

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

**08 MARCH 2021**

**DAY 356**



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 08 MARCH 2021**

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

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

**CHAIRPERSON:** Yes are we ready?

**ADV MYBURGH SC:** Yes thank you. Chairperson we are going to start the proceedings today by dealing with an application brought by Mr Gama to cross-examine Mr Todd that is sequence SEQ10 of 2021 you do have the file in  
10 front of you.

Mr Gama is represented by Counsel I do not know if you wish for him to place himself on record before I start with my very brief submission?

**CHAIRPERSON:** Yes thank you. You may do so from where you are if you are able to do so.

**ADV OLDWADGE:** Thank you Mr Chairperson good morning.

**CHAIRPERSON:** Good morning.

**ADV OLDWADGE:** Oldwadge is my surname, initials KC.  
20 I am a member of the Johannesburg Bar I am instructed in this matter by Brian Kahn Incorporated Attorneys. The two ladies seated to my right are in attendance with me.

**CHAIRPERSON:** Thank you.

**ADV OLDWADGE:** Thank you.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** Thank you Chairperson. I am going to address you for not more than five or six minutes I know that time of the essence.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** But let me get to the point. Mr Todd Mr Chairperson you will remember gave evidence on...

**CHAIRPERSON:** Should you not – should Counsel not for Mr Gama start or is that the arrangement made between the two of you?

10 **ADV MYBURGH SC:** I am happy for him to start yes.

**CHAIRPERSON:** He might – he might like two bites at the Chair so to speak.

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

**CHAIRPERSON:** Because he can reply. I think they will sanitise the podium and then you can go to the podium. Ja.

**ADV MYBURGH SC:** Mr Oldwadge enquires as to whether he could make his submissions from where he is?

20 **CHAIRPERSON:** No I think if – for this I think he should – ja.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** Ja.

**ADV OLDWADGE:** Thank you Mr Chair might I then proceed?

**CHAIRPERSON:** Yes I see that you have prepared written

submissions which – oh no I think I did see – I see the reference to thing – 00:03:00 that case you know that is fine I think I have read them.

**ADV OLDWADGE:** Mr Chair.

**CHAIRPERSON:** Yes you may proceed.

**ADV OLDWADGE:** Thank you. There is of course the issue of condonation.

**CHAIRPERSON:** Yes.

**ADV OLDWADGE:** And I do not simply want to delve into  
10 the merits of the matter so to speak.

**CHAIRPERSON:** Yes.

**ADV OLDWADGE:** I do understand from my learned friend Mr Myburgh that on behalf of the legal team there does not seem to be any opposition to the condonation application.

**CHAIRPERSON:** Was the delay seven days?

**ADV OLDWADGE:** The delay was in fact six calendar days.

**CHAIRPERSON:** Ja.

**ADV OLDWADGE:** Excluding Saturday and Sunday it  
20 would have been four week days Mr Chairperson.

**CHAIRPERSON:** Yes.

**ADV OLDWADGE:** And if you will permit me what we have done under enormous time constraints.

**CHAIRPERSON:** Ja.

**ADV OLDWADGE:** And I am not going to argue the

condonation simply to place this before Mr Chair and I know of your hectic schedule to the extent that you have not considered there was a supplementary set of papers filed during the course of the weekend Mr Chair will note that due to a large part – my unavailability, various travels throughout the country and trials and so forth the founding affidavit did not perhaps not enjoy all the consideration that it ought to have and when I did have occasion to consider it during the course of – towards the end of last  
10 week I felt that we should supplement.

**CHAIRPERSON:** No I do not think I have seen the supplementary affidavit. On what page is it in the bundle?

**ADV OLDWADGE:** We – we – it appears as though it has not been filed in the bundle Mr Chair. I note – I know that the legal team has been placed in receipt of it.

**CHAIRPERSON:** Ja.

**ADV OLDWADGE:** But we do have a copy of it together with annexures might we ask that it be received by you? Might we approach Mr Chair?

20 **CHAIRPERSON:** Yes.

**ADV OLDWADGE:** Thank you. Mr Chair so as not to waste time.

**CHAIRPERSON:** Yes maybe you can con – you can tell me what it says.

**ADV OLDWADGE:** Thank you.

**CHAIRPERSON:** And so on.

**ADV OLDWADGE:** I know we are pressed for time.

**CHAIRPERSON:** Ja.

**ADV OLDWADGE:** Sorry Mr Chair.

**CHAIRPERSON:** Ja.

**ADV OLDWADGE:** Mr Chair will note from the supplementary set of papers.

**CHAIRPERSON:** Hang on one second I think it is more convenient if you take out the affidavit – the supplementary affidavit and annexures and if they need to be brought back they can be brought back rather than bring the whole file.

**ADV OLDWADGE:** As Mr Chair pleases. I just did not want you to be saddled with loose papers because they are not stapled together and we apologise for that.

**CHAIRPERSON:** Yes., no, no what they – they can file – put them in the right place in the file that I have in due course. Yes you can continue.

**ADV OLDWADGE:** In essence Mr Chair I wish to make reference to the difficulties that our client and his legal team have experienced.

**CHAIRPERSON:** Well before you do that I see that the supplementary affidavit seems to be quite substantial.

**ADV OLDWADGE:** Indeed.

**CHAIRPERSON:** I thought it is a brief affidavit. I see it is

twenty four pages. I think I will need to read it properly that is twenty four pages without the annexures.

**ADV OLDWADGE:** Indeed Mr Chair.

**CHAIRPERSON:** No I think I would need to read it and I do not think I can read it this morning for this application to proceed this morning.

**ADV OLDWADGE:** I appreciate Mr Chair's predicament.

**CHAIRPERSON:** Yes. I thought it might be two, three or five pages or something like that but it is quite substantial  
10 and I see that it is longer than the – I think it is longer than the founding affidavit.

**ADV OLDWADGE:** It is indeed. We thought it prudent that we would explain each and every single...

**CHAIRPERSON:** Yes.

**CHAIRPERSON:** Factor that read – that led to this delay of – of four days Mr Chair.

**CHAIRPERSON:** Yes. Yes.

**ADV OLDWADGE:** Whilst it is – it is not a substantial period of time I respectfully submit that we are required to  
20 address it.

**CHAIRPERSON:** No, no you are right. I think the difficulty is simply that it arrived you said over the weekend.

**ADV OLDWADGE:** Indeed.

**CHAIRPERSON:** I have not had time – I am seeing it for the first time. It may have been sent to me I do not know



maybe I just did not see it but I would need to read it.  
So...

**ADV OLDWADGE:** Mr Chair

**CHAIRPERSON:** I think in terms of – in terms of the arrangement your client is supposed to give evidence later in the week is it not?

**ADV OLDWADGE:** He was warned to be in attendance.

**CHAIRPERSON:** Ja from today.

**ADV OLDWADGE:** As from today but there is an informal  
10 arrangement.

**CHAIRPERSON:** Yes, ja.

**ADV OLDWADGE:** Between Mr Myburgh and myself.

**CHAIRPERSON:** Ja, ja.

**ADV OLDWADGE:** As we understood it there was a potential.

**CHAIRPERSON:** Ja.

**ADV OLDWADGE:** That he would be required to testify tomorrow afternoon. I do not know what the position is now.

20 **CHAIRPERSON:** Ja. Ja. I think we should adjourn the application to tomorrow morning so I can read this – this evening. I do not know whether the legal team had any plans of corresponding or they will not be responding because that might affect whether we adjourn it to tomorrow. But I can only get a chance to read it tonight.

**ADV OLDWADGE:** Mr Chair I do not wish to speak on behalf of Mr Myburgh but the indication that we received.

**CHAIRPERSON:** Ja.

**ADV OLDWADGE:** At least so that I am certain about this and clear.

**CHAIRPERSON:** Ja.

**ADV OLDWADGE:** Is that in relation to condonation per se as per the founding affidavit.

**CHAIRPERSON:** Ja.

10 **ADV OLDWADGE:** There was no opposition.

**CHAIRPERSON:** Yes.

**ADV OLDWADGE:** I do not know that their position has changed.

**CHAIRPERSON:** Yes.

**ADV OLDWADGE:** Since their receipt of the supplementary sets of papers.

**CHAIRPERSON:** It does not...

**ADV OLDWADGE:** It is something I can canvass with Mr Myburgh.

20 **CHAIRPERSON:** Does – does the supplementary affidavit only seek to supplement the original affidavit in respect of condonation?

**ADV OLDWADGE:** Absolutely.

**CHAIRPERSON:** Oh okay. Well maybe – I am tempted to – to deal with it if that is what – if that is all it does but

maybe I should err on the side of caution and rather read the affidavit. Probably then if it deals only with condonation probably the position may be that the legal team does not intend to file anything but Mr Myburgh will tell me just now. So subject to that I think we are – I would adjourn the – the application to tomorrow at half past nine.

**ADV OLDWADGE:** As you please Mr Chair.

**CHAIRPERSON:** Ja okay alright.

10 **ADV OLDWADGE:** Thank you.

**CHAIRPERSON:** Thank you. Mr Myburgh and then they can just sanitise the podium before Mr Myburgh goes there.

**ADV MYBURGH SC:** Mr Chairperson in relation to the supplementary affidavit.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** Which I must confess I have not had an opportunity to study.

**CHAIRPERSON:** Yes.

20 **ADV MYBURGH SC:** But it is certainly unlikely given what we indicated to the – our opponent.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** That we would wish to say anything in response.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** And we do not intend from our side of

course it is up to you.

**CHAIRPERSON:** Yes, yes.

**ADV MYBURGH SC:** But you say is confirmation.

**CHAIRPERSON:** Okay no that is fine. Okay. So shall we say that you will indicated by end of the day if your view changes on that? I do not know if you will get a chance to – to look at anything but I just want to know whether we can say the application is adjourned to tomorrow half past nine. just want to know whether we can say the application  
10 is adjourned to tomorrow half past nine.

**ADV MYBURGH SC:** Yes that would – that would be in order Chairperson. I will give you an undertaking I will look at the affidavit over lunch.

**CHAIRPERSON:** Yes okay.

**ADV MYBURGH SC:** And I will – I will come back to you straight after that.

**CHAIRPERSON:** Okay no that is fine. So this application is adjourned to tomorrow at half past nine in the morning. Okay. Your – would the next matter be that of the cross-  
20 examination?

**ADV MYBURGH SC:** Yes the next order of business Chairperson is scheduled to be Mr Gigaba's cross-examination of one of the in camera witnesses.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** I do not know where Mr Pretorius is

because I know he is dealing with that.

**CHAIRPERSON:** Yes he – he ex – he is on – his understanding is that we will start at ten so because it is still ten to ten he must be on his way. I think we will adjourn until ten o'clock.

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

**CHAIRPERSON:** Ja. We adjourn.

**REGISTRAR:** All rise.

**PROCEEDINGS RESUME:**

10 **CHAIRPERSON:** Good morning Mr Pretorius.

**ADV PRETORIUS SC:** Morning Chair.

**CHAIRPERSON:** Good morning everybody. Are you ready?

**ADV PRETORIUS SC:** Yes we are ready Chair. What is to take place this morning is the cross-examination of Witness No. 3.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Legal representatives of Witness No. 3 are present as well as the legal representatives of  
20 Mr Gigaba who will conduct the cross-examination.

As the legal representatives of Witness No. 3 may apply if appropriate for re-examination in terms of the rules perhaps all should place themselves on record.

**CHAIRPERSON:** Yes let us do that. Let us start with the legal representatives of Mr Gigaba. If you are able to –

okay they will need to sanitise the podium before you go in – you go there and the legal representatives of Witness No. 3 may have – may later place themselves on record from where they are if it is possible but if not then they will proceed to the podium at that stage.

**ADV SOLOMON SC:** Morning Chair.

**CHAIRPERSON:** Good morning.

**ADV SOLOMON SC:** It is Solomon RA SC I appear with my learned junior Mr Gumbi instructed by the State Attorneys' office.

10

**CHAIRPERSON:** Yes.

**ADV SOLOMON SC:** For the former Minister Mr Gigiba and we would like to avail ourselves the opportunity of cross-examining Witness 3. We do not expect to be terribly long.

**CHAIRPERSON:** Yes, no, no you should not be long.

**ADV SOLOMON SC:** Thank you.

**CHAIRPERSON:** Okay no that is fine. Mr Pretorius I think needs to come back to the podium. Oh I am sorry Ja. Counsel for Witness No. 3.

20 **ADV DUBE:** Thank you Chair and good morning. The name is...

**CHAIRPERSON:** Good morning.

**ADV DUBE SC:** The name is Sibusiso Dube from Bowman's Chair and I am representing Witness No. 3 in these proceedings.

**CHAIRPERSON:** Thank you Mr Dube.

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

**CHAIRPERSON:** Okay. I think it might serve a useful purpose Mr Pretorius for the benefit of the public if possible if you could just give the gist of Witness No. 3's previous evidence so that the cross – the cross-examination may they follow it better.

**ADV PRETORIUS SC:** You would bear with me a moment.

**CHAIRPERSON:** Yes.

10 **ADV PRETORIUS SC:** Chair Witness No. 3 gave evidence at the same time as Witnesses No. 1 and Witness No. 2. He gave evidence under an order of identity protection which we have loosely called in camera but properly regarded was an order which allowed him to give evidence where his identity was protected and you gave an order that that should occur.

Before summarising the evidence of Witness No. 3 may I just place on record?

20 **CHAIRPERSON:** Just one second. I need the – my file that relates to the in camera application. No that is not the one. But it is among the files that you were given this morning Registrar. It is written on the spine In Camera Application. Okay let me see maybe – maybe I thought it was not the – no I think I was wrong. Yes Mr Pretorius.

**ADV PRETORIUS SC:** Chair it is necessary to place on

record because Witness No. 3 and Witness Nos 1 and 2 – Witnesses Nos 1 and 2 gave evidence relating to the same category of events as close protection officers and drivers of the various government officials and their relationships with the Gupta's and the movement of cash from the Gupta's residence – residences implicating various parties including Mr Gigaba.

On Saturday and this is a matter of public knowledge at the moment what the commission's investigation team together with the securitated as advisors have concluded was a – an assignation attempt on Witness No. 1 and it is necessary just to place that on record. The matter has been reported to the authorities and the security of all the three witnesses; Witness 1, Witness 2 and Witness 3 is being attended to.

It is necessary therefore for the Order of Witness Protection to remain no further order is required from yourself.

But Witness No. 3 gave evidence Chair that over two periods of time and in various official capacities he was a driver and a security – close security protection officer to Mr Gigaba and he relates his eyewitness evidence of what he observed when Mr Gigaba visited the premises of the Gupta's in Saxonwold and how the events showed that Mr Gigaba was dealing with cash which



Witness No. 3 concluded had come from the residence of the Gupta's at the particular time.

There were two periods one before 2009 and one in the mid – between 2010 and 2018 there around 2015 which are relevant to the evidence.

It is necessary then for Witness No. 3 to take the oath once more. Witness No. 3 is giving evidence remotely from a private location – undisclosed location put it that way. Counsel who worked with me on the matter Verushka  
10 September is at present with Witness No. 3. She will confirm that she is in the presence of Witness No.3. Witness No. 3 can then take the oath and she will confirm that it is indeed to her knowledge Witness No. 3 that has taken the oath.

**CHAIRPERSON:** No that – that is fine. Before we do that I just want to say that it is most concerning that attempts by some in our society cont – seem to continue to intimidate and attack people who – who want to assist this nation on the matters that this commission is investigating.

20 People want to assist this commission to understand what happened in regard to the matters that it is investigating. It is completely unacceptable that witnesses whether they have given evidence before the commission or are still going to give evidence before the commission are targeted and attacked and attempts are

made on their lives. Attempts are made to kill them. It is completely unacceptable and I would ask the law enforcement agencies to please assist this commission by dealing with these matters expeditiously because those who seek to silence people who want to assist the commission; who want to assist the nation to understand what happened seemed to be quite determined to continue and attacks on one person whether he or she has previously given evidence or is still to give evidence may well deter many others that the commission wishes to hear from on the matters that it is investigating.

I applaud the courage of various people in our country who despite threats to their own safety and to their lives and to the safety and lives of their loved ones have nevertheless come before this commission to assist the nation to understand what happened with regard to the matters that we are investigating.

I applaud those who will still continue to come to the commission to give evidence or to assist the commission in any way despite these acts of intimidation and criminality by some in our society who silence people who want to assist this commission.

I hope that the law enforcement agency will act with speed to deal with these matters and to protect all witnesses who are under threat wish to assist this

commission or whoever assisted this commission.

I thank Witness 3 that he has once again made himself available to assist the commission despite the reports that have been heard of the attempted killing of Witness 1. We are grateful that Witness 1 survived the attack.

Okay.

**ADV PRETORIUS SC:** Noted Chair thank you.

**CHAIRPERSON:** Yes. We are going to start Ms September  
10 you there?

MS SEPTEMBER: Yes Chair I am.

**CHAIRPERSON:** You confirm that you are with Witness 1  
where you are?

**ADV PRETORIUS SC:** Witness 3.

No Chair I am...

**CHAIRPERSON:** I am sorry Witness 3 I am sorry –  
Witness 3? Do you confirm that you are with Witness 3  
where you are?

Correct Chair.

20 **CHAIRPERSON:** Okay alright. I have previously seen  
Witness 3 he previously took an oath in front of me so if a  
member of the legal team confirms that she is with Witness  
3 I accept that. Witness 3 good morning to you.

**WITNESS 3:** Good morning Chair.

**CHAIRPERSON:** Thank you very much Witness 3 for

availing yourself to once again come and assist the commission. We appreciate that very much.

**WITNESS 3**: Thank you Chair.

**CHAIRPERSON**: The Registrar will administer the oath to you now when she says give your full names do not give your real names just say Witness 3, is that alright

**WITNESS 3**: Yes Sir.

**CHAIRPERSON**: Okay alright. Registrar you may go ahead.

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

**WITNESS 3**: My name is Witness 3.

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

**WITNESS 3**: No.

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

**WITNESS 3**: Yes.

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

**WITNESS 3**: So help me God.

**CHAIRPERSON**: Thank you. Then Witness 3 you will be cross-examined by Counsel for Mr Gigaba. I normally put the – fix the duration of the cross-examination at the

beginning of the cross-examination. Counsel for Mr Gigaba do you – I do not think you should need anything more than 45 minutes?

**ADV SOLOMON SC:** Chair I thought about an hour should suffice.

**CHAIRPERSON:** Okay let us – let us say 45 minutes but we will see at the end of 45 minutes how it goes if it is necessary to – to go into an hour – to an hour then we will – I will – I will allow you.

10 **ADV SOLOMON SC:** Thank you Chair.

**CHAIRPERSON:** Okay alright.

**ADV SOLOMON SC:** Chair I just wanted to enquire. I am going to refer the witness to his statement and to a transcript of his evidence

**CHAIRPERSON:** Yes.

**ADV SOLOMON SC:** As well as an extract from the Fundudzi Report that comments upon his employment. Does he have access to all the documentation wherever he is?

20 **CHAIRPERSON:** He should be but Mr Pretorius will know better.

**ADV SOLOMON SC:** Well we will

**CHAIRPERSON:** He should have access to all documents that were known to the legal team as the documents that would be used in the cross-examination.

**ADV SOLOMON SC:** Thank you.

**CHAIRPERSON:** Mr Pretorius.

**ADV PRETORIUS SC:** Chair if the witness is going to be referred to a report to which we have not had access we will deal with that. I have just confirmed with the legal representatives of Witness 3 that the report referred to has not been drawn to their attention nor ours.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** But for the rest the transcripts and  
10 the documentation relevant to the evidence.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** The witness has in front of him.

**CHAIRPERSON:** Yes. So – so I think there will be a problem with the report because it looks like nobody was given notice that it could be – it would be used.

**ADV SOLOMON SC:** It was furnished to us from the evidence leader Mr Myburgh but – but I can – I can tell him what is in the report and if Mr Pretorius has any objection we can verify that. It is – I will give the page number and I  
20 will – I will read the finding – one of the findings I think there are two in fact if that would be in order?

**CHAIRPERSON:** Well – well it may well be- well

1. They say the witness does not have the report it might be the best situation to just answer something in relation to a report where you might not know the

context.

**ADV SOLOMON SC:** Should we proceed and see the 00:20:01 that unfolds.

**CHAIRPERSON:** Maybe if – if – maybe if while you proceed Counsel for Witness 3 and Mr Pretorius have access to the report and you indicate to them in what area you want to ask questions about while you proceed they might be having a look at – at the relevant portion of the report and when you are done with other aspects of your  
10 cross-examination we can check with them whether they have any problem.

**ADV SOLOMON SC:** Yes.

**CHAIRPERSON:** And then there is the question of – of course they might have an idea whether the witness could fairly be asked to answer questions even if she has not – he has not seen the report.

**ADV SOLOMON SC:** Thank you Chair I place on record it is – is BB27 Bundle 2 page 272. That is where the report is located.

20 **CHAIRPERSON:** Maybe just repeat the reference so that in case somebody did not get it correctly down.

**ADV SOLOMON SC:** Certainly. It is BB27 Bundle 2 page 272.

**CHAIRPERSON:** Yes okay. I think Counsel for Witness 3 looks at me as if to say I do not have it and I think he sees

Mr Myburgh giving Mr Pretorius a copy. Maybe if he does not have maybe once Mr Pretorius has looked at it – at the relevant portion he might share with him and then we take it from there.

**ADV SOLOMON SC:** Thank you Chair. Perhaps then I can continue and in the background Mr Pretorius and perhaps Mr Myburgh because he –

**CHAIRPERSON:** Yes.

10 **ADV SOLOMON SC:** He in fact had shared that bundle with us.

**CHAIRPERSON:** Yes. I think Mr Pretorius would like to say something.

**ADV PRETORIUS SC:** Yes Chair there is a problem. I have just looked at the page names are revealed on the page.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Which would be a gross violation of the order you make.

**CHAIRPERSON:** Yes.

20 **ADV PRETORIUS SC:** And in the circumstances.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Of what has happened this weekend.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** This is a serious problem.



**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** So – we object to that being put in without prior arrangements being made.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** And my learned friend can come back and deal with those at a later stage.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Once there have been proper redactions.

10 **CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** But now already on public record there is a reference and names.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** And it is just quite unacceptable.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** So the matter we strongly object to anything of this sort coming before you today without proper arrangements being made for redactions.

**CHAIRPERSON:** Yes.

20 **ADV SOLOMON SC:** Yes Chair we have no – no difficulty I was never intending to – to reveal the identities through the report.

**CHAIRPERSON:** Yes.

**ADV SOLOMON SC:** I just wanted to read a finding into the record.

**CHAIRPERSON:** Yes.

**ADV SOLOMON SC:** But could we then just reserve.

**CHAIRPERSON:** Ja.

**ADV SOLOMON SC:** The cross-examination on that point.

**CHAIRPERSON:** Ja.

**ADV SOLOMON SC:** And perhaps we can – we could...

**CHAIRPERSON:** Until you have had discussions with Counsel for – Witness 3 and Mr Pretorius and then we will take the matter from there.

10 **ADV PRETORIUS SC:** Yes. But Chair that does not solve the problem.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Which is that this a matter of – this document is the matter of public record already and the reference has been given so perhaps I should draw no more attention.

**CHAIRPERSON:** Yes. I think we must all be quite careful that there is apart from an intentional disclosure of information that should not be disclosed there could be  
20 situation where unintentionally information is disclosed which could lead to disclosure of identities so we all just need to check very carefully.

**ADV SOLOMON SC:** Certainly.

**CHAIRPERSON:** Ja.

**ADV SOLOMON SC:** Chairperson it is – it is just to tell

you Chair it would be simply to – to put to the witness this is what...

**CHAIRPERSON:** Ja, no, no ...

**ADV SOLOMON SC:** This was one of the findings...

**CHAIRPERSON:** No, no, no. Remember the arrangement is that you will have discussions with Mr Pretorius and Counsel for Witness 3. When the three of you have discussed maybe you find a way then that can be told to me and then I can take it from there. So for now we will  
10 exclude that part of your cross-examination.

**ADV SOLOMON SC:** Oh thank you.

**CHAIRPERSON:** Ja okay.

**ADV SOLOMON SC:** Then just – just to tell you – Witness 3 I – the topics that I just want to touch on.

First would be your meeting with Mr Gigaba at the commencement of your re-employment.

Secondly I want to touch on the role you played as part of the security detail.

Then your evidence about the visits to the Gupta's  
20 in Saxonwold.

Next to deal with the logbooks and the diaries that may take a bit of time.

Then your evidence about visits by other parties at the same time.

Then the question of the cash that you spoke about.

Your evidence about the items of apparel that Mr Gigaba apparently purchased.

Reference to Mr Molefe in your evidence and then also the timing of your complaint.

And then we will reserve the question of the Fundudzi Report if we may?

Now Witness 3 you have your – your affidavit that you furnished to the commission, do you have it? I think it was dated 14 September 2020. The witness could confirm  
10 that he – he has access to his affidavit.

**CHAIRPERSON:** Witness 3 can you hear us?

**WITNESS 3:** Yes I do.

**CHAIRPERSON:** Okay which affidavit would you like him to confirm to have?

**ADV SOLOMON SC:** His affidavit that he deposed to for the benefit of the commission the 14<sup>th</sup> of September 2020  
Chair.

**CHAIRPERSON:** Have you got that affidavit Witness 3? Are you looking for it or did you not hear me? Ms  
20 September are you there?

**WITNESS 3:** I do have it Chair.

**CHAIRPERSON:** Okay alright. You must just tell me if you are still looking so that I know that you have heard me. Okay ja he says he has got it.

**ADV SOLOMON SC:** I wanted to refer you to paragraph

123 paragraph 10 – page 123 paragraph 10 of your Witness Statement. Do you have that Witness 3?

**ADV PRETORIUS SC:** Apologies Chair just for the record.

**WITNESS 3:** Yes I do.

**ADV PRETORIUS SC:** It is Bundle BB14(d).

**CHAIRPERSON:** Yes I am trying to look at what I am having in front of me and I could not see – just repeat the bundle Mr Pretorius.

**ADV PRETORIUS SC:** Bundle BB14(d). The affidavit  
10 begins at page 122. It is Exhibit 14D Chair.

**CHAIRPERSON:** My Registrar says if it is an Eskom bundle we do not have it here. Is it an Eskom Bundle?

**ADV PRETORIUS SC:** It is a Transnet Bundle as I understand it Chair. Perhaps I could let you have my copy.

**CHAIRPERSON:** That is fine. If – while she is looking – okay Registrar let me have Mr Pretorius bundle while you look for – for the right one. Check if we do not have it here. Arrange for the protectors to go and get it. Okay, I have got it.

20 **ADV SOLOMONS SC:** May I proceed Chair?

**CHAIRPERSON:** Yes.

**ADV SOLOMONS SC:** Does Witness 3 have the affidavit?

**CHAIRPERSON:** Yes, he said he has got it.

**ADV SOLOMONS SC:** Yes.

**WITNESS 3:** Yes, I do.

**ADV SOLOMONS SC:** Thank you. Now I just want to put to you what Mr Gigaba says in regard to your allegation that you met with him at the commencement of your employment around – prior the commencement of your employment in April 2013.

He says that his security details were dealt with his Chief of Staff, Mr Thani Mesome and he did not get involved in the recruitment process of the discussions with you, as you say.

10 He denies that he had any meeting with you. All of these arrangements would have been attended to by Mr Mesome. Do you agree with him in that regard?

**WITNESS 3:** Thank you Chair. On the day in question, I have met the Chief of Staff and our meeting I was informed that I should not leave the office, the minister wanted to see me. And indeed, yes, I have met the Minister after our meeting at the Chief of Staff.

**ADV SOLOMONS SC:** Alright. Now in paragraph 16 of your affidavit, you will find that at page 124, you say that  
20 Mr Gigaba would travel in the BMW vehicle with two SAPS VIP Officers and your vehicle would follow.

So you were part of a security personnel in the back of the motor vehicle as you were not a member of the SAPS at the time. It would have been improper for you to have travelled in his vehicle in that capacity. Do you

agree?

**WITNESS 3:** Yes, I agree.

**ADV SOLOMONS SC:** And as such, you did not have access to the principle motor vehicle. Is that correct?

**WITNESS 3:** That is correct.

**ADV SOLOMONS SC:** Now if we could then move on to the next topic of the number of visits to the Gupta's. You say that he visited between the period that you were employed in the capacity that you have described, like, a  
10 period of six months, from July to December 2013. You have said on about six or seven occasions. Is that correct?

**WITNESS 3:** That is correct.

**ADV SOLOMONS SC:** Now you say to that. On one of the occasions, you drove Mr Gigaba alone. Now how did that come about? Would that not have been a most serious breach of protocol that we have just agreed upon a few moments ago?

**WITNESS 3:** Thank you Chair. I think on the day in  
20 question as well, the Minister informed me after we logged off that he would like me to take him somewhere and I waited until some of my colleagues left and he went in to refresh and I waited until he came into the car and we drove. On the way, he informed me that we are going to the Gupta residence.

**ADV SOLOMONS SC:** So now you ...[intervenes]

**WITNESS 3:** [Indistinct]

**ADV SOLOMONS SC:** Sorry?

**WITNESS 3:** [No audible reply]

**ADV SOLOMONS SC:** I interrupted you. Had you finished?

**WITNESS 3:** Yes, I am finished. Thank you.

**ADV SOLOMONS SC:** Yes. But would that not have been a breach of protocol? You were not a member of the SAPS  
10 and you were not authorised to drive Mr Gigaba anywhere.

**WITNESS 3:** [No audible reply]

**ADV SOLOMONS SC:** Do you agree?

**WITNESS 3:** But I was informed – he - I was given instructions by the Minister himself.

**ADV SOLOMONS SC:** And would you just slavishly follow his instructions even though it would be a breach of your employment conditions and the SAPS protocols?

**WITNESS 3:** I think I was sitting as a member, and honestly, I took instruction and I honoured the instruction.

20 **ADV SOLOMONS SC:** Alright. I just want to put to you that Mr Gigaba denies that you ever drove on any occasion, let alone to the Gupta residence. Would you like to comment?

**WITNESS 3:** No, on the day, yes, I drove the Minister to the Gupta residence.



**ADV SOLOMONS SC:** I also want to put to you that he denies that he visited their residence on a number of occasion that you describe and that at the most it would have been once or twice during that period of time. Would you like to comment?

**WITNESS 3:** I have gone with the Minister at the residence for about six to seven times.

**CHAIRPERSON:** Just one second. Did you find the file?

**REGISTRAR:** [No audible reply]

10 **CHAIRPERSON:** Oh, okay alright. I am sorry. Mr Pretorius(sic), I wanted to return your file if she had found ours but she did not find it. And they are trying to get it from the residence.

**ADV SOLOMONS SC:** Certainly Mr Chair. Should I continue?

**CHAIRPERSON:** Yes, you may proceed.

**ADV SOLOMONS SC:** Now, of course, the way of testing your evidence against Mr Gigaba's on a number of visits would be to have regard to the diaries and logbooks  
20 because they would provide the independent and objective evidence. Do you agree with me?

**WITNESS 3:** Repeat the question.

**ADV SOLOMONS SC:** Of course, the way to resolve the dispute between you and Mr Gigaba about the number of visits to the Gupta's residence in Saxonwold would be to

have regard to the objective independent in the form of his diary and your logbook. Do you agree?

**WITNESS 3:** Yes, I agree.

**ADV SOLOMONS SC:** Were any of these visits that you have testified about now recorded in Mr Gigaba's diary?

**WITNESS 3:** No, they were not.

**ADV SOLOMONS SC:** Could I refer you to your evidence? It is at Bundle 2, BB-24, page 244, lines 22 to 25.

**WITNESS 3:** [No audible reply]

10 **CHAIRPERSON:** She is just trying to find the bundle for me.

**ADV SOLOMONS SC:** Chair, whilst you ...[intervenes]

**CHAIRPERSON:** You want to just repeat the bundle number and everything unless she has found it. Okay, she has found it. Maybe the page number?

**ADV SOLOMONS SC:** Chair, it is BB-24-244, lines to 22 to 25.

**WITNESS 3:** I do not have that page.

20 **CHAIRPERSON:** Thank you Mr Witness 3. Is this the right file?

**REGISTRAR:** [No audible reply]

**CHAIRPERSON:** Okay. There seems to be a problem with the reference.

**ADV SOLOMONS SC:** Yes. Mr Chair, Mr Pretorius is telling me that I should use the SEQ-07/20201-51

reference.

**CHAIRPERSON:** What bundle is it, first, if it is a bundle?

**ADV SOLOMONS SC:** If I could just place it on record again Chair? It is Bundle SEQ-07/20201.

**CHAIRPERSON:** Okay that will not be a bundle as such but I think I know which document it is. Mr Pretorius, is it the in-camera application?

**ADV PRETORIUS SC:** Chair, a bundle was prepared for the particular purposes of this cross-examination.

10 **CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** It contains several documents. It is SEQ-07/20201. It is in the file that was given to you Chair and ...[intervenes]

**CHAIRPERSON:** Oh, okay.

**ADV PRETORIUS SC:** And ...[intervenes]

**CHAIRPERSON:** No, no. Thank you Mr Pretorius. It was under another file. I think I have got too many files here.

**ADV PRETORIUS SC:** Yes, I understand completely Chair.

20 **CHAIRPERSON:** Yes?

**ADV PRETORIUS SC:** But the bundle that my learned friend is referring to has certain references. The bundle before you has other references.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** But we can get a common

reference at the bottom of the page which has the page of the transcript.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** So if my learned friend can put his reference on record because that is important.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** And then also put the page number at the bottom of the page, then we can all follow.

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

10 **ADV SOLOMONS SC:** That is in order then Chair.

**CHAIRPERSON:** Yes, okay.

**ADV SOLOMONS SC:** I will also just try and follow my learned friend's page numbers but then it is ...[intervenes]

**CHAIRPERSON:** So you just give the reference afresh so that...

**ADV SOLOMONS SC:** Yes.

**CHAIRPERSON:** Ja.

**ADV SOLOMONS SC:** It is SEQ, page 51 and it is typed page 115.

20 **CHAIRPERSON:** Sorry, I think your SEQ reference is not complete. Is it SEQ-07/20201?

**ADV SOLOMONS SC:** Yes.

**CHAIRPERSON:** I think that is the correct reference.

**ADV SOLOMONS SC:** Yes.

**CHAIRPERSON:** And then you say page?

**ADV SOLOMONS SC:** It is page 51 ...[intervenes]

**CHAIRPERSON:** Is that the red number or at the bottom?

**ADV SOLOMONS SC:** Well, I will give both numbers. It is page 51 of that bundle and it is typed page 115 at the bottom of 152.

**CHAIRPERSON:** [No audible reply]

**ADV SOLOMONS SC:** Do you have it Chair?

**CHAIRPERSON:** Yes, it is page 51 on the red numbers at the right top corner and page 115 at the bottom.

10 **ADV SOLOMONS SC:** Yes.

**CHAIRPERSON:** Have you got it Witness 3?

**WITNESS 3:** Yes, I do Chair.

**CHAIRPERSON:** Okay alright.

**ADV SOLOMONS SC:** Now you were asked there:

“Were any of these visits recorded in the Minister’s diary?”

And you say:

“Yes, they were Chair. They were handed over to Witness 1.”

20 So which is the correct answer then Witness 3?

**WITNESS 3:** Thank you. In some of the occasions I was informed by then Minister not to register the movements to – the visits to the Gupta family house in Saxonwold.

**ADV SOLOMONS SC:** That was on some of the occasions?

**WITNESS 3:** Correct.

**ADV SOLOMONS SC:** But on other occasions not. And were they recorded?

**WITNESS 3:** [No audible reply]

**CHAIRPERSON:** Witness 3, can you hear us?

**WITNESS 3:** Yes, Chair.

**CHAIRPERSON:** The question is whether you ...[intervenes]

**WITNESS 3:** [Indistinct]

10 **CHAIRPERSON:** The question is whether your evidence is that on some occasions these visits to the Gupta residence were recorded in the diary but on other occasions they were not recorded. Is that your evidence?

**WITNESS 3:** Not(?) correct Chair.

**ADV SOLOMONS SC:** Sorry, I did not hear? Did you say that is correct?

**CHAIRPERSON:** He said that is correct.

**ADV SOLOMONS SC:** Now if you go to page – your affidavit at page 125, 20.1.

20 **CHAIRPERSON:** I am afraid you will just have to ...[intervenes]

**ADV SOLOMONS SC:** It is BB-14 ...[intervenes]

**CHAIRPERSON:** ...reference because we are using different...

**ADV SOLOMONS SC:** Sorry.

**CHAIRPERSON:** Ja.

**ADV SOLOMONS SC:** Yes, Chair. And can I just say to, perhaps Chair, without being prescriptive to you and Witness 3?

**CHAIRPERSON:** H'm?

**ADV SOLOMONS SC:** It would be useful of both of those bundles stay open all the time because I am just going to move between them.

**CHAIRPERSON:** Yes, okay alright.

10 **ADV SOLOMONS SC:** And so...

**CHAIRPERSON:** Yes.

**ADV SOLOMONS SC:** Just ...[intervenes]

**CHAIRPERSON:** No, no. That is fine but each time you refer just for the transcript.

**ADV SOLOMONS SC:** I shall.

**CHAIRPERSON:** It will be important to say ...[intervenes]

**ADV SOLOMONS SC:** I understand.

**CHAIRPERSON:** To record, ja.

**ADV SOLOMONS SC:** I understand Chair.

20 **CHAIRPERSON:** Okay. Ordinarily ...[intervenes]

**ADV SOLOMONS SC:** So it is BB-14(d) ...[intervenes]

**CHAIRPERSON:** Yes?

**ADV SOLOMONS SC:** Witness [1-3-125].

**CHAIRPERSON:** Yes, and the page numbers?

**ADV SOLOMONS SC:** And – well, 125 is the page

number. It is paragraph 20.1.

**CHAIRPERSON:** Okay that is the red numbers at the top right hand corner, 125.

**ADV SOLOMONS SC:** Do you have it Witness 3?

**WITNESS 3:** Say again?

**ADV SOLOMONS SC:** It is at the foot of the page, 20.1 and 20.2. I will read it out. It says:

“None of these visits were recorded in the Minister’s diary...”

10 And then 20.2:

“By instruction of the Minister I did not record the trips to the Gupta’s residence in the logbook of my allocated vehicle as those were unofficial trips...”

Do you see that?

**WITNESS 3:** [No audible reply]

**CHAIRPERSON:** Do you see that Witness 3?

**WITNESS 3:** Yes, I do Chair.

20 **ADV SOLOMONS SC:** So is that what – is that evidence incorrect?

**WITNESS 3:** [No audible reply]

**ADV SOLOMONS SC:** Because we understand from what you have just told the Chair now that not all the trips were recorded but some were. Now you are saying none were recorded. And you realise the importance of having a



record of these visits. So we have an objective, an independent mechanism to test the veracity of your evidence.

**WITNESS 3:** [No audible reply]

**ADV SOLOMONS SC:** Would you care to comment?

**WITNESS 3:** Like I said earlier on. I was – in some of the occasions I was informed by the Minister himself not to record all the visits on the logbook. And yes, some occasions we recorded, some we did not. And we tried to  
10 locate the logbooks from our offices and they could not find them.

**ADV SOLOMONS SC:** So let me just try and sum up your evidence. You have said on various occasions... I have shown you what you initially said. Is that these visits were recorded and they were handed over to Witness 1.

Then you have said some were recorded, some were not. Then you have said in your statement that I have just read to you, none of them were recorded because that was the instructions of the Minister.

20 And now you are also telling us that we cannot verify and test your evidence because the logbooks are nowhere to be found. Is that correct?

**CHAIRPERSON:** I am sorry. I ...[intervenes]

**WITNESS 3:** That is correct.

**CHAIRPERSON:** Well, okay if he has answered, I thought

you might break it up into manageable propositions.

**ADV SOLOMONS SC:** Certainly Chair.

**CHAIRPERSON:** Just to make sure that... Ja.

**ADV SOLOMONS SC:** So let me just try and summarise your evidence in each part. You have said initially that there was a log and a record of the visits and they were handed over to Witness 1. Do you agree? We have gone through that in your evidence.

**WITNESS 3:** I do agree.

10 **ADV SOLOMONS SC:** Then you have said that, in your oral evidence this morning, questions from the Chair that some of the visits were recorded, others not. Do you agree?

**WITNESS 3:** I agree.

**ADV SOLOMONS SC:** Then you say in your statement that we have just looked at, paragraphs 20.1 and 20.2, that none of the visits were in fact recorded. Do you agree?

**WITNESS 3:** Some of the visits were recorded, some were not recorded.

20 **ADV SOLOMONS SC:** But then your statement is wrong, your affidavit, paragraphs 20.1 and 20.2.

**CHAIRPERSON:** Well, maybe before you put that. What counsel was putting to you Witness 3 was that in your affidavit, particularly in paragraphs 20.1 and 20.2, you have said none of the visits were recorded in the Minister's

diary and you said by instruction of the Minister you did not record the trips to the Gupta residence in the logbook of your vehicle. He just wanted you to confirm that you accept that that is what your affidavit says. Do you agree with that?

**WITNESS 3:** I fully agree Chair.

**CHAIRPERSON:** Okay alright. I think you can take it from there.

**ADV SOLOMONS SC:** Thank you. And then we know that  
10 you say the logbooks and diary are not being produced for this Commission because they are not available. Is that correct?

**WITNESS 3:** That is correct.

**ADV SOLOMONS SC:** So at the end of the day, we have just your word against Mr Gigaba's word. Is that correct?

**WITNESS 3:** [No audible reply]

**ADV PRETORIUS SC:** Sorry, Chair. Just for the sake of clarity. There seems to be some confusion between logbooks on the one hand and diaries on the other. As I  
20 recall the evidence of Witness number 3 was that it was not that the logbooks and diary were unavailable that know what the position about the diary. He said the logbooks were not available. So I think the position should remain clear throughout.

**CHAIRPERSON:** Okay alright.

**ADV SOLOMONS SC:** But in any event, on your version, they were not recorded in the diary of the Minister on his instruction. Is that correct?

**WITNESS 3:** That is correct.

**ADV SOLOMONS SC:** So if I could again just put my proposition. We only have your word against the Minister's word for this. We have no way of testing your version against the objective evidence.

**WITNESS 3:** [No audible reply]

10 **CHAIRPERSON:** Well, maybe you should still say against the records of either the diary or the logbook.

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

**CHAIRPERSON:** I think it will be much more clearer to him. Ja.

**ADV SOLOMONS SC:** So in the absence of the logbooks and the diary, we only have your word for it as to the number of visits that occurred? Do you agree?

**WITNESS 3:** [No audible reply]

**ADV SOLOMONS SC:** Do you agree Witness 3?

20 **WITNESS 3:** Agree.

**CHAIRPERSON:** Did you say you agree?

**WITNESS 3:** I agree on the basis that with the... I have visited the Gupta residence six or seven times. That I agree with.

**ADV SOLOMONS SC:** Well, the ...[intervenes]

**CHAIRPERSON:** I think the proposition was. You agree that because there is no written record of the visits, either in the Minister's diary or in the logbook. Then as to what the true position is, the Commission needs to depend on your word as well as the word of the former minister, Minister Gigaba?

**WITNESS 3:** That I agree Chair.

**CHAIRPERSON:** Okay.

**ADV SOLOMONS SC:** And then just to refer you to your  
10 evidence at page 116 ...[intervenes]

**CHAIRPERSON:** What...what...what ...[intervenes]

**ADV SOLOMONS SC:** So it is again Chair ...[intervenes]

**CHAIRPERSON:** One second. I think they have got my file. So let us return Mr Pretorius(sic) so that he can have access to it. Thank you.

**ADV SOLOMONS SC:** It is SEQ-07/2021 at paginated page 52 and typed page 116. Does Chair have it?

**CHAIRPERSON:** Just give me the page again?

**ADV SOLOMONS SC:** It is the SEQ-07/2021 Bundle,  
20 paginated page 52, typed page 116.

**CHAIRPERSON:** Okay I have got it. Thank you.

**ADV SOLOMONS SC:** Does Witness 3 have it?

**WITNESS 3:** Yes, I do.

**ADV SOLOMONS SC:** And you will see about line 14, Mr Pretorius asked you:

“So were they or were they not recorded in the Minister’s diary?”

He says:

“They were not recorded at all.”

And then he goes on:

“And did you record these trips in the logbook of your vehicle?”

“He informed us we should not record this information in the logbook. So we did not.”

10 “Did he give you a reason for telling you to not record them in your vehicle logbook?”

He says:

“No reason was given to us.”

So I have already made the point that that evidence is in conflict with what you have said today because you have said that there were some occasions where it was in fact recorded but I am putting that passage of the evidence to you to enhance it to what Mr Pretorius had said about the confusion with logbooks and the  
20 Minister’s diary. I think that evidence clears it up. Do you agree?

**CHAIRPERSON:** It might be clearer if ...[intervenes]

**WITNESS 3:** *I agree Chair.* [Parties intervening each other – unclear.]

**CHAIRPERSON:** ...you specifically say what the

confusion was that you see to address.

**ADV SOLOMONS SC:** Yes.

**CHAIRPERSON:** And if that clears it up.

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

**CHAIRPERSON:** Ja.

**ADV SOLOMONS SC:** And the confusion relates to whether it was on all occasions that there was no record or whether there was indeed some occasions where there was a note made either in the diary or the logbook.

10 **WITNESS 3:** [No audible reply]

**ADV SOLOMONS SC:** But you do not need to respond. I think you have responded. Now in regard to this instruction, did you not feel uncomfortable about breaching your standing orders concerning logging or trips that you were involved in, in the vehicle on the instruction of the Minister? Did it not strike you as something you should not adhere to, that instruction?

**WITNESS 3:** Thank you Chair. I [word cut off] the event to my superior, which is witness one in this case, but I am  
20 told that by the minister that I should not record these trips. So he was informed as my line manager.

**ADV SOLOMON SC:** And was it recorded in writing?

**WITNESS 3:** No, I had verbal meeting with him.

**ADV SOLOMON SC:** And has he given evidence in that regard, to your knowledge?

**WITNESS 3:** No.

**ADV SOLOMON SC:** So again it is just your word that we have to accept that this report was made, is that correct?

**WITNESS 3:** That is correct.

**ADV SOLOMON SC:** I just want to put to you that Mr Gigaba denies having given any such instruction. The issue of recording trips in a log book is a matter that fell within the authorities of the officers in their capacities as members of SAPS and in your case part of the security  
10 detail. Do you want to comment? Would you care to comment?

**CHAIRPERSON:** Witness 3, can you hear us?

**WITNESS 3:** I think I missed some of the part, I could not hear clearly, can you please repeat?

**ADV SOLOMON SC:** I certainly will. I am saying Mr Gigaba denies that he gave you any such instruction, his evidence is that the issue of recording trips in the log book is a matter that fell within the authority of the SAPS and in your instance subject to your protocols, he did not instruct  
20 you or any of the other officers ...[intervenes]

**CHAIRPERSON:** I am sorry, I am sorry, I think let us break it up. First, witness 3, counsel for Mr Gigaba says that Mr Gigaba's version is that he never gave you such instructions. What do you say to that?

**WITNESS 3:** He instructed me that I should not records



the trips in the logbook.

**CHAIRPERSON:** Okay and counsel for Mr Gigaba will now tell you what Mr Gigaba has to say in substantiation of this denial that he gave such instructions. Yes, you may proceed.

**ADV SOLOMON SC:** Thank you. And he also says he did not instruct any of the other offices not to record any trip in their logbook, it was not his business to do so and he had no authority to do so.

10 **CHAIRPERSON:** What do you say to that?

**WITNESS 3:** He would give that instruction and will have to honour as the minister, he will be our client and we will have to honour by that.

**ADV SOLOMON SC:** Now of there were at least two vehicles at all times that accompanied the minister, is that correct? One, the BMW and then your vehicle behind, is that right?

**WITNESS 3:** That is correct.

20 **ADV SOLOMON SC:** And the vehicle he was in, there would be log of the visits would there not, through the SAPS? Do you agree?

**WITNESS 3:** Yes, I agree.

**ADV SOLOMON SC:** Have a seen a log of those visits?

**WITNESS 3:** No.

**ADV SOLOMON SC:** Have you ever enquired about them?

**WITNESS 3:** No, I never enquired.

**ADV SOLOMON SC:** Okay, let us move on then, we will move on to another topic now.

**CHAIRPERSON:** Before you do so, I see – I think we are at about 40 minutes, what is your assessment of how much more time you need?

**ADV SOLOMON SC:** Chair, I would say 15 to 20 minutes, if that would suit you?

**CHAIRPERSON:** No, that is fine. Let us go up to quarter  
10 past eleven, then we take the tea break and when we come back – it is now about nine minutes past, when it is quarter then we will take the tea break. When we come back you will need only about ten minutes.

**ADV SOLOMON SC:** Thank you, Chair, could I ask your indulgence to prompt me when the time is there.

**CHAIRPERSON:** Ja. No, alright, okay, okay.

**ADV SOLOMON SC:** Thank you, Chair. Now you say that on occasions that you were with the minister at the Gupta residence you saw four individuals. You mentioned Mr  
20 Molefe, Koko, Mr Ngubane and Mabaso. Do you agree? Do you recall that?

**WITNESS 3:** Yes, I agree.

**ADV SOLOMON SC:** Now Mr Gigaba denies that on the occasions that he went there, one or two occasions in that six month period that these individuals were there at any

time that he was there between July and December 2013.  
Would you care to comment?

**WITNESS 3:** I think that is not true, I think I saw them when I was with him there, he would have seen them as well.

**ADV SOLOMON SC:** Now he tells me – and I want to just put it to you, that in far as Mr Ben Ngubane is concerned, he only became the Chair of Eskom in 2016 as far as he can recall and that period in 2013, as far as Mr Gigaba is  
10 concerned, Mr Ngubane was an ambassador in Chile.  
Would you care to comment?

**WITNESS 3:** I have seen Mr Ngubane at the residence as well in 2013.

**ADV SOLOMON SC:** And also by the same token ...[intervenens]

**CHAIRPERSON:** I am sorry, I think witness 3 might not have appreciated your question. The question, witness 3, is whether you are in a position to deny Mr Gigaba's statement that in 2013 Dr Ben Ngubane was not  
20 Chairperson of Eskom but was an ambassador – was the ambassador of South Africa in Chile or China?

**ADV SOLOMON SC:** Chile.

**CHAIRPERSON:** Chile. Okay. Do you have any comments about that?

**WITNESS 3:** Yes, Chair.

**CHAIRPERSON:** Yes, what is your comment, what is your response?

**WITNESS 3:** The response is in 2013 I have seen Mr Ngubane at the Gupta residence, not necessarily that he was the Chairman of any portfolio but I have seen him in the residence in 2013.

**CHAIRPERSON:** Okay. I take it that what you mean is that you might not be in a position to say what his position was in 2013 but what you are saying is that you saw him at  
10 the Gupta residence, is that correct?

**WITNESS 3:** That is correct, Chair.

**CHAIRPERSON:** Okay, does that help?

**ADV SOLOMON SC:** Thank you, Mr Chair.

**CHAIRPERSON:** Okay.

**ADV SOLOMON SC:** And then by the same token Mr Mabaso only became the Chair of Transnet in either 2014 or 2015. Do you care to comment on that?

**WITNESS 3:** Yes, I saw Mr Mabaso, I did not know her portfolio then but I have seen her at the residence as well.

20 **CHAIRPERSON:** This might not change anything, counsel, but because I have been hearing Eskom evidence I can indicate that Dr Ben Ngubane became Acting Chairperson of the Eskom board in I think March 2015 and at some stage, I think in 2015 still became Chairperson of the board but in 2016 he was Chairperson of the Eskom board.

**ADV SOLOMON SC:** Thank you for that, Chair. Then if I could just take you to your transcript of your evidence, that is SEQ0721, page 53.

**CHAIRPERSON:** Or maybe this might be the convenient time to take the tea adjournment.

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

**CHAIRPERSON:** We will take the tea adjournment now, it is quarter past eleven, we will resume at half past eleven. We adjourn.

10 **INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay, let us continue. You will try and keep within ten minutes? Okay, alright. Just switch on your mic.

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

**CHAIRPERSON:** Thank you, you may proceed.

**ADV SOLOMON SC:** Thank you, Chair. I also just want to put on record, witness 3, that Mr Gigaba denies that on occasion that he was there as you testified that President  
20 Zuma's convoy was there at the same time. You can comment or you cannot comment, it is up to you, I am just putting that on record.

**WITNESS 3:** Thank you, Chair. In one occasion on our visit yes indeed I have seen the convoy of the former President, Mr Zuma, leaving the compound.

**ADV SOLOMON SC:** I interrupted you, continue?

**WITNESS 3:** Thank you, I was saying in one occasion as we were at the Gupta residence I then saw the convoy of the then Deputy President Mr Zuma leaving the compound.

**CHAIRPERSON:** Let me ask this question. When you saw the convoy where were you, where about in the compound were you?

**WITNESS 3:** We were coming into the yard, the premises.

**CHAIRPERSON:** Was Mr Gigaba in the car and if so  
10 where?

**WITNESS 3:** He was still in the car as I was parking the vehicle.

**CHAIRPERSON:** Was he in the same car as you?

**WITNESS 3:** I was in the back of car, yes, sir.

**CHAIRPERSON:** Was he in another car and you were in another car?

**WITNESS 3:** That is correct.

**CHAIRPERSON:** Okay. Was he in a position to have seen what you saw namely former President Zuma's convoy?

20 **WITNESS 3:** Yes because the motorcade, it is quite a number of cars. I am of the view that he have seen the motor vehicle.

**CHAIRPERSON:** Okay, alright.

**ADV SOLOMON SC:** Thank you. Now let us move on to the question of cash. You, on your version, attended with

Mr Gigaba and the Saxonwold residence of the Guptas on six or seven occasions, is that correct?

**WITNESS 3:** That is correct.

**ADV SOLOMON SC:** And you say in an earlier period of time you also observed him at the premises of Sahara in I think 2004, is that correct?

**WITNESS 3:** That is correct.

**ADV SOLOMON SC:** Now you have also testified, I have seen from your testimony and your statement that you  
10 observed a number of people, I do not need to call out their names, we know who they are. On various occasions, carrying bags with money and then going to deposit that money at a vault somewhere, I am not sure where you described it, I do not think it is important. Do you agree with me?

**WITNESS 3:** That is correct.

**ADV SOLOMON SC:** On none of the occasions did you ever see Mr Gigaba carrying – coming to or from either Sahara or the Gupta residence with a bag full of money, is  
20 that correct?

**WITNESS 3:** That is correct.

**ADV SOLOMON SC:** And on no occasion did you take into a vault and witnessing what you surmise to be the depositing of money, is that correct? Do you agree?

**WITNESS 3:** I do not remember taking the minister to the

vault.

**ADV SOLOMON SC:** Sorry, I did not hear that?

**CHAIRPERSON:** He says he does not remember taking the minister to the vault.

**ADV SOLOMON SC:** Yes. Well, had you done so you would have remembered.

**WITNESS 3:** Of course, yes.

**ADV SOLOMON SC:** Yes. So we can assume you never did, is that correct?

10 **WITNESS 3:** That is correct.

**ADV SOLOMON SC:** And then if we go to your witness statement, Chair, BB14d witness 1-3-126, paragraphs 25 to 28. Does Chair have it?

**CHAIRPERSON:** I have got page 126 and I have got the bundle, you say paragraphs?

**ADV SOLOMON SC:** 25 and over the page up to 28.

**CHAIRPERSON:** Yes, I have got it.

**ADV SOLOMON SC:** You see, Chair, it is headed Cash Carried by Gigaba.

20 **CHAIRPERSON:** Yes.

**ADV SOLOMON SC:** Does witness three have it?

**WITNESS 3:** Yes, I do.

**ADV SOLOMON SC:** Now you do not need to read that out, you can cast your eye over it. There is no reference there in your statement to Mr Gigaba having collected or



received any cash from the Gupta residence, is that correct?

**WITNESS 3:** That is correct.

**ADV SOLOMON SC:** Now could you then explain why in your evidence which we find, Chair, SEQ07/21 paginated page 55, typed page 119. Does Chair have it?

**CHAIRPERSON:** Did you say page 55?

**ADV SOLOMON SC:** I did, Chair, and 119, at the foot of the page, typed page 119.

10 **CHAIRPERSON:** Yes, yes, I have got it, ja.

**ADV SOLOMON SC:** Does witness 3 have it?

**WITNESS 3:** Yes, I do.

**WITNESS 3:** So can you explain if you look at line 14, really starts at line 12, you were asked by Mr Pretorius:

“Are you able to say where the money came from?”

And you say:

“I could not tell that time but as, as we make some visits, then I could connect the dots to say the money came from the Saxonwold residence.”

20 And then I am going to take you through Mr Pretorius' questions but let us just focus on that. So here you are saying that you are able to tell the Commission that you say that the cash that you allegedly saw in the possession of Mr Gigaba he acquired and got possession of from the Gupta residence, is that correct?

**WITNESS 3:** That is correct.

**ADV SOLOMON SC:** Now can you explain to the Chair why you were prepared to make that statement when you have admitted that you never saw him on six or seven occasions, as you did with other witnesses, collecting money from the Gupta residence, why were you prepared to make that statement incriminating my client with no evidence whatsoever?

**WITNESS 3:** Thank you, Chair. I think I was of the view  
10 that the money that I had seen carried by the minister, the former minister, came from the Gupta family, it is because in my view every time that we go there, maybe after a day or two, I would see money from the boot of his car in a bag full of money, hence I said I connected the dots. I meant that I was of the view that he may have found the money from the Gupta.

**ADV SOLOMON SC:** But you had six or seven occasions to observe him, as you observed other witnesses, and you have confirmed that on none of those occasions did you  
20 see him taking a bag into or coming with a bag out of the Gupta residence or observing that he was taking cash from there. You have conceded that. Do you agree?

**WITNESS 3:** Yes, I agree.

**ADV SOLOMON SC:** I want to know why you were prepared to come to this Commission and speculate and

draw conclusions adverse to my client to incriminate him without any evidence whatsoever. I would like you to explain why you felt that was part of your function coming to give evidence before this Commission.

**WITNESS 3:** Like I said, I was of the view that he may have found the money from the Gupta because of our frequent visits to the compound.

**CHAIRPERSON:** Let me put this question. Are you able to concede that what you were saying, namely that you  
10 could connect the dots to say the money came from the Saxonwold residence, and would it be correct to say that was simply a suspicion on your part?

**WITNESS 3:** It may be, Chair.

**CHAIRPERSON:** Okay, I do not if that helps, Mr...

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

**CHAIRPERSON:** Ja.

**ADV SOLOMON SC:** And you did not voice that suspicion in your statement. I take it your statement was taken in consultation with one of the evidence leaders, perhaps Mr  
20 Pretorius, Advocate Pretorius, and is that correct? Is it correct?

**CHAIRPERSON:** Witness 3, did you hear the question?

**WITNESS 3:** Not really, Chair.

**CHAIRPERSON:** The question is whether – the question is do you agree that in your affidavit you did not express

that suspicion?

**WITNESS 3:** Yes, I did not.

**CHAIRPERSON:** And the next question that counsel for Mr Gigaba asked was whether your statement was taken from you by one of the evidence leaders of the Commission, maybe Mr Pretorius?

**WITNESS 3:** That is correct.

**ADV SOLOMON SC:** So what we need to understand, witness 3, is at the time when you made your statement, your affidavit for the purposes of this Commission, you did  
10 not voice any suspicion and you had not connected the dots, is that correct? Is that correct?

**WITNESS 3:** The suspicion has been there but maybe I did not voice it to the evidence leader.

**ADV SOLOMON SC:** I beg your pardon?

**CHAIRPERSON:** He says the suspicion was there but maybe did not ...[intervenues]

**WITNESS 3:** Suspicion has been there.

**CHAIRPERSON:** But maybe he did not voice it to the  
20 evidence leader.

**ADV SOLOMON SC:** What made you then voice it during your evidence, your oral testimony?

**WITNESS 3:** I think I remember now, remember these things happened quite some time back. As I was engaging, I started to remember and ja, I said it.

**ADV SOLOMON SC:** So you had forgotten about your suspicion when you did your statement, is that correct?

**WITNESS 3:** That is correct.

**ADV SOLOMON SC:** And you only connected the dots when you gave your testimony, is that correct?

**WITNESS 3:** That is correct.

**ADV SOLOMON SC:** Did anyone assist you in connecting those dots between the time that you gave your statement on the 14 September 2020 and when you gave your  
10 evidence? Do you have an answer?

**CHAIRPERSON:** Did you hear the question, witness 3?

**WITNESS 3:** Chair, could you please clarify the question for me?

**CHAIRPERSON:** The question is whether anybody assisted you to connect the dots before you gave evidence and said that you connected the dots and concluded that the money came from the Saxonwold residence?

**WITNESS 3:** No one assisted me, Chair.

**ADV SOLOMON SC:** Right. You have said that Mr Gigaba  
20 appeared nervous to you when he was – exited the vehicle, is that correct?

**WITNESS 3:** That is correct.

**ADV SOLOMON SC:** But he was not in your vehicle, how could you have observed that?

**WITNESS 3:** On the drop-off he jumped out of the car and

he started to run towards the main door. For me it was very odd, unusual for him to be running into a meeting in that manner.

**ADV SOLOMON SC:** And was this on all occasions, on the six or seven occasions he would jump out and sprint to the front door?

**WITNESS 3:** It happened once.

**ADV SOLOMON SC:** Only once?

**WITNESS 3:** Yes.

10 **ADV SOLOMON SC:** Well, Mr Gigaba denies that he was nervous on the one or two occasions that he would have gone there during that period or that he ever sprinted out of his car. You do not have to comment, I am just putting to you what his version is.

**CHAIRPERSON:** I am looking at my watch.

**ADV SOLOMON SC:** I was hoping you would not but I understand that you are...

**CHAIRPERSON:** Ja, I think you may be over by two minutes but you can wrap up.

20 **ADV SOLOMON SC:** Ja, thank you. I just want to put to you – sorry, quite an important question, just describe the bag that you say you saw in Mr Gigaba's – the boot or trunk of his car that had the money you say you saw?

**WITNESS 3:** It was a travel bag, a travelling bag.

**ADV SOLOMON SC:** A travel bag. What do you call a

travel bag? Is that one of those bags on four wheels that we see in port and people boarding planes with as part of their hand luggage? I see you are smiling behind the mask, Chair.

**CHAIRPERSON:** Yes, I have heard evidence where a witness said he had been offered a lot of money in a bag and when he was asked to describe the bag he said it is like those bag that lawyers carry.

**ADV SOLOMON SC:** Touché, touché, but you are a lawyer  
10 too, Chair, in the broader sense.

**CHAIRPERSON:** Okay, alright. You might to repeat your question for the witness.

**ADV SOLOMON SC:** Yes. I was asking you, witness 3, when you say it is a travel bag, just so we can understand, is it one of those bags we see people on aeroplanes with on – that have normally four wheels and a handle and you wheel them onto an aircraft. If that what you call a travel bag?

**WITNESS 3:** That is correct.

20 **ADV SOLOMON SC:** It is different to a sports bag. Not the same thing, do you agree?

**WITNESS 3:** A travel bag.

**ADV SOLOMON SC:** Sorry, I spoke over you, do you agree?

**CHAIRPERSON:** Is it different from a sports bag, witness

3?

**WITNESS 3:** Yes, it is different, Chair.

**ADV SOLOMON SC:** Well, I have got to wrap up but I am just going to put the references, we will not go there, to save time, but you have described, page 249, line 7 to 8 – sorry, that would – let me give the correct reference, Chair. That would be SEQ07/21, page 56.

**CHAIRPERSON:** Let me just say when you say /21, it is /2021.

10 **ADV SOLOMON SC:** 2021, sorry, Chair.

**CHAIRPERSON:** Yes, yes. And what page?

**ADV SOLOMON SC:** Page 56.

**CHAIRPERSON:** Yes, okay.

**ADV SOLOMON SC:** Typed page 120.

**CHAIRPERSON:** Yes.

**ADV SOLOMON SC:** You then – this will just be my last submission, you describe it there at line 7 to 8 as the bag you saw as a sports bag. Does chair see it?

20 **CHAIRPERSON:** Yes, I can see it. Do you see it, witness 3, at page 56, line ...[intervenes]

**WITNESS 3:** Yes, I do, Chair.

**CHAIRPERSON:** You do see it?

**WITNESS 3:** Yes, Chair.

**CHAIRPERSON:** So what counsel is putting to you is that in your evidence you described the bag as a sports bag but



you have today agreed with his – you have agreed when he asked you whether the bag you were talking – the travel bag is a bag that is different from a sports bag and it is a bag that people normally carry when they go to board aeroplanes. That is what he is putting to you. What do you have to say about that?

**WITNESS 3:** Chair, a sports bag, I think I have one myself, I travel with that bag, I put my luggage in there as well, that is what I am referring to, you travel with that sports bag as well.

**CHAIRPERSON:** I must just say counsel I was hesitating when you used the example of aeroplanes whether the description was clear enough for the witness but I let it go.

**ADV SOLOMON SC:** I understand.

**CHAIRPERSON:** Ja.

**ADV SOLOMON SC:** But we have got on record that in his words it was different to a sports bag.

**CHAIRPERSON:** Yes.

**ADV SOLOMON SC:** But we will leave that for you, Chair.

20 **CHAIRPERSON:** Yes.

**ADV SOLOMON SC:** I just want to say to you that he denies he carried large sums of money with him and if on occasion he paid for a meal, he may have had some cash with him but he certainly was not carrying large sums of cash. You can comment or not but I am just putting that on

record, witness 3.

**CHAIRPERSON**: Do you want to say anything to that, witness 3?

**WITNESS 3**: Thanks, Chair.

**CHAIRPERSON**: I am sorry, is that thanks, you will not comment or you would like to comment, witness 3?

**WITNESS 3**: No, I am not commenting, Chair.

**CHAIRPERSON**: Okay, alright.

**ADV SOLOMON SC**: Chair, bearing in mind the time  
10 constraints I have more questions but I will defer to the  
Chair now.

**CHAIRPERSON**: Yes, yes.

**ADV SOLOMON SC**: As they say in the senate I will yield  
back to Chair. Thank you, Chair.

**CHAIRPERSON**: Okay. No, that is alright. Of course  
there is still the other issue that you will discuss with Mr  
Pretorius.

**ADV SOLOMON SC**: I will discuss with Mr Pretorius.

**CHAIRPERSON**: And maybe – we will see how that one is  
20 resolved.

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

**CHAIRPERSON**: Okay, thank you very much. Mr  
Pretorius, counsel for witness 3, do you want to ask some  
questions before he does or shall we allow him to re-  
examine?

**ADV PRETORIUS SC:** Chair, given the implications of a certain line of questioning of my learned friend and certain innuendos contained in his questioning, to which I have an objection but I will deal with it off the record.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** I need to place certain passages of the evidence on record to clarify the situation regarding the evidence of number 3, but in the meanwhile I think there is a request for re-examination from the  
10 representative of witness 3.

**CHAIRPERSON:** Okay, you will do that later.

**ADV PRETORIUS SC:** I will do that later.

**CHAIRPERSON:** Okay, alright. They did not sanitise before you came in but they must then sanitise now.

**ADV PRETORIUS SC:** So I will wash my hands.

**CHAIRPERSON:** Ja, okay, alright.

**MR DUBE:** Thank you for the indulgence, Chair.

**CHAIRPERSON:** Yes, Mr Dube, how much time do you think you will take? I want to see if I am going to limit you.

20 **MR DUBE:** I should not take long at all, Chair, I think there is probably about three issues that I need to clarify with the witness, Chair.

**CHAIRPERSON:** Okay, ten minutes should be fine, 15 minutes?

**MR DUBE:** I think let us say 15 minutes, Chair.

**CHAIRPERSON:** Ja.

**MR DUBE:** As it may depend on his responses as well.

**CHAIRPERSON:** Okay, alright. Witness 3, your counsel, Mr Dube, will now ask you some questions as his re-examination.

**MR DUBE:** Chair, apologies, I seemed to have lost the page that I marked.

**CHAIRPERSON:** Okay. If you do not find it you will have to improvise as counsel.

10 **MR DUBE:** Certainly, Chair, thank you.

**CHAIRPERSON:** Okay.

**MR DUBE:** Witness 3, good afternoon.

**WITNESS 3:** Afternoon, sir.

**MR DUBE:** Are you well?

**WITNESS 3:** I am well thanks and you?

**MR DUBE:** I think I am in a better place than you are, so certainly thank you for availing yourself to us. Witness 3, the first issue that I would just like you to clarify relates to the logbooks and the minister's diary. Can you just clarify  
20 to the Chairperson, when you refer to logbooks and diary, what it is that you are referring to?

**WITNESS 3:** Logbooks, it is a log books that we keep for all our trips in our official vehicles and the diary, it is the date today, programme of the VIP.

**MR DUBE:** Now let us go to SEQ7/2021 on page 52.

**CHAIRPERSON:** Just move the mic towards you so that you do not speak too far away from it.

**MR DUBE:** Thanks, Chair. Witness 3, let us move to SEQ07/2021 on page 52. Just let me know when you are there.

**WITNESS 3:** I am here, thank you.

**MR DUBE:** Alright. Now there was a lot of questions that arose from your evidence in this regard and I think maybe I will just read from line 12 on page 116 of the transcript, it  
10 is page 52, SEQ07/2021 and when I am done reading I would just like you to clarify to Mr Chairperson what the actual position is with regard to this evidence. Okay? So I will start on line 8 with Adv Pretorius who says yes and paragraph 21.1:

“And I do not understand your evidence now to be this, that none of these visits were recorded in the minister’s diary. So what was the position?”

You respond:

20 “Okay, normally you will just inform us and when he wants us to go, he will inform us to go there.

So were they or were they not recorded in the minister’s diary?”

You say:

“They were not recorded at all.”

And did you record these trips in the log book of

your vehicle?”

You say:

“He informed us we should not record this information on the logbook so we did not.”

Did he give a reason for telling you not to record them in his logbook, in your vehicle logbook?

No reason was given to us.

Right. What types of trips did he say you should not record in the logbook, was it trips to particular destinations or only trips to a particular destination,  
10 one destination?”

And you respond:

“Only for the – that is in question now, he would say we should not record that.”

And the Chairperson asked:

“Which address is that?”

You say – he says:

“Which address is that, is that the Gupta residence?”

20 You say:

“Yes, Chair.”

That was the only – or those are the only trips he said you must not record?”

You say:

“That is correct, Chair.”

Now with this evidence in mind just clarify to Mr Chairperson what is the actual position regarding the logbooks and the minister's diary, were those reported?

**WITNESS 3:** Thank you Chair. Some of these trips were recorded earlier, until the Minister informs me that we should not record them, and the logbooks were kept in our head office, in the hands of witness one, that is the logbook, and on the diary ...[intervenes]

**CHAIRPERSON:** Yes continue.

10 **WITNESS 3:** Yes Chair?

**CHAIRPERSON:** Continue, or are you done?

**WITNESS 3:** And with the diary, thank you Chair, with the diary on the visit to the Saxonwold was not on the diary, the Minister will only tell us on the day, that we need to be at the Gupta residence, thank you.

**ADV DUBE:** Okay so if I understand you ...[intervenes]

**CHAIRPERSON:** I am sorry, before you proceed Mr Dube, I take it that when you refer to those trips you are referring to the trips to the Gupta residence, in your question or did  
20 you mean all trips?

**ADV DUBE:** The trips to the Gupta residence, Chair.

**CHAIRPERSON:** Okay, alright, is that how you understood the question, witness 3, as well?

**WITNESS 3:** That's correct Chair.

**CHAIRPERSON:** Okay.

**ADV DUBE:** So, witness 3 if I'm to summarise your evidence in this regard, you are saying the logbooks, the trips were recorded on some occasions until the Minister instructed you not to record them and from that point, they were no longer recorded but with regards to his diary, the trips were never recorded?

**WITNESS 3:** That's correct.

**ADV DUBE:** Thank you. Now, moving onto the next issue which relates to the six or seven visits to the Gupta  
10 residence. You've mentioned that, on one of these trips it is you who was driving the Minister?

**WITNESS 3:** That's correct.

**ADV DUBE:** And that there was no-one else in the vehicle?

**WITNESS 3:** That's true.

**ADV DUBE:** And it was put to you that, that would be a breach of protocol, do you recall that?

**WITNESS 3:** Yes.

**ADV DUBE:** Was this an unusual occurrence for you and  
20 the Minister to drive together?

**WITNESS 3:** No, I think I did drove the Minister one on one on many occasions, sometimes when we go watch soccer at the stadium, he would request me to come over and I'd take him to the stadium, so driving him alone was not the first time.



**ADV DUBE:** But how would that occur if you were only meant to be driving the back-up vehicle, can you clarify that to Mr Chairperson?

**WITNESS 3:** Okay, on this particular day we were knocking off in the afternoon and the Minister said I must stay behind, of which, yes, I did, and he went to freshen up and after twenty or thirty minutes he came on and he said, we need to go somewhere. We got into the car, as we drove then he told me where we need to go. He said he  
10 must go to a compound in Saxonwold.

**CHAIRPERSON:** Well, you say you were knocking off, is that correct?

**WITNESS 3:** That's correct Chair.

**CHAIRPERSON:** So, did the other protectors leave to go to their respective homes, while you remained behind?

**WITNESS 3:** Yes, all of them, they knocked off, I stayed behind.

**CHAIRPERSON:** Now, you have said that there were a number of occasions when you drove the Minister to  
20 certain places, including when he went to stadium. Were you the only one, of the protectors, that the Minister would, from time to time, ask to drive him somewhere without the other protectors or did he do the same with regard to other protectors?

**WITNESS 3:** I think it was done only to me Chair.

**CHAIRPERSON:** You are not aware that he requested other protectors, individually to take him somewhere without the other protectors?

**WITNESS 3:** With the others, I never heard of, I only know that he would request me the most.

**CHAIRPERSON:** Yes, okay, Mr Dube?

**ADV DUBE:** Thank you Chair. Now, witness 3, going back to these six or seven incidents, why are you certain that it was six or seven times you went to the Gupta residence  
10 because Mr Gigaba says it was only once or twice?

**WITNESS 3:** Thank you Chair, I think in one occasion I took him with his wife, for dinner at the Gupta residence, that was – ja, to cover the six or seven times and the other time was when I saw Mr Brian Molefe at the compound which was a different day and the other day was when I saw Mr Matshela Koko and the other day again, I saw Mr Ben Ngubane and the other day I saw Ms Linda Mabaso, thank you Chair.

**ADV DUBE:** So, you know that it's six or seven times  
20 because on different occasions when you were there with the Minister you saw different people?

**WITNESS 3:** That's correct.

**CHAIRPERSON:** The times that you have specified when you saw certain people, doesn't look like it is six times, you said the one time you saw Mr Brian Molefe, that's one,

the other time you saw Dr Ben Ngubane the second time, the other time you saw Mr Matshela Koko, that's three the other time you saw Ms Linda Mabaso, that's four. Was it one of these four occasions that you saw the former President, Mr Zuma – Zuma's convoy or was it a separate occasion?

**WITNESS 3:** With the convoy was a different occasion, Chair.

**CHAIRPERSON:** So that would be five if my calculation  
10 is correct.

**ADV DUBE:** And think, Chair, he also mentioned there was an occasion where there was a dinner, and he took the Minister's wife.

**CHAIRPERSON:** Oh, yes, so that might take us to six, okay, alright you may continue.

**ADV DUBE:** Thank you witness 3. Witness 3, the propositions or what has been put to you is that Mr Gigaba denies most if not all of the averments that you have made in your statement, he denies that your evidence is true.  
20 Essentially the inference to be drawn from that is that what you have placed before this Commission is a fabrication. Now, are you aware of what happened to witness one over the weekend?

**WITNESS 3:** Yes, I'm aware...[intervenes].

**CHAIRPERSON:** I'm sorry, asking whether he's aware of

the reports.

**ADV DUBE:** Are you aware of the reports, thank you Mr Chair, are you aware of the reports relating to witness one, over this weekend?

**WITNESS 3:** Yes, I am aware.

**ADV DUBE:** Now, you've also requested that you should testify in private, behind camera, is that correct?

**WITNESS 3:** That's correct.

**ADV DUBE:** And part of that was to safeguard your  
10 identity as you are of the view that your life might be in danger.

**WITNESS 3:** That's correct.

**ADV DUBE:** Now, given all of this knowledge, more so regarding the reports about witness one over this weekend, why would you put your life further in danger by fabricating evidence against the Minister or the former Minister Gigaba?

**WITNESS 3:** I think this is a true reflection of what transpired while I was serving him in my duties. All that I  
20 have said in my testimony is a true reflection of what happened in the past.

**ADV DUBE:** Chairperson, thank you, those are all the questions I have for witness 3.

**CHAIRPERSON:** Thank you Mr Dube.

**ADV DUBE:** Thank you.

**CHAIRPERSON:** They will sanitise the podium before Mr Pretorius goes there.

**ADV PRETORIUS SC:** Chair, firstly certain facts put in cross-examination need to be kept and we will check, there may be some inaccuracies that we need to place before you, but we'll do that in due course after proper...[indistinct dropped voice]. Secondly, it's unfortunate that my learned friend saw fit to raise the issues in the manner that he did without placing the full  
10 record before you. We need to place certain matters on record. The way the legal team and the investigators work with any particular witness is that they form a team, and they all work together, sometimes separately but ultimately always together as a team. Where a witness is not represented, the statement will be finalised by the team and will be, then sworn in an affidavit for presentation before you. Now where the position is different where a witness is legally represented and the position in this case, as with all other cases where a witness is legally  
20 represented, the statement is placed before the attorneys, they check it, and they give the go-ahead that the affidavit can then be sworn. Now, in relation to this joining the dots and the suggestion that this might have been suggested to the witness which the witness has denied. I need to place the full text of the relevant evidence on record which I

would have hoped my learned friend would have taken the trouble to do in fairness but be that as it may. On page 119 of 152 of the transcript, that's SEQ07/2021 red number page 55, I just want to read the relevant passages.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Onto the record,

“Advocate Pretorius: are you able to say where that money came from, this is a particular amount of money that he said – in evidence he had observed.

10 Witness 3: I could not tell that time but as we make some visits, then I could connect the dots to say the money came from the Saxonwold residence.

Pretorius: How can you say that?

Witness 3: Because at some point as we went to the premises, he would go to the Guptas and we will go to Sandton and he would use to pay cash for his tailored suit”,

20 Then there is a number or there are a number of passages dealing with the type of bag and the condition in which the money was seen to be kept then on page 120 of 152, that's SEQ07/2021 56 I come back in questioning to the issue of the money and its source, I say,

“You have just told the Chair of an occasion where you saw a bag in the boot of Mr Gigaba's official vehicle and you say Minister Gigaba opened that

bag and you could see a stack of R200 notes in that bag, right? Yes, I say correct, the witness says, correct”.

Then an important passage, I put to the witness the following,

“Right, now I asked you earlier, because your statement says nothing in relation to where that bag came from. Are you able to say where that money came from through any observation that you made, not any opinion that you might have but through any observation from what you saw, did you see where that bag came from?”

10

Witness 3: No, I cannot say where it came from Chair.

And I asked the question again, I’m sorry?

Witness 3: I cannot tell you where it came from Chair.

And then the questioning goes on but it’s not relevant to the point that the witness was properly questioned and fairly questioned.

20

**CHAIRPERSON:** Well, that part, where I take further your questioning may be important, I say I don’t know if that’s like six to the witness, that is because you do not know how, that is the bag, came to the car, not because you do not want to tell us, you do not know how the bag

that had money came into the car, is that right, witness 3 says, yes that is correct Chair.

**ADV PRETORIUS SC:** That's a question from yourself.

**CHAIRPERSON:** Yes, that's a question from me and I say yes and the witness repeats,

“That is correct Chair, I do not know.

Then I say, yes okay and then you say, and nor does your statement say where it came from, you expressed an opinion earlier but I just want to establish that, according to your statement and what you say now, you do not know the history of that bag and how that money came to be in the bag and the bag came to be in the boot of the Minister, we are correct and the witness says, that is correct Chair”.

**ADV PRETORIUS SC:** Yes, Chair, so I'm not sure of the course of my learned friend's ...[indistinct dropped voice], thank you Chair.

**CHAIRPERSON:** Thank you, witness 3 I will excuse you now, depending on the outcome of the discussions between counsel for Mr Gigaba and Mr Pretorius and your counsel, it may be that you might be asked to come back some other time but for now, thank you very much for availing yourself for cross-examination, we appreciate it, you are now



excused.

**WITNESS 3:** Thank you Chair.

**CHAIRPERSON:** Yes, you are excused, I think we should take about – I'll take about five minutes or ten minutes adjournment before the next witness, is that fine – is ten minutes fine?

**ADV MYBURGH:** Ten minutes is perfect, thank you.

**CHAIRPERSON:** Yes, okay we'll take a ten minutes adjournment before the next witness, we adjourn.

10 **INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**ADV MYBURGH SC:** Mr Chairperson before we start Mr Solomon has indicated that he wishes to place something on record with your leave if ...

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** If there is an opportune time for him.

**CHAIRPERSON:** Yes, no that is fine. Let them sanitise before you go there Mr Solomon. Yes Mr Solomon.

**ADV SOLOMON SC:** Thank you – thank you Chair.

20 **CHAIRPERSON:** Yes.

**ADV SOLOMON SC:** Chair I just wanted to put on record one aspect flowing from my questioning that flowed from a discussion I had with Mr Pretorius about the connecting of the dots and anyone that witnessed that he may have spoken to. There is absolutely no suggestion from either me or my

client that Mr Pretorius or any member of this commission would have been – would have spoken to him or encouraged him to connect any dots and that was not the imputation of what my line was.

**CHAIRPERSON:** Yes.

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

**CHAIRPERSON:** Okay no that is fine. But now that you are there maybe I could check where the – whether you and I are on the same page on this that the time that I allowed you for  
10 cross-examination would have been more or less about an hour, is that your assessment as well?

**ADV SOLOMON SC:** I – yes I think so.

**CHAIRPERSON:** Ja I think it started about twenty five to eleven.

**ADV SOLOMON SC:** I think it was about an hour.

**CHAIRPERSON:** Ja. Then there was a fifteen minutes tea break.

**ADV SOLOMON SC:** Yes.

**CHAIRPERSON:** And I think you stopped about ten to or five  
20 to twelve or thereabouts if I am not mistaken.

**ADV SOLOMON SC:** Maybe you owe me five minutes but we can talk about that some time Chair.

**CHAIRPERSON:** And 2 you did say there were some questions you would have liked to ask but I take it that you did not think that they were necessarily crucial?

**ADV SOLOMON SC:** Chair I have been – I am guided by the Chair.

**CHAIRPERSON:** Yes.

**ADV SOLOMON SC:** I am not – I am not complaining that we could not do what we needed to do.

**CHAIRPERSON:** Yes okay.

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

**CHAIRPERSON:** Okay no that is fine. Okay thank you. Okay your next witness is Mr Brian Molefe.

10 **ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** And this time he would be testifying in regard to matters relating to Transnet.

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

**CHAIRPERSON:** Welcome back Mr Molefe.

**MR MOLEFE:** Thank you Chairperson.

**CHAIRPERSON:** Thank you. Your Counsel is here – your legal representative is that right? Okay if you can place yourself on record from that side that would be fine.

**ADV MOTSEPE:** Good afternoon Chair.

20 **CHAIRPERSON:** Good afternoon.

**ADV MOTSEPE:** My name is Clifford Motsepe I am with Advocate Sikhakhane and Mpho Molefe. We are duly instructed Molaba Attorneys on behalf of Mr Molefe.

**CHAIRPERSON:** Okay.

**ADV MOTSEPE:** We just want to put it on record today

Chair that we are not going to make any statements. Thank you.

**CHAIRPERSON:** I am sorry you are not going to?

**ADV MOTSEPE:** Mr Molefe has not prepared any statement for this.

**CHAIRPERSON:** Okay I am not sure I think your voice is soft. He is not going to read any statement – make any statement?

**ADV MOTSEPE:** Yes he has not prepared any statement.

10 **CHAIRPERSON:** Well I know that last week he said he would like to make a statement I said well we will see when he comes back for Transnet but this time I was going to be careful to make sure that we check whether he implicates anybody before I allow him to just read his statement. But if he is not going to make any that is fine.

**ADV MOTSEPE:** Thank you Chair.

**CHAIRPERSON:** Thank you. Then I think the Registrar can administer the oath or affirmation again.

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

20 **MR MOLEFE:** Brian Molefe.

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

**MR MOLEFE:** I have no objection.

**CHAIRPERSON:** Do you affirm that the evidence you will give will be the truth; the whole truth and nothing but the

truth; if so please raise your right hand and say, I truly affirm.

**MR MOLEFE**: I truly affirm.

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

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

**CHAIRPERSON**: Yes.

**ADV MYBURGH SC**: Chairperson the...

**CHAIRPERSON**: You might wish to – for the benefit of the public to just give ...

10 **ADV MYBURGH SC**: Certainly.

**CHAIRPERSON**: An idea to the public what matters will be covered by Mr Molefe's evidence.

**ADV MYBURGH SC**: Yes. The matters that will be covered by Mr Molefe's evidence broadly Mr Chairperson are those set out in the summons and by and large we will be dealing with the issue of the McKinsey and Regiments contracts.

We will be dealing with issues relating to the acquisition of locomotives – 95 locomotives; 100 locomotives, 1064 locomotives. That really lies  
20 fundamentally at the heart of our questioning of Mr Molefe.

There of course are a number of introductory things that we need to deal with but much of the evidence will revolve around McKinsey, Regiments and the locomotives.

**CHAIRPERSON**: Okay alright.

**ADV MYBURGH SC**: Mr Chairperson the two exhibits that

are of particular relevance are Exhibit 22 which you will find in Bundle 5 that is being produced for this hearing and then Exhibit 27. Exhibit 22 is Mr Molefe's Transnet exhibit. Exhibit 27 is a so called POI Bundle which has documents in it that are common to the witnesses that we intend to lead and deal with this week being Mr Molefe, Mr Gama and Mr Gigaba and Mr Singh.

Mr Molefe you have in front of you Exhibit 22?

**MR MOLEFE:** Yes.

10 **ADV MYBURGH SC:** Could I ask you please...

**CHAIRPERSON:** I guess we start with the bundle. Do you have Transnet Bundle 5? You look at the spine of the bundle to see whether it is Bundle 5 – 05.

**MR MOLEFE:** Yes Chair.

**CHAIRPERSON:** You have got it?

**MR MOLEFE:** Yes.

**CHAIRPERSON:** And then I think you can go to the exhibit Mr Myburgh.

20 **ADV MYBURGH SC:** Yes thank you. If I could take you then please to page 28 and there you will find an affidavit. You have been here I know many times so when we refer to page numbers we are referring to the black numbers on the left hand side. I just would ask you to confirm Mr Molefe that this is an affidavit that you deposed to it runs from page 28 to 51 and it was deposed to it appears on the 20<sup>th</sup> January

2021 containing a series of annexures running up until page 114. Would you confirm that that is your affidavit and that you have deposed to it as reflected here?

**MR MOLEFE:** It is indeed Chair.

**ADV MYBURGH SC:** And would you confirm the truth and accuracy of that affidavit?

**MR MOLEFE:** Yes it is so.

**ADV MYBURGH SC:** Chairperson might I ask you then to enter into evidence Mr Molefe's affidavit dated the 20<sup>th</sup> of  
10 January 2021 as Exhibit BB22.3?

**CHAIRPERSON:** The affidavit of Mr Brian Molefe that starts at page 28 is together with its annexures admitted as an exhibit and will be marked as Exhibit BB22.3.

**ADV MYBURGH SC:** And then Mr Chairperson as I have mentioned the other relevant exhibit is Exhibit BB27 found in Bundle 6. That contains a series of investigation reports I do not know if – if Chair you want to admit the bundle now or it is admitted as we – we deal with the reports when dealing with Mr Molefe's evidence?

20 **CHAIRPERSON:** Did we talk about how it would be dealt with – okay your – the bundle is part of Bundle 06 and then you reflect your exhibit BB27 but when you say BB27 you are talking about all the documents that are in the bundle, is that correct?

**ADV MYBURGH SC:** Yes I think it might be more

appropriate then Chair that I deal with it and I ask you to introduce the bundle when we come to the particular documents.

**CHAIRPERSON**: Yes, Yes.

**ADV MYBURGH SC**: If you would prefer that?

**MR MOLEFE**: Yes we might have to do that because I am a little uneasy about saying all the documents are...

**ADV MYBURGH SC**: That are...

**CHAIRPERSON**: Are Exhibit BB27.

10 **ADV MYBURGH SC**: Thank you Chair.

**CHAIRPERSON**: But maybe that we will have Exhibit BB27.1 next – 27.1.

**ADV MYBURGH SC**: Yes.

**CHAIRPERSON**: 27.2 as we go along.

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

**CHAIRPERSON**: Okay.

**MR MOLEFE**: Chair if I may ask a question? I see in those investigation reports some of them have a heading called Findings.

20 **CHAIRPERSON**: Hm.

**MR MOLEFE**: I just wonder as a layman what the meaning of findings (inaudible).

**CHAIRPERSON**: Oh you mean for example in the Fundundzi Report?

**MR MOLEFE**: No, no in the commission's report.



**CHAIRPERSON:** With – well the commission has not made any report. What – take me to the bundle and the page that you have in mind?

**MR MOLEFE:** I think we will deal with them when we get to them.

**CHAIRPERSON:** Later okay alright. Okay.

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

**CHAIRPERSON:** Okay.

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

10 **CHAIRPERSON:** But in case you have any concerns the commission has not made any findings I certainly have not made any findings.

**MR MOLEFE:** Indeed Chair.

**CHAIRPERSON:** Okay alright.

**ADV MYBURGH SC:** Mr Molefe I am not going to take you through your – your statement in the order in which it is – it appears. I am going to ask you some general questions and then more specific questions where you do in your affidavit deal with topics that I am going to touch on – I will take you  
20 there insofar as is necessary.

You will understand and appreciate I am sure that Transnet is a different stream to the Eskom stream and there are some things that I need to revisit. I know you have given evidence about them before but I am going to try in dealing for example with your personal details and predictions as to

your appointments which are relevant for our purposes but I will try and summarise and roll those up so as not to waste time.

In relation to your personal details we know that you worked in the Premier's office in Limpopo then you had a stint in National Treasury; you held a number of very senior positions. You then of course were the CEO of the PIC from June 2003 to July 2010 and then in April of 2011 you became the GCE of Transnet. Would you confirm that?

10 **MR MOLEFE**: Yes indeed it is correct Chair.

**CHAIRPERSON**: Was is it not April...

**ADV MYBURGH SC**: April – I beg your...

**CHAIRPERSON**: I think it was February.

**ADV MYBURGH SC**: February I beg your pardon.

**MR MOLEFE**: I think that was February Chair.

**ADV MYBURGH SC**: February of 2011.

**MR MOLEFE**: April was the – April was Eskom.

**CHAIRPERSON**: Yes, ja.

**MR MOLEFE**: 2015.

20 **CHAIRPERSON**: Ja. Group CEO of Transnet was February 2011.

**ADV MYBURGH SC**: Yes and I – I have – where I misread my notes is that you held that position until April 2015.

**MR MOLEFE**: Yes.

**ADV MYBURGH SC**: So it started in February.

**CHAIRPERSON:** Oh okay, okay.

**ADV MYBURGH SC:** Of 2011 until April 2015 I am indebted to you Chairperson. So that was for a period of approximately four years Mr Molefe.

**MR MOLEFE:** No it was for a period of over five years.

**ADV MYBURGH SC:** Alright.

**MR MOLEFE:** Because when I went to Eskom I was just seconded.

**ADV MYBURGH SC:** Yes.

10 **MR MOLEFE:** So I kept my position at Transnet and I was just seconded to Eskom.

**ADV MYBURGH SC:** And I was going to come to that so you were seconded to Eskom that – that is in the April 2015.

**MR MOLEFE:** yes.

**ADV MYBURGH SC:** As you mentioned, alright. And you remained at Eskom as I understand it until December of 2016, is that correct?

**MR MOLEFE:** Yes.

20 **ADV MYBURGH SC:** Right. And then we also know that you had a short stint as a member of Parliament and I am not going to – to deal with that.

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** Now so far as your – your educational qualifications are listed.

**CHAIRPERSON:** Just before that Mr Myburgh. You – you

just made a point – you just made the point that when you went to Eskom in April 2015 that was under secondment. The secondment did not last your entire time when you were at Eskom is it not?

**MR MOLEFE:** No, no sorry Chair. Yes it lasted until September.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** Sorry, sorry it does not make it five years it makes it four years and maybe nine months.

10 **CHAIRPERSON:** Some months.

**MR MOLEFE:** Ja.

**CHAIRPERSON:** Yes. So – so as long as you were under secondment at Eskom.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** You remained an employee of Transnet.

**MR MOLEFE:** Yes in fact my salary into my bank account was paid by Transnet.

**CHAIRPERSON:** Yes but...

**MR MOLEFE:** And Transnet was reimbursed by Eskom.

20 **CHAIRPERSON:** Yes. But then you were appointed permanently by Eskom.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** In September.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** 2015.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** And once you were appointed permanently so to speak you ceased to be an employee of Transnet and became an employee of Eskom, is that right?

**MR MOLEFE:** Yes.

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

**ADV MYBURGH SC:** Chair. Now so far as your academic qualifications are concerned I understand that you – you have an array of degrees and I supposed we need not go  
10 through all of them but from what I understand you have a B.Com from Unisa, a Masters in Business Leadership from Unisa and you have amongst other things an Honorary  
15 Doctorate in Engineering from the Glasgow Caledonian University, is that correct?

**MR MOLEFE:** That is correct. That is an Honorary Doctorate.

**ADV MYBURGH SC:** Yes. You have other Honorary Doctorates?

**MR MOLEFE:** No I do not have any other Honorary  
20 Doctorates.

**ADV MYBURGH SC:** So I suppose Mr Molefe given your qualifications and experience you were really ideally placed to detect any form of corruption whilst you were the GCE of Transnet.

**MR MOLEFE:** No I cannot say that with certainty Chair. The

fact that you are qualified does not make you a corruption detective.

**ADV MYBURGH SC:** Well...

**CHAIRPERSON:** Does not make you?

**MR MOLEFE:** A – a detector of corruption.

**CHAIRPERSON:** Oh.

**MR MOLEFE:** A corruption detection machine.

**CHAIRPERSON:** Hm.

**ADV MYBURGH SC:** So you say you did not have then the  
10 necessary skills.

**MR MOLEFE:** No I did not say that.

**ADV MYBURGH SC:** Or experience within which to detect  
corruption.

**MR MOLEFE:** No, I did not say so Chair. I did not express  
an opinion.

**ADV MYBURGH SC:** Alright.

**MR MOLEFE:** I just say that I was definitely not a corruption  
detection machine and that does not mean that if I saw  
corruption I could not see – I could not understand it or I was  
20 incapable of understanding and so it is not a – you are able  
or unable.

**ADV MYBURGH SC:** Yes.

**MR MOLEFE:** So I am just saying that I am not a specialist  
corruption detection machine.

**ADV MYBURGH SC:** Yes.

**MR MOLEFE:** As you might be.

**ADV MYBURGH SC:** I accept that you were not a specialist corruption detection machine did you detect any corruption while you were the GCE of Transnet?

**MR MOLEFE:** Yes there were incidents where there was issues of discipline, maybe corruption. It is just that now that you ask me. But I do remember once or twice there was an issue relating to somebody who was security personnel at TFR that had been involved in issues of discipline maybe  
10 you could even say it was corruption but that we dealt with and several incidents. It is just that they were not a subject of this commission.

**ADV MYBURGH SC:** Oh sorry.

**MR MOLEFE:** I never went back to – to refresh my memory but there were issues discipline that we dealt with while I was there.

**ADV MYBURGH SC:** Now you have been asked about the New Age prediction.

**MR MOLEFE:** The?

20 **ADV MYBURGH SC:** The New Age prediction of your appointment as GCE of Transnet. As I understand it though you have not previously been actually shown the newspaper article. Could I ask you to go to Exhibit 22 which you have in front of you and could you please turn to page 401? Mr Molefe it is Exhibit 22. So it is your exhibit at page 401.

Alright you see...

**CHAIRPERSON:** My 401 is a media statement released at the Chairperson's instance on Wednesday night December 2020.

**ADV MYBURGH SC:** I think that you may be in the wrong exhibit or divider Chairperson.

**CHAIRPERSON:** Are the – okay no I am terribly sorry. I made the mistake of looking at the red numbers.

**ADV MYBURGH SC:** Ja.

10 **CHAIRPERSON:** Instead of looking at the red numbers so you were...

**ADV MYBURGH SC:** 401 I beg your pardon – the black numbers.

**CHAIRPERSON:** To the black numbers. I have got the – I have got it ja.

**ADV MYBURGH SC:** Alright. So Mr Molefe you will see that that was a newspaper report it was published on the 7<sup>th</sup> of December 2010, do you see that?

**MR MOLEFE:** Yes.

20 **ADV MYBURGH SC:** Now I take it you would not dispute that the first publication of the New Age actually happened the day before.

**MR MOLEFE:** Come again.

**ADV MYBURGH SC:** The first publication of the New Age was on the 6<sup>th</sup> of December 2010 this was the second day of



the existence of this newspaper.

**MR MOLEFE:** No I do not know that.

**ADV MYBURGH SC:** Right. And we do know that the New Age was Gupta owned, correct?

**MR MOLEFE:** Yes I am not sure of the ownership structure of the New Age.

**ADV MYBURGH SC:** Alright. And ...

**MR MOLEFE:** I do not know about it.

**ADV MYBURGH SC:** And what – what this says is that  
10 former Public Investment Corporation PIC Chief Executive  
Officer Brian Molefe is said to take over as Transnet boss  
and then 1,2,3, 4 paragraphs below that the New Age has it  
on good authority that Molefe will be appointed CEO of the  
board, you see that?

**MR MOLEFE:** Yes Chair.

**ADV MYBURGH SC:** Now as I understand it you say that  
you – you knew nothing about this?

**MR MOLEFE:** No I did not know anything about this.

**ADV MYBURGH SC:** But it was brought to your attention at  
20 the time.

**MR MOLEFE:** Interestingly Chair when I went to check I was  
in fact oversees in New York at the time when this published  
and by the – by the date of this newspaper article I had  
actually been there for a few days maybe over a week. It  
was at the tail end of my trip to – to the United States.

**ADV MYBURGH SC:** Yes I think perhaps I can just cut through my questioning by asking you to look at the bottom of the article. Contacted for comment Molefe says I have not been informed I do not know anything about it. Were you contacted at the time?

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** Yes.

**MR MOLEFE:** I was overseas and I think I got a message on my phone that said, do you know anything about the – you  
10 going to be appointed at Transnet CEO? And that was my response. I have not been informed, I do not know anything about it.

**CHAIRPERSON:** Did the message come from (inaudible0.

**MR MOLEFE:** I think it came from ...

**CHAIRPERSON:** From the 00:22:57) newspaper.

**MR MOLEFE:** Journalist.

**CHAIRPERSON:** Okay.

**MR MOLEFE:** Perhaps one of these journalists.

**CHAIRPERSON:** Okay.

20 **MR MOLEFE:** But I just remember just seeing a message that says that the – do you know that you are just – you are going to be appointed CEO of Transnet? And I said no I do not know anything about and I have not been informed by anyone.

**ADV MYBURGH SC:** Now Mr Molefe would you – I mean you

have said that you do not know anything about this; you cannot explain it. I mean do you think it was a lucky guess on the part of the New Age while speculation – how do you think it came about? You no doubt would have reflected carefully on it when you get a phone like you did and you were asked to comment about your testimony.

**MR MOLEFE**: No I did not reflect carefully about it.

**ADV MYBURGH SC**: You did not?

**CHAIRPERSON**: Did you ask them where you do get this  
10 from?

**MR MOLEFE**: No I did not. I – Chairperson even now I get all sorts of questions about – from the media about the – all sorts of incidents that I do not know anything about and my answer is very short I do not know, I cannot comment.

**ADV MYBURGH SC**: Alright.

**MR MOLEFE**: There has been lots of incidents if you go through the media where I had no comment to make because in fact the media was wrong and there was nothing like that.

**ADV MYBURGH SC**: But what I am really getting at is once  
20 you were appointed as the Transnet GCE did you surely must have reflected back and thought well hell someone knew something that I did not know.

**MR MOLEFE**: No I did not.

**ADV MYBURGH SC**: You must have but how is that possible  
I mean it seems so natural and obvious.

**MR MOLEFE:** Why – why is it difficult for you to 00:24:39 that I could not have taken that article seriously and I did not.

**ADV MYBURGH SC:** Alright.

**CHAIRPERSON:** And what Counsel is saying Mr Molefe is maybe you may be forgiven for not having not – for not having taken it seriously when they sent you a message and said do you know that you are – you are going to be appointed CEO of Transnet. But once it happened.

10 **MR MOLEFE:** Yes.

**CHAIRPERSON:** Then it happened only about what two/three months – two months after ...

**MR MOLEFE:** Yes.

**CHAIRPERSON:** After the article.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** He is saying surely at that stage you must have thought so it means these people knew what they were talking about so I should have taken them seriously. That is what he is saying, what do you say to that?

20 **MR MOLEFE:** No I did not think about it – I did not...

**CHAIRPERSON:** Did not connect the article.

**MR MOLEFE:** I did not stress – I did not stress about it.

**CHAIRPERSON:** And the appointment.

**MR MOLEFE:** Come again.

**CHAIRPERSON:** You did not connect the article and the

appointment?

**MR MOLEFE**: No I did not Chair. I – actually I had surely even forgotten about the article because it is something that happened; I was literally in New York and I got to hear that they say that I am going to be appointed Transnet CEO; I did not know anything about it. Nobody had said anything to me about it and I did not know anything about it and I dismissed it. And – and then later on I – I did not link the article to my appointment.

10 **CHAIRPERSON**: Were you unemployed at the time of the article?

**MR MOLEFE**: I was in fact at the time of the article in the – I was called up to the SANDF at the time of that.

**CHAIRPERSON**: Does that mean you were employed or does that mean you were not employed?

**MR MOLEFE**: It is a – I am a reserve so I cannot say I was unemployed.

**CHAIRPERSON**: Yes.

20 **MR MOLEFE**: But I was called up as a reserve and at the same time I had been doing some transactions with Investec Bank which is what I was doing (inaudible).

**CHAIRPERSON**: Yes how long had it been since you had left PIC, do you remember?

**MR MOLEFE**: Maybe six months.

**CHAIRPERSON**: About six months.

**MR MOLEFE**: Yes.

**CHAIRPERSON**: Would it be correct to say – okay maybe I should not put this. During that six months were you unemployed until you were called on the SANDF?

**MR MOLEFE**: Unemployed I was not looking for a job.

**CHAIRPERSON**: You were not looking for a job.

**MR MOLEFE**: Ja so that is a definition of unemployment.

**CHAIRPERSON**: Yes, yes.

**MR MOLEFE**: When you looking for a job.

10 **CHAIRPERSON**: Yes.

**MR MOLEFE**: And you not doing – I was not looking for job.

**CHAIRPERSON**: Okay.

**MR MOLEFE**: There are some transactions that I had been doing.

**CHAIRPERSON**: Yes.

**MR MOLEFE**: With the Investec Bank.

**CHAIRPERSON**: Yes.

**MR MOLEFE**: And at the on – at this particular time I was in fact on callout at the SANDF.

20 **CHAIRPERSON**: Yes.

**MR MOLEFE**: So this was maybe about two or three weeks

**CHAIRPERSON**: Was SANDF employment?

**MR MOLEFE**: No it is a...

**CHAIRPERSON**: It was not employment?

**MR MOLEFE**: It is reserves yes.

**CHAIRPERSON:** Ja.

**MR MOLEFE:** Ja.

**CHAIRPERSON:** So – but would it be correct to say you were not employed during the six months?

**MR MOLEFE:** I was not employed by anyone.

**CHAIRPERSON:** Ja. Okay alright.

**MR MOLEFE:** Ja.

**CHAIRPERSON:** Well maybe you were self-employed?

**MR MOLEFE:** In a sense because – because I – yes I was  
10 not employed by anyone.

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

**ADV MYBURGH SC:** Thank you Chairperson. Just sticking with the New Age of course under your watch as GCE Transnet then went on to sponsor the New Age big interview, correct?

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** One of the topics that we will come to. So that is on the 7<sup>th</sup> of December now I do not know if you this but you were actually nominated for the position of GCE  
20 by Mr Iqbal Sharma you know that?

**MR MOLEFE:** No I did not know that.

**ADV MYBURGH SC:** Can you turn to page 400 please just a page before that article – page before. That email 13<sup>th</sup> of January sent to Leaders Limited they were the head hunters. You will remember that you made reference to them when

giving evidence in the Transnet stream and it says:

“Dear Mr Khumalo”

**CHAIRPERSON:** You mean in the Eskom?

**ADV MYBURGH SC:** I beg your pardon in the Eskom steam.

It says:

“Dear Mr Khumalo I would like to nominate Mr Brian Molefe to be considered as a candidate for the Group Chief Executive position at Transnet.”

Is this the first time that you had come to learn that Mr  
10 Sharma nominated you?

**MR MOLEFE:** I came to know about it in the context of getting these documents but not until now did I know and I now I mean when do you have....

**CHAIRPERSON:** When you got the bundles.

**MR MOLEFE:** When the bundle was made available yes.

**CHAIRPERSON:** When the bundle was made available.

**MR MOLEFE:** Yes. I do not know what this happened.

**CHAIRPERSON:** H’m.

**MR MOLEFE:** My recollection is that Mr Khumalo, Brian -  
20 I think it was Brian Khumalo – called me could sometime, I think, in January and ...[intervenes]

**CHAIRPERSON:** January 2011?

**MR MOLEFE:** 2011.

**CHAIRPERSON:** Ja, it is just important to mention the years because we deal with different years.



**MR MOLEFE:** Yes.

**CHAIRPERSON:** Ja. January 2011, you say Mr Brian Khumalo called you.

**MR MOLEFE:** Called me and said that Transnet has been looking for a Group Chief Executive and they have appointed him as the head-hunter. Mr Brian Khumalo was the head-hunter. In fact, he tried to head hunt ...[intervenes]

**CHAIRPERSON:** He was from ...[intervenes]

10 **MR MOLEFE:** I think he ...[intervenes]

**CHAIRPERSON:** ...Leaders Unlimited?

**MR MOLEFE:** Yes.

**CHAIRPERSON:** H'm.

**MR MOLEFE:** So he called me and said: I have this mandate to look for a Group Chief Executive Officer. Would you be interested. And I said: Let me think about it. And I... forgot it.

20 He says: Ja, would you be interested? And I said: Let me think about it. And I must have thought about it. For about a day or two and then I called him back and I said: Okay let us give it a shot. And he said: Okay submit your CV to me.

And then I sent my CV to him. And then, as I say in my affidavit, he then called me after a few days to arrange an interview with members of the Transnet Board.

**CHAIRPERSON:** Okay I think maybe you should stop there because ...[intervenes]

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

**CHAIRPERSON:** ...Advocate Myburgh knows how he wants to...

**ADV MYBURGH SC:** Mr Chairperson, I see that it is just past one o'clock.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** I take it that you would like to take  
10 the lunch adjournment.

**CHAIRPERSON:** Yes, let us take the lunch adjournment and we will resume at five past two. We adjourn.

**INQUIRY ADJOURNS FOR THE LUNCH BREAK**

**INQUIRY RESUMES AFTER THE LUNCH BREAK**

**CHAIRPERSON:** Okay let us continue.

**EXAMINATION BY ADV MYBURGH SC (RESUMES):**

Chairperson. Mr Molefe, we were dealing with your appointment and we have got to the 13<sup>th</sup> of January where I have showed you a document reflecting that Mr Sharma  
20 had nominated you. We know, as you have said, that you then went for an interview. Correct?

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** And you would have noticed Mr Sharma as a member of the selection panel?

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** Now are you aware of the fact that Mr Sharma had some business interest together with Mr Essa?

**MR MOLEFE:** No.

**ADV MYBURGH SC:** But you have read about that, have you not, in the documents that you have been provided with?

**MR MOLEFE:** Yes, recently. Yes.

**ADV MYBURGH SC:** Yes. There is reference there in one  
10 of the money flow reports and we will come to that in time. Reference is made to the fact that Mr Sharma and Mr Essa worked together, at least in 2021, at a company called ISA Capital. You have read that?

**MR MOLEFE:** Yes, I have seen it in the documents.

**ADV MYBURGH SC:** Alright. Now just to continue the chronology before I move to another topic. That is in January of 2011. What we know is that in May of 2011, not long after that, you might have read about Mr Gigaba, the then Minister Gigaba, seeking to replace Mr Mkwanazi, the  
20 chairperson with Mr Sharma as the chairperson. Have you read about that?

**MR MOLEFE:** No. No, I have not seen that.

**ADV MYBURGH SC:** And we will deal with that Mr Gigaba. And Cabinet refused that attempt to make Mr Sharma the chairperson.

**MR MOLEFE:** Of Transnet?

**ADV MYBURGH SC:** Yes.

**MR MOLEFE:** I was not aware of that, no.

**ADV MYBURGH SC:** Alright. But what you would be aware of is that a year or so later in August of 2012, Mr Sharma was appointed, was he not, as the chairperson of the BABC?

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** Let us then deal with your  
10 appointment as the CEO of Eskom also having been predicted. Now I am aware that you have been asked questions about this but of course Mr Bester was a Transnet stream witness.

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** And you remember his evidence was that he went to a meeting with Mr Essa at JB's Corner in Melrose Arch sometime between, I think, it was May and November of 2014.

**MR MOLEFE:** Yes.

20 **ADV MYBURGH SC:** And it was at that meeting that Mr Essa told Mr Bester and I quote:

“They... [you assume that was the Gupta's] ...had already decided that the new boss of Eskom will be Mr Molefe and that an announcement in the newspapers soon...”

You have again, as I understand, testified that you do not know where or know anything about that. Is that correct?

**MR MOLEFE:** I do not know anything about that and in addition to that, I do not know Mr Essa. I have never met Mr Essa.

**ADV MYBURGH SC:** But you did not need to meet Mr Essa.

**MR MOLEFE:** I did not even know who he was.

10 **ADV MYBURGH SC:** Yes. Mr Essa was a Gupta lieutenant as he is being described in regard to make contact with people like Mr Bester. He did not – so the Gupta's did not need to make contact with you through Mr Essa, Mr Molefe. Correct?

**MR MOLEFE:** Come again?

**ADV MYBURGH SC:** The Gupta's did not need to make contact with you through Mr Essa ...[intervenes]

**MR MOLEFE:** No.

20 **ADV MYBURGH SC:** ...to... you were a longstanding associate of theirs. Correct?

**MR MOLEFE:** I did not meet Mr Essa.

**ADV MYBURGH SC:** Yes.

**MR MOLEFE:** So I did not know Mr Essa. That is all I am saying.

**ADV MYBURGH SC:** If you could perhaps just deal with

my proposition. The Gupta's did not need to send ...[intervenes]

**MR MOLEFE:** I do not know what the Gupta's needed to do or did not need to do.

**ADV MYBURGH SC:** Well, let us explore the role of Mr Essa. Two examples come to mind. And you will see as I go through your evidence, it is really punctuated with Mr Essa. Let me give you two examples of where Mr Essa pops up. One here in this meeting with Mr Bester, right.

10 And where he also pops up is Mr Gama gives evidence that he sees Mr Essa in Mr Singh's office. He says in the latter part of 2015.

**MR MOLEFE:** Where? Transnet?

**ADV MYBURGH SC:** Yes, at Transnet. And he goes in and Essa says to him: I like to meet with you. And he says to him: Well, you can get my details from Mr Singh.

And in time, Mr Essa contacts Mr Gama and sets up a meeting. Mr Gama says, unknown to him, that meeting is set up at what turns out to be the Gupta  
20 compound. That is what Mr Essa was doing.

But the Gupta's did not need to send Mr Essa to meet with you. You knew them. You were dealing with the generals, effectively. You did not need to deal with the ...[intervenes]

**MR MOLEFE:** I have testified that I knew them.

**ADV MYBURGH SC:** Yes. Sorry. Can you just deal with my proposition? It is not surprising that Mr Essa was not deployed to meet with you because you were dealing with the Gupta's directly.

**MR MOLEFE:** No, I cannot comment on what ...[intervenes]

**ADV MYBURGH SC:** I see.

**MR MOLEFE:** ...Mr Essa was deployed to do or not deployed to do but I did not know Mr Essa.

10 **ADV MYBURGH SC:** Ja.

**MR MOLEFE:** Well ...[intervenes]

**CHAIRPERSON:** I am sorry. Well, Mr Molefe, when counsel puts to you the proposition that he puts to you, he is giving you an opportunity to dispute his proposition. To say that it is incorrect or to say it is correct. Or if you think it is based on a false or premise say that because later on, that proposition may be relied upon in the assessment of all the evidence.

**MR MOLEFE:** Yes, Chair.

20 **CHAIRPERSON:** So I am just making sure that when you decide not to say anything, you know what the implications are. That is all I am ...[intervenes]

**MR MOLEFE:** Yes, but all I am saying Chair is that he says that the Gupta's never sent Essa to meet with me. There is no way that I can know that.

**CHAIRPERSON:** No, he is not saying that. He is saying to you. If they wanted to talk to you, that is the Gupta's ...[intervenes]

**MR MOLEFE:** Yes.

**CHAIRPERSON:** ...there would have been no need for them to send Mr Essa or anybody.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** Because they were having direct interactions with you.

10 **MR MOLEFE:** Yes.

**CHAIRPERSON:** That is what he is saying. You agree with that?

**MR MOLEFE:** Yes, yes. They ...[intervenes]

**CHAIRPERSON:** Okay alright.

**MR MOLEFE:** Ja, there was a need to talk to me, they could have spoken to me because I knew them.

**CHAIRPERSON:** Ja, that is what he is saying. Ja. Mr Myburgh.

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

20 **CHAIRPERSON:** I think I misrepresented what you were saying.

**ADV MYBURGH SC:** No, not at all and I think you correctly summarised it. Thank you Chairperson. Mr Molefe, so is this just another coincidence then? I mean, there is a prediction that you are going to become



the GC of Transnet. That turns out correct. Here you told or there is a piece of evidence that Mr Essa tells Mr Bester that you are going to become the next CEO of Eskom and that happens. Do you just talk that down to a coincidence?

**MR MOLEFE:** Perhaps.

**ADV MYBURGH SC:** A coincidence?

**MR MOLEFE:** Yes. Perhaps a coincidence.

**ADV MYBURGH SC:** So when you first ...[intervenes]

**MR MOLEFE:** I really cannot comment on it. I do not  
10 know if it was a coincidence. I do not know what it was.

**ADV MYBURGH SC:** When you say ...[intervenes]

**MR MOLEFE:** But it is something that I am not aware. I  
am not... I cannot comment on it.

**ADV MYBURGH SC:** When you say you cannot comment,  
do you mean that you really cannot or you do not want to?

**MR MOLEFE:** I cannot.

**ADV MYBURGH SC:** Well, I want to engage you about  
this. So presumable when you... When did you first here  
this quite riveting evidence, shocking evidence by  
20 Mr Bester? When did you first hear of it?

**MR MOLEFE:** By Mr Bester?

**ADV MYBURGH SC:** Yes. It was clear before the  
Commission and he gave this evidence that Mr Essa told  
him between May and November 2014 that you would  
become the new CEO of Transnet. Where did you first

hear of that evidence?

**CHAIRPERSON:** Of Eskom.

**ADV MYBURGH SC:** I beg your pardon. Of Eskom.

**MR MOLEFE:** Of Eskom?

**ADV MYBURGH SC:** Yes.

**MR MOLEFE:** I do not know. Perhaps when Mr Bester came here.

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

**MR MOLEFE:** When Mr Bester came here, yes. Or when I  
10 got the documents. I am not sure. The Eskom documents.

**ADV MYBURGH SC:** But it must have surprised you?

**MR MOLEFE:** No, I did not ...[intervenes]

**ADV MYBURGH SC:** No?

**MR MOLEFE:** I did not – I was not surprised.

**ADV MYBURGH SC:** Oh.

**MR MOLEFE:** Nor was I moved at all.

**ADV MYBURGH SC:** I see.

**MR MOLEFE:** It was just something that he said there  
that I did not think anything about. I just thought, you  
20 know, these people talk about you all the time. I did not –  
I was not shocked or surprised.

**ADV MYBURGH SC:** You did not ...[intervenes]

**MR MOLEFE:** I have people talking about me all the time.

**ADV MYBURGH SC:** I see.

**MR MOLEFE:** I have journalists and newspapers saying

things that are pitifully wrong. That I do not take to head anymore.

**ADV MYBURGH SC:** But this is ...[intervenes]

**MR MOLEFE:** So when I do hear rumours about myself, I – they just do not enter my existence.

**ADV MYBURGH SC:** But Mr Molefe, we are going to spend a long time together, it seems.

**MR MOLEFE:** I am sorry to ...[intervenes]

**ADV MYBURGH SC:** But and it is not ...[intervenes]

10 **MR MOLEFE:** I am ...[intervenes]

**ADV MYBURGH SC:** It is not a bad thing.

**MR MOLEFE:** I am sorry to disappoint you then.

**ADV MYBURGH SC:** No, no. No, you do not.

**MR MOLEFE:** But ...[intervenes]

**ADV MYBURGH SC:** You can assist me but ...[intervenes]

**MR MOLEFE:** But your expectation for me to be surprised does not materialise.

20 **ADV MYBURGH SC:** Perhaps if you could just bear with me and allow me to answer – or ask my question. Are you seriously saying that when you heard that Mr Essa had said this that that did not surprise you or concern you at all? That is really my question. Yes or no?

**MR MOLEFE:** But I do not know who Mr Essa is.

**ADV MYBURGH SC:** Right. Well, you do know of Mr Essa's links with the Gupta's?

**MR MOLEFE:** Yes, now I do.

**ADV MYBURGH SC:** Yes. And you know it at the time that Mr Bester gave evidence. That is why I am trying to press you. It must have been of concern to you.

**MR MOLEFE:** Would you rather that it was of concern to me?

**ADV MYBURGH SC:** I just want you to answer the question.

**MR MOLEFE:** I answered the question. I said it was not.

10 **ADV MYBURGH SC:** Alright. So ...[intervenes]

**CHAIRPERSON:** Well, Mr Molefe at the time that Mr Bester gave evidence, even if in 2011 or 2015 you did not know of his links with the Gupta's, certainly at the time that Mr Bester gave his evidence before the Commission, you knew of or had heard.

You were aware of all the allegations of corruption associated with the Gupta's and you would have heard that he was said to have been an associate of the Gupta's. And you would have been aware that the  
20 allegations, and there has been evidence, that he had been mentioned in a number of instances associated with allegations of state capture and corruption. Is it not?

**MR MOLEFE:** Yes, Chair but ...[intervenes]

**CHAIRPERSON:** Yes.

**MR MOLEFE:** Chairperson ...[intervenes]

**CHAIRPERSON:** Okay. No, before you proceed. You would have been aware. Being aware of that, I would have expected that if, when Mr Bester gave evidence he said that Mr Essa had told you in 2014 that you would be the next boss of Eskom and indeed the following year you did become the next boss of Eskom. I would have expected you to be quite concern.

How could Mr Essa who is associated with all kinds of – who is associated with all kinds of allegations of  
10 corruption and state capture, have said he and whoever else, they have decided that I would be the next boss of Eskom.

And you did then become the next boss of Eskom. I would have expected you to be concerned. To say: Were there people who were using my name here to put me in situations that were compromising?

I would have expected you to be concerned about that. What do you say about that? Is my expectation – would my expectations have been  
20 unjustified?

**MR MOLEFE:** Yes, Chairperson.

**CHAIRPERSON:** Yes. You think I should have expected that you would have no problem with that?

**MR MOLEFE:** Chairperson, can I explain this?

**CHAIRPERSON:** Ja.

**MR MOLEFE:** Firstly, Mr Bester heard from somebody.

**CHAIRPERSON:** Sorry, just repeat that sentence.

**MR MOLEFE:** Mr Bester heard from somebody. He says he was told by somebody that I would become CEO of Eskom ...[intervenes]

**CHAIRPERSON:** No, no, no. He said he heard from Mr Essa ...[intervenes]

**MR MOLEFE:** ...I am saying it is Mr Salim.

**CHAIRPERSON:** Yes. He was told by Mr Salim Essa.

10 **MR MOLEFE:** Yes.

**CHAIRPERSON:** That was his evidence.

**MR MOLEFE:** Yes, he was told by somebody there where they were in a restaurant in one evening. His... partner... Mr Essa. It happened to Mr Essa, told him that I would become CEO of Eskom. Number one. So he heard it from somebody. He does not have personal knowledge of it. Number one.

**CHAIRPERSON:** Mr Essa may have had personal knowledge of it.

20 **MR MOLEFE:** No, no. They... But we do not know that. Mr Essa ...[intervenes]

**CHAIRPERSON:** Well, he told him and it did happen.

**MR MOLEFE:** No. Chairperson, please allow me to finish.

**CHAIRPERSON:** I will allow you but I just want you to understand ...[intervenes]

**MR MOLEFE:** Where you are coming from?

**CHAIRPERSON:** Yes, because I am interested in your explanation.

**MR MOLEFE:** Yes. Yes, but I am trying to tell you where I am coming from.

**CHAIRPERSON:** Yes, okay alright.

**MR MOLEFE:** Secondly. The person that Mr Bester is talking about ...[intervenes]

**CHAIRPERSON:** Maybe complete your firstly, so I make  
10 sure I have heard all of it.

**MR MOLEFE:** So the first one is, it was hearsay. Mr Bester heard it from somebody that he was having dinner with.

**CHAIRPERSON:** H'm?

**MR MOLEFE:** It was hearsay. He heard it – it was gossip, it was hearsay. He heard it there while they were having dinner in my absence. Secondly. The person that he is talking about I have never met. I have never met him. I, actually, do not know him. Why would something  
20 that was said by somebody that I do not know worry me? Why would it worry me?

And the fact that it eventually happened. I know how it happened. I know that I was approached by the Minister, not Mr Essa. I do not know if the Minister has a link with Mr Essa but I know it actually eventually

happened.

And in my knowledge of how it happened, there is no discussion with Bester and Essa. There is no – they do not feature anywhere. That is something – that is like a random event that happened there which this Commission is now trying to elevate to an event of significance.

But in my head, it was between Mr Bester... I, actually, do not even – I am not even an acquaintance of Mr Bester. I just know him from his – that he was a  
10 manager there at the Eskom.

So Mr Bester who is not even acquitted with me, has a discussion with somebody that I do not know. And that is suppose to worry me? No, it does not. It is something that happened there that I do not know anything about.

I know how I got to be appointed at Eskom. I can account about how I got to be appointed to Eskom and it has got nothing to do with people that I do not know. That is why it does not worry me.

20 **CHAIRPERSON:** Well, you do not know if it has anything to do with people that you do not know. All you know is that the Minister approved you.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** But you do not know whether the Minister might have had some discussion with either



Mr Essa or the Gupta's. That you – that at least you would say to me you do not know this. All you know is, the Minister approved you.

**MR MOLEFE:** Chairperson, I just want to... There is a guy who dished up a salad for me. I do not know that guy. He might actually, as I was walking in, have said to the guy next to him: This is Brian Molefe. Must that worry me Chairperson? Or must I get worried about who that person knows that I might know or...

10 I mean, I cannot live my life like that, seeing ghosts or seeing shadows everywhere. When Mr Bester walks in, I mean, this is the man who had a dinner with somebody that I do not know and they talked about me and they said I will be appointed at Eskom and I am supposed to shiver and worry about that and stress about it. I had Chairperson... No. There are things to worry about.

**CHAIRPERSON:** Yes. And this would not be one of them.

**MR MOLEFE:** This was not one of them.

**CHAIRPERSON:** Well, I am going to make one or two –  
20 say one or two things and then Mr Myburgh will continue. On my logic, if it is true that you had never met Mr Essa and you did not know him ...[intervenes]

**MR MOLEFE:** Yes.

**CHAIRPERSON:** ...I would expect that that should worry you more than it should have if you knew him. The fact

that, particularly, when it did happen, you know, I mean – or rather when you bear in mind that you are told that he said in 2014 that they had decided that you would be the next boss of Eskom and then you know as Mr Bester is giving evidence that indeed the following year it did happen.

I would – my logic says if it was somebody that you knew maybe you might not be concerned because you know the person. But if it is somebody that you did not  
10 know, my logic says, it should worry you more to say: How can somebody that I did not even know that I had never met know so much about me even what position I was going to hold the following year. That that would be my expectation. But I think ...[intervenes]

**MR MOLEFE:** But ...[intervenes]

**CHAIRPERSON:** ...you have made your point.

**MR MOLEFE:** Maybe Chairperson, unlike you and Mr Myburgh I am not a good conspiracy theorist.

**CHAIRPERSON:** Well, you are getting a chance. You are  
20 saying it is conspiracy theories. You are getting a chance to influence my thinking. You see? I am saying to myself. Mr Essa...

I am saying to myself. A newspaper belonging to the Gupta's said on the 7<sup>th</sup> of December 2010 that they had on good authority that you would be appointed as Group

CEO of Transnet. That was December 7<sup>th</sup>. January 7, February 7, mid-February and 11 or 12<sup>th</sup>, thereabout, I am not sure, you get appointed as Group CEO of Eskom... of Transnet. That worries me. How did they know? How did they get it so right?

You say it does not worry you. It did not worry you at the time. Then I know hear evidence that somebody who was – who has accepted, in terms of the evidence that has been led, to have been a Gupta associates, tells  
10 somebody in 2014 in a meeting that we are very powerful.

We have decided that Mr Brian Molefe is going to be the next boss of Eskom. And it happens the following year. I do not see how I should not be wanting to find out how was that possible, particularly, when you tell me you did not know Mr Essa. So.

But the opportunity is for you to put your perspective, put your side of the story, so that all of this can be taken into account in the assessment of the evidence.

20 **MR MOLEFE:** So Chairperson, if it was you, you would have been worried?

**CHAIRPERSON:** I would have been worried?

**MR MOLEFE:** And then what?

**CHAIRPERSON:** Investigate? Who is this person? Where does he get this from? Mr Myburgh.

**MR MOLEFE:** I am afraid, if you were in my position you would have been investigating every day. You would have spend your life just pursuing rabbit holes.

**CHAIRPERSON:** [laughs]

**MR MOLEFE:** That are going nowhere.

**CHAIRPERSON:** We might be different Mr Molefe.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** You... But I am giving you the benefit of how I would have dealt with the matter and you are free  
10 and you might influence me to change my mind about that. You might say: Look, I am different. This is how I dealt with things and I dealt with it in this way because of A, B, C, D which you have said.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** Okay. Mr Myburgh.

**ADV MYBURGH SC:** Yes, thank you. Mr Molefe, I assume that what must have concerned you though is when you came to learn of the context in which your name was used by Mr Essa.

20 **MR MOLEFE:** What is your assumption?

**ADV MYBURGH SC:** Well, what Mr Bester said is not an assumption.

**MR MOLEFE:** No ...[intervenes]

**ADV MYBURGH SC:** Mr Bester ...[intervenes]

**MR MOLEFE:** No, you started your sentence by saying

you assume.

**ADV MYBURGH SC:** Mr Bester said that Mr Essa referred to you and knew all about you and they knew you were going to become the next CEO of Eskom but it was in the context of him attempting to put pressure on Mr Bester to appointed Essa's business as a supplier development partner. Now when you heard that, that must have concerned you.

**MR MOLEFE:** Chairperson, Mr Bester never approached  
10 me with this hearsay evidence.

**ADV MYBURGH SC:** I am asking you, when you heard this in the Commission, it must have ...[intervenes]

**MR MOLEFE:** In the Commission? Now recently?

**ADV MYBURGH SC:** Yes.

**MR MOLEFE:** There was no reason to be concerned. It was... it happened in the past. Perhaps maybe if Mr Bester had come to me and said to me I heard from Mr Essa that you are going to be the next CEO, maybe I would have been concerned.

20 **ADV MYBURGH SC:** Sorry, Mr ...[intervenes]

**MR MOLEFE:** But it comes out in the context of the Commission. The it is hearsay. And I expect that the Commission will test the veracity but that is not my job. Where I am now, what Mr Bester was saying he heard a few years ago, is not something that concerned me.

**ADV MYBURGH SC:** Mr Molefe, Mr Essa was engaging in corrupt activity using your name. Can you be quoted and say when you heard that it just did not concern you? And then let us move to the next topic.

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

**ADV MYBURGH SC:** It did not concern you. Correct?

**MR MOLEFE:** Well, if you say Mr Essa was engaged in corrupt in activity using my name, is that what you are found?

10 **ADV MYBURGH SC:** Of course, it would concern you. Correct?

**MR MOLEFE:** No.

**ADV MYBURGH SC:** No? Well, I am not going to carry on ...[intervenes]

**CHAIRPERSON:** I am sorry Mr Molefe. I want to make sure I heard it clearly. Are you saying if somebody – if you – if somebody testified under oath ...[intervenes]

**MR MOLEFE:** Yes.

20 **CHAIRPERSON:** ...and the gist of – part of his evidence was that somebody was using your name to advance corruption or his corrupt activities. That would not concern you?

**MR MOLEFE:** But I do not know that person.

**CHAIRPERSON:** But if it is so, does it – for you, does it matter that you know or you do not know the person?

**MR MOLEFE:** No, it will concern me if I was also involved in some kind of activity that is corrupt and so on and so forth. Maybe I would have been concerned. But when I knew that this person was just – people do this all the time.

Chairperson, I can give you an example. People will say to somebody, and it has happened to me, I know Mr Molefe and I can arrange a meeting with you but you must pay me twenty thousand. And the person pays twenty  
10 thousand.

And the person comes to me and says that: Look, you have to meet so and so. They have got a good project and what have you and so on. And then I agreed to meet them. But I do not know that this person is actually being paid to organise the meeting and I discovered later that that guy actually paid this one to organise a meeting with me.

Well, firstly, I was not part of the deal. That is why it does not worry me. I was not part of the deal. I just  
20 think: *Eish*, it is unfortunate and people do these unfortunate things and they use my name to make money for themselves and so on. But I it is not something that my life has to stop about.

**CHAIRPERSON:** Well, I must confess. I am very concerned about that evidence Mr Molefe. If I heard that

somebody went to an attorney, for example, or advocate  
...[intervenes]

**MR MOLEFE**: Yes.

**CHAIRPERSON**: ...or a court official ...[intervenes]

**MR MOLEFE**: Yes.

**CHAIRPERSON**: ...and said – and used my name  
...[intervenes]

**MR MOLEFE**: Yes.

**CHAIRPERSON**: ...in order to achieve wrongdoing  
10 ...[intervenes]

**MR MOLEFE**: Yes.

**CHAIRPERSON**: ...I would be very concerned  
...[intervenes]

**MR MOLEFE**: Yes.

**CHAIRPERSON**: ...because I would never want anybody  
to use my name to advance criminality. And I would have  
expected that that would be your attitude too.

**MR MOLEFE**: Well, Chairperson what if you do not know  
that person but it is alleged was advancing criminality?  
20 You do not know them. You have never met them. And  
there are allegations that they are advancing criminality  
and they are just allegations.

And my attitude, Chair, would be that you will  
spend your life... People do all sorts of things. You will  
spend your life running down rabbit holes which is what I



have tried to avoid my life. Just chasing and chasing and chasing rabbit holes. Rabbit holes that have no meaning.

There is a great example, Chairperson, of a farmer who was trying to – who was having a problem with a rabbit that was eating the farmer's – his vegetable garden, vegetable patch. And he saw the rabbit going to the barn and he shot at the rabbit but the barn caught fire. The people came to put out the fire. And the deep question remained but what happened to the rabbit.

10 **CHAIRPERSON:** Well, I guess I understand correctly to say as long as you do not know the person who uses your name to achieve wrongdoing, corruption, criminality, you would not be concerned?

**MR MOLEFE:** As long as I do not know the person who it is alleged is using my name. Is alleged is using my name. Then, Chairperson, I had all sorts of other things to do.

**CHAIRPERSON:** You would not even want to go to the police and say I do not have all the facts but I heard somebody is going around, for example the township,  
20 collecting money using my name for criminal activities, you would not even go to the police because you do not know them?

**MR MOLEFE:** Well, to go to the police you would have to have evidence of wrongdoing.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** And once you have the evidence of wrongdoing but it is indeed so and that they are incorrect corrupt, that there is evidence that crimes were committed then you are obliged to report to the police but as long as you meet somebody who says that so and so steals cars and he was talking about it and you do not even have evidence that that person stole a car, I mean, what are you going to say when you get to the police? [speaking vernacular] he is talking about me and you do not even  
10 know that person.

**CHAIRPERSON:** Mr Myburgh, continue.

**ADV MYBURGH:** Yes, thank you. Mr Molefe, perhaps we live in different world but ...[intervenes]

**MR MOLEFE:** Yes, you and I do, Mr Myburgh.

**ADV MYBURGH:** I just want you to know that it may very well be that the submissions that I make to the Chairperson at the Eskom – sorry, the Transnet stream evidence will be that many of your answers are simply contrary to natural human behaviour and perhaps the  
20 submission would be, and I am giving you an opportunity to answer it, is you are doing this, you are presenting these unnatural answers because what you are really trying to do is at all costs to distance yourself from the corruption. That is why you are doing this. Do you want to comment on that?

**MR MOLEFE:** I disagree with you.

**ADV MYBURGH:** Alright. So let us then deal with your ties with the Guptas. Just before I move on, do I understand that you seemed at least a bit surprised when I told that Mr Essa was seen by Mr Gama at the Transnet offices holding meetings?

**MR MOLEFE:** Yes, I was surprised.

**ADV MYBURGH:** Well, then you must have been shocked to the core when you heard Mr Bester's evidence that said  
10 before the meeting that Bester had with Essa or he made the comment, he had a prior meeting with Essa and Singh.

**MR MOLEFE:** And who?

**ADV MYBURGH:** Mr Singh.

**MR MOLEFE:** Who had a meeting with Singh?

**ADV MYBURGH:** They same place they met with you at Melrose Arch, Mr Molefe.

**MR MOLEFE:** Essa that met with me?

**ADV MYBURGH:** That Mr Essa met with Mr Bester when they discussed you, it was in Melrose Arch. They had had  
20 an earlier meeting in Melrose Arch, Bester and Essa, present at that meeting was Mr Singh.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** That must have shocked you when he heard ...[intervenues]

**MR MOLEFE:** At that meeting?

**ADV MYBURGH:** The meeting preceding the meeting that Mr Bester gave evidence about where the comment was made about you becoming the next CEO of Eskom. Did it surprise you or not?

**MR MOLEFE:** I would have been surprised that Mr Singh had met Mr Essa?

**ADV MYBURGH:** Yes.

**MR MOLEFE:** Is that what you are saying?

**ADV MYBURGH:** Yes.

10 **MR MOLEFE:** It had nothing to do with me.

**ADV MYBURGH:** I am not asking you that and that is not an answer. You must have been – if you were surprised when I told you that Gama says that he saw Essa at the Transnet offices meeting with Mr Singh, if you were surprised by that how can you not have been surprised by Bester’s evidence that said that he met with Essa and Singh? You must have been surprised.

**MR MOLEFE:** You see, Mr Myburgh, I think you know Mr Essa to be corrupt and that Mr Bester’s gospel truth about  
20 things that Essa said and what the people that he talked about and the meetings that we had, now with hindsight surprise you, that – sorry, now with hindsight shock you and your find revolting because we are here today and you now know what you know but I did not know about the corrupt activities and when people say that – when Mr

Mcebisi Jonas said that one of the Gupta brothers said they will work with Brian Molefe, he does not even remember who it was that said so. I know it not to be true that I worked with them in the manner that he was suggesting and I do not understand why it should worry me in Setswana they say [speaking vernacular], the guilty conscience convicts itself, I do not [speaking African language] in English. So the guilty conscience is the one that – so if you do not have a guilty conscience

10 ...[intervenes]

**CHAIRPERSON:** Betrays you.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** A guilty conscience portrays you.

**MR MOLEFE:** Ja, *ukwahlulela*(?) is to give judgment, *ukwahlulela* is to judge yourself.

**CHAIRPERSON:** Ja, that is to – ja, I think it means – it must mean that when you hear something being said.

**MR MOLEFE:** Yes.

20 **CHAIRPERSON:** Or maybe when you are accused of something that you know is true.

**MR MOLEFE:** Yes, yes.

**CHAIRPERSON:** Your guilty conscience tells you but you know that is true.

**MR MOLEFE:** Ja, ja.

**CHAIRPERSON:** So you might pretend that it is not true

but inside your conscience ...[intervenes]

**MR MOLEFE**: You know.

**CHAIRPERSON**: You know.

**MR MOLEFE**: And a guilty conscience may force you to act in a particular way.

**CHAIRPERSON**: Yes, yes.

**MR MOLEFE**: Because you know that this is – there is substance.

**CHAIRPERSON**: Yes.

10 **MR MOLEFE**: So because I did not have that conscience that said that when Mr Essa's name is mentioned I must jump and investigate. I did not do it, I did not see a need to do it because my conscience did not demand of me to do anything.

**ADV MYBURGH**: Now, Mr Molefe, I am not sure that I understand all of that. Let me just go back ...[intervenes]

**MR MOLEFE**: It means [speaking vernacular].

**ADV MYBURGH**: Yes, but you did have a guilty conscience.

20 **MR MOLEFE**: No.

**ADV MYBURGH**: Because you did know what was going on. Are you suggesting that you did not know at all what Mr Essa and the Guptas were up to, that they were – on the evidence that has been presented to the Commission they were engaging in money laundering using the

business that you were in charge of. Are you suggesting you did not know that?

**MR MOLEFE:** Mr Myburgh, are you saying that I knew?

**ADV MYBURGH:** I am asking you, did you not know?

**MR MOLEFE:** No, I am telling you I did not.

**ADV MYBURGH:** You did not know at all/

**MR MOLEFE:** Not.

**ADV MYBURGH:** And to make it worse, the people that were actually the perpetrators, they were friends of yours, 10 the Guptas. We are going to come to that now. So, Mr Molefe, just so that you understand the context in which my questioning of you takes place, many ...[intervenes]

**MR MOLEFE:** Mr Myburgh, I think that you would like to see a particular outcome and I am sorry if I disappoint you.

**ADV MYBURGH:** No, let me - sorry, if you will just let me finish because I was in fairness going to tell you what I am going to examine you about.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** Many Chief Executive Officers have 20 been in your position before where it is found out that there is corruption and criminal activity under their watch.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** And then they need to explain themselves, did they know, were they asleep at the wheel, were the crooks too cunning or where they complicit and

that is really ultimately what the Commission in relation to you will have to decide. Once you accept there was corruption and money laundering, the question then is, you say you did not know. Well, why do you say that, why did not know? Were you diligent enough? Were you asleep at the wheel? Were these crooks too cunning for you or were you actually complicit and those are what my questions are directed at. So it is not that I want any particular outcome, I want to be able or the Commission wants to be able to  
10 answer that question. That is why I am probing you. So let me just start out by asking you this. Do ...[intervenes]

**MR MOLEFE:** So you will try to determine whether I knew?

**ADV MYBURGH:** That is what I am asking you, are you suggesting that you did not know?

**MR MOLEFE:** Yes.

**ADV MYBURGH:** Okay. Alright, so then the question of course arises but why did you not know and how is that you could not have known? Now in fairness to you, those  
20 are always hard questions for CEOs in your position to answer but in fairness to you, I need to point out that what makes your position so much more difficult is that you were friends with the perpetrators. You were frequenting their house, you had a seat at the table, yet you say you did not know. How is that possible? Were you being played by



these people? Do you feel portrayed by these people? Those are questions that we need to ask and need to be answered by you over the course of the next [indistinct – dropping voice] and I put that to you in fairness. Now let us start this line of questioning by me asking ...[intervenes]

**CHAIRPERSON:** Well maybe, Mr Myburgh, please do not forget the question you wanted to put just now before we move too far. I want to go back a little bit to what you said about what your conscience or anybody's conscience might  
10 do when a certain accusation is made. I want to say what do you say about this proposition, that when something – when an accusation is being made against you – and now I am not talking about you, Mr Brian Molefe, anybody. If you know it to be true, you may well do nothing about it because you know it is true. You accept that that is one of the reactions that can happen. I am talking now in general, it is a general proposition.

**MR MOLEFE:** Yes. If I know it to be true...

**CHAIRPERSON:** Ja.

20 **MR MOLEFE:** Definitely.

**CHAIRPERSON:** Ja.

**MR MOLEFE:** Then my reaction might be different.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** If I cannot ascertain whether it is true or not, I do not know if I will invest my time to pursuing it if

maybe it is fifty/fifty.

**CHAIRPERSON:** Okay.

**MR MOLEFE:** Or maybe if it is unlikely or like I say but people that I do not know at the dinner table. So if I know it to be definitely true then maybe my reaction might be different but if it is something that is just a spurious allegation then I would not pursue it. I mean, there have been suggestions that I was going to be the next CEO of SAA. I have never gone and investigated who said it, why  
10 they said it and - like I say, it is a rabbit hole that you end up pursuing to no end, wasting time and resources.

**CHAIRPERSON:** Well, what do you say to – what would you say to a proposition that the reason why you may not have been, is it surprised, when the New Age predicted that you were going to – maybe predict is not the right word, they said they had it on good authority that you would be the next CEO of Transnet and when you did become Group CEO of Transnet a few months after the article and a few months after the journalist had contacted  
20 you, what do you say to the proposition that the reason why you did not want to find out how come the New Age got this so correctly is because you knew how they knew because you also knew that you were going to be the next Group CEO, so there was nothing to investigate because you knew where they go the information from. What would

you say to that?

**MR MOLEFE:** Ja, Chairperson, if that question is very important to you and it needs to be investigated, right, and the question is when they say that they heard it from good authority, who was the good authority? I think that is what should interest me. I am telling you that I did not know anything about it, I was definitely not the good authority that they were talking about. The source of that story was, as they say, good authority. So who was it?

10 Perhaps the Commission should have investigated, perhaps you should have asked the journalist, call the journalist here and say when you said you heard it from good authority, who was the good authority? Did Brian Molefe know about it? What did he say when you confronted him with the question? Because what I said when I was confronted with the question was actually fortunately published, I do not know about it, nobody talked to me about it, I do not know anything about it.

**CHAIRPERSON:** Thank you. Mr Myburgh?

20 **ADV MYBURGH:** Yes, so let us go back – let us start then with your ...[intervenes]

**MR MOLEFE:** Because, Chairperson, I think that now it appears to me that just because the Commission did not investigate who the good authority was, it looks like you want to keep it on me and say that Molefe, you knew about

this and you were part of it and so on and so on when in fact the correct thing to have done was to ask this journalist where did you get and how come that you were so accurate? I cannot answer those questions.

**CHAIRPERSON:** No, no, no, that is fine, Mr Molefe, and it may well be that asking the journalist might be option but I know that journalists normally do not want to reveal their sources but at least now that you are there, it is legitimate to ask you whether you know particularly because it is your  
10 evidence that you went to the Gupta residence several times.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** You had a relationship with them so – and it was a Gupta-owned newspaper. So you might have said no, I know how it came about, I was approached, blah, blah, blah, or I know nothing about it, nobody talked to me.

**MR MOLEFE:** I am telling you that I did not know.

**CHAIRPERSON:** No, no, no, I understand that.

**MR MOLEFE:** And for that I am being ridiculed.

20 **CHAIRPERSON:** No, no, you are not being ridiculed, your evidence is being tested. That is part of investigating.

**MR MOLEFE:** Okay.

**CHAIRPERSON:** And what is being done is to put to you other possibilities to give you a chance to say no, but that is wrong because of a, b, c, d.

**MR MOLEFE:** So, Chairperson, you are saying that this line of questioning is part of the investigation of who the source was?

**CHAIRPERSON:** Well, I am not talking about the source. Part of what one is trying to do, what the Commission is trying to do is what happened, who were the participants, who knew what and within the context of the questions – Mr Myburgh just explained to you there is the question whether you knew about these things or whether you did  
10 not know, you see, and you will give your evidence, say this I knew, this I did not know or I did not know anything but it is fair that you should be given a chance to say I did not know that, I knew that and this is the position.

**MR MOLEFE:** Yes. And, Chairperson, I can assure you that I have promised that I will cooperate with the Commission, I will tell you what I knew.

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

**MR MOLEFE:** And then where I did not know anything I will tell you that I did not know.

20 **CHAIRPERSON:** Ja.

**MR MOLEFE:** But let me say – I will go even further, Chair, I will actually desist from speculating as well.

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

**MR MOLEFE:** Because I do not think that is fair.

**CHAIRPERSON:** But you must also understand that the

evidence leader and I do not necessarily have to just accept what a witness says. Some things you hear and you do not have further questions, maybe some time later you say no, but I should have asked that question. Sometime as you hear what the witness says, a question arises and you put that to the...

**MR MOLEFE**: Yes, yes. Except ...[intervenes]

**CHAIRPERSON**: Feel free to say what you know, when you do not know you say you do not know, it just does not  
10 mean – it just does not mean that Mr Myburgh, if you say you do not know, will necessarily just accept that like that.

**MR MOLEFE**: Yes.

**CHAIRPERSON**: Sometimes he might have no issues with you saying you do not know, sometimes he might have issues, same thing with me.

**MR MOLEFE**: Yes.

**CHAIRPERSON**: Ja, okay. Mr Myburgh?

**ADV MYBURGH**: Thank you. So you previously testified  
20 in the Eskom stream that you knew the three Gupta brothers quite well. You said especially Ajay, you said you had a lot of interaction with him, you said that you have been to the Saxonwold compound on numerous occasions, you said you have lost count now many times and when you were there you attended family functions and private meetings.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** You remember that evidence?

**MR MOLEFE:** Yes.

**ADV MYBURGH:** And you said that whilst it is fashionable for people to say that they do not know the Guptas you were not one of those people. So let us just start out by dealing with how often you went to Saxonwold. You say that you have lost count how many times. How many times did you go there?

10 **MR MOLEFE:** I do not know, numerous times.

**ADV MYBURGH:** Yes, on a let us say in average month how many times would you go there?

**MR MOLEFE:** I do not – I cannot remember, Chair, because ...[intervenes]

**ADV MYBURGH:** Come, Mr Molefe.

**MR MOLEFE:** It was seven, eight, nine years ago.

**ADV MYBURGH:** Yes but you ...[intervenes]

**CHAIRPERSON:** A month, are you saying seven, eight a months?

20 **MR MOLEFE:** No, seven, eight, nine years ago.

**CHAIRPERSON:** Oh, okay.

**MR MOLEFE:** Like it happened, ja. It depends, I mean, as I said, it was a live issue that we had reason to discuss which was the formation of the bank or the purchase of a bank and that we would discuss and we had tried to do it

before I even went to Transnet and even after I had left to go to Transnet there would be occasion to talk about maybe a development or a – talk about a possibility or a – whatever needed to be discussed along those lines which conversations I assume are not part of the [indistinct – dropping voice]

**CHAIRPERSON:** Well, just to recap from your evidence under the Eskom work stream, is my understanding correct that you said that your relationship with the Guptas  
10 preceded 2011 by a number of years?

**MR MOLEFE:** Ja, maybe two. Not the relationships ...[intervenes]

**CHAIRPERSON:** Or you interactions with them.

**MR MOLEFE:** Knowing them.

**CHAIRPERSON:** Knowing them?

**MR MOLEFE:** Ja, knowing them, talking about them, knowing them.

**CHAIRPERSON:** Yes, ja.

**MR MOLEFE:** And then when I tried to do this bank and I  
20 went to them to ask them if there would be a way that they could assist me.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** And that is when you can say on this stuff I had left the [indistinct – dropping voice]

**CHAIRPERSON:** Yes. Okay, you mentioned two years,



are you saying there had been the relationship with them might have started about two years before 2011 but knowing them might have happened a number of years earlier?

**MR MOLEFE:** Yes, they tried to do deal with ...[intervenes]

**CHAIRPERSON:** PIC.

**MR MOLEFE:** PIC, that came down in that context.

**CHAIRPERSON:** Okay.

10 **ADV MYBURGH:** So – sorry, Mr Chair.

**CHAIRPERSON:** Ja.

**ADV MYBURGH:** Mr Molefe, please, I just want you to answer my question and then we can move on. So in the years that you were the GC of Transnet, 2011 to '15, in an average month, how many times would you go to the Gupta residence?

**MR MOLEFE:** I do not know, Chair, because you cannot talk of an average month. Maybe in one month I would go three times and then do not go for six months and then  
20 maybe go once, maybe – it was sporadic.

**ADV MYBURGH:** Yes.

**MR MOLEFE:** It is difficult to ...[intervenes]

**ADV MYBURGH:** Well, then let us make it in a six month period.

**MR MOLEFE:** To attach – it is difficult to attach an

average to it.

**ADV MYBURGH:** Well....

**MR MOLEFE:** I do not know, maybe once a month on average.

**ADV MYBURGH:** Once a month?

**MR MOLEFE:** Over a six months period – over a 12 month period.

**ADV MYBURGH:** Over a five year period.

**MR MOLEFE:** Over a – no, I do not know ...[intervenes]

10 **ADV MYBURGH:** I am sure you went there more than that because that is only 60 times.

**MR MOLEFE:** Because it is not linear as well, so...

**ADV MYBURGH:** Sorry?

**MR MOLEFE:** It is not linear, so you cannot take – if I say that I went there two times every six months you cannot say over a five year period I went two times, six months, ja.

**ADV MYBURGH:** It seems that you went there even on those calculations very often but let me just ask you this or  
20 perhaps put to you this.

**MR MOLEFE:** But, Mr Myburgh, I do not know how you arrived these conclusions that you are now putting into the record as if they are evidence.

**ADV MYBURGH:** Well, I am going to use your own maths. You say well, could be once a month, twice a month,

whatever, but over a five year period that mounts up, Mr Molefe, it is on a – as you say, you have lost count how many times you went because you went there so often, not because you went there so little, correct?

**MR MOLEFE:** Ja, I understand mathematics is a complex subject maybe for you, Mr Myburgh, but I also said you cannot impute a linear relationship.

**ADV MYBURGH:** No, that is fine.

**MR MOLEFE:** Which means that you cannot therefore  
10 draw a graph.

**ADV MYBURGH:** Well, let us try and get ...[intervenes]

**MR MOLEFE:** If you drew the graph you would arrive at a conclusion that I was there last month.

**ADV MYBURGH:** Let us deal with some of the evidence and try and get to some of the maths.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** Witness 1 says that he took you to Saxonwold 11 times in 14 months between July 2011 and September 2012. Would you accept that?

20 **MR MOLEFE:** Yes but who is witness 1?

**ADV MYBURGH:** But would you accept that you would have gone there ...[intervenes]

**MR MOLEFE:** Yes, it may well be true.

**ADV MYBURGH:** Yes.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** So that gets us to about once the month as you said.

**MR MOLEFE:** Yes, yes.

**ADV MYBURGH:** Right.

**MR MOLEFE:** But then, you see, the thing about linearity is that maybe during that period it was 11 times over a 14 month period, maybe in the next 14 months I went there twice of thrice.

**ADV MYBURGH:** No but you went there more than 11  
10 times because witness 2 actually says that when he went there he saw you there, now not in your official car, but in your private car. So do you accept that you would go to the Gupta compound, sometimes driven there ...[intervenes]

**MR MOLEFE:** That was witness 3.

**ADV MYBURGH:** Sorry, just – do you accept that you went there ...[intervenes]

**MR MOLEFE:** It was not witness 2, it was witness 3, witness 2 never mentioned my name.

20 **ADV MYBURGH:** Alright, I think you may be right. But do you accept that sometimes you went there in an official car, I call that a Transnet car, and on other occasions you went in your private vehicle, correct?

**MR MOLEFE:** Yes, yes.

**ADV MYBURGH:** Alright. So I just want to get a sense of

when you say you attended family functions, what sort of functions would that be?

**MR MOLEFE:** They would have the one – and, I do not know, whenever they had occasion. They would invite me, sometimes I would go, sometimes I would not go.

**ADV MYBURGH:** So whenever they had occasions they would invite you, correct?

**MR MOLEFE:** Yes, yes.

**ADV MYBURGH:** Okay. And you said that you would  
10 attend private meetings and I really want to just get a sense of during the time that you were the GC of Transnet, those four or five years, what sort of private meetings were you having?

**MR MOLEFE:** To talk about the bank, to talk about developments in the banking sector.

**CHAIRPERSON:** Just raise your voice.

**MR MOLEFE:** To talk about the bank, to talk about developments in the banking sector, to talk about developments with period the person that had agreed to  
20 help us establish the bank. To talk about different things.

**ADV MYBURGH:** Yes, but ...[intervenes]

**MR MOLEFE:** Mainly relating to the fact that we had been trying to establish a bank.

**ADV MYBURGH:** But, Mr Molefe, you see what I want to ask you about, are those meetings or are those friendly

chats that you would have with your friends? Would you really classify these things as meetings?

**MR MOLEFE:** Well, a meeting is when two people come together, whether it is on friendly terms or on hostile terms, a meeting is a meeting, as in meet, so...

**ADV MYBURGH:** Alright, so let us deal with some other figures.

**MR MOLEFE:** So I was not really going into different classifications of meetings in terms of the literature.

10 **ADV MYBURGH:** The Public Protector found that between August and November of 2015 you visited the Saxonwold area 19 times. Do you remember that?

**MR MOLEFE:** I remember that that is what the Public Protector said.

**ADV MYBURGH:** That is four months, 19 times.

**MR MOLEFE:** That is what the Public Protector said.

**ADV MYBURGH:** Could that have been correct possibly? Maybe when you are not following the linear approach, perhaps in these months you went there more often.

20 **MR MOLEFE:** Chairperson, if you go into my affidavit...

**CHAIRPERSON:** Yes?

**MR MOLEFE:** You will see that I deal with that specific issue.

**CHAIRPERSON:** I know that you do say you went to the Gupta residence several times. I saw that particular

...[intervenes]

**MR MOLEFE:** I went several times but then on the Public Protector's report I engaged a communication specialist who I gave authority to go and get my telephone report and he says in his report that the Public Protector's report was wrong because in one instance, I – it is in my evidence, I went ...[intervenes]

**CHAIRPERSON:** Is it attached to your affidavit?

**MR MOLEFE:** It is attached to my affidavit.

10 **CHAIRPERSON:** Okay, Mr Myburgh, do you want to assist him to ...[intervenes]

**MR MOLEFE:** I am sorry, it is attached to my Eskom affidavit.

**CHAIRPERSON:** Oh, okay.

**ADV MYBURGH:** Yes. I thought perhaps I had missed something very interesting.

**MR MOLEFE:** Yes, but if you go and check my Eskom affidavit.

**ADV MYBURGH:** Yes.

20 **MR MOLEFE:** I deal with that in the report of the telecommunication specialist.

**ADV MYBURGH:** Alright.

**MR MOLEFE:** He says in one instance in twenty minutes I made, I think, three calls and received about – I made two calls or – and received nine calls and the Public Protector

counted that in 20 minutes, in 20 minutes in the Saxonwold area, and the Public Protector counted that as 11 different visits to the Saxonwold area, and the specialist, it is in the – perhaps that is why the Eskom stream never asked me about the Public Protectors report because it is actually arose when I was at Eskom.

And perhaps because they saw that I - my only, the only reason I could fathom for them not being interested in the Public Protectors report was that I actually explained  
10 quite well, the flaws in the Public Protectors report and...[intervene]

**ADV MYBURGH SC:** That was of course in 2015.

**MR MOLEFE:** Maybe, Mr Myburgh it would help if you went and read my response in the Eskom stream to the Public Protectors report and the affidavit, and the specialist pointed out...[intervene]

**ADV MYBURGH SC:** Alright, well if you just give me a second, of course, that was in 2015 where the Public Protector gave or made those findings in respect of the  
20 period when you were at Eskom.

**MR MOLEFE:** Yes, and a specialist pointed out that that report of the Public Protector relating to my telephone was erroneous.

**ADV MYBURGH SC:** Alright.

**MR MOLEFE:** It had errors.



**ADV MYBURGH SC:** So how many times did you then, when you were Eskom, how often would you go to the Gupta's was it more or less than when you were at Transnet?

Transmit, just simply?

**MR MOLEFE:** I do not know; it is difficult to say.

**ADV MYBURGH SC:** You do not know.

**MR MOLEFE:** But I do not think that here was a discernible change in pattern when I went to Eskom.

10 **ADV MYBURGH SC:** Yes.

**MR MOLEFE:** There was a, yeah.

**ADV MYBURGH SC:** It does seem from what I can see that things carried on where they left off, really.

**MR MOLEFE:** Where did you see that?

**ADV MYBURGH SC:** From Transnet to Eskom we will come to that.

**MR MOLEFE:** Yes, yes, I do not deny that I did go to the residents even when I was at Eskom.

And how often...[intervene]

20 **CHAIRPERSON:** Physically, I am sorry, what you are saying is as far as you are concerned, the frequency of your visits to the Gupta's residents when you were at Transnet was no different from the frequency of your visits to the Gupta residents when you were at Eskom.

**MR MOLEFE:** I can recall that there was a change in

taken or attitude.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** So there was a need for you, too, have a series of meeting. I take it you would also meet with AJ Gupta then outside of the Saxonwold residence.

**MR MOLEFE:** Ja, that did happen.

**ADV MYBURGH SC:** And was it as often?

**MR MOLEFE:** No, no.

**ADV MYBURGH SC:** And I take it that you would have  
10 reciprocated, then, when it came to entertaining the Gupta's. It wasn't a one-way street, I mean they invited you to family functions, as you put it every time on each occasion, they would invite you sometimes you would go sometimes you would not. I assume you reciprocated yourself.

**MR MOLEFE:** They did come to my house once, several times.

**ADV MYBURGH SC:** Yes, and what sort of family functions would you have invited them to?

20 **MR MOLEFE:** No, I hardly ever had functions at my house but when I do have, for example, occasion to cook a dinner I would maybe once in a while, invite them over for dinner.

**ADV MYBURGH SC:** And how often would you speak on the phone to Ajay Gupta?

**MR MOLEFE:** I do not know Chairperson, because part of

the problem, because I was not keeping a tab but part of the problem was that according to the telephone specialist, the Public Protectors report counted incidents where the phone was not answered, and where messages were left.

**ADV MYBURGH SC:** Now I am asking you Mr Molefe.

**MR MOLEFE:** I did not keep a tab I do not know how...[intervene]

**ADV MYBURGH SC:** No but you see is it that you do not know or you do not want to assist us? I mean, you are a  
10 very intelligent person and your contact with the Gupta's it does not just arise now...[intervene]

**MR MOLEFE:** No but...[intervene]

**ADV MYBURGH SC:** No sorry but if you do not mind me finishing please, there is something that you...[intervene]

**MR MOLEFE:** But Mr Myburgh...[intervene]

**CHAIRPERSON:** Hang on, hang on Mr Molefe.

**MR MOLEFE:** Mr Myburgh it is not necessary to patronise me, please do not patronise me.

**CHAIRPERSON:** Hang on Mr Molefe let Mr Myburgh  
20 finish and then you can answer.

**MR MOLEFE:** But Chairperson, I take exception to being patronised by Mr Myburgh saying that I am an intelligent person and so on, and so that is patronising.

**CHAIRPERSON:** Yes, but I am simply saying, when you get a chance to respond, then you can take the point.

**MR MOLEFE:** When I get a chance to respond, I must tell him that he is patronising.

**CHAIRPERSON:** I am saying if you want to say anything in response to what he is saying, you can say what you want to say and then we will take it from there.

**ADV MYBURGH SC:** Mr Molefe it is not my intention to patronise you and if you interpreted my question that way, I do apologise. But what I really want to get at is for you simply to tell us, do not worry about the Public Protector,  
10 you have got your concerns about her report, and you say it is wrong.

I am asking you, during the time that you were the GC of Transnet those four or five years, typically, how often would you speak to Ajay Gupta on the telephone? Now, we have managed to deal with how often you visited the compound, we want to get a sense, please from you.

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** As to how often you would speak to him on the phone.

20 **ADV MOLEFE SC:** Chairperson.

**CHAIRPERSON:** Sorry, yes.

**ADV MOLEFE SC:** Ja, Mr Molefe has already given an answer, he said he did not keep a tab, that is the answer he has given.

**CHAIRPERSON:** Yes, but I think Mr Myburgh accepts

that he might not have kept a tab but wants him to see whether he cannot give us a sense in the same way, as he did with regard to the visits because with regard to the visits, he also did not keep a tab but nevertheless, he was able to give a sense, I think that is what Mr Myburgh is trying to get.

**MR MOLEFE:** It is dependent on the issues at the particular point in time. He would call or I would call if I had something that crossed my mind about a particular  
10 issue, and I cannot remember how often we spoke, but we did speak.

**ADV MYBURGH SC:** And I assume you would accept you spoke often.

**MR MOLEFE:** And I actually hardly ever spoke to the other two brothers. It was just really Mr Ajay that had been interested in the bank, because the Public Protector also refers to a telephone call from Mr Atul Gupta and when we checked my phone records, we found that Mr Atul Gupta did call, the call was never answered and I never  
20 returned the call and the Public Protector counted it as a phone call from Mr Atul Gupta to me.

**ADV MYBURGH SC:** Now, Mr Molefe I think you might have touched on this before that was the evidence of Mr Jonas, I think it also featured in the Eskom stream.

**MR MOLEFE:** Mr who?

**ADV MYBURGH SC:** Mr Jonas, where his commenting on a meeting that he attended with the Gupta's and he said that Mr Gupta...[intervene]

**MR MOLEFE:** No, I do not recall the evidence of Mr Jonas, who is Mr Jonas?

**ADV MYBURGH SC:** Mr Jonas, this passage was put to you from what I understand during...[intervene]

**MR MOLEFE:** Mr Jones?

**ADV MYBURGH SC:** Just if you bear with me, Mr Jonas  
10 goes to a meeting with the Gupta's...[intervene]

**MR MOLEFE:** Oh Jonas.

**ADV MYBURGH SC:** They offered him the position of Finance Minister.

**MR MOLEFE:** Oh Jonas, I thought you said...[intervene]

**CHAIRPERSON:** Oh maybe, I was also trying to think which witness was that.

**ADV MYBURGH SC:** Alright.

**MR MOLEFE:** Oh, Mr Jonas, Jonas.

**ADV MYBURGH SC:** Alright, so and I think you might  
20 have already referred to this in passing, but I just read what he said. He said now his referring to Mr Gupta:

“That they had worked closely with a number of people, including Lynn Brown, and Brian Molefe related and as a result, they were protected.”

In other words, those people who worked with them are

protected. He said that:

“Mr Molefe is very safe, and that his career path is very clear, and that no one would touch him, and that I would be safe to.”

I think this passage has been put to you, it is quite startling, is it not?

**CHAIRPERSON:** Ja, I put that to you, even though I did not quote, but the gist of it when you were giving evidence.

**MR MOLEFE:** Chairperson, I cannot comment on Mr  
10 Jonas's evidence. I mean, I was not there. He says somebody who he cannot say for sure, it was said all of those things and I said I could not comment on it.

But what I could comment on was my career and when you did put it to me, I said to you that I do not think that my career requires assistance from a person that Mr Jonas had had met on the corridors.

**ADV MYBURGH SC:** I have actually reflected on that answer of yours, and I really do not understand it, because it is not about whether you needed the Gupta's.

20 **MR MOLEFE:** Yes.

**ADV MYBURGH SC:** I mean firstly one, they may have needed you.

**MR MOLEFE:** You reflected on that?

**ADV MYBURGH SC:** Ja, I have reflected on the evidence that you gave and the answer that was published in the

newspaper. Where it was reported, as you say, look, I do not need people I have got a lot of experience and I had my career path.

**MR MOLEFE:** But I cannot comment on your reflection.

**ADV MYBURGH SC:** But that is not the issue here. You accept that perhaps the Gupta's needed you.

**MR MOLEFE:** I do not know Chairperson; no I do not know that the Gupta's needed me.

**ADV MYBURGH SC:** Mr Molefe this passage really does  
10 show that you were very much in the Gupta camp.

**MR MOLEFE:** This passage, from Mr Jonas the story that he was told by somebody in a corridor. A person who – he does not really recall...[intervene]

**CHAIRPERSON:** Not in a corridor, in a meeting at the Gupta residence.

**MR MOLEFE:** I seem to recall that somebody was passing in that corridor, and they said, Mr...[intervene]

**CHAIRPERSON:** Well, there are two versions.

**MR MOLEFE:** And in fact, he does not even recall even  
20 with your version Chairperson, he says it might have been.

**CHAIRPERSON:** Ja, but let me tell you what the version is about, on his version, he had a meeting at the Gupta residence on the 23<sup>rd</sup> of October 2015 in the afternoon, a lunch and at that meeting, where him, Mr Duduzane Zuma, Mr Hlongwane and a Gupta brother. It is true that he was



not sure which of the Gupta brothers but what has been established through the evidence of Mr Duduzane Zuma and maybe Mr Hlongwane is that the Gupta brother who was at the Gupta residence on that day is Mr Tony Gupta. That is where he says the discussion was but Mr Duduzane Zuma and Mr Hlongwane denied that a Gupta brother attended that meeting, and that there was the kind of discussion that Mr Jonas says took place in that meeting with a Gupta brother.

10           And they simply say, Mr Tony Gupta popped in at some stage, while they that is Mr Duduzane Zuma and Mr Hlongwane were having a meeting with Mr Jonas, popped in to communicate something to Mr Duduzane Zuma and then left, those are the two versions.

**MR MOLEFE:**    So this statement that was mentioned by one of the Gupta brothers to Mr Jonas was it done in that meeting?

**CHAIRPERSON:**   Yes, according to Mr Jonas.

**MR MOLEFE:**    Did Mr Hlongwane or Mr Duduzane Zuma  
20 get to hear this person talking like this?

**CHAIRPERSON:**   They denied that such a discussion took place between Mr Jonas and any Gupta brother.

**MR MOLEFE:**    So both of them denied.

**CHAIRPERSON:**   Both of them denied.

**MR MOLEFE:**    But Chairperson, I fail to understand how

the Commission continues to attach such value to the statement by Mr Jonas, that has not been corroborated by people who were present.

**CHAIRPERSON:** But you see, Mr Molefe I think you seem not to understand something very fundamental about the Commission.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** The Commission is continuing to investigate. The Commission has not made any findings.

10 The Commission has not accepted anybody's version.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** That is why even when I put that version to you, when you were giving evidence under the Eskom work stream, I said something to the effect that this is what Mr Jonas said and if what he said is true, then, blah, blah, blah, blah, blah.

So, we have not accepted that Mr Jonas version is true. We have not accepted that Mr Duduzane Zuma's version and Mr Hlongwane versions is true. We are still  
20 probing as to what may be true and what may not be true, and the findings will be made later.

**MR MOLEFE:** But Chairperson you see that statement, as is put by Mr Jonas, that is not corroborated. If it were true, it would advance a particular narrative that will excite Mr Myburgh.

So to the extent that it looks like I mean, I have had it repeated even in my absence here in the Commission, during the evidence of others that he has said, but Mr Jonas say, but Mr Jonas say even now and the feeling that I have is that that statement of Mr Jonas that was said by this person, it has not been corroborated. That was in any event, hearsay evidence. It looks like the Commission attaches a lot of weight to it just like Mr Besters statement that, I doubt - I do not know maybe it has been  
10 corroborated.

But while we were at the dinner it is indeed true that Mr Salim Essa did mention this. So there I do not know if there were any attempts to corroborate this evidence that I am now being confronted with, that I now have to respond to, on the basis of which I am now being ridiculed.

**CHAIRPERSON:** But you see – no, no nobody is ridiculing you Mr Molefe, if that is the word you used just now.

20 **MR MOLEFE:** Yes.

**ADV MYBURGH SC:** Nobody is ridiculing you, the attempt is to get your input on how you see things based on what you know and it is up to you to say, but I hear what you say, Mr Jonas said, but I would say this Commission should reject that evidence of Mr Jonas,

because there are two witnesses who deny what he says happened, that kind of thing that is the response.

**MR MOLEFE:** But I have said that Mr Myburgh is repeating it again.

**CHAIRPERSON:** But that is because we had - just because you say it does not mean we immediately accept that okay, Mr Brian Molefe has said now he rejects...[intervene]

**MR MOLEFE:** But when Mr Jonas says it, it is accepted  
10 immediately.

**CHAIRPERSON:** But when that is put to you, certainly when I put it and I think when Mr Myburgh puts it, it is on the basis to say, if we were to accept, if it was to be accepted that what he said was true, but whether it will ultimately be accepted as true, is something that will be seen when all the evidence has been added. The idea is to test the soundness of various aspects of evidence.

**MR MOLEFE:** Yes, well all I was suggesting Chairperson, was that perhaps, if we want to check if that is true. We  
20 should ask the people who were present to corroborate what Mr Jonas was saying. And if they cannot corroborate it, or if no attempt has been made to corroborate from the people who were present, it is really unfair to be asking me who was not present, what if I think that is true.

**CHAIRPERSON:** Well, you see, Mr Molefe.

**MR MOLEFE:** Yes, sir.

**CHAIRPERSON:** If for example, some of the propositions that Mr Myburgh puts to you because they are based on saying, well, maybe this is how the evidence should be looked at, if you were not to put that to you but later on, he presents arguments to me to say you must reject Mr Molefe's evidence that he knew nothing about this, because of A, B, C, D. And he never gave you a chance to deal with those propositions, you may have a case to say  
10 but he was unfair to me why did he not put this to me, so that I could show how flawed the proposition was that kind of - so the idea is just to make sure that one, there is fairness to for you, but if you say, look, I cannot - I do not know, I do not know that or I cannot answer that, it is fine.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** Ja.

**MR MOLEFE:** No, Chairperson just for the record. Also, I cannot answer what happened that day with Mr Jonas.

**CHAIRPERSON:** Ja, okay.

20 **ADV MYBURGH SC:** Alright, was there a time when you stopped going to the Saxonwold residence of the Gupta's?

**MR MOLEFE:** I cannot remember making that conscious decision but maybe there was a time when I was less I frequented the place.

**ADV MYBURGH SC:** Did you there up until they fled to

Dubai?

**MR MOLEFE:** No, no, I suppose Chairperson, I cannot say that I had decided not to go there because I was I was afraid of the accusations and so on and so forth. But yeah, there was a time when I was not going to their residence anymore.

**ADV MYBURGH SC:** Yes, but what caused you to stop going there?

**MR MOLEFE:** I do not know Chairperson; I think we just  
10 drifted apart.

**ADV MYBURGH SC:** Sorry?

**MR MOLEFE:** We just drifted apart.

**CHAIRPERSON:** You know, whether you went there after the Public Protectors report?

**MR MOLEFE:** Yes, I did after the Public Protectors report, I think I did.

**CHAIRPERSON:** Yes, okay. But maybe I can take this opportunity to ask a question relating to the Public Protectors report. My recollection is that when you reacted  
20 to the Public Protectors report, you did not want to say whether or not you had been to the Gupta residence and that you said there were, there was a shift in there, although I think you were, maybe smiling or laughing. So maybe that was not serious.

Am I correct to say, at that stage you did not say,

well, it is true I have been there and I have been there many times?

**MR MOLEFE:** No, the Public Protectors report said, Mr Molefe's telephone record says in the Saxonwold area, not that the Gupta's residence.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** If actually the Public Protector had interviewed me and allowed me the opportunity to ask as the Act demand question about the evidence that she had,  
10 I would have asked her when you say I was in the Saxonwold area, what technology did you use, how did you really do it? Because she does not really say how the telephone records was done. But when I was going to eat at the time, I said that, on that morning, I think we were giving on financial, I walked into the Eskom Executive Committee and I sat there with the whole executive committee. I actually kept quiet for a few seconds and then I said, the Public Protector says I was in the Saxonwold area.

20 And that means that I was at the Gupta residence can somebody balance me if I was in the Saxonwold area my telephone records say I was in the Saxonwold area, does that mean that I was at the Gupta residence? I was not saying I was there, or I was not there, I was just saying the veracity of the Public Protectors claim that I was at the

Gupta residence

And then one member of the executive, Mr Chaustery[?] and I said it over and over again. Mr Chaustery[?] says that is ridiculous because actually in that area there is a shebeen and if yet she had asked me, she would have seen that I always go to a shebeen.

So, I said Chaustery[?], really and he said yes and then later on in afternoon, when I was talking about during the results announcement I said, you know, Chaustery[?] here, says there is a shebeen there, he says there and that if they had asked him they would have found that, in fact, there is shebeen there. I was saying what Chaustery[?] had said in the morning. And then, I then also said so using this logic the Public Protector if she had looked at my phone record, she would have found that every day, I pass on the N1 in Midrand to go home. In the morning and in the afternoon and I am less than one and a half kilometres away from a place called Kisa[?] in Midrand.

She might as well have come to the conclusion that every day from Monday to Friday in the morning and in the evening, I go to Kisa[?], but that would have been wrong, her logic is wrong. So I did not say that there was a shebeen in fact, the Sunday Times did publish an article that says that Mr Molefe said he was at the shebeen and I challenged it with the person, that was what I did and he



said after listening carefully, what Mr Molefe had said he never said he was at a shebeen.

And yet, despite all of that, the media went on and on about the shebeen. Chairperson, I also said in that at Eskom there was a man in Cape Town, just forget his name, who had been found to have tampered with his meter. electricity grid.

**CHAIRPERSON:** Tampered with?

**MR MOLEFE:** With his electricity meter, you know the  
10 meter that measures how much electricity.

**CHAIRPERSON:** Ja.

**MR MOLEFE:** So they tampered with it so that it does not register the unit. So the Eskom officials went to his house and found that the meter had been tampered with, and then he admitted to it, they found him guilty, they fined him I think R10 000,00 he paid it.

And a few months later, they came to his house to check his meter again and they found that it had been tampered with and on the spot they disconnected his  
20 electricity and fined him again and refused to reconnect him until he had paid his fine, which was I think, was double what the fine has been. And then...[intervene]

**CHAIRPERSON:** What is the point about that story?

**MR MOLEFE:** And then the person went to the Public Protector to complain, to complain that he has been

disconnected from the grid.

**CHAIRPERSON:** Yes, but what is the relevance of that story to what you are dealing with?

**MR MOLEFE:** You will hear it when I get to that.

**CHAIRPERSON:** Yes, but I do not want you to take too long in case after 30 minutes I find that it is not relevant.

**MR MOLEFE:** No, Chairperson I have been waiting five and a half years to tell this story.

**CHAIRPERSON:** Yes, but I do not want you to take too  
10 long if you can indicate to me this is the relevance, that will help.

**MR MOLEFE:** Yes, but okay but then the Public Protector found that the fact that this guy had been found to have been tampering with his meter before, does not mean that he had now been tampering with the meter and that Eskom should have had a process to determine whether or not he had been tampering with it.

And she said, some prophetic words, in that finding, she says, the fact that a person is known to be a goat  
20 thief, it does not mean that when you see him next to a head of goats, that he has stolen the goats. The fact that a known goat thief is walking next to sheep to the goats, does not mean that he has stolen the goats.

And I said, even at that time in 2016, that it is strange, then, that if the Public Protector places me in

Saxonwold next to the proverbial head of sheep, or goats, it means that I was doing something wrong. So that is the relevance of the story that the Public Protector herself had come to a conclusion without due process, something that she had found us guilty of doing as Eskom in the past.

**CHAIRPERSON:** But you knew yourself at the time in 2016, that even though she might have been talking about your telephone records, or cell phone records, reflecting that you were on a number of occasions in the vicinity of –  
10 or in Saxonwold.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** You knew that she was really trying to look at to what extent there may have been a relationship between yourself and the Gupta's and you knew that you had frequented the residence many, several times as you put it, is that right?

**MR MOLEFE:** No, Chairperson, what I knew at the time, was that Glencoe had been to her and that we were having a colossal fight, and that she had chosen to listen to and  
20 that this marathon had been created by Glencoe and battled in the media. As I said, when I was giving evidence in Eskom you would be surprised what R1billion can achieve and for them, R1billion could buy.

**CHAIRPERSON:** Yes, but you are not suggesting to me Mr Molefe, are you that in 2016, when you were reacting to

the Public Protectors report, you did not know, that you had been to the Gupta residence several times. Do you accept that you have been?

**MR MOLEFE:** Yes.

**CHAIRPERSON:** Ja, okay.

**MR MOLEFE:** But Chairperson, what I did know is that nobody had proven any impropriety.

**CHAIRPERSON:** Yes, okay alright.

**MR MOLEFE:** And that was the whole point of the whole  
10 thing to suggest that there had been impropriety. That is why I talk about the story of the man walking next to the sheep, it does not mean he has stolen them.

So to suggest impropriety you had to do much more than what the Public Protector did. She basically Chairperson pulled my name over the coals and caused my name to be tarnished without a proper investigation.

**CHAIRPERSON:** My Myburgh.

**ADV MYBURGH SC:** Thank you.

**CHAIRPERSON:** Mr Myburgh before you continue are we all  
20 of the same understanding that if necessary we will go into the evening with Mr Molefe's evidence? Let me start with you Mr Molefe from your side you have no problem with that?

**MR MOLEFE:** They can go on until midnight.

**CHAIRPERSON:** Yes okay. Counsel for Mr Molefe that is fine with you as well?

We should not have any problem Chair.

**CHAIRPERSON:** Okay alright. Mr Myburgh no problem.

**ADV MYBURGH SC:** Well I cannot be the odd one out I suppose.

**CHAIRPERSON:** You – you – do you think we conspired to make sure we put you into a corner where you cannot just jump out.

**ADV MYBURGH SC:** It is Mr Molefe's narrative.

**CHAIRPERSON:** Okay alright let us continue.

10 **ADV MYBURGH SC:** Thank you. So you are not able to put a date even an approximate date when you stopped going to the Gupta residence?

**MR MOLEFE:** Yes, yes I cannot – I cannot put a date. Ja I suppose by the time I left Eskom or after I had left Eskom I really did not frequent the 00:01:37.

**ADV MYBURGH SC:** When you look back having heard the evidence that has been presented in this – this commission do you feel at all betrayed by the Gupta's? Do you feel that you were perhaps played by them?

20 **MR MOLEFE:** I do not know Chair that they played me; maybe they I do not know but what I – what I do feel – what I definitely feel is that there have been suggestions that I have – I did things that are wrong and there has not been evidence to show exactly what it is that I did wrong.

I have no regrets that I knew the Gupta's. I have no

regrets that I had gone to their house; that I had spoken to them over the phone. I was not the only South African that did that. However I also feel that for anyone suggests that I was involved in wrongdoing they have to come with proper evidence and that has not been forthcoming.

What has been forthcoming is this – is this – this narrative as I put it but you were walking too close to she. The proverbial votes.

**ADV MYBURGH SC:** That is how perhaps I think is perhaps  
10 a different question. What is your answer to whether you feel betrayed by the Gupta's is it yes or no?

**MR MOLEFE:** No I feel that I was done in by the Public Protector – the Public Protector..

**ADV MYBURGH SC:** So you do not feel betrayed by the Gupta's?

**MR MOLEFE:** No the person who was supposed to protect me from this onslaught that happened because of evidence or in the absence of evidence the person that was supposed to protect me was the Public Protector.

20 **ADV MYBURGH SC:** Sorry.

**MR MOLEFE:** The – the Gupta's I do not know they may have done what they did but I was not part of it so I do not ...

**ADV MYBURGH SC:** Mr Molefe that is why I do not really understand your answer. Assume for a moment that they did

what they did and there you were at the Gupta compound; there you were a friend of theirs.

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** On your version they were not being transparent with you; they were not telling you what was happening; they played you. Do you not feel betrayed at all by them?

**MR MOLEFE:** Chairperson the thing that makes me feel betrayed is I feel like somebody walked into the Gupta residence and they had (inaudible) maybe – maybe let us  
10 say it was the police or the Hawks or whatever and then all they did was to open fire and kill everything that was moving there including myself.

When they did not ask why are you here, what are you doing here and this is what you doing and this is what is wrong about your being here.

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

**MR MOLEFE:** So I feel like – I feel like the Public Protector just went in there and just opened fire.

20 **ADV MYBURGH SC:** But Mr Molefe.

**MR MOLEFE:** Putting a machine gun on rapid fire and shot at everything that was moving.

**ADV MYBURGH SC:** You are not answer my question because you – again go into your culpability. I am not asking you about your culpability. Let us assume for a

moment that you completely innocent and you did not know anything about this my question is, surely you must feel betrayed by the Gupta's?

**MR MOLEFE:** But...

**ADV MYBURGH SC:** There assuming for a moment that they were involved in large scale money laundering from the very business that you were in charge of and they did not tell you this and you fostered this four year relationship. It seems to me the obvious answer must be to the Chairperson I was – I  
10 cannot believe that these people did this to me I feel betrayed.

**MR MOLEFE:** Well – you and I are wired differently.

**ADV MOTSEPE:** Chairperson.

**CHAIRPERSON:** Yes.

**ADV MOTSEPE:** Mr Myburgh makes it a conclusion that the Gupta's were involved in money laundering.

**CHAIRPERSON:** He says on the assumption as I understood him. He said let us assume that they were involved in money laundering among other things and let us assume that  
20 Mr Molefe is innocent and was not involved on that so that – as I understood it that is how he started his question – his proposition. Did you hear differently?

**ADV MOTSEPE:** Ja, no I heard differently.

**CHAIRPERSON:** Okay let us...

**ADV MOTSEPE:** And 00:06:15 position.



**CHAIRPERSON:** Okay maybe let us just check with Mr Myburgh. Mr Myburgh.

**ADV MYBURGH SC:** And certainly it was my intention to put it in that qualified way.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** Mr Chairperson.

**CHAIRPERSON:** Okay, okay.

**MR MOLEFE:** But Chairperson if I am found with somebody who stole a car for example.

10 **CHAIRPERSON:** Oh I am sorry I thought it was still your Counsel talking.

**MR MOLEFE:** Oh sorry, sorry.

**CHAIRPERSON:** So it is you. No, no your 00:06:42 is done but for some reason I thought he was continuing.

**MR MOLEFE:** That is why I say Mr Myburgh I think we are wired differently.

**CHAIRPERSON:** But I am sorry Mr Molefe let us go back to what Mr Myburgh's question was because there is a question of whether he made assumptions or not. So – then you can  
20 answer let us just get that right. Mr Myburgh.

**MR MOLEFE:** There was...

**ADV MYBURGH SC:** So –

**MR MOLEFE:** Mr Myburgh says.

**ADV MYBURGH SC:** I am going to try and put my question again.

**CHAIRPERSON:** Ja, ja.

**ADV MYBURGH SC:** Mr Molefe then we need to move on. I am going to ask you to try and make a distinction between your culpability and the fact that you feel ...

**CHAIRPERSON:** If any.

**ADV MYBURGH SC:** That you feel you were shot down by the Public Protector that is all I am dealing with now. Let us assume that you are completely innocent. Let us assume for a moment that the Gupta's were involved in large scale  
10 money laundering from your business. And we know that you were friendly with them surely then you must feel betrayed by them.

**MR MOLEFE:** Ja so let us – that is why I say you and I are wired differently. The way that I think about that question is let us assume that I am walking down the street with somebody who stole a car and then the police come and without asking any questions arrest both of us and go and torture both of us without asking me or trying to establish even from the person that I am arrested with.

20 **ADV MYBURGH SC:** Yes.

**MR MOLEFE:** My culpability and then put me through porter, prison whatever maybe even succeed in getting me sentenced to prison who do you become angry with? The guy that you are walking in the street or is it the police who did not do their job? And that is why I say that the person who

betrayed me is the Public Protector because she should have known as she said in the case of the guy in Cape Town that you need proper investigation before you drag somebody's name into the arena where you are fighting for (inaudible).

**ADV MYBURGH SC:** So can we record that you do not feel betrayed by the Gupta's – short point? Correct?

**MR MOLEFE:** I feel betrayed by the Public Protector.

**ADV MYBURGH SC:** And you do not feel betrayed by the Gupta's?

10 **MR MOLEFE:** Yes.

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

**CHAIRPERSON:** Ja well I – I must make sure I understand that correctly Mr Molefe because I do not want to attribute to you something that you did not say or mean. You seem to be saying if you are friends – if you are friends with somebody and you are in charge of an entity such as Transnet and that friend of yours goes behind your back and effectively steals money from Transnet the entity of which you are in charge you will not feel that that friend of yours has betrayed you?

20 **MR MOLEFE:** By the way we are still going to give evidence about the stealing of the money.

**CHAIRPERSON:** No, no let us talk the general proposition.

**MR MOLEFE:** Oh ja well if...

**CHAIRPERSON:** Are you saying that you would not feel that your friend has betrayed you?

**MR MOLEFE:** Eventually. Eventually there is proof beyond reasonable doubt or if – even on the basis of the commission if there is findings that there was indeed laundering then I will feel betrayed. The constitution Chair says people must be – must have until proven guilty. The way that we are approaching this whole problem of the Gupta's is that guilt has already been ascribed before there has been proper processing.

**CHAIRPERSON:** Well – well I have been saying to you that  
10 no findings have been made.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** I have been saying that quite a few times.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** But we are probing to see what aspects of whose evidence are sound or are probably true and sometimes at this stage I might think part of what you say is true but later on when I sit down and have heard other witnesses I might change my mind.

**MR MOLEFE:** Ja.

20 **CHAIRPERSON:** So findings have not been made but we are probing – we have to test them ja.

**MR MOLEFE:** And Chairperson I said – I said one day in Parliament when I asked a similar question about the Gupta's I said you know you may be ascribing guilt to them and you say they did wrong things and so on and you may

well be right but until there has been proper processing – proper processes of – of ascertaining their guilt then I mean it is like seeing somebody kills somebody and this person that killed somebody we know who this person is...

**CHAIRPERSON:** Let us – let us.

**MR MOLEFE:** And you saying – you are asking me do you think – do you think.

**CHAIRPERSON:** I think I understand what you say Mr Molefe.

10 **MR MOLEFE:** Do you think that the murderer betrayed you when the guy who committed the murder or alleged who committed the murder has not been convicted of murder. There may well be evidence that they did things that are wrong but Chairperson let me – or let me – to answer Mr Myburgh's question correctly then. The day that you make your finding and the day that they have been arrested and being put in prison and have been found guilty in terms of – of the laws of our land perhaps at that point I will feel betrayed but at the moment I really take the constitutional  
20 principle of not guilty until found guilty very seriously. I said this to Parliament once that really I suspect the thing that has captured me is our constitution. With our constitution that even the Gupta's have rights in terms of our constitution and that was the spirit of our constitution because what Parliament was saying was that you know these people have

done this – they have done this and so on and so forth. Now there are allegations that they stole money and so on and so on it may well be true but let us wait for the right legal processes to unfold. Perhaps at that point Mr Myburgh you can ask me.

**CHAIRPERSON:** Well of course you...

**MR MOLEFE:** Do you feel betrayed and I will say now I really feel betrayed but for now I cannot be sitting here and agreeing with you that they are guilty because like me they  
10 have not been put through a proper legal process by a – a forum that is recognised by our law and our constitution.

**CHAIRPERSON:** But you know of course that they fled the country and you probably also know that they said in affidavits that were read out in an open hearing of the commission that they would never come back to this country and they did not want to subject themselves to legal processes in this country because they think that among  
20 others the Hawks and the NPA are unfair to them so that is – you know that that is the attitude they conveyed to this commission in 2018 or 2019 when they applied for leave to cross-examine.

**MR MOLEFE:** Yes and that their assets were attached and subsequently returned because I do not know what the Judge found.

**CHAIRPERSON:** Ja.

**MR MOLEFE:** After their assets were attached then after a proper legal process they were returned. So I would rather wait for the courts in – in – where...

**CHAIRPERSON:** You may wait forever because they might never come back. They fled the country. They – the legal system Mr Molefe.

**MR MOLEFE:** It is a very interesting constitutional question Chair.

**CHAIRPERSON:** And...

10 **MR MOLEFE:** Of whether – of a person who is not guilty until proven guilty if that person flees does that suddenly mean that you can treat them as being guilty?

**CHAIRPERSON:** Yes. No I just want to say this Mr Molefe it is quite interesting that you referred to the position that initially their assets were attached or – and then – but then later on they – their assets were returned to them. The legal system which made sure that if initially their assets were taken from them wrongly were returned to them. The very system that – legal system that made sure they were  
20 returned to them that is the system they did not – they do not trust – that is the system that they do not come back to.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** Ja.

**MR MOLEFE:** Ja. But the fact that they do not want to come back or that they are there like 00:16:35 they have left

the country in terms of our constitution that has captured can we then say let us treat these people as if they are guilty.

**CHAIRPERSON:** Hm. My Myburgh.

**ADV MYBURGH SC:** Yes thank you. Mr Molefe when you – when you look back at your time as the GCE of Transnet perhaps with the benefit of hindsight is there anything that you would have done differently?

**MR MOLEFE:** As the GCE of Transnet yes.

**ADV MYBURGH SC:** What?

- 10 **MR MOLEFE:** Perhaps I – perhaps I should not have gone to Eskom at the time when I was asked to go to Eskom. Perhaps I was too disciplined and to agree to go to Eskom. Because Chairperson I really believed in the market 00:17:36. I thought it was a phenomenal program where we were involved in a capital program to buy locomotives, buy cranes for the ports, to finalise the pipeline, to make a Transnet a world class company. Transnet was returning to profitability and sometimes my regret is that I was never given the opportunity to see that project come to finality.
- 20 One of the things that we were doing at Transnet Chairperson is that we were building a locomotive that would be made in South Africa. That locomotive was built. We had a very exciting project at the CSIR with young engineers that were putting together a locomotive of our own. In fact our plan was not to finish the acquisition in terms of the 1064



was to replace the tail end of the 1064 with our own made in South Africa locomotives. That locomotive was built and commissioned but I do not know where it is now. So perhaps maybe my regret is maybe I should have stayed to see the market demand strategy to finality. Sometime after I had left the – the volumes that we had picked up in the transportation of volumes on the general freight business and full line and – and all line the systems that we put up to improve operational efficiencies were lost. Crane movement  
10 at the ports had increased phenomenally when I was there to about thirty moves per hour. I am told that they are nowhere near that at the moment and that the port of Durban for example has gone back to where it was before I arrived at Transnet.

**CHAIRPERSON:** Try and go closer to the microphone.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** I think some of your words are being swallowed. You are swallowing.

**MR MOLEFE:** Yes. Yes. So that is my regret that perhaps I  
20 should have stayed.

**ADV MYBURGH SC:** Alright you should have stayed. Is that the only thing?

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** Because I just wanted to put to you you know there has been evidence by Dr Molefe, people like

Mr Fulmink who have explained..

**MR MOLEFE**: Which Dr Molefe?

**ADV MYBURGH SC**: Popo Molefe.

**CHAIRPERSON**: Oh he is Dr Molefe.

**ADV MYBURGH SC**: I understand so – sorry have I got it mixed up?

**MR MOLEFE**: No because my father is also Dr Molefe.

**ADV MYBURGH SC**: Oh alright no I am talking...

**MR MOLEFE**: And sometimes also ...

10 **ADV MYBURGH SC**: You can properly be assured I am not referring to your father.

**MR MOLEFE**: Ja and people also refer me to Dr Molefe but I frown on it because it is just an honorary doctorate.

**ADV MYBURGH SC**: Let us deal – it is Popo Molefe he has given evidence and he has filed an affidavit where he has explained the radical remedial action that had to be taken within Transnet to right the ship in the wake of you and then Mr Gama being the GCE.

**MR MOLEFE**: He says he has explained what?

20 **ADV MYBURGH SC**: That radical remedial action had to be taken.

**MR MOLEFE**: I do not know what he is talking about.

**ADV MYBURGH SC**: Well Mr Fulmink at a simple level came and explained the changes that had to be made to the PPM the Procurement Procedures Manual so as to learn lessons

and to adapt from what had gone wrong in the past.

**MR MOLEFE**: The changes in the PPM?

**ADV MYBURGH SC**: Yes.

**MR MOLEFE**: Which changes in particular?

**ADV MYBURGH SC**: Well I am going to come to his evidence in time about confinement, single source contracts, confidential confinements. Many things that you were involved in but as I understand it I ask you that question – I ask you to introspect and to tell the Chairperson whether you  
10 would have done anything differently or better and what you say to us is well actually you would have just stayed there longer.

**MR MOLEFE**: Yes. Yes I think that if I – sometimes I feel that if I had stayed there longer we would have continued the successes that we were experiencing on the – one the operational side of the business.

**ADV MYBURGH SC**: Yes I am not just talking about the operational side Mr Molefe.

**MR MOLEFE**: No but I am.

20 **ADV MYBURGH SC**: Alright.

**MR MOLEFE**: Ja I am saying that the – the successes that we achieved on the operational side that – that those successes are the things that positively contributes to...

**ADV MYBURGH SC**: And what about other parts of the business?

**MR MOLEFE:** Economic growth.

**CHAIRPERSON:** Let us – Mr Myburgh let him finish.

**ADV MYBURGH SC:** I beg your pardon.

**CHAIRPERSON:** Finish your answer Mr Molefe.

**MR MOLEFE:** The operational side is the side that contributes to growth in the economy. Transnet was not from an operational point of view what it used to be when I arrived there by the time I left.

**ADV MYBURGH SC:** Now...

10 **MR MOLEFE:** And that – that would have been seen in the credentials.

**ADV MYBURGH SC:** Mr Molefe turning to a different subject you received many ...

**CHAIRPERSON:** Maybe now that you are going to another subject we should take a short adjournment. It is four o'clock let us take ten minutes break and then we will come back. We adjourn.

**MR MOLEFE:** Thanks.

**REGISTRAR:** All rise.

20 **INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay let us continue.

**ADV MYBURGH SC:** Thank you.

**CHAIRPERSON:** Is – how is the heat on that side of the house?

**ADV MYBURGH SC:** I think it is fine Chairperson.

**CHAIRPERSON:** It is fine. Okay. So I think it is this side. [laughs] But it is fine. We do not have to switch on the aircon as long as it is fine that side. Okay let us continue.

**ADV MYBURGH SC:** Thank you. Mr Molefe, I wanted just to change gears now and perhaps deal with the market demand strategy. I think you were speaking about that a little earlier?

10 **MR MOLEFE:** Yes.

**ADV MYBURGH SC:** Just for the purposes of the record. I will just ask you to confirm. As I understand it, it is a R 300 billion, seven year capital investment programme that sought to expand South Africa's rail, port and pipeline infrastructure and the majority of that investment was targeted at Freight Rail Operations. Is that correct?

**MR MOLEFE:** Yes, the majority. Yes...

**ADV MYBURGH SC:** And as I understand it. It was announced in April 2011 and shortly after you joined  
20 Transnet. Is that right?

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

**ADV MYBURGH SC:** With the investment commencing in April the next year.

**MR MOLEFE:** I cannot remember exactly when it was announced but, yes, it was after I had...

**ADV MYBURGH SC:** So by the time you left Transnet or was three years into the MBS?

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** And I assume that the MDS must have been amongst your most important tasks, the running of that strategy, that programme?

**MR MOLEFE:** It was the most important thing. A number one.

**ADV MYBURGH SC:** And I assume it must have been a  
10 very exciting initiative to be in charge of an organisation that had such massive funds available to – for investment and expansion?

**MR MOLEFE:** It was exciting to be in charge of an organisation that had a plan.

**ADV MYBURGH SC:** And I suppose also onerous? I mean, it brought with it a lot of responsibilities on your shoulders, correct?

**MR MOLEFE:** Yes, sir ...[intervenes]

**CHAIRPERSON:** It must have been exciting to be in an  
20 organisation – in charge of an organisation, not only that had a plan but also that had funding because it cannot be exciting if there is a plan but there is no funding to executive the plan.

**MR MOLEFE:** Well, the 70% of the MDS was to be funded from operations and 30% from borrowings but the 70% from

operations over the seven year period included from improved operations. So what was really stressful about it was that if the operations do not improve during the seven year period and we do not realise those funds from operations, then the MDS would also collapse because... So it really – it had funds that were based on what we were going to achieve ...[intervenes]

**CHAIRPERSON:** ...performance.

**MR MOLEFE:** Yes, so the – our performance was a  
10 function of the availability of the funds but also the markets would not give us the money, the 30% borrowings if we fail in the first couple of years.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** And then also by way of an introductory topic. I just want to ask you a few questions about the BADC and delegations of authority. As I understand the evidence, historically the Board of Directors including sub-committees did not have any delegated authority for procurement related activities.  
20 There would have been a decentralised procurement system in place?

And this then changed in 2011 with the board acquiring procurement powers and a special sub-committee of the board being created, the Board Acquisition and Disposal Committee, the BADC. Is that a fair summary to

the best of your knowledge?

**MR MOLEFE:** When I joined Transnet they had a BADC and this was not unusual for a board to have an oversight of procurement. Actually, now that you mention it, I cannot remember that Transnet had a history of not having a BADC. It never occurred to me that this was new and that it never existed before. But when I – certainly when I joined, there was a BADC that had – that oversaw procurement activities.

10 **ADV MYBURGH SC:** Alright. Well, the evidence that I have seen says that in 2011 the board acquired procurement powers and the BADC was established.

**MR MOLEFE:** When in 2011?

**ADV MYBURGH SC:** In 2011. I presume it might have been before you joined.

**MR MOLEFE:** So that must have been in January.

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

**MR MOLEFE:** I joined in, I think, in February.

**ADV MYBURGH SC:** Yes. So do I understand your  
20 evidence to be that by the time you joined Transnet ...[intervenes]

**MR MOLEFE:** ...BADC...

**ADV MYBURGH SC:** ...the BADC was already there.

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** Some of the stuff that I have put to



you might have been before your time.

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** Then as I understand the evidence in step with the MDS, BADC's approval authority was increased in 2012. I think it went up to R 2 billion with the board being required to approve tenders above this.

**MR MOLEFE:** Chair ...[intervenes]

**ADV MYBURGH SC:** ...your recollection?

**MR MOLEFE:** I saw that but according to the evidence  
10 that you have. Who increased the BADC's authority?

**ADV MYBURGH SC:** I do not know. It is from the evidence that I have read. But does that accord with your recollection that the BADC's authority was upped to R 2 billion in 2012?

**MR MOLEFE:** I cannot specifically recall that Chair.

**ADV MYBURGH SC:** Alright.

**MR MOLEFE:** But, you see, it depends on who increased it. So if it was the board and if it is true that the BADC's authority was increased by the board, then the board had  
20 authority to do so.

**ADV MYBURGH SC:** Yes. No, I am not suggesting there is anything wrong with this. I am just – as we go into the big procurement tenders, just by way of background, I wanted to deal with the MDS and BADC and delegation of authority.

What we do know, as you have already accepted is, is that Mr Sharma was then appointed as the chairperson of the BADC in August 2012.

**MR MOLEFE**: Yes.

**ADV MYBURGH SC**: Then in 2013, the evidence that has been led, is to the effect that there was delegated authority to certain individuals to approve high-value transactions. The CFO up to R 750 million and you in your position as the GCE up to a billion. You remember that?

10 **MR MOLEFE**: Yes.

**ADV MYBURGH SC**: And effectively what happened is, you became – and this is the term, I do not use in the pejorative way, but one-person acquisition council.

**MR MOLEFE**: No, that is no true.

**ADV MYBURGH SC**: You disagree with that?

**MR MOLEFE**: I disagree with that wholly.

**ADV MYBURGH SC**: Alright. And why do you disagree with that?

20 **MR MOLEFE**: Because there is nothing that I did at Transnet, even at Eskom, that had not been recommended.

**CHAIRPERSON**: That had not been...?

**MR MOLEFE**: That had not been recommended.

**CHAIRPERSON**: Oh.

**MR MOLEFE**: From lower down.

**CHAIRPERSON**: Okay.

**MR MOLEFE:** So the instances where I actually wrote a memo to approve something myself – I wrote the memo and then I approved it myself – are very – I cannot actually even recall one.

But everything was originated in the operating units and they wrote their recommendation that they wanted and the executives had to recommend it and only then would I approve. Sometimes not approve it.

But also, we had a well-functioning Executive  
10 Committee and that some – the matter – a lot of the matters were referred to the Executive Committee for – they were approved...

**ADV MYBURGH SC:** Alright. We are going to come to the relevant contact in a moment. And you are right. Most of them reflect various levels of recommendation or in some instances Mr Singh recommending and you signing. We will come to that. What we also know from the evidence is that both the BADC and you and Mr Singh within your authority had the power to award tenders on a confinement  
20 basis.

**MR MOLEFE:** Yes. Although there was a power to award tenders on a confinement basis, as I say, I would rarely do it without a recommendation.

**ADV MYBURGH SC:** Yes. No, I accept that. But you had the power?

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** Alright. Now what Mr Foreminck(?)  
[00:09:46] testified to ...[intervenes]

**MR MOLEFE:** Mister who?

**ADV MYBURGH SC:** Mr Foreminck.

**MR MOLEFE:** Foreminck?

**ADV MYBURGH SC:** Yes, the Corporate Governance  
person.

**MR MOLEFE:** Yes.

10 **ADV MYBURGH SC:** The Executive Manager of  
Governance.

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** He testified that the one-man  
acquisition councils and the widespread use of the  
confinement process were amongst the areas of concern or  
problem areas that he had identified ...[intervenes]

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** ...which had sought to address in the  
new updated PPM. Do you accept that that is something  
20 that happened?

**MR MOLEFE:** Mr Foreminck is a peace time hero because  
he never raised that issue with me when I was there.

**ADV MYBURGH SC:** Yes. No, I understand that but he is  
one of the people that I referred you to just now, that  
looking back at what happened, Mr Foreminck gave

evidence that these are changes that we made. We looked to tension up and improve the system. I take it you do not dispute that evidence?

**MR MOLEFE**: Yes, yes.

**ADV MYBURGH SC**: So for much of my questioning of you and I am going to really be dealing with your involvement in the procurement of goods and services at Transnet in that context, context of the MDS, context of the BADC and the delegation of authority.

10 **MR MOLEFE**: But before we proceed. Let me help you also with context. The other context about procurement at the Transnet was that in the process of procurement every step there was assurance that was given by assurance teams.

**CHAIRPERSON**: That there was assurance...?

**MR MOLEFE**: Assurance.

**CHAIRPERSON**: Ja?

**MR MOLEFE**: That was given.

**CHAIRPERSON**: Yes?

20 **MR MOLEFE**: By assurance teams.

**CHAIRPERSON**: H'm?

**MR MOLEFE**: For example, they have things that they call gate(?), for example, in the... So there would be the initial sort of process and then assurance must be given and then assurance will open the gate to the next phase and the

next phase of the next phase. So you could not get to from identifying a project to – of procurement and get to the final payment without assurance.

**CHAIRPERSON:** So you... Are you saying that after – from the time a need was identified for ...[intervenes]

**MR MOLEFE:** Yes.

**CHAIRPERSON:** ...goods or services ...[intervenes]

**MR MOLEFE:** Yes.

**CHAIRPERSON:** ...to the time of payment ...[intervenes]

10 **MR MOLEFE:** Yes.

**CHAIRPERSON:** ...there were various stages in the journey?

**MR MOLEFE:** Ja.

**CHAIRPERSON:** And at each stage ...[intervenes]

**MR MOLEFE:** There was a ...[intervenes]

**CHAIRPERSON:** ...some assurance that you would be given ...[intervenes]

**MR MOLEFE:** Yes.

20 **CHAIRPERSON:** ...that what had happened before that stage ...[intervenes]

**MR MOLEFE:** Yes.

**CHAIRPERSON:** ...was in order?

**MR MOLEFE:** Yes.

**CHAIRPERSON:** And that is the point you are making?

**MR MOLEFE:** Ja. In fact, those things we called me

gates.

**CHAIRPERSON:** Gates?

**MR MOLEFE:** That could be only opened by legal  
...[intervenes]

**CHAIRPERSON:** Ja.

**MR MOLEFE:** ...and internal audit.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** And sometimes external assurance.

**CHAIRPERSON:** Yes.

10 **MR MOLEFE:** But everything so far was right.

**CHAIRPERSON:** Okay.

**MR MOLEFE:** And that was – for me that was the most  
important thing.

**CHAIRPERSON:** H'm?

**MR MOLEFE:** For example, when you are having – when  
you have a tender.

**CHAIRPERSON:** H'm?

**MR MOLEFE:** So when the bid was submitted, before you  
open them, the assurance people come. Then you open it,  
20 then you adjudicate it each time they open the gate.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** Alright. Now I want to start off by  
asking you some questions under the heading of  
Procurement of Consulting and Advisory Services.

**MR MOLEFE:** Yes?

**CHAIRPERSON:** Shall I find that somewhere in his statement or in any document or not really?

**ADV MYBURGH SC:** No, I think it is a connection of different contracts ...[intervenes]

**CHAIRPERSON:** Oh.

**ADV MYBURGH SC:** ...which you ...[intervenes]

**CHAIRPERSON:** No, that is fine.

**ADV MYBURGH SC:** ...you become – you are familiar with Mr Chairman.

10 **CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** So most of my questioning relates then to procurement and I want to start off by Procurement of Consulting and Advisory Services and I want to start with the one, the 1061 transaction, advisor contract, the McKinsey consortium.

Now what the evidence says – and Mr Molefe, along the way I am going to summarise it for you and you can agree or disagree. A lot of this is really just background to the point that I want to get to.

20 **MR MOLEFE:** Yes.

**ADV MYBURGH SC:** The evidence is to the effect that given the magnitude of the 1064 Locomotive transaction, Transnet procured, we know, transaction advisors, effectively external consultants ...[intervenes]

**MR MOLEFE:** Yes.



**ADV MYBURGH SC:** ...to provide advisory services in respect of four different things. Firstly, the validation of the business case. Secondly, technical evaluation and optimisation and bids. Thirdly, deal structuring and finance. And then fourthly, procurement advice and legal services. Does that accord with your recollection?

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** Alright. And what we then know in relation to the 1064 transaction, advisors contract, is that  
10 in May or the 30<sup>th</sup> of May 2012, Transnet issued an RFP to nine consortiums on a confinement basis. Do you remember that?

**MR MOLEFE:** Yes, but when the – when the tender was issued, the main consortium, there must have been a memo that was ...[intervenes]

**ADV MYBURGH SC:** [Indistinct]

**MR MOLEFE:** You have it there by you.

**ADV MYBURGH SC:** Ja, I do not dispute that. I am...[intervenes]

20 **MR MOLEFE:** No, I just wanted to see it for my ...[intervenes]

**ADV MYBURGH SC:** I am not suggesting for a moment and perhaps I need to also make this point. I am not suggesting that there was anything wrong in what transpired. I am trying to get to the point of which I want

to question you about.

**MR MOLEFE**: Alright.

**ADV MYBURGH SC**: So what we know is that an RFP is issued to nine consortiums on a confinement basis. And I am not suggesting that there is anything irregular about that.

**MR MOLEFE**: Yes.

**ADV MYBURGH SC**: What then happened is. On the 27<sup>th</sup> of July, the contract is awarded to the McKinsey  
10 consortium.

**MR MOLEFE**: Yes?

**ADV MYBURGH SC**: And it included – it was the main bidder and it included as a co-bidder and ST partner a concern by the name of Letsema. Do you recall that?

**MR MOLEFE**: Yes. So it was awarded properly.

**ADV MYBURGH SC**: Yes, I am not suggesting  
...[intervenes]

**MR MOLEFE**: Yes, okay?

**ADV MYBURGH SC**: Well, I am going to come to the  
20 problem in a moment.

**MR MOLEFE**: Yes.

**ADV MYBURGH SC**: Then what happens is. On the 27<sup>th</sup> of August, you approved a memorandum from Mr Sing, advising that Letsema had a conflict of interest and proposing that it be replaced. You remember that?

**MR MOLEFE:** Yes, I remember there was an issue about the conflict of interest.

**ADV MYBURGH SC:** So if I can ...[intervenes]

**MR MOLEFE:** ...involving...

**ADV MYBURGH SC:** If I could ask you, please, to turn to your file, Exhibit 22.

**MR MOLEFE:** Exhibit 22?

**ADV MYBURGH SC:** Ja.

**CHAIRPERSON:** Start with the bundle Mr Myburgh  
10 ...[intervenes]

**ADV MYBURGH SC:** Bundle 5. I beg your pardon.  
Exhibit 22.

**MR MOLEFE:** What is the page number?

**ADV MYBURGH SC:** Five... Sorry, 405.1.

**CHAIRPERSON:** 485.1?

**ADV MYBURGH SC:** 405.1. Yes. Mister ...[intervenes]

**CHAIRPERSON:** Oh, okay ...[intervenes]

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

**CHAIRPERSON:** 405?

20 **ADV MYBURGH SC:** 405.1. Mr Chairperson, I undertook  
to ...[intervenes]

**CHAIRPERSON:** Oh, yes.

**ADV MYBURGH SC:** ...Mr Molefe's lawyers to point out to  
you that from 405.1 through to 405.94, these are  
documents that were recently added to the bundle. For

some reason, there was a problem with the transmission of these documents and I understand that Mr Molefe might only have received them last night.

**CHAIRPERSON:** H'm?

**ADV MYBURGH SC:** The agreement that we have is that I will point that out to you, place it on record.

**CHAIRPERSON:** H'm?

**ADV MYBURGH SC:** When I take Mr Molefe to a document, I will place on record too that it is a new  
10 document. And obviously, if he needs time to reflect on his answers more carefully, we are more than prepared to give it to them him.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** And we would also like to just express our gratitude to him and his lawyers for not making an issue of this in the interest of proceeding with matters.

**CHAIRPERSON:** Yes. Thank you.

**ADV MYBURGH SC:** So Mr Molefe, we had got to the memo of 22 August and this – this it is. You will see if you  
20 go to page 405.4 that it is sent to you or various levels of authority but ultimately you see Mr Singh recommended and then you ultimately approved it on the 22<sup>nd</sup> of August 2012. Correct?

**MR MOLEFE:** Yes, it was compiled by Mr Josef Mohamed, recommended by Gary Peter and Anoj Singh.

**DV MYBURGH SC:** Yes.

**MR MOLEFE:** I approved it.

**ADV MYBURGH SC:** So this was a month or so after the contract had initially been awarded to McKinsey. I just want to go, if I may, to the purpose of the memorandum at page 405.1. It says:

10 “The purpose of this memorandum is to request approval of the Group Chief Executive for the appointment of the McKinsey consortium for the complete advisory services and Webber Wentzel for the legal advisory services at transaction advisors on the 1064 tender...”

1.1:

20 “For the Group Chief Executive to note that McKinsey will be advised to partner another firm with equal or better credentials than Letsema for the procurement elements due to a conflict of interest with Barlow World and Letsema...”

I just want to pause there if I may? So what was this conflict of interest involving Letsema?

**MR MOLEFE:** Ja, Chairperson, as you said, these documents were received last night, but if I recall the problem was that Barloworld was a potential bidder.

**ADV MYBURGH SC:** Sorry?

**MR MOLEFE:** Barloworld was a potential bidder.

**ADV MYBURGH SC:** Right?

**MR MOLEFE:** If I recall from what I said now. And that Letsema was in partnership with Barloworld.

**ADV MYBURGH SC:** Right.

**MR MOLEFE:** And for Letsema to be advising on the bid evaluations, because this is what I think this was about, there would be a conflict.

10 **ADV MYBURGH SC:** But why did ...[intervenes]

**MR MOLEFE:** As far as I recall the incident, I think that is what happened.

**ADV MYBURGH SC:** Alright. But ...[intervenes]

**MR MOLEFE:** But if you read the memo it should say what the problem was.

**ADV MYBURGH SC:** No, that was the – that is the difficulty. I do not see that.

**MR MOLEFE:** But what I recall was that ...[intervenes]

20 **CHAIRPERSON:** It refers to a potential conflict without, it seems, specifying the potential conflict.

**MR MOLEFE:** What I recall was that Barloworld was a... Ja, I... I do not know... Maybe, Chairperson, I am making a mistake but the conflict that I remember was that Barloworld was a potential bidder or a potential partner as one of the bidders.

**ADV MYBURGH SC:** Well, two questions though. I mean, firstly, why was that not picked up during the tender evaluation process?

**MR MOLEFE:** I do not know Chair. You see ...[intervenes]

**ADV MYBURGH SC:** And secondly, why is it not recorded in here?

**MR MOLEFE:** Chair, I would have to go through these documents properly. As I say ...[intervenes]

10 **CHAIRPERSON:** Yes?

**MR MOLEFE:** ...we – they were handed out last night.

**CHAIRPERSON:** No, that is fair enough. Well, he might need time to have a look at this Mr Myburgh.

**ADV MYBURGH SC:** Well, look, it is not a lengthy document but of course I have no objection. The other option, of course Mr Molefe, is that you could have a look at those overnight. There might be other issues that arise and then we could deal with it again tomorrow if you want.

20 **MR MOLEFE:** Yes, yes. Please, I would like to go through ...[intervenes]

**CHAIRPERSON:** Ja, that is fine.

**MR MOLEFE:** ...through it. But sitting here, what I remember was that Barloworld would be a potential bidder and so Letsema advising on the transaction advisory would have been a conflict ...[intervenes]

**CHAIRPERSON:** No, that is ...[intervenes]

**MR MOLEFE:** That is what I ...[intervenes]

**CHAIRPERSON:** I think it is fine. Go over it overnight.

**MR MOLEFE:** Ys.

**CHAIRPERSON:** And then you can deal with it when you have had a chance to look at this.

**ADV MYBURGH SC:** Alright. So, and perhaps then we could come back to the two questions and that is. Why was it not picked up during the tender evaluation? And  
10 why is it not recorded here.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** But let me take you to paragraph 15 at page 405.3. There you see... Well, at 14 it talks about:

“The tender evaluation process was concluded whereby...”

And it talks about the McKinsey consortium and then it says:

“The Transnet acquisition council awarded the McKinsey consortium the completed advisory  
20 services and split the award providing legal...”

Now that was the decision that was made and we know that from the resolution of the Transnet Acquisition Council at pages 504.5 and 504.6.

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** The financial implications, you see



McKinsey would get 35% of the value of contract and the procurement partner, Letsema, it says: ...due to a conflict of interest would get 20%. And the value of the contract, it appears at 17 is R 15 million. Is that correct?

**MR MOLEFE:** Yes, that is what the memo says.

**ADV MYBURGH SC:** Alright. So that is on the 22<sup>nd</sup> of August. What we do know, going forward in time, is that some four months or so later, on the 6<sup>th</sup> of December 2012, Transnet in the form of Mr Singh and  
10 McKinsey conclude an LOI. Do you remember that? A Letter of Intent. It is not in the bundle. I will take you there.

**MR MOLEFE:** It is not in the bundle?

**ADV MYBURGH SC:** Not in yours. So let me just go through this and Mr Molefe, if there are documents that you want to see, then I will take you to them but then you must remember we have to go through those files behind you. So let us go through the chronology and see if you recall. So 22 August, we have got that letter.

20 **MR MOLEFE:** 22 August, which years?

**ADV MYBURGH SC:** 22 August 2012, okay?

**MR MOLEFE:** 2012.

**ADV MYBURGH SC:** Now I am dealing with what happened. So in other words, there is a recommendation which you approved that Letsema can be replaced.

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** What I am suggesting to you is that on the 6<sup>th</sup> of December 2012, Transnet in the form of Mr Singh and McKinsey conclude an LOI which reflects that Regiments had replaced Letsema. And perhaps I should take you to that document given the importance of it because this is how Regiments comes on the scene.

**MR MOLEFE:** On the 12<sup>th</sup> of December?

**ADV MYBURGH SC:** 6 December.

10 **MR MOLEFE:** 6<sup>th</sup> of December.

**ADV MYBURGH SC:** Just give me a moment, please.

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

**ADV MYBURGH SC:** Could you please go behind you to Exhibit BB-3A?

**CHAIRPERSON:** Well, your junior, Mr Myburgh, could assist him to find the file.

**ADV MYBURGH SC:** [No audible reply]

**MR MOLEFE:** Yes.

20 **ADV MYBURGH SC:** What we need is BB-3B. So I think you have A, we need B.

**CHAIRPERSON:** I think, please help him...

**MR MOLEFE:** Yes?

**CHAIRPERSON:** Have you got – found it? Oh, you want... Have you got the page Mr Myburgh?

**ADV MYBURGH SC:** BB-3B, page MSM-354.

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

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

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

**ADV MYBURGH SC:** So there are two sets of numbering.  
I am referring to the MSM number, top right hand, 354.

**MR MOLEFE:** Yes?

**ADV MYBURGH SC:** Okay. so this is the Letter of Intent.  
It dated the 30<sup>th</sup> of November 2012. You will see the  
quality is really poor but what we can make out, if you go  
10 to page 358, is that on the 4<sup>th</sup> of December it was signed  
by Mr Singh. And if you go over the page ...[intervenes]

**MR MOLEFE:** 338?

**ADV MYBURGH SC:** 358.

**MR MOLEFE:** 358.

**ADV MYBURGH SC:** Ja, MSM-358. It was signed by  
Mr Singh. MSM-359, it was then signed by McKinsey on  
the 6<sup>th</sup> of December.

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** Alright. Now if you go to 354, you  
20 will see in the second paragraph, it says:

“The parties to this agreement are Transnet...  
[and then we have...] McKinsey Incorporated,  
the supplier, and other members of the  
consortium, namely...”

And now you see Regiments Capital. Do you see

that?

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** And so that is how between the memo that you signed on the 22<sup>nd</sup> of August and now, the 6<sup>th</sup> of December 2012, it is in that intervening period you see that Regiments then replace Letsema. Do you see that?

**MR MOLEFE:** Ja, but Chairperson, as I always said at Transnet, before something like this happened, Mr Singh  
10 enters into an agreement.

**CHAIRPERSON:** Please speak up. Do not lower your voice.

**MR MOLEFE:** Before something like this happens, Mr Singh ...[intervenes]

**CHAIRPERSON:** The replacement?

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

**CHAIRPERSON:** When you say something like this, you mean the replacement?

**MR MOLEFE:** This agreement.

20 **CHAIRPERSON:** Oh ...[intervenes]

**MR MOLEFE:** ...before something like this gets signed.

**CHAIRPERSON:** Ja.

**MR MOLEFE:** There is usually a memo ...[intervenes]

**CHAIRPERSON:** There is usually...?

**MR MOLEFE:** A memo.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** That I have always said to Transnet Executives which must be written in English so that everybody understands as to why we are doing what we are doing.

**ADV MYBURGH:** Yes.

**MR MOLEFE:** That is recommended by somebody and then approved before we actually do the action, this is the action. So I will be curious to see if there was a memo  
10 preceding ...[intervenues]

**ADV MYBURGH:** No, you see, Mr Molefe ...[intervenues]

**CHAIRPERSON:** Okay, let him finish, Mr Myburgh.

**MR MOLEFE:** Ja, I will be curious to see if there was a memo preceding.

**ADV MYBURGH:** But, you see, you perhaps I misunderstand what happened. What you recommended, is you said to McKinsey you must replace Letsema.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** You said that to McKinsey, McKinsey did  
20 that.

**MR MOLEFE:** Oh, I see.

**ADV MYBURGH:** It was McKinsey's choice, it is not a Transnet choice. So that memo that you are talking about is not what you see here.

**MR MOLEFE:** But was there no memo?

**ADV MYBURGH:** This is McKinsey – and I am going to come and explain to you how it happened.

**MR MOLEFE:** Because even with that, I suspect there would have been something that says that look, there was a memo before that say McKinsey must replace Letsema and McKinsey has suggest that Letsema should be replaced and so and so and therefore the contract is ready to be signed, we recommend that it be signed.

**ADV MYBURGH:** I am going to explain to you what  
10 happened now. It is one of the startling pieces of evidence that have been presented in this Commission. So the question then is, between the 22 August and the 6 December how does Regiments come to be appointed and I want you to consider this. Have you come across and read the evidence of Mr Ian Sinton of Standard Bank given in this Commission?

**MR MOLEFE:** No, I just saw that Mr Ian Sinton gave evidence but I never looked at his affidavit or ...[intervenues]

20 **ADV MYBURGH:** So according to what was reported to Mr Sinton by a Mr Niven Pillay and other directors of Regiments, their appointment came about in this way, okay? In October of 2012 Kuben Moodley arranged ...[intervenues]

**MR MOLEFE:** This what Mr Sinton says?

**ADV MYBURGH:** Yes, it was reported to Mr Sinton.

**MR MOLEFE:** Oh, this is what Mr Sinton says Mr Pillay told him?

**ADV MYBURGH:** Ja, that is right. But just bearing in mind the context. Mr Sinton is from Standard Bank and he was investigating certain suspicious payments or transfers made out of Regiments' account and that is how he comes to give this evidence.

**MR MOLEFE:** Yes.

10 **ADV MYBURGH:** Now, Mr Molefe, I am not – so that we do not cross swords, I am not suggesting to you that every piece of evidence that I am going to put to you is the gospel truth and that is what has to be found, I am putting to you that that is his evidence.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** The Chairperson will have to decide in time whether to accept it but I am just apprising you of what the evidence is.

**MR MOLEFE:** Yes.

20 **ADV MYBURGH:** As to how Regiments comes on the scene.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** Okay. So Mr Sinton says that it is reported to him by these two Regiments' directors that in October of 2012 Mr Moodley arranges a meeting between

himself, Regiments and Mr Sagar of McKinsey and Mr Essa. Okay? So you have got ...[intervenes]

**MR MOLEFE:** Mr Sinton, Moodley ...[intervenes]

**ADV MYBURGH:** No, Sinton is not there.

**MR MOLEFE:** Oh, Moodley...

**ADV MYBURGH:** So what we have is two Regiments' directors.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** Okay and Mr Moodley arranges the  
10 meeting.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** Mr Sagar is there from McKinsey and Mr Essa, who you know about but had not met was there. He says that at this meeting Regiments were told that Transnet required McKinsey to appoint a black-owned supply development partner with 30% of the fees earned, as we have seen.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** And McKinsey then offered to appoint  
20 Regiments as its SD partner, provided Regiments agreed to pay 30% of all of its income from Transnet to Mr Essa and 5% to Mr Moodley. That is how Regiments came to be appointed.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** I presume you do not know anything



about that.

**MR MOLEFE:** Yes, I do not.

**ADV MYBURGH:** Alright. Now you might also have read from one of the money flow reports that we will come to in a moment, that the money flows team does not necessarily consider Mr Pillay to be a reliable witness and questions his version about whether Mr Sagar was there, but considers it is possible that he is telling the truth. So the concern is not about Mr Sinton, because it was reported to  
10 him, the question is whether Mr Pillay was telling the truth. But what has been determined is that this is the manner in which Regiments came onto the scene and the understanding was that Regiments would then replace Letsema but with Regiments on the scene, the deal was that they had to pay 30%, which in time was up to 50%, of all their earnings on that contract to Mr Essa and 5% to Mr Moodley. That was the evidence of Mr Sinton.

**MR MOLEFE:** So that was the arrangement between McKinsey and Regiments?

20 **ADV MYBURGH:** Yes.

**MR MOLEFE:** I cannot comment.

**ADV MYBURGH:** No, you cannot comment, presumably. Alright. And then the rest is history because following Regiments' appointment as McKinsey's SD partner on the 1064 advisory contracts and other contracts which we will

come to in a moment, more than R200 million was transferred from Regiments to Gupta shell companies in payment of these fees.

**MR MOLEFE:** From Regiments?

**ADV MYBURGH:** Regiments would pay Gupta shell companies, for example Homix, you would have read about them.

**MR MOLEFE:** Ja, I heard about Homix when the Gupta Leaks first came up.

10 **ADV MYBURGH:** Ja, so I suppose on the face of it really Mr Essa pulled off something of a heist on that evidence. Every rand – because it was up from 30%, every rand that was paid to Regiments, they paid 50%, 50 cents in a rand to Mr Essa for doing nothing, just because of this introduction.

**MR MOLEFE:** I cannot comment.

**ADV MYBURGH:** So it is now that I want to take you to one of the money flow reports, if I may.

**MR MOLEFE:** Yes.

20 **ADV MYBURGH:** Can I ask you please to turn to page ...[intervenes]

**CHAIRPERSON:** Is that bundle – same bundle?

**ADV MYBURGH:** Bundle 5, Chairperson and perhaps we need just to start with page 115. Are you at 115, Mr Molefe?

**CHAIRPERSON:** Is that we have a 3.3 notice?

**ADV MYBURGH:** That is correct, yes.

**CHAIRPERSON:** Okay.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** Okay. So this is a 3.3 notice that was issued to you, you see it is dated the 18 November last year, 2020.

**MR MOLEFE:** Ja.

**ADV MYBURGH:** And you were advised – and this was  
10 issued in the run-up to McKinsey giving evidence. You were issued with this notice and you were told at paragraph 4 the topics on which witnesses from McKinsey will be questioned and may implicate on the following and they list it and you referred there to annexures A and B. Do you see that?

**MR MOLEFE:** Come again? Annexures A and B?

**ADV MYBURGH:** Ja,. paragraph 4 references annexure B – An and annexure B. Do you see that?

**MR MOLEFE:** Yes, yes.

20 **ADV MYBURGH:** And those are what we refer to as the two money flow reports. The one report you find at page 120 and I am not going to go to; this now, I am coming to it, what I want to take you to though is the second money flow report which would have been annexure B and that you find at page 324. Are you there? 324. I think that is

it there.

**MR MOLEFE**: Yes.

**ADV MYBURGH**: Ja. Are you at 324? So what this is, Mr Molefe, is a report that was drafted by the money flows team.

**MR MOLEFE**: Yes.

**ADV MYBURGH**: An investigator by the name of Lisa Moeller and it was a report that was part of the documents, formal exhibit before the Commission at the hearing of the  
10 McKinsey evidence. I want to take you please to page 325. Are you there?

**MR MOLEFE**: Ja, this report was done by...?

**ADV MYBURGH**: This is a report done by – so there are various different streams within the Commission.

**MR MOLEFE**: Ja, it was done by the Commission.

**ADV MYBURGH**: This is done by the money flow team.

**MR MOLEFE**: Team. Ja, you see, this is what I was referring to about findings.

**ADV MYBURGH**: Yes, well ...[intervenes]

20 **MR MOLEFE**: This is one of them that has findings, at the beginning when I said ...[intervenes]

**CHAIRPERSON**: Yes, No, I remember you raising that.

**MR MOLEFE**: Some of the reports have got findings.

**CHAIRPERSON**: Yes.

**ADV MYBURGH**: Well, I think you can accept that it is a

report by the money flows team, it might make certain factual findings.

**MR MOLEFE**: Let us just say preliminary ...[intervenes]

**ADV MYBURGH**: Well, it is certainly not – it is not a finding that the Commission has made, it is simply ...[intervenes]

**CHAIRPERSON**: Yes, maybe I need to explain that to Mr Molefe because it could be confusing to somebody not maybe used to Commissions. I am the only person who  
10 would make findings that you should be concerned about.

**MR MOLEFE**: Yes.

**CHAIRPERSON**: But when investigators investigate, investigators of the Commission, they may form some views as to what the position is.

**MR MOLEFE**: Ja.

**CHAIRPERSON**: And maybe they could even – or some witnesses could put that as their conclusions or their findings but it is not my findings. The ones that you should be concerned about are those that are made by me.

20 **MR MOLEFE**: Yes.

**CHAIRPERSON**: The ones that they may make or conclusions that they make are just opinions and so on and they can ...[intervenes]

**MR MOLEFE**: Ja. No, I was just saying it so that there is a ...[intervenes]

**CHAIRPERSON:** No, no, no, I accept that you were ...[intervenes]

**MR MOLEFE:** Even if you use other terminology.

**CHAIRPERSON:** Yes, no, no, no.

**MR MOLEFE:** Preliminary or...

**CHAIRPERSON:** No, no, no, I understand.

**MR MOLEFE:** Or conclusions or...

**CHAIRPERSON:** Yes.

**MR MOLEFE:** But when they say findings...

10 **CHAIRPERSON:** Yes. No, I understand.

**MR MOLEFE:** Because they work for the Commission.

**CHAIRPERSON:** Yes, no, no, I understand, ja.

**MR MOLEFE:** Ja.

**ADV MYBURGH:** So, Mr Molefe, perhaps I can also explain to you that these reports were put before McKinsey, they were prepared in advance of McKinsey's evidence.

**MR MOLEFE:** Yes.

20 **ADV MYBURGH:** And McKinsey accepted them because we will come to the settlement with McKinsey in a moment.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** But there are just some aspects of this money flow report that I want to take you to and perhaps we can go through it in some detail. At paragraph 1, they refer to their previous report which they say shows that

Essa orchestrated the incorporation of Regiments as McKinsey's supply development partner.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** I have explained that to you already.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** And then Mr Niven Pillay and another person of Regiments have repeatedly testified at paragraph 2 in civil litigation that the original arrangement reached between Regiments and Essa, this is at page 325, in this regard was that an entity nominated by Essa would receive 30% of all amounts ...[intervenes]

**CHAIRPERSON:** I am sorry, I am sorry, Mr Myburgh, I thought you were at 323, are you now at 325?

**ADV MYBURGH:** I beg your pardon, I am at 325.

**CHAIRPERSON:** Oh, okay.

**ADV MYBURGH:** At paragraph 2.

**CHAIRPERSON:** Okay, sorry, I do not know what is wrong with me today from ...[intervenes]

**ADV MYBURGH:** I am sure it is probably my fault, Mr Chairman, I am sorry if I have led you astray.

**CHAIRPERSON:** I think it is the second time I am focusing on red page numbers.

**ADV MYBURGH:** I would have thought if anyone has learnt by now it must be you.

**CHAIRPERSON:** Of course. Ja, no, no, no, that is fine.

Ja, 325.

**ADV MYBURGH:** 325. So at paragraph 2 they record that these two people have repeatedly testified that an entity nominated by Essa would receive 30% of all amounts received by Regiments flowing from its position as McKinsey supply development partner at Transnet and an additional 5% would be paid to Albatime, a company of Kuben Moodley.

**MR MOLEFE:** Yes.

10 **ADV MYBURGH:** Who introduced Regiments to Essa. I have explained that to you. It is not clear whether this 30/5% arrangement was ever implemented, the cash flows analysed by the Commission show that the arrangement actually implemented by Regiments for most of the lifespan of the relationship with McKinsey was that Essa's entities were ordinarily paid 50% of Regiments' revenue from Transnet with Albatime being paid 5% Transnet's revenue, leaving Regiments with only 45%. And then they say at paragraph 3 ...[intervenes]

20 **CHAIRPERSON:** Just hang on one second. I think that sentence on page 326 starting with:

“The cash flows analysed by the Commission...”

Might be a good example of what Mr Molefe was talking about.

**ADV MYBURGH:** Yes.



**MR MOLEFE:** Instead of saying analysed by the Commission, might be analysed by the money flows team.

**ADV MYBURGH:** Yes, absolutely, yes.

**CHAIRPERSON:** Ja, ja, ja. Okay, alright.

**ADV MYBURGH:** Then it says at paragraph 3:

10 “In some cases Regiments’ laundering arrangements with Essa and Albatime on joint McKinsey/Regiments’ contracts with Transnet were fraudulently presented by Regiments in joint  
McKinsey/Regiments bid submissions as Regiments supply development arrangements. In other cases the laundering payments were made without any pretext of such payments in the proposals submitted by McKinsey/Regiments.”

Paragraph 4:

20 “Through these laundering arrangements hundreds of millions of rands were laundered through shell companies nominated by Essa out of fees paid by Transnet to Regiments on the McKinsey/Regiments appointments at Transnet.”

Do you see that?

**MR MOLEFE:** Yes.

**ADV MYBURGH:** Then they say at paragraph 5 or the report says:

“Regiments has publicly admitted that it had an

arrangement with Essa and Moodley that they pay Essa and Albatime 50% and 5% respectively of the income they received from Transnet in respect of contracts on which they worked alongside McKinsey. They claim that these payments were business development fees due to Essa who introduced them to McKinsey and to Moodley who introduced them to Essa.”

Paragraph 6:

10 “The business development fees paid to Essa were simply money laundering payments. The shell companies designated by Essa to receive these business development fees changed over time. They included Devita...

Which we will hear about later.

“...and Homix and a number of others.”

Over the page:

20 “All of these shell companies operated as out and out money laundering vehicles without any legitimate business activities. Revenue received from Regiments by these shell companies was within days, laundered to lower level money laundering entities. Apart from inflows from Regiments and other corrupt associates of Essa and the Guptas to shell companies had no income.

Apart from outflows to lower lever laundry entities, the shell companies had no expenses of consequence. None of the shell companies paid PAYE (employees' tax) to SARS."

Do you see that?

**MR MOLEFE:** Yes.

**ADV MYBURGH:** Now we get to a part that involves you directly at paragraph 6:

10 "The joint McKinsey/Regiments proposal in June 2014 for the coal line contract..."

Because you signed these contracts together with Mr Singh, we are going to come to them in a moment, or you signed the confinements.

"The joint McKinsey/Regiments proposal in June 2014 for the coal line contract, the LMPP contract , stated the Regiments would be using Homix and Albatime as site development partners."

**MR MOLEFE:** The contract stated that Homix will be used.

20 **ADV MYBURGH:** That is how bad it was. I will show you the contracts.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** So now Homis actually put up as a site development partner of Regiments. At paragraph 9:

"The coal line and LMPP contracts were awarded to

McKinsey and Regiments without any competitive bidding process.”

I will come to the detail in a moment.

“At the same time Transnet also awarded to McKinsey and Regiments without any competitive bidding process contracts with Kumba Iron Ore and manganese contracts.”

Those are contracts that you or bid confinements that you and Mr Singh signed, will come to them in a moment. 10:

10 “In the context of preparing joint proposals for these contracts, Regiments emailed to McKinsey on 13 June 2014 a spreadsheet containing a detailed breakdown of fees that were to be paid by Regiments to Homix and Albatime in their guise as site development partners of Regiments on the four contracts. The spreadsheets attached to the Regiments’ email of 13 June 2014 provided for aggregate amounts in excess of R100 million to be paid to Homix and Albatime on the four contracts.”

20 Paragraph 11:

“McKinsey has confirmed through David Fine’s statement...”

He works for McKinsey.

“...to parliament that neither Homix nor Albatime were involved in providing services in any project in

which McKinsey were involved. However, as detailed below, millions of rands were paid to Homix and Albatime from the amounts paid by Transnet to Regiments in respect of these four contracts and other Regiments/McKinsey contracts.”

**MR MOLEFE:** So the money from Transnet to Regiments to these companies?

**ADV MYBURGH:** Ja.

**MR MOLEFE:** Or was it from Transnet to McKinsey to  
10 Regiments?

**ADV MYBURGH:** Well, sometimes they would pay directly where they were the skills development partner. We will come to the detail. So in some instances ...[intervenes]

**MR MOLEFE:** Ja, the big companies came with Regiments.

**ADV MYBURGH:** In some instances what would happen is it would be McKinsey and Regiments, right? And then the deal was Transnet would pay Regiments and then those amounts would be disbursed to Essa and Albatime through  
20 Homix, etcetera.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** In other instances what happened is when McKinsey/Regiments put in a bid, Regiments put up Homix and Albatime as their skills development partners.

**MR MOLEFE:** And then but they would pay their skills

development partners.

**ADV MYBURGH:** That is right.

**MR MOLEFE:** After being paid by Transnet.

**ADV MYBURGH:** Okay, so then have a look at paragraph 12. So it talks about:

“In February 2016 Regiments produced an internal evaluation of its advisory unit for the purposes of determining what payments should be made during Wood and Pillay.”

10 Etcetera and it says that.

**CHAIRPERSON:** That name there, Mr Myburgh, is Nyonya.

**ADV MYBURGH:** Nyonya.

**CHAIRPERSON:** No, just for that ...[intervenes]

**ADV MYBURGH:** Between Wood, Pillay and Nyonya.

**CHAIRPERSON:** Yes.

**ADV MYBURGH:**

20 “When Wood with a 32% interest in Regiments took the advisory unit with him to Trillian but gave up his interest on all other business units within Regiments.”

**CHAIRPERSON:** If I am pronouncing it wrongly somebody should let us know but that is my understanding of how it is pronounced.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** I am indebted to you, Mr Chairman.

**CHAIRPERSON:** Okay.

**ADV MYBURGH:** Then there are two other paragraphs which I am going to deal with with Mr Singh in particular, we can leave those out for the moment but let us just go to the conclusions at paragraph 3:

10 “Over the period March 2014 to February ’16  
Regiments paid hundreds of millions of rands to  
money laundering vehicles designated by Essa in  
return for his role in corruptly procuring their  
procurement to contracts with state owned  
enterprises.”

16:

“More than 200 million of these laundry payments  
derived from fees paid to Regiments on contracts  
where they worked as McKinsey’s site development  
partner at Transnet.”

17:

20 “In some of its joint proposals with McKinsey  
Regiments fraudulently provided for these laundry  
payments by describing Essa’s laundry vehicle,  
Homix, as Regiments as site development partner.”

So you get the picture generally, Mr Molefe.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** Now did you know about this?

**MR MOLEFE:** No, Chair.

**ADV MYBURGH:** Alright. So at least on this report  
...[intervenes]

**CHAIRPERSON:** You are asking whether he knew then,  
Mr Myburgh?

**ADV MYBURGH:** Yes, then.

**CHAIRPERSON:** Okay.

**ADV MYBURGH:** Mr Molefe, so then on the face of this  
report what happened is that whilst you were at the helm of  
10 Transnet there was large scale money laundering  
happening under your watch using Transnet. Do you see  
that?

**MR MOLEFE:** This money laundering, I mean, it is not a  
finding, is it?

**ADV MYBURGH:** Sorry?

**MR MOLEFE:** It is not a finding.

**ADV MYBURGH:** No, fair enough.

**MR MOLEFE:** It is not a finding, so ...[intervenes]

**ADV MYBURGH:** I am saying that the Chairperson  
20 ...[intervenes]

**MR MOLEFE:** So the Chairperson must still apply his mind  
to this evidence.

**ADV MYBURGH:** He must still decide. That is why I  
specifically said to you on the face of this report.

**MR MOLEFE:** On the face.



**ADV MYBURGH:** I mean ...[intervenes]

**CHAIRPERSON:** Yes, what Mr Myburgh is doing, Mr Molefe, is he is saying as far as he is concerned when he looks at this report.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** It would seem that it suggests that during the relevant time and during that relevant time you were Group CEO of Transnet there was large scale money laundering.

10 **MR MOLEFE:** Yes.

**ADV MYBURGH:** So – but he wants you in the end to say whether you have any comments, I just want to put that in context, his proposition in context.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** Ja.

**MR MOLEFE:** I agree with your choice of words, Chair.

**CHAIRPERSON:** Yes, yes.

**MR MOLEFE:** It would seem so.

**CHAIRPERSON:** Ja.

20 **MR MOLEFE:** And so I will wait for the finding, the final finding to be made as to whether there was money laundering, there was corruption as he says and so on and so forth. Then I will express my opinion at that point. But the Commission is still ongoing, this is part of an investigation that is ongoing so let us wait and see what

happens in – what comes out of the wash.

**ADV MYBURGH:** No, absolutely and just – I mean, I am sure you will appreciate that the Commission is not able to make separate findings, you know, in other words it could not sign off on this and make a finding of money laundering and then we cross-examine you. Unfortunately – or examine you – these processes need to run together.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** But I am simply putting to you what –  
10 certainly it seems to me the money laundering scheme is going to advance to the Chairperson.

**MR MOLEFE:** It seems that that is what is going to happen.

**ADV MYBURGH:** Okay.

**MR MOLEFE:** So I will wait for the findings to be made and then we can take from you.

**CHAIRPERSON:** Do I understand you ...[intervenes]

**MR MOLEFE:** What I can categorically say now is I have no knowledge of these schemes.

20 **CHAIRPERSON:** Ja.

**MR MOLEFE:** And had no part in them.

**CHAIRPERSON:** Ja.

**MR MOLEFE:** And that from where I was sitting there was certainly no wrongdoing on my part.

**CHAIRPERSON:** Am I correct in understanding you to be

saying you have no quarrel with the suggestion that if what the report says is what happened then it seems that there was large scale money laundering?

**MR MOLEFE**: It seems so.

**CHAIRPERSON**: It seems so. That is good enough, ja.

**MR MOLEFE**: But before one jumps, you must wait for the draft to beat first, the draft will beat when the findings are made.

**CHAIRPERSON**: No, no, no, that is finding.

10 **MR MOLEFE**: Before you start dancing.

**CHAIRPERSON**: You see, the idea is this, that when Mr Myburgh reads this report, that is what seems to him.

**MR MOLEFE**: Yes.

**CHAIRPERSON**: But you might read this report and say but I do not agree that if this is what happened, it means there was [indistinct] 27.14 value, do not read – or you might even say no, it does not reflect any money laundering ...[intervenes]

**MR MOLEFE**: Or I might even say ...[intervenes]

20 **CHAIRPERSON**: So the idea is just to give your own perspective.

**MR MOLEFE**: Or I might even say well, it be interesting to hear what these people have to say about it.

**CHAIRPERSON**: Yes, ja.

**MR MOLEFE**: Their right of reply.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** Because when they do reply, a different picture might emerge.

**CHAIRPERSON:** Ja.

**MR MOLEFE:** So I would rather hold the horses and say I note what it being said, we will wait for the final outcome.

**CHAIRPERSON:** Ja.

**MR MOLEFE:** However, I do – I want to emphasise that in as far as my knowledge, my personal knowledge of these  
10 activities are concerned, I did not know about them and I was no involved and I deny any wrongdoing if that is what is ...[intervenes]

**ADV MYBURGH:** Yes, no, that I appreciate but I suppose now you understand the context in which we have concerns about what the drivers have to say about senior executives having money.

**MR MOLEFE:** What the drivers have to say?

**ADV MYBURGH:** Yes.

**MR MOLEFE:** What did the drivers say, Mr Myburgh.

20 **ADV MYBURGH:** We will come to that.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** But you do understand, just so that we – before we move on, that on the fact ...[intervenes]

**MR MOLEFE:** Ja, but on ...[intervenes]

**ADV MYBURGH:** Just hang on, Mr Molefe. On the face of

this report Mr Essa and the Guptas are engaged in money laundering.

**MR MOLEFE:** The Guptas ...[intervenes]

**ADV MYBURGH:** In hundreds of millions. You understand that?

**MR MOLEFE:** It seems so.

**ADV MYBURGH:** Yes, I am saying on the face of ...[intervenes]

**MR MOLEFE:** No, I understand what you say and I also  
10 understand that you are saying it seems so.

**ADV MYBURGH:** No, you are saying it seems so, I am saying on the face of the report ...[intervenes]

**MR MOLEFE:** No, the Chairperson said [inaudible – speaking simultaneously]

**ADV MYBURGH:** Yes, but I want to make one point ...[intervenes]

**MR MOLEFE:** All I said was I like the Chairperson's choice of words.

**ADV MYBURGH:** But I want to ...[intervenes]

20 **MR MOLEFE:** Because we must still wait for the final finding.

**ADV MYBURGH:** But there is a – you talked about a beating of the drum, this is not silent because one thing I want to mention to you is that McKinsey, you know, have conceded that all of these contracts were tainted.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** And they have put their money where their mouth is, they have agreed to pay back 650 million in relation to these contracts and a contract at SAA.

**MR MOLEFE:** Yes.

**ADV MYBURGH:** That speaks volumes, does it not?

**MR MOLEFE:** Yes. But let us wait for the final finding and in any case, you may well present this to me but it is up to the Chairperson ...[intervenes]

10 **ADV MYBURGH:** Yes, I understand that.

**MR MOLEFE:** To make a finding.

**ADV MYBURGH:** Do you want to comment on McKinsey having accepted that all the contracts are tainted where they worked alongside Regiments and on the basis have agreed to pay R650 million.

**MR MOLEFE:** No, I will comment on it.

**ADV MYBURGH:** But you accept they did that.

20 **MR MOLEFE:** Ja, I mean you heard they did of their volition, for their own reasons, I did not see why I should...[intervenes]

**ADV MYBURGH SC:** Well they did it because the contracts are tainted, they would not have done that out of the goodness of their heart.

**MR MOLEFE:** Maybe they did it out of the goodness of their heart.

**ADV MYBURGH SC:** Mr Molefe please.

**MR MOLEFE:** [laughing]. Yes, Mr Myburgh, Mr McKinsey took a particular line ...[intervenes]

**ADV MYBURGH SC:** Alright.

**MR MOLEFE:** ...of action and all I am saying is I do not see a need for me to comment.

**ADV MYBURGH SC:** You see now the importance of every time we determine involvement of Mr Essa it becomes important, does it not.

10 **MR MOLEFE:** To you, yes.

**ADV MYBURGH SC:** And to the Commission.

**MR MOLEFE:** And to the Commission, yes.

**ADV MYBURGH SC:** I just wanted to go back and ask you this. What I am struggling - and the great irony, I suppose insofar as you say you completely innocent is this started with you agreeing to Letsema being replaced.

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** Yes, Mr Molefe.

20 **MR MOLEFE:** Even the famous case of the guy who slipped in the bathroom had a concussion...[intervene]

**CHAIRPERSON:** Please raise your voice, speak up Mr Molefe.

**MR MOLEFE:** I say, is it not the case of the guy who slipped in the bathroom, had a concussion and then somebody rushed him to hospital and then on the way to

hospital, they had a car accident, and then when they got to...[intervene]

**CHAIRPERSON:** I cannot hear you.

**ADV MYBURGH SC:** I do not think the Chairperson can hear you.

**CHAIRPERSON:** I cannot hear you.

**ADV MYBURGH SC:** And you know you must speak to him.

**MR MOLEFE:** I am saying to Mr Myburgh is this not the  
10 case of the guy who slipped in his bathroom, had a concussion, was rushed to hospital on the way to hospital, he had a car accident, and then when he got to hospital he was not attended to and he died.

So now...[intervene]

**CHAIRPERSON:** I do not know what you are talking about.

**MR MOLEFE:** Alright.

**CHAIRPERSON:** And maybe, let us continue.

**MR MOLEFE:** Yeah, and then what Mr Myburgh is saying,  
20 but the problem is the concussion.

**CHAIRPERSON:** If at a later stage, you want to - you think there is something important about this incident, this example, you can come back to it, but let us continue for now.

**MR MOLEFE:** But Mr Myburgh understands what I am



trying to say.

**ADV MYBURGH SC:** Yes, I do and I mean, that I need to put to you that it started with a decision...[intervene]

**CHAIRPERSON:** Is it somehow like the man who walks next to the goats?

**ADV MYBURGH SC:** I think it is, too close to the goats.

**CHAIRPERSON:** Too close to the goats but he is not stealing them.

**ADV MYBURGH SC:** I think what is important and again,  
10 now I am being - in fairness to you I suppose whether you walked too close to the goats or whether you were complicit, cannot be determined on a decision by decision basis. So you cannot say, well, let us say you know, I knew something about a crocodile and I did not do anything wrong.

What we going to, have to do at the end of your evidence is tally all of these things up and then ask the question. Did you really not know, were they too smart for you, were you asleep at the wheel or were you complicit?

20 **MR MOLEFE:** Yes.

**ADV MYBURGH SC:** We have to decide that on all of the facts.

**MR MOLEFE:** I have, I have not - I have no problem in you deciding that as long as it is based on evidence.

**ADV MYBURGH SC:** Absolutely.

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** Alright, so let us see if - could I just take you perhaps for the sake of completion to page 403 of the same bundle, bundle 5. There is a media statement released by the Chairperson, you have read this I take it, 403.

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** Have you read this statement before? **MR MOLEFE:** Yes.

10 **ADV MYBURGH SC:** And perhaps paragraph 1 captures it.

“McKinsey worked alongside Regiments Capital at Transnet and SAA on contracts that had been investigated by the Commission. The Commission recently initiated discussions with McKinsey is now pleased to announce that McKinsey has undertaken to repay all of the fees paid to it for work it performed on the Transnet and SAA contracts, alongside Regiment. The amount covered by  
20 McKinsey is undertaking has not yet been fixed with Transnet and SAA but is likely to be around R650million.”

You see that?

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

**ADV MYBURGH SC:** I just want to go back before we go

forward. Did you, when Transnet agreed that Letsema be replaced by Regiments and that was a big change, not so. Regiments, sorry Letsema to Regiments because if you look at it in the context of the contract, they were effectively a 30% partner, it is a big change, to move from one SD partner to another, not so?

**MR MOLEFE**: No, the change that in which I was involved was to say that Regiments must find another partner.

**ADV MYBURGH SC**: But it is a big change.

10 **MR MOLEFE**: No, that was not a big change.

**ADV MYBURGH SC**: No it was because...[intervene]

**MR MOLEFE**: The big change for me after everything that was said is when the deals that you are talk about were made.

**ADV MYBURGH SC**: Oh, yes, absolutely.

**MR MOLEFE**: Yeah, that was the big change.

**ADV MYBURGH SC**: Ja, because must speak about the money, I know.

20 **MR MOLEFE**: Yeah, but just saying that Regiments must replace Letsema and just leaving it there.

**ADV MYBURGH SC**: But Mr Molefe...[intervene]

**MR MOLEFE**: I think was not a big change.

**ADV MYBURGH SC**: No, okay well, perhaps I need to finalise it.

**MR MOLEFE**: So it what on the actual, not even the

replacement that happened, but the deals that you now described, happened down the line, where actually the big change happened.

**ADV MYBURGH SC:** Yes, no I think perhaps we at cross purposes, the replacement of Letsema with Regiments was a material change to the McKinsey Consortium.

**MR MOLEFE:** Yes, but you must remember that my involvement was where not even the replacement. It was to say that Letsema needs to be replaced because of the  
10 conflict of interest. But it was unfortunate that here that conflict is not properly captured, because, as I remember, it was because Barloworld is likely to be a bidder.

But I will go and investigate this overnight about why Letsema was - there was a recommendation that I agreed with that Letsema must be replaced. But the big change for me in listening to this story is when the deals that you are talking about, about sharing of the partners, and so on are concerned, that is where the bid is.

**ADV MYBURGH SC:** You did not know about that?

20 **MR MOLEFE:** I did not know about that.

**ADV MYBURGH SC:** Because you and I are at cross purposes I am afraid. Can I just take you and see if we can cut through this for the purposes of moving on, can I ask you to go I think for the first time to bundle 6, to exhibit 27.

**MR MOLEFE:** Yes, page?

**ADV MYBURGH SC:** Are you there? I want to take you towards the end of the file to page 380, three eight zero.

**MR MOLEFE:** What was that?

**ADV MYBURGH SC:** I think you might have the wrong file. This is one of the two Mr Molefe that I gave you this morning.

**CHAIRPERSON:** Ja, it is a file that should be in front of you one of the files in front of you, it should say Transnet  
10 bundle 5, 306, Transnet 06. It is a smaller file I think, Transnet bundle 06. What about the green one, that green one that you have in front of you?

**MR MOLEFE:** The green one that is mine.

**CHAIRPERSON:** Oh it looks like – oh I thought they were finding it somewhere else, Transnet bundle 06.

**ADV MYBURGH SC:** With your leave Mr Chairman, we will find that file because I know that I gave it to Mr Molefe because I gave it this morning, but there are lots of files. My junior has another copy of this bundle perhaps for the  
20 sake of speeding things up.

**CHAIRPERSON:** Okay, Mr Molefe they will give you another file.

**ADV MYBURGH SC:** Alright, so are you at page 380?

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** And you are familiar with the fact

that...[intervene]

**CHAIRPERSON:** You want to give Mr Molefe sanitizer, have you got sanitizer there?

**MR MOLEFE:** Ja, I have Chair.

**CHAIRPERSON:** Did they give it to you, will you be fine? Okay, alright.

**ADV MYBURGH SC:** Alright, so Mr Molefe you familiar with these reports, in this bundle?

**MR MOLEFE:** Yes.

10 **ADV MYBURGH SC:** This page 380, you see at paragraph 2.4, there is the heading, the letter of intent related 6 December, we have spoken about that. I am going to take you if I may to paragraph 2.4.5 and Mr Molefe you will also in, fairness to you I point out that these reports, of course, are not binding on the Chairperson. They are just opinions of a particular entity.

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** But I will take you to it so that I can get you to comment on the propositions that I want to  
20 make. It says at 2.4.5:

“Pursuant to the approval by Mr Molefe that McKinsey partner with another service provider Regiments was included as a member of the McKinsey Consortium despite not having properly tendered as part of the McKinsey Consortium.”

2.4.6:

“The appearance of Regiments name as a member of the McKinsey Consortium and accordingly a service provider to Transnet at this stage of the procurement process was irregular for the following reasons.”

Sub-one:

“Regiments was not a member of the McKinsey Consortium when it submitted its proposal to the  
10 1064 transaction advisor tender.”

Sub-two:

“The 1064 transaction advisor tender was awarded by the TAC to the McKinsey Consortium based on its stated composition at the time of the submission of its proposal. The capabilities of the McKinsey Consortium members to perform the various aspects of the 1064 transaction advisory tender and accordingly, the McKinsey Consortium eligibility for the award was assessed based on the verification  
20 and evaluation of the claims made by its constituent members of which Regiments was not one.”

Sub-three:

“Transnet has a statutory duty to ensure that when it contracts for goods and services it does so in accordance with the system that is fair, equitable,

transparent, competitive and cost effective. It is this then when Transnet has in place a PPM which states inter alia that all procurement with Transnet shall be done in line with these procedures. The inclusion of Regiments as a member of the Consortium was not transparent, competitive and ultimately not in accordance with any of the PPM stipulated procurement path.”

**MR MOLEFE:** Yes.

10 **ADV MYBURGH SC:** Sub-seven:

“It is apparent from the inclusion of Regiments as a member of the McKinsey Consortium in the LOI that after the adjudication and award of the tender by Transnet the McKinsey Consortium was permitted to change its composition and to introduce a new member. This regiments, as such, the capabilities and other credentials of Regiments were not subjected to the rigor of the verification evaluation and adjudication process inherent in any tender  
20 process.”

Now, do you want to comment on that?

**MR MOLEFE:** Yes, Chairperson, as you see, in 2.4.5 it says:

“This went to the approval by Mr B Molefe by McKinsey to partner with another service provider.”



That is, where I was involved, that they should partner with other service providers.

**ADV MYBURGH SC:** Yes.

**MR MOLEFE:** Then after that, what you presented was an agreement between McKinsey and partner by Mr Singh that that partner would be, and then I asked when that contract was presented here, that this contract must have been preceded by a name, I did ask at the time.

I do not know if you remember, I said the way that  
10 we did things for Mr Singh to sign a contract like this there must have been a memo that explains the background to this, to sign this contract.

**ADV MYBURGH SC:** Mr, Mr Molefe.

**MR MOLEFE:** And at the time, I said, I would be interested to see that memo, what that memo said about Regiments and what really the reasons behind this is, and then I think he said, no, we do not have the memo we just have the agreement.

**ADV MYBURGH SC:** But why I laugh is no one is going  
20 to record what happened, I have told you what happened. It is large scale criminal activity.

**MR MOLEFE:** No.

**ADV MYBURGH SC:** The meeting was called, and Regiments were told, we will appoint you but then you must pay Essa 30% of the fee. That is not going to find its way

into a memorandum.

**MR MOLEFE:** But at Transnet for Mr Singh to sign a contract like that, he needed a memo.

**ADV MYBURGH SC:** Well, let us see what Mr Singh says but let me ask you this question. Where was Regiments subjected to verification, evaluation and adjudication?

**MR MOLEFE:** But that memo would say.

**ADV MYBURGH SC:** No, that is not what happened. What the fact show is you decided that Letsema should be  
10 replaced. It opened the door for McKinsey to choose whoever they wanted, that was your decision. Why did you not say that whoever you choose as a replacement for Letsema has to be subjected to the same verification evaluation and adjudication process, why did you not do that?

**MR MOLEFE:** That is why I am curious to see if Mr Singh's signing of that contract was preceded by a memo written in what I always call at Transnet English, which explains why  
20 we are taking a decision.

**ADV MYBURGH SC:** Why did you not provide when you took the decision that Regiments had to be subject to the same verification, evaluation and adjudication process as Letsema? Why did you not provide for that in your decision?

**MR MOLEFE:** You mean, why was that not recommended to me?

**ADV MYBURGH SC:** You also had to apply your mind Mr Molefe.

**MR MOLEFE:** Yes, I was not saying who should replace Letsema, I was not involved.

**ADV MYBURGH SC:** That is not what I am asking.

**CHAIRPERSON:** Let us, maybe let us...[intervene]

**MR MOLEFE:** So the letter will mean, where Letsema  
10 must be replaced.

**CHAIRPERSON:** Let us come – let just look at it from this angle, do you accept as you sit there today or do you not accept that it would have been irregular for Regiments to be brought in, in that fashion without being subjected to that process of verification, you accept that?

**MR MOLEFE:** I do, Chair

**CHAIRPERSON:** Yes, okay alright.

**MR MOLEFE:** Which is why I am asking.

**CHAIRPERSON:** Yes.

20 **MR MOLEFE:** Mr Anoj Singh's signature of that contract was it preceded by name because that memo would have outlined the process that was followed or not followed. It is actually in assessing the contents of that memo, if it exists. That would tell us exactly what happened and what the reasons were, yes.

But unfortunately, because I did not sign that contract, I did not see that but what I am saying to the Commission, if you really, really want to get to the bottom of our arrangement or Mr Singh has got to sign that agreement. There must have been a memo unless Mr Singh comes here and says, no, I signed but there was no name.

**CHAIRPERSON:** Yes, okay but as you sit there looking at this, and accepting that it would have been irregular for Regiments to be included without going through this  
10 verification process.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** Are you leaving out what might be found if there is a memo and Mr Myburgh has already said that I think it is unlikely there would be any memo, leaving that aside, can you think of any reason why it would have been justified to include Regiments without subjecting Regiments to that process that Letsema had been subjected to?

**MR MOLEFE:** Yeah, no, I cannot think of any.

20 **ADV MOTSEPE SC:** Chair.

**CHAIRPERSON:** Yes.

**ADV MOTSEPE SC:** I would imagine this is one of the documents that were received last night, and if that is the position, I think Mr Molefe should be granted...[intervene]

**CHAIRPERSON:** Your voice is lowered.

**ADV MOTSEPE SC:** I was saying Chair this is one of the documents that has been received last night and if that is the case, Mr Molefe can be given an opportunity to look at this document overnight.

**CHAIRPERSON:** To get?

**ADV MOTSEPE SC:** Mr Molefe can be given an opportunity to look at this document overnight if this is one of the documents that we received last night, especially those documents were delayed and others.

10 **MR MOLEFE:** Chair.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** The contract what I will do tonight is provide to the Commission and investigate if Mr Anoj Singh's entering into a contract was ceded by a memo. Let us find out if there was a memo and get hold of that memo. Failing which perhaps it can be explained what the process was.

**CHAIRPERSON:** Ja.

20 **MR MOLEFE:** But we said I am not in a position to comment on that, because I also want to understand what the process was.

**CHAIRPERSON:** Ja, no that is fine, Mr Myburgh.

**ADV MYBURGH SC:** Yes, thank you, so you see...[intervene]

**CHAIRPERSON:** And Mr Singh is coming, of course.

**ADV MYBURGH SC:** Yes, Mr Singh is coming, he will no doubt deal with the questions that you have left for him and that I have got for him, too. But Mr Molefe you see what the facts show is that Regiments actually became involved without any adjudication or evaluation or verification of them certainly not by Transnet, so just to let you...[intervene]

**MR MOLEFE:** Unless if we find the memo that explains that.

10 **ADV MYBURGH SC:** Mr Molefe it does not help you to say unless you can find a memo, the Commission has investigated this matter. This is evidence that has been dealt with. I am taking it to the MNS Report, they also investigated matters. You cannot every time when faced with a difficult question, say that there must be a memo somewhere. I mean, just so that you understand, on the face of it...[intervene]

**MR MOLEFE:** The problem with your difficult questions, Mr Myburgh is that they are questions that did not involve  
20 anything that I did.

**ADV MYBURGH SC:** Right, you know...[intervene]

**MR MOLEFE:** Because I can explain my actions.

**ADV MYBURGH SC:** But you were involved here directly you said...[intervene]

**MR MOLEFE:** No, no I said I was involved up to the point

where Letsema had to be replaced. I did not - I was not involved in the replacement of Letsema and all I am saying is in the replacement of Letsema was there memo that was written.

**ADV MYBURGH SC:** No, there was not, not on our investigation and research.

**MR MOLEFE:** Was the definitely not, I mean, was Transnet asked for that memo?

**ADV MYBURGH SC:** Mr Molefe if there was one, then we  
10 would have put it up.

**MR MOLEFE:** No, no.

**ADV MYBURGH SC:** I mean, I cannot swear that there is not one, but the point is, if you could just deal with this, why did you not apply your mind and say we cannot let McKinsey just replace Letsema with whoever they want?

**CHAIRPERSON:** Regiments.

**ADV MYBURGH SC:** I beg your pardon?

**CHAIRPERSON:** Yeah, you.

**ADV MYBURGH SC:** Why did you not provide for some  
20 evaluation process? That is really all I am asking, the decision and it is a decision that you took.

**MR MOLEFE:** Ja, Chair that I am prepared to concede.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** But maybe when we replaced, when we said Letsema must be replaced we should have also talked

about a process to find the replacement.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** We did not talk about the process. However, I am curious to see even in the absence of stating that there must be a process, what was followed? What was the process?

**CHAIRPERSON:** Would it be correct to say you are keen to find this out because on your own understanding it would have been irregular for Regiments to be included  
10 without going through the process, so you are keen to find out what justification may have been put up?

**MR MOLEFE:** It would have been odd.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** Alright, Mr Myburgh.

**ADV MYBURGH SC:** Thank you. So let us then move on. So that was a conflict that arose, Letsema we know is ultimately replaced by Regiments. That happens between August and December that is 2012. Now do you remember  
20 that a year later, in about November 2013 Regiments then replaced Nedbank, due to another conflict of interest.

**MR MOLEFE:** I seem to recall that vaguely.

**ADV MYBURGH SC:** November 2013.

**MR MOLEFE:** Ja, I recall - let me just say I remember.

**ADV MYBURGH SC:** Okay, well, perhaps tomorrow I will



give you a copy of the letter because I have it in Mr Singh's file, but for the moment...[intervene]

**MR MOLEFE:** Did Mr Singh sign the letter?

**ADV MYBURGH SC:** Yes, he did. So do you recall Regiments replacing Nedbank?

**MR MOLEFE:** Vaguely Chair, I have no recollection of the detail. But once again, there would have been a memo and I am quite happy to look at the memo, and look because that is what the discipline that we had instilled was that every action must be accompanied by a memo that explains  
10 in English, exactly what is happening.

**ADV MYBURGH SC:** Well, perhaps Mr Singh was not as rigorous in the memo process as you were. He signs the letter – but let me give you a copy tomorrow.

**MR MOLEFE:** Of the letter?

**ADV MYBURGH SC:** Ja.

**MR MOLEFE:** And the memo that precedes the letter if there is.

**ADV MYBURGH SC:** Now...[intervene]

20 **CHAIRPERSON:** Must I take volume 6, bundle 6 away or you still needed?

**ADV MYBURGH SC:** I think, yes, I think you could. Thank you, Chairperson.

**CHAIRPERSON:** Okay, I have limited space here so I have to keep an eye on how many files I keep here.

**MR MOLEFE:** Or sorry, I had I put the file safely here on the chair, that I could not find.

**CHAIRPERSON:** Mr Molefe?

**MR MOLEFE:** No, that file that was missing...[intervene]

**CHAIRPERSON:** You have found it.

**MR MOLEFE:** It was here on my chair, ja.

**CHAIRPERSON:** Oh, okay.

**MR MOLEFE:** I put it away, but now I forgot it was there.

**CHAIRPERSON:** Ja, okay.

10 **ADV MYBURGH SC:** Mr Molefe look, I am going to give you this letter and obviously the Chairperson a letter...[intervene]

**CHAIRPERSON:** I am sorry, Mr Myburgh maybe now that you have discovered that you have got it there, maybe the one that was lent to you should go, so that you do not end up.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** Ja, it should be returned to whence it came from.

20 **ADV MYBURGH SC:** Mr Molefe just so that we locate ourselves I will give you the letter overnight, but dated the 19<sup>th</sup> of November 2013, signed by Mr Singh, paragraph 3:

“In May 2013, a potential conflict of interest was raised with McKinsey...[intervene]

**CHAIRPERSON:** Do I have that?

**ADV MYBURGH SC:** No, you do not.

**CHAIRPERSON:** I do not, okay.

**ADV MYBURGH SC:** I am going to provide it overnight.

**MR MOLEFE:** What was the date of the letter?

**ADV MYBURGH SC:** 19 November 2013:

10 “In May 2013, a potential conflict of interest was raised with McKinsey concerning Nedbank, to which a response from McKinsey confirmed the conflict and an alternative solution to provide the services to Transnet was proposed in terms of Regiments Capital to provide the services.”

Paragraph 6:

“This letter says Mr Singh, serves to confirm Transnet’s agreement to McKinsey’s request that Regiments Capital to provide the required services in place of Nedbank.”

Do you see what has happened there?

**MR MOLEFE:** Ja, but I can confirm that was not discussed with me.

20 **ADV MYBURGH SC:** Sorry?

**MR MOLEFE:** I can confirm that that was not discussed with me.

**ADV MYBURGH SC:** Yes, because it was another big and important change, and you see how Regiments now becomes more dominant, not, so?

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** And of course, as it became more dominant, it charged more fees and the more the money laundering grew. That is what you see from the money flows report, not so?

**MR MOLEFE:** I cannot comment on that.

**ADV MYBURGH SC:** But you understand – do you see what was happening here.

**MR MOLEFE:** Hey?

10 **ADV MYBURGH SC:** Do you see what was happening here?

**MR MOLEFE:** But I cannot comment on it because as I say, I was not involved in it.

**ADV MYBURGH SC:** But do you understand now, that one's got to track Regiments, one must track carefully the decisions that were taken that enabled Regiments to come on the scene. One must track carefully every extension of the scope of Regiments work, is that no so?

**MR MOLEFE:** Ja, but...intervene]

20 **ADV MYBURGH SC:** Do you accept that?

**MR MOLEFE:** Mr. Myburgh I said to you that the way that I understood the system to work was that every single decision has to be carefully explained in a memo. Now in the absence of these memos, I mean, I do not know what the memos will say when we find them.

**ADV MYBURGH SC:** Here is Mr Singh's letter Mr Molefe.

**MR MOLEFE:** No, no the letter before you write a letter and make a decision like that or become involved in it there has to be a memo, that is how we operated and in the absence of a memo, I would really want to know why was it not properly explained.

**ADV MYBURGH SC:** That's exactly the question that we are asking.

**MR MOLEFE:** In English?

10 **ADV MYBURGH SC:** Yes precisely, but what you said now, which is important is that you knew nothing about this, correct?

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** Alright.

**MR MOLEFE:** But I would also be curious to see if that decision as properly documented.

**ADV MYBURGH SC:** And what you also accept I suppose is every single contract which is concluded with Regiments must also come under microscope, correct?

20 **MR MOLEFE:** Yes.

**ADV MYBURGH SC:** And what we are going to see is – do you remember how many contracts you signed or tender confinements you signed in favour of Regiments, many?

**MR MOLEFE:** No I don't remember.

**ADV MYBURGH SC:** We are going to come to them.

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** And in fact ...[intervenes]

**MR MOLEFE:** And when you do bring them with their memo's.

**ADV MYBURGH SC:** Here in these bundles the document that there are.

**MR MOLEFE:** Yes, okay no that's fine.

**ADV MYBURGH SC:** And maybe unwittingly that you have seen from the money flows reports those contracts  
10 generated massive money laundering payments, the contracts that you signed, do you understand how one has to look at this carefully now under the microscope, Mr Molefe, you understand that?

**MR MOLEFE:** Yes I do.

**ADV MYBURGH SC:** And one is really only able to draw conclusions at the end, correct?

**MR MOLEFE:** No.

**ADV MYBURGH SC:** So let us then – just before I move on, you did know, as I understand your evidence, that  
20 Regiments, having replaced Letsema also went on to replace Nedbank, you knew that happened, but as I understand it you didn't have anything to do with the decision.

**MR MOLEFE:** Ja, I can't recall the detail or the – I remember that vaguely, ja, but I cannot recall the detail.

**ADV MYBURGH SC:** Can you think why Mr Singh wouldn't have engaged you over this decision because he certainly engaged you over the decision to replace – to have Letsema replaced.

**MR MOLEFE:** Which is why want to see the memo.

**ADV MYBURGH SC:** But you see it is a phantom defence.

**MR MOLEFE:** No, no, no it was – I don't know 2013 is eight years ago, a lot of things have happened in eight  
10 years, I do remember this vaguely but I can't, I need my memory to be jogged, especially that some of the documents arrived last night, I really need to apply my mind and try to recall properly what happened.

**ADV MYBURGH SC:** Okay, alright, so now we have got to November 2013, I am just following the chronology tracking this 1064 advisory contract. There then came a time you may recall when McKinsey ceded its rights and obligations to Regiments, do you remember, on the 1064 contract.

20 So just look at the steps, Letsema is replaced by Regiments, Regiments then replace Nedbank, McKinsey then cedes the contract to Regiments. Regiments now becomes the primary contractor, correct?

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** In circumstances where there has

been absolutely no verification, evaluation or assessment of it.

**MR MOLEFE:** Where are the documents?

**CHAIRPERSON:** Without having won any tender.

**MR MOLEFE:** Come again sir.

**CHAIRPERSON:** And without having won any tender.

**MR MOLEFE:** Without having won any tender yes.

**CHAIRPERSON:** H'm.

**MR MOLEFE:** But where are the documents.

10 **ADV MYBURGH SC:** Well that's one of the new documents from last night, so I just want to place that on record, but let's go to that document.

**CHAIRPERSON:** So it is like – I am sorry Mr Myburgh – so it is like Mr Molefe Regiments comes in and says no I just want – I will just take a hand, then after some time it says I want the whole arm, and then later on it says no I am taking over everything, when then McKinsey ...[intervenes]

20 **MR MOLEFE:** Were they taking over or were they being given.

**CHAIRPERSON:** H'm?

**MR MOLEFE:** Were they taking over or were they being given?

**CHAIRPERSON:** I don't know if there is a difference, but ultimately they would take the position of the main



contractor.

**MR MOLEFE**: Yes.

**CHAIRPERSON**: When in fact they were not even there at the beginning.

**MR MOLEFE**: Yes.

**CHAIRPERSON**: Slowly they come in, then they want more, and then ultimately maybe somebody might say they push McKinsey out and take over, but maybe it is not pushing out, but they take over in the end.

10 **MR MOLEFE**: Yes.

**CHAIRPERSON**: Mr Myburgh?

**ADV MYBURGH SC**: Yes thank you. Could I ask you please to go to Exhibit BB3[a], and if you could then turn to page – the numbers at the top, the MSM numbers, MSM175. Are you there?

**MR MOLEFE**: Yes.

**ADV MYBURGH SC**: So this is a letter by Mr Segar from McKinsey to Mr Singh, dated the 16<sup>th</sup> of April and it reads:

20 “Pursuant to our discussion and agreement on 5 February we have now confirmed that the mandate awarded to McKinsey Incorporated all rights and obligations created thereby was on 5 February ceded and delegated to Regiments Capital.”

**MR MOLEFE**: Yes.

**ADV MYBURGH SC**: You see that?

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** You see how it grew.

**MR MOLEFE:** Ja, but could this be done legally?

**ADV MYBURGH SC:** We are going to come to that because this is where you become directly involved, I am not suggesting necessarily that this is illegal, but what we know is that Regiments were conducting themselves illegally, they were siphoning funds from your business. Do you understand what happened here Mr Molefe?

10 **MR MOLEFE:** Ja, but – no, no McKinsey is ceding its right to the contract ...[intervenes]

**ADV MYBURGH SC:** You know and I am going to put parts of the McKinsey's evidence to you, You see this was around the time where the contract, the 1064 contract was coming to fruition and McKinsey in fact walked away from this, and they were replaced by Regiments and in this time they then came back subsequently.

**MR MOLEFE:** So they were ...[intervenes]

**ADV MYBURGH SC:** Just bear with me.

20 **MR MOLEFE:** They were coerced into doing this?

**ADV MYBURGH SC:** Just bear with me for a moment. It was in this time between McKinsey leaving and when they came back that there was this massive increase in the ETC for the 1064 locomotives.

**MR MOLEFE:** What increase?

**ADV MYBURGH SC:** Sorry?

**MR MOLEFE:** What increase?

**CHAIRPERSON:** The ETC.

**ADV MYBURGH SC:** The ETC. Let's come to that.

**CHAIRPERSON:** I have forgotten the abbreviation what it stands for.

**ADV MYBURGH SC:** The estimated total cost.

**MR MOLEFE:** Ja, that was not an increase, but we will get to it.

10 **ADV MYBURGH SC:** Alright. So just tracking this so here we see 16 April McKinsey are saying look I have ceded rights and obligations, they are out in relation to the 1064 advisory contract, do you follow? Regiment is now the dominant entity, correct?

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** Okay so let's then have a look at your – now go please back to your file, Bundle 5, page 405.7. This is also a letter that you received or memo that you received recently, you are more than welcome to take  
20 time to look at it more carefully.

**MR MOLEFE:** So this is what we got yesterday?

**ADV MYBURGH SC:** Ja, 405.7.

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** Now this incidentally, remember the McKinsey letter is dated the 16<sup>th</sup> of April, this is a

memorandum to you from Mr Singh, if you go to page 405.15. You will see that he sends it to you on the same day, 16.04.14, do you see that? Do you see that? Mr Molefe?

**MR MOLEFE:** What did you want me to see?

**CHAIRPERSON:** He is asking whether you can see on page 405.15 that Mr Anoj Singh signed this memorandum on the same day, namely 16.04.14, same day as the letter that McKinsey sent to Regiments.

10 **ADV MYBURGH SC:** Alright, and if you have a look at the recommendation.

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** Sub-line “note the deliverables executed by the transaction advisor on the locomotive transaction compared to the original scope...”

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** “...ratify the amendment in the allocation of scope of work from McKinsey to Regiments Capital.”

20 **MR MOLEFE:** Yes.

**ADV MYBURGH SC:** “3. Ratify the amendment in the makeup of the transaction advisor consortium from Nedbank Capital with Regiments Capital.”

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** “Now the proven change in the

remuneration model of the transaction advisor compared to the original remuneration model.” Right?

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** Delegation power to the GCFO to give effect to the above proposal, right?

**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** And now the fees?

**CHAIRPERSON:** Add to the above approvals.

**ADV MYBURGH SC:** I beg your pardon, approvals, thank  
10 you. And the fees you see in the table above they were originally it would seem about 50million, what were they now? What were their anticipated fees?

**MR MOLEFE:** Chairperson and Mr Myburgh you know what you are doing is really unfair, this was given to me yesterday, last night. We got it last night. Now you can't take a document that we received last night and just go to the end of the document and say do you see what is the recommended fee. What does the body of the document say? Now as we were talking ...[intervenes]

20 **CHAIRPERSON:** Hang on Mr Molefe, hang on, hang, hang on, so we don't waste time. As I understand it the arrangement that has been reached between Mr Myburgh and yourself and your counsel is that in regard to the documents that you received last night Mr Myburgh would ask questions, but you have a right to say I am not able to

answer questions on this document because I need more time and that will be respected, so that is the arrangement, and all you need to say is look I need to have more time on this document and then that will be – nobody has forced you to answer questions on documents where you need time that you received last night.

**MR MOLEFE:** But Chair even if I am not forced why put me in that position in the first place, because if you look at page 40512, because I just skimmed through this  
10 document, it talks about value paid in by the advisor, it says 00512 impact on Transnet, change remuneration model for a transactional riser, and that is written in English and it goes through general amendment principles, budget implication, but Mr Myburgh's question is going right to the end and saying can you see that 50million.

**CHAIRPERSON:** Yes, but you are free to say look I need to have time to do this and that will be accepted.

**MR MOLEFE:** I do Chairperson.

**CHAIRPERSON:** Ja okay.

20 **ADV MYBURGH SC:** Alright, so you want to leave it there?

**MR MOLEFE:** I would like to leave it, it was given last night and it is not just a matter of going to the conclusion and saying Mr Molefe can you see your culpability there.

**ADV MYBURGH SC:** Ja.

**MR MOLEFE:** That's what you said you see this is where your involvement is ...[intervenes]

**ADV MYBURGH SC:** Mr Molefe ...[intervenes]

**MR MOLEFE:** See that 50million.

**ADV MYBURGH SC:** I think the Chairperson ...[intervenes]

**CHAIRPERSON:** But we are going to waste time now. Mr Molefe you said you need more time, that is accepted.

**MR MOLEFE:** Yes.

10 **CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** Perhaps what I should also then do is point out to you what other documents are contained here, you will see that there's a whole lot of CIPRO reports towards the end, not much reliance will be made on them other than pointing to a name or two, so could you go through all of them overnight and then we will come back to this memo and we are going to come back to the first one.

**MR MOLEFE:** Which ones?

20 **ADV MYBURGH SC:** These documents, the 405 collection.

**CHAIRPERSON:** You might wish to make a note Mr ... – you might wish to make a note of the documents he would like you to look at overnight.

**ADV MYBURGH SC:** The documents that you were given

last night are all the 405 documents, from 40591 to 40595. You will remember that I asked you questions about the memo at 405.1 we are going to come back to that, and ...[intervenes]

**MR MOLEFE:** 405?

**ADV MYBURGH SC:** 405.1.

**MR MOLEFE:** Ja, 2, 4, 5?

**ADV MYBURGH SC:** To 405.6.

**MR MOLEFE:** .6.

10 **ADV MYBURGH SC:** And this is the second document that we will come back to, tomorrow. 405.7 and it is a long document that goes on.

**MR MOLEFE:** Chair when will we return to these documents?

**CHAIRPERSON:** Oh it is tomorrow.

**MR MOLEFE:** No Chair, I will go through them and I will take legal advice.

**CHAIRPERSON:** Okay, that's fine.

**MR MOLEFE:** So I am afraid it will not happen overnight.

20 **ADV MYBURGH SC:** I beg your pardon?

**MR MOLEFE:** I am afraid it will not happen overnight.

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

**CHAIRPERSON:** Well the studying of the documents will happen overnight but you say before you – you will get a chance to ...[intervenes]



**MR MOLEFE:** Yes.

**ADV MYBURGH SC:** Okay, alright. Let us then  
...[intervenes]

**CHAIRPERSON:** Well isn't the position that – just one sec  
– isn't the position that it is better that you look at all the  
documents that you got last night in respect of which you  
haven't had time to reflect, just so that we don't have a  
situation where later on you might say well I looked at only  
the documents that were mentioned but I didn't look at the  
10 others that I also got.

**MR MOLEFE:** Yes, all the documents that were  
...[intervenes]

**CHAIRPERSON:** Received last night?

**MR MOLEFE;** Ja. You see the thing about the documents  
that were received last night some of them we had, some  
of them we had, so skimming through them it is difficult to  
say because now you see this one we have, this one eish I  
am not sure, and so on, and it is not possible to  
...[intervenes]

20 **CHAIRPERSON:** Ja, there was not enough time compare  
and check.

**MR MOLEFE:** Ja, I had this about half past seven on  
Sunday night.

**CHAIRPERSON:** Ja, no, no that is fair enough.

**ADV MYBURGH SC:** Can I just also indicate that from

page 405.28 all the way to 405.95, so it is the bulk of the documents these are two CIPRO reports Chairperson where we will indicate to Molefe when we adjourn what we are using them for, it is really just a matter of showing that X person was a director and Y person was a director, there is a lot of paper here but it involves actually only two names.

**CHAIRPERSON:** Okay, alright.

**ADV MOTSEPE:** Thanks Chair. I have just been  
10 instructed by my instructing attorney that we will have to consult with Mr Molefe and thereafter only make a determination whether he will be ready tomorrow to testify on these documents because as he has just indicated I only received them last night at ten o'clock.

**CHAIRPERSON:** No that is fine.

**MR MOTSEPE:** So we will liaise with the evidence leader to indicate whether we will be ready tomorrow or not.

**CHAIRPERSON:** Yes. But I think subject to what the position will be when we adjourn the idea would be that Mr  
20 Molefe comes back tomorrow and if there is going to be a request for the adjournment of the hearing of his evidence or the adjournment of the hearing of his evidence in regard to certain issues then we can deal with it at that stage. Okay, alright, it is one minute past six, I think every two hours we should just have a short adjournment. Let us

have an adjournment, unless – your estimate is that we are still going to take some time? I don't know how the documents that you can't ask Mr Molefe about affect the time that you needed for today.

**ADV MYBURGH SC:** Chairperson it would obviously be preferable to deal with those documents and get them out of the way, because as you have seen what I am trying to do, and I hope that it is helpful to you and the witness, is to build the chronology and see how this particular contract  
10 unfolded, so I am happy to go back to the documents, but it is not first price.

The other thing that strikes me is if we work too late then no doubt Mr Molefe is going to say he didn't have an opportunity to look at the documents.

**CHAIRPERSON:** I think you are right, so maybe we should adjourn now.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** Maybe we should adjourn now so Mr Molefe gets enough time to look at the documents and talk  
20 to his legal team, and then also because you say it is important for you if possible to deal with the documents before you move on because of the chronology that you want to deal with.

So let us adjourn now, and then resume at ten tomorrow. I have that other application at half past nine, I

don't know if you have had an opportunity ...[intervenes]

**ADV MYBURGH SC:** Yes I did have a look at it briefly  
Chairperson, we don't intend to say anything in response.

**CHAIRPERSON:** Okay no that is fine. Okay we are going  
to adjourn now. In regard to Mr Molefe's evidence will  
resume at ten tomorrow, in regard to the other application  
of Mr Gama, that will be at half past nine tomorrow  
morning.

We adjourn.

10 **REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO 9 MARCH 2021**