeting at all.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** So would not recall the contents.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** Whether to that extent of detail or not, am I correct Mr Zwane?

20 **MR ZWANE:** You are correct Chair.

**ADV PRETORIUS SC:** But Mr Mokoena goes further to say he gave an undertaking that advanced payments were stopped, would stop and he did put a stop to them by the end of February 2011. That's what he says. It goes further and perhaps I should go further to complete the

sequence of events. Mr Mokoena says then that on their return to Bloemfontein and after the meeting with national, you insisted that they continue to pay the contractors. What do you say about that?

**MR ZWANE:** Chair, I, I deny that strongly. And want to say to this Commission even if by chance I would, I would have said that, I had said to this Commission I left the department the second week of February. Meaning I would not have been a stumbling block for any means for the  
10 officials to stop that kind of an exercise if it was illegal. I was no longer there. But I don't recall me insisting on anything that national had actually said it is illegal for us to do.

**ADV PRETORIUS SC:** There is evidence notwithstanding that background that the payments continued.

**MR ZWANE:** That's correct Chair, I've seen that evidence when I came to this Commission.

**ADV PRETORIUS SC:** Thanks, and you yourself confirm that? Let's move on. That was dealt with thoroughly at the  
20 end of the last hearing.

**CHAIRPERSON:** Well of course if the advanced payments were stopped after that meeting with the national minister, that could have or would have interfered with the plan to ensure that by the end of the financial year a certain amount of progress had been made in the building of

houses and the spending of the money on housing, is it not?

**MR ZWANE:** Chair the information in front of this Commission that we all know is that finally money was taken. A resolution on the 12<sup>th</sup> of January 2011, a letter was written by the DG to the HOD indicating that their seven days have lapsed, lapsed and so money will be taken. And we all know the response by HOD with end that he's ...[indistinct] the slate, he thought we were  
 10 progressing well. So there was a decision that money would be taken. Why would the department continue with advanced payment if money was taken? Because that would have created a situation for the financial year. I must say Chair that it is correct that for all intents and purposes we had tried our level best to build houses. And that information is here. I don't want to dwell in it. And to a certain extent we succeeded. But the control or oversight, administrative oversight, because from where I'm standing, where I am seated, I should say the issue of  
 20 advanced payment or tripartite arrangement has been done by a number of provinces. But the how that issues monitored, I think becomes a problem and we must ...

**CHAIRPERSON:** I'm going to stop you.

**MR ZWANE:** Okay.

**CHAIRPERSON:** Because my question was simply whether

you would accept that if the advanced payment was stopped, that would mean the building of houses further would have to stop, because and that the spending of the money allocated for housing would also – it would mean that by the end of the financial year the department might not have used all the money that had been set aside for houses. But I think your answer is, you are simply saying well there is correspondence that the, there was a decision to take the money away. But I thought you could say yes,  
10 that would be the, that would be the effect of stopping advanced payment or no, that would not be the effect.

**MR ZWANE**: That would have mean a project which was linked to that money which was taken was going to suffer.

**CHAIRPERSON**: Yes, yes.

**MR ZWANE**: You are correct Chair.

**CHAIRPERSON**: Okay, alright.

**ADV PRETORIUS SC**: And at the last hearing we dealt with that letter of January and the response by the department and the press statement, we dealt with that at  
20 some length you will recall Chair. And its common cause that the program was called to a halt in January, is that correct? We know it continued after that, but there was an occasion in January where the program was stopped. Is that correct?

**MR ZWANE**: I can't remember Chair. I remember that they

were discussions with national in January that continued.

And finally I ...

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Well we'll look we'll look at that.

**END OF RECORDING**

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**INQUIRY RESUMES**

**ADV PRETORIUS SC:** ... in that regard and ...

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** In our summary for the Chair we'll deal with that issue.

**MR ZWANE:** Okay.

**ADV PRETORIUS SC:** Chair page 178 of the transcript of 22 September 2020. It is correct that Mr Mokoena corrected his statement. I was referring to the statement. And said, he did not mention the document. He just spoke about his plan without mentioning the document. So he  
10 mentioned neither, he neither presented the document.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Nor referred to the content of the document.

**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** It spoke about issues that would have been contained in the document.

**CHAIRPERSON:** Okay, okay.

**ADV PRETORIUS SC:** The disciplinary proceedings that followed as a result of which five officials were dismissed  
20 and not Mr Mokoena. Heard the evidence of Mr Sisha, S-I-S-H-A from national treasury, who testified that the Division of Revenue Act, Section 50 which we've dealt with in evidence here and the Treasury Regulations prohibited advanced payment for goods where they had not been delivery of those goods for the benefit of government. And

those, that evidence was confirmed and the disciplinary inquiry findings by Advocate Van Graan. The proposition I want to put to you is that a fully informed official or MEC ought to have known that the advanced payments system was unlawful. As at least being in contravention of the Division of Revenue Act and the Treasury Regulations. What do you say to that?

**MR ZWANE**: I would say, I said in my earlier evidence that in terms of DFMA and Treasury Regulation 8.2.3 advanced  
10 payment when there is a clear contact of what is going to be paid in advance is not illegal. I have said earlier on, today that on the hindsight one must admit that the, the administration of the whole process had the loop, loopholes in terms of mitigation, risk, mitigation controls, internal controls and things like that. But the scheme itself Chair, in terms of this facts I've mentioned, even at that time nobody brought it to my attention even when I have said they must go and research, that this could be a legal kind of a scheme.

20 **ADV PRETORIUS SC**: There was a judgment of the full bench of the Free State division which went further in commenting on the tripartite agreements. And the session agreements that were part of the advanced payment system. There the presiding judge who wrote the judgment said the material supply session agreements were and I



quote:

“Used as part of the documentation to create the farce of legitimacy so as to make the payments look regular and in accordance with the law. As indicated above it was done to circumvent the provisions of DORA, that’s the Division of Revenue Act.”

Are you aware of that finding?

**MR ZWANE**: No.

10 **ADV PRETORIUS SC**: Now you’ve been through the session agreements, their implications and their import. I don’t want to repeat that now. We’ve been through it exhaustively. But I just wanted to put that finding before you.

**MR ZWANE**: Okay.

**ADV PRETORIUS SC**: The auditor general found and I quote:

20 “Goods and services with the transaction value of over R500 000,00 were not procured by means of a competitive bidding process as per the requirements of ...”

And reference to various instruments of national treasury. We know that there was no competitive bidding process before the allocations were made for involving advanced payments. We know that. Don’t we?

**MR ZWANE:** I think without really going back Chair we have dealt with that matter earlier and I have expressed my understanding.

**ADV PRETORIUS SC:** Yes, well we know that during 2010, 2011 and in respect of the expenditure for 2010, 2011 there was no competitive bidding process that was completed. Correct?

**MR ZWANE:** The open tender was abandoned.

**ADV PRETORIUS SC:** And there was no other competitor  
10 bidding for ...[indistinct].

**MR ZWANE:** And that ...[indistinct] were taken, yes Chair.

**ADV PRETORIUS SC:** Yes. The disciplinary inquiry reviewed the evidence of a number of witnesses as a result of which those five officials were dismissed. It was found in those proceedings by Advocate Van Graan that the advanced payment system, particularly the act of paying on session was introduced through a decision of the MEC, yourself, the former HOD Mr Mokoena, and the former chief financial officer Ms Dlamini. You have a comment on that?

20 **MR ZWANE:** Through, I would say through a decision of the executive committee which was researched at that particular time. And finally brought to me when it was signed. And I agreed with that.

**ADV PRETORIUS SC:** Right. Certain adjustments had to be made to the housing subsidy system to accommodated

these advance payments. Do you know about that? And we've discussed the retention clause. Do you recall that?

**MR ZWANE**: I remember the retention clause and the guarantees that were supposed to be there.

**ADV PRETORIUS SC**: Oh. Those were removed. Did you know about that? Did you give those instructions?

**MR ZWANE**: No Chair, I wouldn't give such an inst – in fact I did not tamper with the, the legal means of instrument in running this scheme.

10 **ADV PRETORIUS SC**: Notwithstanding your participation in the advanced payment scheme and the participation of Mr Mokoena, we know that there were no consequences that you face disciplinary or otherwise in the ensuing year, am I correct? The only people to be disciplined and dismissed, lose their jobs were the five officials who were subject to the disciplinary inquiry. And they were found guilty of participating in the war room meetings and in the advanced payment system. That was what they were found guilty of and fired for. Is that not somewhat unfair?

20 **MR ZWANE**: Well Chair as I went through this document I think there were other matters that were also put as charges to those officials. But when it comes to the specific matter, I think it would be, it would have been unfair that the junior officials under the accounting officer would be called and faced the music for the documents

that was researched and produced and signed, or approved by the accounting officer. I think it is unfair that that process had to be dealt with the way it has been dealt with. I always carried a view and as I read here that some of these officials had other issues like giving contract out of the signed allocations and other matters. Otherwise I would agree with the Chair that pertaining to this matter it would have started at the head. And if there is any issue that the, the team, the disciplinary team wanted to raise or  
10 find out at least, I would have been gladly wanted to cooperate with that process to say the least.

**ADV PRETORIUS SC:** Yes, well an observer might remark that the more junior officials were targeted as escape goats for the decisions of more senior officials.

**MR ZWANE:** Well Chair, it, it seems like that publicly as, as it happened. I wouldn't, I wouldn't blame the HOD who took that decision that if there's something untoward what was supposed to be the normal running of things, that issue should be corrected.

20 **ADV PRETORIUS SC:** Alright. You've gone as far as the HOD, what about the MEC Mr Zwane?

**MR ZWANE:** Well Chair the – to be fair with this Commission I had not committed any wrongdoing knowingly, or any – I have not rejected any proposal as the MEC by then that was brought to me by my team. Even

when we were at the meeting where issues were raised, I gave them a chance to go and research and make sure that we have a sound document that we can work on. During December the minutes will, will tell you. 30<sup>th</sup> Of December. A concern was raised. I called the meeting in Bethlehem where the CFO had raised issue in terms of the controls. And I requested that those controls must actually be addressed. So from where I am seated, I have done everything in my power to ensure that any wrongdoing  
10 should be eliminated. And there is proof to that effect. I wouldn't have participated in any way, in any wrongdoing, knowingly.

**ADV PRETORIUS SC:** I hear your denial and let me put the proposition to you. Well let me put another proposition to you because it does seem from the evidence that a legitimate argument can be made that the law was deliberately ignored for the purposes of spending the money before the end. And in fact that was said by the department in its founding affidavit in later review  
20 proceedings. But let me not tax you with that. You were not part of that drafting. That evidence is before the Chair and your evidence will be weighed up against that evidence, including the evidence that we've dealt with over the last three days. Court will bare with – I'm sorry. Chair if you would bear with me for a moment. Given our

discussion before we started with evidence Mr Zwane, we over that hour. So if I may say you lose the bet, but hopefully we can speed up. I want to put certain different propositions to you and I dread asking this question or raising this topic again and that's the list of the 106. You remember we spent a day discussing that and other lists. That evidence is on record and I hope we don't have to go down that route again. But I need, I need to put to you certain things that Mr Mokoena said and Advocate Van  
10 Graan found about that list. Mr Mokoena says that he was given a list of contractors, 106 contractors by yourself and he was told by you to appoint those contractors. What do you say to that? It seems to be reasonably consistent with your evidence.

**MR ZWANE:** I deny that issue Chair. I have earlier on indicated how the process was run in that department and I never interfered that process. There would be a time where the officials lead by HOD, that will after following processes, due processes in terms of procurement will then  
20 approach the MEC to say we are ready, this is what must be done in terms of allocation and the contractors.

**CHAIRPERSON:** Alright.

**MR ZWANE:** So I deny that I, myself gave him a list that he does not know where it comes from.

**ADV PRETORIUS SC:** Alright, well he might have known

where it comes from, but we know from your evidence at least that you approved that list. And signed it, in September 2010.

**MR ZWANE**: I did not sign only that list Chair.

**ADV PRETORIUS SC**: Well you might have signed other lists.

**MR ZWANE**: Yes.

**ADV PRETORIUS SC**: But you signed that list and we know that that was the list which formed the basis of later  
10 appointments of contractors and suppliers.

**MR ZWANE**: Even in my evidence I have not denied knowing the list Chair. My issue has always been how the list was developed.

**ADV PRETORIUS SC**: Alright.

**MR ZWANE**: The list I know.

**ADV PRETORIUS SC**: We'll come to that in a moment.

**MR ZWANE**: Okay.

**ADV PRETORIUS SC**: But for the moment you signed the list.

20 **MR ZWANE**: That is correct, ja.

**ADV PRETORIUS SC**: You approved the list.

**MR ZWANE**: That is correct.

**ADV PRETORIUS SC**: That is your evidence.

**MR ZWANE**: Yes.

**ADV PRETORIUS SC**: We've been through that.

**MR ZWANE:** Yes.

**ADV PRETORIUS SC:** For hours on end.

**MR ZWANE:** Yes.

**ADV PRETORIUS SC:** And that list was the list from which suppliers and contractors were chosen in November and December and part of January 2010 and 2011. Correct?

**MR ZWANE:** That is the list that came as a result of the earlier dispute by contractors when we had actually said the work must started earlier in August. Exco gave that  
10 decision. And there was a dispute declared by this other contractors, so the whole process had to, had to be stopped.

**ADV PRETORIUS SC:** I was hoping we wouldn't have to ...

**MR ZWANE:** Okay.

**ADV PRETORIUS SC:** Go down there again.

**MR ZWANE:** Oh okay.

**ADV PRETORIUS SC:** No, I can't stop you if you wish to go down there.

**MR ZWANE:** No.

20 **ADV PRETORIUS SC:** But all I can say ...

**MR ZWANE:** I'm saying ...

**ADV PRETORIUS SC:** Well let me, let me stand back. You give your evidence.

**MR ZWANE:** Maybe it would have helped me to hear what the leader of evidence wants to say.



**ADV PRETORIUS SC:** Yes, alright. I will try and help. But it's not very helpful. We've studied the evidence of that day closely. And there is not one consistent version, but there on our calculation varying versions that total about seven in total. And I'm not going to go through that because we would spend weeks here.

**MR ZWANE:** Okay, okay.

**ADV PRETORIUS SC:** The evidence that you gave understandably as evidence from your own recollection 10  
10 years ago.

**MR ZWANE:** Yes.

**ADV PRETORIUS SC:** And I think you will concede that during the course of the day it differed from time to time. You corrected yourself, different explanations were given. But what – you agree with that, because you nod?

**MR ZWANE:** No, I do agree Chair.

**ADV PRETORIUS SC:** Yes. That list of 106 we eventually learned from your later versions that it was not the list presented to Exco on the 30<sup>th</sup> of January, oh 30<sup>th</sup> of June  
20 2010. It was a later list compiled and signed by you in October. Let's can we settle for that at least?

**MR ZWANE:** We can settle for that provided it would say it also contained some of the contractors that were there in the list of June.

**ADV PRETORIUS SC:** Well whether it did or not there

were 23 of those contractors ...

**MR ZWANE:** Yes.

**ADV PRETORIUS SC:** That we know from the open auditor's report.

**MR ZWANE:** Yes, yes.

**ADV PRETORIUS SC:** But there were 83 others that came from various sources and I'll give you some detail in that regard in due course.

**MR ZWANE:** Yes.

10 **ADV PRETORIUS SC:** But what I wanted to put to you for the moment is not the chequered history of that list, to put it at its lowest, but simply to tell you what Mr Mokoena said and asked for your comment.

**MR ZWANE:** Okay.

**ADV PRETORIUS SC:** Mr Mokoena said that he queried with you that on that list were many companies or contractors that he was seeing for the first time. And he asked, why are there so many new contractors on this list. And he resp – you responded according to Mr Mokoena by  
20 saying, this is my list or this is my plan and I have the power to allocate.

**MR ZWANE:** I deny that fact Chair.

**ADV PRETORIUS SC:** And he said that after the war room meetings that you made allocations of contracts to contractors and suppliers.

**MR ZWANE:** I deny that fact Chair.

**ADV PRETORIUS SC:** That was also a finding of mister, Advocate Van Graan after reviewing the evidence put before him. That, that evidence was confirmed by Mr Mkhathshwa who said that you chose contractors that would be allocated unit to build.

**MR ZWANE:** Mr Mkhathshwa would have never been with me at any moment as I have indicated our interaction was with HOD. I would not understand how, how would he know  
10 at least to say the least to what he is saying.

**ADV PRETORIUS SC:** We dealt with this last time very briefly and I think your response to the proposition which is important now to raise in respect of questions I'm about to put was that on that list there were a number of contractors who had not been part of the group of contractors that submitted bids in the open tender process in April 2010. You said you didn't know about that, do you recall that?

**MR ZWANE:** That is correct Chair.

**ADV PRETORIUS SC:** There were also a number of  
20 contractors who had been disqualified during that process. Do you know anything about that?

**MR ZWANE:** No Chair.

**ADV PRETORIUS SC:** Well we've compared the bidders list and the documentation relating to that process, the bid evaluation committee documents and the bid adjudication

committed documents, and we've compared that with the list of 106. Not going to go through those lists with you but merely to say there were, there was a material number of people who did not partake in that process who found their way onto the list of 106. And there were in addition people who had been disqualified. There was some discussion – you nod your head. We've established that. We've established that you don't know anything about that, can't contest it. But there, there was a discussion at the  
10 last hearing that perhaps that list of 106 comprised those people who had passed the threshold of acceptance in the tender process. And I just want to put to you that's not correct on our research. And we'll put the detail in our submissions.

**MR ZWANE:** That was my assumption as you will remember Chair. When I was asked my understanding of the list I had signed.

**ADV PRETORIUS SC:** Yes.

**MR ZWANE:** I've said those lists should have been  
20 composed of all the contractors who have passed the test. That is what I said in this Commission and I want to stand with that.

**ADV PRETORIUS SC:** Alright. Well an examination of the list will show what it shows. And that in fact is confirmed in the open waters report and just for the record if I could

give a reference, it is at best there is 15 page 537 and following paragraphs 7.6 where those particular bidders are listed for people who didn't bid are listed and people who did bid and were disqualified are listed. Now according to the investigators and the evidence leader's examination of these various lists, we found a number of contractors who found their way onto the list of 106, but did not tender at all in the open bidding process. And two of those were Rob's Construction and Thuthella Logolo(?).

10 Do you know of those entities?

**MR ZWANE**: No.

**ADV PRETORIUS SC**: Alright. Mr Mokoena in his statement said that on that list of 106, he did not recognise the first six contractors that were recorded on that list. He remembers the names of three of them. That Allatory, Koena Property Developers and Raloto Properties. Do you recall the names of those contractors?

**MR ZWANE**: No.

20 **ADV PRETORIUS SC**: Mr Mokoena he put it as a belief he had no, more than a belief based on what I will put to you. But these contractors were close to you Mr Zwane because you called Mokoena personally to expedite their payments. What do you say? You have read Mr Mokoena's evidence, what do you say about that?

**MR ZWANE**: I deny that evidence Chair.

**ADV PRETORIUS SC:** He also says, well Mr Makesi(?) said in the founding affidavit, in the review proceedings, that it would have been irregular for a MEC to be involved in the appointment of contractors. You would concede that?

**MR ZWANE:** That's what I've been saying all along Chair.

**ADV PRETORIUS SC:** Yes. Let's just deal with Rod's Construction for a moment and I want to put to you what the investigators have found during the course of the  
10 investigations. Rob's Construction with that name appears on the list of 106. I presume you don't contest that.

**MR ZWANE:** I would not contest any name appearing on the list that I have signed.

**ADV PRETORIUS SC:** And they do not appear on the bid evaluation committee minutes which is a full list of all those who tendered. So the allocation list reference Chair is it is for 14.224 and 225. That's where Rob Construction name would appear on the list at those pages. And the bid evaluation committee minutes appear at FS20 page 63. All  
20 this will be summarised in the work yet to be done by the legal team Chair. The investigators go further in their report to say that Rob's Construction appears to be a trading name for Rob's Investment Holdings Pty Ltd. Do you know anything about that?

**MR ZWANE:** No Chair.

**ADV PRETORIUS SC:** Alright. And the reason they say that is in a later tender Rob's Investment Holdings Pty Ltd including, included housing allocations given to Rob's Construction as part of its own experience. So it cited Rob's Construction as part of Rob's Investment Holdings experience. So they related companies according to the researchers.

**MR ZWANE:** Okay.

**ADV PRETORIUS SC:** You understand the proposition?

10 **MR ZWANE:** I understand Chair.

**ADV PRETORIUS SC:** Rob's Bricks received a payment of seven million rand. It's not clear whether that was as a material supplier or not. That payment is shown in the investigator's report at FS20 page 203 to 205 Chair. So the investigators have concluded that Rob's Bricks and Rob's Investment Holdings are associated as and part of that association would include Rob's Construction. Do you know a Mr Blackie Seoe, S-E-O-E? Seoe?

**MR ZWANE:** Yes, I know him Chair.

20 **ADV PRETORIUS SC:** Do you know that he was the sole director of Rob's Investment Holdings at the time?

**MR ZWANE:** No Chair.

**ADV PRETORIUS SC:** That also appears in the supplementary investigator ...

**CHAIRPERSON:** Well do you know, even if you don't know

that he may have been the sole director, do you know him to have been part of that entity.

**MR ZWANE**: I know him Chair as somebody who was very close to sports especially boxing. If I am not mistaken I think at a particular time he participated because I used to see him in that kind an activity. I know he is from Free State also.

**CHAIRPERSON**: Oh but you do not know him to be connected to any particular company or entity?

10 **MR ZWANE**: No I would not know all his companies.

**CHAIRPERSON**: Ja okay alright.

**MR ZWANE**: I would not.

**CHAIRPERSON**: Okay.

**ADV PRETORIUS SC**: The relevant references just for the record for the moment Chair appear at FS21.827 and FS21.832 to 3. That by way of background we know from the researches of the investigators that Robs Construction received housing allocations towards the end of 2010 -2011 – beginning of 2011. Do you know that for a fact or not?

20 **MR ZWANE**: Outside – outside the 106.

**ADV PRETORIUS SC**: No they were on the 106.

**MR ZWANE**: And then they received other allocation.

**ADV PRETORIUS SC**: No and as a result of being on that list they received housing allocations.

**MR ZWANE**: My recollection is that all the 106 contractors



should have been allocated.

**ADV PRETORIUS SC:** Right so you would not have a problem with the fact that if Robs Construction were on that list they received allocations?

**MR ZWANE:** I would not have had a problem with any contractor Chair.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** On that list because I would have assumed that it had gone through processes and it is correct for them  
10 to be there.

**ADV PRETORIUS SC:** Well we know that they did not go through the open tender process and they were not on that result and data base but let me just put that to you as a fact I do not want to go back into the data base the 106's the journey enough for the moment unless of course you want to go there of course you are entitled to do so. But anyway let me just take this story a little further.

Lucky Seoe and Mr Magashule were co-directors of an entity called Sambal, S-a-m-b-a-l Investments, did you  
20 know that?

**MR ZWANE:** No I do not Chair.

**ADV PRETORIUS SC:** Yes. That evidence comes from the transcript of an interview that the investigators had with Mr Seoe he is since deceased recently deceased. So it is a transcript of an investigator interview for the record again

FS13 3AA 389. So the CIPC the official record show that Mr Magashule and Blackie Seoe were former directors in a company together.

But we know too from FS12 391.31 that a payment was made from Rob Investment Holdings to Ms Cholota in the Premier's office and that receipt was acknowledged by Ms Cholota.

So we know that without a formal process a company received a benefit as a contractor towards the end of 2010  
10 that there was some association – business association between the rector or that company although you do not know that and Mr Magashule and that subsequently a payment was made from Robs Investment Holdings to the office of the Premier. Do you know anything about that?

**MR ZWANE:** No Chair. I only saw the transcripts in this document but prior to that I did not know anything.

**ADV PRETORIUS SC:** Really. And interviews have been held with the person of Robs Investment Holdings who made the payment Mr Mtwentula, do you know him?

20 **MR ZWANE:** Mr?

**ADV PRETORIUS SC:** Mtwentua – M-t-w-e-n-t-u-l-a

**MR ZWANE:** No Chair.

**ADV PRETORIUS SC:** Alright. Chair all that information is contained in the Investigators Report in some detail. You recall that at the last chairing we spoke about a person

Rochelle Els, do you recall that?

**MR ZWANE:** Rochelle?

**ADV PRETORIUS SC:** Yes. Do you know who she was?

**MR ZWANE:** I have met Rochelle I think when we were expecting some – inspecting some houses.

**ADV PRETORIUS SC:** Yes she is a member of the Thuthela Bogolo Trading Enterprise CC an entity which also appeared on the 106 list but did not appear on the bid evaluation committee lists as a tenderer. She received a housing  
10 allocation and Mr Mokoena's evidence is that he believed that Rochelle Els was close to Mr Magashule. We have dealt with that you recall?

**MR ZWANE:** Yes I recall Chair.

**ADV PRETORIUS SC:** Right. And the reason given by Mr Mokoena for that evidence was that because you Mr Zwane used to tell Mr Mokoena that Mr Magashule has said that Els should be appointed and her claims should be expedited. What do you say about that?

**MR ZWANE:** I can put it in this commission that Mr – the  
20 HOD Gift Mokoena was more close to the former Premier than me. I think if there was issue of that nature that issue would be communicated with him not me as he have indicated in this commission of how far they come both of them.

**ADV PRETORIUS SC:** We have also since obtained a

second affidavit of Mr Mokoena and again I must put it to you although I do not want to revisit the evidence of the last hearing but if you wish to do so of course you may.

Mr Mokoena says yes indeed a data base of eligible contractors was kept. That there was a data base that was kept. But he said it was never the position that someone could just be given a contract because they appeared on the data base or that one's presence or listing on a data base entitled one to receive an allocation of houses to be built  
10 and the like.

The purpose of a data base was to notify people on the data base or to notify entities on the data base that a tender was going to be issued and that they could then tender in a formal process. Have you read that affidavit?

**MR ZWANE:** Yes I have.

**ADV PRETORIUS SC:** What do you say about that?

**MR ZWANE:** I find it very strange Chair.

**ADV PRETORIUS SC:** Well...

**MR ZWANE:** In fact other evidences including Mmuso  
20 Tsoametsi's evidence would say they will call it – they will go out for tenders and those tenders will be adjudicated and become a data base where it could be allocated for the next five years for those contractors that appear on the tender and that is what I was told.

**ADV PRETORIUS SC:** Well the fundamental difference

between you and Mr Mokoena on that because what Mokoena says in his affidavit is your – you could be invited to an advertisement process to express interest in appearing on a data base but thereafter the allocation of work would depend on a fair procurement system.

**MR ZWANE:** Well Chair that is not what I was told. That process lies with him when he was a HOD. Mr Mokoena was there in 2004 when this other process did take place. So I would not do – I would not delve much in terms of how they  
10 administered administratively because that was not my space and I have never interfered with that space.

If an open tender was called for I had all supported it. If they came back with the data base giving me reasons there is people who have been there I have never given them a problem but I am saying officials who have been there longer than me are giving different versions of how the department used to perform there.

**CHAIRPERSON:** Of course you did testify that although you might not when you came to the department you might now  
20 have known about the Housing Act. You did know the – you did know about the PFMA and you did know about – ja you did know about the PFMA and you had an understanding of that, is that correct?

**MR ZWANE:** I did...

**CHAIRPERSON:** Is my recollection of your evidence

correct?

**MR ZWANE**: I corrected myself Chair.

**CHAIRPERSON**: Yes.

**MR ZWANE**: On the 12 October.

**CHAIRPERSON**: Yes.

**MR ZWANE**: That I had seen the Housing Act.

**CHAIRPERSON**: Yes.

**MR ZWANE**: And I knew about it – I was told about it.

**CHAIRPERSON**: Yes.

10 **MR ZWANE**: Although I relied more on the PFMA.

**CHAIRPERSON**: Ja.

**MR ZWANE**: Because I was from the municipality.

**CHAIRPERSON**: Yes.

**MR ZWANE**: Yes. The – Section 6.3 I was taken aboard on those sections where the MEC administered and so forth and so on.

**CHAIRPERSON**: Ja okay.

**MR ZWANE**: Yes.

20 **CHAIRPERSON**: You are saying that your last evidence was that ...

**MR ZWANE**: I corrected it.

**CHAIRPERSON**: You corrected yourself and you said you knew about the Housing Act.

**MR ZWANE**: Yes.

**CHAIRPERSON**: Is that right?

**MR ZWANE:** That is – yes Chair.

**CHAIRPERSON:** Okay and you had an understanding of it or you just knew about it?

**MR ZWANE:** The – I understand it.

**CHAIRPERSON:** Housing Act.

**MR ZWANE:** I understand it Chair.

**CHAIRPERSON:** You understood it as well.

**MR ZWANE:** Yes I understood it.

**CHAIRPERSON:** Oh okay alright. But you – my focus is the  
10 PFMA.

**MR ZWANE:** Yes.

**CHAIRPERSON:** You – you – am I correct in understanding that what you said last time was that you had an understanding of the requirements of the PFMA?

**MR ZWANE:** That is correct Chair.

**CHAIRPERSON:** Yes. Now was it your understanding that if there is a data base – if there are companies who are on the department's data base there is no need to go on open tender or was your understanding that the two are not  
20 inconsistent with each other.

The fact that you have a data base of companies does not mean – does not exempt you from going on open tender when you are supposed to go on open tender. What was your own understanding of the position?

**MR ZWANE:** I think it will help us Chair to separate the data

base as it appears on the PFMA because it will have limitations in terms of the amounts and so forth. Maybe try to understand how the data base used by the Department of Housing at that particular time used to be done.

A competitive process would be entered into like the constitution and other relevant acts would want. And out of that action instead of looking for ten contractors that are going to get a job for that particular year you go and look for 150 and then you come back and put all these contractors  
10 that have undergone that competitive process to be on the –  
on your list which is famously

**CHAIRPERSON:** That data base.

**MR ZWANE:** Which has famously gone to data base.

**CHAIRPERSON:** Yes ja.

**MR ZWANE:** But...

**CHAIRPERSON:** Ja the list.

**MR ZWANE:** The list.

**CHAIRPERSON:** Ja.

**MR ZWANE:** This is the list that even the evidence of some  
20 of the people who were here was saying for the next five  
years that list will be used. Maybe for the purpose of this  
commission let use the word list.

**CHAIRPERSON:** Yes.

**MR ZWANE:** And that list will be used until it expires.

**CHAIRPERSON:** Ja.



**MR ZWANE:** In the next five years.

**CHAIRPERSON:** Yes.

**MR ZWANE:** And – so because that had followed a competitive process Chair that is how things were happening when I came there and I expressed at some point a view I must say which is not in my evidence that – why is that so? Why can we not every time when we have a project go through this process?

**CHAIRPERSON:** Open tender process.

10 **MR ZWANE:** Yes. They said there is no time when we are not building houses in this department whether unfinished houses or new houses.

Now if you are here after you are going to be entering into this process it takes time and you are not going to finish. So this is how we are doing it here and well I – I then understood what they were saying and that is what I aligned myself with when I was there.

**CHAIRPERSON:** Okay just to – to summarise that. Am I correct in saying what you are saying is after talking to them  
20 about this data base of list phenomenon.

**MR ZWANE:** Yes Chair.

**CHAIRPERSON:** Your understanding was that once companies or entities had been included in the data base or in the list one that would be for five years.

**MR ZWANE:** That is correct Chair.

**CHAIRPERSON:** And two there would be no open tender process in respect of each project that might come up.

**MR ZWANE:** Within the five years.

**CHAIRPERSON:** Within the five years and – but your understanding was that before a company or companies were put onto the data base there would be a competitive process.

**MR ZWANE:** Process yes.

**CHAIRPERSON:** So therefore your understanding was that in respect of the building of houses during any particular  
10 term five year term it is in order for companies that are on the data base to be given contracts to build houses without any further open tender process, is that correct?

**MR ZWANE:** That is correct Chair.

**CHAIRPERSON:** Ja okay. Mr Pretorius.

**ADV PRETORIUS SC:** Yes well let us from our point of view just summarise that because your most recent answer does not accord with the law but I think you have foreshadowed that by referring to the amounts contained in Treasury Regulations.

20 **MR ZWANE:** Yes sure.

**ADV PRETORIUS SC:** On the limits imposed by that. But the first proposition is pressure of time for the completion of a particular project is no reason for departing from the prescripts governing procurement. There are some provisions that allow emergency procurement processes to

take place but they are very strict. Time alone is not sufficient. You – are you aware of that?

**MR ZWANE**: Yes I am aware Chair.

**ADV PRETORIUS SC**: Right. Secondly the Treasury Regulations deal with data bases but they specify that above a certain amount I think at the time it might have been R500 000, I am not ...

**MR ZWANE**: Yes that is correct.

**ADV PRETORIUS SC**: You still have to despite your  
10 presence on a data base be subject to a competitive bidding process, do you know that?

**MR ZWANE**: I know that Chair.

**ADV PRETORIUS SC**: And many of the allocations that we are dealing with here exceeded that amount. Correct?

**MR ZWANE**: There are those who exceed yes.

**ADV PRETORIUS SC**: Right. So despite your presence or listing on a data base and perhaps I should not use the word list because I will come to that in a moment. A competitive bidding process may yet be required in relation to a  
20 particular contract over R500 000.00. For those under R500 000.00 different provisions apply. You are aware of that? You mentioned it.

**MR ZWANE**: I thought I had clarify myself that my understanding of this process is that let us take a company who will tick all the boxes of being able to be awarded well

beyond 500 the company who will tick all those process during an open tender as this is explained.

The difference will be instead of looking for ten companies that are going to build 100 houses there will be 150 companies that have gone through the same process that the ten companies have undergone. Meaning they tick all the boxes. They then are as reserves of any project that comes.

That is the explanation I got Chair which – which to  
10 me as I am seated here becomes slightly different from a data base. Because a normal data base as described by the law can only be compiled with a particular amount as the leader of evidence is saying, that I know.

**ADV PRETORIUS SC:** Yes well a data base is a legitimate tool in the procurement process. The establishment of a data base is governed by law and particularly Treasury Regulations. But even one's presence on the data base does not entitle one to be granted a contract over R500 000.00 if that is to happen there must be a competitive bidding  
20 process. That is what the law says.

**MR ZWANE:** Yes.

**ADV PRETORIUS SC:** Your understanding of it we can look at in the course of time and assess it. But what I do want to put to you is that there appear to be two issues that may have been conflated or confused.

The first issue is a list. That is an established list from which you believed as a department contractors could be appointed. A data base says Mr Mokoena is something that precedes the compilation of the list.

There would be an advertisement and I will give you an example in a moment to contractors that advertisement would say, please give us any interest you may want to express in getting work. We will then put you on a data base and when there is a need to allocate work we will contact  
10 you and invite you to bid.

And if you would look at page FS12 372.23 you will see an example of such an advert. Okay. You do not want to go and trust me on it.

**MR ZWANE:** I have seen it Chair.

**ADV PRETORIUS SC:** You have seen it.

**MR ZWANE:** But the question becomes in this commission let us take the nearest. The tender year 204 and 2009 was such a process of the expression of interest used. Even in terms of the evidence given here by other people who were  
20 called here I think this issue we must in my own understanding Chair is an issue that seeks to address the inadequacies which were there – which we must accept in this commission that in terms of the law there were issues that were not followed properly. And at a particular time these issues they were an endeavour to try and correct these

issues. I would accept that.

**ADV PRETORIUS SC:** Alright. In fact that is what the department went to court to establish in order to review the contracts given. You know about that. There has been extensive evidence. But perhaps that comment is unnecessary the evidence is on record. It does not require your comment.

I would like to move to another topic. The

**CHAIRPERSON:** Sorry Mr Pretorius maybe we should take a  
10 short adjournment I see it is four o'clock.

**ADV PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** Ten minutes and then we can continue.

**ADV PRETORIUS SC:** Yes we will be finished ...

**CHAIRPERSON:** What is your estimate?

**ADV PRETORIUS SC:** Well...

**CHAIRPERSON:** I am not putting pressure I just...

**ADV PRETORIUS SC:** I think we would like to be finished by five but I think we may be finished by half past four.

**CHAIRPERSON:** Ja no, no that is fine – that is fine.

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

**CHAIRPERSON:** Okay we will adjourn for ten minutes. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay let us continue.

**ADV PRETORIUS SC:** Chair, I would like to place something on record. It seems I may have, in fact probably did, put a misleading proposition

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** And it must be corrected. When dealing with the Robs Construction payment. The payment by Robs Investment was made to an entity called SUD Trade, s-u-d t-r-a-d-e. This may have been on the instruction of the  
10 premier's office. We do not know that. That may be an inference that might be drawn.

But that payment was copied to the premier's office and to Ms Cholota. And acknowledgement of that payment was noted by Ms Cholota in the premier's office. So that is the correct sequence.

**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** You will recall evidence concerning the meeting of Exco on the 30<sup>th</sup> of June 2010. And we have dealt with the minute of that meeting. You recall that?

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

**ADV PRETORIUS SC:** Mr Mokoena says in his additional affidavit, and you would have noted that, that:

“In the normal course of events, if the department reports to Exco, that report would be signed off by the head of department.”

In other words, Mr Mokoena.

**MR ZWANE**: Yes.

**ADV PRETORIUS SC**: Is that a correct statement?

**MR ZWANE**: That is correct Chair.

**ADV PRETORIUS SC**: And not only that but that the head of department would have been invited to the Exco meeting. Is that correct?

**MR ZWANE**: Yes, that is correct Chair.

**ADV PRETORIUS SC**: Right. The Exco Resolution which  
10 we have dealt with refers to a report from the department but Mokoena says he did not sign off on any such report, nor was he invited to the meeting. Can you confirm that?

**MR ZWANE**: Well, Chair. I think I must say what I have said – agreed with, is correct. But ...[indistinct] [00:02:45] Mokoena should have also said that before the Exco, there is a structure called Four(?) Hot(?)/Forward(?) [00:02:52]. That structure is a structure composed of head of department and the DG in preparing for Exco.

So if somebody for any reasons is not going to be part of  
20 Exco, they would be part of Four Hot/Forward [00:03:15] wherein an agenda is prepared.

They would also become part of the Four Hot/Forward(?) [00:03:22] after the Exco could track down in terms of what they needed to make follow-ups and report back in terms of the timeframes.



So it will not be correct that all these other processes, the former HOD would come here and deny. He knew about this meeting. He knew about the outcome of the meeting. And as much as I – I knew of them. I think that is what I want to depose to this Commission.

**ADV PRETORIUS SC:** Well, we know that the minute mentions a list given to the Exco for its consideration, correct?

**MR ZWANE:** The...[intervenes]

10 [Parties intervening each other – unclear]

**ADV PRETORIUS SC:** ...mention?

**MR ZWANE:** Yes, Chair.

**ADV PRETORIUS SC:** What Mr Mokoena says further that he never, at that time, knew of any list, whether for new or existing projects that had been sent to the MEC. That is yourself, and by implication. Exco.

**MR ZWANE:** The question... Then the question becomes: What did he do? Because if he did not know about this list and this list was produced by me and it was irregular...

20 According to the PMFA, he should have objected to this matter and reported the matter. And this matter is only raised here in the Commission.

Mr Mokoena knew about all the lists that were there. He supported them. He even participated in terms of drawing contracts for all these lists Chair. If he was – he had a

problem with any of the lists, he should have not even participated because that would have been illegal and it would have formed fruitless and wasteful expenditure and we all know what the law says about that. He knew.

**ADV PRETORIUS SC:** You were the one who attended that meeting and made that report.

**MR ZWANE:** I was the one who did what Chair?

**ADV PRETORIUS SC:** You attended the meeting of Exco on the 30<sup>th</sup> of June and made that report to Exco referred to in  
10 the minute.

**MR ZWANE:** I made that report Chair and there was presentation. In that presentation and the presentation, if I am not mistaken, it is part of these records. It even says the department has gone into a vigorous process to ensure that all the participants that were in that list are correctly there.

They had been vetted and so they qualify. That was the presentation according to the minutes and I could not without the help of administration knows those issues because I do not vet any people. I do not do those issues. They are  
20 administrative issues.

**ADV PRETORIUS SC:** Right. Well, we have been through the list, how they were comprised and the existence or otherwise of competitive bidding processes preceding the compilation of the list. I do not want to go there. I do want to deal briefly, finally, with the affidavit you submitted to the

Commission regarding the Housing Act.

**MR ZWANE**: Yes. Do I want to do what Chair?

**ADV PRETORIUS SC**: No, I want to deal with it.

**MR ZWANE**: Okay.

**ADV PRETORIUS SC**: If I may?

**MR ZWANE**: Okay.

**ADV PRETORIUS SC**: The procurement policy required in terms of Section 3(2)(cA) of the Housing Act was, according to our researchers, introduced by the minister with effect  
10 from April 2002. It was – that is Chapter 3A of the 2000 Housing Code. That is simply for the record. Those references. But did you know, at the time you were MEC, of that procurement policy?

**MR ZWANE**: No, Chair.

**ADV PRETORIUS SC**: And then I would like to deal with this issue of delegation because it may be a matter of concern to the Chair to consider certain recommendations to tighten any loopholes that might exist.

The earliest reference that we could find and in the short  
20 time available to us – perhaps our researchers need some further work - but in 2013 there was a document entitled Principles of Public Administration and Financial Management Delegations, approved by Cabinet which stated that:

“Any delegation or authorisation to exercise a power

or perform a duty, does not diverse the principle  
functionary of the responsibility concerning the  
exercise of the delegated power or performance of  
the duty.”

Now we know that in the Housing Act, the MEC has  
certain duties and powers. Those delegations would in 2013  
had been subject to these delegations conditions. Their  
accountability would have remained.

And we have established that, certainly as far as we  
10 know and as far as you are concerned, those provisions did  
not exist before 2013. And may need to be looked at once  
again Chair in relation to delegation and accountability for  
the functions delegated.

**MR ZWANE**: If I may just comment Chair? I think this issue  
gels in with what I have said earlier on that due to some  
development, new acts were introduced to try and deal with  
those developments and I think it is a good example of that  
kind of – an issue that I have raised earlier on.

**ADV PRETORIUS SC**: Is there anything you wish to add  
20 Mr Zwane?

**MR ZWANE**: Chair, I think I agree that with the - with the  
answering of a democratic government. A number of things  
had to be taken care of. And the issue of tightening the act,  
coming with new acts, could try and look at the situation that  
was prevalent at that particular time. It became a big issue.

And over time, we were able as government to plug the holes that seemed to be there unchecked because of legislation. I think that is what I want to put on this issue Chair.

**ADV PRETORIUS SC:** And finally and in summary, let us – the legal team gives the wrong impression Chair. We would still rely on the allegations made in the review affidavit submitted by Mr Mkhize as to the nature and intent behind the Advanced Payment System but you know about that and  
10 we have put it. Chair, those are the questions.

**CHAIRPERSON:** Yes, Mr Zwane.

**MR ZWANE:** Chair, I just wish to quickly express my appreciation for the commitment that this Commission has shown. Under normal circumstances, we would have been given a chance to go and be with our family. It is Christmas time and we have many other issues.

But this Commission has taken its work seriously. And I want to say on my part, as I have said earlier on, I want – I wish to cooperate with this Commission and I think I have  
20 displayed that.

Even this morning, I was supposed to come here at four. I was called earlier and I availed myself. I will continue doing that even for future if I am needed.

I did say the last time, I feel very comfortable in terms of how this Commission has treated me up to this part. I also

want to thank you for having made this time for me to come and clarify those issues that may remain hanging in the minds of people. I have indicate that I did not have anything to do with the Rochelle or Blakey. I did not take any instruction from anybody.

And I will try in the future to ensure that whatever information I have, needed by the Commission, will assist the Commission.

Otherwise, a blessed festive season for all of you. I  
10 hope I will be called in January [laughs], not in December. But should it happen that the Commission remembers me [laughs] during December, I am still committed to assist this Commission. Otherwise, thank you very much Chair and the evidence leader and everybody.

**ADV PRETORIUS SC:** Yes, thank you Mr Zwane.

**CHAIRPERSON:** Well, thank you very much Mr Zwane. On  
all the information that I am aware of for now in the dealings between the Commission and yourself, the information I have is definitely that you have been cooperating. That you have  
20 given this Commission cooperation. So on the information that I have, certainly that appears to be the position.

And you are right that you were meant to appear only later and you were called and asked whether you could come earlier and you and your legal representatives agreed and we are grateful for that.

Because there was a challenge which had happened but because you were able to come earlier, we are going to be able to also – I am going to be able to hear another witness. And if you had come at four o'clock, there might have been a clash.

So on the information I know, you certainly have cooperated. And we appreciate that you express – you feel free to express that you feel that you have been treated properly by the Commission. We will always try. Maybe we  
10 will not always be seen to be succeeding but certainly we will always be trying.

Thank you very much. As you say, you will still come back because there is still some outstanding business and ...[intervenes]

**ADV PRETORIUS SC:** And we reserve our rights.

**CHAIRPERSON:** [laughs] So. But thank you for all the compliments you have given to the Commission. And we also wish you an enjoyable festive season.

We will try and make sure that we do not remember you  
20 on the 23<sup>rd</sup> of December or the 24<sup>th</sup> and call you to come and finish the outstanding business. We will try and remember you in January or beyond that. [laughs].

Okay thank you. And we – I take it that your legal representatives do not intend to – do not wish to re-examine?

**RE-EXAMINATION BY THE LEGAL REPRESENTATIVE:**

[Microphone not working properly]

**CHAIRPERSON:** Yes, thank you. So you are now excused.

Thank you very much.

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

**CHAIRPERSON:** I think I must adjourn to allow the new evidence leader for the evening session to set up so that then I will come back and hear the next witness.

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

10 **CHAIRPERSON:** Yes. Otherwise, from your side, you and your team are also excused.

**ADV PRETORIUS SC:** Thank you, Chair.

**CHAIRPERSON:** And Mr Zwane's legal representative is also excused. Okay. We will adjourn for ten minutes. We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Good afternoon, Mr Seleka. Good afternoon everybody.

20 **ADV SELEKA SC:** Good afternoon, Chairperson.

**CHAIRPERSON:** Yes. Are we ready?

**ADV SELEKA SC:** We are ready Chairperson.

**CHAIRPERSON:** Yes. Please administer the oath. Good afternoon Mr Koko.

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



**CHAIRPERSON:** Administer the oath, registrar, or affirmation.

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

**WITNESS:** Matshela Moses Koko.

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

**WITNESS:** No.

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

10 **WITNESS:** Yes.

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

**WITNESS:** So help me God.

**MATSHELA MOSES KOKO:** (d.s.s.)

**CHAIRPERSON:** Yes, please switch on your mic Mr Barry.

**ADV BARRIE SC:** Before you commence. May I just hand these documents up to you Chair?

20 **CHAIRPERSON:** Yes, okay.

**ADV BARRIE SC:** You will recall when we were in this chamber before, when I was not here, I did refer you to the issue regarding the documents that we were – you can recall, the records that we were unable to source from the Commission's staff.

And I then mentioned to you that it might be necessary for us in the circumstances to revert to the promotion of Access to the Information Act which we did have to do during the course of this week. You are the Information Officer in terms of the act and the documents we ...[intervenes]

**CHAIRPERSON**: Is it not the secretary the person?

**ADV BARRIE SC**: I cannot hear you sir?

**CHAIRPERSON**: Is it not the Secretary of Commission?

**ADV BARRIE SC**: No, not in terms of the legislation.

10 **CHAIRPERSON**: H'm?

**ADV BARRIE SC**: Not in terms of the legislation.

**CHAIRPERSON**: Oh, what does it – do you remember what it says?

**ADV BARRIE SC**: Well, it is the head of the organisation and ...[intervenes]

**CHAIRPERSON**: Yes.

**ADV BARRIE SC**: And that is you. So you – so what I really want to enquiry about is. Where you have been put in your put in your capacity as Information Officer, whether you  
20 have been put in possession of those documents?

**CHAIRPERSON**: I ...[intervenes]

**ADV BARRIE SC**: The originals, you will see there on the 9<sup>th</sup> of December, two days ago.

**CHAIRPERSON**: I have no recollection of seeing them but that does not necessarily mean they have not been placed

on my desk?

**ADV BARRIE SC:** As you say.

**CHAIRPERSON:** Especially if they are not recent, they may be on my desk and still to be seen but it is good that you have said now.

**ADV BARRIE SC:** Ja, we needed assurance ...[intervenes]  
Yes.

...that you are in possession of it ...[intervenes]

**CHAIRPERSON:** Ja, ja.

10 **ADV BARRIE SC:** ...and that in your capacity under the act  
...[intervenes]

**CHAIRPERSON:** Yes.

**ADV BARRIE SC:** ...you will give it the necessary attention.  
Thank you.

**CHAIRPERSON:** Well, as I said the other time. If it is information that we do have and it is relevant and there are no grounds why you should not be given, such information should be made available. It, ordinarily, should not even be necessary to resort to the act but I am not criticising you for  
20 resorting to it for the reasons you have.

But there is no reason why, in principle you should not be given any information that is relevant to your client's evidence if we have information. Unless there are special grounds.

**ADV BARRIE SC:** Thank you.

**CHAIRPERSON:** And if there are special grounds, then one can deal with those.

**ADV BARRIE SC:** There is one further issue. And that is rising from the earlier testimony of Mr Koko and what you put across during that. We have drafted a supplementary affidavit which [laughs] attorney(?) [00:04:17] apparently on the 11<sup>th</sup> of December if it is a Friday, you cannot find them anywhere near the office.

10 So we had some difficulty for the affidavit to be commissioned but we did succeed in doing that. And my learned friend is in possession of the original which has now been commissioned and I understand the copies have been made. So I assume that that will also now be made available to you.

**CHAIRPERSON:** Okay, no fine.

**ADV BARRIE SC:** So it would be relevant to ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV BARRIE SC:** ...what happened on the 3<sup>rd</sup> ...[intervenes]

20 **CHAIRPERSON:** Yes.

**ADV BARRIE SC:** ...as well as what happened ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV BARRIE SC:** ...what is at issue today.

**CHAIRPERSON:** Yes, yes.

**ADV BARRIE SC:** Then the third issue is, though, and that is referred to in affidavit is. Where he said yesterday: My attorneys seemed ...[intervenes]

**CHAIRPERSON:** Just one second Mr Barrie. The aircon is quite noisy but I do not know if it is without it, it might be too hot. How is the...? Is it hot?

**ADV BARRIE SC:** I am ...[intervenes]

**CHAIRPERSON:** You are fine?

**ADV BARRIE SC:** ...very well. So.

10 **CHAIRPERSON:** Maybe if you do not switch it off completely, at least if you – can you down it a little bit. That would help. Before you continue Mr Barrie. Registrar, give these documents to the secretary and say he must discuss them with me. Okay. Yes?

**ADV BARRIE SC:** Chair, and then, yesterday at about – I think my attorney received the document at about quarter past ten in the morning and it is quite a substantial affidavit, a further affidavit that Ms Daniels has deposed to. I think it was deposed to on the 30<sup>th</sup> of November but it was only  
20 given to us yesterday.

And in this affidavit, we would have really liked to deal with that affidavit as well because it is directly relevant to today but in the circumstances, we were unable to do so.

I do not even know when it came to my attention and to my client's attention but we are going to respond on affidavit

to that affidavit in due course.

**CHAIRPERSON:** Yes.

**ADV BARRIE SC:** So I just want to draw that to your attention. Thank you Chair.

**CHAIRPERSON:** No, no. That is fine. My understanding, given the time that we are commencing, is that we will try and finish evidence at least relating to the suspensions today. It appears from what I have been told that there is someone to have said Mr Koko must come in the morning at  
10 ten o'clock but it said he must come at four.

The witness that I was hearing earlier on, Mr Zwane, was the one who was arranged to come at four o'clock. So it looks like... Well, Mr Seleka is the one who knows. It looks like some problem happened. And if mister...

If the summons had said ten o'clock, it may have been possible to cover more than the issue of suspensions because we would have had the whole day but now we do not. But the – an arrangement will be made for Mr Koko to come back in due course to cover whatever else we will not  
20 have been able to cover today.

**ADV BARRIE SC:** On that subject Mr Chair. There are two further subjects, apart from the suspension of the executives that my client was directed to, provide a response. The one relates then to the Tegeta Contract if I can put it broadly in that way. And the other relates to the McKinsey Master

Services Agreement.

From what you have just said. Can we assume that the plan of the Commission if I can put it in that way, is that those two subjects will be dealt with at the same time?

**CHAIRPERSON:** There is no reason why they cannot – they should not be dealt with at the same time, as far as I am concerned. I see Mr Seleka nods. So I think that is the idea.

**ADV BARRIE SC:** Very well.

10 **CHAIRPERSON:** Ja, ja. Okay.

**ADV SELEKA SC:** Chairperson, shall we proceed?

**CHAIRPERSON:** H'm?

**ADV SELEKA SC:** May we proceed?

**CHAIRPERSON:** Yes. You confirm that you nodded?

**ADV SELEKA SC:** Yes, I do.

**CHAIRPERSON:** [laughs]

**ADV SELEKA SC:** Yes, I do. I do Chairperson indeed.

**CHAIRPERSON:** Okay alright.

**ADV SELEKA SC:** Yes.

20 **CHAIRPERSON:** Okay let us proceed then.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** H'm.

**EXAMINATION BY ADVOCATE SELEKA SC(CONTINUES):**

Thank you, Chair. Mr Koko, is coming for the second time. We could not finish the suspensions last time. So we intend

to do so this evening Mr Koko. Chairperson, we are using for the proposes of Mr Koko's evidence, Eskom Bundle 15. One, five.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Exhibit U-27.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Mr Koko's affidavit appears on page 5.

**CHAIRPERSON:** Yes, I got it.

**ADV SELEKA SC:** It has already been admitted as Exhibit  
10 U-27.1.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Thank you. Ja. Mr Koko, the Commission is trying to – its endeavour is meant to achieve the truth about what transpired in matters that it is investigating and we try to get to what is the truth. And in this matter of suspension, we know that you have in your affidavit set out what you believe are the reasons why you were suspended. And last time, we went through that exercise, also looking at the evidence that has been given by  
20 others and what the board itself had said.

Now, you have in your testimony last time, just to recap, you have said that Ms Tsholofele Molefe's version is correct and you were referring specifically to where she goes to Mr Matona and speaks with him about the suspension as it appears from her affidavit.



And he in response, according to Ms Tsholofele Molefe, she says:

“He also informed me that he had heard from outside sources that we were going to be suspended at the board meeting later that day.”

Do you recall that?

**MR KOKO**: Yes, I do.

**ADV SELEKA SC**: Yes. Now, in your testimony you were saying that Mr Matona said to her: I know about the  
10 suspension. There is a slight difference in what you are saying and what Ms Tsholofele Molefe says in that Mr Matona, according to Ms Tsholofele Molefe, he said:

“He also informed me that he had heard from outside sources that we were going to be suspended...”

Now I will come to Ms Tsholofele Molefe’s version in a moment. Let us look at what you say is the knowledge you and Mr Matona had about your suspensions. So according to you, you knew from Mr Matona that the two of you will be  
20 suspended if you do not unsuspend – and I use that word which you have used in your affidavit – unsuspend Mr Sikhasimbe. Correct?

**MR KOKO**: That is correct Chair.

**ADV SELEKA SC**: You told the Chairperson that you were not aware – you did not have prior knowledge of the

suspension of the four executives.

**MR KOKO**: That is correct Chair.

**ADV SELEKA SC**: I have looked at your – the transcript of your testimony at the Parliamentary Portfolio Committee. Comparing it to your affidavit, it seems quite clear that, according to you, the meeting of the 9<sup>th</sup> and the meeting of the 11<sup>th</sup> would have had to do with the suspension of you and Mr Matona as the result of you not complying with Mr Tsotsi's instruction. Is that correct?

10 **MR KOKO**: Chairperson, I have listened to the audio and I can certainly say the meeting of the 9<sup>th</sup> did not discuss suspensions.

**ADV SELEKA SC**: Yes.

**MR KOKO**: I can confirm to you that the meeting of the 11<sup>th</sup> certainly did.

**ADV SELEKA SC**: Yes. But my question is ...[intervenes]

**CHAIRPERSON**: I am sorry Mr Seleka. There was something I wanted to say while Mr Barrie was on his feet which I forget. I just want to...

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

**CHAIRPERSON**: Mr Barrie, I just want to confirm that I did read the letter that you handed up last time. Remember the letter that you handed up? I did read it. I did ask the legal team to ensure that they respond to the letter insofar as anything that relates to them.

But it would help – I know that in the letter you talk to your client through your attorneys, talks about the various matters or things that he would like to be done or he wish to be done but he says they have not been done and so and so on.

I – it would help me a lot if there was a chance that a separate document would be prepared that gives – say there is a clear list of the kind of things that we are asking for.

Probably, if one goes through the letter – it is just it is  
10 not a short letter, it is quite lengthy – one can get them. But it would be help if a document is send to say: We are asking that, for example, with regard you look at the audio, in regard to that meeting with regard to this, this is what is relevant about it.

**ADV BARRIE SC:** Yes.

**CHAIRPERSON:** You know, if one has that list, then one can then say: Okay this we have. This we do not have. Or this we can do. Maybe this we cannot do. It makes it easier to see how much of that we are able to do and how of that  
20 we are not able to do.

**ADV BARRIE SC:** Oh, okay.

**CHAIRPERSON:** If there is a chance that we could get something like that that would be helpful.

**ADV BARRIE SC:** Much of what was in the letter... Well, the whole letter is confirmed in the affidavit.

**CHAIRPERSON**: Yes, yes.

**ADV BARRIE SC**: In his supplementary affidavit.

**CHAIRPERSON**: Yes, yes.

**ADV BARRIE SC**: And more detail is given.

**CHAIRPERSON**: Yes.

**ADV BARRIE SC**: Particularly about the issues that we submit do fall within your terms of reference.

**CHAIRPERSON**: Yes, ja.

**ADV BARRIE SC**: But have not, apparently, been  
10 investigated before you.

**CHAIRPERSON**: Ja, ja.

**ADV BARRIE SC**: So that is a major aspect of it.

**CHAIRPERSON**: Yes.

**ADV BARRIE SC**: And but I understand what you... Is in other words, if we can point your investigators in the direction of where matters should be available, that could potentially support my client's version of events.

**CHAIRPERSON**: Yes, yes. No, if we could get that. But also it will help me because then I can just look at the list  
20 and say: Well, what about that? What about that? What about that?

**ADV BARRIE SC**: Mr Chairman, there is another thing I must raise with you.

**CHAIRPERSON**: H'm.

**ADV BARRIE SC**: And that is, in the previous proceedings

there were certain documents that were requested from my client. And to be perfectly frank. It was my responsibility and I ran out of time. We will insofar as possible make those available to my learned friends.

**CHAIRPERSON**: Yes, yes.

**ADV BARRIE SC**: But we have not yet.

**CHAIRPERSON**: Okay.

**ADV BARRIE SC**: We apologise for that.

**CHAIRPERSON**: Okay. No, that is fine.

10 **ADV BARRIE SC**: Really. It is just that ...[intervenes]

**CHAIRPERSON**: No, that is fine.

**ADV BARRIE SC**: [Indistinct] [00:18:05]

**CHAIRPERSON**: Yes, yes. No, no. That is fine. Certainly, we may – certain things might not happen or might not be done at a certain time, but as far as I know, there is no reason to say we are not doing this because we have a certain narrative.

In 2018, there is a clear letter or memo that I sent to the Head of the Legal Team and the Head of the Investigation  
20 Team and that memo, amongst other things, said the Investigation Team and the Legal Team must make sure that they follow evidence.

It does not matter who it leads to. No matter what his position was before, what his position is now, what his position is likely to be in the future. If the evidence leads to

that person, they must do that. And nobody must be spared. There is a specific memo that says that.

**ADV BARRIE SC:** We are gratified to learn of that. Thank you Chair.

**CHAIRPERSON:** Okay thank you. I am sorry Mr Seleka. I interrupted you.

**ADV SELEKA SC:** No, that is not a problem Chair. Should I proceed Chair?

**CHAIRPERSON:** [No audible reply]

10 **ADV SELEKA SC:** Thank you. Mr Koko, my question stems from – because it is a different question. It is not whether or not there was discussions about the suspensions in the meetings of the 9<sup>th</sup> and the 11<sup>th</sup>. It is about what you say was going to happen in those meetings.

According to the way you narrate the issues, you give the understanding that that was your understanding that Mr Matona says you ...[intervenes]

**MR KOKO:** That is correct Chair.

20 **ADV SELEKA SC:** Ja. But you know that Mr Matona has denied your version from his affidavit you have seen? That he – he says he did not say to you that if you do not unsuspend Mr Sikhasimbe, Mr Tsotsi is going to suspend you and him. You see his denial?

**MR KOKO:** I have been Mr Matona's affidavit and I am sure that he denies that.

**ADV SELEKA SC:** Now. And you have also admitted that you did not raise the issue of Mr Sikhasimbe with the board at the time of your suspension.

**MR KOKO:** I did not raise the issue with the board. That is correct Chair.

**ADV SELEKA SC:** Yes.

**MR KOKO:** When I was suspended on the 11<sup>th</sup> of March.

**ADV SELEKA SC:** Yes.

**MR KOKO:** The earliest opportunity I got to meet the board  
10 after the 11<sup>th</sup> of March, I certainly did and did so sharply.

**ADV SELEKA SC:** Yes. It is clear from the minister's affidavit, Minister Browne, that she was also aware of the Sumitomo matter. I have read a paragraph from her affidavit. Do you remember that?

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

**ADV SELEKA SC:** And she said an executive from Eskom came in person to tell her about the issue. Do you remember that?

**MR KOKO:** I remember that Chair.

20 **ADV SELEKA SC:** And you have listened to the audio recordings, you have looked at the minutes of the meeting. It is apparent. from both the audio and the minute, that the minister came to the board on the 11<sup>th</sup> of March around eleven or half-past eleven, had a meeting with the board but never raised the issue of Sumitomo with the board.

**MR KOKO:** Chairman, the meeting of where the minister was is not recorded. And I have not seen the minutes. So I do not know what the minister raised.

**ADV SELEKA SC:** Ja, I heard you earlier saying you have listened to the audios. I think you do say in your affidavit, in fact, that the issue – even here you said, five minutes ago – the issue of the suspensions was definitely raised in the meeting of the 11<sup>th</sup>. So you cannot be definite unless you know what took place in that meeting.

10 **MR KOKO:** Chairman, there is no audio recordings, nor the minute of the meeting of the 11<sup>th</sup> where the board – where the minister was.

**CHAIRPERSON:** H'm. Yes, to the extent that he may have said that, Mr Seleka, he might have meant it was raised during the meeting of the 11<sup>th</sup>.

**ADV SELEKA SC:** Not.

**CHAIRPERSON:** Not when the minister was there but maybe the one that came after.

**ADV SELEKA SC:** Yes.

20 **CHAIRPERSON:** But of course, that can be checked with him.

**ADV SELEKA SC:** Yes.

**MR KOKO:** I have listened to the audio of the meeting after the minister left. I have read the minute of the meeting after the minister left. The minute – the meeting of the board with



the minister was not recorded, nor minute taken. So I do not know what the minister raised at the board.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: Yes. No, but what I was saying was something different because you have made that point.

**MR KOKO**: Yes.

**CHAIRPERSON**: What I was saying is. To the extent that you may have said as Mr Seleka was saying. You may have said that issue was raised during the meeting of the board  
10 on the 11<sup>th</sup>. You may have meant during the meeting of the board after the minister had left.

**MR KOKO**: Oh, certainly.

**CHAIRPERSON**: Ja.

**MR KOKO**: Certainly.

**CHAIRPERSON**: But I was saying, he could check with you whether that is what you meant.

**MR KOKO**: Certainly, that is what I meant.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: Okay.

20 **ADV SELEKA SC**: Yes, Mr Koko I think you are right that it was established before the Commission, at least insofar as evidence is led, that the audio record – the minute – the meeting with the minister was apparently not audio recorded. I think you are correct in that regard. That is what has not been done here. You follow?

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

**ADV SELEKA SC:** You follow?

**MR KOKO:** Yes.

**ADV SELEKA SC:** But we do have the minutes of that meeting in the file. The evidence here does not show that the minister raised the Sumitomo matter with the board. In fact, the minister comes there. Dr Ngubane testified. It is in his affidavit. Mr Khoza was here recently. It is also in his affidavit.

10 That the minister, when she arrives there, raised four areas of concern to the board and that area included your area. And said the four executives should step aside. It will be better if they step aside so that they do not hinder the inquiry that the minister wanted to have undertaken. So that is the evidence before the Commission. Do you have any comment?

**MR KOKO:** Chair, the part that I recollect is that the minister raised areas that she needed to be investigated and there were four areas. I also recall the evidence in this  
20 Commission that says the minister did not instruct that executives in those four areas be suspended. She left it to the board. That is the part that I remember.

**CHAIRPERSON:** Well, I must check whether you heard evidence that said that she did not instruct or whether you heard evidence that she said at the time: I cannot instruct

the board ...[intervenes]

[Parties intervening each other – unclear]

**MR KOKO**: No, I heard evidence here that the minister said she cannot instruct the board to suspend.

**CHAIRPERSON**: Yes, did you hear evidence this week of Mr Khoza who said the minister – I think he said something like he wanted us to read between the lines.

**MR KOKO**: H'm.

**CHAIRPERSON**: And I asked him whether he could say that  
10 by implication the minister was instructing and he said yes  
by implication. Did you hear that evidence?

**MR KOKO**: No, I missed that Chair.

**CHAIRPERSON**: Okay.

**MR KOKO**: I...

**CHAIRPERSON**: Ja.

**MR KOKO**: When Mr Khoza was testifying, I was  
...[intervenes]

**CHAIRPERSON**: Busy.

**MR KOKO**: ...busy with the counsel putting together the  
20 ...[intervenes]

**CHAIRPERSON**: Oh, okay. No, that is fine. But certainly, there has been a lot of evidence to the effect that the minister made it clear that she cannot – she could not instruct the board. And then of course, what each member of the board would make of what she said is another matter but

that line was there.

**MR KOKO:** Ja, Chair. I cannot comment on what the minister told the board.

**CHAIRPERSON:** Yes.

**MR KOKO:** Except what I just heard.

**CHAIRPERSON:** Ja. No, that is fine.

**ADV SELEKA SC:** Thank you, Chair. In fact, Dr Ngubane...  
Chair, you will recall. He says after the minister left, it was  
absolutely clear to them that the minister wanted the inquiry  
10 and the minister wanted the executives to be suspended.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** That is the one thing.

**CHAIRPERSON:** H'm.

**ADV SELEKA SC:** The – we also asked Mr Khoza the same  
question whether it was clear to you after the minister left  
that that is what she wanted and he also confirmed.

**CHAIRPERSON:** Yes, okay.

**ADV SELEKA SC:** So Sumitomo, Mr Koko, was not raised  
with the board.

20 **CHAIRPERSON:** I think what Mr Koko has been  
emphasising, whenever you have raised that question.

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

**CHAIRPERSON:** Is that, he did not raise it on the 11<sup>th</sup>.

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

**CHAIRPERSON:** But he raised it later on.

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

**CHAIRPERSON:** Ja, so ...[intervenes]

**MR KOKO:** At the first earliest opportunity Chair.

**CHAIRPERSON:** Ja.

**MR KOKO:** When I realised ...[intervenes]

**CHAIRPERSON:** Ja.

**MR KOKO:** ...that the story that the board told me, was when they told me that they had – the board has information in their possession that points to sabotage in the area of my  
10 business. Now once somebody...

You know, you should come to a meeting prepared. And the board comes to you and say: You know what? We have evidence that your area of business has actually committed sabotage to the National Regulation, which is treason, that succumbs you.

You immediately – it does not matter what – whether you wanted to – whatever you wanted to tell. The board, the respectable board says: We have evidence. We have the evidence that your area is sabotaging the country by passing  
20 load shedding. That succumbs you completely.

**CHAIRPERSON:** Okay continue Mr Seleka.

**ADV SELEKA SC:** Thank you, Chair. Mr Koko, that obviously should be contrasted with your attitude which you talked about when – by the time of Dr Ngubane's board sought to suspend you and you say you told the board: If you

suspend me you will be protecting corruption and I will go to the police immediately. Do you remember that?

**MR KOKO:** Yes.

**ADV SELEKA SC:** H'm. So and that also be compared with your attitude that you went at length with the board to tell them that but you are suspending the person who is not responsible for maintenance. You mentioned those two gentlemen.

**MR KOKO:** Yes, Mr Govender and Mr Ntsokolo.

10 **ADV SELEKA SC:** That is right. Now let us then look at what you say in your affidavit in regard to your suspension. Please turn to page 45. Eskom bundle 15, page 45, Chairperson.

**CHAIRPERSON:** What page?

**ADV SELEKA SC:** 45. Are you there, Chairperson?

**CHAIRPERSON:** Yes, I found it.

**ADV SELEKA SC:** Thank you. Mr Koko, are you also there?

**MR KOKO:** I am there.

20 **ADV SELEKA SC:** So just to put it in context, you talk about a Dentons' report and Ms Suzanne Daniels who does not have the report, says the report is destroyed and you question her why she cannot produce this report and this is at the time of the Dentons giving its investigation and report to the board. Paragraph 154, Mr Koko you write:

“Remember, the board at the time...”

Now at a time that would have been June/July 2015 or even in March 2015.

10 “...was acting on instructions from government to get rid of me. Why would the board have suppressed information that would have served its purpose 100%? In addition, why would the board then in October 2015 appoint me as Group Executive Generation and Technology implying confidence in my abilities, competence and integrity? It is unthinkable that the board would put me in charge of the whole of Eskom’s power generation after such allegations had been made. It would have been a very serious dereliction of duty on their part”

20 Now what is intriguing here, Mr Koko, is that fair sentence that the board at the time was acting on instructions from government to get rid of you. That cancels everything about Mr Tsotsi seeking to suspend you because of Sumitomo.

**MR KOKO**: No, Chair.

**ADV SELEKA SC**: Comment?

**MR KOKO**: This, I am playing back to the Commission, I am saying if Mr Tsotsi’s version is right, that he was directed by the former President of the Republic together

with Ms Myeni, one, when the opportunity arise through Denton after interviewing witnesses who can vouch for what – for my corrupt activity, the government and the board should take that opportunity to say here is now real evidence we can work on to get rid of Mr Koko because witnesses that have been talked to by Dentons, we hear from Ms Daniels, brought in damning incriminating evidence to Denton.

Now if the government in terms of what Mr Tsotsi's  
10 version is all about is correct, they would have been – it would have been a clinical finish. Mr Koko, here is the evidence, here are the witnesses, step aside. But I am simply saying that is – I mean, it is a dereliction of duty for the board that has got before it information from Denton that says I have acted corruptly and there are witnesses to support that. Instead they bring me back but that information of Dentons does not find its way through the final report and I respect Dentons, I think if Dentons is aware of criminal activities, whatever instructions, they are  
20 professionals, that information should find its way through the final report. So I do not buy the story that the documents were destroyed. Even if they were destroyed, Dentons, as professionals, will stand by the report and say you have asked us to do this but we have come across this information. It did not find its way there. They bring me



back allegedly to cooperate with other so-called agents of state capture to do what the transactions they are doing and on top of that, in October they promote me. Does not make sense.

**ADV SELEKA SC:** What is telling in that paragraph, Mr Koko, is that it does not bear what you have just explained.

**MR KOKO:** But this is what it means.

**ADV SELEKA SC:** That is, if Mr Tsotsi's version is correct, that is not there. In fact, the opposite is true in  
10 your statement ...[intervenes]

**MR KOKO:** No.

**ADV SELEKA SC:** Let me finish. You urged the reader to remember, you add the word remember, that at the time – the board at the time was acting on instructions from government to get rid of me.

**MR KOKO:** Of course, at the time.

**ADV SELEKA SC:** Can I finish?

**CHAIRPERSON:** Let him finish, Mr Koko. That statement is unqualified, there is no qualification to the statement.  
20 You understand what I mean?

**MR KOKO:** I understand what you mean. But, Chair, I am here to talk to my affidavit and I will talk to my affidavit and I will not feel less to talk to what I meant, I wrote this. Remember, this Commission was told that it is government through the former President who directed our suspension.

Remember that. This is what this paragraph says. So ...[intervenes]

**CHAIRPERSON:** Just before you proceed, Mr Koko – do not forget the point you point you want to make. Mr Seleka, do you know whether prior to paragraph 1.4 Mr Tsotsi in his affidavit has indicated what he believed the reason for his suspension was?

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

**CHAIRPERSON:** Where do we find that?

10 **ADV SELEKA SC:** You find that from paragraph 19 onwards. I mean 79, I will give you the page reference, Chairperson.

**CHAIRPERSON:** Paragraph 79?

**ADV SELEKA SC:** 79. That is on page 26.

**CHAIRPERSON:** Okay. I just want to...

**ADV SELEKA SC:** Chair, I should warn you, that reason spans fifteen pages of that document.

**CHAIRPERSON:** Well, I will not need to – I just want to quickly – 26 you said?

20 **ADV SELEKA SC:** Page 26, the first paragraph on page 26, which is 79.

**CHAIRPERSON:** In effect does he say that he believed that it was Mr Tsotsi?

**ADV SELEKA SC:** Chairperson, it is unequivocal.

**CHAIRPERSON:** I am sorry?

**ADV BARRIE:** Chair, I am a bit lost now. What document are we referring to?

**CHAIRPERSON:** We are Mr Koko's affidavit, I have asked whether prior to paragraph 154 of Mr Koko's affidavit, which is the paragraph on which Mr Seleka is asking him, whether – you follow now?

**ADV BARRIE:** I was under the impression that you were referring to what Mr Seleka said.

**CHAIRPERSON:** Oh, no, no.

10 **ADV BARRIE:** But I must be mistaken, I am sorry.

**CHAIRPERSON:** No, no. So, Mr Seleka, in those paragraphs does Mr Koko say he believes that he was suspended because of Mr Tsotsi?

**ADV SELEKA SC:** Correct?

**MR KOKO:** Chair, can I take you to paragraph 114 on page 35?

**CHAIRPERSON:** Page 35? Yes, 114.

**MR KOKO:** Page 35.

20 **CHAIRPERSON:** “This was only a ruse, Mr Tsotsi wanted to get rid of me because I suspended Mr Sikhasimbe”

Yes. Okay, alright, I wanted – I think, Mr Seleka, you are free to pursue the line you pursue and Mr Koko will explain or defend what he said or the way he was.

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

**CHAIRPERSON:** But maybe there is a possibility that when the paragraph is read in context it may be that having said what he believed the reason was for his suspension in earlier paragraphs it may be that he was saying well, if what has been officially said as the reason why we were being suspended is true then maybe blah blah blah blah. But I am just saying, you know?

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

**CHAIRPERSON:** But you must feel free to pursue but Mr  
10 Koko was answering and I interrupted him. Do you want to finish your answer?

**MR KOKO:** Yes, I am very clear before this paragraph in my affidavit on the reasons why I was suspended and I am also very clear that the version that I was suspended because there was an inquiry that was mooted on the 6 March in the President's guesthouse that culminated in the meeting in Nkandla on the 8<sup>th</sup>. That may be well be true and I will not quibble to it and you will remember that Nick Linnell says it is him on the meeting of the 6<sup>th</sup> with Ms  
20 Myeni who suggested that it is not possible to do an inquiry of this nature without getting the executive to step aside. That is the evidence of Nick Linnell. He also says ...[intervenes]

**CHAIRPERSON:** Just hang on one second because you mentioned that point even last time. If you team, Mr

Seleka, or even Mr Barrie, if they are able to – if somebody is able to go to that part of Mr Linnell’s evidence where he says what Mr Koko says, I would like to look at that but not necessarily now.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** But in due course. Continue, Mr ...[intervenes]

**MR KOKO:** Ja, I am certain that he said that, I am hundred percent sure.

10 **CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Can I get that Mr Koko, what he said?

**MR KOKO:** In the meeting in the presidential guesthouse where the President was supposed to attend but did not attend and he ...[intervenes]

**CHAIRPERSON:** In Pretoria.

**MR KOKO:** Yes, it ended up in the meeting between Ms Myeni and ...[intervenes]

**CHAIRPERSON:** Yes, yes, Mr Linnell.

20 **MR KOKO:** Mr Linnell. When the discussions of the inquiry was mooted Mr Linnell says to Ms Myeni it is not possible to do an inquiry of this nature and still leave the executives in their offices. That is what Mr Linnell says.]

**ADV SELEKA SC:** Yes – yes, sorry, I can confirm that.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Mr Linnell says in his view the

executives responsible because of influential presence, he would advise that they be suspended to avoid them influencing their subordinates. So Mr Linnell did say it.

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

**MR KOKO:** The President allegedly did not pitch up and they were directed to be at Nkandla and they had ...[intervenes]

**CHAIRPERSON:** No, no, not at Nkandla at the Durban official residence of the President.

10 **MR KOKO:** Yes.

**CHAIRPERSON:** Durban, ja.

**MR KOKO:** Yes and then ...[intervenes]

**CHAIRPERSON:** On the 8<sup>th</sup>.

**MR KOKO:** Yes. And then he says – first there was a discussion around the need for the inquiry and then there was discussion about the areas that must be investigated and at that point the areas that must be investigated were three, Generation, Commercial and the [indistinct] 13.44 problem and then he says he did not know Eskom and none  
20 of the people in the meeting knew Eskom. The names of the people to be suspended were later emailed to him later that evening and the names were Mr Matona, Mr Koko and Mr Marokane. Now I am not in a position to dispute or agree with that.

**CHAIRPERSON:** Yes.

**MR KOKO:** That may well be. What I am putting to you is that Mr Tsotsi who testified here and said he has always wanted an inquiry into Eskom but he has not acted on it.

When the opportunity arose through that process, to throw my name in there, he did it, otherwise he would have been objective and if he had been objective my name would not stand against Generation. The real person who was managing Generation, at least at that point for the short time, when Mr Ntsokolo would have been there or his  
10 predecessor who managed Generation for the last seven years and the only reason Mr Tsotsi, I think – and then that is my thinking, between now and then he did not mention Mr Ntsokolo and Mr Deba(?) is because he wanted to force my name at all costs because he wanted to get rid of me because of how I responded to him with Mr Sikhasimbe.

**CHAIRPERSON:** Yes, okay. Mr Seleka?

**ADV SELEKA SC:** Thank you, Chair. Mr Koko, I believe that you said you had been appointed into this position in October 2014 prior to you being suspended, Generation.

20 **CHAIRPERSON:** Ja, just repeat what position so that it is clear.

**ADV SELEKA SC:** The position from which he was suspended on the 11 March 2015. Is it October 2014?

**MR KOKO:** I was appointed October – I was appointed in the position – in the Generation position in October 2014.

**ADV SELEKA SC:** Yes.

**MR KOKO:** No, no, no, I apologise. I was appointed the head of – the GE Technology and Commercial October 2015 and then 12 months later, October 2015, the head of Generation.

**CHAIRPERSON:** Okay, no, I think that is confusing.

**MR KOKO:**

**ADV BARRIE:** It seems to me the witness misspoke when he referred to 2015, he intended to refer to 2014 and then  
10 he said a year later in 2015 [inaudible – speaking simultaneously]

**MR KOKO:** I appointed in 2015, October.

**CHAIRPERSON:** Yes, okay ...[intervenes]

**ADV BARRIE:** But it is on record but he misspoke.

**CHAIRPERSON:** Okay, ja, no, that is fine. Let us just get it clear ...[intervenes]

**MR KOKO:** October.

**CHAIRPERSON:** Which position, appointed from when? And when position appointed from when?

20 **MR KOKO:** October 23, 2015 I was appointed the head of Generation.

**CHAIRPERSON:** 2015?

**MR KOKO:** 2015.

**CHAIRPERSON:** Okay, alright. And then the other position?



**MR KOKO:** October 2014, Technology and Commercial.

**CHAIRPERSON:** Okay, alright.

**ADV SELEKA SC:** Oh, yes, so ...[intervenes]

**CHAIRPERSON:** So part of the point you make is that to the extent that at the Durban meeting on the 8<sup>th</sup> only three areas were identified that were to be investigated. The area of which you were in charge was not one of them, is that the one?

**MR KOKO:** You are partly correct. You are partly correct.

10 I was responsible at that point on ...[intervenes]

**CHAIRPERSON:** But in March 2015?

**MR KOKO:** In part – in March – no, no, I was responsible during that meeting for Commercial.

**CHAIRPERSON:** Yes.

**MR KOKO:** Right, now the trick about Commercial, it is quite elegant actually and if you know Eskom you are going to laugh at it. The reason they have put Commercial there is because of the evidence again led by Nick Linnell based on the letter, a very poorly written letter by a gentlemen  
20 that I have never met, called Jabu Masangwane(?). Joe Masangwane Masangwane says the corruption in Commercial is based on the diesel expenditure and at that point, Chair, Eskom was burning a billion rands per month on diesel. Jabu Masangwane to create an excuse and a force narrative to get me suspended on Commercial issues,

he says we have converted – and please listen to it again on Nick Linnell - Mr Linnell's affidavit. He says we have converted the open cycle gas turbines in Ankerlig and Gourikwa to base load and because of that then we were having this billion rand expenditure. That can only come from a person who is mischievous because it is not factual or who is clueless, does not know because the only reason we were burning diesel of a billion rands a month is because the Generation fleet was sitting at an energy availability back factor at that time, and I am telling you a number that is factual, of 69%. That is the only time when the government set up a war room because the performance of Eskom at that time was at the lowest. It has since become the lowest now in 2020 and that was the only time – that was the time we had a Majuba coal silo collapse and we lost 3 600 megawatts at Majuba.

So at that point, given the 69% of the burn energy availability factor and the fact that we lost Majuba, we had no reason but to burn diesel to keep the lights on, it had nothing to do with corruption.

**CHAIRPERSON:** But the – you see, when you made the point that you made about when you became head of Generation and when you were head of the other portfolio ...[intervenes]

**MR KOKO:** Yes, yes.

**CHAIRPERSON:** I thought that the point you sought to make was that your portfolio that you occupied, which you were heading in March 2015 when this meeting in Durban took place was not one of the portfolios that were – one of the three portfolios that were mentioned and that may be – that is what I thought – that is where I thought you were going, that Mr Tsotsi brought it in because of your issues with him but from what you are saying, it looks like you accept that your portfolio which you were heading in March  
10 2015 was one of the portfolios that were mentioned, am I right?

**MR KOKO:** Chairman, I think you ...[intervenes]

**CHAIRPERSON:** It may be that you might say wrongly, it should not have been mentioned, but do you accept that factually it was mentioned or you know nothing of that.

**MR KOKO:** Chairman, the affidavit of Mr Linnell first said there were reasons given for which areas were to be suspended.

**CHAIRPERSON:** Investigated.

20 **MR KOKO:** He says there were reasons. The reason that they gave for Commercial, which was my responsibility.

**CHAIRPERSON:** Yes.

**MR KOKO:** Were false.

**CHAIRPERSON:** Yes.

**MR KOKO:** Were false and does not matter how you look

at it.

**CHAIRPERSON:** Yes.

**MR KOKO:** And that ...[intervenes]

**CHAIRPERSON:** No, no, no, I understand that, I was simply saying I was not on another point which I thought you were pursuing, I was wanting just to have clarification that whether rightly or wrongly your portfolio was one of the three that were mentioned. I think from what you are saying is they provided a wrong basis as far as you are  
10 concerned.

**MR KOKO:** Correct.

**CHAIRPERSON:** For including it.

**MR KOKO:** Correct.

**CHAIRPERSON:** Ja, okay.

**MR KOKO:** Correct. And, and, and they made to carry the monkey that did not belong to me.

**CHAIRPERSON:** Yes, Mr Seleka?

**ADV SELEKA SC:** Chair, I am moving on. Mr Koko, in regard to that paragraph you have assisted us with,  
20 paragraph 114, where you say:

“This was all ruse, Mr Tsotsi wanted to get rid of me because I suspended Mr Malesela Sikhasimbe and refused his unlawful instruction to make the misconduct case against Malesela Sikhasimbe to disappear.”

“Unlawful - refused his unlawful instruction to make the misconduct case against Mr Malesela Sikhasimbe to disappear.”

So I have contrasted that with what you said in that paragraph where you say remember, the board at the time was acting on instructions from government to get rid of me. So you are emphasising this to be the reason in this paragraph 1.1.4, the rust.

10 So if this matter, which as we have gone through your testimony last time and looking at your affidavit which made you angry, you went to Melrose Arch to get away from Mr Tsotsi, you called Ms Daniels to come to you at Melrose Arch to be assisted on what your legal rights against this intended suspension. Why this issue, of the misconduct of Mr Sikhasimbe was settled at 12 months at the CCMA?

**CHAIRPERSON:** Sorry, what is ...[intervenes]

**MR KOKO:** Why was it settled?

**CHAIRPERSON:** Let me just hear the question, why...?

20 **ADV SELEKA SC:** Why this burning issue of Mr - misconduct of Mr Sikhasimbe was settled at 12 months with him at the CCMA?

**CHAIRPERSON:** Oh, okay.

**MR KOKO:** Chair, this is quite an interesting point. So Mr Sikhasimbe was dismissed and I effected the decision

itself.

**CHAIRPERSON:** Yes, there was a recommendation by an independent chairperson. There was a recommendation by a senior counsel who says guilty, dismissal. I ...[intervenes]

**CHAIRPERSON:** You implemented that.

**MR KOKO:** I implemented that. Then he went to CCMA. Ms Daniels was handling that and Ms Daniels came to me and with IR and said what is your strategy? I said the guy  
10 must not come back. The guy was not come back, he is dismissed, that is it. Then 2015, contrary to what many people think, Mr Chair, and the board members came here and struggled very much to give you a picture of what was happening in Eskom in 2015 and, I mean, I invite your investigators to go and check the minutes of the IFC of 26 February. It tells you the real picture of Eskom. It was a ...[intervenes]

**CHAIRPERSON:** IMC or ...[intervenes]

**MR KOKO:** IFC.

20 **CHAIRPERSON:** The Investment and Finance Committee.

**MR KOKO:** The Investment and Finance – if there is any single document that tells you the position of Eskom is that it is those minutes, I think it is paragraph 5.

**CHAIRPERSON:** Yes.

**MR KOKO:** It says ...[intervenes]

**CHAIRPERSON:** You said it is February 2015?

**MR KOKO:** February 2015.

**CHAIRPERSON:** Ja.

**MR KOKO:** The 26 February.

**CHAIRPERSON:** Ja, okay.

**MR KOKO:** It says we are bankrupt, the government is not going to help us, the IMPD4 must be expedited. The load shedding in 2015 cost the economy, if you use CSI numbers, close to R85 billion in 2015.

10 I said to Suzanne, go handle this, I support you. My focus is not to go to CCMA and courts, my focus is to stop the loss of R85 billion to the economy. My focus is to make sure that we stop the primary energy cost and you will read it in there.

Suzanne Daniels came to me, the hearing of Mr Malesela took very long, the internal hearing, it took extremely long and I was very clear and I told everybody I told – I even went to – I think Mr Molefe was the CES, I said Mr Molefe, I am not spending time at the CCMA given  
20 what the IFC says about the position of Eskom, my focus is to stop load shedding.

My colleagues at Eskom will tell you, in 2015, when I took over Generation, they were having meetings, I cancelled all meetings. I cancelled all meetings, I cancelled all executive meetings, I said our focus – our

focus is to keep the lights on. We are load shedding, we are costing the economy over R80 billion a year, so - and so that is the reason why. Ms Daniels came to discuss it with me and say we want to settle this matter, say Suzanne, make it get away, but I do not want this person here, my focus is to keep the lights on.

**CHAIRPERSON:** Mr Seleka?

**ADV SELEKA SC:** Thank you, Chair. And Mr Sikhasimbe says - you see the affidavit from him, that he is puzzled  
10 that he would have been so important to cause the suspension of four top executives and in fact the loss of the jobs of three of those executives at a high cost to Eskom. Your comment?

**CHAIRPERSON:** Mr Seleka, I am not sure that we should be really going much into ...[intervenes]

**ADV SELEKA SC:** Yes, I am moving on, Chair.

**CHAIRPERSON:** The merits of whether Mr Sikhasimbe should or should not have been suspended or should or should not have been dismissed, so ...[intervenes]

20 **ADV SELEKA SC:** Yes, it is not the purpose, Chair.

**CHAIRPERSON:** H'm?

**ADV SELEKA SC:** It is not the purpose.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** The purpose is again testing Mr Koko's validity of the reasons given for his suspension. I am



moving on, Chair.

**CHAIRPERSON:** Ja please I think try and – ja because I do not want us to - because whether I think Mr Sikhasimbi should have been suspended or should not have been suspended or should have been dismissed or should not have been dismissed, I am not sure that it is something that has much bearing on anything.

**ADV SELEKA SC:** Yes, Chair my question was if you look at the totality of the evidence, that if Mr Koko is  
10 correct that his suspension is as a result of Mr Tsotsi and Mr Sikhasimbi being suspended, Mr Sikhasimbi says wow, then I was so important that I caused four executives to be suspended and three of them to be gotten rid of.

**CHAIRPERSON:** I do not see his point. Ja, I mean he may be quite interested in that because he was involved in that, but the Commission is really looking at other issues. The only reason why his issue comes in is because Mr Koko says Mr Tsotsi sort my suspension because of that.

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

20 **CHAIRPERSON:** But Mr Tsotsi has not said because Mr Koko unfairly suspended Mr Sikhasimbi I wanted him suspended that is not suspension, ja.

**ADV SELEKA SC:** Correct Chair. Now let us – I had said that I will come back to the version of Mr Tsholofelo Molefe and Mr Koko, by the way you testified about the Koko hunt

last time in your appearance can you tell...[intervene]

**CHAIRPERSON:** Well I am sorry can I ask this Mr Koko following upon what you said earlier on in regard to Mr **Mosongaai** and with regard to Mr Linnell if...[intervene]

**MR KOKO:** Mr, I heard Mr Linnell and Mr?

**CHAIRPERSON:** Mr Linnell and Mr **Mosongaai**.

**MR KOKO:** Mr **Mosongaai**?

**CHAIRPERSON:** Yes, based on what you are saying Mr Linnell's evidence was which I think Mr Seleka confirms  
10 you are right that he mentioned to Ms Myeni at the Pretoria meeting something along the lines that he could not see how the investigation could be done without the heads of the particular portfolios being suspended which included your portfolio.

Number one if at the Durban meeting the person who  
gave certain reasons why your portfolio should be investigated was not Mr Tsotsi but Mr **Mosongaai** does that not, don't those two points suggest that the inclusion of  
20 your portfolio among the portfolios to be investigated and the idea that you should be one of the three executives mentioned or rather one of three executives whose portfolios were mentioned in Durban that should be suspended don't those points suggest that the idea that you should be suspended did not originate from Mr Tsotsi.

**MR KOKO:** Except that the audios of the 11<sup>th</sup> it is Mr Tsotsi who talks passionately about me.

**CHAIRPERSON:** That is the audios of the meeting.

**MR KOKO:** The 11<sup>th</sup> of March meeting.

**CHAIRPERSON:** The Durban meeting or?

**MR KOKO:** No.

**CHAIRPERSON:** Oh the 11<sup>th</sup> of March.

**MR KOKO:** The 11<sup>th</sup> of March meeting.

**CHAIRPERSON:** Oh yes, okay.

10 **MR KOKO:** Except that it is Mr Tsotsi who is very passionate about me.

**CHAIRPERSON:** Yes, no we can come to that but do you accept that if you do not look at what was discussed at the meeting of the 11<sup>th</sup> if you just look at those two points you made. Do you not accept that they seem to suggest that your inclusion or the inclusion of your portfolio among the portfolios to be investigated did not originate from him?

**MR KOKO:** No let me tell you why.

**CHAIRPERSON:** Ja.

20 **MR KOKO:** When Mr Linnell tried to explain how he knew or how he met Mr Masanganye he frequently said in this Commission I have met him at Zola Tsotsi's house. I was introduced...[intervene]

**CHAIRPERSON:** Jut repeat at Mr Zola Tsotsi's house.

**MR KOKO:** Zola Tsotsi's house.

**CHAIRPERSON:** Ja.

**MR KOKO:** Yes, so I cannot rule out that it was a caucus position between him and Mr Tsotsi.

**CHAIRPERSON:** Okay but when you say that, when you say you cannot rule out I understand that to mean I cannot assert it as a fact but I cannot exclude it as a possibility that they conspired. Am I correct to understand you that way?

**MR KOKO:** Chair I am and you might be unhappy with my  
10 answer but I certainly...[intervene]

**CHAIRPERSON:** No I am not I just want to make sure that I understand you correctly.

**MR KOKO:** I am certainly of the opinion that Mr Tsotsi and Mr Masongwane conspired.

**CHAIRPERSON:** Yes, okay but as you put it now it might be – you based that more on what Mr Tsotsi said on the 11<sup>th</sup> plus what you have testified happened involving you Mr Matona and Mr Tsotsi prior to the 11<sup>th</sup>.

**MR KOKO:** Correct.

20 **CHAIRPERSON:** Ja, okay alright. Mr Seleka.

**ADV SELEKA SC:** Thank you Chair. Yes, Mr Koko I had asked in regard to the testimony the Koko hunt. When did that start the Koko hunt?

**MR KOKO:** Chair and you will need to give me a chance this is very, very important to my heart.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** I just want an indication of when did it start.

**MR KOKO:** It started December 2014.

**ADV SELEKA SC:** Okay.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** So what does it entail?

**MR KOKO:** So Chair the Koko hunt started with a matter that landed on your desk that you...[intervene]

10 **ADV SELEKA SC:** Yes, but I am asking what does it entail?

**MR KOKO:** I am explaining that Chair Mr Seleka has to give me a chance here he cannot push me I will give my story.

**CHAIRPERSON:** Ja, I will give you a chance yes.

**MR KOKO:** We...[intervene]

**CHAIRPERSON:** Well you had just said it is a matter that we are not aware of the matter.

20 **MR KOKO:** Yes, so let me do that, so there was a project at Eskom and there is still a project called the Koeberg steam generator replacement. This steam generator replacement was delayed for quite some time before I was appointed but I am an engineer and I understood the dynamics of having the Koeberg steam generator replacement done and quite frankly the toing and froing we

then ascertain like the steam generator was nonsensical.

One, two there were serious issues with the project team that was running it. Just to summarise the story short the Koeberg steam generator contrary to what many people do not understand in my view was the Picasso to the nuclear bid into the future. It was the single biggest nuclear project in the country second to the big nuclear future. So we had to do it and do it properly and I made sure that we do that but the story of nuclear was  
10 politicised. Nuclear is President Zuma and renewables is alleged to be Mr Ramaphosa. So we had – and those dynamics played big time towards the ANC conference. But in my mind I was clear it is the right thing to do and we will do it and I will take no prisoners.

Chair I have never been attacked so much I mean the document that is served before the court was a similar conspiracy to what we are doing now and the conspiracy was the Board tender committee awarded the steam generator contract to Western House and overnight Mr  
20 Matjila and Mr Koko changed the decision and awarded it to Ariva and they went to I think it was to the Minister and between the Minister Brown and Mr Matjila and Mr Koko moved the decision from Western House and to Ariva.

At the time Mr Chair the story sounded the believable you could have heard another Commission of

Koeberg generator force but I was the phase of it, I took claim on that. Everybody the newspapers criticised me left right and centre because they argued that I am anti-renewables and pro-nuclear. That is where the Koko hunt start the culmination of the Koko hunt was in June 2016 when we were supposed to sign the renewable IPP's. Now purely on the economics of Eskom anybody who buys a product and listen to me Chair anybody who buys a product for R83,00 when he can make it for eighty-three cents a  
 10 unit for eighty-three cents when he can make it for forty cents and then sell it for R2,25 is stupid and does not act in the interest of Eskom.

It is happening today and I repeat it is stupid whether government is doing it, whether Eskom is doing it, it is stupid. You can make it for forty cents, you buy it for eighty-three cents, you sell it for twenty-five cents. I objected to that, till today I am carrying the brunt of it that is the Koko hunt.

**CHAIRPERSON:** That is the Koko hunt?

20 **MR KOKO:** Yes, and everybody take that opportunity to say this guy is corrupt, his pro-nuclear, his anti-renewables if I have done something wrong for as long as I mentioned his name that is good. When the issue of Koeberg steam generator was raised in this Commission your response which hurt me because you created an impression to the

public that Mr Koko is out of line.

You said but the merits were not discussed, I wrote the judgment the merits were not discussed. What you did not tell them is that the contract, the person who came before the court was not the person who tendered the person who came before the court did not have a local standing to court that is what when you should have said when you should have told the public it hurt me Chair that here is a DCJ telling the public that I wrote the judgment  
10 and if Mr Koko had read the judgment he would have, you did me wrong but that is fine that is the Koko hunt.

**CHAIRPERSON:** Okay well the fact remains that that judgment was decided on local stand that remains it did not go into the merits. There was a Mamelodi judgment which went into the merits so that part is factual, okay.

**MR KOKO:** And the minority judgment of then Deputy Justice Moseneke ruled in my favour.

**CHAIRPERSON:** Yes.

**MR KOKO:** And the South Africans must know that there  
20 was a minority judgment by Deputy Chief Justice Moseneke that said Koko was right the words that he used was that Mr Eskom was meticulous.

**CHAIRPERSON:** Yes but Mr Koko all judgments of the Constitutional Court are public so that minority judgment is known. Mr Seleka.



**MR KOKO:** I accept that Chair I made your point.

**CHAIRPERSON:** Ja okay, Mr Seleka.

**ADV SELEKA SC:** Chair let me try to expedite. Mr Koko I am going to run through the version of Ms Molefe because that version is correct as you have accepted. Now the version is that on the 10<sup>th</sup> of March 2015 they were in the second day of the strategy session. Ms Veleti tells her that you are calling her to come to Melrose Arch and she did not know Ms Veleti why you were calling her and makes  
10 enquiries with Ms Molefe and Ms Molefe say well do not go if Mr Koko calls you again let him call, let him speak to me...

That's on the 10<sup>th</sup>, on the same date in the evening she, Ms Molefe, is called by Mr Dan Marokane and Mr Dan Marokane tells her let's meet and they meet, wherever they met, and he relays to her what he had been told by Ms Suzanne Daniels, which is the meeting with you at Melrose Arch has ...[intervenes]

**CHAIRPERSON:** Just raise your voice Mr Seleka.

20 **ADV SELEKA SC:** Which is the meeting with you and Mr Salim Essa at Melrose Arch, so I am just giving you that version. With that information she meets, she goes to Mr Matona the next day, on the 11<sup>th</sup> of March, and that is when she says to Mr Matona I hear that we are going to be suspended. Mr Matona says I hear – I have heard rumours

also that we are going to be suspended.

Now Mr Matona does not say to her well you know – or let's start with her first, she does not say to Mr Matona I understand that you and Mr Koko are going to be suspended, and for the ...[indistinct] reason, nor does Mr Matoma respond along those lines.

So clearly her suspension, or what she had heard was the suspension was in regard to the four executives as told to her by Mr Dan Marokane, Mr Marokane told by Ms  
10 Suzanne Daniels.

I want to take you to a paragraph in your affidavit on page 46, paragraph 156 ...[intervenues]

**MR KOKO:** Chair I ...[indistinct] about what he says but I need to answer his question because I want to come back to ...[intervenues]

**ADV SELEKA SC:** Chair I can give him time to go back now.

**MR KOKO:** Yes, my counsel told me to keep quiet when the lead investigator speaks, and ask for permission to  
20 comment.

**CHAIRPERSON:** Ja.

**MR KOKO:** And I will do that.

**ADV SELEKA SC:** Ja, but I am saying the version of Ms Tsholofelo Molefe which ...[indistinct]

**MR KOKO:** I am at page 46.

**CHAIRPERSON:** Page 46?

**ADV SELEKA SC:** Ja page 46 Chair. What I was saying to Mr – to you Mr Koko, is that the version of Ms Molefe, which you say is correct, you said it last time, that is the one that is outlined there and when she goes to Mr Matona saying we – I understand we are going to be suspended she is referring to the four executives, but I want to refer you to this paragraph, paragraph 1 ...[intervenes]

**CHAIRPERSON:** Hang on before you referred him to the  
10 paragraph he wanted to say something.

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

**MR KOKO:** Thank you Chair, I don't believe Ms Molefe's affidavit or what Ms Molefe was told that I called Ms Dlamini to come to Melrose Arch, that is false, I don't believe that because it is false. I have never called Ms Dlamini, Ms Nonkululeko Veleti, to come to Melrose Arch, I called her I told her I am at Melrose Arch, so the discussion between her, Ms Molefe and Ms Veleti that I told Ms Veleti to come to Melrose Arch I don't believe it  
20 because it never happened, it is false.

**CHAIRPERSON:** Okay, now it is important that we understand exactly what you say yes. Ms Dlamini testified that she is the one that told Ms Molefe about the content of – well about the fact that you had called her to about the content of the discussion that she said happened between

the two of you, so are you saying that to the extent that Ms Dlamini conveyed this to Ms Molefe Ms Dlamini is not being truthful or is mistaken or are you simply saying that well the fact that there was such a conversation between the two of them about this is rejected, or ...[intervenes]

**MR KOKO:** No, no, no I cannot reject the conversation  
Chair.

**CHAIRPERSON:** Yes, but what I am saying ...[intervenes]

**MR KOKO:** I was not there when they talked so I cannot  
10 reject that there was a conversation between the two of  
them.

**CHAIRPERSON:** Yes, yes.

**MR KOKO:** What I am saying is that if Ms Veleti Dlamini  
told Ms Molefe that I called her to Melrose Arch she is  
mistaken.

**CHAIRPERSON:** Okay, no that is fine, yes, I think you  
made the same point last time about that ja.

**MR KOKO:** Yes, the part that I agree that with Ms Molefe  
and that is based purely on my interaction with Mr Matona,  
20 is when Mr Matona says he knew, he knew from, he knew –  
he says he knew from outsiders, I think he owes you an  
explanation who the outsiders are, that they will be  
suspended. Ms – no, yes, that is Ms Molefe, that make it  
because it accords to the conversation that I had been  
having. The part that should interest all of us is that Mr

Matona denies that, she says I only learnt about the suspensions of the four when I was suspended.

**CHAIRPERSON:** Okay, Mr Seleka don't forget the point you were pursuing please.

**ADV SELEKA SC:** Okay, yes Chair.

**CHAIRPERSON:** Well what you say Mr Koko with regard to your assertion that Ms Dlamini was mistaken to hear to say you had called her to a meeting at Melrose Arch, what do you say to this proposition that how come Ms Dlamini  
10 tells Ms Molefe something that is consistent with what Mr Masango tells Ms Kraai about in regard to him and tells Mr Marokane about and how come Ms Dlamini is mistaken about something that is consistent with what unbeknown to her from what I understand her position Ms Daniels tells, told somebody, I don't know whether it was Mr Marokane or ...[intervenes]

**ADV SELEKA SC:** Marokane yes.

**CHAIRPERSON:** Marokane about on the same day, so what you have is Ms Daniels says on the 10<sup>th</sup> tells Mr  
20 Marokane on the 10<sup>th</sup> of March 2015 Mr Koko called me to a meeting at Melrose Arch, where I met him and Mr Salim Essa, or maybe doesn't go to the details of Salim Essa but he told – I was told, he called me to a meeting in Melrose Arch where I heard that four executives are going to be suspended.

Mr Abram Masango also testifies and says on the same day I got a call from Mr Koko as well and he called me to Melrose Arch and there in that meeting I was told that four executives would be suspended. All of these people, as I understand the position, are acting independently of one another. Ms Kraai says indeed that is what Mr Abram told me either it is the same day or the following day reported to me, Mr Dan Marokane also says I don't know if it was a week or whatever later or two weeks  
10 that's what Mr Abram Masango told me as well.

**ADV SELEKA SC:** On the 14<sup>th</sup> Chair.

**CHAIRPERSON:** On the – okay ...[intervenes]

**ADV SELEKA SC:** The Saturday.

**CHAIRPERSON:** Okay so what do you say to the proposition that it looks very strange that Mr Marokane, that you spoke to her and you were at Melrose Arch on that day, you admit that you spoke to her, you called her, you admit you were at Melrose Arch but you are saying that in terms of the content of the conversation she is mistaken  
20 about you having said she must come to a meeting at Melrose Arch, but it so happens that there are these two other people who independently tell other people that same things, same calls were made to them and same discussion happened. What do you say about that?

**MR KOKO:** Chairman you are not correct to suggest that

Ms – no – Ms Daniels and Mr Masango are acting independently and I will come back to that.

**CHAIRPERSON:** Yes, no, no, you must tell me, I am just saying from what I have heard or not heard that they ...[intervenes]

**MR KOKO:** Ja, so I am coming to that, I am saying ...[intervenes]

**CHAIRPERSON:** Ja, you must come to that ja.

**MR KOKO:** ...you are not correct. I called Ms Dlamini,  
10 that is a fact, I told her I was at Melrose Arch, I actually thought she is at Megawatt Park, and what she did not tell you because we were very close, before I knew that she was at the college I was harassing her to find out what is going on, in the corridors at Megawatt Park, because that was the day I was supposed to be suspended.

**CHAIRPERSON:** Okay, I am sorry, I am going to ask you to repeat that, I don't think I heard clearly.

**MR KOKO:** I am saying what she did not tell you about  
20 our conversation when I called her and I told her that I am at Megawatt Park and I told her why I was at Megawatt Park, I told her I ran out of the office, I did not want to ...[intervenes]

**CHAIRPERSON:** Oh you mean you told her you were at Melrose Arch?

**MR KOKO:** I told her at Melrose Arch, I ran out of

Megawatt Park because Mr Tsotsi has a permanent office at Megawatt Park, he interacts, and I did not want to come across him, but I believe that he was going to suspend us on that day and Ms Veleti Dlamini was quite senior and I said just find out for me what is going on in the corridors talk, when I – I don't know whether I phoned him first – her first – or Mr Masango first, but I also phoned Mr Masango.

**CHAIRPERSON:** Yes, yes.

**MR KOKO:** So at no stage that I told her I am at Megawatt  
10 Park, but here is a clue for your answer, at no stage did I  
tell her to come to Megawatt Park, I told her my story  
...[intervenes]

**CHAIRPERSON:** Okay, you still keep on saying Megawatt  
Park, Melrose Arch.

**MR KOKO:** I apologise, and I think you are right Chair.  
Here is a clue to your answer, Ms Veleti and this makes me  
not to sleep because I am wondering why would she do  
that. She says in her affidavit in the afternoon when we  
met at Midrand, and remember the meeting of Midrand I  
20 told you, she did not tell you, she was asked to comment  
on it, she said Mr Koko told me that she will be suspended  
with other executives and she writes it in black and white,  
she did not tell me who else was going to be suspended.

When she comes here to sit here and she looks at  
you and you asked her did Mr Koko tell you that the CFO



will be suspended. She says yes, that – and it is irrational, her affidavit is very clear that I did not tell her, she comes here she says I told her. I cannot explain why other than to say she looks, she came here, she looks at the trends, she thinks that is what you want to hear. If you go to Ms Daniels based on the suspension letters, the four suspension letter that were shown to you by Mr Khoza and Ms Daniels that were written by her on the 10<sup>th</sup> in the evening ...[intervenes]

10 **CHAIRPERSON:** That is now Ms Daniels?

**MR KOKO:** Ms Daniels, written by her and aided by Mr Salim Essa, when in her version she was not asked to assist either me or Mr Essa to write suspension letters. That is classical example of if ever you needed evidence that Ms Daniels was in contact with Mr Essa on that day it is those four letters. The source of the information to Mr Marokane, to Ms Molefe he is the same person who based on the evidence here, met Mr Essa at least at seven o'clock, that is the issue for me. She had contact with Mr

20 Essa based on the suspension letters. They both, Mr Masango and Ms Daniels, go to Parliament and they say we worked together to get rid of Mr Koko, so they did not act independently. It is a story Chairman a concoction created after March 2017 after I have dealt with her – with him and Ms Kraai. Ms Kraai and Mr – Ms Kraai and Mr

Masongo [00:00:11] created this story after I issued an instruction that they must be investigated.

**CHAIRPERSON:** Yes now of course we dealt previously I think with the question that as at the 10<sup>th</sup> and 11<sup>th</sup> March 2015 you were still close Ms Daniels, you were still close to Mr Masongo. So with regard to Mr Dan Marokane saying yes Mr Masongo did tell me.

**MR KOKO:** But Mr Marokane does not say that Chair.

**CHAIRPERSON:** Hang – hang on one second we will need  
10 to check up. I am under the impression that he does.

**MR KOKO:** But he does not.

**CHAIRPERSON:** But we need to check. To the extent that he confirms that Mr Masongo did tell him during 2016 then we would need to look at why he would say that. Mr Seleka is my recollection incorrect?

**MR KOKO:** Chair I listened to the testimony.

**CHAIRPERSON:** Ja.

**MR KOKO:** That was put to Mr Masongo by Mr Seleka that Mr Masongo – Mr Marokane denies what Mr Masongo says.

20 **CHAIRPERSON:** Okay. Mr Seleka.

**ADV SELEKA SC:** Chair the...

**CHAIRPERSON:** Maybe I am mistaken.

**ADV SELEKA SC:** Well Mr Masongo did answer my question saying – he answered it in the affirmative that he told Mr Dan Marokane but I did put to him that Mr Dan Marokane did not

confirm that and...

**CHAIRPERSON:** Did he confirm that he was told by Ms Daniels.

**ADV SELEKA SC:** No that one is confirmed yes.

**CHAIRPERSON:** He confirmed that.

**ADV SELEKA SC:** That one is confirmed.

**CHAIRPERSON:** What he did not – but was he asked about Masongo’s version that is Mr Dan Marokane?

10 **ADV SELEKA SC:** I did provide him with Mr Masongo’s affidavit.

**CHAIRPERSON:** Yes okay.

**ADV SELEKA SC:** I specifically asked him.

**CHAIRPERSON:** Okay. Okay. But he confirmed the one relating to ...

**ADV SELEKA SC:** Correct Chair.

**CHAIRPERSON:** Ms Daniels.

**ADV SELEKA SC:** Correct.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Yes.

20 **CHAIRPERSON:** So I think maybe the – what I would put – what I would want you to comment on that is limited to Ms Daniels and Mr Marokane. Would you have a reason why Mr Marokane would confirm that Ms Daniels told her something in – on the 10 March if she actually did not tell him?

**MR KOKO:** Sir you – Chair.

**CHAIRPERSON:** Did he have the reason?

**MR KOKO:** Chair you have said we were close with Ms Daniels.

**CHAIRPERSON:** Yes, yes.

**MR KOKO:** We had a very good professional relationship that is correct.

**CHAIRPERSON:** Yes.

**MR KOKO:** But she did not tell me that she met Mr Essa and wrote the suspension letters against the four of us and it  
10 was created by Mr Essa. She did not. I cannot explain that.

**CHAIRPERSON:** Okay.

**MR KOKO:** I just cannot explain her behaviour that here is a person on evidence before us met Mr Essa, wrote the suspension letters, Mr Essa edited the suspension letters and then she goes to Mr Marokane and say, Mr Koko took me to Mr Essa and the four of you are going to be suspended. I just cannot explain that type of behaviour.

**CHAIRPERSON:** Okay no that is fine. Continue Mr Seleka.

**ADV SELEKA SC:** Thank you Chair. Just to clarify on this  
20 Vilene Chairperson. When she testified the transcripts shows now she is telling before we ask her questions.

“And he indicated that I might be referring to Mr Koko I might be asked to ask in the role – in the role because there was not in those words there was chance that the FD was also

in the list of suspensions.”

So but then we – it is incumbent on us to get clarity from her.

So she says:

“Not in those words.”

She said there is a chance the FD was also on the list of suspensions.

**CHAIRPERSON**: Ja.

**MR KOKO**: And Chair there is a – there is a..

**ADV SELEKA SC**: So – can I – let me just finish.

10 **CHAIRPERSON**: Ja let him finish ja

**MR KOKO**: I apologise Chair.

**ADV SELEKA SC**: So then we would have asked questions to clarify and she would have answered which is what Mr Koko is referring to.

**CHAIRPERSON**: Yes.

**ADV SELEKA SC**: And that is what the evidence is Chair.

**CHAIRPERSON**: Ja. Okay Mr Koko you wanted to say something?

20 **MR KOKO**: No the – I do not think that I was understood why in my discussion in my dinner discussion in Midrand which Ms Vilete says is – was twenty minutes and it was not. And when we were discussing and she says so if you are going to be suspended – because I was very clear. I said me and Mr Matona are going to be suspended. I did not talk about other people who will most likely act, I said I do not

know you may probably act. There is a reason for that  
[00:05:20].

**ADV SELEKA SC:** Sorry Chair but that is ...

**CHAIRPERSON:** Yes let him finish – let him finish. Let Mr  
Koko finish.

**MR KOKO:** And there was a reason for that. And the reason  
for that is because if you look at the Eskom organisation  
structure the most senior person at the time in commercial –  
remember I was head of commercial it was her.

10           She had set up what we call Shared Services all the  
transactional activities on finance and commercial were  
centralised into one and she set it up and she did so well to  
it and she became an executive of the year.

So if you look at the succession planning and you say  
who is more – who are the two or three or four people who  
will step into the position of the Chief Procurement Officer  
you will be naïve if you do not mention her.

**CHAIRPERSON:** Yes Mr Seleka.

**ADV SELEKA SC:** Yes Chair thank you. Let me put it this  
20 way Mr Koko. You see your explanation for the – for your  
suspension it does not explain why these executives who are  
four who we understand in two different meetings before the  
11<sup>th</sup> they get suspended – talked about that is including  
yourself and they get suspended on the 11<sup>th</sup> just as it is said  
to have been discussed at the Melrose Arch meeting. Your

version does not explain that. That is one.

Let me add the other one. It does not explain why the Minister comes there on the 11<sup>th</sup> and he – the other board members have said he speaks in support of what Mr Tsotsi had said on the 9<sup>th</sup>. Identifies four areas of her concern and she says these four executives should step aside.

I will add the third one. It does not explain why the executives who were appointed to act they say you told them  
10 they will act – at least these two.

But I told you also about Mr Abram Mabolane that you said to him this meeting you are being called to the Chairperson it is maybe about you going to act because we are going to be suspended but you did not tell him who is going to be suspended. He walks away from your office under the impression that he is going to act in your position. And all three of them get appointed just as they say you suggested to them.

Your version does not explain that so how – how does  
20 the Chairperson view...

**MR KOKO:** Chairman I cannot – I cannot carry that – the monkey of a Melrose Arch meeting with Salim Essa. It did not happen. I did not know Salim Essa in 2015. I have put it to you go check my telephone records, go and probe whatever intelligence you can employ you will not find my

contact with Mr Essa either telephonically or on the emails.

Ms Daniels met with Mr Essa on the 10<sup>th</sup> the evidence shows that before you. So I cannot carry that monkey. I did not have a discussion with Mr Essa and Ms Daniels about the suspensions. I did not meet Mr Masongo at Melrose Arch. I phoned him during the day he was in a meeting. I said on the 3<sup>rd</sup> I phoned in the afternoon towards five o'clock I was driving to go and meet Ms Dlamnini. She – he asked me he will come to where I am. I said no, no we are  
10 neighbours so I know where he lives. Do not come to Joburg. But I told him exactly, exactly what I was going through.

I did not tell Mr Mabalane that he is going to act. I have not seen his affidavit. I am looking forward to it. I explain to the commission why I think I was suspended and I am convinced why – I am convinced why I was suspended.

I cannot explain what Minister Brown did. I cannot explain it but I can tell you why I think I was suspended.

**CHAIRPERSON:** Yes. Okay.

20 **ADV SELEKA SC:** It also does not explain your version why the coincidence – is it a coincidence or what that Mr Masango says he told me – Mr Koko four executives are going to be suspended but I will come back and the other three will not. And exactly that happens.

**MR KOKO:** Chair I once again am – if you want a witness



that has said too many things that do not tie up it is Mr Masango. And you go with his version at your own risk.

What I can tell you is that the story that the board was in a conspiracy with me to take me out and bring me back. They had an opportunity to leave me there. I – it just does not make sense. This story of a conspiracy that brings me back is just as a minimum just ridiculous.

**ADV SELEKA SC:** Ja. It does not explain Mr Koko which is what Mr – Ms Daniels was told that there will be an inquiry  
10 by an independent firm. And what happens is this. Mr Linnell who was embraced by the board to be the coordinator he had suggested the different in mind. One to be headed by a judge and to appoint a law firm and an auditing firm. What happens the Audit and Risk which was headed by Ms Mabude declines that terms of reference and the board goes out of its way to appoint one independent I suppose law firm Dentons to conduct the investigation. Exactly as she was told at Melrose Arch.

**MR KOKO:** Chair once again when you asked Ms Daniels  
20 that – when she said to you Ms Essa told me that four executives will be suspended and they will not come back. And you asked me – you asked her but why did you not say so? She could not give you a decent answer I do not think you got a decent answer. I cannot speak for the Audit and Risk. I do not know how Dentons was appointed. I just know

I dealt with them, they interviewed me many times. I cannot talk for the board. They must come here and speak for themselves.

**ADV SELEKA SC:** Yes. Chair as to the four executives and one returning we know that from Mr Masango. That is from his side.

And it does not explain the genesis of all these meetings – the meetings at the President’s but you said you cannot dispute that because you were not there.

10 It puzzles the mind that if you – if your statement could be said prior to the 11 March and prior to this executives – the three being gotten rid of that they will be gotten rid of and the witness says, I heard it from Mr Koko. And you see the board is at pains to negotiate – to exit them and pay them huge amounts of money as harsh money to go away. That s I said here previously that that is either a coincidence or it is an orchestration. Your comment? Which on the face of it it seems if you look at this witness’ evidence you would have been part of or behind it.

20 **MR KOKO:** If ever there was an orchestration I was never part of it.

**ADV SELEKA SC:** Mr Seleka ...

**ADV SELEKA SC:** Shall I ask the last question Chair?

**CHAIRPERSON:** Well I am not saying ask the last question I just want to make sure that we are all on the same page.

We have – all have the same idea of how much time.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Still – you still need. We are at twenty eight minutes to seven, what is your assessment of how much more time?

**ADV SELEKA SC:** I ask a question in a minute Chair. In less than a minute – I ask a question in less than a minute. I cannot control the answer how long it is going to be.

**CHAIRPERSON:** Yes.

10 **ADV SELEKA SC:** But let me see I can simplify the questions and...

**ADV BARRIE:** Mr Chairman I have actually got a problem with what has just been stated to you.

**CHAIRPERSON:** Sorry.

**ADV BARRIE:** I actually have a problem with what my learned friend has just put to you because what it really amounts to.

**CHAIRPERSON:** Yes.

**ADV BARRIE:** The intimidation of the witness.

20 **CHAIRPERSON:** No hang on...

**ADV BARRIE:** Because what he is saying to you and he is suggesting that you and I are on the same side.

**CHAIRPERSON:** I did not take it seriously.

**ADV BARRIE:** May I speak Sir? May I speak Sir?

**CHAIRPERSON:** Ja.

**ADV BARRIE:** So it is – he is indirectly trying to limit the witness' answers that is what he is doing and that is not fair Sir and you should not allow it. That is not a joke.

**CHAIRPERSON:** No, no.

**ADV BARRIE:** It is not a joke Sir.

**CHAIRPERSON:** No, no, no. What – no, no I do not think he meant it seriously. The position is ...

**ADV BARRIE:** This is my very point he hides behind supposed humour.

10 **CHAIRPERSON:** Ja, ja no.

**ADV BARRIE:** But that is not what is happening here Sir.

**CHAIRPERSON:** No, no, no. Let us talk about what your...

**ADV SELEKA SC:** Time estimation Chair.

**CHAIRPERSON:** Ja what your assessment is of the time you need.

**ADV SELEKA SC:** I think we – we could be less than ten minutes Chair.

**CHAIRPERSON:** Okay no that is fine.

**ADV SELEKA SC:** Yes.

20 **CHAIRPERSON:** I just wanted to have an idea so that we all we know.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** It might be a little more or less.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** But I just wanted an idea.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Okay alright.

**MR KOKO:** Chair my sincere apologies I can do with a comfort break.

**CHAIRPERSON:** Okay alright. Okay let us take ten minutes?

**MR KOKO:** No five minutes.

**CHAIRPERSON:** Five minutes will do.

**MR KOKO:** Five minutes.

10 **CHAIRPERSON:** But walking to where you might walk and coming back.

**MR KOKO:** I will run quickly.

**CHAIRPERSON:** Ja okay. Let us take a five minutes break then.

**MR KOKO:** Thank you Chair.

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

**CHAIRPERSON:** We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

20 **INQUIRY RESUMES**

**ADV SELEKA SC:** Okay, there, they fixed it. And then Mr Koko, the board returns you. They returned you back from your suspension on the basis that the Dentons Investigations did not find any wrongdoing against you but when, in fact, the board never gave Dentons the mandate to investigate

any misconduct against any of the suspended executives.  
Your comment?

**MR KOKO**: Chair, I think that the board must be ashamed of themselves from day one because the suspensions were not warranted. They must be ashamed. I told them – and the minute of the 11<sup>th</sup> is very clear. I went in to create a – they even had to cut – to send me outside for a cool-off, you know, like a rugby player who has been out of order.

They had to say – I had to stay outside for close to 40-  
10 minutes because I just did not agree with them. They were not making sense. So I was not surprised. And when I met them, I told them. When they gave me a settlement, I did not even look at it. I told them by blood is blue. I did nothing wrong. Charge me if I have done something wrong. So I was not surprised.

**ADV SELEKA SC**: Yes. Then I have referred you to page 46 of your affidavit, paragraph 157.

**MR KOKO**: 46?

**ADV SELEKA SC**: 157.

20 **CHAIRPERSON**: Well, on my bundle there is not a 157 at page 46. There is 167.

**ADV SELEKA SC**: Ja, Eskom Bundle 15 Chairperson. Sorry.

**CHAIRPERSON**: That is the one. You said...

**ADV SELEKA SC**: Page 46.

**CHAIRPERSON:** Oh, no. I am terrible sorry. This is page 46 of the affidavit, not the bundle.

**ADV SELEKA SC:** Oh, okay.

**CHAIRPERSON:** So you mean the paginated pages?

**ADV SELEKA SC:** Paginated, yes.

**CHAIRPERSON:** No, that is fine. That is fine. Yes, okay I am there.

**ADV SELEKA SC:** Yes. There is a paragraph there Mr Koko, paragraph 146 and I think you are specifically  
10 dealing with paragraph 27 of Ms Tsholofele Molefe's affidavit. You say:

“I do not believe what Ms Molefe deposed to in paragraph 27 of her affidavit regarding what other had told her.”

And then you go on to say:

“I, again, suspect that she has been precognise[sic] by the Zondo Investigation Team.”

Now Chair, it is important we look at paragraph 27 of Ms Molefe's affidavit.

20 **CHAIRPERSON:** What bundle?

**ADV SELEKA SC:** Eskom Bundle 11. Please assist Mr Koko. Eskom Bundle 11, page 15. Paragraph 27 Chair is at the bottom of the page.

**CHAIRPERSON:** I have got paragraph 27.

**ADV SELEKA SC:** Thank you, Chair. The paragraph reads:

“My suspension, although difficult to believe and understand, did not come as a surprise.

The day before my suspension, the Senior General Manager for Shared Services, Ms Nomkuleko Dlamini aka Lettie, came to me in panic and informed me that Mr Matshela Koko called her and requested that she go to Melrose Arch to meet some people.

10 At the time, we agreed that she would not go and if Koko called her again, she would refer him to me. Later on the same day, Mr Dan Marokane, Group Executive of Group Capital Division, informed me that he had heard from Ms Suzanne Daniels, Executive in the Office as the Chief Procurement Officer that he, Koko, Matona and I would be suspended the following day, 11 March at the board meeting.

20 Before the board meeting commenced at nine a.m. I went to see Matona in his office and he also informed me that he had heard from outside sources that we were going to be suspended at the board meeting later that day.”

And Chair you can also read paragraph 28 which is of interest but let me deal with 27 because paragraph 28, it says:



“While we were waiting to be called, I also received a call from one of the general managers, I cannot remember which one, asking me if it was true that we are being suspended.

I received information from reliable sources that at Essa’s behest, four of the general managers were called to his office at Melrose Arch.

These general managers were informed of the suspensions that would take place the following day and that they should be ready to act in our stead.”

10

But Mr Koko, I want to focus now on what you singled out in your affidavit which is paragraph 27 about which you say you do not believe what she is deposing in paragraph 27.

And you go on to say:

“I, again, suspect that she has been precognise by the Zondo Investigation Team.”

Can you explain what this means?

**MR KOKO:** Chair, I saw the letter that my attorney sent you because I do believe and you may disagree with me and I could be wrong, it is okay. I do believe that your investigators are chasing people with evidence.

20

**ADV SELEKA SC:** What

**MR KOKO:** By chasing people in their evidence. And I do believe that they coach certain witnesses. I could be wrong.

By some of the things that I read in this evidence, based on what I know, I get shocked. It is only – it is something that I can say only in this place. And if I am wrong, I will take it.

**ADV SELEKA SC:** Ja.

**MR KOKO:** That is my belief and I have to say it.

**CHAIRPERSON:** H'm.

**MR KOKO:** And that last sentence points to that.

**CHAIRPERSON:** H'm.

**MR KOKO:** But let us go to what I am saying about – we  
10 talked about it. I cannot dispute the conversation between  
Ms Molefe and Ms Dlamini. I was not there.

**CHAIRPERSON:** H'm.

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

**MR KOKO:** But the content is not true.

**CHAIRPERSON:** H'm.

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

**MR KOKO:** The content is simply not true.

**CHAIRPERSON:** H'm.

**ADV SELEKA SC:** Now let us got to page 37 in the same  
20 bundle Mr Koko. Eskom Bundle 11.

**MR KOKO:** Eskom Bundle 11?

**ADV SELEKA SC:** Ja, the same one Ms Molefe's affidavit is  
found. Page 37 Chair.

**CHAIRPERSON:** Of the same?

**ADV SELEKA SC:** Of the same bundle. Eskom Bundle 11.

**CHAIRPERSON:** Yes?

**ADV SELEKA SC:** Where we are reading ...[intervenes]

**CHAIRPERSON:** Page 37?

**ADV SELEKA SC:** Page 37.

**CHAIRPERSON:** But before we go there. I just want to ask.  
Ms Molefe says that ...[intervenes]

**ADV BARRIE SC:** [Microphone not switched on]

**CHAIRPERSON:** H'm?

**ADV BARRIE SC:** We ...[intervenes]

10 **CHAIRPERSON:** Hang on. Let me say what I want to say  
first. Then I will give you a chance.

**ADV BARRIE SC:** [No audible reply]

**CHAIRPERSON:** Ms Molefe says at paragraph 28 of her  
affidavit that she received information from reliable sources  
or that she says that four of the general managers were  
called to Mr Essa's office in Melrose Arch and that there they  
were told – informed of the suspensions that would take  
place the following day and that they should be ready to act  
in our stead.

20 Has somebody investigated this part, talked to those  
general managers, got more information?

**ADV SELEKA SC:** Chair, what I understand the  
investigators have found in regard to that paragraph is to the  
extent they accrued there is three executives or managers  
who acted on the 12<sup>th</sup>.

**CHAIRPERSON:** H'm?

**ADV SELEKA SC:** You see, Mr Zethembe Khoza has denied having a prior meeting. He was here.

**CHAIRPERSON:** H'm.

**ADV SELEKA SC:** He only went as – even though the meeting of the 19<sup>th</sup> show that he had a meeting with those people who were to act. So he has denied that part. You will recall in the meeting ...[intervenes]

**CHAIRPERSON:** But all I want to find out is whether this  
10 has been pursued to check with Ms Molefe who those managers were and talk to them to find out there is any truth that they were called to ...[intervenes]

**ADV SELEKA SC:** We have... Ja, checking was done with her Chairperson.

**CHAIRPERSON:** Yes. Okay. You will, at some stage, draw my attention to where I must check if there is material here, arising out of that in this ...[intervenes]

**ADV SELEKA SC:** Ja. As you say, it is – she says reliable sources Chair.

20 **CHAIRPERSON:** Yes, ja.

**ADV SELEKA SC:** So...

**CHAIRPERSON:** But she should be able to... Well, I... She should be able to say ...[intervenes]

**ADV SELEKA SC:** To substantiate it.

**CHAIRPERSON:** Or if she cannot tell you what the – who

the reliable sources were ...[intervenes]

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** ...at least she should be able to tell you whether the four general managers are the people who ultimately acted or it is different people. And they should be asked whether they were called to such a meeting.

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

**CHAIRPERSON:** Ja, okay alright. Mr Barrie, what ...[intervenes]

10 **MR KOKO:** Chair, it is much more than that.

**CHAIRPERSON:** Sorry?

**MR KOKO:** It is much more than that.

**CHAIRPERSON:** Yes.

**MR KOKO:** We are untrusted in the telephone records because we want to know ...[intervenes]

**CHAIRPERSON:** Yes.

**MR KOKO:** ...who was Ms Molefe talking to, who reliable – told her that.

**CHAIRPERSON:** Yes.

20 **MR KOKO:** And ...[intervenes]

**CHAIRPERSON:** Ja.

**MR KOKO:** And what was the discussions about. And that is the discussion that the telephone records my counsel has been asking.

**CHAIRPERSON:** Ja. Mr Barrie, you wanted to say

something?

**ADV BARRIE SC:** Chair, I think the conclusion of the previous hearing, in the absence of my learned friend, because he was in conference with you after the hearing, you will recall. I had a conversation with Miss Govender(?). And... With Ms Jaggenhout(?)

**CHAIRPERSON:** Ja.

**ADV BARRIE SC:** My learned friend's junior.

**CHAIRPERSON:** Okay?

10 **ADV BARRIE SC:** And the reason for that conversation was that Mr Koko was during the testimony on the 3<sup>rd</sup> of December, confronted with bundles that we do not have and that he was not supplied with beforehand. That leave us in an embarrassing situation.

And the arrangement was and we referred to the files that were behind Mr Koko and said we would like to have them.

At that time, I insisted I wanted it in hard copy but the next day on the 4<sup>th</sup> of December, we wrote the letter and we  
20 said: No, no. Forget about the hard copy. We are quite happy to have it in electronic copy. So what we then subsequently received were Bundles 12, 13, 15 and 18.

But the arrangement was that the bundles that are going to be referred to you – before you during the examination of my client, will be made available to us. Now suddenly there

is Bundle 11 that is being referred to.

I now see there are seven bundles there at the witness. We are not supplied with it. And it is a simple matter of giving us a link to an electronic site. Then we can know what is going on before and Mr Koko can acquaint himself with the issue of the bundle. So we are upset about it.

**CHAIRPERSON:** Mr Seleka, what do you say to that point?

**ADV SELEKA SC:** Chair, the bundles, as my learned friend says, some of them were given to him. The request for hard  
10 copies, I was not aware of it but I am not sure whether the Commission ...[intervenes]

**CHAIRPERSON:** But he says that they changed that. He says that they ultimately said electronic is fine.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** But his complaint is that you are now referring to a bundle that has not been provided to him. That is his complaint.

**ADV SELEKA SC:** Yes. Oh, yes. I have just provided my learned friend with it. Last time ...[intervenes]

20 **CHAIRPERSON:** [laughs] He is saying it should have been provided earlier. That is what he is complaining about.

**ADV SELEKA SC:** No, I understand Chair.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** And he is complaining about last time. The last time, we only referred to Mr Koko's bundle.

**CHAIRPERSON**: No, no. He is complaining about now. He says you are referring to Bundle 11. He says Bundle 11 is not amongst the bundles that you made available to him before.

**ADV SELEKA SC**: No, that is correct Chairperson.

**CHAIRPERSON**: H'm.

**ADV SELEKA SC**: It was not available to them before.

**CHAIRPERSON**: H'm.

**ADV SELEKA SC**: The bundles which we used, we  
10 determined that during the course of our preparation. So I decided today, during the course of the day, that I will seek to rely or refer to bundle – not bundle, but the affidavit of Ms Molefe. So we did not provide it then last week or during the course of the week.

**CHAIRPERSON**: Well, but ...[intervenes]

**ADV SELEKA SC**: But the affidavit would have been provided to them.

**CHAIRPERSON**: But the principle that he is talking about is. There is an agreement – at least he – they made the  
20 point and ...[intervenes]

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: ...they thought you had accepted the principle that they should be provided in advance ...[intervenes]

**ADV SELEKA SC**: Yes.



**CHAIRPERSON:** ...with the bundles that will be used in questioning their client.

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

**CHAIRPERSON:** And he says the use of Bundle 11 now ...[intervenes]

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** ...to question his client ...[intervenes]

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** ...when Bundle 11 has not previously been  
10 given to them, is unfair to them.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** That is the point he is making.

**ADV SELEKA SC:** Yes. No, Chair I accept that. We would have shared the affidavit of Ms Molefe only with them.

**CHAIRPERSON:** Sorry, your voice is low again.

**ADV SELEKA SC:** The affidavit... But is that correct? Because when they are sent - my understanding is - when they are sent, the Rule 3.3. Notice about a particular witness Chair, they are provided currently with a password that gives  
20 them a link to the documentation that goes with that. So I ...[intervenes]

**CHAIRPERSON:** Yes, but he says you may have given that at some stage or the Commission might have done that at some stage.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** But there comes a time when you inform him or you give them notice ...[intervenes]

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** ...we are going to use the following bundles to question your client.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** So even if that affidavit may have been given to them at the stage of the 3.3 Notices, if you do not include it in your list when you say these are the ones we  
10 are going to use on that day, it is unfair that you know use it without them having had a chance to look at them. It seems like a fair point to me.

**ADV SELEKA SC:** Yes, it is a fair point Chair.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** I am not sure...

**CHAIRPERSON:** [laughs]

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

**CHAIRPERSON:** Well, if it is a fair point, it seems to me, you should not question Mr Koko using a bundle that they  
20 have not had a look at them. Unless they say: Look, okay it is fine. Go ahead for the purposes of finishing, you know.

**ADV SELEKA SC:** Chair, may I explain?

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** I know ...[intervenes]

**CHAIRPERSON:** Ja, you can explain.

**ADV SELEKA SC:** I know I said it is a fair point but it has to be assessed in the context of what parties get provided with in terms of Rule 3.3. So the bundles are available to them electronically. So they will always have them.

**CHAIRPERSON:** Yes, but you remember I said the point is. You might – I might have 100 affidavits that you have given me in terms of 3.3 Notices.

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

**CHAIRPERSON:** But closer to the date when my client is  
10 going to be questioned, you give me notice that you are only going to use ten out of those 100 affidavits. And then when I am at the hearing, having prepared only on the basis of the ten affidavits, you then go back and take – use another affidavit that I have not notice about. Then that is the point. So I might have that but I did not bring that because you did not include it as one of the literary you are going to use.

**ADV SELEKA SC:** Yes, that is the point I was making because we provide with electronic versions.

**ADV BARRIE SC:** Yes, but ...[intervenes]

20 **ADV SELEKA SC:** So it is not hard copies Chair.

**ADV BARRIE SC:** May I...? Like you and I ...[intervenes]

**CHAIRPERSON:** Okay I am not sure [laughs]

[Parties intervening each other – unclear]

**ADV BARRIE SC:** ...on this point. We are not provided with electronic access to all the bundles.

**CHAIRPERSON**: H'm.

**ADV BARRIE SC**: These were the only bundles that we received electronically.

**CHAIRPERSON**: Ja.

**ADV BARRIE SC**: I have... If I my learned friend wants to ask questions about this bundle, Mr Koko will be able to deal with it, I am sure.

**CHAIRPERSON**: H'm.

**ADV BARRIE SC**: So that is fine.

10 **CHAIRPERSON**: Yes.

**ADV BARRIE SC**: For this limited purpose.

**CHAIRPERSON**: Ja, ja.

**ADV BARRIE SC**: To refer to this bundle.

**CHAIRPERSON**: Ja, but for ...[intervenes]

**ADV BARRIE SC**: We are going to come back.

**CHAIRPERSON**: Ja.

**ADV BARRIE SC**: And we would then really like to be put in possession of the bundles.

**CHAIRPERSON**: Ja.

20 **ADV BARRIE SC**: Electronically. In any old way, use home inspection.

**CHAIRPERSON**: Ja.

**ADV BARRIE SC**: But if it is like ...[intervenes]

**CHAIRPERSON**: No, no. That is alright.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON:** Okay. So I think Mr Barrie says okay for purposes of today, that is fine.

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

**CHAIRPERSON:** But for future, please give them the ...[intervenes]

**ADV SELEKA SC:** Give them the bundles ...[intervenes]

**CHAIRPERSON:** ...all the materials that you use, ja. Okay alright.

**ADV SELEKA SC:** Yes, Chair. Then page 37 of Eskom  
10 Bundle 11. Three, seven. Eskom Bundle 11. Chair, this ...[intervenes]

**CHAIRPERSON:** We are at seven o'clock. I think we should try and wrap up if we can.

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

**CHAIRPERSON:** 37. Yes, continue.

**ADV SELEKA SC:** Thank you. Chair, this is a transcript of Ms Molefe's testimony at the Parliamentary Portfolio Committee.

**CHAIRPERSON:** Okay.

20 **ADV SELEKA SC:** You will see that this transcript is dated 8 November 2017.

**CHAIRPERSON:** H'm?

**ADV SELEKA SC:** The starting page is page 20 Chairperson.

**CHAIRPERSON:** Just say that again.

**ADV SELEKA SC:** The starting page of the transcript is page 20.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** But the portion I want to read is in – is on page 37. Against miss ...[intervenes]

**CHAIRPERSON:** Ja, I am not sure. I think you are confusing me.

**ADV SELEKA SC:** Oh.

**CHAIRPERSON:** You said page 37 and I went there. Then  
10 you said page 20.

**ADV SELEKA SC:** Oh. What I am explaining is. The transcript Chairperson starts on page 20.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Paginated page 20.

**ADV SELEKA SC:** Paginated page 20.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** The passage I want to read from is on page 37.

20 **CHAIRPERSON:** Ja, I am there.

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

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** And that is against Ms Molefe's name Chairperson. You get the first two names. Honourable Mazzone and then Ms L.. Is that Ngcanga?

**CHAIRPERSON:** Ja, just ...[intervenes]

**ADV SELEKA SC:** Thabiso(?).

**CHAIRPERSON:** You can skip that.

**ADV SELEKA SC:** That is right. Let me skip that. [laughs]

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Then there is Ms Tsholofele Molefe. And there – Chair, the paragraph I... Well, just let me read it quickly. It says:

10 “Thank you, Chair. If I can address the issue of my suspension? I think Dr Lingenye(?) had also asked a question on which I have just realised that I did not respond to.

You know it is really a difficult one because to a large extent I would be speculating but the issues around our suspension did not... and out on the day that the same meeting took place.

20 I have been informed by people, you know, from various areas that there are news out there that we are going to be suspended because we – we are not playing ball or we do not understand the mandate.

And when I looked at why – would be suspended – what I have I done? I knew exactly that I have said no to which I think would lead to my suspension.

In fact, I had heard, I think a couple of days before our suspension...”

I was, stand the words, not fully typed out.

“...there is a board meeting coming and you would be suspended on that board meeting.

Because it was a rumour, I did not have factual evidence to it. So I really ignored it.”

But this is the part Chair I want. She says:

“But what I remember vividly happening on the day, the day before the suspension, I had a strategic session with my team.

10 And one of my direct reports, Nomkuleko Felete(?)...  
There they typed Fele(?).

“...came to me in panic saying he(sic) has just received a call from Mr Matshela Koko saying that she must come to Melrose Arch and she asked me why do I not go? Why must she go there? And I said I have no idea ...[intervenes]

**CHAIRPERSON:** Sorry Mr Seleka. I quickly have gone through ...[intervenes]

**ADV SELEKA SC:** Have you gone through it Chair?

20 **CHAIRPERSON:** I am not sure what is different in that passage.

**ADV SELEKA SC:** Correct Chair.

**CHAIRPERSON:** She says from what we have read in her affidavit.

**ADV SELEKA SC:** Yes, thank you, Chair. If we have just



gone through it. Mr Koko – I can see his anticipating my question. Mr Koko, this testimony which is exactly the same as in that paragraph 27 of her affidavit was done on the – was given on the 8<sup>th</sup> of November 2017. You know that exactly, is it not?

**MR KOKO:** I beg your pardon?

**ADV SELEKA SC:** Do you know that exactly, is it not?

**MR KOKO:** Do know what

**ADV SELEKA SC:** That she gave this testimony on the  
10 8<sup>th</sup> of November 2017.

**MR KOKO:** That is correct Chair.

**ADV SELEKA SC:** And at that time, this Commission had not been established.

**MR KOKO:** That is correct Chair.

**ADV SELEKA SC:** So this Commission or the team of the investigators could not have done what you allege in your affidavit in paragraph – the paragraph I have read.

**ADV BARRIE SC:** What page?

**ADV SELEKA SC:** 157.

20 **CHAIRPERSON:** The point that ...[intervenes]

**ADV SELEKA SC:** You want to answer the question?

**CHAIRPERSON:** ...is being made Mr Koko by Mr Seleka is that. You said that miss... Was it in regard to Ms Molefe or ...[intervenes]

**ADV SELEKA SC:** Ms Molefe.

**CHAIRPERSON:** Ms Molefe.

**ADV SELEKA SC:** Ms Molefe.

**CHAIRPERSON:** She gave – in reaction to her version, you said well you think she must be precognise by the investigators of this Commission. I think Mr Seleka is saying, but here before this Commission was established, she was given the same version. So how come you say she is giving this version because she has been precognise?

**MR KOKO:** Chair, the... Here is the point. And it is not a  
10 single event. It is – there is a trend. There is a trend that starts with the Parliamentary Inquiry on Eskom on State Capture. And the only difference between here and in parliament is, I think we got a better Chair here that asks difficult questions.

But the tendency of investigators to given this purpose and then come and just follow that line, that is what I am all about.

Instead of saying we had to but where is your evidence? Where are the people you say called you? Let us interview  
20 those people. You say four people have met with the chairman. Where are those people? Let us interview those four people. Nobody is telling me about that. And that is the point I am making.

**CHAIRPERSON:** So are you then suggesting now that she gave that version to – in parliament because somebody,

whether they were investigators or whatever, that they have dealt with her, also precognise her?

**MR KOKO:** I am saying exactly that Chair.

**CHAIRPERSON:** To... So the investigators of this Commission and whoever was – may have been involved in regard to her parliamentary appearance, also did the same?

**MR KOKO:** I am saying exactly that.

**CHAIRPERSON:** Ja.

**MR KOKO:** If I have to be blind about it. It is the same.

10 **CHAIRPERSON:** Okay alright. Mr Seleka.

**ADV SELEKA SC:** Chair, I think the documentation speak for themselves and I have no further questions.

**CHAIRPERSON:** Okay alright. Mr Barrie, it may well be that you would want to re-examine at the end of everything or did you want to – do you have some re-examination for this evidence?

**ADV BARRIE SC:** Yes, Chair. Chair, it is a matter of time. The re-examination will take a substantial period of time but what I do want to do is, because the issues that have been  
20 debated with the witness here today, have all been dealt with  
...[intervenes]

**CHAIRPERSON:** Yes.

**ADV BARRIE SC:** ...in the affidavit ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV BARRIE SC:** ...that was ...[intervenes]

**CHAIRPERSON**: Handed up.

**ADV BARRIE SC**: Well, it has not yet been handed up.

**CHAIRPERSON**: Oh.

**ADV BARRIE SC**: That is the real point I want to make.

**CHAIRPERSON**: Okay, okay.

**ADV BARRIE SC**: So his more comprehensive responses  
...[intervenes]

**CHAIRPERSON**: Yes.

**ADV BARRIE SC**: ...to this whole issue ...[intervenes]

10 **CHAIRPERSON**: Ja.

**ADV BARRIE SC**: ...are contained in here and the original  
of this has apparently been taken by the person on the  
Commission's staff who prepares the bundles.

**CHAIRPERSON**: Yes.

**ADV BARRIE SC**: And – but these have already been given  
page numbers.

**CHAIRPERSON**: Ja.

**ADV BARRIE SC**: Bundle 15.

**CHAIRPERSON**: H'm?

20 **ADV BARRIE SC**: So on that basis, if I may hand up to you  
...[intervenes]

**CHAIRPERSON**: Ja, okay.

**ADV BARRIE SC**: ...a copy of the signed affidavit.

**CHAIRPERSON**: Okay.

**ADV BARRIE SC**: Then shortly, the accompanied bundle

which is going to be a substantial bundle ...[intervenes]

**CHAIRPERSON:** Ja.

**ADV BARRIE SC:** ...will be made available electronically  
...[intervenes]

**CHAIRPERSON:** Okay.

**ADV BARRIE SC:** ...to the secretariat.

**CHAIRPERSON:** Yes.

**ADV BARRIE SC:** But the issue here is that the matters  
that have been raised are dealt with in this affidavit in great  
10 detail.

**CHAIRPERSON:** Ja, okay.

**ADV BARRIE SC:** And you will find that from paragraph 51  
on page 18 of the affidavit itself. I see it has not been  
numbered in accordance with bundle 15.

**CHAIRPERSON:** Yes.

**ADV BARRIE:** And we would argue, Mr Chairman, that  
you should have regard to what is in this affidavit in this  
regard. Similar matters have been dealt with in the  
original affidavit but in the meantime what has happened is  
20 that the evidence has come available that on the 10 March  
Ms Daniels was part to a document that was exchanged  
with Mr Salim Essa. That is of very crucial importance to  
where the truth lies.

I would also point out that the passage that was  
referred to in Ms Molefe's evidence before the

parliamentary commission makes for interesting reading and it does not accord, but that is for you to look into, with what was said to the Commission. What she did report at that stage is apparently that Ms Vileti came to her and said Mr Koko wants her to come to Melrose Arch and that was all and that she then later learnt the following day that the four people who were going to act in the positions of the suspended people had all been called to Melrose Arch.

Now what has happened about that version of  
10 events, we have no idea but we just want to point out that it is any event inevitable that over a passage of time there are going – conflicts are going to start, people start – and you are fully experienced there, people actually start believing what is imprinted in their minds and it makes the fact-finder or the trier of facts version very difficult.

But the point that we are making is, there are of course avenues which can be followed to track the movements of people. The cell phone companies know where calls are received and where they are made from.

20 **CHAIRPERSON:** Ja.

**ADV BARRIE:** Because they know which towers have been activated.

**CHAIRPERSON:** Ja.

**ADV BARRIE:** So if somebody says I was at Melrose Arch but it then appears he was on his way to Witbank, you can

know about it.

**CHAIRPERSON:** Ja.

**ADV BARRIE:** That evidence is available provided of course that you ask for it.

**CHAIRPERSON:** Ja.

**ADV BARRIE:** And so that is the issue, is eventually one looks for concrete evidence. Evidence that cannot be contravened by the mere say-so of witnesses. But we make the point that we have dealt with these issues  
10 comprehensively in this affidavit and we now place it before you.

**CHAIRPERSON:** Ja.

**ADV BARRIE:** So that it, I would imagine, becomes available for public consumption as well.

**CHAIRPERSON:** Well, I assume you have given one to ...[intervenes]

**ADV BARRIE:** As I say I am not ...[intervenes]

**CHAIRPERSON:** Or you say the Commission already has?

**ADV SELEKA SC:** No, it was given before we started.

20 **ADV BARRIE:** Yes, yes, my learned friend has it and the original has gone off to be copied.

**CHAIRPERSON:** Oh, okay, no that is fine.

**ADV BARRIE:** The point that I am making is that it is going to take time, the re-examination because we will take you through this affidavit.

**CHAIRPERSON:** Ja. No, that is fine.

**ADV BARRIE:** And so that is going to take some time.

**CHAIRPERSON:** Okay.

**ADV BARRIE:** Thank you.

**CHAIRPERSON:** Okay, thank you.

**ADV BARRIE:** And thank you for [indistinct] 03.39 yesterday.

**CHAIRPERSON:** Okay. No, that is alright. Thank you very much to everybody. Thank you, Mr Koko, thank you, 10 Mr Barrie, thank you everybody, thank you Mr Seleka and your team and the staff. We are going to adjourn now. This is the last hearing of the Commission this year. The next hearing will be next year in January and the date will be announced. We adjourn.

**INQUIRY ADJOURNS SINE DIE**